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COVID-19 Legal Insights



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1. Insolvency proceedings during the state of emergency

Is the debtor's obligation to file for insolvency still in effect? Are such requests settled during the state of emergency?

A state of emergency was declared in Romania on 16 March 2020 by Presidential Decree No. 195/2020 (the “Decree”), published in the Official Gazette No. 212/2020.

The Decree institutes a 30-day state of emergency throughout the Romanian territory and establishes first emergency measures of direct and immediate application, as well as measures of gradual applicability with a view to preventing the spread of COVID-19 and handling the consequences of this epidemic.

The present document aims at clarifying the impact that certain measures ordered by the Decree may have on the insolvent debtor's obligation to file for insolvency, as currently provided under Law No. 85/2014 on insolvency prevention procedures and insolvency procedures, as well as the likelihood for a request to this effect to be settled by the court while the state of emergency is still effective.

1. Applicable law

According to Article 66(1) of Law No. 85/2014, the insolvent debtor is obligated to file with the tribunal a request to be made subject to the provisions of this law, within no more than 30 days from the date on which the state of insolvency occurred.

The state of insolvency is defined by Law No. 85/2014 as that state of the company's assets and liabilities where the available financial resources are not sufficient for the payment of uncontested debts in excess of 40,000 RON that became payable and due for more than 60 days.

2. The obligation to file for insolvency is still in effect during the state of emergency

The 30-day term from the occurrence of the state of insolvency in which the request must be filed is neither a prescription, nor a forfeiture term, so, in principle, the provisions of the Presidential Decree suspending all such terms throughout the state of emergency do not apply.

As such, the debtor whose assets and liabilities are affected by the state of insolvency is still obligated to file for insolvency.

Since, according to the insolvency law, the request for opening the insolvency procedure should be filed for the debtor by the persons who, according to the debtor's constitutive acts or bylaws, have the capacity to represent it, the obligation to make and file, within the 30-day term, the request for the voluntary opening of the insolvency procedure is incumbent on the insolvent debtors' legal representatives.

3. Penalty for nonobservance of the legal term for the voluntary opening of the procedure

Failure to file the request, or a delay of more than 6 in filing it may entail criminal liability for the offense of simple bankruptcy set forth and punishable under Article 240 of the Criminal Code.

In other words, the mere failure to file for voluntary insolvency before the end of the 30-day term from the occurrence of the state of insolvency does not trigger criminal liability; the insolvent debtor's passivity in following the procedure provided by Law No. 85/2014 is punished only if it lasts for more than 6 months.

The 6-month term provided by the Criminal Code for the simple bankruptcy offense does not qualify among the terms currently suspended under the Decree.

4. Are debtors' requests for opening the insolvency procedure settled during the state of emergency?

According to the Presidential Decree, during the state of emergency Courts of Appeal will continue to review and settle urgent cases.

An analysis of the public information made available by the courts competent to solve such requests in the stages of first instance and appeal, namely Tribunals and Courts of Appeal, indicates that, in principle, requests for opening the insolvency procedure filed by the debtor are considered urgent and, therefore, may be tried and settled during the state of emergency.

In addition, according to Law No. 85/2014, the debtor's request is to be tried in urgent procedure, within 10 days from being filed, in chamber, without summoning the parties and before any potential requests filed by the creditors.

5. How can we assist you?

The insolvency procedure is by no means the end of the road for the debtor, as some business owners may think. Quite the contrary, the insolvency procedure involves a special legal regime being imposed on the debtor, which is strictly regulated by Law No. 85/2014 and which, in conjunction with a thoroughly prepared business plan and the pivotal legal assistance, may constitute a real remedy for redressing and relaunching the debtor.

Boasting a vast experience with numerous projects carried out for its clients, Țuca Zbârcea & Asociații perfectly understands that, right now, companies need support in all forms to be able to overcome the challenges of the state of emergency. This is why we have put in place measures that allow us to remain fully committed and available to our clients non-stop. The remote work system, successfully implemented by Țuca Zbârcea & Asociații, ensures the provision of services under optimal but also safe conditions. Whenever possible, meetings shall be held online in order to reduce exposure to the epidemic.

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Editors

COVID-19 Legal Insights is our response to the COVID-19 outbreak. We shall keep you informed on the various legal challenges posed by the coronavirus, thanks to a dedicated practice group comprising lawyers with different backgrounds, such as compliance/regulatory, corporate and commercial, insurance, labour and employment, litigation and arbitration, insolvency, public procurement, data privacy, tax and customs. In addition, our taskforce offers strategic advice on crisis-specific matters: corporate restructuring, review and (re)negotiation of agreements (including collective bargaining agreements and individual employment contracts), performance of the contracts which are affected by force majeure and hardship, unblocking pre-litigation relationships, etc. To keep abreast of developments, please feel free to regularly check our dedicated online resource: <http://www.tuca.ro/covid-19/>



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