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A NEW PERSPECTIVE ON INSOLVENCY – THE PROCEDURE APPLICABLE TO THE DEBTOR WHO IS A NATURAL PERSON (I)

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ABSTRACT:*Previously to the entrance into force in Romania of Law no.151/2015 on the insolvency of individuals, the present study aims as main objective to research the regulatory framework in the matter of the insolvency of individuals comprised in Law 151/2015 and to analyse the regulatory solutions preferred by the national lawmaker. The methods used in this study are data analysis, document analysis and comparative research. Taking into consideration the fact that at national level we find ourselves close to having enforced a system of protection of the natural person undergoing insolvency, it is particularly necessary to unveil the rules applicable in the matter and the doctrine, that design a unitary and coherent system, to which the present study aims to contribute together with the studies that will follow on this subject.*

KEY WORDS: *insolvency of individuals*; *debt reimbursement plan; asset liquidation; discharge of debt*
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1. THE NATURAL PERSON'S INSOLVENCY PROCEEDINGS AS REGULATED BY ROMANIAN LAW NO.151/2015

1.1. The concept of insolvency of the natural person

Ab initio it should be mentioned that in the Romanian legal system the insolvency of professionals is regulated by Law no.85 of 2014[1], on the procedures of insolvency and insolvency prevention, while the insolvency of the individuals is regulated by Law no.151 of 2015[2].

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[1]Law 85 of 2014 on insolvency prevention and insolvency, published in the Official Gazette., no. 466 of 25.06. 2014, hereinafter called "Law 85/2014".

[2] Law no.151 of 2015 on the insolvency of natural persons, published in the Official Gazette no.464 of 26/06/2015, hereinafter called "Law 151/ 2016". See the need for an explicit regulation on the limits of application of the natural person's proceedings as well as that of the professionals' insolvency proceedings in Frățilă, (2015). The answer to the legitimate question whether a veritable Code of Insolvency would have been more appropriate to comprise regulations on the insolvency of legal persons and individuals as well, see in Nour (2015).

Illo tempore, the regulation on the insolvency of the natural person, a feature of novelty in the national regulatory framework, had fervent supporters but also strong opponent. The doctrine (Piperea, 2009) refers to three categories of grounds that are in favour of the adoption of the law, one being the"judicial ground, the social one and the economic one".

The necessity to adopt the regulation in the matter of the natural person's insolvency represents, in the opinion of the doctrine (Comsa, 2015, p.13-16), a compensation measure needed by the over-indebted Romanian consumers, a measure from which consumers in other EU Member States already benefit.[3]

At the same time, the doctrine (Florescu, 2015) recalls a few aspects of social nature which do not qualify the law to be adopted: " apart from the fact that the law on insolvency of individuals relies on a triple regulation on the forced execution of obligations, this law is a real trap for Romanian citizens, being "wrapped-up" in good intentions and benefits that will prove to be elusive.

The adoption of such law will translate into lack of responsibility and the absence of the proactive role of the law-maker in relation to the dangers to which the Romanians citizens will be exposed, because irrespective of wording chosen for the text of the law, it is foreseeable that this law will be extremely risky from social point of view." The same doctrine considers also that the lack of harmonization between the regulations of Law 151/2015 and the CJEU case law.

The road followed by Law 151/2016 on the natural person's insolvency was certainly a tangled one... and at this point it has not ended yet. In accordance with the provisions of art.93, first thesis of Law 151/2016, the law was going to enter into force within 6 months from the date of publication in the Official Gazette, namely starting from 26 December 2015, and in accordance with provisions of art.93, second thesis, it is exempted from this prorogation art.92 of the law, which establishes the insolvency commissions, and which was going to enter into force 3 days after its publication in the Official Gazette.

Art.92 of this law stipulates the following terms that run from 26.05.2015 – the date of its publication in the Official Gazette: - according to para.1, a term of 3 months in which must be constituted the insolvency commission at central level and the regional level; - according to para.1, a term of 60 days within which shall be approved, through Government's decision, the enforcement guidelines which include also the fees of the administrator and liquidator in charge of the procedure, the minimum and maximum amounts of these fees; - according to para.4, a term of 5 months inside which the professional bodies: attorneys, public notaries, judicial executors, liquidators, communicate to the insolvency commission the first list of the members who were admitted to be included in the list of administrators and liquidators of the proceedings of insolvency on individuals, and a term of 3 months inside which the professional bodies elaborate the common curricula and the unitary methodology for examination necessary in order to hold this capacity;- in accordance with para.5, a term of 6 months inside which shall be constituted section "Debtors – individuals with obligations that do not arise from

[3] in extenso the grounds for adopting the regulation and the route taken by the legislative initiative constituting of the Draft Act on the insolvency of natural persons PL-x-579/2014 until the adoption of Law 151/2016, see in Comsa, (2015, pp.13-16 and the sources cited therein).

operating a business", within the Bulletin of insolvency procedures, hereinafter called BIP-I.

Through Romanian Government Ordinance no.61 of 2015[4] on the prorogation of the entrance into force of Law no.151/2015 on the proceedings of insolvency of individuals, the initial term for entering into force, provided in art.93 first thesis, namely 26 December 2015, was prorogued until 31 December 2016[5].

On 28 December 2015 the Ministry of Economy released the Action Plan for the implementation of the Law on the proceedings of insolvency of individuals[6], which establishes the regulatory measures that are to be adopted, respectively the orders and decisions to be taken by the government and involving the National Authority for Consumer Protection[7], the National Office of Trade Registry[8] and the Superior Council of the Magistracy[9], with special view on the set-up of the professional body of members and technical staff of the insolvency commissions within NACP, the staff necessary for editing the BIP-I within NOTR, as well as the judiciary staff and auxiliary staff within courts of law, respectively the judges responsible with certain competencies within the insolvency of the natural person.[10]

On the 4 of October 2016, the Parliament of Romania rejected the GEO no.61/2015 through which the date of entrance into force, provided in art.93 first thesis of Law 15/2015, was adjourned until 31 December 2016, thus establishing the entrance into force

[4] hereinafter called GEO 61/2015, published in the Official Gazette no. 962 of 24.12.2015

[5] the law-maker's grounds for this second prorogation of the date of entry into force of Law 151/2015 are stated in the Preamble of the law: the complexity of the domain being regulated through Law 151/2015; the very short and insufficient terms allocated for developing the rules of implementation and for setting-up the insolvency committees at national and district level; the financial impact on the general state budget and on the other hand, the impossibility to ensure the functioning of the insolvency committees with the current financial and human resources, the material impossibility to immediately set-up the structures stipulated in Law 151/2015; the requirement to set-up the 42 insolvency committees at district level, as well as a central committee, as this demands the development of a new structure which requires resources that would enable it to carry out its activity; it was determined that in order to build a system that would function throughout the whole country and ensure integrity and transparency, the date of 26 December 2015 is not a feasible date and that certain aspects will have to be regulated after the adoption of Law 151/2015; it was issued by the consumer protection authority, a project for Government decision that approves the rules of enforcement of Law 151/2015, as a result of the consultations held with all stakeholders – ministries, professional bodies, professional associations, representatives of debtors – in order to ensure an efficient and coherent legal framework that could help to achieve optimal implementation of Law 151/2015, and its entry into force is conditioned by the existence of the structures that ensure the framework that is vital for carrying out the insolvency proceedings; that not proroguing the date of entry into force would generate major disruptions to the application of justice, by reference to the judicial proceedings of insolvency through asset liquidation, with serious consequences for the compliance of the requirements on the right to justice and to trial within a reasonable time or to release pending trial.

[6] accessed on 03.02.2017,content/uploads/2015/12/28_dec_Plan_actiune_Legea_ insolventei_ persoanelor _fizice.pdf

[7] hereinafter called NACP

[8] hereinafter called NOTR

[9] hereinafter called SCM

[10] Government Decision no.328 of 27.04.2016 allocated as additional judiciary resources 244 positions of judge, and the plenary of the Superior Council of the Magistracy approved on 7 June 2016, the criteria for the distribution of the human resources according to jurisdiction, hence not only the judges whose competence includes the insolvency of natural person. see http://www.juridice.ro/wp-content/uploads/2016/06/plen-1.pdf, accessed on 12.02.2017

of Law 15/2015 on 31 October 2016.[11] The president of Romania did not pass the Law by rejecting GEO 61/2015, but he sent it for re-examination on 31 October 2016 on grounds related to the "absence of an adequate organisational and functional framework, we consider that entrance into force of provisions of Law 151/2015 on 31 October 2016 is likely to render inapplicable the administrative proceedings of insolvency based on reimbursement plan, as well as the simplified insolvency proceedings".[12] In accordance with the provisions within the regulatory framework comprised by GEO 61/2015, Law 151/2015 was supposed to enter into force on 31 December 2016, but the date of entry into force was again adjourned for 1 August 2017, based on art. IX of GEO no.98/2016[13], consequently the « saga » goes on...

The aim of the law is to institute a collective procedure for the recovery of the financial situation of the debtor acting in good faith, by covering a great extent of the debts and debt discharge under the conditions expressly provided by the content of the law. The doctrine in (Comsa, 2015, p.19,47) ascertains that in the current economic context, the insolvency proceedings aims to represent a remedy rather than a sanction, as personal bankruptcy was considered throughout the time, and that the purpose of the regulation makes reference to two components having economic value, each at its turn being subdivided in financial recovery, payment of debts and debt discharge, and one having judicial value – the concept of good-faith of the natural person to which these regulations are applicable.

1.2 The scope of Law 151/2015; Extension vs. limitation

The scope of Law 151/2015 is determined in direct relation to the following cumulative criteria:[14]

- the main place is taken by the criteria of the nature of the individuals' obligations, which caused the state of insolvency, in the meaning that they were not the result of operating a company.[15]

- the domicile, residency or regular residency in Romania of the natural person for at least 6 months before filing the application. It is considered that debtor has its usual

[11] see http://www.gandul.info/stiri/legea-insolventei-persoanelor-fizice-intra-in-vigoare-mai-devreme-15763469, accessed on 15.02.2017

[12] see http://www.bancherul.ro/intrarea-in-vigoare-a-legii-insolventei-persoanelor-fizice-(falimentul-personal)-se-amana-din-nou,-pentru-ca-guvernul-nu-a-reusit-timp-de-10-luni-sa-asigure-conditiile-pentru-punerea-in-aplicare-a-legii--16801, accessed on 15.02.2017 and http://www.agerpres.ro/politica/2016/10/31/alerta-presedintele-iohannis-cere-reexaminarea-prorogarii-termenului-de-intrare-in-vigoare-a-legii-insolventei-persoanelor-fizice-12-13-39, accessed on 03.02.2017. The plenary of the SCM referred the request on this matter to the President of Romania on his agenda of 6 October 2016.see http://www.juridice.ro/wp-content/uploads/2016/10/07_10_2016__83548_ro.pdf, accessed on 15.02.2017.

[13]called the Ordinance on the prorogation of deadlines and establishment of new deadlines for certain measures regarding the completion of activities comprised in the contracts concluded in accordance with the Loan agreement between Romania and International Bank for Reconstruction and Development, to finance the Project on judicial reform, signed in Bucharest on 27 January 2006, ratified through Law no.205/2006, as well as for the amendment and supplement of regulatory acts, published in the Official Gazette no.1030 of 21 December 2016.

[14]see art.4

[15] the concept of "operating a company" is defined in art.3 of the Romanian Civil Code, in correlation with the concept of "professional", the latter being the one who operates the company, which means systematic exercise, by one or several persons, of an organized activity that lies in the production, administration or sale of goods or supply of services, irrespective of its (non) profit making status.

residency in Romania if the debtor lives constantly in Romania, even if the legal formalities of registration have not been completed, if the debtor possesses goods or has income in Romania. For a thorough explanation of the provisions on the minimum 6 months during which the debtor must have had residency in Romania in order to benefit from the provisions of Law 151/2015, the doctrine (Detesan, 2015, p.76) sends us to para.31 of the statement of reasons in Regulation EU 646/2015 of the European Parliament and European Council of 20 May 2015 on the insolvency proceedings, this period being considered necessary in order to avoid "judicial tourism".

- the natural person is in a state of insolvency.[16] The doctrine in Nasz (2016, p.73) recalls that insolvency ”is characterised by insufficient funds available for payment of debts as these fall due."

In establishing the state of insolvency of the natural person, the law-maker institutes through the provisions of art.4, para.1, letter b), an additional criterion that Detesan (2015, p.81-82, 86-87) calls the "criterion of (cash-flow) insolvency" or the "state of over-indebtedness" that is in place and structured and which "continues in time", that according to the doctrine is instituted additionally to the criteria comprised by the provisions of Law 85/2016.

This criterion takes shape in the enforcement of Law 151/2015 only for the debtors who do not convey a reasonable probability to become capable of carrying out their obligations according to the agreements, within a period of maximum 12 months, together with maintaining a reasonable standard of living for oneself and for the dependant persons. In practice, this criterion takes into consideration the total amount of the obligations in relation to the current or forecasted income considering the level of professional training and expertise, as well as the sizeable assets owned.

- the total amount of outstanding obligations is at least equal to the threshold value, which in accordance with art.3, pt.24 of Law 151/2015, represents the minimal amount of the debtor's outstanding debts, required in order to be able to submit the application for opening of the insolvency proceedings based on a debt reimbursement plan or the judicial insolvency proceedings through liquidation of assets. After 90 days from the maturity date of any debt that remained unpaid in relation to one or several creditors, the relative presumption of insolvency is instituted.[17]

The doctrine (Detesan, 2015) analyses again, in a comparative manner in accordance with the regulation provided by Law 151/2015 and that provided by Law 85/2014, the extent of the threshold amount, determining the following distinction: in the first law the amount of the threshold represents 15 national minimum wages in case of applying for the administrative proceedings based on debt reimbursement plan.[18]Within the second law the threshold amount is 40.000 lei.

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[16]a comparative analysis of the concept –natural person's state of insolvency and that of the professionals' state of insolvency as regulated by Law 85/2016, to be seen in op.cit.29, pp.79-80. This comparative analysis determined that the presumption of insolvency is instituted when after 90 days from the due date as regulated by Law 151/2015, respectively after 60 days from the due date as regulated by Law 85/2014, the debtor did not pay the debt towards one or several creditors.

[17]see art.3, pt.12, thesis II

[18] the minimum gross wage as set by national law was increased to 1.450 lei/month, beginning with 1 January 2017, for a full working hours of 166,00 on monthly average for 2017, representing 8,735 lei/hour, according to the Romanian Government Decision no.1/2017, published in the Off. Gazette no. 15 din 06.01.2017, while 1

We would like to mention also that while in the individuals' insolvency proceedings the threshold amount includes the outstanding debts which cumulated must reach the threshold value, in the regulation of the insolvency proceedings for professionals this threshold value represents the amount of one debt for which can be submitted the application for opening the proceedings by the creditor or by the debtor.

The exclusions from the scope of Law 151/2015 are targeted mainly at the debtors in relation to which, on grounds imputable to them, was closed either an insolvency proceedings based on debt reimbursement plan, a judicial insolvency proceedings by means of asset liquidation or a simplified insolvency proceedings, less than 5 year prior to submitting a new application for opening the insolvency proceedings. In the loop of exclusions are also the debtors who were sentenced for certain acts, were laid off under certain conditions on grounds imputable to them, and which determined or enhanced the emergence of insolvency wilfully or by gross negligence.[19]

1.3. The bodies applying the proceedings of insolvency of individuals under the rules of Law 151/2015

The bodies that apply the proceedings of insolvency are, in accordance to art.7 of Law 151/2015: the commission of insolvency, the administrator/liquidator of the proceedings, the courts.

We notice the element of novelty at national level in the framework of the proceedings of insolvency of individuals which is the existence of the insolvency commissions, as compared to the insolvency of professionals where the proceedings falls exclusively under the jurisdiction of the court of law, respectively the county court and court of appeal.

1.3.1 The commission of insolvency at central and regional level

The insolvency commission at central level is the administrative body that monitors and coordinates the activity of the insolvency commissions in the country, and the latter is the decentralized structure in the country of the central insolvency commission, which is organized and functions in every county, having decision-making, control and supervision prerogatives within the proceedings of insolvency based on debt reimbursement plan, supervision responsibilities within the simplified insolvency proceedings, and control tasks during the period of post-proceedings supervision in the case of insolvency through liquidation of assets.[20]

The commission of insolvency at central level is composed of one representative of each of the following institutions: the NAPC, the Ministry of Public Finance MPF, Ministry of Justice –MJ, Ministry of Labour, Family and Social Protection – MLFSP, Department Bulletin of Insolvency Proceedings within NOTR, and the county commissions of insolvency is made up of the county representatives of the same bodies and institutions. The doctrine criticises these solutions stating that"consequently, state institutions are involved by the law in an insolvency proceedings where it is brought under discussion the stake of the individual debtor and the stake of the creditors. The resolution is different from the one issued in the matter of forced execution, where there is an

Euro = 4,5069 Lei on 06 January 2017, see http://www.bnr.ro/Cursul-de-schimb-524.aspx, accessed on03.02.2017.

[19] see art.4, para.4 , letters a – f. commented in Comsa, 2015, pp.162-168.

[20] see art.3, pct.9 and 10 of Law 151/2015

exceptional character of the involvement of public institutions such as the law courts and the public force bodies. Such a system is not beneficial for the state budget and is not in favour of the civil and commercial circuits. On the other hand, the law generates a new bureaucratic mechanism, even if the future is one of decentralisation and not one where are created mechanisms that ”devour” the financial resources”(Nour, 2015).

At central level but also at county level, the technical mechanism necessary for a good functioning of the commissions' activity is organized within NACP, and the expenses associated with the organization and coordination of the commission and technical mechanism shall be ensured from the state budget, precisely from the Ministry of economy.[21]

As the doctrine (Detesan, 2015, p.164) indicates, the county commission "is the administrative body that ensures the exact enforcement of the law", which shall determine the exercise of the decision-making prerogatives, the control and supervision prerogatives provided in art.45, para.2, letters a-m, of Law 151/2015.[22]

A first act, subsequent to Law 151/2015, but adopted to support its implementation, is the Romanian Government Decision no.11/13/01/2016 on the establishment of the insolvency commissions at central and county level.[23]

1.3.2 The administrator/liquidator of the proceedings

The administrator handles the proceedings based on debt reimbursement plan under the control of the insolvency commission.[24]

The liquidator administers the judicial proceedings of asset liquidation under the control of the court, and fulfils supervision prerogatives during the post-proceedings period of the judicial insolvency proceedings of asset liquidation, under the control of the insolvency commission.[25] Both the administrator and the liquidator are chosen and assigned from the insolvency practitioners, bailiffs, lawyers and public notaries registered on the List of administrators and liquidators of proceedings of insolvency of individuals[26], with the only specification that the administrator is appointed by the insolvency commission while the liquidator is appointed by the court. Also, the title of administrator of proceedings is different from that of judicial administrator, the latter being used for the insolvency practitioner entitled with role in certain stages of the professionals' insolvency proceedings.

1.3.3. The courts are the first instance court and the county court as court of appeal.

The role and jurisdiction of courts within the insolvency proceedings of individuals are developed by the doctrine (Nour, 2015) who recalls the aspect about ”the criterion of the amount being irrelevant in determining the material jurisdiction of the insolvency court. We consider that this rule on jurisdiction is one concerning public order."

[21] see art. 44.para. 6 together with art.92, para.3 of Law 151/2015

[22] see in Comsa, 2015. pp.93-95 the grounds on which the administrative proceedings carried out through the insolvency commission was considered not to be affecting the free access to justice that is provided by art.21 of the Constitution.

[23] published in the Official Gazette no.50 of 22.01.2016

[24]see art.9

[25]see art.11

[26]in Nour (2005) it is being denounced the innovative solution through which the capacity of liquidator can be obtained also by lawyers, public notaries, considering that it is not in favour of the specialisation of the persons in this field.

1.3.4. Publication of documents in the Bulletin of insolvency proceedings section "Debtors – individuals with obligations that do not arise from operating a business"

The publication of the decisions handed by the insolvency commission, by the court as well as any other documents to be published according to Law 151/2015, shall be carried out with due regard to regulations on protection of personal data, in the Bulletin of insolvency proceedings, section "Debtors – individuals with liabilities not deriving from the operation of a company" BIP –I.[27]

The doctrine (Comsa, 2015, pp.30-31) makes reference to the legal provisions adopted in 2006 that established for the National Office of Trade Registry to publish in electronic format and/or on paper the BIP, that would comprise all the documents relating to the insolvency proceedings of professionals.

In accordance with Order 1082/C of 20 March 2014 of the Ministry of Justice, on the adoption of Regulation of 20 March 2014 on the organization and functioning of NOTR and the offices of the Trade Registry attached to county courts[28], applicable herein, the Department of the Bulletin of insolvency proceedings established within the NOTR has the responsibility to publish and provide in full the Bulletin, and carried out the service of summoning the parties, sending the court judgments, call out and notification of acts of proceedings issued by the courts/ insolvency practitioners/ other persons authorised within the insolvency proceedings, carry out specific activities provided by Law 85.2015 on insolvency proceedings and ensure the coordination and methodological guidance and control activities of the offices of trade registry attached to county courts in the field of insolvency and related fields.[29]

Consequently, the Department of the Bulletin of insolvency proceedings established within the NOTR shall have the responsibility to publish in electronic format the newly created section within the Bulletin of insolvency proceedings, which is the BIP-individuals.

Moreover, through Order no.3338 of 24.08.2016[30] of the Ministry of Justice on approving the framework of the section "Debtors – individuals with liabilities not deriving from operating a business" within the BIP, and on approving the framework of documents to be published in it and the proof of publication was approved the format of section BIP – I, and the following categories of documents and decisions of the commissions of insolvency, notifications, the judgments of the courts, the proof of publication. The doctrine (Detesan, 2015, pp.209-210 and Annex 4) in an analysis of the public registries of debtors and insolvency proceedings indicates that from a total number of 27 analysed states, 7 states do not keep registries, while from the 21 states that do keep registries in 6 states these are not public access registries.

The prerogatives of the insolvency commissions as well as those of the administrator of proceedings / liquidator and those of the courts are to be assessed in correlation with

[27] see art.3, pt.1

[28] published in Off. Gazette, no. 384 of 23 May 2014

[29] see The Department of the Bulletin of insolvency proceedings art 3, para.7 together with art.5, para.1, letter.j of the Order. functions according to the following structure: the Bureau for editing the Bulletin of insolvency proceedings; the Bureau for legal assistance and provision of the Bulletin of insolvency proceedings; the Bureau for technical assistance and publication of the Bulletin of insolvency proceedings.

[30] published in Off. Gazette, no. 745 of 26.09.2016.

the three categories of proceedings regulated by Law 151/2015, as they are individualised, correlated and are objective in relation to each of these proceedings.

1.4. Categories of insolvency proceedings applicable in the case of individuals

In accordance with the regulation delivered through art.5 of Law 151/2015, the categories of insolvency proceedings are:

a) the insolvency proceedings based on debt reimbursement plan;

b) the judicial insolvency proceedings based on assets liquidation;

c) the simplified insolvency proceedings;

1.4.1. The administrative proceedings based on debt reimbursement plan

In accordance with point 17 of art.3 of Law 151/2015, the insolvency proceedings based on debt reimbursement plan is a class, collective and egalitarian procedure applicable to the individual debtor acting in good faith, in order to recover his/her financial situation, for an adequate management of income and expenses meant to cover the liabilities at the highest extent through a debt repayment plan, followed by the discharge of the residual debt, under the conditions established by the law. We concur with the conclusion of the doctrine (Dobrev, 2014) that "The central element of the new regulation represents the procedure of debt rescheduling based on a hybrid mechanism which borrows the simple, unsophisticated character of the preventive arrangement but also the judicial architecture of the re-organisation through reimbursement plan."

The proceedings is initiated in accordance with provision under art.13, exclusively on the debtor's demand, through the regional insolvency commission, based on filing a standard form application,[31] accompanied by a series of documents stating the financial situation of the debtor.[32]

The regional insolvency commission entitled to settle the application is the commission having jurisdiction where the debtor had the domicile/residence, usual residence for at least 6 months prior to filing for insolvency. Within the insolvency proceedings based on debt reimbursement plan, the insolvency commission has decisional, control and supervisory prerogatives, being supported by the proceedings administrator. The doctrine (Comsa, 2015, p.78) reveals also that despite being an administrative body, the regional insolvency commission has special jurisdictional prerogatives in the field of insolvency proceedings of individuals.

The application shall be filled with data regarding the creditors and their receivables, the judicial actions and forced execution procedures initiated by the creditors, the amount of incomes, the debtor's assets, the debtor's liabilities, the disputes in relation to the debtor's assets that the creditor is/was part of, the amount of the debtor's income resulting from labour and other assimilated to them.[33]At least 30 days before filing the application, the debtor is obliged to notify all known creditors, about the intention of opening the proceedings, by any means of communication that provides confirmation of receipt.

Within 30 days from the receipt of the application, the commission verifies by default, the regional jurisdiction, analyses the application and submitted documents and after

[31] this is approved through the decision of the president of the central insolvency commission and it is made available for free, to the stakeholders, at the offices of the insolvency commissions, as well as online, on the internet website of the central insolvency commission, see art.13, para.7

[32]see art.13, para.6, letter.a-f

[33]for all the elements comprised in the application see art.13, para.6, letters .a-q

hearing the debtor and informing him/her regarding the effects of the proceedings, the commission issues a decision approving as a matter of principle the application. In order to approve as a matter of principle the application for opening the insolvency proceedings based on debt reimbursement plan, the commission shall verify that all requirements indicated *ut supra* are met, and at the same time verifies that there are no conditions that would *attract de plano* the inapplicability of the proceedings.[34]

In fulfilling the decisional functions, the commission will deliver decisions which are then listed in the doctrine (Detesan, 2015, p.209). From the decisions listed in the doctrine, the ones considered to render the proceedings efficient are the "*decision approving as a matter of principle the application*[35]*-decision ascertaining that the debtor's financial situation is irreparably compromised"* and through which, after obtaining the debtor's approval, the commission refers to the law court for opening the judicial insolvency proceedings through liquidation of assets, if the debtor owns sizeable assets and/or incomes, - *decision to refer to the law court for opening the simplified insolvency proceedings if the debtor meets the requirements provided for this case.*

The first effects triggered by the commission's decision to approve in principle the application for opening the insolvency proceedings based in reimbursement plan lie in the *temporary, lawful,* stay of the forced execution initiated against the debtor's patrimony, for which reason the decision shall be immediately communicated to the bailiff. The temporary measure of stay will remain in place latest until the creditors' approval of the plan, until the request to confirm the plan is answered or until the term for submitting such request expires. The period of the stay cannot exceed 3 months; however the court may approve the extension of the temporary stay with up to 3 months, if it considers that by not approving this measure, the financial situation of the debtor would become irreparably compromised, with a clearly determined risk for the reimbursement plan not to be carried out.[36]

The first measures to be taken by the proceedings administrator are the notification of creditors, the publication of the notification in the IPB-I and the request for an information report regarding the amount and type of debt claimed by each creditor, in order to prepare the preliminary table of receivables. The proceedings administrator also has the responsibility of inviting the creditors and the debtor to the reconciliation procedure to reach an agreement concerning the plan.

The reimbursement plan is, in accordance to provisions of art.3, pt.5, of Law 151/2015, the plan issued by the debtor together with the administrator of proceedings to cover a period of 5 years, but it is also possible to extend the enforcement with 12 months at the longest, under the conditions stipulated within the plan.

The plan contains the method that shall be employed to cover the debts from the debtor's patrimony, the aggregate value of obligations and the due dates in accordance to the table of receivables, as well as any additional measures for the financial recovery of

[34]see art.4, para.4 , letters .a – f and developed inComsa (2015) at p.162-168.

[35]through this decision it is also being assigned an administrator of proceedings and it is indicated whether temporary measures are required

[36] see art.21. We may notice that the same first effects shall be triggered also in the case where the insolvency commission rejects the application for opening the individual insolvency proceedings, the debtor challenged the rejection ruling in the district court, and the court settled the challenge by approving in principle the application for opening the individual insolvency proceedings. See art.19.

the debtor and has in view the adequate management of incomes and expenses to obtain a superior receivable coverage ratio, followed by the discharge of residual debts, which we will analyze below. The plan shall be considered approved if the creditors representing minimum 55% of the aggregate value of the receivables and 30% of the value of the receivables that benefit from a cause of preference vote in favour of it. The creditors, who were notified but did not express their vote, shall be considered to have voted in favour of the plan.

The approval of the plan by the creditors results in *opening the insolvency proceedings based on reimbursement plan, action that is ordered through the decision of the insolvency commission*.[37]

Both categories of decisions of the insolvency commission – the one approving in principle the application for opening the insolvency proceedings based on reimbursement plan, as well as that for opening the proceedings based on reimbursement plan, following the approval of the plan by the creditors, can be challenged through before the court of jurisdiction, within 7 days from the date the application was communicated.

The decision in of the first category may be challenged by creditors or by the debtor, and the decision in the second category may be challenged by the creditors who voted against the plan. In both cases, the challenge produces the stay of their enforcement. The judgment delivered for settling the challenge is not enforceable and can be appealed within 7 days from communication, whereas the appeal is to be judged by a county court, with promptness and pre-eminence.[38]

Law 151/2015 comprises also a procedure of confirmation of the plan by the court, respectively the district court, carried out under well-determined conditions, on the debtor's request, if the plan was not approved by the creditors. The judgment confirming the plan, issued by the district court shall be communicated to the creditors and to the debtor and may be appealed within 7 days from communication, whereas the appeal is to be judged by a county court, with promptness and pre-eminence.

Both the approval as well as the confirmation of the plan result in the stay, *ope legis*, by operation of law, of certain measures and due dates, as follows: -the measures of forced execution for debt coverage from the debtor's patrimony, and the stay shall remain in place until certain dates, one of them being the date when it is declared definitive the judgment that settled the application for debt discharge, while not being subject to lawful stay the measures of forced execution of co-debtors and/or third party guarantors[39]; - the prescription of the creditors' right to demand the forced execution of their receivables against the debtor.

Moreover, from the date when the table is declared definitive and until it is declared definitive the judgment that settled the application for debt discharge, it shall be lawfully suspended, with regard to the debtor, the flow of interests, penalties, default interests as well as any other such incidental charges to the payment obligation, except for the debts that benefit from preferential causes whose interests and incidental charges are calculated

[37] see art.29
[38] see art.17 correlated with cu art.30
[39] similar judgement was ruled in the case of the professionals' proceedings regulated by Law 85/2014.

in accordance with the documents of the debt, not exceeding the value of the asset subject to the preference cause.[40]

A new stage that pursues the approval, respectively the confirmation of the debt reimbursement plan, is the execution of the plan, stage where the insolvency commission holds supervision prerogatives over the execution of the plan to be in accordance to the approved version.[41] If the plan was carried out, then the commission of insolvency acknowledges the fulfilment of the measures and the payment of obligations in accordance with causes of the plan and orders the closing of the insolvency proceedings based on debt reimbursement plan, by issuing a decision within 30 days from the receipt of the final report. The decision to close the insolvency proceedings based on debt reimbursement plan accompanies the debtor's application for discharge of residual debts. The application shall be settled by the district court who shall order the discharge of the debtor from residual debts represented by the aggregate value of the receivables that exceed the coverage ratio agreed through the reimbursement plan, respectively winding-off the debts registered in the table, and which exceed the coverage ratio agreed through the reimbursement plan.

The sentence discharging the debtor of the residual debts shall be communicated to the debtor and creditors and may be appealed in the county court within 7 days from its communication, and the appeal shall be tried promptly and pre-eminently.

1.4.2. The judicial insolvency proceedings by liquidation of assets

Opening the judicial insolvency proceedings by liquidation of assets is ordered by the court of jurisdiction, on the demand of the insolvent debtor:

- if the debtor's financial situation is irremediably compromised;
- if the application for opening the insolvency proceedings based on debt reimbursement plan was rejected by the insolvency commission subject to a proposal to open judicial insolvency proceedings by liquidation of assets;
- if no plan was approved or confirmed by the court;
- if the plan cannot be accomplished for reasons which are not attributable to the debtor;

Even the creditors may submit this request under certain conditions specifically determined.[42]

The court, through the judgment ordering the opening of the proceedings, appoints a liquidator and establishes his/her fee. The judgment may be appealed within 7 days from the communication. The appeal shall be settled with promptitude and pre-eminence.[43]

The opening of the judicial proceedings by asset liquidation has the following effects:

- the debtor can no longer exercise his/her right of disposal over the enforceable assets and revenues belonging to his/her estate;
- the individual enforcements against the debtor’s estate are stayed de jure, unless the stay is already in place, as a result of the opening of the proceedings based on the plan. The stay remains in place until certain date.

[40]see art.34
[41]see art.38
[42] see art.46
[43]see art.48

- the prescription of the creditors' right to ask for the enforcement of their receivables against the debtor's patrimony is stayed; the stay remains in place until a certain date.

- until the date when it is declared definitive the judgment settling the application for discharge of debts, are stayed with regard to the debtor, the flow of interests, penalties, default interests as well as any other such incidental charges to the payment obligation, except for the debts that benefit from preferential causes whose interests and incidental charges are calculated in accordance with the documents of the debt, not exceeding the value of the asset subject to the preference cause, if the proceedings is opened under the situations regulated by art.46 indicated above.

The liquidator notifies the creditors to send within 30 days from the receipt, and information note regarding the aggregate value of the receivable, the market value of the asset subject to preferential causes, and if applicable, the creditor has an assessment of the asset and goes to prepare the preliminary table of receivables within 15 days from the receipt of the information note.[44]

The debtor and the creditors may file challenges in relation to the table of receivables, regarding the receivables and the rights stipulated or not stipulated in the table, within 7 days from its communication. The liquidator draws the final table of receivables, which is then served to the creditors and to the debtor. After receiving the final table of receivables, the court dismisses itself through definitive

After receiving the final table of receivables, the court disengages the matter through final ruling. Within 30 days from the opening of the proceedings, the liquidator shall carry out an inventory of the assets owned by the debtor, including the rights over the debtor's receivables and the rights *in rem*, other than the property right that the debtor holds over the goods of other persons. After the capitalization of the assets, the funds resulting from revenues encumbered by causes of preference or from the sale of assets and rights belonging to the debtor’s estate, encumbered by causes of preference, shall be distributed to the creditors who are the beneficiaries of such causes of preference after deduction of the procedural expenses and, if applicable, of the expenses advanced by the creditor during the procedure;

The other debts against the assets of the debtor, registered on the table of receivables, shall be distributed in the following order: procedural expenses; receivables representing the amounts owed by the debtor to third parties based on obligations, such as maintenance obligations or the allowance for minors; receivables arising throughout the insolvency proceedings; budgetary receivables; unsecured receivables;

After the debtor's enforceable assets are capitalized and the amounts obtained are distributed to the creditors, the liquidator prepares a final report within maximum 30 days from the completion of the liquidation, and it is communicated to the debtor and to the creditors.[45] The court, on the liquidator's request filed within 30 days from the date the final report remains definitive, rules the closing of the judicial insolvency proceedings by asset liquidation, based on the final report that was challenges or amended, if applicable, after the settlement of challenges. The liquidator continues to have the responsibility of supervising the debtor after the closing of the judicial insolvency proceedings by asset liquidation.

[44]see art.52 and 53
[45]see art.63

1.4.3 The simplified insolvency proceedings.

The simplified insolvency proceedings is applicable to the debtor that fulfils cumulatively the following requirements: - the total amount of the obligations amounts does not exceed 10 national minimum wages; - does not have sizeable assets or income; - is above standard age for retirement or has lost total or partial ability to work.[46]

The court together with summoning the debtor and creditors, as they were identified in the list of creditors endorsed by the insolvency committee, establishes through the judgment either the fulfilment by the debtor of the requirements for applying the simplified insolvency proceedings, or the dismissal of the insolvency committee's application. The judgment is communicated to the debtor, the creditors and to the insolvency committee, and can be appealed in county court, within 7 days from its communication date.[47]

Starting from the date when the judgment in the simplified proceedings is declared definitive, all the forced execution measure on the debtors' patrimony taken in recovery of debts are stayed de jure. From the date of the judgment is declared definitive, in what concerns the debtor, are stayed de jure the flow of interests, penalties, default interests as well as any other such incidental charges to the payment obligation. Similarly, the prescription of the creditors' right to ask for the enforcement of their receivables against the debtor's patrimony is stayed.[48]

Within 15 days from the date when the judgment indicated *ut supra* is declared definitive, the insolvency committee notifies the debtor with regard to the approval of the application for the simplified insolvency proceedings, and informs the debtor that during the next 3 years after the notification, the following obligations incur: - to pay of current debts as they fall due; - not to contract new loans; - to provide to the insolvency committee, on a yearly basis, a statement regarding the state of his/her patrimony; - to immediately inform the committee or receiving any income higher that ½ of the national minimum wage, additionally to the amount declared through the application for simplified proceedings; - to inform the insolvency committee with regard to the acquirement of any title, including inheritance, donation, goods and services, the value of which exceeds the national minimum wage.[49]

When the term of 3 years is reached, the insolvency committee issues a decision to stop the application of the simplified insolvency proceedings, through which acknowledges the debtor's fulfilment of his obligations during the proceedings and of the requirements for discharge of the residual debt. If the debtor does not fulfil these obligations, the committee, by default or on request by one or several creditors, issues a decision that acknowledges the ceasing to apply the simplified proceedings. In this case the debtor is held to cover the debts acquired previously to the applying for the simplified proceedings, including the interest and penalties that would have been applied if the suspension would not have been in place, from which are deducted any payments made, if applicable.[50]

[46] see art.65.
[47] see art.67.
[48] see art.68.
[49] see art.69.
[50] see art.70.

The discharge of residual debts can be requested similarly to the proceedings based on debt reimbursement plan, within 60 days from the issue of the decision closing the simplified proceedings.

The insolvency committee orders the discharge of the debtor from residual debts, which is the value of the debts that exceeds the coverage rate agreed upon in the reimbursement plan.[51]

(follow-up in the next issue of the review)

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[51]see art.71.