

Romania: Insolvency procedures and the state of alert



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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.

The state of emergency imposed “lockdowns” ranging from closing non-essential businesses to limiting public gatherings. Romanian authorities announced on Friday, 15 May 2020, the ending of the state of emergency and the beginning of a 30-day state of alert because of the ongoing COVID-19 pandemic which was subsequently extended and it is currently in force until 14 October 2020.

How were insolvency procedures affected?

The Decree has impacted insolvency procedures in a number of ways: (i) 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; (ii) 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 all ongoing or potential court cases, procedural steps such as prescription or forfeitures (time bars) were suspended.

For all ongoing insolvency cases that had to be carried out by means of public hearings, the courts decided to (i) suspend/postpone 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.

What happened after 15 May 2020 (the date of relaxing emergency measures)?

The court cases, including insolvency ones, were impacted by (i) the judicial vacation (August) and (ii) the lodging of numerous insolvency requests due to approved emergency measures which will lead to a rise in insolvency cases.

Among the measures introduced can be mentioned:

- Debtors in difficulty are no longer obliged 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 the 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 companies which have been insolvent for more than 60 days 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, 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 reorganisation, the period of execution of a reorganisation plan, as well as the initial duration for the execution of a reorganisation 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. 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. ■



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