



## client alert

INSOLVENCY PROCEEDINGS | ROMANIA |

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### NEW ROMANIAN LAW REGARDING INSOLVENCY PROCEEDINGS

Further to an appeal to the Constitutional Court of Romania, the new Romanian law on insolvency and bankruptcy proceedings, Law no. 85/2014, also implementing Directive 2001/24/EC of the European Parliament, has been adopted and entered into force on 28 June 2014.

The new law brings together under one piece of legislation all the measures regarding insolvency that were previously to be found in various different laws and regulations.

We highlight below some of the many changes provided by this new law.

#### **SPECIAL MANDATE PROCEDURE**

The new law provides for the possibility of opting for the use of a special mandate. This is a confidential procedure under which the court appoints a third-party insolvency practitioner to examine the business of the insolvent company and to advise it on the steps to be taken to avoid bankruptcy and recover from the insolvency.

#### **OPENING OF PROCEEDINGS**

Another important change affects the conditions for submitting applications to open insolvency proceedings in Romania. The law increases the minimum value of the debt necessary to open proceedings from RON 10,000 (approx. EUR 2,200) under the former law to RON 40,000 (approx. EUR 9,000), i.e. six (6) times the gross average wage for employees.

The application to open insolvency proceedings can be made either by the debtor company or a creditor. In order to be entitled to open insolvency proceedings, the creditor must have a certain liquid debt that has been outstanding for more than 60 days. The application to open insolvency proceedings can also be made by a liquidator during the liquidation procedure, as defined by Law no. 31/1990 regarding commercial companies, or any other authorities entitled to supervise certain types of companies (for example, the Financial Supervision Authority with regard to financial institutions).

## OBSERVATION PERIOD

There are also new provisions regarding the observation period, which is the period during which attempts are made to restructure the finances of a company. This is the period before insolvency proceedings are opened, the reorganization plan is confirmed or the company enters bankruptcy.

Based on the new rules, this observation period cannot exceed 12 months if general insolvency proceedings have been initiated against the debtor company. In the case of simplified insolvency proceedings, this period cannot exceed 20 days. These changes are designed to reduce the number of pending proceedings.

## PREFERENCE OF PAYMENT

The law also changes the order of preference for the payment of debts in case of bankruptcy. According to the new rules, debts resulting from employment contracts are in third place, and debts to the state budget occupy fifth place. In the past, these debts were situated at the top of the list and took priority ahead of other unsecured creditors, but behind secured creditors. This new classification is due to the move to second place of debts representing funds granted to the debtor in order to continue its activities during the observation period

In general, the rules provided by the new law are in line with the European trend towards reducing insolvency and bankruptcy proceedings.

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