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IMPORTANT AMENDMENTS AND SUPPLEMENTS TO LAW NO. 85/2014 ON INSOLVENCY PREVENTION AND INSOLVENCY PROCEEDINGS

Law no. 216/2022 has reshaped many of the essential provisions of **Law 85/2014 on insolvency prevention and insolvency proceedings**, mainly concerning insolvency prevention procedures – the ad-hoc mandate which was replaced by the restructuring agreement and the prevention agreement.

The Early Warning Procedure:

One of the most surprising changes is the introduction of **the Early Warning Procedure**, dedicated to professionals who fail to fulfil their fiscal obligations. Through this procedure, the Romanian tax authorities send automatic notifications to those professionals who fail to pay their contributions to the state budget, the state social security budget and/or the unemployment insurance budget. Moreover, the Ministry of Finance/National Tax Administration Agency (ANAF) will also send information regarding relevant recovery solutions, aimed at helping professionals who might find themselves in financial distress.

Main changes regarding insolvency prevention procedures:

The restructuring agreement:

Another important change is that the provisions regarding the ad-hoc mandate have been repealed and replaced with **the restructuring agreement**. The purpose of the restructuring agreement is for the debtor to restructure its activities and to reach an agreement with its creditor(s) regarding the payment of the debts due.

Thus, a debtor who faces financial difficulties may propose a restructuring agreement, which can be drawn up either by the restructuring administrator or by the debtor, with the assistance of the restructuring administrator. Among others, the restructuring agreement must contain an analysis on the economic situation of the debtor, a list of the claims which will be and not be affected by the reorganization agreement and the proposed restructuring measures which can be either operational, financial or human resources oriented. The agreement will eventually be voted by the affected creditor(s), based on the categories in which they fall.

As opposed to the previous ad-hoc mandate, the voted restructuring agreement will be binding for all of the creditors, not only those who vote for it. Moreover, once the restructuring agreement is confirmed by a court and during its execution, no affected creditor may trigger the insolvency procedure against the debtor.

For debtors who had a net turnover/gross income of up to EUR 500,000 in the previous year and the restructuring agreement was voted unanimously, the confirmation of the restructuring agreement by the court will not be necessary.

The preventive agreement:

Several essential amendments have been brought to **the preventive agreement** as well. The limit for the execution of the restructuring plan has been extended to 48 months, from 24 months in the previous regulation, with the possibility of extending it for another 12 months. During the first year of the

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implementation of the restructuring plan, the debtor must reimburse a minimum of 10% of the claims affected by the preventive agreement.

The restructuring plan can only be voted by those creditors who have affected claims, based on the categories they fall in (e.g.: wage claims, preferential claims, state-budget claims, etc.). For the debtors who had a net turnover/gross income of up to EUR 500,000 in the previous year, it is not mandatory to establish the claim categories.

With respect to the protection granted to the debtors, once the preventive agreement procedure is initiated, all the enforcement procedures against the debtor are suspended by law for a period of 4 months, which may be extended to 12 months from the moment the preventive agreement has started and until the restructuring plan is ratified. As an exception, the wage claims enforcement procedures shall not be suspended by law, but only upon the debtor's request, if certain requirements are met.

Moreover, another change brought by the new regulation is that during the suspension of the enforcement procedures against the debtor, until the ratification of the restructuring plan, all penalties, interest, and other expenses related to the debt will also be suspended.

From the moment the restructuring plan is ratified, the enforcement procedures regarding the affected claims against the debtor are suspended. The penalties, interest, and other expenses related to the debt will be suspended according to the provisions of the restructuring plan.

Similar to the previous regulation, for the entire duration of such procedure, an insolvency procedure cannot be started against the debtor.

Main changes regarding insolvency procedure:

Slight changes have also been brought to the reorganization procedure. Thus, the updated provisions of Law no. 85/2014 stipulate that natural persons subject to registration in the Trade Registry, liberal professions and family businesses and its members cannot benefit from the simplified procedure any longer.

Another change is that the execution of a reorganization plan if the debtor is a legal entity will be limited to a period of 4 years – instead of the 3-year period regulated in the previous legislation, with the possibility of extending it, if the initial period of execution is less than 4 years.

Conclusion

In conclusion, the amendments to Law no. 85/2014 are aimed at simplifying insolvency prevention and insolvency procedures, while granting higher protection for both debtors and creditors and helping entrepreneurs keep control of their businesses during difficult financial/operational times.

PETERKA & PARTNERS Romania remains at your disposal to provide more information and related legal assistance connected to this topic.

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