

# **JUDICIAL RESTRUCTURING & BANKRUPTCY PROCEEDINGS**

*The presentation hereby has in view the legal provisions in force on the 31<sup>st</sup> of March 2004*

## ***Applicable legislation in this field***

- Law no. 64/1995 on judicial reorganization and bankruptcy procedure, republished in the Official Gazette no. 608/13<sup>th</sup> of December 1999, as further amended and completed:
  - Law no. 82/2003 on the approval of the Government Ordinance no. 38/2002 for the amendment and completion of the Law no. 64/1995 on the procedure of judicial reorganization and bankruptcy, published in the Official Gazette no. 194/26<sup>th</sup> of March 2003
  - Government Ordinance no. 38/2002 for the completion and amendment of the Law no. 64/1995 on the procedure of judicial reorganization and bankruptcy, published in the Official Gazette no. 95/2<sup>nd</sup> of February 2002
- Order no. 5/1999 on the approval of the Methodological Norms for the enforcement of Art. 4 from the Law no. 64/1995 on judicial reorganization and bankruptcy procedure, republished, published in the Official Gazette no. 4/7<sup>th</sup> of January 2000

## ***I. Scope of legal provisions in the field of judicial reorganization and bankruptcy***

Legal provisions in the field of judicial reorganization and bankruptcy apply to any of the following categories of merchants, in a state of insolvency:

- trade companies;
- consume cooperatives and craftsmen's cooperative hereinafter referred to as cooperative organizations – as well as territorial associations of consume and craftsmen's cooperatives;
- natural persons, acting individually or in family associations.

Through insolvency it is understood that the state of the debtor's patrimony, characterized through the evident incapacity of payment of the exigible debts with available cash amounts.

## ***II. Bodies that enforce the judicial reorganization and bankruptcy procedure***

The bodies that enforce the judicial reorganization and bankruptcy procedure are: law courts, syndic-judge, manager, liquidator, creditors' assembly and creditors' committee.

Under the aspect of material competence, the competent law courts to apply the procedure are the tribunals and the court of appeal.

Under the aspect of territorial competence, the procedures stipulated by law are in the exclusive competence of the tribunal in the jurisdiction of which the debtor's headquarter is, which appears at the Trade Registry.

## ***III. Procedure***

The judicial reorganization and bankruptcy procedure may be initiated, according to Art.24 from the Law. No. 64/1995, republished, further amended and completed, through an application filed at the competent tribunal by: debtors, creditors, territorial chamber of commerce and industry.

### **1. Commencement of the procedure**

#### **1.1. Commencement of the procedure at debtor's request**

The debtor in a state of insolvency may address the tribunal an application requesting in concrete the opening of the judicial reorganization procedure or the opening of the bankruptcy procedure. If the debtor does not stipulate anything in his application or does not file this declaration within 10 days from the date of the introduction of the application it is considered that the debtor agrees with the commencement of the bankruptcy procedure.

If a trade company makes the application, the persons who, according to the bylaws or documents of formation, have the capacity to represent it shall sign it.

The tribunal shall not accept debtors' reorganization applications that have made such an application within the last 5 years or they made the object of such an application made by the creditors.

After the registration of an introductory application, the president of the tribunal shall appoint immediately the syndic-judge. The syndic-judge shall analyze debtor's application, verifying if the legal conditions are

fulfilled and shall pronounce a **conclusion** of rejection of the application or admission of an application and to open the procedure. Through the same conclusion, the syndic judge shall appoint an official receiver, if the debtor has manifested the option for reorganization by continuing the activity, or a judicial liquidator, if the debtor has manifested the option for the reorganization through the liquidation of some goods or for bankruptcy.

**The conclusion for the opening of the procedure** shall be notified: to all the creditors mentioned in the list filed by the debtor, to the debtor, to the trade registry office where the debtor is incorporated, for the performing of the mention.

Creditors may oppose to this application within 15 days from the issuance of the modifications. In this situation, the syndic judge shall proceed to their summoning, together with the debtor, to a meeting and as a result of this meeting, he shall settle at the same time, through a decision all the oppositions.

### **Specification**

If the debtor declares his intention to reorganize his activity, he has to make a reorganization plan that has to be confirmed by the syndic judge. The plan will have to be proposed within 30 days from the date of the opening of the procedure. The syndic-judge may extend the term with a maximum of 60 days.

If no plan is confirmed, the tribunal shall order that the syndic-judge to begin immediately the bankruptcy procedure, in the conditions provided by the Art.77 and the following ones from the Law no. 64/1995.

#### 1.2. The opening of the procedure at the request of the creditors/territorial chamber of commerce and industry

Any creditor, who has a sure debt, liquid and exigible, may introduce at the tribunal an application against a debtor who has ceased the payments for at least 30 days.

The territorial chambers of commerce and industry will be able to introduce an application against the debtor who, according to their data, is in a notorious situation of cessation of payments.

In both cases, the object of the application is the commencement of the procedure, following that the concrete procedure to follow shall be further established, in respect with the debtor's situation and his position, creditor's or partners' position.

Within 48 hours from the registration of the application of the creditors and to the territorial chamber of commerce and industry, the syndic judge shall take within 10 days a meeting to which all the creditors that filed the applications shall order the posting of a copy at the court door.

Within 5 days from the receiving of the copy the debtor may establish that he would be in a state of insolvency. In this case, the syndic judge shall hold, within 10 days, a meeting in which the creditors that filed the application, the debtor and the territorial chamber of commerce and industry shall be summoned.

If the debtor does not lodge a complaint in due time, the syndic-judge shall give **decision for commencement of the procedure**.

At the debtor's request, the syndic-judge may oblige the creditors who have filed the application to deposit, within 5 days, with a bank, a **bail** of maximum 30% from the value of the debts. The bail shall be returned to the creditors if their application is admitted.

The syndic judge shall reject the creditors' application if he establishes that the debtor is not in a state of cessation of payments.

## **Specification**

Within 10 days from the commencing of the procedure, the debtor shall have to file at the dossier of the case the requested documents, in case of failing to comply with this obligation being sanctioned with a civil fine of lei 200,000 for every day of delay, fine that shall be imputed to the persons who legally represent the debtor. The quantum of the fine shall be changed periodically, through Government decision, according to the inflation index.

## **2. Effects of the commencing of the procedure**

- a) From the date of the commencing of the procedure all judicial or extrajudicial actions for the performing of the debts on the debtor or his assets are suspended.
- b) The commencement of the procedure suspends any prescription terms of the previously mentioned actions. The terms shall begin after 30 days from the termination of the procedure.
- c) No interest or expenditure shall be added to the non-secured debts or to the non-secured parts from the secured debts, from the date of the

commencement of the procedure, except the case in which, through the program of payment of the debts included in the reorganization plan, it is derogated from the above-mentioned procedures.

- d) After the commencement of the procedure has been ordered, it is forbidden for the managers of the trade company, under the sanction of nullity, to alienate, without the syndic-judge's consent, the shares or capital shares, owned at the debtor, which is the object of this procedure.
- e) Except the cases provided by Law no. 64/1995, as further amended and completed or by those authorized by the syndic-judge, any constitution of personal or corporal security, made after the commencement of the procedure shall be null.

### **3. State of certain debtor's juridical documents**

The manager or the liquidator may introduce actions for the annulment of certain debtor's juridical documents in the conditions stipulated by Art. 44 – 49 from the Law no. 64/1995 republished, as amended. In the event in which the manager or the liquidator do not want to introduce such actions, the syndic-judge may authorize the creditors' committee for this purpose.

The actions introduced by the administrator/liquidator are exempted from stamp duties.

### **4. Bankruptcy**

The syndic-judge shall decide, by his conclusion, the commencement of bankruptcy in the following cases:

- 1. a) the debtor has declared the intention to enter into bankruptcy or has not declared the intention of reorganization; and  
b) none of the other justified subjects proposed a reorganization plan, in the conditions stipulated under the Art. 59 or none of the proposed plans was accepted and confirmed;
- 2. a) the debtor declared his reorganization intention but did not propose a reorganization plan or the plan proposed by him was not accepted and confirmed; and

b) none of the other justified subjects proposed a reorganization plan, in the conditions stipulated under Art. 59 or none of the proposed plans was accepted and confirmed.

3. Payment obligations and the other assumed responsibilities are not fulfilled, in the conditions stipulated through the confirmed plan or the debtor's activity in the course of reorganization brings losses to his fortune.

## **5. Performing of liquidation**

The liquidator under the syndic-judge's control shall perform the liquidation of the goods from the debtor's fortune.

Excepting the cases expressly provided by law, the liquidation shall begin as soon as the final consolidated table of the debts is posted.

The liquidation shall be performed by taking into account the following basic rules:

- goods from the debtor's fortune shall be sold as advantageous as possible and as soon as possible;
- goods may be sold in block or individually;
- for the selling, the evaluation of goods, necessary for the establishing of the price for the call or for the direct selling, shall be performed by an auditor that shall assist the liquidator.

### **5.1. Distribution of the amounts derived as a result of liquidation**

The liquidator shall present to the syndic-judge once at three months, calculated from the date of the commencement of the liquidation, a report on the funds obtained from the liquidation and from the cashing of debts and a plan of distribution between creditors.

In case of bankruptcy the debts shall be paid according to the order stipulated by Art. 108 from Law 64/1995 as amended by the Government Ordinance no. 38/2002, namely:

1. fees, stamps and any expenditures afferent to the procedure instituted by Law no. 64/1995 as amended by the Government Ordinance no. 38/2002, including expenditures necessary for the preservation and management of the goods from the debtor's fortune as well as the payment of the remunerations of the persons employed in the conditions of Art.9, Art.17 paragraph (1), Art.21,

Art.22 and of Art.62 paragraph (3) from Law no.64/1995, as amended.

2. debts representing credits, with the afferent interests and expenditures, given by the banking companies after the opening of the procedure, as well as the debts resulting from the continuation of the debtor's activity after the opening of the procedure;
3. the debts arisen from labor relations, for 6 months at the most previous to the opening of the procedure;
4. budgetary debts;
5. debts secured by mortgages, pledges or other corporal movable securities or possessory lien of any kind;
6. debts representing the amounts owed by the debtor to third parties on the basis of certain supporting obligation, benefits for the minors or of payment of certain periodical amounts destined for the insurance of means of existence;
7. debts representing amounts established by the syndic-judge for the supporting of the debtor and his family, if he is a natural person;
8. debts representing banking credits, with the afferent expenditures and interests, those resulting from products deliveries, performing of services or other works, from rents;
9. other unsecured debts;
10. subordinated debts;
11. debts of the partners or of the shareholders of the debtor legal person, deriving from the residual right of their capacity, according to the legal and statutory provisions.

## **6. Closing of the procedure**

*A reorganization procedure* through the continuation of the activity or liquidation on the basis of a plan shall be closed, by a decision, as a result of the fulfilment of all the payment obligations assumed in the confirmed plan.

*A bankruptcy procedure* shall be closed when the syndic-judge has approved the final report, when all the funds or goods from the debtor's fortune were distributed and when the non-claimed funds were deposited with the bank. Following a liquidator's request, the syndic-judge shall pronounce another decision, closing the procedure and, as the case may be, ordering the striking off the trade company. In a resembling way, a procedure commenced as reorganization, but becoming subsequently bankruptcy shall be closed.

The decision for the closing of the procedure shall be notified by the syndic-judge to the debtor, to all creditors, partners/shareholders, to the territorial department of public finances and of the trade registry office where the debtor is incorporated, for the performing of the mention and shall be posted in excerpt at the tribunal.

Within 15 days from the postage of the excerpt, the interested parties will be able to lodge **complaints**, settled by the syndic-judge at the same time, by a decision, in a meeting held with maximum 30 days from the postage of the excerpt.

#### ***IV. Sanctioning regime***

Violation of the incumbent obligations by the persons involved in the judicial reorganization and bankruptcy procedure is sanctioned according to the Law no. 64/1995 on the judicial reorganization and bankruptcy procedure, as further amended and completed.

##### ***For example:***

The deed of the person who, in one's own name or through interposed persons, requests the registration of an application for admission of a non-existing debt on the debtor's fortune is punishable with imprisonment between 3 months to one year or with a fine.

The appropriation, use or dealing by the manager of debtor's fortune liquidator, as well as by any other representative or a delegate of this one, with money, values or other goods they manage or administer is an offence of embezzlement punishable with the imprisonment from one year to 15 years and prohibition of certain rights.