

# JUDICIAL REORGANIZATION – SOLUTION FOR CRISIS PERIODS

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**Abstract:**

*Currently in the Romanian economic landscape the insolvency phenomenon began to be increasingly better known to the business community first through the impact on business partners from different areas of the industry, and then through the personal experience. For creditors supporting a reorganization plan with real prospects of recovery and covering claims proves to be advantageous especially in current market conditions.*

**Key words:** *Insolvency, Recovery, Judicial reorganization, reorganization plan*

**JEL classification:** M41

According to the Law 85/2006 on insolvency procedure, the general procedure applies to all categories of commercial companies' debtors; companies; cooperative and agricultural organizations, economic interest groups and any legal persons governed by private law that also carry out economic activities.<sup>1</sup>

For an entity to be able to propose a reorganization plan for the continuation of business and payment of creditors, it must meet the minimum conditions, respectively to have in its patrimony assets with which it can continue operating, to conduct accounting records and the manager of the debtor company, as well as the headquarter of the company to exist, to be found and to provide to the court the documents under article 28 paragraph 1, within the period prescribed by law.

In the given economic conditions, the possibility of recovery of assets for the debtor in insolvency procedure is neither viable nor short term.

The assets' price has fallen and as a consequence the value of guarantees provided by the debtor in favor of creditors has been correspondingly reduced.

If after a long period of time in which bankruptcy was the best method of privatization, given the high price of assets covering significant percentages of the list of creditors, we are witnessing a repositioning of priorities, focusing on reorganization and the methods insolvency prevention, on the spot mandate and preventive concordat.

The reorganization strategies have a particular importance not only in the economic and social context, “intensification of competition due to globalization, technological and technical progress, the high costs of capital and other factors determine increasingly more companies to go through difficult periods.”<sup>2</sup>

Along with the financial crisis which included our country, it brought with it some of the special features of the causes of insolvency, that raise a number of issues related to the claims' categorizing, the way of extinguishing them, or their priority level.

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<sup>1</sup> Legea 85/2006 privind procedura insolvenței art.1 alin.1 (Law 85/2006 on insolvency procedure, article 1, paragraph 1)

<sup>2</sup> Lupulescu Ana-Maria, Reorganizarea societăților comerciale în contextul integrării europene, Editura Wolters Kluwer, 2010, pag.5.

Although according to the law, the insolvency practitioner is obliged to make all arrangements for market exposure of the assets that want to be valued, the methods of sale fail to leverage the maximum amounts resulting from their sale, or by selling them, creditors obtain values less than their claims' value, thus facing the situation where in the case of bankruptcy they recover only a portion or even no claim against the debtor, especially in the case of unsecured creditors.

Proposing a reorganization plan and its approval by the creditors are important stages in the insolvency procedure, because most of the times the proposal of a reorganization plan depends on the creditors regarding its approval, a situation rarely met in practice because most times creditors don't approve the proposal, and the entrance to the simplified procedure is only a matter of time.

Furthermore as the procedure requires more time, its administration costs increase, in the detriment of all creditors, from the amounts resulting in the course of the procedure, the costs of the procedure will be covered mainly, so including those costs necessary for the conservation and management of the assets in the property of the debtor and those involved in the evaluation and exploitation of the debtor's assets.

But at the moment opening the general insolvency procedure and the judicial reorganization represent a method more viable than the simplified procedure of bankruptcy.

Opening the insolvency procedure may be advantageous for the debtor as follows:

- opening the insolvency procedure suspends any action for the recovery of claims against the debtor, the debtor will have a period of leisure by opening the procedure for the payment of creditors;
- suspension of any accessories unfolding (interests, increases or penalties) for unsecured claims prior to the initiation of the procedure and for the unsecured parties of the guaranteed claims;
- the judicial actions introduced by the judicial manager in order to recover claims against the debtors of the company in insolvency will be exempt from payment of stamp fees;
- any service provider is not entitled to during the observation period and reorganization period, to change, to refuse or to temporarily discontinue such service to the debtor, if he has the captive consumer quality;
- the possibility of maintaining some contracts by the judicial manager, regardless of the contract's option, naturally in circumstances strictly determined by the law.

Subject to voting the reorganization plan by creditors and the confirmation by a bankruptcy judge, the reorganization plan brings the following advantages for the debtor:

- the possibility of paying the remaining debts over a period of 18 months from the confirmation of the plan, this period may be extended by not more than a further period of one year, with the vote of 2/3 of the creditors remaining in balance;
- the possibility of reducing the amount of some claims, provided that these categories of claims to receive as much as they would have received in the event of the debtor's bankruptcy;
- the possibility of eliminating certain categories of claims, provided that these categories of claims have not received anything in the case of the debtor's bankruptcy;
- the possibility of saving the business and continuing the activity, relieved of remaining debt at the date of the confirmation of a reorganization plan, the debtor is discharged by the difference between the value of the obligations which he had before the confirmation of the plan and the one provided in the plan.

The reorganization plan will specify what organizational measures will be taken for its implementation as well as whether it will keep all or part of its business management, including the right of disposition over the property of his patrimony, its supervision being the task of the judicial manager appointed under the law.

It will also present the financial resources to support it, as well as their sources of origin.

The solutions from the proposed reorganization plans may include a proposal to liquidate some assets from the debtor's patrimony, for finding financial sources to support the plan and the continuation of the debtor's activity without the need for those assets.

Below we present a study made by COFACE Romania regarding the situation of bankruptcies and their share on activities (see table no. 1), as well as a situation in terms of the number of effective companies that judicially reorganized in 2010, based on the data provided by the National Trade Register Office.

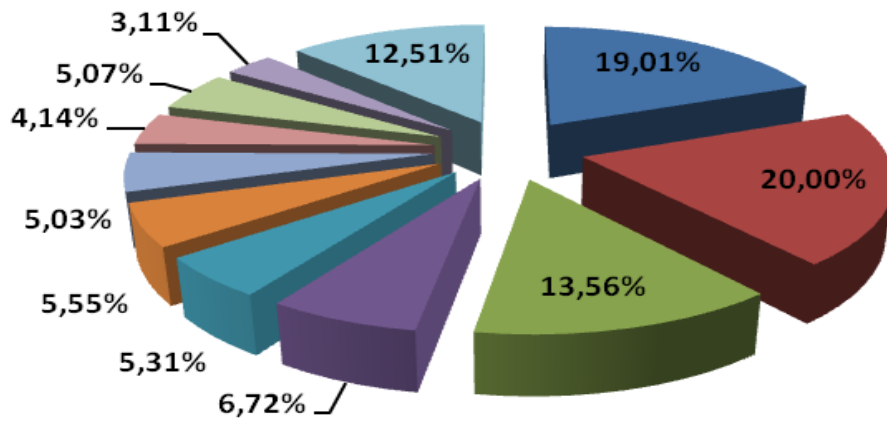
Table no. 1

The composition of companies in bankruptcy by sectors of activity

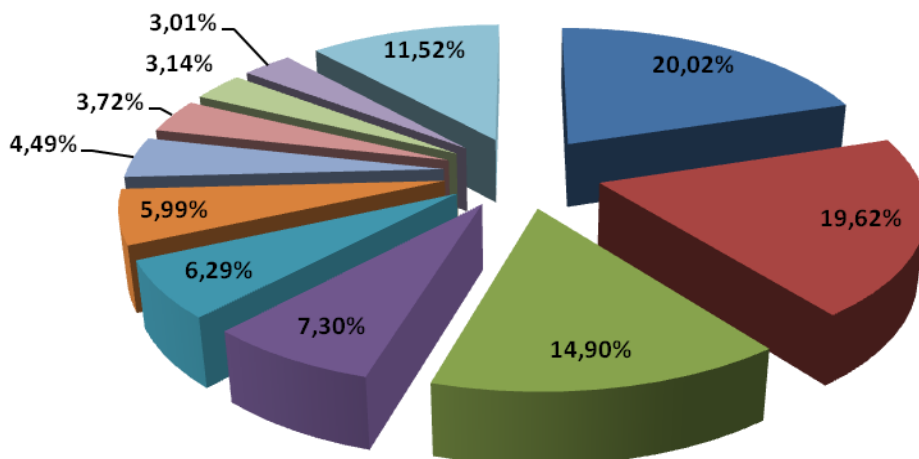
Sector of activity	Total bankruptcies 2009	Total bankruptcies 2010
Retail trade	3.501	4.262
Wholesale and distribution	3.684	4.178
Construction	2.497	3.172
Transport	1.237	1.555
Other service activities provided in the main companies	979	1.340
Hotels and restaurants	1.022	1.275
Wood and wooden products manufacturing	927	955
Textiles, clothes and shoes' manufacturing	762	793
Agriculture	934	668
Food and beverages industry	573	641
Metal industry	496	625
Real estate transactions	281	366
Other personal service activities	204	279
Recreational, cultural and sportive activities	157	260
Chemicals and chemical products' manufacturing	223	216
Drainage and waste removal, sanitation and similar activities	206	198
Financial intermediation	139	197
IT	172	193
Machinery and equipment industry	166	171
Postal services and telecommunications	129	139
Extractive industry	54	101
Health and social assistance	47	70
Production and supply of electricity and thermal energy, water and gas	31	38
<b>Total</b>	<b>18.421</b>	<b>21.692</b>

The total number of insolvency cases includes both the cases opened in 2010 and the files contained in the balance at January 1, 2010, coming from previous years and still unresolved.

### Bankruptcies share by sector in 2009



### Bankruptcies share by sector in 2010



- Retail trade
- Wholesale and distribution
- Construction
- Transport
- Other service activities provided in the main companies
- Hotels and restaurants
- Wood and wooden products manufacturing
- Textiles, clothes and shoes' manufacturing
- Agriculture
- Food and beverages industry
- Other

Figure no. 1 – Top 10 industries in terms of the number of bankruptcies at 31.12.2009 and 31.12.2010

From the COFACE analysis, conducted on the basis of the data provided by the National Trade Register Office, results that in 2010 a total of 21.692 companies were in various stages of the insolvency procedure. Of these, 10.377 companies were in general

insolvency procedure, 5.104 in simplified insolvency procedure, 5.482 in bankruptcy, 702 in insolvency and 27 in judicial reorganization.

According to the data provided by the Trade Register: it can be seen that the number of bankruptcies registered in 2010 increased by around 17.76% compared to the number bankruptcies from 2009, when there were registered 18.421 cases of insolvency.

The first three positions of the classification - retail trade whole sale and constructions - remain unchanged for the third consecutive year, in terms of representative sectors and focus mostly the number of insolvencies registered in 2010, respectively 53,53%, a stabilization of the level registered in 2009, of 52,56%.

## CONCLUSIONS

From the statistical analysis performed, results that in the Romanian society, there are extremely few companies that are in juridical reorganization, since the approval of a reorganization plan depends on the creditors, and they are skeptical regarding their possibility to pay over a period of about 3 years the existing debt, if they have not been able to pay their debts in the current course of the debtor activity in insolvency.

Judicial reorganization depends on the financial and technical resources held by the company, and its possibility to find these resources if they are not available.

There is the possibility that the debtor in insolvency could become immediately free debt and the possibility that he pays these debts to the predetermined deadlines, sometimes stopping increases and penalties for delays.

The company may find an outlet market and it doesn't have to sell its assets at derisory prices in the current conditions of economic crisis.

Judicial reorganization maintains the current workplaces of employees without contributing to the increase of unemployment among the Romanian population.

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