

Romania



Photo: Lavinia Iancu

All you need to know about becoming an Insolvency Practitioner

Lavinia Iancu of Relicons SPRL Timisoara, Romania takes us through what is needed to become an IP in her country



The amendment of the regulation regarding the profession of insolvency practitioner was stringently imposed in the new context of the liberalisation of the community law on the free movement of services (Directive 2005/36/EC of the European Parliament and of the Council on the recognition of professional qualifications, published in the Official Journal of the European Union L255/30 September 2005, p. 0022-0142). Under such conditions the Government's Emergency Ordinance 86/2006 was adopted on the organisation of the activities of insolvency practitioners, promulgated by Act 254 which entered into force on 2 August 2007.



Access to the profession

Act 254/2007 brought significant amendments to the Government's Emergency Ordinance 86/2006 on the organisation of the activity developed by insolvency practitioners (IPs).

The core amendment is that in Romania, only private persons in individual offices, associated offices, individual professional enterprises with limited liability (IPURL) or professional civil firms with limited liability (SPRL) may practice as an IP.

Individual offices should be members of the National Association of Insolvency Practitioners from Romania (UNPIR). Associated offices are established through the association of individual offices. An SPRL is established upon Articles of

Association, arisen from the association of at least two IPs. The capital share of an SPRL represents the equivalent in RON of at least Euro 10,000; the contribution of the partners can be brought in cash, in kind or in business.

IPs, individual offices, associated offices, IPURLs and SPRLs are registered with UNPIR and the UNPIR Table is published yearly in the Official Gazette (MO) of Romania, part 1.

The range of activities allowed by an IP, regardless of its organisation is strictly limited to proceedings on

- insolvency;
- voluntary or amicable arrangements; or
- insolvency prevention under applicable laws, including the actions of financial supervision or special receivership.

An IP may also conduct appraisals ordered by criminal bodies or by law courts in cases regarding the development of actions related to insolvency procedures, voluntary or amicable arrangements.

Appointment

In Romania, an IP candidate must

- hold a higher education degree, long-term education in law, economic sciences or engineering;
- have three year's experience in the legal or economic sector from the date of earning the higher education degree or long-term education
- have passed the examination in the IP profession
- not to be under any of the circumstances of indignity expressly provided for.

Upon passing the examination, the candidate has to register himself in the IPs Table, to obtain professional liability insurance, take a written oath, and become a trainee IP. Traineeship lasts two years, during which time the IP is not allowed to work independently. After the expiration of the two-year period, the Trainee IP may sit another examination and should he pass it, he will become a licensed insolvency practitioner, being allowed to practice according to one of the aforementioned legal forms.

In October 2007, the first examinations took place for the licensing of IPs. Out of 340 candidates, 209 passed the examination and shall cover the stages stipulated by the new legislation in force to become licensed IPs.



Access of foreign IPs

Private or legal persons holding citizenship and nationality of an EU Member State, or belonging to the European Economic Space, may become IPs according to the Government's Emergency Ordinance 86/2006, amended and promulgated by Act 254/2007, under the same conditions as Romanian citizens. They may become IPs in one of such states and may register in the UNPIR Table, being exempted from the examination procedure. UNPIR automatically recognises the document issued by the competent authority of the EU Member State or of the European Economic Space in which the citizen of such state may legally practice the profession. Legal persons established in such a way may also register in the UNPIR Table to practice the profession in Romania.

In the event of only temporary or occasional practice of the profession of IP in Romania, the foreign applicant must apply for the first time in Romania, or if there arises a substantial change of his status, he shall submit a statement to UNPIR including the services he shall render, accompanied by relevant documentation. In the case of IPs who are private persons, they have to prove citizenship, professional license, a certificate proving that the applicant has a legal domicile in a Member State to develop the profession of IP, that he is not prohibited from practicing the IP profession, even if only temporarily, at the time of certificate issuance. In the case of IPs who are legal persons, the declaration shall be accompanied by proof of nationality, by the appointment and legal status of the applicant, as well as by the license of operation. The declaration may be submitted to UNPIR by any means and it is renewed yearly if the practitioner intends to practice temporarily or occasionally during that year.



IP Remuneration

The Government's Emergency Ordinance 86/2006, amended and promulgated by Act 254/2007 on the activity of IPs, regulates a general framework for remuneration.

In Romania, IPs are entitled to receive fees for their activity. Fees may be fixed, based on success or a combination of both.

Simultaneously with the commencement of the insolvency proceedings, the judge establishes a temporary fee for the observation period.

This fee may be amended once, at the first meeting of the creditors, upon the request of the IP. When establishing the fee level according to the laws currently in force, all the factors indicating the complexity of the services to be rendered by the IP shall be taken into account.

There shall be taken into account the number of debtor's employees, the risk of labour conflicts, the debtor's turnover in the last three years, the cumulative value of the debts and the number of creditors, the value of the receivables (claims), and the number of debtors.

As grounds for the amendment of the fee, the IP shall take into account the number and complexity of the pending disputes in which the debtor acts as plaintiff and as defendant, respectively, the value of the assets according to their evaluation, the nature of the assets, the market value, the risk relating to their preservation, and the level of liquid funds the debtor has in order to cover the original liquidation costs.

In Romania, for the administrative work which does not produce any income, there is no regulation for a minimum level of the IP's fee to be applied unitarily by all judges. This is why in practice there are large differences between temporary fees established by judges at the commencement of the procedure. The same law leads to very large differences between the fees acknowledged by the creditors' assembly.

In accordance to provisions of Act 85/2006 on insolvency, the expenses related to the administration of the procedure are borne from the capital of the debtor; otherwise, payment shall be made from the liquidation fund established from 20% of the fees charged by the Offices of Trade Register for the registration operations. The liquidation fund is administered by UNPIR.



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