PERSONAL BANKRUPTCY AND THE ROMANIAN REALITIES

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Abstract
Bankruptcy is defined as the legal situation in which an individual, a company or an institution cannot meet outstanding liabilities, which are superior in value compared to available assets. Personal bankruptcy refers to the situation described above in the case of individuals. This highly important legal and economic institution was long ago settled in the United States of America, United Kingdom, France, Germany, Japan, and recently in former communist countries such as Poland, Latvia, Estonia, and Lithuania, existing throughout the EU, except for Romania, Bulgaria and Hungary. In December 2015, in Romania, the Personal Bankruptcy Law is to come into force and this article focuses on the main aspects of the three steps procedure comprised in it as well as on the advantages and disadvantages from all involved parts perspective, that is: individual debtors, Banks as creditors and state institutions as third parties highlighting the main changes that are to happen both for individuals as well as for the society as a whole.

Keywords
personal bankruptcy; insolvency; legal entities; debtor; creditor

JEL Classification
G33; K35

1. Introduction

Bankruptcy (broken bank letter) is the legal situation in which an individual, company or institution (also called legal entities) cannot meet due payments (outstanding liabilities), which are superior in value compared to available resources (assets).
In Romania the core law for bankruptcy is the Insolvency Code, in force since the mid of 2014 which contains provisions to ensure a fluent insolvency procedure. This Code created the framework for granting financial insolvency for companies and clarifies some aspects of ongoing contracts of an insolvent company. Nevertheless the Code comprises regulations regarding the reorganization plan.
Law no. 85/2014 on insolvency proceedings and insolvency prevention is an attempt to unify the regulation of procedures which were before contained in various laws. The Code means a compact law, which contains provisions that permit a fluent insolvency procedure and also improve amicable settlement of pre-insolvency proceedings such as the preventive concordat or the ad hoc mandate and arrangement . The New Insolvency Code specifies the *simplified procedure* as a procedure whereby the insolvent debtor might go straight into bankruptcy proceedings, either with the insolvency procedure or after an observation period of maximum 20 days. This simplified procedure applies to insolvent debtors who fall into one of these categories: professional individuals subject to registration in the

Trade Register, except those exercising liberal professions; family business, family business members; instruments of incorporation or accounting documents cannot be found; the administrator cannot be found; headquarters / professional does not exist or does not match the address in the trade register; voluntarily dissolved legal persons, judicial or law before drawing application, even if the liquidator has not been appointed or, even called the mention regarding the appointment has not been entered in the trade register; borrowers who have declared their intention by application of bankruptcy; any specific person which had not obtained the law required authorization to operate an enterprise.

2. Personal bankruptcy general overlook

Like the companies, people can also give themselves bankrupt. In the civilized world this is a settled law provision. Personal bankruptcy has a long history in the US, UK, France, Germany, Japan, and, a more recent one in former communist countries such as Poland, Latvia, Estonia, Lithuania (2013). In fact it exists throughout the EU, except for Romania, Bulgaria and Hungary - where it may, however, soon come to live. A person may enter bankruptcy / insolvency of its income can no longer satisfy creditors. The debtor may ask for the court protection and the court would consider whether the bankruptcy is excusable or not. The debtor shall be presented before the court to be declared insolvent, at his request or at the request of creditors. After being declared insolvent the debtor can propose a plan to creditor and the debt will be paid under the supervision of a trustee and a periodic control of the court, or is declared bankrupt. There are three steps involved in this procedure: a 90 days observation period, personal insolvency and finally bankruptcy.

3. Romanian perspective on personal bankruptcy

Law no. 151/2015 on insolvency individuals was published in the Official Monitor on 26 June 2015 and will come into force in six months, December 26. The normative act was promulgated by President Klaus Johannis in June 18, after being adopted by deputies. The final vote was in 20 May with 309 votes "for", 0 "against" and 3 "abstentions". In December 2014, the bill passed tacit the Senate.

The new law provides new balanced arrangements so that not to favor any debtor nor creditor, but to offer a real support of all Romanians of good faith who were indebted not by their fault but because they got into financial trouble.

The main advantages of this law are:

- Any foreclosure started is suspended once the insolvency proceedings for individuals begin
- The accumulation of interest and penalties for overdue payment are inhibited
- All receivables become liquid and due
- All unilateral acts of the debtor have no longer effects
- Ensures a balance between the interests of individual debtors and those of creditors

The key provision of the law is that it establishes legal procedures designed to rectify the financial situation of the individual debtor in good faith, covering a larger measure of its liabilities and "discharge of debts" of the concerned individuals. Essentially, an individual debtor is considered insolvent when its assets are characterized by insufficient cash funds available to pay outstanding (overdue) debts. Insolvency of an

individual debtor is presumed by law to exist if after passing a period of 90 days from the due date of the obligations it has not paid its debts to one or more creditors. The new regulation procedures will apply to individuals, except those that manage a company, independent activities or freelancers.
Law no. 151/2015 covered three insolvency levels:
• Insolvency proceedings on a debt repayment plan;
• Insolvency proceedings based on the liquidation of assets;
• simplified insolvency procedure.
These procedures apply depending on reliability and depending on the results obtained by previous procedure.
At this point a question arises: What conditions must be met to apply for personal bankruptcy? Law no. 151/2015 establishes that the insolvency of the debtor's assets is that state which is characterized by insufficient cash funds available to pay debts as they become due. The insolvency is assumed after passing a 90 days period since the due date in which the debtor has not paid the debt to one or more creditors.

4. Law addressability and procedure

Romanian personal insolvency law aim individuals of good faith, whose debt resulting from an activity that aims to meet a personal need, such as from utility providers, delays in the payment of bank loan contracted to purchase a service or product staff and not a business that aims to generate profit. However, the law does not clearly define what a borrower in good faith is, but make a list of debtors who can not benefit from this procedure. Among the reasons that may prevent an individual to enter insolvency are the existence of convictions for various offenses, preparation of fraudulent or overly generous acts that have diminished its wealth, failure to submit the efforts to find a job a.s.o.
The new provisions will apply to individual debtor who:
• domicile, residence or habitual residence for at least six months prior to application in Romania;
• is insolvent and there is a reasonable likelihood regain, over a period of 12 months, able to perform its obligations as contracted, while maintaining a standard of living reasonably for himself and for the people It has dependents; [1]
• the total amount of its obligations due is at least equal to the threshold value (threshold value represents the minimum amount of outstanding debts of the debtor required to be filed for the opening of insolvency proceedings on the basis of the plan of debt repayment or procedure by judicial insolvency liquidation of assets; this is 15 minimum wages).
Individuals insolvency can be solved in three ways: on the basis of debt repayment plan, the liquidation of assets or the simplified procedure.

4.1. Insolvency based on recovery plan liabilities

In case of a debtor believed to be insolvent (because it lacks cash to pay due debts - state insolvency can be taken into account if payment term debt was exceeded by more than 90 days), but its financial situation is not irreparably compromised, the Commission may request the opening of insolvency based on debt repayment plan, which is an administrative and not a judicial procedura. In this case, the minimum

[1] Reasonable probability is estimated by considering the total amount of obligations related to revenues or forecasted to be realized given the level of training and expertise of the debtor and also the traceable assets in his possession

debt must total 15 minimum wages (the law does not specify net average salaries). The application for opening insolvency procedure is public and includes the reasons that caused the situation, the debts, the prior initiated procedures to negotiate rescheduling debt, the marital and profesional status, the amount of revenues collected on the past three years as well as the expected revenues for the next three years, debtors assets, bank accounts, amounts recovered from debtors, litigations in progress or completed, the existence of convictions for tax evasions or false. The application will have attached the evidence of occupational status - employed / unemployed, evidence that was not fired for reasons that may be charged and that he made every effort to obtain a job, the documents proving income and tax returns for the past three years, an extract from the judicial record and tax record to date, a report to the credit bureau and a proposed repayment plan. After analyzing the request, the insolvency application may either be accepted in order to open the insolvency proceedings based on a plan, or may be rejected and noted that the financial situation of the debtor is irremediably compromised, in which case, the court may grant insolvency proceedings through liquidation of assets, or in simplified form, as appropriate.

Effects of opening insolvency proceedings based on repayment plan:

• provisionally suspend foreclosures started, for not more than three months, unless the court decides to extend this period if such debtor's financial situation would become hopelessly compromised;

• an administrator will be appointed for the procedure. Based on data provided by informing creditors and debtors, debts table will be drawn;

• The debtor, with the insolvency administrator will develop a debt repayment plan, which proposes acquittal. Share coverage of debts by repayment plan must be higher than the share of coverage could be achieved by liquidating the assets of the debtor. A series of rescheduled debts cannot be reduced or removed in insolvency proceedings, such as legal or conventional maintenance obligations or liabilities resulting from criminal liability and the contravention;

• The duration of the plan is five years, extendable by another year;

Insolvency Commission will assess the feasibility of the plan. The plan is approved if creditors representing 50% of the total value of receivables and 30% of the debts that benefit causes preference voted in favor;

• In case the repayment plan is not approved by creditors, the debtor may request the competent court to acknowledge it. Thus, the court has the right to override the vote of creditors in case assessed that these were against unreasonably share of debt coverage superior to that proposed in the plan that would be achieved through liquidation;

• Upon approval of the repayment plan all enforcement measures for the realization of receivables, runny interest, penalties, delay penalties etc., except receivables benefiting causes of preference are suspended; • institutions or companies with insolvent person has signed contracts will not be entitled to terminate ongoing contracts by the opening of insolvency proceedings;

• The debtor is obliged to cooperate with the Commission and with the insolvency receiver and communicate any information on its financial condition; must be subject to surveillance receiver in relation to all activities; It is required to prepare quarterly progress reports to the plan; is obliged to conduct a legal activity producing income;

- In the case of not respecting the plan, or that the debtor does not pay its current debts based on closing procedure can be initiated a liquidation of assets plan

4.2. Insolvency through asset liquidation proceeding

Insolvency through asset liquidation procedure can be requested by the debtor, directly, where "financial situation is irremediably compromised". The situation is considered irreversible compromised after being passed through two filters: subjective, and that of the debtor's bankruptcy judge. A clearer definition of the terms could avoid an uneven court practice. Creditors may request the opening of the liquidation of assets when the procedure based on a plan cannot be carried out. Once the insolvency court upheld the liquidation of assets, suspended foreclosures and individual debtor is prohibited from using the assets and the income that can be liquidated.

Carrying the insolvency proceedings through liquidation of assets involves:

• Preparing the final table. The liquidator will ask creditors to submit, within 30 days of the initiation, information on the amount of the debt and the market value of the asset which is guaranteed. The liquidator is obliged to prepare the preliminary table of receivables within 15 days of receipt of the notice.

• inventory of assets of the debtor. Within 30 days of the opening of proceedings, the liquidator will make the inventory of assets of the debtor.

- Liquidation of the assets. The deal liquidator sells the assets, which will conclude on behalf of the debtor, to sales. The goods are sold free of encumbrances.

If, although they have made every effort the liquidator failed to capitalize on the good in two years, lenders may become its owners for liabilities.

• Termination and release of liability. After the goods have been recovered and the proceeds were distributed to creditors, the liquidator shall prepare a final report. Within 30 days of when it becomes final, the court pronounces the closing of procedure and determines how debtor revenues may be used to cover liabilities, after closing procedure.

• Issuance of debt remaining waste is covered by debt cancellation during post-closing procedure. According to article 72, the debtor will be released from liability if after three years from the closing date of the procedure at least 50% of the total receivables is covered, or after 5 years 40%, and so on.

4.3. The simplified procedure Insolvency

Insolvency simplified procedure can be accessed by an individual if the total amount of its debt is not more than 10 minimum wages, has no assets or income tracking and has over the standard retirement age or has lost total or at least half of the working capacity. Insolvency Commission will review its application and if it satisfies the conditions will be submitted to the court. From the date of the final judgment shall suspend all enforcement measures, the flow of interest, calculating penalties and so on. The debtor must, since the opening of proceedings to pay their current debts on time, not more loans, report annually to the Board of insolvency on the situation of its property or if extra income over ½ of the minimum wage economy front said at the time the application for insolvency, insolvency should notify the Commission if inherits her donates or receives goods or services worth more than minimum wage.

5. Law limits

Not all borrowers can benefit from the application of the new law. Law. 151/2015 establishes that it regulates procedures will not apply to the debtor:

• in the case which has been closed for reasons that are imputable to an insolvency procedure based on debt repayment plan, a legal procedure of insolvency by

liquidation of assets or a simplified insolvency procedure more than 5 years prior to the formulation of a new application to open insolvency proceedings;
• Who has been sentenced for an offense of tax evasion, forgery of a crime or an intentional crime against property by disregarding confidence;
• Who was fired in the last 2 years for reasons attributable to him;
• That, although fit to work without a job or other source of income and not filed reasonable diligence needed to find a job or refused unreasonably, a job proposed by either a other income generating activities;
• New debt that has accumulated through voluptuary expenses while he knew or should have known that it is insolvent;
• That caused or facilitated reaching insolvent, with intent or gross negligence. Shall be presumed to have had this effect: contracting in the last six months before the application to open insolvency proceedings, the debts that represent at least 25% of the total liabilities, excluding liabilities excluded;
• Take over the last three years before the application, the undue burden in relation to its state patrimony, the benefits they get from the contract or to all the circumstances that have contributed significantly to the failure of the debtor to pay its debts, other than those caused by people who contracted it so;
• Performance in the last three years before the application of certain preferential payments, which have contributed significantly to reducing the amount available to pay other debts;
• Transfer in the last three years before the application, goods or assets or heritage values of another natural or legal person while he knew or should have known that through these transfers will reach insolvent;
• Termination of an employment contract by mutual consent or by resignation last six months before the application initiating proceedings;

- another insolvency procedure opened before the application for opening insolvency procedure under Law 151/2015

6. Conclusions

Experts believe that the insolvency law violates the right of individuals' free access to court. Insolvency Law has also some gaps that will aggravate its application. One is the establishment of committees of insolvency, with complex components, but without any official of the creditor, the insolvency commission is also invested with powers of decision, control and surveillance of the individual's or administrator's insolvency proceedings, which will bear real difficulty in practice. Another problem posed by the law in its current form is violation of the right of free access to court. In some cases, the Commission acts as a court of insolvency itself without giving the person the opportunity to challenge the measure in court.
Also, the insolvency administrator is appointed by the Board of insolvency random from among the insolvency practitioners, bailiffs, lawyers or notaries public, listed as the administrators and liquidators for insolvency proceedings of individuals. Enrollment in this special list will be made only after an examination organized by each professional body, but are automatically included bailiffs and insolvency practitioners with a length of over five years expertise. This will create a discretionary treatment between lawyers and notaries that must express willingness to be included on the special list of insolvency administrators and insolvency practitioners or bailiffs with an expertise bigger than five years, which will be automatically included. The law imposes a number of duties for liquidators without them to be detailed in any way. For example, the liquidator may request denunciation

of contracts concluded by the debtor. This law complements Law no 85/2014 on insolvency proceedings, which regulates a special procedure allowing the receiver to terminate the contract within 3 months from the initiation to maximize debtor's property. Instead, the new rules are completed only with the Civil Code, which does not allow denunciation unless a clause inserted in the contract prior to termination, and the Civil Procedure Code, which governs this institution at all. In this situation, the liquidators would be unable to fulfill their obligations without clarifying the duties limitations.

Plain said, personal bankruptcy reffers to a debtor who has to pay the bank a rate that can no longer afford (low income, unemployment, disease, growth rate) may enter into a plan of reorganization to pay a certain amount monthly for three. Nevertheless, call for bankruptcy is a very serious thing for the borrower and should be avoided. In case of bankruptcy, the customer loses his house and other properties dispensable. That happens now only in the case of enforcement, except that now, if the collateral / assets made not cover the debt, the debtor will still have to pay the bank the difference, that will remain embarrassed for many years, perhaps decades, no chance resorting to a loan, credit card etc. Let us think of the sale value of a home now compared to the glory years of the real estate market, when houses were not only expensive but also overvalued by real estate appraisers. On average, prices have fallen by 50% from the peak, and if the guarantee is auction sold, the debtor is good by paying for the difference, plus interest and fees. That means that for many years the debtor is under debt and all the declared income are tracked and the bank has the right of them. This is why some choose to hide their income and go to gray economy affecting not only the economic side of life but also the social one. With the bankruptcy of individuals approved, the debtor has a new start. He'll lose his home but will not be prosecuted for credit difference if it's in danger, can stay in his house for a while.

For banks, the advantages are that, beyond the fact that they may require insolvency of the debtor, they can unleash their provisions made for bad loans as a result of the bankruptcy debtor. Thus, the pressure on bank balance sheets, because the money trapped provisions are very expensive. However, banks worry that Romanians will rush to declare bankruptcy in order not to pay rates on credit and that the law means nothing but a new method by which debtor could and would understand to escape obligations. Romanian Bankers have expressed opposition to this law project ever since the beginnings.

Last update: given that none of the previous conditions needed for the law implementation weren't met, the Personal Bankruptcy Law is to come into force since the end of 2016, which is a year later then originally planned.

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