

MANAGING THE FISCAL DEBTS FOR THE CONTRIBUTORS IN INSOLVENCY PROCEDURE

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Abstract

In a market economy, insolvency is a common phenomenon. Its amplitude is, however, an important barometer for sustainable economic development and for the normal economic processes and financial stability and predictability of the business environment, entrepreneurial management quality. The fundamental purpose of opening insolvency proceedings is the "freeze" of debtor's debts up to that time at which it will be remove the possibility of establishing new flows accessories, and continuing to pay all current liabilities and debt installments history.

Key words: insolvency procedure, debtor's debts, Code of Insolvency, fiscal debts, bankruptcy procedure.

JEL Classification: H30, H32

1. Introduction

In the market economy, the economic agents may sometimes encounter financial difficulties which in order to be overcome may require ongoing the activity in a special condition, regulated by insolvency legislation. The fiscal bodies, as managing entities in the fiscal domain, operates a multitude of methods, techniques and procedures for accomplishing them, in other words to collect taxes from the contributors. Insolvency procedure, with a wider and wider application at present, in our country, may at times be utilized with ill will by the contributors, in order to skip the payment of fiscal duties, making thus impossible for the fiscal bodies to accomplish their functions and role.

2. Insolvency procedure for the contributors fiscal debts

At present (the end of May, 2014), in Romania, the insolvency issue is regulated by the Law no. 85/ 2006, regarding the insolvency procedure. At this moment, a new juridical norm is about to be promulgated, generically called in the public space “Insolvency Code”, a norm which was approved by the legislative body as “Law regarding the procedures for preventing insolvency”. It is also worth mentioning that at the level of European Union there is a regulation of the area through the Regulation (CE) no. 1346/ 2000 regarding the insolvency procedures.

Under the present juridical norm “insolvency refers to that condition of the debtor’s patrimony characterized through insufficient pecuniary funds for paying the certain, liquid and current liabilities:

a) Insolvency is presumed as visible when the debtor within 90 days from the due date, did not pay his debt to the creditor; the presumption is relative;

b) Insolvency is imminent when the debtor is proven he will not be able to pay the engaged current liabilities, with the pecuniary funds available at the due date [12]”.

The new approach substantiated in the “Code of Insolvency” to be soon promulgated, states that “insolvency is that condition of the debtor’s patrimony characterized by insufficient pecuniary funds available for payment of the certain, liquid and current liabilities as it follows:

a) The debtor’s insolvency is presumed when after 60 days from the due date, he did not pay his debt toward the creditor; the presumption is relative;

b) The insolvency is imminent when the debtor is proven unable to pay the engaged current liabilities at due date with the available pecuniary funds at the due date [13]”.

Comparing the data, we notice a slight alteration of the concept and it is in relation with the time interval generating the potential condition of patrimonial difficulty, in the sense of diminishing the interval from 90 to 60 days. From the perspective of the creditors, this alteration is beneficial since it reduces the action interval of the ill will debtor, being able to disaffect the patrimony, thus affecting the possibility for the debts to be recuperated.

In case the insolvency condition of the debtor emerges, there is a possibility to apply a body of collective measures, which in our legislation may be:

- Insolvency procedure;
- Judicial re-organization;
- Bankruptcy procedure;

In essence, the fundamental goal of opening the insolvency procedure is that of “freezing” the debtor’s debts until that moment; the possibility to establish new accessory debts is eliminated and carrying on the activity in order to pay all the current debts and evenly spaced the older debts. Whether this objective cannot be accomplished, the last stage of the procedures is pursued, respectively bankruptcy, referring to liquidation of the debtor’s wealth and extinguishing his debts (totally or partially, depending on his wealth value) following a certain order, preferably substantiated precisely.

In a market economy, insolvency is a common phenomenon. Its amplitude is yet an important barometer regarding sustainable economic development and natural carrying on the economic and financial processes concerning establishment and predictability of the business environment, concerning the quality of entrepreneurial management.

In Romania, in the interval 2010 – 2013, the number of the economic agents within the procedure of insolvency is presented in the table below:

Table no. 1. Economic agents in the insolvency procedure

Year	2010	2011	2012	2013
Indicator	21692	19651	26807	29587

Source: www.onrc.ro

Graphically, the indicator is reflected as it follows:

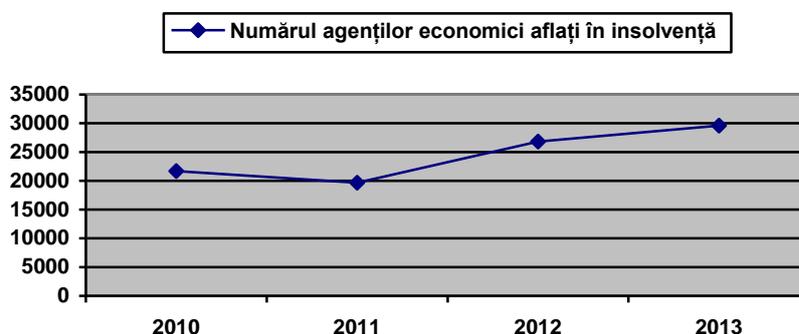


Figure no. 1.. Number of economic agents in insolvency

Absolute and relative dynamics of the indicator for the analyzed is as it follows:

Table no. 2. Absolute and relative dynamics of the number of economic agents in insolvency procedure

Year	2010/2010	2011/2010	2012/2011	2013/2012
Absolute dynamics	0	- 2041	+ 7156	+2780
Relative dynamics (%)	0	- 9,4	36,4	10,4

Source: own calculus

The graphical representation as a dynamics of the number of economic agents in insolvency procedure:

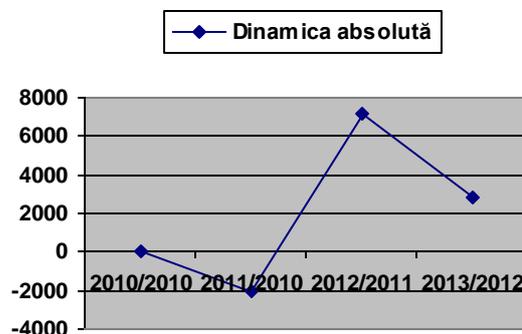


Figure no. 2. Absolute dynamic

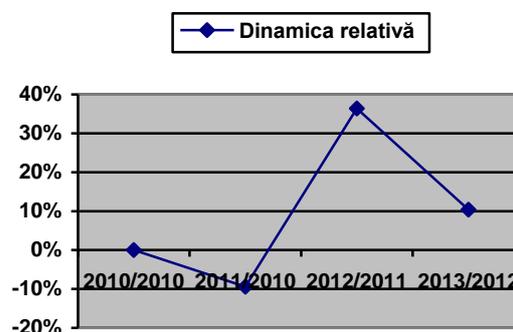


Figure no. 3. Relative dynamic

A simple analysis of the data presented above allows us to formulate a body of observations as it follows:

↳ In the time interval of 4 years an oscillatory evolution from one year to another can be noticed, marked by a diminishing in 2011 and an increase in 2012 and 2013;

↳ Although in the last 2 years the trend is positive, it is to be remarked the diminishing of the amplitude of the phenomenon, respectively from +36, 4% to +10, 4%, a fact which corroborated with the data afferent to the first 4 months of 2014 (according to the data on the portal www.onrc.ro, in the first 4 months of 2014 8889 of economic agents in insolvency procedure have been registered, a lower value with 14,36% comparatively to the same period of 2013, when there were 10379 economic agents in the same condition.), makes us state that there are premises of a descendant trajectory, in other words diminishing of the absolute value from one year to another for the economic agents in insolvency procedure.

Despite the regress of this phenomenon, it is worth mentioning that the insolvency has certain amplitude in the Romanian economy and its implications are significant within the process of accomplishing the income of the general consolidated budget.

In practice, one of the most important creditors, speaking of the volume of debts in insolvency procedure is the state, as a manager of the fiscal debts. That is why the normative framework in the domain of insolvency is extremely important, which has to ensure a perfect balance between the debtor's interests and the creditors' interests, yet emphasizing the public interest in the budgetary system, respectively on recuperating the fiscal debts. Taking into account this situation, we shall focus our analysis on the implications of the legal dispositions present or future (Law 85/ 2006 and “Insolvency Code”) upon the process of managing the fiscal debts in our country.

Managing the fiscal debts (in other words taxes, contributions and other sums of money due to the consolidated general budget) represents, in essence, according to the specialized doctrine [14] a set of operations referring to:

- ⇒ Establishing the object for which a tax has to be paid;
- ⇒ Establishing the quantum of the due tax;
- ⇒ Collecting the tax;

In the Romanian maker of law's vision managing the fiscal debts represents a set of activities carried on by the fiscal bodies in relation with:

- ⇒ Fiscal registration;
- ⇒ Stating, establishing, checking and collecting the taxes, contributions and other sums due to the consolidated general budget;
- ⇒ Solving the appeals against the fiscal administrative acts;

Currently, in Romania, at the level of fiscal bodies, managing the contributors' debts like taxes, contributions and other sums due to the consolidated general budget is accomplished through the vehicle of informatics accountancy system called “Informatics system for managing the fiscal debts” (SIACF). This system is extremely complex and is organized upon specialized systems depending on the legal and administrative of the fiscal debt. The components of the system are:

- 1.Subsystem of overtaking the acts of collecting incomes - SPAC;
- 2.Subsystem of extinguished debts – SCS;
- 3.Subsystem of non-extinguished debts – SCNS;
- 4.Subsystem of the debts under enforcement– SCES;
- 5.Subsystem of TVA reimbursement – SRMB;
- 6.Subsystem of fiscal debts created an administrative document cancelled afterwards – SAAS;
- 7.Subsystem of fiscal debts for which the cancellation of enforcement was disposed - SCSE;
- 8.Subsystem of the debts for which payment facilities have been given – SCIP;
- 9.Subsystem of atypical debts – SCA;
- 10.Subsystem of the debts in the case of the contributors declared insolvent, who have traceable incomes or goods, but whose value is lower that the fiscal debts to be paid – SCDI;
- 11.Subsystem of the debts in the case of the contributors declared insolvent, who have traceable incomes or goods – SCDE;
- 12.Subsystem of the debts in the case of the contributors in insolvency – SCIV;
- 13.Subsystem of the debts for the contributors for whom the procedure of judicial re-organization has been opened – SCR;
- 14.Subsystem of the debts for the contributors for which the procedure of bankruptcy has been opened – SCF.

Depending on to their status, each contributor's fiscal debts and correlative obligations are registered in one of the systems, enumerated above. The managing body can at any time generate the fiscal situation of a contributor through the contributor's chart, synthetically (comprising information from the entire system) or analytically (comprising information from each system).

The subsystem of the contributor's debts in insolvency enables managing the fiscal debts and correlative obligations, registered by the contributors in this condition, in the period comprised between opening the procedure and the date to which the appointed syndic judge opens the procedure of judicial procedure of judicial reorganization or bankruptcy procedure, depending on the situation. The fiscal body operates a multitude of operations within the system such as:

- Processes the information referring to opening the insolvency procedure and enables the transfer of non-extinguished fiscal debts and correlative obligations from the subsystems they are registered at the date of opening the procedure in insolvency subsystem;

- Issues the decision referring to accessory payment obligations;
- Transfers the debts comprised by debt statement from the insolvency subsystem, depending on the debt condition and on the syndic judge's decision in the judicial reorganization subsystem or the bankruptcy system depending on the respective case;
- Marks the debts registered at debt table;
- Monthly issues a list with the payments made by the debtor or in his name, to exonerate the fiscal debts registered at the debt table, respectively to exonerate the fiscal obligations emerged after the date when the insolvency procedure was opened;

- Enforces the procedure of solidary liability;
- Enables lay the sums against the fiscal record paid after the solidary liability;

The subsystem of the contributors' debts for which the judicial reorganization procedure has been opened ensures the management by the fiscal bodies of debts and correlative obligations of the contributors in this condition through a set of operations such as:

- ◇ Introducing information on opening/ closing the judicial reorganization procedure;
- ◇ Depending on the information introduced in the subsystem, the transfer of non-exonerated fiscal debts is enabled from the subsystem of the debts in the case of the insolvent contributors in the subsystem of extinguished debts or the transfer of non-exonerated debts in the subsystem of the debts in the case of the contributors for which the bankruptcy procedure has been opened;

- ◇ Registering the payment programme of the debts within the Reorganizational Programme confirmed by the syndic judge;

- ◇ Apportioning the collected sums for exonerating the fiscal obligations registered at the debt table and of fiscal obligations emerged at the date when Reorganizational Plan was confirmed so that their extinguishing should be carried on in the order legally substantiated;

- ◇ Submitting the supplementary debt statement;

- ◇ Enforcement of the commitment procedure for solidary liability;

- ◇ Lay against the fiscal record the sums recuperated after the commitment of solidary liability;

- ◇ Manages the special information referring to the decisions issued by the syndic judge deciding the patrimony liability for the legal persons for the delayed fiscal obligations of the debtor as a legal person;

The subsystem of the debts in the case of the contributors for whom the bankruptcy procedure has been opened enables the management of the debts registered by the debtors in this condition and compels the fiscal body to carry on activities similar to those describe above.

Apart from the effective procedure of managing the fiscal debts of the contributors in the insolvency procedure, the legal framework is very important of regulation, which can support or, on the contrary limit the efforts of the fiscal bodies to extinguish the respective debts. Since we would like to analyse comparatively the present and future law in the domain from this perspective, we shall pursue by showing the legislative weaknesses influencing the collecting process.

Among the negative effects generated in the managing procedure of the fiscal debts by the Law 85/ 2006 we can mention:

- ⇒ The fiscal bodies' impossibility to exercise enforcements for the debts emerged after opening the procedure;

In practice, the legal provision instituting this regime transformed the fiscal bodies into mere "spectators", many times noticing the accelerated increase of the volume of fiscal obligations in that period, yet without having any other reaction than the possibility to require the syndic judge the bankruptcy of the debtor. Finding a solution to these requests was not generally in the favour of fiscal body, especially in those situations it was not the majority creditor, because the other creditors were against it. The contributor goes on functioning and registering current fiscal obligations, which significantly increased the capacity of documentary collecting of the administering fiscal body having extremely negative influences upon the substantiating process and accomplishing the budgetary incomes.

- ⇒ The possibility of annulling the debtor's obligations before the date of confirming the reorganization plan and the provisions of the plan;

This legislative breach was smartly speculated by the debtors in consensus with the practitioners in insolvency. The action algorithm was carried on as it follows: the practitioner in insolvency emphasized in the table of creditors the real volume of the debtor's fiscal obligations; nonetheless the reorganization plan comprising the payment charts of the older debts took on only the payment of a certain part of the respective debts, they obtained the other creditors' agreement for approval of the plan thus conceived and after its confirmation, the debtor was clean from the obligations unforeseen in the plan.

- ⇒ Substantiating a procedure for establishing the debts table in which the manager's involvement was almost exclusive.

Under the conditions a ill will judicial manager existed, who according to the law is appointed by the majority creditor, there was a possibility for the manager in a consensus with the debtor to validate an unreal debt, majority in sum and thus the fictious majority creditor, who usually was within the debtor's group of interests, could appoint the respective judiciary manager as liable for the insolvency procedure. The activity area of the body/ committee of creditors, as well as that of the syndic judge is restricted enough, because the judicial manager is compelled to analyze

the financial book records of the debtor, to validate them as being real and draw reports regarding the real situation and based on all these actions to suggest the approval of the debts value.

The negative effects from the fiscal body perspective are those that, in many cases it manages for the fiscal debts not to be majority in sum and thus the creditor not to have the possibility to appoint the judicial manager

3. Conclusions

„The Insolvency Code”, the juridical norm in force, unfortunately corrects only the first shortcoming of those presented above, in the sense that it substantiates the fiscal bodies’ possibility to exercise activities of enforcement upon the debtor for fiscal obligations emerged after opening the procedure. Also the new law diminishes the possibility of accumulating new debts after opening the procedure, since it allows the incumbent of a current, liquid and certain debt older than 60 days and a quantum of 40,000 lei to request any time during the fulfilment of the reorganization plan or after accomplishing the payment obligations taken on in the plan, passing in bankruptcy, its request can be rejected only in the situation when the debtor is not indebted, it is exonerated or the debtor concludes a payment convention with that creditor.

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