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Text of Official Insolvency Law of Romania, English-part 1 (1-65)

Law No. 64/1995

Law regarding the Judicial Reorganization and Bankruptcy Procedure

Published in the Official Journal of Romania, Part I, No. 130 of 29 June, 1995 and amended by Emergency Ordinance No. 58, effective November 3, 1997.

Chapter 1

General Provisions

Art. 1.

This law shall be applied to traders - natural persons and commercial companies - that can no longer meet their commercial debts and will be hereinafter called debtors.

Art. 2.

The Law is aimed at establishing a procedure for the payment of the debtor's liabilities, in case of cessation of payments, either by reorganizing the enterprise and its activity or liquidating some assets of the estate until they are sufficient to meet the liabilities, or by bankruptcy.

Art. 3.

(1) In the sense of this Law, the property of the debtor includes all his assets and property rights, including those acquired during the procedure established under this Law, which can make the object of forced execution, in the conditions of the Code of Civil Procedure.

to solve the claims of having the debtor stripped of the right to run his activities;
to pass judgment on the actions instigated by the syndic-judge, to annul transfers bearing on properties, prior to the introductory petition;
to pass judgment on the debtor's or creditor's claims against the measures taken by the syndic-judge;
to confirm the reorganization plan or, as the case may be, the liquidation plan after its being voted by the creditors;
to pass judgment on the contestations against the resolution of the syndic-judge to have the debtor continue his activity, in case of reorganization;
to settle the claims against the biannual reports and final report of the syndic-judge;
to pass the sentence of closing the procedure.

Art. 7.

The decisions of the tribunal are final and binding. They may be contested, according to the Law, by appeal.

Section 2

The Syndic-Judge

Art. 8.

The syndic-judge is appointed by the president of the court on the grounds of Art. 13, par. 3 of Law No. 92/1992 on judicial reorganization.

Art. 9.

In carrying out his duties, the syndic-judge will be able to designate specialists. The appointment and amount of these persons' wages will be subject to the endorsement of the court. The respective wages will be paid out of the debtor's property.

Art. 10.

(1) Within the framework of the present law, the syndic-judge's main obligations are the following:

In any stage of the procedure, the court may replace the syndic-judge with another, upon a motivated conclusion, given by the Council Chamber.

Section 3

The Meeting of the Creditors. The Creditors' Committee

Art. 13.

(1) The known creditors will be convened by the syndic-judge whenever he deems necessary, in case the holders - with securities and IOU's - of at least half the total value of the debts requests it from the debtor.

1 Two delegates of the debtor's employees will also attend the meetings of the creditors, voting for the debts of the employees representing wages and other money benefits.

2 Likewise, the debtor will attend the meetings - with the exception of the cases when the syndic-judge exempts him - as well as a representative of the territorial Chamber of Commerce and Industry.

3 The meetings of the creditors will be chaired by the syndic-judge.

Art. 14.

(1) During the meetings of the creditors, the creditors will have the right to analyze the situation of the debtor, the measures taken by the syndic-judge and their effects, and suggest with good reasons, other measures.

1 When the syndic-judge has approved the reorganization plan or, as the case may be, the partial sale or liquidation plan, the respective scheme shall be put to vote by the meeting of the creditors, in the conditions established under Art. 54 by this Law.

2 Likewise, the suggestions of the syndic-judge will be put to vote by the meeting of the creditors, referring to the sale of important assets in the property of the debtor, such as land, factories, installations, etc.

Art. 15.

(1) During the first meeting, the Creditors Assembly shall elect, by a simple majority of votes, a committee composed of 3-5 creditors, from among those

- a to supervise management activities;
- b to assist the debtor in all the acts bearing on the management or only in part of them;
- c to run, entirely or partly, the activity of the debtor.

1 The court may amend the tasks of the administrator upon his request or at the request of the creditors' committee or its delegate, or of the Public Ministry.

Section 5

The Liquidator

Art. 18.1

(1) In cases of bankruptcy, at the proposal of the syndic-judge, the tribunal may order the hiring of a liquidator -- natural person or commercial company -- whom it will designate. The liquidator -- natural person -- or the permanent delegate -- natural person of the liquidating commercial company -- must be an authorized accountant, a chartered accountant or a person owning a university degree in economics or law and must have at least five years of practice -- economic or legal.

(2) If the debtor which is the subject of the present procedure is a banking company, the appointment of the administrator must have the prior approval of the National Bank of Romania and of the Ministry of Finance.

1 The liquidator undertakes the actions and operations ordered by the syndic-judge.

Chapter III

The Procedure

Section 1

Introductory Petitions

Art. 19

by the unlimited liability partners or, in the conditions of Art. 24-26 of this Law, against them.

2 A petition lodged by an unlimited liability associate or against him on account of his debts will be devoid of juridical effects as regards the unlimited liability society or the sleeping partnership company of which he is part.

Art. 23.

The court shall not accept reorganization petitions by the debtors who in the previous 5 years made similar requests or made the object of such a petition lodged by the creditors.

1 The Petitions of the Creditors or of the Territorial Chambers of Commerce and Industry

Art. 24

1 Any creditor who has a secured debt, liquid and due, may lodge a petition to the court against a debtor who, for at least 30 days, has stopped payments.

2 The simple refusal to pay, on the basis of exceptions that the debtor deems, in good faith founded, does not represent a proof of payment stopped.

3 The territorial Chamber of Commerce and Industry may lodge a petition against a debtor, who according to the data the former have acquired, is in a notorious position of payment stopped.

Art. 25.

Within 48 hours since the registration of the petition, the court will serve the debtor and the territorial Chamber of Commerce and Industry with a copy of the respective document, and will have a copy posted at the court entrance.

Art. 26.

1 If, within 5 days since receiving the copy of the petition lodged by the creditors, the debtor contests the fact that he has stopped payment in the conditions established under Art. 24, Par. (1), the court will have to convene, within 30 days, a meeting gathering the creditors that have lodged the

2 The notification will specify the place, the date and the hour of the first meeting of the creditors.

Art. 29.

The debtor will have to file the documents required under Art. 21, par. (1) within 15 days since receiving the copy mentioned under Art. 27, in case he does not contest the petition of the creditors, or from the date his contestation of the creditors' petition was rejected, as per Art. 26, par. (3) in case he has contested it.

Art. 30.

Within 5 days since the registration of the debtor's claim or the expiration of the term allowed for the debtor to contest the creditors' petition, or the rejection of the debtor's contestation of this petition, the court will designate, in the conditions of Art. 8, a syndic-judge having tasks established under Art. 10 and, in the conditions of Art. 17, an administrative receiver having the tasks laid down by Art. 18.

Art. 31.

As of the date of registration of the debtor's claim or the expiration of the term for the debtor to contest the creditors' petition, or the date of rejection of the debtor's contestation of this petition, all judiciary or extrajudiciary action shall be suspended for the realization of the debts of the debtor, or over his assets, that are prior to the introductory petitions.

Art. 32.

The registration of the debtor's claim or the expiration of the term allowed for the debtor to contest the creditors' petition, or the rejection of the debtor's contestation suspend all terms of limitation of the actions provided under Art. 31. The terms will go into effect 30 days after the rejection of the introductory petition or the closing of the procedure.

Art. 33.

The debtor is obliged to make available to the syndic-judge and the administrator, both in the case of a reorganization and of liquidation, of some of

Art. 39.

The syndic-judge may bring actions, with the tribunal, for the cancellation of the fraudulent acts concluded by the debtor to the detriment of the creditors' rights which were made within the three years prior to the registration of the introductory application.

Art. 40.

(1) The syndic judge may bring actions, with the tribunal, for the cancellation of the establishment or transfers of assets and rights to third parties, and for the restoration to them of the goods transmitted and of the value of other services rendered by the debtor by way of the followings acts:

(a) acts of gratuitous transfer, concluded during the three years prior to the registration of the introductory application; humanitarian sponsorships are excepted;

(b) commercial operations in which what the debtor has performed obviously exceeds what it has received, which were effected during the three years prior to the registration of the introductory application;

(c) acts concluded, during the three years prior to the registration of the introductory application, with the intention of all the parties to them of secreting goods from the pursuit of the creditors or otherwise impairing their rights;

(d) acts of conveyance of property to a creditor with a view to paying off a previous debt or for its benefit, which were concluded within the 120 days prior to the registration of the introductory application and which result in the increase of the amount which the other creditors might claim in bankruptcy;

a establishing or improving a real guarantee for a claim which was unsecured but proven within 120 days prior to the introductory application.

1 The following commercial operations concluded in the year prior to the introductory petition, with persons having juridical relations with the debtor, may also be annulled, and the contributions recovered, if they are detrimental to the interests of the creditors:

a with a sleeping partner or an associate holding at least 20% of the capital of the commercial company, when the debtor is a sleeping partnership society or a general partnership company, respectively;

asset transferred or, if that asset no longer exists, its value at the date of the transfer made by the debtor.

2 The third party that acquired the respective asset and then restored to the property of the debtor the value of the asset to him by the debtor will hold on the property a debt of the same value, on the condition the third party should have accepted the transfer in good faith and without the intention of confining, stalling, or deceiving the debtor's creditors.

Art. 44.

The syndic-judge, the Creditors' Committee or the liquidator may take legal action in order to retrieve from the person who receives the asset or the value of the asset transferred by the debtor, only if such person had not paid the appropriate value of the asset, knowing that the initial transfer could be annulled.

Art. 45.

1 The syndic-judge may order that the notification of the registration of an application for annulling a transfer of property be mentioned in the registers of real estate publicity.

2 A person that acquires a deed or obtains a security or another real right on the respective immovable asset, after making the respective notification will have the deed or his right conditioned by the right to recover the asset.

Art. 46.

(1) With a view to maximizing the value of the debtor's assets, the syndic-judge may assume or reject any contract, including loan prolongation contracts, unexpired leases or other long-term contracts, as far as these contracts have not been executed totally or substantially by all the parties concerned. The syndic-judge has to answer, within 30 days, to a request by the co-contracting party, in which he is requested to make his decision regarding the assumption or rejection of the contract; in the absence of such an answer, the syndic-judge may not ask for the execution of the contract, as this is considered rejected.

(2) In case of rejection of a contract, the co-contracting party may take legal action for damages against the debtor.

the debtor, if he owes credit and will be put down in the debt table, if it is a liability on the debtor's property.

Art. 49.

If a commissioner who holds deeds for goods to be received or for commodity becomes the subject of an introductory petition, the committee will be entitled to take back the deeds or the commodities or to ask for their value to be paid by the commissioner.

Art. 50.

1 If the debtor holds goods on consignment or any other goods that belong to another, at the date of registration of the introductory petition, the expiration of the term for the debtor to contest the creditors' petition, or the rejection of the debtor's contestation of this petition, the holder will have the right to recover his goods if the contract allows for it, except when the debtor holds a valid security right over the goods.

2 If at one of the dates mentioned under par. (1) the goods are not in possession of the debtor and he cannot recover them from the current holder, the owner will be entitled to have his debt recorded in the debt table, with the value of the merchandise at the respective date. If the debtor is in possession of the goods at that date but he has subsequently lost possession, the owner may ask for the entire value of the merchandise to be inscribed in the debt table.

Art. 51.

The fact that an owner is a party to an open procedure, under this Law will not rescind a contract for the renting of a building occupied by a tenant, except when otherwise stipulated. Nonetheless, the syndic-judge may refuse to secure the performing of any services due to the tenant by the owner for the period of rental. In this case, the tenant may move out and instigate an action or may remain in possession of the immovable assets, he is not entitled to any compensatory action against the debtor, but will only have the right to deduct from the rent he pays the cost of the services due by the owner.

Art. 52.

under Art. 108 - holders of at least one third of the value of the unsecured debts, will be able to propose a scheme or a plan. Likewise, a plan may be suggested by the associates in the general partnerships, sleeping partners in sleeping partnerships, and the shareholders of at least one third of the nominal capital of a joint-stock company.

2 The plan shall provide either for the reorganization and continuation of the debtor's activity or liquidation of its estate.

3 The debtor's statement -- if he is a natural person -- made under Art. 21 paragraph (1) f) as regards his intention of reorganizing his activity shall not be accepted and no plan advanced by him shall be accepted under Art. 62, if he had been, during the last five years, a debtor in a procedure according to the present law or if he had been convicted by a final decision for fraudulent bankruptcy, breach of trust, forgery, fraud, embezzlement, false testimony, bribery, offenses against public or private property or offenses made punishable by Law No. 21/1996 on Competition.

4 The scheme will have to be proposed within 60 days from the registration of the debtor's petition or the date when the term has expired for the debtor to contest the creditor's claims, or the date when the debtor's contestation against the relevant claims has been rejected. The syndic-judge may extend this term to 90 days.

5 Annulled.

Art. 56.

1 In case it is suggested that the activity be continued, the draft reorganization plan shall indicate the prospects of pickup as related to the possibilities and specific activity of the debtor, with the available financial means and the market demand as to the offer of the debtor.

2 The draft reorganization plan for the continuation of the activity shall set forth the modalities to liquidate the liabilities, shall specify and justify the level and the prospects of the jobs, the social conditions provided for the continuation of the activity, as well as other similar objectives.

Art. 57.

If the draft reorganization plan provides, with a view to recovery through continued activity, for personnel cuts dictated by economic reasons, the

(c) which damages are to be paid to all categories of creditors, in comparison to what they would receive in a distribution, if this could be done, in case of bankruptcy;

a in what way and to whom could the debtor's estate be sold -- partially or totally, in block - and which effects can result out of that, especially as regards continuation of the use of some parts of the debtor's enterprise, the use of he employees, satisfying the creditors as well as the financial projects on which the possibility of accomplishing the plan is based.

Art. 62.

1 The syndic-judge will accept a plan advanced by legally competent parties, and which contains all the information required. The syndic-judge may ask for the opinion of an expert, confirming thus the possibility to carry out the plan before accepting it. The expert will be paid from the debtor's wealth. Those who have proposed the scheme, the debtor and the creditors' committee, if any, will be heard before deciding on the scheme.

2 Any plan (scheme) accepted shall be:

a submitted to the court secretariat and accessible to all the interested parties that may ask for a copy thereof;

b communicated to all the known creditors, the debtor and all the associates of the shareholders.

1 The syndic-judge shall order that the acceptance of the plan should be published in the Official Journal of Romania, Part IV, and in two wide-spread local newspapers, together with an identification the person who made the proposal, the date when the plan will be voted on and the fact that voting by letter is also accepted, providing that the creditor's signature is authenticated by a public notary, transmitted by any means possible and registered at the tribunal. Since the moment of its publication, all the parties concerned are deemed to be on notice about the plan.

Art. 63.

1 No later than 30 days after the notification of the plan, in conformity with Art. 62, par. (2), letter (b) the court will hold a meeting with the privileged creditors

a at least two of the categories of creditors mentioned under Art. 63, par. (4) accept the scheme, on condition that at least one of the disadvantaged categories accepts the scheme;

b all the disadvantaged categories, as well as each member of a category that has not accepted the scheme will be subject to a fair and equitable treatment under the scheme. A fair and equitable treatment is that when:

-- none of the categories which do not accept the plan receives less than it would have received in case of bankruptcy;

-- no category or no member of any category receives more than the total value of his debt or

another compensation equal to the current value of the debts or his rights;

-- all the creditors in a category are treated equally, except in the case when each member of a category accepts in writing an unequal treatment.

1 If a disadvantaged category does not accept the scheme, then the debtor or any other shareholder, associate or holder of nominal capital of the debtor will not retain anything from the value of the debtor's wealth: the debtor or any other shareholder or part of the nominal capital of the debtor will not be deemed to receive part of the debtor's wealth if the scheme provides that he retains or receives in property an asset that does not exceed his financial contribution up to the date when the reorganization plan was confirmed.

2 If, in the conditions under par. (1) of this Article, several schemes may be confirmed, the court shall confirm the scheme of the debtor. If the scheme of the debtor does not fulfil the conditions provided under par. (1), the court will confirm the plan accepted by the most disadvantaged categories of creditors.

3 With the confirmation, the court may impose on the debtor certain conditions or limitations in the carrying out of the activity, in accordance with the scheme confirmed.

Art. 65.

1 When the decision that confirms a scheme comes into effect, the activity of the debtor is adequately redressed; the debts and the rights of the creditors and of the other parties interested are thus modified as provided by the scheme. In case of forced execution, the plan confirmed will be deemed as an absolute decree against the debtor.