

The Brief

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Law No. 85/2006 (the "Insolvency Law") has recently been amended by Law No. 169/2010 which, aside from shortening various procedural delays aiming at limiting insolvency proceedings to less than one year, provides for the following main amendments:

- (i) creditors are entitled to file for insolvency only if they have a claim exceeding RON 45,000 and outstanding for more than 90 days;
- (ii) ongoing negotiations aimed at restructuring the debtor's debts may, under certain conditions, exempt the debtor from the obligation to file for insolvency;
- (iii) certain transactions entered into 120 days prior to the opening of insolvency proceedings in performance of an arrangement between the debtor and the creditors for restructuring the debtor's debts may be exempted from annulment;
- (iv) secured creditors whose claims arose as part of the reorganisation plan are preferred to secured creditors whose claims arose prior to the opening of insolvency proceedings when distributing the proceeds of the liquidation of the debtor's assets subject to security interests.

Moreover, in order to encourage and support out-of-court restructuring, the Minister of Justice, the Minister of Public Finances, and the National Bank of Romania are working on finalizing a Guide with recommendations for restructuring procedures.

Finally, the Fiscal Procedure Code has been amended in order to extend the cases where persons having contributed to the debtor's financial difficulty and companies in the debtor's group may be held jointly liable for the payment of the debtor's fiscal debts.

2. New Rules regarding Real Estate Publicity p. 4

Law No. 7/1996 on cadastre and real estate publicity has been recently amended by Government Emergency Ordinance No. 64/2010. The main amendments relate to the implementation of a unitary cadastre and real estate publicity system at the national level and to the registration of buildings with the land book.



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1. AMENDMENTS TO INSOLVENCY REGULATIONS

Amendments to the Insolvency Law

Law No. 169/2010, in force since 24 July 2010, amends the Insolvency Law with the aim of providing stricter conditions to be met by creditors filing for insolvency, shortening the term of insolvency proceedings and encouraging negotiations between the debtor and its creditors to prevent insolvency, as well as the financing of insolvent debtors that can be rescued following a reorganisation procedure.

- **Opening of insolvency proceedings**

- a. **Conditions to be met by creditors**

Harsher conditions (though not really dissuasive) are set in order for a creditor to be entitled to file for insolvency, as follows:

- (i) its claim needs to be certain, liquid and **outstanding for more than 90 days** (instead of 30 days);
 - (ii) the value of its **claim**, as resulting **after set-off** of the mutual claims of the creditor and the debtor, **exceeds RON 45,000** (instead of RON 30,000).

- b. **Duty of the debtor to file for insolvency**

The Insolvency Law provides for a duty of the debtor to file for insolvency within 30 days as of the date of its insolvency.

Aimed at encouraging restructuring negotiations between the debtor and the creditors, Law no. 169/2010 allows the good-faith debtor to file for insolvency within a **5-day term as of the failure of negotiations with creditors**, in the following two cases:

- (i) the debtor is engaged in **out-of-court negotiations** for the restructuring of its debts;
 - (ii) the debtor becomes insolvent during **an ad-hoc mandate or preventive compromise** ("*concordat preventiv*") **procedure**, but there are serious indications that negotiations may soon lead to an out-of-court arrangement.

- **Shortening of procedural delays**

In an attempt to **limit insolvency proceedings to less than 1 year**, various procedural delays have been shortened, including as follows:

- (i) creditors may challenge the opening of insolvency proceedings within 10 days (instead of 15 days) as of receipt of the notification informing them of the opening of insolvency proceedings; the hearing before the syndic judge of all such challenges must be set within 5 days (instead of 10 days);
 - (ii) decisions of the syndic judge may be appealed within 7 days of being notified (instead of 10 days) and the court of appeals must hear such an appeal within 10 days (instead of 30 days) as of the registration of the file.

- **Stay of proceedings**

Law No. 169/2010 provides that, in addition to judicial actions and enforcement proceedings for recovery of claims against the debtor or its assets, **extrajudicial actions** (e.g. arbitral proceedings) shall be also automatically **suspended** as of the opening of insolvency proceedings.

- **Exemption from annulment of transactions concluded 120 days prior to the opening of insolvency proceedings**

According to the Insolvency Law, the following **transactions concluded within the 120-day term** prior to the opening of insolvency proceedings are **presumed fraudulent** and may be annulled:

- (i) ownership transfers to a creditor for payment of a prior debt or to the benefit of such a creditor, if the amount the creditor would have obtained in the event of the bankruptcy of the debtor was lower than the value of the transfer;
 - (ii) granting or perfection of security interests for an unsecured claim;
 - (iii) prepayment of debts, if the debts' due date had been set for after the opening of insolvency proceedings.

According to Law No. 169/2010, the above-mentioned transactions **shall not be annulled**, provided that they were concluded in **good faith**, in performance of an arrangement between the debtor and its creditors concluded following **out-of-court negotiations** for the **restructuring of the debtor's debts**, and provided that such arrangement should have reasonably led to the financial recovery of the debtor and had not been intended to prejudice and/or discriminate other creditors. The same exemption applies to legal arrangements concluded within the ad-hoc mandate or preventive compromise procedures.



- **Changes in the distribution order of liquidation proceeds for secured creditors**

According to Law No. 169/2010, the proceeds of the liquidation of debtor's assets subject to security interests shall be distributed, after payment of related liquidation costs and taxes, **firstly to secured creditors for their entire claims** (including interest and penalties of any kind) if such claims **arose during insolvency proceedings**, after confirmation of the reorganisation plan and as part of such plan, and only subsequently to secured creditors holding claims arising before the opening of the insolvency proceedings.

- **Approval of the reorganisation plan**

Pursuant to Law No. 169/2010, all proposed plans for the reorganisation of the debtor are to be submitted directly to the creditors' assembly (without the need for such plans to be previously approved by the syndic judge). Hence, the syndic judge shall only have to confirm the plan approved by the creditors' assembly, if all legal requirements in respect of the plan's contents and the approval procedure are met.

Law No. 169/2010 also provides that **claims** which are to be **paid** in full within the 30 days following confirmation of the reorganization plan or **according to the loan** or leasing **agreement** they result from are deemed as claims that were not unfavoured and are **deemed to have approved the reorganization plan**.

Draft Guide for Out-of-Court Restructuring

In order to encourage and support out-of-court restructuring, as an alternative to judicial proceedings (i.e. ad-hoc mandate and preventive compromise and insolvency proceedings), the Minister of Justice, the Minister of Public Finances, and the National Bank of Romania are working on finalizing a Guide with recommendations for out-of-court restructuring procedures aimed at rescuing a debtor from insolvency and protecting its creditors.

The draft guide as made available on the Minister of Justice's website (the "**Draft Guide**") introduces the concept of **moratorium**, defined as the period allowed by certain creditors to the debtor to prepare a restructuring plan.

According to the Draft Guide, the debtor and its creditors may enter into a moratorium agreement providing, on the one hand, the undertakings of the creditors not to file for insolvency during the moratorium, not to initiate or continue enforcement proceedings against the debtor and not to attempt to improve their individual position by obtaining or enforcing security or by requesting a preferential treatment; and, on the other hand, the debtor's undertakings not to take any actions disadvantaging the creditors or affecting the creditors' possibilities to recover their claims (as compared to the possibilities available to the creditors at the date of the moratorium).

The Draft Guide provides additional recommendations for out-of-court restructuring on aspects such as: (i) the full access to information on the debtor's activity to be granted by the debtor to its creditors, (ii) the priority to be given to new funds granted to the debtor for its recovery, as well as (iii) the minimum requirements as to the information and measures to be contained in the restructuring plan.

Joint Liability for Fiscal Debts of Debtors in Financial Difficulty

The Fiscal Procedure Code has been amended pursuant to Emergency Government Ordinance No. 54/2010 on measures for preventing tax evasion in order to extend the range of persons that may be held jointly liable for the fiscal debts of the debtor declared as being in financial difficulty (in Romanian "*insolvabil*") (i.e. a debtor whose income or assets which may be subject to enforcement are of a lower value than that of its fiscal debts), as follows:

- natural or legal persons who, prior to the date of the debtor's financial difficulty, have acquired, in bad faith, assets from the debtor thus causing the financial difficulty of the latter (*regardless of the acquisition's date, which had been previously limited to the 3-year period prior to the debtor's financial difficulty*);
- managers, shareholders or any other person having caused the debtor's financial difficulty by alienating or hiding, in bad faith, assets of the debtor;
- managers who, during their mandate, did not comply, in bad faith, with their legal duty to file for insolvency, as regards the debtor's fiscal debts related to such period and remained unpaid upon opening of insolvency proceedings;
- managers or any other persons who, in bad faith, prevented the due filing of tax statements and/or the payment of fiscal duties;
- managers or any other persons who, in bad faith, had amounts recovered by, or reimbursed to, the debtor from the consolidated general budget of the State, without right.

In addition, if the debtor is declared in financial difficulty or insolvent, companies from the debtor's group (*regardless of whether or not they carry out the same activity(ies) as the debtor*) may be held jointly liable for the fiscal debts of the debtor provided that either one of the following conditions are met:

- they acquire ownership over physical assets of the debtor the accounting value of which represents at least half of the accounting value of all physical assets of the debtor;
- they have *or have had* contractual commercial relations with the debtor's clients and/or suppliers, other than the utilities suppliers, representing at least half *of the total value of transactions*;
- they have *or had* employed or concluded civil services agreements with at least half of the debtor's employees or service suppliers.



2. NEW RULES REGARDING REAL ESTATE PUBLICITY

Law No. 7/1996 on cadastre and real estate publicity (“**Law No. 7/1996**”) has been recently amended by Government Emergency Ordinance no. 64/2010 (“**GEO No. 64/2010**”), in force as of 2 July 2010. The main amendments relate to the implementation of a unitary cadastre and real estate publicity system at the national level and to the registration of buildings in the land book.

• Unitary cadastre and real estate publicity system at national level

GEO No. 64/2010 sets forth new rules on the implementation of a unitary cadastre and real estate publicity system at the national level, based on a national multi-annual programme for the registration of real estate properties. This programme is to be financed by the State budget.

GEO No. 64/2010 allows the registration in the land book of the **possession** over immovable assets whose owners may not be identified. In addition, in case neither the owners nor the possessors of immovable assets are identified, such immovable assets are to be also registered in the land book, with the stipulation “unknown owner”; the ownership right may be subsequently registered, based on the documentation provided by GEO No. 64/2010.

The persons benefiting from encumbrances registered in the old real estate registers (“*registrele de transcripțiuni si inscripțiuni*”) shall file for the renewal of their registration in the land book within 30 days as of the date of the release of the technical documentation for each cadastral sector.

Furthermore, **no later than 31 December 2014**, persons holding real rights registered according to the old real estate publicity systems must **file for the opening of land books**, free of charge, **or else face the penalty of losing the enforceability of their rights against third parties**. The same rule applies to persons benefiting from encumbrances registered with the old real estate registers (“*registrele de transcripțiuni si inscripțiuni*”) who must file for the opening of land books, as well as for the registration of such encumbrances therewith.

• Registration of buildings in the land book

A major change facilitating the taking of security and the financing of real estate projects is **the possibility** introduced by GEO No. 64/2010 **to register in the land book the ownership right over buildings upon the completion of execution stages**, based on the following documents:

- (i) the building permit;
- (ii) the minutes regarding the stage of the execution of the building, approved by the representative of the authority which issued the building permit;
- (iii) the cadastral documentation.

In addition, GEO No. 64/2010 simplifies the procedure for registration of buildings in the land book and brings it into line with the current practice by removing the requirement of a certificate issued by the town hall attesting that the building was erected in compliance with the building permit. Therefore, the ownership right over buildings may be registered in the land book based on:

- (i) the building permit;
- (ii) the reception minutes as of the completion of the construction works;
- (iii) the cadastral documentation.

Moreover, GEO No. 64/2010 **facilitates the registration in the land book of buildings completed prior to 31 August 2001** (the date of the entry into force of Law No. 453/2001, amending and completing Law No. 50/1991 on constructions), the following documents being required for registration in this case:

- (i) the building permit or, in its absence, a certificate attesting the registration of the property in the agricultural register and the fiscal registers, issued by the mayor of the administrative unit in the area where the building is located;
- (ii) the cadastral documentation.

It follows that, for the registration of such buildings, the reception minutes as of the completion of the construction works is not required.

• Rights that may be registered in the land book

GEO No. 64/2010 allows the registration in the land book of any lease agreements or assignment of receivables agreements, regardless of their term (the provision of Law No. 7/1996 requiring for their term to exceed 3 years having been deleted).

In addition, further to the amendments introduced by GEO No. 64/2010, the concession and administration rights are expressly listed by Law No. 7/1996 among the real rights that may be registered in the land book.



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