

Legal Alert

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Amendments brought to the legislative framework regarding insolvency prevention procedures and insolvency proceedings

On October 2, 2018, Emergency Ordinance no. 88/2018, amending and supplementing some normative acts in the field of insolvency (hereinafter "**the Ordinance**") entered into force. The Emergency Ordinance brought several changes to the current legislative framework on insolvency prevention procedures and insolvency proceedings, which will be detailed below.



Amendments brought to the legislative framework regarding insolvency prevention procedures and insolvency proceedings

The Ordinance introduces several amendments to the current legislative framework on insolvency prevention procedures and insolvency proceedings, namely Law no. 85/2014 (hereinafter "**Law 85/2014**" or "**Insolvency Law**"), as follows:

- **The debtor's request to open the insolvency proceedings. Rules on the threshold value envisaged at the opening of insolvency proceedings, as a means of protecting the budgetary creditor**

Currently, the threshold value required for the opening of the insolvency proceedings is of 40,000 Lei (for both creditors and debtors). An additional condition was imposed by the Ordinance on the debtor with respect to filing the request for opening the insolvency proceedings, namely that the amount of the budgetary receivables should represent less than 50% of the declared total receivables, otherwise the latter would not be able to file the request.

- **Establishing incompatibilities - guaranteeing the impartiality of participants in insolvency proceedings**

A natural or legal person who is a creditor in the proceedings may not be appointed as **special administrator**;

Persons who are in a contractual relationship likely to create a conflict of interest or are affiliated with the judicial administrator/liquidator, the debtor or with any of the creditors, may not be appointed as **specialists** (lawyers, accountants, valuers, and other specialists).

- **New rules regarding prescription of the patrimonial liability action of the persons guilty of the debtor's insolvency status**

The patrimonial liability action may be brought within 3 years from the date on which the person responsible for insolvency was or ought to have been known but at the latest by the date of publication in the Insolvency Proceedings Bulletin of the Report on the causes and circumstances that led to insolvency.

- **New rules regarding:**

Starting the forced execution procedure with respect to claims incurred during the insolvency proceedings older than 60 days.

Treatment of budgetary claims in the procedure:

- a) the tax receivables established by a challenged fiscal administrative act and whose enforcement has not been suspended by a final court decision, shall be admitted to the creditors' table and registered under resolute condition until the appeal has been finalized by the administrative court;
- b) the possibility to convert budgetary receivables into shares, subject to the fulfilment of certain cumulative conditions and with the consent of the budgetary creditor;
- c) the criteria to be taken into account by the budgetary creditor when voting on the reorganization plan, which proposes to reduce unsecured budgetary claims by up to 50%.

Assignment of budgetary receivables subject to the cumulative fulfilment of the following conditions:

- a) the price is at least equal to the value of the budgetary receivables, ensuring the full recovery of the receivables listed in the final table;
 - b) the payment of the assignment price and the recovery of the budgetary receivables shall be made within a period of maximum 3 years from the date of conclusion of the assignment contract.
 - c) the assignee justifies a public interest in the assignment of the claim.
- **Significant changes are also made with regard to the insolvency legal status of insurance/reinsurance companies, of which we mention:**
 - a) compulsory introduction of the Guarantee Fund in the Creditors' Committee;
 - b) liquidation and capitalization of the rights from the patrimony of the insurance/reinsurance companies will be made with the notification of the Guarantee Fund and with the approval of the creditors' meeting;
 - c) the Financial Supervisory Authority may request the syndic judge to replace the liquidator if he/she finds the non-fulfilment of his/her duties, and then to appoint a liquidator from the list of insolvency practitioners approved by the Financial Supervisory Authority.
 - d) within 90 days of the final decision to open the bankruptcy proceedings, the insurance policies concluded by the debtor - insurance/reinsurance company shall cease by operation of law.
 - e) the amounts resulting from the capitalization of the technical reserves of the insurance/reinsurance company will be fully distributed to the Guarantee Fund in order to settle the claims corresponding to payments of compensations/indemnities awarded to the insurance creditors.

Entry into force

The Ordinance entered into force on the date of its publication in the Official Gazette of Romania, Part I, respectively on 02.10.2018. With respect to the application in time of the amendments made, it is provided the immediate application of the deadlines set by the Ordinance, respectively of the requests formulated in the proceedings initiated before the entry into force of the Ordinance, including the ones not settled until the latter date.

For further questions regarding the aspects mentioned in this alert, please contact us.



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