

Chapter 5

Insolvency

1. General

As of June 2014, Romania has a new law that regulates the insolvency procedure, *i.e.* Law no. 85/2014 on insolvency prevention procedures and on insolvency procedure (the “Insolvency Code”).

The Insolvency Code was enacted as a response to the need for unifying the current practice in the insolvency field and it replaces the former Law no. 85/2006 on insolvency procedure, the Government Ordinance No. 10/2004 on the bankruptcy procedure of credit institution, the Law No. 503/2004 on financial recovery and bankruptcy of the insurance companies and the Law No. 637/2002 regulating the international private law relations concerning insolvency.

The changes brought by the Insolvency Code are meant to encourage the recovery of viable companies. In this respect, the Insolvency Code adapts and implements the “best practice” regulations provided by World Bank recommendations, by the Report on the Observance of Standards and Codes” („ROSC”), by the European Commission’s recommendations and by UNCITRAL Legislative Guide on Insolvency.

2. Main regulations

- Law No. 85/2014 on insolvency prevention procedures and on insolvency procedure (“Law No. 85/2014”);
- Council regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings;
- Government Emergency Ordinance No. 46/2013 on financial crisis and insolvency of the administrative-territorial units.

3. Entities subject to insolvency proceeding

3.1. Entities subject to general insolvency proceeding

The general insolvency proceedings stated by Insolvency Code are applicable to all business professionals, as they are defined by the Romanian Civil Code (*i.e.* anyone who exploits a company), except for the ones practicing liberal professions or who are subject to special regulations.

Unlike the former insolvency law, the Insolvency Code also applies to autonomous administrations (“regii autonome”).

3.2. Entities subject to simplified insolvency proceeding

3.2.1. Individual business professionals, subject to registration in the Trade Registry, with the exception of individuals who practice liberal professions

3.2.2 Family associations

3.2.3. Debtors mentioned at point 3.1. above that meets at least one of the following conditions: (i) they have no asset in their patrimony; (ii) their articles of association or accounting documents cannot be found; (iii) their director may not be found; (iv) their headquarters no longer exists or no longer corresponds to the address mentioned in the Trade Registry;

3.2.4. Entities that have been subject to voluntary dissolution, prior to submission of the request to initiate the insolvency proceedings, even though the judicial liquidator was not appointed yet or, although appointed, his appointment was not registered at the Trade Registry;

3.2.5. Debtors that have declared in the claim filed with the courts their intention to undergo bankruptcy proceeding;

3.2.6. Any individual/entity who is conducting business-like activities, who has not obtained the necessary authorization for exploitation of a company and it is not registered in the special publicity register.

4. Mandatory conditions for the commencement of the insolvency proceeding

The Insolvency Code sets forth two mandatory conditions which need to be cumulatively met in order for the creditors to be able to commence the insolvency proceeding against their debtor:

- (i) the creditor should hold a receivable that is certain, liquid and outstanding for more than 60 days (unlike the prior regulation that stated a 90 days period);
- (ii) the receivable held by the creditor must exceed the amount of LEI 40,000 (roughly EUR 9,000), or 6 national gross average salaries/per employee, for receivables arisen out of labour relations.

The debtor is compelled to submit a claim for the commencement of the insolvency proceeding within 30 days as of the date the insolvency state has occurred. The Insolvency Code defines the *insolvency state* as the insufficiency of the available funds for the payment of certain, liquid and outstanding debts. According to the law:

- (i) the state of insolvency is *presumed as obvious* when the debtor, after 60 days as of the maturity date, failed to pay its debt; such presumption is relative, meaning that a proof to the contrary is admissible;
- (ii) the state of insolvency is *reputed to be imminent* if it can be proved that the debtor will not be able to pay its outstanding debts with the available liquidities on the maturity date.

5. Procedures

The Insolvency Code regulates two procedures to be undertaken by debtors that are not able to pay their debts:

- (i) the judicial reorganization proceeding, aiming to rescue the debtor;
- (ii) the bankruptcy proceeding, aimed at liquidating debtor's assets and paying the outstanding debts.

Likewise, the Insolvency Code sets forth another classification of the insolvency proceedings as follows:

- (i) the general insolvency proceeding applying to the debtors mentioned at point 3.1. above; such entities shall undergo successively, the judicial reorganization proceeding and, in case of failure of the reorganization, the bankruptcy proceeding or, separately, on a case by case basis, only the judicial reorganization proceeding or bankruptcy proceeding;
- (ii) the simplified insolvency proceeding applying to debtors mentioned at point 3.2. above; such entities shall directly undergo the bankruptcy proceeding or the bankruptcy procedure shall be instated after a 20 days observation period.

5.1. Judicial reorganization

In case of judicial reorganization, the debtor's business will be restructured according to a reorganization plan approved by the creditors and confirmed by the court. The debtor's activity during the reorganization period is managed by the special administrator under the supervision of a judicial administrator appointed by the syndic judge. The special administrator is appointed by the debtor's general meeting of shareholders. The syndic judge may decide to withdraw, entirely or partially, the special administrator's powers of managing the debtor's business.

In case the debtor fails to comply with the reorganization plan or such plan is not agreed by the creditors, the debtor will become subject to the bankruptcy proceedings.

5.2. Bankruptcy

The bankruptcy proceeding shall be applied in the following cases:

- (i) the debtor expressed its intention to undergo the simplified proceeding;
- (ii) the debtor did not express its intention to reorganize its activity;
- (iii) none of the entitled persons proposed a reorganization plan or the proposed plan was not approved by the creditors and confirmed by the court;
- (iv) the payment obligations and other incumbent obligations are not accomplished according to the conditions stressed in the reorganization plan or the activities carried out by the debtor during the reorganization proceeding trigger losses to its patrimony;

- (v) the judicial administrator's report proposing the commencement of the bankruptcy proceeding was approved;
- (vi) at the request of the creditor who has a certain, liquid and outstanding receivable against the debtor, acknowledged by the judicial administrator or by the court, that exceeds the amount of LEI 40,000, if this amount is not paid within a 60 day period since the acknowledgement of the receivable;
- (vii) at the request of any creditor or of the judicial administrator, if the debtor does not comply with the provisions of the reorganization plan or if the debtor is accumulating debts towards his creditors during the procedure.

There are several stages to be observed in a bankruptcy proceeding, starting with the identification of debts and creditors, followed by the liquidation and the distribution of the proceeds obtained from liquidation. The main stages of the bankruptcy proceedings are the following:

- (i) withdrawing debtor's right to manage its business;
- (ii) preparing an inventory of debtor's assets;
- (iii) appointing a temporary liquidator within the general proceeding which has to be further confirmed, and confirming, as liquidator, the judicial administrator within the simplified proceeding;
- (iv) establishing liabilities: drawing up the list of creditors, the list of debtor's assets and the profit-and-loss account for the year prior to the date of filing the bankruptcy application, verifying the creditors' receivables and drawing up the list of receivables, settlement by the syndic judge of any objections, drawing up and posting the final chart of the debtor's liabilities;
- (v) carrying out the liquidation: sale of the debtor's assets by auction or by direct sale (wholesale or retail), payment of taxes, stamp duties and all sale-related expenses, payment of secured creditors (the secured creditors are such creditors who have mortgages, pledges, or retention rights on debtor's assets);
- (vi) distributing the amounts resulted from liquidation: drawing up the final report and balance sheet by the liquidator, settlement of the objections thereof and approval of the same by the syndic judge and final distribution of the debtor's funds with the observance of the priority order set forth by the law;
- (vii) closing the liquidation process, upon the liquidator's request, conveyed in a decision of the syndic judge.

6. Official bodies implementing the insolvency procedure

According to Law No. 85/2014, such official bodies are the court, the syndic judge, the creditors' assembly, the special administrator, the judicial administrator and the liquidator. The syndic judge has mainly coordination tasks, while the administrator/ judicial administrator /liquidator have mainly executive duties. Insolvency practitioners, entities or individuals, carry out the reorganization and liquidation activity.

6.1. The court

All main proceedings regarding judicial reorganization and bankruptcy, except for appeals filed against the decisions of the syndic judge which are settled by the court of appeal, are under the exclusive competence of the tribunal having jurisdiction within the county where the debtor's headquarters was located for at least 6 months prior to filing the request for opening the insolvency proceedings.

If the debtor's headquarters was modified within a period of 6 months before the submission of the request to open the procedure, then the competence to rule over the request is acknowledged to the tribunal having jurisdiction within the county where the debtor had registered its latest headquarters, according to the Trade Registry.

The syndic judge is randomly selected through a computerized system amongst the specialized judges within the respective tribunal.

6.2. The syndic judge

The main powers of the syndic judge are as follows:

- (i) to decide upon commencement of the insolvency proceeding, both general as well as simplified proceeding;
- (ii) to appoint or, as the case may be, replace the provisional judicial administrator or liquidator and set forth their attributions;
- (iii) to confirm the judicial administrator or the liquidator appointed by the creditors' assembly;
- (iv) to examine the legal actions filed by the judicial administrator or liquidator;
- (v) to settle the potential objections filed by the creditors, by the debtor or of any other persons;
- (vi) to settle legal actions for personal liability against the members of the management bodies who contributed to the debtor's insolvency situation, or the criminal investigation authorities when there are data related to the perpetration of certain crimes;
- (vii) to confirm the reorganization plan, provided that the latter was approved by the creditors;
- (viii) to settle the judicial administrator's/creditor's request to adjourn the judicial reorganization procedure and to commence the bankruptcy procedure;
- (ix) to settle the challenges filed against the judicial administrator's/liquidator's reports;
- (x) to settle the claim for the annulment of the creditors' assembly's decisions;

- (xi) to settle the judicial administrator's/liquidator's requests submitted to the syndic judge, provided that the creditors' assembly/committee could not assume a decision for lack of quorum, within at least two meetings with the same agenda;
- (xii) to order the summon of the creditors' assembly, with a specific agenda;
- (xiii) to decide upon the closing of the insolvency proceeding.

6.3. Creditors' assembly

The creditors' assembly is formed by the debtor's creditors and is convened and chaired by the judicial administrator or liquidator (unless the law or the syndic judge requires otherwise). The creditors' assembly may be also convened at the request of the creditor's committee or at the request of creditors holding at least 30% of the total value of receivables.

The creditors' assembly may appoint during their first meeting a creditors' committee formed of 3 or 5 creditors of the first 20 creditors based on the amount of the debts; the committee thus appointed will replace the committee that might have been previously appointed by the syndic judge.

The main powers of the creditors' committee are as follows:

- (i) to analyse the debtor's financial status and to make proposals to the creditors' assembly regarding the debtor's activity and the proposed reorganization plans;
- (ii) to negotiate with the judicial administrator or liquidator the terms of the his appointment;
- (iii) to analyze the reports drafted by the judicial administrator or liquidator and, as the case may be, to challenge such reports;
- (iv) to draft reports on the measures taken by the judicial administrator or by the liquidator, to present said reports to the creditor's assembly and make new recommendations if the case;
- (v) to request the withdrawal of the debtor's right to manage its business;
- (vi) to submit to the syndic judge claims for the annulment of fraudulent acts/operations concluded by the debtor at the expense of the creditors, provided that such claims were not submitted by the judicial administrator/liquidator.

6.4. Special administrator

Following the commencement of the proceeding, the debtor's general meeting of shareholders will appoint, on the shareholders' expenses, a representative as special administrator, in order to represent the debtor's interests as well as the shareholders' interests and to participate in the proceeding on behalf of the debtor. Following the withdrawal of the debtor's right to manage its business, the debtor will be represented by the judicial administrator/liquidator who will also manage its activity, while the mandate of the special administrator will be reduced to representing only the shareholders' interests.

After the commencement of the proceeding and the designation of the special administrator, the activity of the debtor's general meeting of shareholders will be suspended and its members may be convened only at the request of the judicial administrator, for the cases strictly stated by the law.

The main powers of the special administrator are the following:

- (i) to participate, as the debtor's representative, in the litigations concerning the annulment of fraudulent acts/operations concluded by the debtor at the expense of the creditors in the 2 years prior to the opening of the insolvency procedure;
- (ii) to submit challenges within the insolvency procedure, as allowed by law;
- (iii) to propose a reorganization plan;
- (iv) to manage the debtor's activity under the supervision of the judicial administrator after the confirmation of the plan, provided that the debtor's right to manage its business was not withdrawn;
- (v) to participate to the inventory following the commencement of bankruptcy proceeding, by receiving the final report and the closing balance and by participating in the meeting convened for the settlement of the objection and approval of the final report;
- (vi) to receive the notification regarding the closing of the insolvency proceeding.

6.5. The judicial administrator

The creditor holding at least 50% of the total value of the receivables or, as the case may be, the creditors' assembly with a majority of minimum 50% of the total value of the receivables may decide the election of a judicial administrator (natural person or legal entity), and fix his remuneration, save for the case when such remuneration shall be paid out of the liquidation fund, case in which the syndic judge sets forth the amount thereof.

The judicial administrator, natural or legal person, as well as the representative of the latter must be an authorized practitioner in insolvency.

The judicial administrator's main duties are the following:

- (i) to examine the debtor's economic situation and the documents submitted by the latter within the procedure and, if necessary, to draft a report with a proposal to either commence the simplified procedure, or to continue the observation period within the general procedure; the aforementioned report would be subject to approval by the syndic judge, within a time frame stated by the latter, but no more than 20 days after the appointment of the judicial administrator;
- (ii) to examine the debtor's activity and to draft, within a 40 days period after his designation, a detailed report on the causes and circumstances that led the debtor into insolvency state, whilst mentioning the possible hints and preliminary elements referring to the members of the management bodies

who could be held accountable for the debtor's insolvency situation and also regarding the premises for submitting a claim for personal liability against the members of the management bodies; the report would also conclude on the debtor's real possibility to reorganize its activity, or, on the contrary, on the causes that prevent the reorganization ;

- (iii) to elaborate the reorganization plan;
- (iv) to manage debtor's business activity;
- (iii) to file actions for declaring void any fraudulent acts, concluded by the debtors and causing damage to the creditors' rights, as well as certain asset transfers and business operations entered into by the debtor and the setting up of guarantees likely to prejudice the creditors' rights;
- (iv) to maintain or terminate certain contracts concluded by the debtor;
- (v) to conclude transactions, waivers of debts and personal guarantors, relinquish security interests upon the confirmation by the syndic judge.

6.6. The liquidator

In case the syndic judge decides upon the commencement of the bankruptcy proceeding, a liquidator shall be appointed. Such liquidator may also be the former judicial administrator.

The main duties of the liquidator are:

- (i) to manage the debtor's activity;
- (ii) to file actions for declaring void any fraudulent acts, concluded by the debtors and causing damage to the creditors' rights, as well as certain asset transfers and business operations entered into by the debtor and the setting up of guarantees likely to prejudice the creditors' rights;
- (iii) to sell the assets of the debtor;
- (iv) to conclude transactions, discharge debts, discharge the personal guarantors, relinquish security interests, all upon confirmation of the syndic judge.

One of the most important duties for both the liquidator and the judicial administrators is filing actions aimed to annul deceptive acts concluded by the debtor. Thus, no later than 16 months as of the date of commencement of the insolvency proceeding the court may be invested to declare void the agreements the debtor has entered to the detriment of creditors, during the last 2 years prior to the commencement of the proceeding.

8. Insolvency of credit institutions

Credit institutions duly incorporated in Romania, their subsidiaries abroad and the credit cooperatives (called hereinafter “credit institutions”), undergoing an insolvency state, were subject to special bankruptcy proceedings instituted under GO No. 10/2004.

As of 28 June 2014, the GO No. 10/2004 was replaced by the Insolvency Code, which provides a special chapter regarding the insolvency of credit institutions.

According to the Insolvency Code, credit institutions are deemed insolvent if in one of the following situations:

- (i) in case of manifest incapacity of paying its outstanding debts with the available liquidities;
- (ii) the solvency indicator (calculated based upon the relevant regulations issued by the National Bank of Romania) drops under 2%;
- (iii) in case of withdrawal of the operating license, due to the impossibility of being financially restored.

If insolvent, credit institutions have the obligation to request the relevant court, within 30 days, to commence the bankruptcy proceeding. Prior to such request, the credit institutions have to file a request within 10 days as of the insolvency interfered with the National Bank of Romania in order to obtain the approval on the commencement of the bankruptcy proceeding.

Creditors of the insolvent credit institution may also file a bankruptcy request in the following cases:

- (i) the central houses of credit cooperatives, including the credit cooperatives affiliated thereto, have not fully paid their certain, liquid and outstanding debts within at least 30 days as of maturity date;
- (ii) other credit institutions (including banks) have not fully paid their certain, liquid and outstanding debts within at least 7 days as of maturity date.

The file of the bankruptcy request in both cases provided above has to be preceded by the prior approval of the National Bank of Romania.

The bankruptcy proceeding starts following an application filed by the debtor, by its creditors or the National Bank of Romania.

All main procedures regarding the insolvency of credit institutions, except for appeals which are settled by the court of appeal, are under the exclusive jurisdiction of the tribunal of the county where the debtor’s headquarters are located. The syndic judge shall be randomly selected through the computerized system amongst the specialized judges within the respective tribunal.

The court will notify the National Bank of Romania on its decision to start the bankruptcy proceeding for each relevant credit institution. The National Bank of Romania will immediately close the accounts of the relevant credit institution opened with the National Bank of Romania and transfer the available funds into

the accounts of “*credit institution in bankruptcy*”-type opened by the liquidator with a commercial bank where all other available funds of the debtor shall be transferred as well. Subsequently, the financial operations of the bankrupt credit institution shall be undertaken through this account exclusively.

Subject to approval of the final report by the syndic judge, the distribution of all funds or assets of the bankrupt credit institution and depositing of all unclaimed funds with the Romanian Treasury and the submission of the statement of accounts with the syndic judge, the insolvency proceeding shall be closed. The decision to close the bankruptcy proceeding is notified, in writing or through the media, to all involved parties.

8. International private law relations regarding insolvency

8.1. Harmonized EU insolvency rules (source: European Commission)

As of the Romanian accession to the European Union (“EU”) in 2007, the international private law aspects regarding insolvency are mainly regulated by the Council regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings (the “Regulation”).

The Regulation establishes a common framework for insolvency proceedings in the EU. The purpose of harmonised arrangements regarding insolvency proceedings is to avoid assets or judicial proceedings from being transferred from one EU country to another in order to obtain a more favourable legal position to the detriment of creditors (“forum shopping”).

Except for insurance undertakings, credit institutions and collective investment undertakings, the Regulation applies equally to all proceedings, whether the debtor is a natural or a legal person, a trader, or an individual.

According to the Regulation, the courts with jurisdiction to open the main insolvency proceedings are those of the EU country where the debtor has his/her centre of main interests. This should be the place where the debtor usually administers his/her interests and that is verifiable by third parties. In the case of a company or legal person, this is the place of the registered office, in the absence of proof to the contrary. In the case of a natural person, in principle it is the place where his/her work is domiciled or the place of his/her usual residence.

Secondary insolvency proceedings may be opened subsequently in another EU country if the debtor has an establishment in its territory. “Establishment” means any place of operations where the debtor carries out a non-transitory economic activity with human resources and goods. The effects of the winding-up proceedings must be limited to the assets of the debtor located in that territory. The opening of such proceedings may be requested by the liquidator of the main proceedings or by other persons or authorities according to the law of the country in which the opening of the proceedings is requested. In some cases, such territorial proceedings may be opened independently before the main proceedings, if the local creditors and the creditors of the local establishment request it or where main proceedings cannot be opened under the law of the EU country where the debtor has his/her centre of interests. However, these proceedings will become secondary proceedings once the main proceedings are opened.

Pursuant to the Regulation, the law of the EU country in which insolvency proceedings are opened determines all the terms of those proceedings: the conditions for their opening, conduct and closure. It also determines practical rules such as the definition of debtors and assets, the respective powers of the debtor and the liquidator, the effects of proceedings on contracts, individual creditors, claims, etc.

Decisions by the court with jurisdiction for the main proceedings are to be recognised immediately in other EU countries without further scrutiny, except:

- (i) where the effects of such recognition would be contrary to the country's public policy;
- (ii) in the case of judgments that might result in a limitation of personal freedom or postal secrecy.

However, restrictions on creditors' rights (a stay or discharge) are possible only if they have given their consent.

If a court of an EU country decides to open insolvency proceedings, the decision is to be recognised in all other EU countries, even if the debtor could not be the subject of such proceedings in the other countries. The effects of the decision are those provided for by the law of the country in which proceedings are opened and they come to an end in the event of secondary proceedings being opened in another EU country.

The liquidator appointed by a court with jurisdiction may act in the other EU countries in accordance with his powers provided for by the law of the EU country where the proceedings are opened, but respecting the law of the country on whose territory s/he is acting. In particular, s/he may have the debtor's assets removed and may bring any action to set aside that is in the interests of the creditors if assets were removed from the country of the main proceedings after the opening of the proceedings, subject to rights in rem of third parties or reservation of title.

Publication measures may be taken in any other EU country at the request of the liquidator (publication of the decision opening the insolvency proceedings and/or registration in a public register). Publication may be mandatory, but in any event it is not a prior condition for recognition of the foreign proceedings.

If a person concerned is not aware of the opening of proceedings, s/he may be considered to act in good faith when making a payment to the debtor instead of the liquidator in another EU country. If such a payment is made before publication of the decision opening the proceedings, the person concerned is considered to have been unaware of the opening of proceedings. On the other hand, if a payment is made after publication of the decision, the person concerned is assumed to have been aware unless there is proof to the contrary.

8.2 Subsequent Romanian insolvency related enactments on international private law

The Insolvency Code regulates at the national level, the international private law issues on insolvency. Thus, the Insolvency Law contains provisions meant at (i) establishing the law applicable to private international relations on insolvency, (ii) outlining applicable procedural norms in private international relations on insolvency, and (iii) setting forth the conditions to be observed by the Romanian relevant authorities when requesting/giving assistance in respect of insolvency proceedings commenced on the Romanian territory/foreign territory.

Under the provisions of the Insolvency Code, usually, the law applicable to private international relations in terms of insolvency is the law applicable at the debtor's central headquarters, namely the law applicable in the area of the main headquarters of a legal entity or the law of the professional domicile of the natural person performing an economic activity or an independent profession.

Insolvency Code mainly regulates the following scenarios:

- (i) cases when legal assistance is required in Romania by a foreign court or by a foreign representative, in respect of a foreign insolvency proceeding

Such cases may occur when the insolvency proceeding has started abroad and its recognition in Romania is required (for example, because the debtor has assets located in Romania).

In such cases, the foreign representative has the right to address directly to the Romanian courts and bring before them a recognition petition for the foreign proceeding, by also submitting several documents in order to prove the commencement of the proceeding abroad.

If the Romanian courts admit the foreign proceeding, no other further individual petitions and appeals or enforcement measures, judicial or extrajudicial may be brought before the court, and if they have already been started they shall be suspended. Furthermore, the right to charge or dispose in any way of the debtor's assets will be suspended. Any deeds failing to comply with these rules will be null and void.

- (ii) cases when legal assistance is required in a foreign state, in respect of a bankruptcy proceeding governed by Romanian law

This situation occurs when the bankruptcy proceeding starts in Romania and its recognition abroad is required (for example, because the debtor has assets located abroad).

The Romanian representative (the individual or legal person appointed judicial administrator or liquidator within a Romanian bankruptcy proceeding) is entitled to act in a foreign state, as delegate of the bankruptcy proceeding opened in Romania, under the conditions set forth by the foreign applicable law.

- (iii) cases when a Romanian insolvency proceeding and a foreign insolvency proceeding against the same debtor are carried out simultaneously

In this particular case, admittance of the foreign proceeding cannot prevent filing of a local action under Insolvency Code, or the registration of an application for claim admittance under such proceeding.

After recognition of a foreign proceeding, the insolvency proceeding regulated by Insolvency Code may be commenced against the same debtor only if the debtor is headquartered in Romania. The effects of the proceeding provided by Insolvency Code shall be limited only to the debtor's assets located in Romania and to other assets which, pursuant to the Romanian law, have to be covered by such proceeding, to the extent imposed by the need to ensure cooperation between the Romanian and foreign authorities. The recognition of a foreign proceeding is, until proven otherwise, an assumption of the debtor's insolvency and the proceeding provided by the Insolvency Code may be started based on this assumption.

9. Insolvency of administrative-territorial units

Since 2013, the administrative-territorial units are subject to special insolvency proceedings enacted by Government Emergency Ordinance No. 46/2013.

Certain provisions regarding administrative-territorial unit's insolvency procedure were also previously instituted under Law No. 273/2006 regarding the local public finance.

According to the aforementioned regulations, the insolvency is the state of administrative-territorial units characterized by the existence of financial distress caused by a lack of liquidities, which leads to the failure to meet payable and outstanding monetary obligations over a certain period of time.

The state of insolvency is presumed in one of the following situations:

- (i) in case of non-payment of payable and outstanding debts, older than 120 days and that exceed 50% of the general budget of the administrative-territorial unit, without taking into account the claims in relation to which there is a pending commercial litigation;
- (ii) in case of non-payment of the salary rights in relation with labour relationship and stipulated in the budget of incomes and expenditures over a period longer than 120 days as of the due date.

The official bodies implementing the insolvency procedure are the main budget holder, the deliberative authority, the court, the syndic judge, the creditors' assembly, the creditors' committee and the judicial administrator.

The insolvency request may be filed by any creditor or by the main budget holder, as follows:

- (i) The creditor or group of creditors with one or more payable and outstanding claims against the administrative-territorial unit, in an amount exceeding 50% of the latter's budget for a period of 120 consecutive days, may submit an application to commence the insolvency proceedings;
- (ii) Main budget holder has the legal obligation to request the commencement of the insolvency proceeding within 15 days after determining the insolvency state of the administrative-territorial unit.

All main proceedings are under the exclusive jurisdiction of the tribunal of the county where the administrative-territorial units is located. The appeals filed against the decisions of the syndic judge are settled by the court of appeal.

Within 30 calendar days after the commencement of the insolvency proceeding by the syndic judge's decision, the judicial administrator, along with the main budget holder, with the consultation of the General Directorate of Local Public Finance, or the General Directorate of Public Finance of Bucharest, as the case may be, shall draft a recovery plan.

The recovery plan, if previously approved by the Local Council, is binding for both the Deliberative Authority and the main budget holder.

After the confirmation of the recovery plan by the syndic judge, the activity and the structure of the specialized offices of the mayor or of the County Council or, as the case may be, of the institutions or the public services of local or county interest are restructured accordingly, and the receivables and rights of the creditors and other interested parties are adequately set.

Should the conditions for the insolvency state be remedied, the insolvency proceeding of the administrative-territorial units is closed, even if not all of the receivables within the recovery plan are paid.

If the receivables are not entirely paid during the implementation of the recovery plan, the regulations regarding the financial crisis situations of the administrative-territorial units will apply, as stipulated by the Government Emergency Ordinance No. 46/2013 and Law No. 273/2006 regarding the Local Public Finance.

Accordingly, a financial crisis recovery proceeding, based on a restructuring plan, will be initiated under the responsibility of the main budget holder, which will supervise the administration and operations of the administrative-territorial unit until its recovery and closing of the financial crisis recovery proceeding.

The commencement and the closing of the insolvency proceeding of the administrative-territorial unit are registered with the Local Registry of the Insolvency Cases held by the General Directorate of the County Public Finance or the General Directorate of the Public Finance of Bucharest. The information regarding the commencement and the closing of the insolvency proceeding of the administrative-territorial units is centralized in the National Registry of the Insolvency Cases. A separate National Registry of Financial Crisis Cases is kept by the Ministry of Public Finances to record the relevant information relating to financial crisis recovery proceedings.