

# THE IP JOB AND THE GLOBAL ECONOMIC CRISIS

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**Abstract:**

*The activity range of the insolvency practitioner widens considerably, being able to play an important role in straightening out the entities found in a temporary financial distress. The IP's role shall change in a significant manner, the IP being transformed, from a simple executor of the legal provisions, into a real negotiator between the insolvent debtors and their creditors. The entire global economy has been affected by the loss of trust in the financial system, with major repercussions on the severe loss of liquidity, on the rise of the interests' rates and, implicitly, on the rise of the internal and external financing costs. This crisis is not a reversible one, in that we shall not return to where we've started, when it will be overcome.*

**Key words:** global crisis, economy, IP job

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Romania's adhesion to the European Community has implied the Romanian legislation's transformation into a compatible one to the UE regulations. A significant importance was given to the insolvency field because it was considered that it didn't deliver adequate mechanisms for the elimination off the market of the ineffective companies, on one hand, and for supporting the ones that are temporarily in a financial crisis state, on the other hand.

Following these observations, a new insolvency code was adopted and a new regulation concerning the insolvency practitioners' activity.

Unlike many states of the European Union where the IP profession is open to all lawyers, without any specific regulations, in Romania this profession is ultra legislated:

- OUG no. 86/2006 approved with alterations and completions by the no. 254/2007 Law on the organization of the insolvency practitioners' activity;
- The organization and functioning statute of The National Union of the Insolvency Practitioners from Romania(UNPIR);
- The professional ethical conduct and discipline code of UNPIR.

In Romania, to be appointed IP, the candidate has to cumulatively fulfill 3 positive conditions and a negative one:

- to hold a higher education degree, long-term education in law, economic sciences or engineering
- to have 3-year experience in legal or economic sector from the date of earning the higher education degree, long-term education
- to have passed the examination in the IP profession
- not to be under any of the circumstances of indignity expressly provided for.

The admission into profession is a very rigorous examination, organized once a year, at a national level by UNPIR. The examination domains consist of law, management, evaluation and accounting.

The persons who have been condemned for committing intentional crimes capable of harming the profession's prestige and those who have been forbidden the right to manage and to administrate a company are considered unworthy and are denied the access to the profession.

Upon the pass of the examination, the candidate has to register in the IPs Table, to conclude a professional liability insurance, to take a written oath. The UNPIR table has a subsection for the trainee insolvency practitioners.

Following the passing of the already mentioned examination the candidate will perform a traineeship that lasts two years. The trainee is not allowed to work independently, the legal solution being to work as an employee or as collaborator of a definitive insolvency practitioner or of civil professional company. During all this period the trainee cannot acquire the partner quality in a professional company.

The traineeship ends with a tenure examination, the trainee being obliged, within a five year term, to sustain and to promote this examination, under sanction of radiation from UNPIR Table.

The tenure examination consists of a case presentation from the trainee's practice. In evaluating the trainee there will be taken into consideration both the oral exam and the paper deposited by the traineeship's conductor. At a national level there are 227 traineeship conductors.

In October 2007 took place the first examination for the licensing of IPs under the new conditions stipulated by the aforementioned laws.

In certain circumstances the practitioner quality can be definitively acquired without covering the already mentioned steps. There will be welcome into profession, exempted from examination, the syndic judges that have exerted this function consecutively for 5 years, if they file a request within 1 year since they stopped being magistrates.

Private or legal persons holding citizenship, and nationality, respectively, of an UE Member State or belonging to the European Economic Space may become IPs under the same conditions as Romanian citizens.

The foreign persons' regime, natural or legal, which possess the IP quality and intend to carry out this profession on the Romanian territory, is different depending on their affiliation to the UE.

Citizens of an EU Member State or of the European Economic Space that have acquired the IP quality in one of such states may register in the UNPIR Table, being exempted from the examination procedure.

UNPIR automatically recognizes the document issued by the competent authority of the UE Member State or of the European Economic Space upon which the citizen of such state may practice legally the profession of IP.

Persons established in a non UE State may acquire the UNPIR member quality, if in their residence state they possess this specialty, certified by the professional acknowledged entities or the public entities that authorize them, under conditions stipulated in bilateral conventions.

If a foreign IP, coming from a UE state or the European Economic Space, practices insolvency specific activities, only on a temporary or occasional basis, he will be exempted from the registration procedure in UNPIR.

In Romania, only natural persons organized in individual offices, associated offices, civil professional enterprise of insolvency practitioners (SPPI), individual professional enterprise with limited liability (IPURL) or professional civil firm with limited liability (SPRL) may practice this profession.

1. The individual office is established based on the decision of the IP. The assets brought as contribution represents its patrimony and is subjected to the rules of the professional assets for allocation.
2. The Associated offices are established through the association of individual offices.
3. The SPPI is established by a civil society contract.

4. Exceptionally, it may be established an IPURL with a sole partner IP.
5. SPRL is established upon a society contract, arisen from the association of at least 2 IPs. This association may have as unique activity the exertion of the insolvency practitioner's profession. The capital share of a SPRL represents the equivalent in RON of minimum Euro 10.000; the contribution of the partners can be brought in cash, in kind and in industry. The coordinating partners are the legal representatives of the SPRL in relation with third parties.

IPs, individual offices, associated offices, SPPI, IPURL and SPRL are registered with UNPIR and the UNPIR Table is published yearly in the Official Gazette (MO) of Romania, part 1.

Therefore the IPs can exert their profession as independent natural persons or as partners, collaborators or employees of a professional society having legal personality.

The insolvency practitioners, natural persons, exert this profession in individual offices, associated offices or civil professional societies – SPPI, without legal personality.

The legal persons organize and function as SPRL and IPURL, both having legal personality.

The range of activities conducted by an IP regardless the organization form is strictly limited to proceedings on:

- Insolvency
- Voluntary or amicable arrangements
- Insolvency prevention under applicable laws, including the actions of financial supervision or special receivership.

IP may also conduct appraisals ordered by criminal bodies or by law courts in cases regarding the development of actions related to insolvency procedures, voluntary and amicably arrangements.

The judicial administrator is the insolvency practitioner, appointed to exert the attributes stipulated by the law or by the court, in the insolvency proceedings, during the observation period and during the reorganization's proceeding's period.

The liquidator is the insolvency practitioner, appointed to conduct the bankruptcy proceedings, both in general procedure and in the simplified one.

The insolvency practitioner profession is incompatible with a salaried activity in other professions' framework, excepting the didactic academic activity in law and economics.

The insolvency practitioner is allowed to also possess the following qualities: lawyer, consultant, expert accountant, authorized accountant, evaluator, financial auditor, arbitrator, mediator, conciliator and financial expert.

The IP's main tasks are:

- The non-concurrence obligation which implies his abstaining from any unloyal concurrence or any anti-concurrent practice;
- To exert his attributions personally, the IP cannot delegate to other persons his attributes stipulated by the law or determined by the syndic judge;
- The professional confidence;
- The payment of its annual contributions;
- To conclude professional insurance.

The IPs are liable for the disciplinary violations they commit, being sanctioned with punishments up to the definitive expulsion of the UNPIR, accompanied by the IP quality loss.

In Romania, the IP's disciplinary violations are ruled by the discipline commissions, and if one IP is not pleased with the decision made by the commission, he can address to the court.

Since the number of successful reorganizations in Romania is extremely small, it was felt the need to normatively sanction new alternative solutions, out of court, to prevent the insolvency state of the debtor that finds himself in a temporary financial difficulty phase. In present, the preventive concordat Law is in a project state. This project, establishes the conciliator as a person who will bring both the debtor and his creditors to an agreement acceptable for all the involved parties. The conciliator shall be a professional, insolvency practitioner, member of a professional body that guides his activity upon a deontological strict code.

After the enforcement of this law, the activity range of the insolvency practitioner widens considerably, being able to play an important role in straightening out the entities found in a temporary financial distress.

If until now, the insolvency practitioner's entire activity was conducted in the private law, concerning mainly the merchants, a new law project opens the access to the public law. In 2006, in the local public finances' Law, were introduced 2 articles, regarding the "financial crisis" and the "insolvency" of the public administration territorial unit, which were to be enforced in January 2008. In March 2008, in a Emergency ordinance it was stipulated that the coming into force of those 2 articles shall take place simultaneously to the coming into force of their special application law. To the date, the law on the financial crisis and the administrative territorial units' insolvency is still in a project phase. There goes without saying that this project does not aim these units' dissolution but the taking of some recovering measures by its manager, together with the judicial administrator appointed by the court.

Also, the legislator has on his agenda the insolvency of the non traders, of the simple physical persons, especially seen on their quality of goods and credits consumers.

As we've already stated the IP's role shall change in a significant manner, the IP being transformed, from a simple executor of the legal provisions, into a real negotiator between the insolvent debtors and their creditors.

The organization of insolvencies, on time and in a professional manner, represents a prophylactic operation for the economy's alive organism, but also a chance for the economic agents, affected by the lack of liquidities, to redefine themselves. Naturally each subject, that shall not be able to cope with its exigible debts, shall imply for the IP the finding of various solutions, with the purpose to reorganize its activity, and even ingenuity on the perspective of liquidation.

A market economy implies cyclic movements with rise and decline sequences. The entrepreneurial spirit raises the economy, but it also can place it on a descendent slope. This reality reflects the functioning way of the free markets.

The entire global economy has been affected by the loss of trust in the financial system, with major repercussions on the severe loss of liquidity, on the rise of the interests' rates and, implicitly, on the rise of the internal and external financing costs.

Central banks were forced to massively inject money on the majority of the developed markets of the world.

The surveillance rules of the financial markets were hardened and, alongside, the risks of the investments were revaluated. Panic has increased and, together with, has grown the foreign investors' aversion against risk. The global shares transactions have diminished on the last trimester of 2008 by 37% compared to the same period of 2007(information taken from Stock Exchange's Bucharest site).

Global financial markets experienced a new wave of gyration in February 2009 as a result of heightened uncertainty about the viability of banks in major developed countries and intensified financial stresses in Central and Eastern Europe. At the same time, the adverse impact of the global financial crisis on economic activity continued to deepen, unemployment is escalating worldwide, accompanied by an increased number

of reported incidents of social unrest, such as strikes and demonstrations. Meanwhile, many countries are seeing a rapid deterioration in their government revenues.

The global imbalances are unwinding in a disorderly and recessionary fashion, implying a retrenchment of imports in deficit countries and a decline in exports in surplus countries, accompanied by a collapse of world trade. Such an abrupt and counter-productive adjustment of global imbalances could precipitate heightened uncertainty and volatility of exchange rates among major currencies.

The impact of the sharp decline in activity on government revenues coupled with the substantial fiscal stimuli and financial sector bailouts enacted by many governments is resulting in major deteriorations in budget positions, which has already led to a significant increase in sovereign debt spreads.

In February 2009, the currencies in Eastern Europe plunged after a massive asset sell-off as investors became worried about the sustainability of external debt. A large share of credit in the new EU member States is denominated in foreign currencies and the banking sector persistently rolled over short-term debt, channeling funds into long-term loans, especially mortgages. The devaluation of the Eastern European currencies and weak export prospects will complicate the repayment of loans and the massive withdrawal of capital by foreign investors threatens the stability of the financial system. The European Bank for Reconstruction and Development, the European Investment Bank and the World Bank announced their decision to allocate 24.5 billion euros to the new EU members to restore credit flows and to support small and medium-sized businesses. During their 1 March summit, EU leaders rejected the proposal by Hungary for a 190 billion euro aid package for Eastern Europe and pledged support on a case-by-case basis for these countries.

This crisis is not a reversible one, in that we shall not return to where we've started, when it will be overcome.

In the last Periodical Economic Report UE10 of the World Bank (The Periodic Economic Report UE10 is published three times a year and monitors the macroeconomic tendencies and the evolution of the reforms from the UE10 countries. The UE 10 countries are: Bulgaria, the Czech Republic, Estonia, Latvia, Lithuania, Poland, Romania, Slovakia, Slovenia and Hungary) is stated that "the economic raise perspectives, on the European Union countries, continue to diminish".

The straightening out perspectives are somber because the economies of the European Union countries are confronted with the challenges of a crisis manifested at the level of international liquidities and with risks of the vulnerable banks. The impact shall be felt increasingly conspicuous on the real economy.

The above mentioned report has shown that, compared to other countries, the new members of the European Union were struck by the economic crisis when they were already weakened, having big public debts, reduced foreign currencies reserves, stiff currency exchanges and banks depending on the savings kept abroad.

It goes without saying that we've entered an international era of increasing regulations on the financial markets with all its consequences, and from the states' perspective – into a period of prolonged increased inflation and high deficit.

It's premature to see all the details of the financial crisis and the impact on Romania because, the crisis' potential is pretty high and it's very likely that some of the elements that configure the present world system might change.

Without being specialists on this field we can state that Romania has been plainly struck by the global economic crisis, since more and more autochthonous companies find themselves on the situation of closing their business. This situation is demonstrated by the increasing number of insolvency dossiers on 2008, that indicates a rise of 65% compared to 2007, accordingly to the numbers received from the Office of the National Trade Register. If, in 2007, at a national level, 8297 companies weren't

able to cope with their exigible debts, in 2008 none the less 14.483 companies entered the insolvency procedure.

The number of insolvency dossiers has begun to increase significantly starting with October 2008, when the effects of the international crisis were beginning to be felt in Romania too. At a national level, from 769 insolvency cases in September 2008, the numbers have increased with 150% up to 1.934 dossiers in October, this number being constant to present.

Since Romania shall not take any measure to improve the general state of the economy, we appraise that, in the next 6 months of 2009, the number of insolvency cases shall grow considerably. The National Union of Insolvency Practitioners from Romania states that, in 2009, shall be registered over 20.000 new insolvency cases.

Accordingly to the National Trade Register Office, in last year, the most affected by insolvency was the field of cars and home appliances, with over 6.500 insolvency dossiers. Second runner up was the field of processing industry with approximately 2.700 cases, followed by the building companies with approximately 1.400 insolvent companies.

In this framework of global financial crisis, if the survival efforts made by the actors on the economic market cannot be quantified, the numbers that indicate an unprecedented growth of the insolvency dossiers are, in fact, “a cry for help” of the economic agents.

It's obvious that the Romanian economy shall profoundly suffer due to the global economic crisis, that shall lead to the disappearance off the market of a significant economic agents number, and alongside, of a significant number of jobs. In this framework, the IP's role in the Romanian economy has become a very important one, since the IP, with high professionalism, shall have to find rescue solutions from the orbit of financial breakdown.

We maintain that the IP's efforts must be sustained by the legislator too, because the enforcement of a new Insolvency Code it's becoming crucial in 2009, when the biggest number of bankruptcy cases in the modern history of the Romanian economy is expected.

## **REFERENCES**

The Organization of the Insolvency Practitioners' Activity Law no. 254/2007

The Insolvency Law no.85/2006

The Report concerning Global Development in 2009

[www.bvb.ro](http://www.bvb.ro)

[www.onrc.ro](http://www.onrc.ro)

[www.unpir.ro](http://www.unpir.ro)

[www.worldbank.org](http://www.worldbank.org) “The Periodic Economic Report UE10 2009 of the World Bank”