

# CONSIDERATIONS REGARDING THE ACCOUNTING PRINCIPLES APPLIED IN INSOLVENCY PROCEEDINGS

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**Abstract:** : The Romanian economy, after 1990, has undergone a comprehensive restructuring process from centrally planned economy to an economy governed by the rules of the market economy, rules of the game led to a competitive type economy, with winners and laggards, with winners and losers. In the first phase, the restructuring of the Romanian enterprises has known just the division into two or more independent entities. Subsequently, according to the model of Western economies, the economic entities in our country during the process of restructuring and reorganization adopted a second way, namely the merger with its two versions: the merger by absorption and merger by fusion. The permanent struggle to maintain the market segments owned or even more to conquer other market segments as well as tax regulations adopted by our country led to the insolvency of a large number of businesses. Recent regulations bring some new administrative and foremost procedures to prevent insolvency. Thus, borrowers in financial difficulty are able to choose one of the following procedures: ad-hoc mandate and the preventive arrangement.

**JEL classification:** M41, M49

**Key words:** critical; insolvency, ad-hoc mandate, preventive arrangement, reorganization, insolvency practitioner

## 1. INTRODUCTION

The significant transformations which occurred in the Romanian economy after 1990 began a period of transition from a centrally planned economy to a market economy, the competition was brought on top as well as the need for performance and acceptance of the rules of market economy. If the first phase was focused on the establishment of law firms and independent utilities, later we had to go through a period of legislative gap until the moment of issuing a new bankruptcy law and we also had to wait more than a decade to organize professional insolvency practitioners. The competitive economic environment, the lack of the skills to work with market mechanisms, high interest rates, high levels of depreciation of the national currency and a tax system unfriendly, sometimes hostile, contributed to the increase in the number of bankruptcies. Otherwise, just by applying, in 2009, the flat tax and the work stopped or suspended about 175,000 undertakings. Only in the fall of 2013 began to take shape concerns about insolvency prevention with the advent GEO 91/4.10.2013 in regard to

the procedures to prevent insolvency. Although GEO 91/2013 was in force only two months, until it was declared unconstitutional by the decision CCR nr.417/17.12.2013 we appreciate that after removing the unconstitutional items, the new law will have to retain certain valuable elements related to the prevention of insolvency.

## **2. OBJECTIVES**

The general objective of this research paper is to shed light on an overview of the procedures to prevent insolvency. In the context of an interesting and challenging topic, following the launch and withdrawal of regulatory insolvency the present study.

## **3. METHODOLOGY**

The research methodology used in the preparation of this paper is based on the processing and interpretation of a variety of data and information collected from various sources such as regulations, specialty papers, information disseminated by professional bodies, and numerous opinions issued by specialized bodies with respect to subject matter of the investigation within. To achieve the objectives we use a constructive research methodology for details regarding procedures to prevent insolvency and empirical studies. The current research topic is being useful both for the professionals in the field and for teaching purposes with students, master and PhD.

## **4. THE FINANCIAL DIFFICULTIES**

Critical GEO nr.91/4.10.2013 insolvency procedures to prevent insolvency act published in the Official Monitor 620/4.10.2013 brought a series of administrative novelties and foremost proceedings to prevent insolvency. Thus, borrowers in financial difficulty are able to choose one of the following procedures:

- ad-hoc mandate
- preventive arrangement.

### **Ad-hoc mandate**

It may be set based on a request addressed by the debtor to the president of the court, according to this request the debtor proposes an ad hoc representative of insolvency from the body of practitioners authorized by law. The application must include a detailed description of the grounds which make the ad hoc appointment of a trustee. If it finds that the reasons are real and the nominee meets the conditions provided by law, the President shall appoint the ad hoc closure enforceable mandate proposed. The ad hoc trustee objective is to achieve within 90 days of the appointment an agreement between the debtor and one or more of its creditors to overcome the state of financial difficulty in which the debtor has its safeguarding, preserving places work and cover the existing debt. The ad hoc trustee may propose remittances, debt rescheduling or partial reduction, continuation or termination of ongoing contracts, staff reductions and other measures deemed necessary. At the proposal of the debtor and with the ad hoc trustee approval, the President shall establish a provisional fee which may be in the form of a fixed fee or a monthly fee. The accounting treatment of transactions initiated and completed by the agent starts the ad hoc nature of the operations and their effect on the debtor's assets.

By way of example, the following can happen:

- The rescheduling debt payment to a vendor in the amount of 1,000,000 lei in 10 equal monthly installments, without charging interest and penalties. Monthly payments will be made of 100,000 lei.

401 Suppliers = 512 Cash at bank

- Reduce the amount of 1,000,000 lei bill purchases by 25%. The red invoice received from the vendor will conduct registration:

%	=	Suppliers	- 250.000
Stocks or Assets			
4426 VAT deductible			

- Debts relief related to previous years

Debts = 117 Retained earnings

### **The preventive arrangement**

The arrangement may be requested by a debtor in financial difficulty given that is:

- Has not benefited from a previous preventive arrangement in the past three years that has failed;
- If the debtor and / or shareholders / associates or its administrators has been convicted for intentional crimes of property, corruption, forgery and offences under Law 22/1969, the Accounting Law 82/1991 as amended and supplemented, Law 78/2000, Law 656/2002, Law 571/2003, Law 241 / 2005 in the last 5 years
- If it hasn't been ordered to bear a portion of the debtor's liabilities by members of the management and / or supervision.

Bankruptcy judge appoints provisional administrator of composition at the proposal of the debtor, the insolvency practitioners authorized by law. Project arrangement must show in detail the following:

- Analytical Statement of assets and liabilities certified by a chartered accountant or a certified auditor as appropriate under the law of the state of financial difficulty
- Causes of financial difficulty and the appropriate measures taken by the borrower until the application of the financial accounting
- Project on the financial-accountant development in the next 24 months
- Recovery plan containing at least the following measures
  - the reorganization of the debtor,
    - restructuring management
    - reducing staff
    - changing functional structure
  - ways to overcome the financial difficulties
    - capital increase
    - bank loan, bond or other,
    - the creation or dissolution of workstations,
    - sale of assets.

- the claims deadline set by agreement should not exceed 24 months from the date of its finding or its approval according to judgment enforceable.

The accounting treatment of transactions initiated and completed during the period of the arrangement is based on the nature of their operations and their effect on the debtor's assets. By way of example there can be undertaken a series of activities that lead to overcoming financial difficulties.

## 5. WAYS TO OVERCOME THE FINANCIAL DIFFICULTIES

The most important ways to overcome the financial difficulties of the economic entities in financial difficulty are: increasing capital and obtaining bank loans, bonds or other.

- The capital increase is carried out with the approval of the AGM and respecting the right of first refusal. For example, the share capital is increased by 25%, issuing a new action every four old shares. The subscribed capital is paid up on the cashier unit.

456 Settlements with partners/shareholders on capital = 1011 Subscribed capital not paid

531 Cash = 456 Transactions with shareholders/associates related to capital

1011 Subscribed capital not paid = 1012 Subscribed capital paid

- Bank loan, bond or otherwise.
  - a) To complete an investment-objective found in technological trial it is negotiated a long-term loan (5 years) with mortgage - production halls - and the one-year grace period.

512 Cash at bank = 162 Long- term bank loans

b) Coupon bond issue with an annual interest rate calculated by the formula:

$D = \text{Interest ROBOR 12 months} + 2 \text{ percentage points}$

with the possibility of converting the shares at face value by adequate increasing of the social capital

- issuing bonds

461 Sundry debtors = 161 Debenture loans

- Cashing the bonds

531 Cash = 461 Sundry debtors

- Payment of periodic coupon interest

666 Interest expenses = 531 Cash

-Redemption of bonds at maturity

505 Redeemed debentures = 531 Cash or  
512 Cash at bank

a) cancellation of bond

161 Debenture loans = 505 Redeemed debentures

b) conversion of bonds into shares

109 Own Shares = 505 Redeemed debentures

and simultaneously

161 Debenture loans = 1012 Subscribed capital paid

## 5. CONCLUSIONS

In the current period the insolvency rate, economic entities increased considerably. In fact, the insolvency of the debtor's assets is a state characterized by insufficiency of funds available for the payment of debts due. Bankruptcy proceedings imply collective insolvency proceedings which are applied to the debtor in order to eliminate its assets so that to be able to cover the liabilities - meaning the obligations - followed by removal of the debtor from the registry of registration. The increasing number of bankruptcies leads to market distortions of the capital goods currently experiencing an increase in supply due to the absence of a proper application of such goods. Those who have to lose out of this are not only creditors (mainly banks and the state budget) but also the broader economy which is facing an increase in unemployment by reducing the number of jobs. This is why we consider as necessary the reconsideration of the legislative process on a constitutional basis, as well as the legislation and implementation of procedures to prevent insolvency.

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