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COVID-19 Legal Insights



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Legislative amendments in insolvency matters during the state of alert

Considering the economic and financial difficulties caused by the spread of the SARS-Cov-2 virus, Law No. 55/2020 concerning measures for preventing and fighting the effects of the COVID-19 pandemic was passed, which includes, in Section 8, a series of regulations applicable to insolvency matters.

Said regulations consist of amendments to Law No. 85/2014 on insolvency prevention procedures and insolvency procedures, which shall apply during the state of alert and seek to protect debtors facing financial difficulties or insolvency and to limit the number of companies undergoing insolvency.

1. Amendments to the conditions for opening the insolvency procedure

Debtors that are insolvent starting 18 May 2020, or that will become insolvent during the state of alert have the option, but no longer the obligation, to submit the request for opening the insolvency procedure within 30 days after occurrence of the insolvency. Therefore, during the state of alert, the opening of the insolvency procedure shifts from being a legal obligation to being an option for debtors.

Furthermore, the share of tax liabilities in the total amount of debt is no longer a condition for voluntarily opening the insolvency procedure. The obligation for this type of debts to not exceed 50% of the total amount of liabilities was also temporarily eliminated.

Strictly for the debtors whose business activity entirely or partially ceased as an effect of the measures imposed in order to limit the spread of SARS-Cov-2, the minimum debt threshold that justifies opening the insolvency procedure both at the debtor's and at the creditors' request increased from RON 40,000 to RON 50,000.

Also as regards the category of debtors whose activity entirely or partially ceased due to the measures put in place to limit the spread of SARS-Cov-2, creditors may only submit requests for opening the insolvency procedure if they first demonstrate an attempt to conclude a payment agreement.

2. Extension of time-limits as regards preventive arrangements with creditors

The maximum period for negotiating the offer for an arrangement with creditors, as well as the period for preparing the offer for such an arrangement is extended by 60 days for procedures in progress during the state of alert.

The period for satisfying the claims established under a preventive arrangement ongoing on 18 May 2020 is extended by 2 months.

3. Extension of time-limits in insolvency procedures

The observation period, as well as the period in which those legally entitled may propose a plan, is extended by 3 months, including where that period had started running, for those procedures undergoing the observation period and those where a plan had already been submitted.

For those cases where a reorganisation plan had been submitted but, due to the effects of the COVID-19 pandemic, the recovery perspectives changed, those entitled to submit a reorganisation plan may submit an amended reorganisation plan within 3 months as of the coming into force of the new law, provided that they notify the creditors (through the official receiver) of their intention within 15 days as of the coming into force of this law.

The period for implementing the judicial reorganisation plan for the debtors undergoing judicial reorganisation as of 18 May 2020 is extended by 2 months.

The implementation of the reorganisation plan may be suspended for 2 months in the case of debtors whose business activity was entirely stopped as an effect of the measures implemented to prevent the spread of the COVID-19 pandemic. This measure may be ordered based on an application submitted by the affected debtor within 30 days after the coming into force of Law No. 55/2020. The syndic judge will settle the application in an urgent procedure, without summoning the parties to appear before the court.

For debtors undergoing judicial reorganisation upon the coming into force of Law No. 55/2020 who entirely or partially ceased their activity as an effect of the measures adopted in order to prevent the spread of the COVID-19 pandemic, the period for implementing the reorganisation plan may be extended, without however exceeding a total implementation period of 5 years, and may be modified if required, in observance of the procedure regulated by Law No. 85/2014.

For debtors that entirely or partially ceased their business activity as an effect of the measures adopted against the spread of the COVID-19 pandemic during the state of emergency and/or the state of alert, the initial period for implementing the reorganisation plan, as provided by Law No. 85/2014 (i.e. 3 years extendable to 4 years) may be of 4 years and may be extended, without exceeding a total implementation period of 5 years, or modified, if applicable, in accordance with Law No. 85/2014.

4. Regulations allowing enforcement proceedings for the recovery of current claims are suspended during the state of alert

The provisions of Law No. 85/2014 that allowed enforcement proceedings to be initiated and carried out in view of recovering current claims are not applicable during the state of alert. Consequently, insolvent debtors are temporarily spared the risk of enforcement if they face difficulties in paying their debts arising after the opening of the general insolvency procedure.

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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 be up to date with the news in these matters, you may access the resources available at the following link: <http://www.tuca.ro/covid-19/>



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