Romania: Liability of Statutory Directors contributing to an insolvency

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IT IS THE RESPONSIBLE PERSONS WHO CONTRIBUTED TO THE INSOLVENCY OF THE COMPANY THAT MAY BE HELD LIABLE FOR THE COMPANY'S DEBTS

Romanian insolvency proceedings are governed by a modern legal framework aimed at rescuing the insolvent debtor, while also ensuring (at least, partially) the payment of debts to creditors.

Sedes materiae in Romania is Law No. 85/2014 on insolvency prevention and procedures (Romanian Insolvency Code) which also covers special provisions for creditors (legal persons, insurance companies, groups of companies), and preventive measures and cross-border insolvency procedures.

Legal grounds for claiming the civil liability of the persons which contributed to the insolvency of the company

During an insolvency or bankruptcy procedure, creditors or the insolvency practitioner may claim this civil liability against such persons under certain legal requirements. Generally, the grounds are based on the report of the insolvency practitioner concerning the reasons and circumstances leading to the insolvency of the company.

In case the report did not mention any liable persons for the insolvency of the company and/or decided that there were no grounds for filing the civil liability claim, such a claim may be filed by the president of the creditors' committee, by an appointed creditor, or by the creditor who holds more than 50% of the total amount of receivables entered on the table of creditors.

As a general rule, the characteristic of a Romanian limited liability company (the most common type of company) is that all the debts incurred are the company's liabilities and not the liabilities of its shareholders, the company being a separate entity from the shareholders.

On the other hand, under certain circumstances, it is the responsible persons who contributed to the insolvency of the company that may be held liable for the company's debts, according to the Romanian Insolvency Code which provides that, for such specific cases, the competent court may decide that part of the company's liabilities are borne by any person (including the shareholders) who caused the bankruptcy by performing any of the following:

a) Use of the company's assets or credits for personal gain or for the benefit of third parties;
b) Performing trade activities for personal benefit under the coverage of the company;
c) Decision to further continue the activity of the company for personal benefit, which obviously led the company to suspending payments;
d) Fictitious bookkeeping, the removal of certain accounting documents or the failure to conduct bookkeeping according to the law;
e) The misappropriation or removal of part of the company's assets or the fictitious increase of the company's liabilities;
f) The use of inappropriate methods to obtain company funds with a view to delaying the suspension of payments; and
g) The payment or the approval of the payment to a preferential creditor against the other creditors, in the month preceding the suspension of payments.

In case such a claim is admitted by the competent court, the creditors of the company may seize the assets of the respective persons who shall have to cover with their own funds all or part of the company's liabilities.

In practice, however, there are few claims admitted by the courts. Most of the time, the creditors, having insufficient evidence for the claim to be admitted, merely invoke the text of the law and base their claim on the assumption of fault.

In conclusion, this is a complex process and more acts and facts must be taken into consideration by the initiator of such a claim. ■