

Natural Persons Insolvency

The Natural Persons Insolvency Law no. 151/2015, which sets a collective procedure for the financial recovery of the debtor, a natural person, in good faith, with a view to recovering his/her liability and discharge his/her debt, was published in the Official Gazette on June 26th, 2015, and shall enter into force on August 1st, 2017, subsequent to its being postponed once again.

Insolvency is the state of a debtor's patrimony defined by his/her impossibility to meet his/her financial obligations as debts become due. The Law does not refer to the insolvency of authorized individuals or to those carrying out a liberal (independent) activity, but only to the insolvency of regular individuals.

The major advantage of the law on personal insolvency procedures is that after insolvency, the good-faith debtor, a natural person, can keep possession of the immovable asset pledged as collateral for the loan he/she applied for.

The natural person – the debtor in question – shall meet the conditions listed below, so as to start the insolvency procedure:

- He/she has his/her domicile, his/her residence, or his/her regular residence in Romania for at least 6 months prior to his/her submitting the request;
- He/she is insolvent (i.e. he/she does not hold available funds) and there is no reasonable possibility to execute his obligations over 12 months' maximum, while still maintaining a normal life level for himself/herself or his/her dependents;
- The total amount of due obligations is at least equal to the threshold of 15 minimum wages.

The insolvency procedures regulated by this law are:

- The insolvency procedure based on a debt repayment plan - applicable to the debtors holding traceable goods and revenues;
- The insolvency procedure based on assets liquidation - also applicable to the debtors holding traceable goods and revenues;
- The simplified insolvency procedure - applicable to the debtors who have no traceable goods and revenues and the total amount of their obligations equals at most 10 monthly minimum wages.

1. The insolvency procedure based on a debt repayment plan

Should the debtor believe he is insolvent because he/she lacks cash needed to pay his/her outstanding debts (the insolvency state can be considered if the debt payment term was exceeded by more than 90 days), but his/her financial situation is irreparably compromised, the debtor may submit an insolvency request based on a debt repayment plan, which stands for an administrative proceeding, and not a judicial one.

In this case, the minimum amount of debt shall not exceed in total 15 minimum wages (the law does not specify whether the wages are net or average).

During this procedure, the foreclosure measures initiated against the debtor are suspended as an effect of the law. Foreclosure measures commenced against co-debtors and warrantors shall not be suspended, however.

An insolvency administrator shall be appointed and a debt table shall be drawn based on the information provided by the debtor and creditors. The debtor together with the insolvency administrator shall draw up a debt repayment plan in which the debt coverage is higher than the coverage that could be achieved by liquidating the debtor's assets. The plan duration is five years, extendable by one year.

The plan in question shall be approved if the creditors representing at least 50% of the total value of receivables and 30% of the receivables that benefit from a legal cause of preference voted in favor of it.

The institutions and the companies that have signed agreements with the insolvent person shall not be entitled to terminate the contracts in progress due to the insolvency proceedings.

If the debt repayment plan is not complied with or the debtor does not pay for his/her current debts, this procedure shall be closed and the procedure based on assets liquidation shall be initiated.

2. The insolvency procedure based on assets liquidation

The debtor may directly request this procedure, when "the financial situation is irreparably compromised" – this term is quite subjective as the law does not provide a clear definition for that. Also, the creditors shall be entitled to request the commencement of this procedure if the procedure based on a debt repayment plan cannot be carried out.

Once the court upholds the procedure of assets liquidation, the foreclosure measures initiated against the debtor shall be suspended and the debtor shall be prohibited from using the assets and the incomes that can be liquidated.

The liquidator shall ask the creditors to submit, within 30 days of initiating the procedure, information on the debt amounts and the market value of the property based on which the debt is guaranteed. The liquidator shall be obliged to draw up a preliminary table of receivables within 15 days since the receipt of the notice.

Within 30 days since the commencement of the proceedings, the liquidator shall make the assets inventory. The liquidator shall sell the assets and conclude sales agreements on behalf of the debtor. If, despite all efforts being made, the liquidator fails to capitalize the assets for two years, the creditors can become the assets owners.

The court of law can rule the debt release if the debtor has covered at least 50% of his total debt value, 40% after 5 years and so on, after 3 years since the closing of the procedure.

3. The simplified insolvency procedure

This procedure can be accessed by an insolvent person if the total amount of his/her debt is no more than 10 minimum wages, if there are no assets or income traceable and the debtor is older than the standard retirement age or he/she lost at least half of his/her capacity to work.

All the foreclosure measures initiated against the debtor and the accrual of interest, penalties, delay taxes and any other accessories to the payment obligation shall be suspended, as of the date when the sentence becomes final. On the other hand, during this procedure, the debtor cannot enter new loan agreements.

Law no. 151/2015 also regulates a series of situations in which the insolvency procedure is not applicable, namely:

- to debtors who previously benefited from the insolvency procedure over the last five years and the proceedings were concluded for reasons imputable to the debtor;
- the procedure was concluded because of their fault at least five years prior to the submission of the insolvency demand;
- to debtors who were definitively convicted of tax evasion, forgery, or intentional offense with regards to assets, by breach of trust;
- to debtors who were dismissed over the past two years for reasons imputable to them;
- to debtors who have not made actual efforts to find a job or have refused a job they have been offered without any justification;
- to debtors who are fully aware of their insolvency and yet they acquire new debts;
- to the debtors who have brought about or facilitated insolvency on purpose or by severe guilt;

- to the debtors who are already involved in another opened and ongoing insolvency procedure.