

Insol Europe Survey

Insolvency Regulation in Romania

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1. Type of insolvency office holder (IOH)

Insolvency procedures in Romania are divided into professional's procedures, which can be applied to professionals (this include companies and individuals that exercise an organized activity consisting in the production, administration or sale of goods or services, whether or not for profit) and insolvency procedures for insolvent individuals. The personal insolvency law has been adopted in May 2015 and it will enter into force by the end of December 2016.

For both professional and personal insolvency procedures, there are both rescue procedures, aimed at the financial rehabilitation of the company or individual, and procedures whose aim is simply to sell assets and distribute their proceeds to creditors.

Professional insolvency

Both the rescue procedure and the liquidation procedure begin with an observation period (maximum duration: 12 months) during which the creditors submit to the designated IOH their claims against the debtor. These claims are then analysed by the IOH in order to establish the legitimacy, exact value and priority of each claim. The insolvency practitioner then draws a preliminary table of the debt. Creditors may dispute the practitioner's findings and the claim will be settled by the judge. The IOH then draws the definitive table of debt. The next step will determine if a company will follow a rescue procedure or a liquidation procedure. In this observation period the IOH is named judicial administrator.

Rescues procedure – the reorganization period

After the judicial administrator drafts the definitive table of debt, a reorganization plan may be prepared. The plan may provide forbearance and or forgiveness of a proportion of the debt that it is owed. The plan can be drafted by the debtor, one or more creditors who individually or together own more that 20% of the debt value in relation to the definitive table, or the judicial administrator.

The purpose of this procedure is restructuring the debtor's activity according to a plan approved by the creditors and verified by the judge. In the reorganisation period the IOH is named judicial administrator.

The big steps involve the preparation, approval, confirmation, implementing and following a plan called plan of reorganization, which may provide, together or separately, but not

limited to: a) an operational financial and/or corporate restructuring of the debtor; b) a partial or total liquidation of the debtor's assets;

In order for creditors to vote the plan, they will be divided, according to the type of their debt – on categories – the secured debt category – employee's debt category – the state debt category – the suppliers' unsecured debt category and other unsecured debt category.

In order for the plan to be approved by the creditors, the plan must be accepted by the majority of categories (including, if there is, a disadvantaged category) and at least 30% of the total debt values. A plan will be deemed accepted by a category if it is accepted by an absolute majority of the debt value of that category.

If the plan is approved by the creditors, and confirmed by the judge, the company will continue to trade under the control of a special administrator, subject to supervision of the IOH until completion of the arrangement.

Liquidation procedure – bankruptcy

The judge will open a bankruptcy procedure in case such as: the debtor opted for a liquidation procedure, or there was no reorganization plan drafted, or the plan drafted was not approved by the creditors and confirmed by the judge, or the plan hasn't been fulfilled by the debtor according to its provisions, or the current creditors haven't been paid. Current creditors are those whose debt was born during the insolvency procedure. In the bankruptcy procedure the IOH is named judicial liquidator.

The current creditors deposit their claim with the IOH. These claims are then analysed by the IOH in order to establish the legitimacy, exact value and priority of each claim. The judicial liquidator then draws a table of the current debt. Creditors may dispute the judicial liquidator's findings and the claim will be settled by the judge. The judicial liquidator then draws a consolidated table of debt. The IOH proceeds with an inventory of the debtor's asset, after the assets valuation the IOH's job is to realise the assets and distribute them to creditors.

If the companies respond to certain criteria, it will skip the observation period and restructuring procedure all together and enter into bankruptcy.

Personal Insolvency

The personal insolvency law has been adopted in May 2015 and it will enter into force by the end of December 2016. It has both a rescue procedure and liquidation procedure. The IOH duties and functions are largely the same as in the professional insolvency.

2. Size of the Profession

As of 2015, there were 3724 licensed IOH, of whom 2814 were actively taking insolvency appointments. There are no restrictions on the size of the profession, other than the qualifying requirements for authorisation and acceptance of appointments detailed below.

3. Practicing Norms

Romania's IOH can only practice in professional limited liability companies (SPRL), personal limited liability companies (IPURL) and individual practices. These companies' main activity is restricted to IOH regulatory obligations.

4. Qualification Training and Entry Into the Profession

An IOH is required to be licensed. In order to obtain a license one must possess an economic or law university degree and 3 years of experience in the law or economic field and must pass an exam organized by the National Training Institute for Insolvency Practitioners. The exam consists of 80 choice questions.

After having passed the exam, one becomes a trainee IOH. If the 3 years of experience in the economic or law field are achieved working for an IOH, then there is no need for the traineeship; after passing the exam one becomes an IOH.

The trainee IOH must work alongside a seasoned IOH carrying out supervised the functions and duties of an IOH. After 2 years of traineeship, the trainee must pass another exam in order to become an IOH capable of carrying out unsupervised the functions and duties of an IOH.

5. Professional bodies

The IOH's are typically accountants, lawyer or legal advisers.

The IOH's professional body is The National Organization for Insolvency Practitioners' (UNPIR).

The National Organization for Insolvency Practitioners' main objectives are establishing and maintaining necessary regulation for IOH, ensuring fair competition between insolvency practitioners, combating unfair, abusive and fraudulent insolvency market, ensuring transparency and fair practice standards on insolvency market.

The regulatory activity also comprises of: setting and enforcing minimum professional standards, specifying ethical standards, requiring members to undertake a minimum annual continued professional education, adjudicating complaints regarding member's conduct (The disciplinary court within the organization), levying fines and impositions, excluding members from membership and other.

The National Organization for Insolvency Practitioners' has designed the Insolvency Code of Ethics, Interpretation Decisions and the IOH Statute, all of which the IOH are expected to comply with.

The National Organization for Insolvency Practitioners' was founded in 1999.

6. Continuing professional education

The minimum requirement of continuing professional education consists of 20 hours per years, hours that can be obtain by participating in The National Training Institute for Insolvency Practitioners' seminars or on conferences accredited by this organization. This requirement is set within a statutory frame.

7. Body corporate or individual

The IOH must be a body corporate and cannot undertake insolvency appointments in a personal capacity.

8. Sanctions for acting as an IOH without proper authorization

If an unauthorized person accepts an IOH appointment, they may face criminal sanctions. Due to publicly accessible registers of IOHs, it would be unusual for an individual who is not properly authorized to be able to successfully hold themselves out as an IOH.

9. Bonding and Insurance

There are no surety requirements that an IOH maintain in respect of appointments.

It is a requirement of the National Organization for Insolvency Practitioners' that members should hold professional indemnity insurance if they wish to accept appointment as IOHs. The professional indemnity insurance is provided by a number of insurance firms, and the IOHs do not self-syndicate their cover.

10. Appointment of IOHs

Typically IOHs are chosen because of their experience and reputation, however the following provide further details by insolvency procedure:

The judge, opening an insolvency procedure will appoint the IOH requested by the creditor who initiated insolvency proceedings or by the debtor if he initiated the insolvency proceedings. In the absence of such a request made by the debtor or by any of the creditors, the judge will appoint the IOH who has submitted a tender to the file. If there is no tender to the file, the IOH will be randomly selected by the judge. If both debtor and creditor requested a different IOH, it will prevail the creditor's request. The IOH named by the judge is temporary.

In the first creditors' assembly, they may decide to appoint another IOH or to confirm the IOH appointed by the judge.

In case of bankruptcy, the above steps also apply.

11. Remuneration

The remuneration of an IOH and the costs of the insolvency procedure are drawn from the proceeds of the assets of the insolvent estate. If the procedure lacks assets and has no means of sustaining the procedure costs, the costs will be sustained by a national fund.

Authorization and approval of the IOH's remuneration is dictated by the insolvency legislation, which places responsibility for such approval in the hands of the judge (at the opening of an insolvency procedure) or the creditors of the insolvent estate.

An IOH may prepare his offer considering the following criteria:

- a) the number of employees of the debtor;
- b) the risk of labour disputes;
- c) the debtor turnover for the last 3 years;
- d) total debt and number of creditors;
- e) the number and complexity of disputes pending in which the debtor is the plaintiff, respectively, the defendant;
- g) the net asset value, according to the evaluation;
- h) the assets, market attractiveness, risks related to their conservation;
- i) the cash available to the debtor to cover the initial costs of liquidation.

The judge and the creditors may approve his offer or they may set another remuneration for the IOH, without consulting with him.

12. Personal liability of IOHs

The IOH may be held accountable for exercising his functions and duties in bad faith or gross negligence. In addition to this, the IOH may be held accountable in civil, criminal, administrative or disciplinary proceedings.

13. Release of IOHs from personal liability

All insolvency procedures provide for the discharge of the IOH once they have left office and the insolvency procedure has been closed.

14. Independence

IOHS are subject to an insolvency Code of Ethics which requires them to identify and avoid or mitigate threats to their objectivity or integrity. Failing to do so will result in serious disciplinary sanctions such as suspension of their right to practice.