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NEW LEGISLATION REGARDING THE PREVENTION OF INSOLVENCY AND INSOLVENCY PROCEEDINGS

On 28th of June, 2014, Law No. 85 regarding the prevention on insolvency and insolvency proceedings (the "Law") entered into force, regulating in a unitary manner the insolvency legal framework. The Law was published in The Official Gazette of Romania nr. 466, on 25th of June, 2014.

We are listing below the main amendments regarding the insolvency proceedings included in the above mentioned normative act:

Conditions regarding the request to open insolvency proceedings: The Law establishes a lower threshold of the outstanding receivables when requesting the opening of insolvency proceedings, namely RON 40,000 (as compared to the previous threshold of RON 45,000) and a period of minimum 60 days exceeding the due date (as opposed to the previous term of 90 days). These conditions should be observed by both the debtor and the creditor.

Procedural provisions: New procedural rules have been added (e.g. the proceedings are settled before the competent tribunal at the debtor's registered office or professional office for at least 6 months prior to court referral, shorter court hearing terms etc.).

Notifying the fiscal authorities: Before the court settles the request for opening insolvency proceedings against a debtor, the fiscal authorities are notified with respect to the intention of opening such proceedings.

Notifying the creditors: The creditors that have not been notified with respect to opening the insolvency proceedings, may submit a claim for receivables at any time, however they will continue the proceedings considering the stage reached at the time of registration in the table of receivables.

Provisional measures before opening the proceedings: In urgent cases, until settling the request for opening the insolvency proceedings, the court may decide to suspend any enforcement proceedings regarding the debtor's assets. The court may also take provisional measures to prevent selling of such assets and to preserve the debtor's goods.

The observation period: During this period, the judicial administrator may use any amounts existing in the debtor's accounts, even if a form of warranty is constituted in favor of a creditor, either with the approval of such creditor or by granting him an appropriate security.

The reorganization plan: The approval of a reorganization plan is additionally subject to obtaining the favorable vote of the creditors who represent at least 30% of the all the receivables registered against the debtor, besides the condition of the vote on categories of receivables (which was stipulated before). In addition, the Law limits the execution of the reorganization plan to a period of maximum 3 years, starting the date of the confirmation plan, which can be extended by a maximum of 1 year, in case the initial plan is changed.

Current receivables: If the payment requests for the current receivables approved by the judicial administrator or by the court are not paid within 60 days since their approval, the creditor whose receivable exceeds RON 40,000 has the right to request the opening of the bankruptcy proceedings.

Utility supply: The Law maintains the obligation of the utility suppliers to continue providing services to the creditor, but if the current receivables are not paid within 90 days, the supplier is entitled to suspend the provision of services. In addition, such the receivables have priority for payment.

Budgetary receivables: Within 60 days from publishing in the Insolvency Proceedings Bulletin of the notification regarding opening of the proceedings, the fiscal authorities will conduct the fiscal inspection concerning the activity of the debtor and they will have the possibility to submit an additional claim for registration in the table of receivables.

Financing granted to the debtor: Financing granted to the debtor for conducting its current activities, with the approval of the general assembly of creditors, will be refunded with priority.

Other special provisions: The Law stipulates special provisions concerning insolvency proceedings of the group of companies, bankruptcy proceedings of credit institutions, bankruptcy proceedings of insurance and reinsurance companies, respectively cross-border insolvency proceedings.

Applicability: The Law is applicable to proceedings concerning prevention of insolvency, respectively to insolvency proceedings, initiated after the date when the new provisions entered into force, namely 28th of June, 2014. The proceedings started before this date are subject to the previous regulations.

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