THE INSOLVENCY ADMINISTRATIVE-TERRITORIAL UNITS

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ABSTRACT. THE INSOLVENCY IS STATE PROPERTY OF A PERSON WHO HAS FINANCIAL DIFFICULTIES AND HAS NO CASH ON HAND TO PAY OFF DEBTS DUE. INSOLVENCY ADMINISTRATIVE - TERRITORIAL UNITS IN THE LEGISLATION IS A NOVELTY IN OUR COUNTRY IS GOVERNED BY GOVERNMENT EMERGENCY ORDINANCE NO. 46/2013 ON THE FINANCIAL CRISIS AND THE INSOLVENCY OF ADMINISTRATIVE-TERRITORIAL UNITS.

KEY WORDS: ADMINISTRATIVE-TERRITORIAL UNITS, INSOLVENCY, FINANCIAL RECOVERY, TRUSTEE JUDICIAL, CHIEF AUTHORIZING OFFICER.

In private law, insolvency is governed by Law no. 85/2014 on procedures to prevent insolvency and insolvency[1], as amended and supplemented[2], applicable to private legal persons carrying out economic activities, while in public law, insolvency is governed by Government Emergency Ordinance no. 46/2013 on the financial crisis and the insolvency of administrative-territorial units [3] governing insolvency for some categories of legal persons of public law, namely the territorial administrative units (villages, towns, cities and counties), thus eliminating the traditional view that procedure insolvency applies only to traders. Today we can talk insolvency legal person and the insolvency of individuals regulated by Law no. 151/2015[4]. Insolvency does not mean that person is insolvent; it has no assets in the heritage on which they can sell.

Within 6 months after the entry into force of Law no. 273/2006 on local public finances, Ministry of Administration and Interior[5] and Ministry of Finance were required to draw up the draft special law on the financial crisis and insolvency administrative-territorial units, but this did not happen until 2013 when it was approved Government Emergency Ordinance no. 46/2013 on
the financial and administrative-territorial insolvency, insolvency regulation of administrative-territorial units is a novelty in our country's legislation.

According to article 75, paragraph 1 of Law no. 273/2006 and the provisions of article 2 paragraph 1 letter r of Government Emergency Ordinance no. 46/2013, insolvency is state heritage administrative - territorial unit characterized by the existence of financial difficulties, the severe shortage of cash on hand, resulting in non-payment of liabilities, liquid and payable over a certain period of time. Insolvency is presumed in one of the following:

- Non-payment amount and due payment obligations older than 120 days and above 50% of the planned expenditure in the general budget of the administrative-territorial unit, without taking into account those in commercial litigation;
- Failure to pay wages stemming from labor relations and set out in the revenue and expenditure over a longer period of 120 days from the due date.

One of the main reasons due to which an administrative-territorial unit becomes insolvent is the large volume of arrears of units / territorial-administrative subdivisions to suppliers of goods, services and works, to which are added „restitution to European Union funds raised for various projects, which are not fulfilled or not fully in line with European standards, making purchases uninspired”[6].

The insolvency procedure

The insolvency proceedings administrative-territorial units includes all the acts and operations on the opening of insolvency proceedings and appointment of the liquidator, development, acknowledge and implement the recovery plan insolvency and closure of insolvency proceedings.

Opening of insolvency proceedings and appointment of receiver

Open insolvency proceedings on a petition filed in court by the creditors or the Chief Authorizing Officer. The Chief Authorizing Officer of the administrative-territorial mayor in communes, towns and municipalities and county council president, if the county.

Under article 75, paragraph 4 of Law no. 273/2006, the chief authorizing officer of the territorial administrative unit must, within 15 days of the declaration of insolvency which occurred par. 1 to request the opening of insolvency proceedings on administrative-territorial unit, by application lodged at the court in whose jurisdiction over the administrative-territorial unit. Chief Authorizing Officer of the administrative-territorial unit has the obligation to notify opening of insolvency proceedings creditors and any interested persons.

The request to open insolvency proceedings, brought by the main credit must be accompanied by the following documents [7]:

a) Copies of the approved budget and financial reports completed by the end of the previous month;

b) A complete list of the assets in administrative-territorial unit, including all accounts through which it runs its funds; if the assets are encumbered, they mentioned data from the public register;
c) A list of creditors, with name and surname or name and address of residence or registered office, regardless of claims they hold: clear, conditionally, due or not yet due, contested or uncontested, showing the amount, cause and legal rights preferable;

d) A list of payments and patrimonial transfers made by administrative-territorial unit during the 120 days before the application;

e) List of essential public services that the territorial administrative unit to be provided during the course of the procedure.

Also, according to article 75, paragraph 2 of Law 273/2006, any creditor or group of creditors that has one or more debts, liquid and enforceable against an administrative-territorial units with aggregate value exceeding 50% of its budget over a period of 120 days consecutive, may petition the court in whose jurisdiction has its headquarters administrative-territorial unit a request to open insolvency proceedings the administrative-territorial units.

The request creditors must be accompanied, where appropriate, by documents certifying [8]:

a) The amount and basis of the claim;

b) The existence of a guarantee, established by the administrative-territorial unit or established by law;

c) The existence of protective measures on goods administrative-territorial unit.

If the request made by the principal loan of administrative-territorial unit fulfills the conditions required by article 75 paragraph 4 of Law no. 273/2006, as amended and supplemented, the bankruptcy judge issue an order opening the proceedings and insolvency administrator has to perform within 5 days notice to all creditors listed in the list submitted by the territorial administrative unit insolvent by the principal loan.

If, within 15 days of receiving the notification, creditors oppose the opening of proceedings, the syndic will take, within 10 days from filing the opposition creditors, a meeting to which summoned the receiver legal representative administrative-territorial unit and creditors who oppose the opening of proceedings.

After the hearing, the bankruptcy judge solved at once, by a judgment, all oppositions. Acknowledging opposition, the bankruptcy judge will not be able to keep open insolvency proceedings. The bankruptcy judge shall revoke the conclusion of initiation. Subsequent opening of the proceedings, at the request of the debtor and creditors, will not change the release date of insolvency.

Under article 60 of Government Emergency Ordinance no. 46/2013, within 48 hours of filing the request of creditors, the bankruptcy judge shall forward the request, copies of the administrative-territorial unit and has displayed a copy at the courtroom door. If, within 5 days of receipt of the administrative-territorial unit denies children insolvency, bankruptcy judge held a hearing within 10 days of the appeal being filed, which are cited legal representative of the administrative unit territorial and lenders who have initiated proceedings.
If the bankruptcy judge finds that the administrative-territorial unit is insolvent, rejected the appeal and open procedure through a sentence.

In case, the bankruptcy judge finds that the administrative-territorial unit is not insolvent, creditors shall reject the application and order the decision be posted on the courtroom door. If rejected, it is deemed to lack any effect even registered.

If the territorial administrative unit does not dispute insolvency within 5 days syndic pronounce judgment opening insolvency proceedings

The decision to initiate the procedure, the bankruptcy judge shall appoint a trustee judicial and establishes its tasks.

The Chief Authorizing Officer within 5 days from the declaration of insolvency, request registration with the general direction of the county public finance, Bucharest respectively, in local situations insolvency register of administrative-territorial units.

The local register situations of insolvency administrative-territorial units is public, is published on the website of the Ministry of Finance. Since the entry into force of Government Emergency Ordinance no. 46/2013, to date, a total of five administrative units were registered in the Register of the local insolvency situations of administrative-territorial units [9], three of them coming out of insolvency, and the three who came out of insolvency two came to the share of liabilities in total government spending centralized administrative-territorial unit to zero, which means that their financial viability is restored.

Under article 71 Government Emergency Ordinance no. 46/2013, during the administrative-territorial unit is declared insolvent, the Chief Authorizing Officer and deliberative authority may not, without the consent of the liquidator:

a) To issue rules or adopt decisions as appropriate, which may lead to an increase in financial liabilities, except as provided by law, or perform other expenses than those needed to provide essential public services;

b) To establish new services or public institutions of local or county interest;

c) Meet any financial obligations incurred prior to the initiation of proceedings, except for the obligations specifically approved the recovery plan insolvency administrative-territorial unit;

d) To borrow funds with the exception of loans to refinance debt;

e) To hire additional staff.

Develop recovery plan insolvency

According to Law no. 273/2006, with subsequent amendments and Government Emergency Ordinance no. 46/2013, as amended and supplemented, within 30 days, the insolvency administrator of insolvency develop the recovery plan, with the main credit, endorsed the general direction of the county public finance or the Directorate General of Public Finance Bucharest and the regional chamber of accounts.

The insolvency recovery plan will include [10]:

a) Measures to restore the financial viability of the administrative territorial unit;
b) Further measures for provision of essential services administrative-territorial unit during the entire period of its insolvency;

c) Plan to pay debts to creditors.

In addition to these elements of the recovery plan contained insolvency, Government Emergency Ordinance no. 46/2013 completing Law no. 273/2006, referred to in articles 91-93 means and deadlines for settlement of debts each creditor included in the plan for paying debts to creditors, a separate chapter on the plan to pay debts to creditors, negotiated debt repayment schedule and terms of repayment.

The recovery plan is subject to approval by the local council insolvency within 10 days of preparation and becomes binding for both the deliberative and the main credit for the administrative-territorial unit. The case is not forthcoming within this period, the administrator will propose bankruptcy judge issuing the decision to take over the duties of chief credit by the administrator [11].

The recovery plan is communicated to all creditors of the insolvency administrator, the notification indicating the date of the meeting and the meeting of creditors, which is on the agenda for deliberation on this plan.

The bankruptcy judge shall convene a hearing within 20 days from filing the recovery plan in court, the plan is accepted, in its initial form or modified, or rejected by the bankruptcy judge, if necessary after hearing the persons summoned. If the plan is rejected, the bankruptcy judge granted a new deadline for its restoration [12].

When judgment admission to the recovery plan, activity and structure of the specialty of the mayor or county council, as appropriate, and public institutions and services of local or county interest, if applicable, any form of funding, are reorganized accordingly, the rights and claims of creditors and other interested parties are modified accordingly.

The principal loan administrator, as appropriate, shall be bound in the period of the insolvency proceedings to ensure efficient and effective provision of essential public services, under the law.

The administrator will monitor compliance with the recovery plan insolvency. In case of non-recovery plan insolvency administrator will propose suspending duties syndic principal loan and issuing the decision to take over the duties of authorizing officer by the administrator.

Execution of the recovery plan may not last more than 3 years with effect from its date of admission.

Closure of insolvency proceedings

Under article 109 Government Emergency Ordinance no. 46/2013, as amended and supplemented, if the conditions are no longer met the insolvency of the administrative-territorial bankruptcy judge pronounce a judgment terminating the proceedings even if they were not extinguished all claims covered by the plan recovery. The remaining unsettled claims in insolvency will be included in the recovery plan of the state of financial crisis.
Terminating the proceeding sentence is notified by the syndic administrative-territorial unit and all creditors to carry out the mention in the local register of situations of insolvency administrative-territorial units, and posted excerpts from the court premises.

At the request of the liquidator, the syndic judge may order that a part of the liability administrative-territorial unit which is in a state of insolvency, be borne by the persons responsible for property management administrative-territorial unit, which contributed to the entrance of the administrative-territorial in this situation, one of the following facts[13]:

a) Use of property or administrative-territorial unit loans for personal, collective or benefit of another person;

b) They ordered the personal, collective or benefit of another person, continuing an activity that determines entry into insolvency of the administrative-territorial unit;

c) Use of false accounting, accounting documents declaring the disappearance of legislation or failure to complete accounting records;

d) Misuse or concealment of activities of administrative-territorial unit or fictitious growth of these activities;

e) Use of illicit means to obtain funds for administrative-territorial unit, to postpone the suspension of payments;

f) Completed the payment of debts to a creditor to the detriment of other creditors, within 120 days prior to the request for the opening of insolvency proceedings.

Applying the above provisions does not exclude certain offenses for acts that constitute crimes or misdemeanors.

By closing the proceedings, the bankruptcy judge, the receiver and all the people involved are issued by any task or responsibility concerning the procedure, administrative-territorial unit and its assets, creditors and holders of guarantees.

As seen from the above, the insolvency proceedings seeking financial recovery of administrative-territorial units. Unlike private law, where the legal entity may go bankrupt, in public law, administrative-territorial unit cannot go bankrupt, there is no danger of its extinction. However, although the way they are regulated financial crisis and the insolvency of administrative-territorial units, the two procedures should be consecutive, the law does not preclude an administrative-territorial reach directly into insolvency proceedings, without being first declared the financial crisis that administrative unit. Procedure financial crisis is administrative in nature and not mandatory insolvency proceedings at an earlier stage, while the insolvency procedure is legal.

As we have expressed and on another occasion[14], ferenda law, procedure and financial crisis to be the case earlier mandatory insolvency proceedings, so when declaring a state of financial crisis of the administrative-territorial implementation of the plan of financial recovery may an end to the conditions that led to the state of financial crisis without reaching insolvency administrative-territorial units, the latter having the possibility to improve their economic and
financial situation does not reach the threshold of 50% of liabilities liquids and payable outstanding.

„A village located in insolvency is a black hole for the economy in the area, propagating the "virus" of financial inefficiency around, as there are companies that live mainly from contracts with local authorities”[15].

It is desirable to avoid the administrative units to reach the financial crisis, and more insolvent. “The austerity measures are drugs to diseased social relations, no measures to prevent future crises. Economic crises, social, and consequently, political, are prevented by good governance” ”[16].

References:
[1] Published in the Official Gazette of Romania, Part I, no. 466 of 25. 06.2014.
[3] Published in the Official Gazette of Romania, Part I, no. 299 of 24/05/2013. Subsequently Government Emergency Ordinance no. 46/2013 has been modified, last change being the Law no. 35/2016 (published in the Official Gazette of Romania, no. 219 of 24. 03. 2016).