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**The State of Alert and Insolvency Procedures in Romania**

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*Introduction*

Due to the global Covid-19 pandemic, Romania declared a state of emergency, as of 16 March 2020, by Presidential Decree No. 195/2020 (Decree) for 30 days, which, on 15 April 2020 was extended by another 30 days. At the same time as the Decree was enacted, the emergency authorities imposed “lockdowns”, including measures like closing non-essential businesses, limiting public gatherings and limiting people’s movements as well as monitoring the streets to ensure people remain inside. These measures have serious implications for the right to liberty, freedom of association and freedom of movement. In addition, many employees lost their jobs or their individual labour agreements were suspended due to technical unemployment; hotels are empty, flights are grounded, restaurants and other small businesses are closing.

*How are insolvency procedures affected?*

As regards Law no. 85/2014 on insolvency procedures, emergency measures taken by the Decree have impacted insolvency procedures in a number of ways: only debtors’ requests filed for opening an insolvency procedure could be processed; as a result, creditors’ requests were suspended and creditors’ claims (appeals, oppositions etc.) against the debtors’ requests for opening the insolvency procedure were not processed during the state of emergency; the statutory time limits for challenging transactions were also temporarily suspended, in order to respect the social distancing measures imposed by the government, as well as to protect distressed companies. As a general effect of the Decree concerning ongoing or potential court cases, procedural steps such as prescription or forfeitures (time bars) were suspended.

Generally, during the state of emergency, courts continued to process all urgent cases, as defined by law, and in this category also fell the requests for opening the insolvency procedure filed by the debtors. Courts held their deliberations in closed sessions to processanysuch requests within 10 days from their being filed. According to the provisions of the insolvency law, an insolvent debtor is obliged to lodge with the court a request within no more than 30 days from the date at which the state of insolvency occurred. This term was not suspended by the Decree; therefore, the obligation to file a request for the voluntary insolvency procedure opening still fell within the timeline above.

The state of insolvency (bankruptcy) is defined as the situation when a company can no longer meet its financial obligations to its lenders as debts become due, for more than 60 days and if the value of its outstanding debts exceeds the amount of RON 40,000 (roughly EUR 8,200). Failure by the debtor to submit an insolvency filing within 30 days from the onset of the insolvency state does not carry any direct sanction. However, by postponing it (up to six months from the onset of insolvency) any filing can trigger criminal liability for late filing, which carries the risk of a prison sentence (this type of sanction has not been suspended either by the Decree).

For all ongoing insolvency cases that had to be carried out by means of public hearings, the courts decided to (i) suspend hearings; or (ii) proceed with them by using digital means (e.g. Zoom, Skype) wherever possible or in situations forced by the particular circumstances of the case; or (iii) complete other procedural aspects which do not imply the presence of the parties at a public hearing. However, given the nature of insolvency cases and the fact that the administration of cases is mostly carried out by the insolvency practitioners, the frequency of such situations has been very low compared to other types of matters (civil, administrative).

The administration activity of insolvency practitioners (auctions, evaluation of assets etc.) was also continued wherever possible using digital means, following decisions made by the creditors’ meetings or creditors’ councils. There is no statistical data regarding the use of digital means. However, in our experience, we have not encountered any opposition to the continuation of the proceedings using this method.

*What to expect after 15 May 2020 (the expected date of relaxing emergency measures)?*

In Romania, the state of emergency ended on 14 May 2020 and it was replaced by a state of alert. Two things of note are likely to impact cases after this date:

* The judicial vacation (July-August) will be shortened this year to only one month (August), due to the consequences of the Covid-19 pandemic and also due to the strike of magistrates and auxiliary court personnel which affected the judicial system in the first two months of 2020;
* The ~~likely~~ lodging of numerous insolvency requests due to approved emergency measures which will lead to a rise in insolvency cases.

*How will insolvency procedures be affected during the state of alert?*

As of 15 May 2020, the state of emergency has been replaced by a state of alert in Romania for 30 days, and therefore, new rules became applicable. In order to support companies (both those in a state of insolvency and those already in insolvency proceedings), as well as the entire business environment, a series of measures have been adopted to prevent and combat the effects of the COVID-19 pandemic, respectively, measures meant to respond to their interests.

In this respect, the priority has been to protect the debtors in difficulty, whose companies, although still viable, risk being brought by creditors into insolvency proceedings, a circumstance that would involve loss of jobs and the sale of assets at low prices, and, on the other hand, companies already in insolvency proceedings which have prospects of recovery.

Among the measures introduced can be mentioned:

* Debtors in difficulty are no longer obliged, during the state of alert, to lodge with the court a request for insolvency within 30 days from the date when the state of insolvency occurs.
* Creditors’ claims for opening insolvency proceedings against a debtor who has ceased his activity, totally or partially, as a result of the measures adopted during state of emergency, may only be lodged after a reasonable attempt, proven by documents communicated between the parties by any means (including by electronic means), to come to a payment settlement agreement.
* The possibility of forced enforcement for current receivables of insolvent companies that are more than 60 days old has been suspended, thus offering an additional possibility for the debtor to recover.
* In the case of debtors who have ceased their activity, totally or partially, as a result of the measures adopted during the state of emergency in order to prevent the spread of the Covid -19 virus, maintained as appropriate during the state of alert, the threshold value for opening the insolvency procedure has been increased to RON 50,000 from RON 40,000 (the new figure being approx. EUR 10,500).
* The deadlines for prevention/restructuring procedures in relation to the activity of a debtor in difficulty, such as: the procedure for negotiations for an ongoing arrangement with creditors (*concordat preventiv*), the deadlines for a debtor under observation, for a debtor in judicial reorganization, the period of execution of a reorganization plan, as well as the initial duration for the execution of a reorganization plan, have all been extended during the state of alert.

*Summary*

These particular measures adopted by the Romanian state, in order to support companies and the Romanian economy severely tested by the Covid-19 crisis, have encouraged companies to find the most suitable solutions to these challenges and follow the example of other European countries such as: Estonia, Germany, Lithuania etc. Given the unique situation created by the Covid-19 pandemic, it remains to be seen whether companies will use other types of rescue proceedings, namely pre-insolvency measures (aiming at rescuing the company), which could be first considered both by the debtors and creditors. In Romania, these rescue proceedings, namely the ad-hoc mandate and the arrangement with creditors (*concordat preventive*, have the advantage that all parties involved (debtors, bank creditors and supplier creditors) may agree upon the rescuing of a distressed company. As such, these procedures may be more efficient given the present situation.