LEGAL UPDATE

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APRIL 2006

NUMBER IV

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INSOLVENCY

The New Insolvency Law

Starting with mid July 2006 the new Law on insolvency proceedings no. 85/2006 shall come into effect. As of that moment, Law no. 64/1995 shall be repealed. Generally, the new insolvency law accelerates and improves the judicial reorganisation and the bankruptcy processes.

Simplified proceedings

Simplified proceedings have been enacted for events of insolvency applicable to traders – individuals and family associations – and to businesses – entities unable to keep and present statutory books and documents or not holding assets or whose registered office is no longer valid, etc. In such a system proceedings are directly applicable to the debtor, either when the insolvency procedure is initiated, or at the end of a 60 day term of surveillance No judicial reorganization procedure will be conducted preliminary, in case the debtor has chosen to start the insolvency simplified proceedings.

Limitation of the receiver judge powers

The powers of the receiver judge shall limit to controlling the activities of the liquidator and to the rule over the claims/ applications related to the insolvency proceedings. The receiver judge shall no longer have powers in connection to business related decisions on the assets involved in the proceedings, his responsibilities being strictly related to examination of validity conditions of respective deeds.

Supplementary powers vested with the creditors meeting and with the creditors committee

The new law expressly sets the duties of the creditors committee. These include (i) review of the debtor's standing (ii) acknowledgement and review of the reports prepared by the liquidator and, if the case, drafting complaints (iii) preparing the reports for the creditors meeting on the measures taken by the liquidator. The creditors committee is also vested with supervision powers as to the activity of liquidator.

Insolvency Proceedings Journal

The new enactment introduces the "Insolvency Proceedings Journal" printed by the National Trade Register Office, which shall publish the related summons, convening notices, notifications and communications of the procedural documents.

Efficiency of the juridical reorganisation proceedings

The reorganisation plan may stipulate besides the reorganisation and maintenance of the debtor's activity or the resolution of certain assets included in the debtor's patrimony, the combination of the two reorganisation mechanisms, as well.
The new law introduces the principle of a four vote groups within the creditors meeting namely: (i) creditors having secured

debts, (ii) budgetary creditors, (iii) unsecured creditors – suppliers in the absence of which the debtor's activity may not be carried out and that can not be replaced; and (iv) other unsecured creditors.

Increase of the winding-up reserves

The winding-up reserves shall be set-up by increasing with 20% the fees collected by the trade register offices seconded to the district courts for the registration operations, and by 20% the registration fees collected by other registries (i.e. for agribusinesses, for associations and foundations involved in lucrative activities, etc).

Miscellaneous

Article 282 of the Company Law no. 31/1990 is repealed. The new enactment maintains the distinction between the simple insolvency and fraudulent insolvency. In terms of sanctions, punishment terms for the event of fraudulent insolvency get significantly softened.

CAPITAL MARKETS

NSC Regulation no. 1 of 2006

Two main adjustments to the capital markets legal framework have been brought in by the Regulation no. 1/2006 of the National Securities Commission on issuers and securities trading, the first one pertaining to the concept of "persons acting in concert", the second one referring to the issuers' delisting process.

Persons acting in concert

According to the new rules, expressly qualify as "*persons acting in concert*" those:

(i) who in pursuing with a transaction have used funding from same source or made available by the other entities involved in such transaction or

(ii) who have transferred the proceeds of such transaction to the other entities involved thereto or

(iii) whose ownership, management or administration bodies have mainly the same structure or

(iv) who mutually entered into transactions with financial instruments previously negotiated, on their own behalf or through the concerned persons or who usually carry out transactions through persons directly or indirectly controlled by one of them or

(v) who similarly exercised or exercise the voting rights attached to the securities issued by the same issuer or

(vi) who – in relation to transactions or for exercising the voting rights attached to own financial instruments have appointed or appoint as legal representative the same person, respectively persons who are concerned persons or

(vii) who have jointly carried out or carry out operations, related or not to the capital markets.

Delisting Process

Regulation no. 1/2006 maintains the possibility[1] of delisting a company pursuant to the decision of the extraordinary general meeting of shareholders issued with the observance of the *de minimis* quorum and majority rules, without promoting a public offering and irrespective of the shareholding quota held by the majority shareholder. Shareholders which do not agree with the delisting decision have been granted the right to withdraw from the company within 45 days as of the delisting decision being published and have their share redeemed by the company based on market price to be determined by independent appraisal.

However, the Regulation no. 1/2006 provides that the delisting process should observe the regulations of the regulated market.

Whereas currently the regulations of the Bucharest Stock Exchange do not impede or hinder such a simplified delisting procedure, it is expected that - it shall get repealed by means of the upcoming Stock Exchange Code.

NBFIs

Secondary legislation for NBFIs

Part of the secondary legislation regarding the non-banking financial institutions – the **NBFI**s – is already in place, the National Bank of Romania ("**NBR**") having issued as of April 20th, 2006 (i) the Norm on the NBFIs' minimum share capital no.2/2006, (ii) the Norm regarding the General Registry, the Special Registry and the Evidence Registry no.3/2006 and (iii) the Norm on the notification procedure and the registration with the registries of the NBFIs no.4/2006.

Statutory requirements

Clarifications have been provided in relation to the minimum share capital, established to the RON equivalent of Eur 200,000, being expressly provided that the NBFIs for which specific enactments establish a higher level (e.g. Eur 3 million for mortgage loan companies) should keep to such level. The scope of business – as included in the Articles of Association of a NBFI – shall be statutory, explicit and specific, being also provided that secondary activities, other than specific credit activities, shall be authorized only if ancillary to the statutory scope.

NBFIs Registries

Upon registration with the General Registry the GR and the Special Registry – the SR, every NBFIs will receive a GR registration number and a SR registration number; all documents issued by an NBFI shall include those registration numbers.

The NBFIs already existing on the date the Government Ordinance concerning the regulation of certain fiscal-financial measures no. 28/2006 has entered into force shall be registered with SR by the Regulatory and Authorization Department of the NBR based on the notification for

[1] Initially regulated by an enactment of February 2006, with legal force lower than the one of the Regulation no. 1/2006.

registration with the GR and the communication issued by the Surveillance Department, if such NBFIs comply with the registration criteria,.

In terms of GR and SR registration formalities and documentation, bottom line is that NBR is entitled to require all related documents it may deem necessary for the process. Registration with the SR does not certify the accomplishment of specific requirements for acceding to such Registry, but create an obligation in the charge of the NBFIs to comply with the special criteria provided by the primary and secondary legislation within a 30 day term.

CUSTOMS

New Customs Code

A transitory Customs Code shall be effective starting with June 18, 2006 and until Romania's accession to the European Union, when relevant European provisions shall fall due. The new Customs Code incorporates the EEC Regulations no. 2913/1992 on the EU Customs Code, save for aspects mainly related to institutional organisation and compliance regime, on which member states/future member states have free regulatory options.
The new enactment shall be followed by Customs Regulations.

New legal concepts

The Customs Code reclassifies the custom regimes into *economic* and *suspensive,* with practical consequences on their implementation, where mainly the implementation of an economic regime is conditioned upon the issuance of a permit by the customs authority.

As replacement to the former custom regime of "*import*" it shall be used the concept of *„release for free circulation of goods",* according to community provisions, thus being avoided the confusion between the use of generic term of „*import*" in other custom regimes.

In terms of their origin, one shall distinguish between goods which are *preferential* and goods which *or non-preferential,* distinction involving a preferential fee regime. This treatment also depends on Romania having concluded agreements for preferential fee regimes with countries where goods originate.

It is also extended the possibility to trade goods under a free area regime, the new Customs Code providing the concept of *free customs bonded warehouses.* Such warehouses shall be set by means of custom authority decisions.

Customs authority to benefit of extended competencies

This is particularly true in respect of customs control of fixed and movable goods anywhere on the Romanian territory. Moreover, the special area falling under the customs supervision shall be extended to 30 sq. km being understood that within such area the authorities may take special actions, including investigations and controls without prior notice. Custom debts shall be

deemed as receivables of the relevant customs office and shall be accordingly booked.

Customs Authorized Agents

It has been introducing the institution of *custom authorised agents*, which may benefit from a simplified custom procedure, provided that they meet some requirements including financial good standing, a clean record, and appropriate logistics. By means of Regulations eligibility criteria and related benefits shall be detailed.

A Specific Jurisdiction

Aggrieved parties within the customs procedure are entitled to launch litigation against the authorities in accordance with administrative court rules as per Law no. 554/2004. Preliminary proceedings having as object matter the custom debts and related may be carried out in accordance with the rules set by Fiscal Procedure Code.