

# Introduction to the Romanian Personal Insolvency Law

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On 20 May 2015, the Romanian Parliament adopted the Personal Insolvency Law (“PIL”). Reff & Associates, the law firm representing Deloitte Legal in Romania, has prepared a material summarizing the main provisions of the new law, in order to facilitate the understanding of the contemplated legislation by the various interested parties. We note however that **the law is not currently in force**. It will first need to be promulgated by the President of Romania, after which it shall entry into force within **6 months** as of its publication in the Official Gazette of Romania. We note that, in accordance with the law, the President is entitled to send the proposed law back to the Parliament for re-examination (however, this can be done by the President only once).

### DISCLAIMER

In preparing this summary, in some cases where the text of the law was not clear, we have made some limited interpretations; since this is a new law with no precedents and/or jurisprudence available, such interpretations may or may not be validated in practice.

#### Summary

- A. Purpose of the Romanian Personal Insolvency Law
- B. Definition of personal insolvency
- C. To whom does personal insolvency apply
- D. Individuals excluded from the applicability of the law
- E. Types of insolvency proceedings
- F. Key features of Insolvency Procedure based on a Reimbursement Plan (IPRP)
- G. Key features of Judicial Insolvency Procedure via Liquidation of Debtor’s Assets (IPLA)
- H. Key features of Simplified Insolvency Procedure (SIP)
- I. Discharge of residual debts under IPRP or SIP
- J. Discharge of residual debts under IPLA
- K. Interdictions
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### DEFINITIONS

- BPI** means the Insolvency Proceedings Bulletin
- IC** means the Insolvency Commission
- IPLA** means the judicial Insolvency Procedure via Liquidation of the debtor’s Assets
- IPRP** means the Insolvency Procedure based on a Reimbursement Plan
- PIL** means the Personal Insolvency Law
- SIP** means the Simplified Insolvency Procedure

### KEY ASPECTS

#### A. Purpose of PIL

- Establishment of a collective procedure for redressing the financial situation of a debtor (individual) of good faith, by means of a reimbursement plan;
- Payment, to the extent possible, of the

individual’s liabilities;

- Discharge of residual debts, in order to facilitate the recovery from insolvency.

#### B. Definition of personal insolvency

- Means the status of the debtor’s patrimony characterized by insufficient cash funds for debts’ payment, as they become due;
- The debtor’s state of insolvency shall be presumed if he/she did not pay its debt(s) due to one or more creditors, upon expiry of a **90-day term** as of the due date (relative presumption).

#### C. To whom does personal insolvency apply

PIL applies to individuals of good faith, whose liabilities do not result from the exploitation of an enterprise (in the meaning of Article 3 of the Civil Code) and who fulfill cumulatively the following conditions:

- a) Have had the domicile/residence/usual residence (*reședința obișnuită*) in Romania for at least 6 months before the submission of the insolvency application;
- b) Are under the state of insolvency (as described under Section B above) and there is no reasonable probability to become able, within a maximum period of 12 months, to fulfill their payment obligations as contracted, at the same time with maintaining a reasonable standard of living for themselves and for the persons who depend on them (PIL provides indications on how the reasonable probability should be estimated); and
- c) The total value of their due liabilities is **at least** the equivalent of **15 minimum wages in Romania** (*salariul minim pe economie*), in case of an IPRP/IPLA, and of **maximum 10 minimum wages** in Romania, in case of the SIP.

#### D. Individuals excluded from the applicability of PIL

The procedures regulated by PIL cannot be applied to a debtor in any of the following circumstances:

- has been subject to a prior insolvency procedure finalized with the release of residual debts within

- less than 5 years before the submission of the current insolvency application;
- has been convicted through a final court decision of committing any of the following criminal offences: tax evasion; forgery; intentional offences against the patrimony in breach of trust – except if meanwhile rehabilitated;
- has been dismissed for reasons imputable to him/her within the last 2 years;
- even if fit to work and without a workplace or any other income sources, (i) did not make reasonable efforts to find a workplace; or (ii) unjustifiably refused a proposed workplace or another income producing activity;
- has incurred new liabilities, through unnecessary expenses (so called “*voluptuary expenses*”), if he knew or should have known that he is under the state of insolvency;
- caused or facilitated the state of insolvency, intentionally or by gross negligence.

PIL regulates some actions presumed in a relative manner to have such an effect – for example:

- **within the last 3 years before the filing of the insolvency application:**
  - the debtor contracted excessive liabilities in comparison with (i) his financial status, or with (ii) the advantages deriving from the respective contract, or with (iii) all circumstances which significantly contributed to the debtor's inability to pay its debts as they become due (i.e. other liabilities than those owed by the debtor towards the parties with whom it entered into this kind of contractual relationships);
  - the debtor made some preferential payments (which significantly contributed to the decrease of the amounts available for covering the remaining liabilities);
  - the debtor transferred some assets (or other values) to other individuals or legal entities, if he knew or should have known that such transfers should cause the state of insolvency.
- **within the last 6 months before the submission of the insolvency application:**
  - the debtor contracted liabilities which represent at least 25% of the total value of his/her liabilities, except for exempted liabilities (as defined by the PIL – e.g. legal or conventional duties of upkeep (*întreținere*), criminal/official liabilities);
  - the debtor terminated an employment relationship through mutual agreement or by resignation.

PIL also does not apply in cases when a prior IPRP or IPLA has been closed due to debtor's fault, within less than 5 years before the filing of the current insolvency application.

In addition, one cannot file for personal insolvency in case that an insolvency procedure is already opened against the respective individual.

## E. Types of insolvency proceedings

- Insolvency Procedure based on a Reimbursement Plan (**IPRP**);
- Judicial Insolvency Procedure via Liquidation of the Debtor's Assets (**IPLA**);
- Simplified Insolvency Procedure (**SIP**).

## F. IPRP (Insolvency Procedure based on a Reimbursement Plan)

### 1. Initiation of IPRP upon debtor's request

- The initiation of IPRP cannot be requested by the debtor's creditors;
- The debtor has to notify his intention to initiate the procedure to his/her creditors, within minimum 30 days before the submission of the application;
- Application to be submitted by the debtor (or, as the case may be, by both spouses or cohabitants) to the competent IC;
- The information to be submitted together with the application includes, *inter alia*:
  - the reasons for entering under the state of insolvency;
  - the identification details of the creditors; information on the amount and type of their receivables and existence of preference rights, if the case;
  - information on judicial actions/measures started against the debtor's wealth (including enforcement actions and precautionary measures (*măsuri asigurătorii*), as well as a list of litigations (either ongoing or finalized), which could affect whatsoever his/her patrimony;
  - information on extrajudicial negotiations for debt settlement conducted by the debtor in the past;
  - information on income (e.g. salary, pension, dividends, IP rights etc.) for the last 3 years and on estimated income for the following 3 years;
  - information on its assets, as well as on rights *in rem* (*drepturi reale*) with respect to assets owned by others, if the case;
  - information on bank/brokerage accounts and available amounts;
  - information on its claim rights (*drepturi de creanță*) vis a vis third parties;
  - free of charge acts, as well as legal transaction exceeding 10 minimum wages concluded within the last 3 years;
  - name of the companies in which the debtor had the capacity of shareholder/director during the last 2 years; number/percentage of owned shares;
  - whether the respective individual has been an authorized freelancer (**PFA**), owner of an individual enterprise or member of a family enterprise within the last 2 years.
- There are also various documents to be submitted together with the application, such as:
  - a full report issued by the Credit Bureau with maximum 30 days before the submission with the IC;
  - a proposal for the debts reimbursement plan (**Reimbursement Plan**).

### 2. IC's decision on the file

Within 30 days as of the receipt of the application, as the case may be, the IC will issue:

- a decision approving in principle the initiation of IPRP - through which appoints an administrator and mentions if any temporary measures should be applied;
  - the decision is promptly published with the

BPI, under Section – “*Debtors – Individuals having liabilities which are not the result of the exploitation of an enterprise*” and is communicated to the debtor, the known creditors and the appointed administrator.

- b) a decision acknowledging that the debtor’s financial situation is irremediably compromised and through which, after obtaining the debtor’s consent, apprises the court of law for the initiation of IPLA (provided that the debtor has assets/income which could be recovered);
- c) the IC notices that the SIP’s conditions are met and follows the specific procedure in this respect;
- d) a rejection decision – for example in the case where the debtor has recoverable assets and from the sale of such assets either (i) all outstanding liabilities would be settled; or (ii) the sum of unpaid liabilities would be less than 15 minimum wages;
  - the rejection decision will be communicated only to the debtor (not publicly available);
  - in case that the rejection is caused by the nonfulfillment of the criteria under Section C letter b) above, the debtor loses the right to ask in court the initiation of an IPLA;
  - if a change in the factual circumstances occurs, the debtor can submit a new application for the initiation of IPRP or IPLA only after the expiry of at least 6 months as of the date when the IC’s decision became final.

### 3. Challenging IC’s decision

- The debtor or his/her creditors can challenge in court the IC’s decision, within 7 days as of its communication;
- The contestation suspends the IC decision’s effects;
- The sentence pronounced by the court of law of first instance is not enforceable and can be appealed in front of the tribunal, within the same term.

### 4. Suspension of ongoing enforcement procedures

- On the issuance date of the IC’s decision approving in principle the initiation of IPRP, the ongoing enforcement procedures are suspended by law (*de jure*);
- The enforcement stoppage lasts up to: (i) the approval date of the Reimbursement Plan, or, as the case may be, (ii) the moment when the sentence on the Reimbursement Plan’s confirmation becomes final; or (iii) the term within which the request for the Reimbursement Plan’s confirmation should have been made expires;
- As a rule, the suspension period cannot exceed **3 months**;
- By way of exception, if, in lack of such measure, the debtor’s financial condition would become irremediably compromised and there is a certain risk that the Reimbursement Plan would not be achieved, the court may approve the extension of the initial suspension term with subsequent time periods of up to 3 months.

### 5. The Preliminary Table of Claims

- Within 30 days as of the publication in BPI of the notification prepared by the administrator, the creditors have the obligation to provide to the administrator information on:
  - The amount and type of their receivables;
  - A valuation of the asset subject to a preference right (if available);

- Any acceptable restructuring measures.
- Within 60 days as of the publication in BPI of the notification, the administrator prepares the **Preliminary Table of Claims**, which includes information on:
  - the receivables’ amount as per creditors’ request;
  - the receivables’ amount accepted by the administrator;
  - information on preference rights;
  - ranking of the preference rights.
- The co-debtors or guarantors who paid the debtor’s debt shall be registered with the table of claims with the amount paid (Art. 1596 of the Civil Code);
- The receivables benefiting of a preference right shall be registered with the Preliminary Table of Claims (together with interest) up to the market value of the encumbered asset;
- If the sale of the encumbered assets will be made at a price higher than the value of the secured creditor’s receivable registered with the Final Table of Claims, the positive difference shall be given to the same secured creditor, even if (i) part of its receivable was registered as unsecured; or (ii) the value of accrued interest corresponding to its receivable was decreased (however within the limits of its total debt);
- The creditors/debtor can challenge in court the Preliminary Table of Claims, within 7 days as of receipt from the administrator;
- The court of law of first instance should solve the complaints within 20 days as of the registration of the last complaint;
- The sentence can be appealed in front of the tribunal, within 7 days as of its communication.

### 6. The Final Table of Claims

- In lack of any contestations, the Preliminary Table of Claims becomes final and is submitted to the IC and the debtor and the creditors are notified by the administrator in this respect;
- Otherwise, within 15 days as of the sentence becoming final, the administrator prepares the Final Table of Claims, which is notified to the debtor and creditors and submitted with the IC.

### 7. The Reimbursement Plan

#### a) Preparation

Within 30 days as of the debtor’s and creditors’ notification with respect to the Final Table of Claims, **the debtor, in collaboration with the administrator, prepares the Reimbursement Plan.**

#### b) Mandatory content

The mandatory content of the Reimbursement Plan is described under the PIL:

- The *debt coverage ratio* through the Reimbursement Plan has to be higher than: (i) the coverage ratio which could be obtained within an IPLA; and (ii) the value of the seizable (*urmăribile*) assets of the debtor, calculated as a percentage of the total value of seizable assets and income of the debtor;
- The measures for the debtor’s financial recovery might also include unilateral termination of some contracts, putting in place additional security etc.;
- The measures for payment of current receivables;

- There are some *exempted obligations* (as defined under the PIL), which cannot not be decreased or rescheduled.

#### c) Maximum duration

- **5 years** as of the moment when the decision initiating the IPRP becomes final;
- might be extended with maximum **12 months**.

#### d) Family home

The Reimbursement Plan should contain also the proposed approach with respect to the debtor's family home during the IPRP (if it will be sold or not for covering debtor's liabilities, etc.)

#### e) Notification to creditors

The Reimbursement Plan is notified to the known creditors, together with the IC's related comments.

#### f) Conciliation procedure

- Within 30 days as of creditors' notification, the administrator invites the creditors and the debtor to a conciliation meeting;
- The conciliation process should be no longer than 60 days, but can be extended with another 30 days by the IC;
- Conciliation could be conducted through electronic communication means.

#### g) Approval of the Reimbursement Plan

- The Reimbursement Plan is approved if creditors representing minimum 55% of the total amount of receivables and 30% of the total amount of secured receivables voted in its favor;
- The above mentioned majority shall not be considered met if it would have not occurred in lack of the favorable vote of *the creditors which are related parties with the debtor* (as defined under the PIL);
- Failure to express the vote (upon notification), is considered as vote in the favor of the Reimbursement Plan.

#### h) Rejection of the Reimbursement Plan. Confirmation in court

- The administrator files with IC a minute with (i) the reasons for non-approval; (ii) the equitable nature of the measures proposed to creditors; and (iii) the feasibility of such measures, within 3 days as of completion of voting;
- If the IC challenges the voting results, the voting process should be organized again; otherwise, the rejected Reimbursement Plan, together with the administrator's minutes, is communicated to the debtor;
- Within 7 days as of the receipt of the minutes, the debtor may ask in court: (i) **the Reimbursement Plan's confirmation**; or (ii) **the initiation of IPLA**;
- The competent court of law may confirm the Reimbursement Plan only if the cumulative conditions under PIL are met;
- The court's sentence might be appealed.

### 8. Opening of the IPRP

- If the Reimbursement Plan is approved/considered approved, the IC issues a decision acknowledging the opening of the IPRP:
  - The decision is communicated to the interested persons (as well as to relevant public authorities, in order to register it in publicity registries) and will be published in BPI;
  - Creditors who voted against the Reimbursement Plan can challenge the decision in court, within 7 days as of its communication – the contestation suspends the decision's effects; the sentence might be appealed at the tribunal.
- If the court of law confirmed the Reimbursement Plan through a final decision, it communicates such ruling to IC, for IC to apply the IPRP procedure
  - IC communicates the final ruling to the debtor/creditors/administrator and publishes it with BPI.



## 9. Actions suspended by law

| <i>What is suspended?</i>   | <i>When suspension starts?</i>   | <i>When it ends?</i>   |
|---|--|--|
| All enforcement measures against the debtor (co-debtors/guarantors are not covered)   | On the approval date of the Reimbursement Plan   | 1) when the ruling on the discharge of residual debts becomes final;<br>2) the closing of IPRP for reasons imputable to the debtor;<br>3) the closing of IPLA, if all creditors agree with the entry of the debtor into IPLA |
| The accrual of interest, penalties, delay penalties, any other accessories of the debtor's payment obligations<br><br><b>Exception:</b> for preferred receivables (i.e., which benefit of a legal privilege or are secured by security agreements), the accrual of accessories continues in accordance with the contractual provisions, up to the value of the encumbered asset | On the date when the Table of Claims becomes Final<br><br><b>N.B.</b> Suspension does not operate if the Reimbursement Plan is not confirmed | When the ruling on the discharge of residual debts becomes final.  |
| The statute of limitation of creditor's right to start the enforcement of its receivables   | The draft law is not clear – one interpretation would be that the suspension starts on the date when the Table of Claims becomes Final       | Upon final rejection of the Reimbursement Plan   |

## 10. Secured creditor's right to claim the suspension's stoppage

- A secured creditor has the right to ask in court the stoppage of the suspension effect with respect to its secured receivable and the immediate sale (out of the insolvency proceedings) of the encumbered asset,

provided that, cumulatively:

- The value of the security's object is covered in full by the total value of the secured receivable;
- There is no adequate protection of the secured receivable in relation to the security's object, due to (i) the decrease of the value of the asset; or (ii) existence of a certain danger that it will suffer a considerable decrease; or (iii) lack of insurance of the asset for destruction or damage risk;
- The asset/right covered by the preference right is not important for the fulfillment of the Reimbursement Plan.
- In principle not applicable if the encumbered asset is the family home.

## 11. Agreements ongoing on the date of IPRP's approval in principle

- The debtor will not lose the benefit of any term while he is in the state of insolvency/under insolvency proceedings (i.e., Art. 1417 of the Civil Code shall not be applicable);
- Any contractual provisions providing for the (i) termination of ongoing agreements; (ii) time barring; or (iii) acceleration of debts, if grounded on the opening of the insolvency proceedings, are **null and void**.

## 12. New loans

During the execution period of the Reimbursement Plan/IPLA, the debtor may contract new loans only with the IC's approval (provided in any case that it is accepted by the administrator) and only for the purpose of solving an emergency of danger for the debtor's life or health or the life or health of the persons under its upkeep.

## 13. IC has supervision attributions during the execution of the Reimbursement Plan

## 14. Attributions of the administrator

- For example:
  - Approval of the debtor's acts of disposal of seizable rights/property;
  - Drafting biannual reports to be made available to the creditors and the IC;
  - Drafting the **final report** on the execution of the Reimbursement Plan, within 30 days as of the plan's finalization – creditors can challenge the report within 7 days as of its receipt;
  - Notification of the IC for closing the IPRP, within 15 days as of the moment when the report is final.
- The administrator may be replaced following a procedure regulated in PIL.

## 15. Challenging the administrator's acts during the IPRP

- Complaint submitted to the IC within 7 days as of acknowledgement, however no later than 30 days as of the adoption of the respective measure;
- The IC's decision can be challenged in court within 7 days as of its communication and is published in the BPI.

## 16. Amendment of the Reimbursement Plan

- Reasons:** significant changes in the debtor's revenues or of the assets' value.
- Amendment to be made:
  - Upon the IC's request:**
    - IC notifies the debtor and the

administrator on the necessity to prepare a proposal for amending the Reimbursement Plan (within 30 days as of the respective notice).

**b) Upon the request of:**

- **the debtor and/or the administrator** – in such case, evidences supporting the amendment and an amendment proposal have to be also submitted; or
- **one or more creditors** – there is no need for the creditors to provide evidences supporting the amendment or a proposal for the amendment of the Reimbursement Plan, as such proposal will be prepared by the debtor and the administrator, upon the IC's notification in this respect.
- Request has to be submitted to IC, which solves it within 15 days;
- **The amendment of the Reimbursement Plan should be approved by the creditors under the same circumstances as the approval of the initial plan.**

*consent in this respect and submit a request, may open the IPLA against the debtor.*

- The sentence of the court can be appealed, within 7 days as of its communication;
- The final court decision on the closure of IPRP is published in BPI.

**In case of closure of IPRP due to impossibility to fulfill the Reimbursement Plan (irrespective of the applicable reasons):**

- the debtor does not benefit of the discharge of residual debts; and
- the debtor has to repay in full the creditor's receivables registered under the Final Table of Claims (including the accessories which were temporary suspended).

**G. IPLA (Judicial Insolvency Procedure via Liquidation of Debtor's Assets)**

**1. Initiation of IPLA**

- a) Upon the **debtor's request** (i.e. being under the state of insolvency), if, alternatively:
  - He/she considers that his/her financial condition is irremediably compromised;
  - His/her application for the opening of IPRP has been rejected by the IC, with the proposal to open the IPLA;
  - No Reimbursement Plan has been approved /confirmed;
  - The Reimbursement Plan could not be fulfilled due to reasons non-pertaining to his/her fault.
- b) Upon the **request of any of the creditors**, if the Reimbursement Plan could not be fulfilled due to reasons non-pertaining to the debtor's fault;
- c) Upon the **request of all creditors**, if the Reimbursement Plan could not be fulfilled due to reasons pertaining to the debtor's fault.
- The court of law issues a sentence approving the initiation of IPLA against the debtor (has to be published in BPI and communicated to the known creditors and the debtor; can be appealed within 7 days) and appoints a liquidator;
- If the IPLA is initiated after an IPRP, the administrator might be appointed liquidator.

**2. Effects**

- Debtor can no longer dispose of its seizable assets/incomes
- Suspension by law of:
  - Enforcement measures against the debtor (if not already operated based on an IPRP);
  - The statute of limitation of creditor's right to start the enforcement of its receivables;
  - The accrual of interest, penalties, delay penalties, any other accessories of the debtor's payment obligations (only in case of an IPLA opened as per Section G.1 letters a) and b) above) - *such suspension does not operate if the debtor concluded or whatsoever committed any fraudulent acts against the creditors before the IPLA opening.*

**17. Closure of the IPRP**

**a) In effect of the fulfillment of the Reimbursement Plan**

- Closure of IPRP shall be acknowledged by the IC through a decision issued within 30 days as of the receipt of the administrator's final report;
- Decision to be published in BPI.

**b) In effect of the impossibility to fulfill the Reimbursement Plan**

**b<sub>1</sub>) Reasons not-pertaining to the debtor's fault**

- The *debtor and/or the administrator* may request to IC to close the IPRP and to start the IPLA - IC submits the request to the competent court of law;
- The *creditors* may request the initiation of IPLA against the debtor, if the payments scheduled under the Reimbursement Plan have not been made for at least **6 months** as of their due date;
- By way of exception, the *current creditors* (creditor who owns a certain, liquid and due receivable, born during the insolvency proceedings and who has the right to satisfy its receivable with priority) may request the initiation of IPLA against the debtor, if the payments scheduled under the Reimbursement Plan have not been made for at least 90 days as of their due date;
- The court of law closes the IPRP (acknowledging the non-fulfillment of the Reimbursement Plan for reasons non-pertaining to debtor's fault) and opens the IPLA against the debtor.

**b<sub>2</sub>) Reasons pertaining to the debtor's fault**

- If the measures under the Reimbursement Plan are either (i) not fulfilled; or (ii) fulfilled with delay or in an incomplete manner, *any creditor, the administrator or the IC* may immediately ask the court of law to close the IPRP;
- The court of law pronounces the closure of IPRP (acknowledging the non-fulfillment of the Reimbursement Plan for reasons pertaining to debtor's fault) and, *provided that all creditors express their*

### 3. Liquidator's attributions

- For example:
  - Report on debtor's financial situation;
  - Evaluation and exploitation of debtor's assets;
  - Preparation (if not already drafted under IPRP) or update of the Preliminary and Final Table of Claims;
  - Makes payments towards the creditors, based on the Distribution Plan;
  - Unilateral termination of contracts;
  - Exercise of debtor's procedural rights under judicial actions;
  - Supervision post-IPLA, under the IC's control.
- PIL provides for specific steps to be followed for the purpose of replacement of the liquidator.

### 4. Challenging the liquidator's acts during the IPLA

Complaint to be submitted to the court of law within 7 days as of acknowledgement (if not otherwise provided under the PIL), however no later than 30 days as of the adoption of the respective measure.

### 5. Notification of the creditors

- Within 30 days as of receipt of the notification, creditors should provide information on: (i) receivables' amount; (ii) market value of secured asset; (iii) a valuation report (if available);
- Creditors whose receivables have been registered under the Final Table of Claims should provide information only with respect to receivables born afterwards.

### 6. The Preliminary Table of Claims

- Within 15 days as of receipt of information, the liquidator prepares the Preliminary Table of Claims;
- There are similar rules as in case of IPRP (see Section F.5. above);
- Receivables which represent obligations not computed in money (or whose value is subject to modifications) shall be computed and registered by the liquidator with their nominal value as of the opening date of the procedure;
- Receivables in foreign currency shall be registered in RON (based on NBR's exchange rate published on the opening date of the procedure);
- The creditors/debtor can challenge in court the Preliminary Table of Claims, within 7 days as of its receipt from the liquidator;
- The court of law of first instance should solve the complaints within 20 days as of the registration of the last complaint;
- The sentence can be appealed in front of the tribunal, within 7 days as of its communication.

### 7. The Final Table of Claims

Within 15 days as of the court sentence becoming final, the administrator prepares the Final Table of Claims, which is notified to the debtor and his/her creditors.

### 8. Inventory of debtor's assets

Within 30 days as of opening of IPLA (term which might be extended), the liquidator prepares the inventory of debtor's assets (including receivables against third parties and rights *in rem* over property owned by third parties).

### 9. Opening of a liquidation account on debtor's name, for the purpose of collecting seizable revenues and all amounts resulting from sale of assets

- The amounts existing in debtor's account on the opening date of the insolvency procedure, which are subject to preference rights, might be transferred to this account only subject to the respective secured creditor's consent;
- The debtor has the right to benefit exclusively from the amounts which represent non-seizable income (as defined under the PIL).

### 10. Sale of debtor's seizable assets (i.e., assets which creditors can execute for recovering their claims)

- as soon as the inventory and the Final Table of Claims is prepared, the seizable assets are sold in accordance with the provision of the Civil Procedure Code;
- The list of assets to be sold has to be published on the websites of UNPIR, UNEJ, UNBR and UNNP;
- If the sale of assets is made through public auction, the adjudication minutes signed by the liquidator represents the property title - for the case where the law requires for the operation of the transfer of ownership the authentic form, a notary public has to authenticate the contract based on the adjudication minutes;
- Assets are acquired free of any encumbrances.

### 11. Payments in-kind

- If the liquidator cannot sell a seizable asset within 2 years as of the finalization of the inventory and the Final Table of Claims, it notifies the creditors, who can opt for acquiring the ownership over the property instead of receiving the owed sum;
- PIL regulates a specific procedure in this respect.

### 12. Cancellation of debtor's fraudulent acts

- *Who can ask the cancellation of debtor's fraudulent acts:* the liquidator or any of the creditors;
- *To whom is the request addressed:* court of law;
- *Until when:* 1 year as of the opening of IPLA/expressing creditors' agreement to continue the insolvency procedure with respect to the debtor;
- *Condition:* the Reimbursement Plan part of an IPRP should have not been fulfilled due to reasons pertaining to debtor's fault and, following the request in this respect of all creditors, the court should have decided to close the IPRP and to initiate an IPLA;
- *Which acts/operations concluded in creditor's prejudice might be cancelled* – limited list provided under the PIL;

- a) Operations/acts done/executed within the last 6 months before the opening of IPLA:
  1. Deeds under which the debtor's service obviously exceeded the benefit received;
  2. Deeds by which ownership over an asset has been transferred to a creditor instead of debt reimbursement, if the amount to which the respective creditor would have been entitled within the IPLA is lower than the value

- of the transfer deed;
- 3. Establishment of a preference right for securing a receivable which was originally unsecured;
- 4. Payment of debts made in advance, if their due date was initially established after the opening of the IPLA.

**Note that the acts/operations under points 2-4 above cannot be cancelled in court if such deeds have been concluded as per an agreement reached between the debtor and its creditors in good faith, following extra-judicial negotiations for debt restructuring.**

- b) Operations/acts done/executed within the last 2 years before the opening of IPLA:
  1. Acts concluded with the purpose to carve out some of the debtor's assets from the creditors' possibility to enforce them in the future or to damage the creditors' rights (provided that all the parties of such deeds acted with intention);
  2. Operations/acts concluded with a *related party creditor* (as defined under PIL - e.g. a legal entity controlled by the debtor).

### 13. Specific distribution rules are provided in the PIL

### 14. Closure of IPLA

- a) Within 30 days as of the finalization of the liquidation, the liquidator prepares the **final report**, together with a presentation on debtor's revenues:
  - Creditors can challenge in court the final report within 7 days as of its communication; the sentence can be appealed within the same term;
  - Within 30 days as of the report becoming final, the court of law, appraised by the liquidator, pronounces the closure of IPLA and establishes the proportion of debtor's seizable revenues which, further to the closure of the procedure, might be used for covering its debts.
- b) At any moment during the insolvency procedure, if it is revealed that **the debtor concluded acts or generally acted against the creditors' interest** (either before the opening of the insolvency procedure or during such procedure), any creditor may ask in court the closure of the IPLA;
  - However, **if all the creditors agree**, the IPLA may continue, but (i) the debtor shall not benefit of the discharge of residual debts; and (ii) the debtor shall cover the debts registered with the table of claims in full (i.e. together with temporary suspended accessories).
- The final court decision is published in BPI and communicated to the IC;
- Further to the closure of IPLA and until the final court decision on the discharge of debts is issued, the liquidator still has post-closure monitoring attributions.

## H. SIP (Simplified Insolvency Procedure)

### 1. To whom SIP applies

- SIP applies to a debtor who cumulatively:
  - a) is under the state of insolvency;
  - b) fulfills the conditions under Section C letters a) and b) above;
  - c) is not under the situations described at Section D above;
  - d) the total amount of its debts is of maximum 10 minimum wages;
  - e) has no seizable assets or income (as defined under the PIL);
  - f) is over the standard age for retirement or has lost in full (or at least half of) its ability to work.

### 2. Effects

As of the final court decision on the opening of SIP, (i) all enforcement measures against the debtor, and (ii) the accrual of accessories with respect to the debts and (iii) the statute of limitation of creditor's right to start the enforcement of its receivables, are suspended.

### 3. Key aspects

- Within 15 days as of the final court decision, the IC notifies the debtor on the admission of its application and informs it that, **for a period of 3 years as of this notice**, it has certain obligations, as follows:
  - To pay current debts, on their due date;
  - Not to contract new loans;
  - To annually submit to the IC an informative notice on its financial situation;
  - To promptly inform the IC on the receipt of any supplementary revenues (higher than ½ of the minimum wage) to the revenues declared under the insolvency application, as well as on the acquisition of assets, receipt of services, heritages or donations whose value exceeds the value of the minimum wage.
- Upon the expiry of the 3 years term:
  - a) If the debtor fulfills its obligations – IC issues a decision on the termination of SIP (acknowledging the fulfillment of debtor's obligations) and on the discharge of debtor's residual debts;
  - b) Otherwise – IC issues a decision on the termination of SIP; the debtor has to cover in full the debts contracted prior to the opening of SIP (including accessories).
- IC's decision might be challenged in court within 7 days as of its communication; the final decision is published in BPI.

### I. Discharge of residual debts as effect of the fulfillment of the Reimbursement Plan under the IPRP or fulfillment of debtor's obligations under the SIP

- Means the discharge of the debts registered with the table of claims which exceeded the coverage ratio established through the Reimbursement Plan or which have not been repaid during the SIP;
- Co-debtors' or guarantors' obligations are not discharged;
- The debtor has the right to submit a request for the discharge of residual debts (i.e. the receivables which exceed the coverage ratio agreed through the Reimbursement Plan) within 60 days as of the issuance of the decision closing the IPRP/SIP;

- The court's sentence on the debt discharge might be appealed within 7 days as of its communication;
- The final court decision on the debt discharge is published in BPI – **as of this moment, the debtor can no longer be subject to any interdiction/restriction of rights related to the insolvency proceedings.**

#### J. Discharge of residual debt in case of IPLA

- Means the discharge of the debts not covered after the expiry of the monitoring period post-closing of the IPLA;
- Co-debtors' or guarantors' obligations are not discharged;
- Further to the closure of IPLA opened as per Section G.1 letters a) or b) above, the debtor shall continue to make payments towards the creditors as per PIL's specific provisions (see period of time, amount of the seizable revenues established by the IC/court of law, applicable interdictions/obligations etc.);
- The court of law may decide the discharge of residual debts, if:
  - a) after **1 year** as of the IPLA's closure, the debtor covered at least **50%** of all its debts and observed the specific obligations and interdictions under the PIL;
  - b) after **3 years** as of the IPLA's closure, the debtor covered at least **40%** of all its debts and observed the specific obligations and interdictions under the PIL- if, irrespective of debtor's diligences, it could not cover at least this quota, upon debtor's request, with the observance of PIL, the court of law may decide the discharge of residual debts only after the expiry of **5 years** as of the IPLA closure.
- Court's decision on debt discharge might be appealed within 7 days as of its communication;
- Within the abovementioned periods of time:
  - a) the debtor has to fulfill **specific obligations** and has to observe **specific interdictions** – for example:
    - cannot contract new loans (except for the purpose of solving an emergency of danger for its life or health or the life or health of the persons under its upkeep, with IC's prior approval);
    - cannot make donations, cannot refuse donations and heritages etc.
  - b) the debtor shall be registered with BPI as "**debtor under post-insolvency monitoring**".
- PIL regulates the IC's and the liquidator's specific attributions during the post-insolvency monitoring period;

- If the discharge of debts is **rejected**, under PIL's conditions, the debtor should repay in full the receivables (including temporary suspended accessories);
- **If, within 3 years as of the issuance of the court's decision on residual debts discharge, it is revealed that the debtor concluded fraudulent acts prejudicial to the creditors' rights, any of the creditor may ask in court the revocation of the debt discharge;**
- **The debtor for which the debt discharge has been revoked is not entitled to submit a new insolvency application in accordance with PIL for a period of 5 years as of such revocation.**

#### K. Interdictions

- Upon the request of any interested person or *ex officio*, the court of law may apply through the decision closing the insolvency procedure due to debtor's fault, or, as the case may be, through the decision revoking the discharge of debts benefit, one of the following interdictions:
  - Interdiction to be appointed director/manager of a public or private legal entity, within 5 years as of the closure of the procedure/revocation of debts discharge benefit; or
  - Interdiction to act as a credit operator (*ordonator de credite*) or to exercise attributions specific to such function, within 5 years as of the closure of the procedure/revocation of debts discharge benefit;
  - if the debtor currently occupies such positions, he/she may lose the right to occupy it, for the above mentioned period of time.

#### L. Corroboration with other laws

- If compatible, the dispositions of the Civil Code and Civil Procedure Code should be applied in addition to PIL's provisions;
- Within 60 days as of PIL's publication in the Official Gazette of Romania the Government should adopt PIL's norms of implementation.

**For further questions, please do not hesitate to contact us.**

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