

INSOLVENCY OF THE TERRITORIAL ADMINISTRATIVE UNITS IN ROMANIA

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Abstract:

The insolvency of the territorial administrative units is a recent concern of the Romanian Parliament; the normative act concerning that subject has been passed in year 2013. It entered in force as consequence of the pressure of the International Monetary Fund, which imposed a series of conditions to Romania in view of concluding a new Framework Agreement. That law stands out given its incoherence and certain aspects that will lead to implementation difficulties. Beginning with the model of Law no. 85/ 2006, a possibility of restructuring the territorial administrative units that face financial difficulties was created.

Key words: insolvency, administrative units, restructuration

JEL Classification: K22

Introduction

In year 2006, by Law no. 273 concerning the local public finance, the Parliament undertook the obligation, according to article 85, for in 6-month time to adopt specific legislation concerning the insolvency of territorial administrative units (TAU). Certainly, the Parliament's attention was not focused on that direction for years in a row although the legislation concerning the commercial insolvency domain had been adopted almost 10 years before (Law no. 85/ 2006) and has been subject to numerous modifications until now.

With the emergence of the economic crisis, the insolvency procedure was just a way of finding out a fact situation, namely the failure of Romanian companies in paying off the growing debt. More and more companies have used the insolvency procedure to make their debtors react and pay their debts, but through the effects of the economic crisis, most companies haven't succeeded that in an amicable manner and they entered the insolvency procedure¹. The territorial administrative units did not benefit for a long time of the privilege of a specific legislation in the insolvency domain.

Considering the need to conclude, in 2013, a new Agreement with the International Monetary Fund, Romania was bound to diminish the arrears registered by the territorial administrative units to the good, service, and work suppliers. That was the time when the Parliament passed the Government Emergency Ordinance no. 46 of May 21, 2013² concerning the financial crisis and insolvency of the territorial administrative units. The tense state in which that normative act was passed, due to reasons concerning the requirements imposed by the International Monetary Fund, led to the entering in force of a law with an extremely poor quality as regards the legislative technique (It uses some terms that were subsequently waived by the entering in force of the New Civil Code and of the Civil Procedure Code).

¹ Nagy, Cristina Mihaela(2012). *Financial recovery and bankruptcy of insurance and agricultural companies in the conditions of the financial crisis*, Lucrări Științifice ale Simpozionului, Seria I, vol. XIV, Section 3: Agricultural finance, accounting and legislation section, p. 195

² Government Emergency Ordinance no. 46/ 2013 concerning the financial crisis and the insolvency of territorial administrative units was published in the Official Bulletin of Romania no. 299 of May 24, 2013

Financial crisis and the insolvency

The Government Emergency Ordinance no. 46/ 2013 sets out the general framework and the collective procedures that can be used for covering the liabilities of the territorial administrative units.

The two procedures named financial crisis and insolvency are vital for defining the insolvency of territorial administrative units. Both procedures can be used by those entities when facing financial difficulties. Both procedures can be used when the patrimony of TAU registers financial difficulties by the acute lack of available money, which leads to not paying the due and payable payment obligations, for a certain period of time. Those two procedures are separated by the total amount of the receivables, as well as by their oldness. For declaring the financial crisis procedure, the TAU's receivables must surpass 15% of the general budget and be older than 90 days. For beginning the insolvency procedure, the TAU's receivables must surpass 50% of the general budget and be older than 120 days, without considering those in commercial litigation.

The financial crisis is a purely administrative procedure that the decision-making authority can initiate, which as consequence of that decision authorizes the main credit release authority to draft a project of the financial recovery plan. The purely administrative character of that procedure must not lead to the conclusion that the financial crisis is a mandatory preceding phase for beginning the insolvency procedure. As consequence, if a TAU finds that the conditions for beginning the insolvency procedure are met, it can use it without the financial crisis state being declared.

The person bound to notify the financial difficulties that impose declaring the financial crisis state is the main credit release authority; if he is ignoring them, he will be punished according to article 114 paragraph 1 of the Government Emergency Ordinance no. 46/ 2013. The possibility to notify the financial crisis state is also granted to other persons such as the head of the accounting financial department, the secondary and tertiary credit release authorities, sundry creditors, etc.

In 5-day time since passing the decision of finding the crisis state by the decisionmaking authority,

- the main credit release authority is bound to request that it is registered in the register of financial crisis situations of that TAU, which register is coordinated by the county directorates general of public finance.
- the crisis committee is created by an order of the prefect and it is made up of the mayor / the president of the county council, the head of the accounting financial department, the manager of the public local concern office that generated the crisis state, a representative of the decision-making authority, a representative of the county directorate general of public finance, and a representative of the associative structure of local public administration authorities in which the concerned TAU is included.

The committee will draft the recovery plan according to the project drafted by the main credit release authority. The approaches that will be made for ensuring the supplying of vital public services during the application of the plan – article 5 paragraph 4 of the Government Emergency Ordinance no. 46/ 2013 – are vital for that plan. The plan is approved in 3-day time since having been drafted, by the decision of the decisionmaking authority according to the proposal of the main credit release authority. The decision-making authority will approve it in 5-day time since having been submitted. If it is not adopted, the decision-making authority will revise it and if it will not be adopted after being revised, the plan will be deemed approved in the form proposed by the initiator. After being approved, the plan will be implemented mandatory, and the main credit release authority will send monthly reports to the decision-making authority and the crisis

committee, with comments concerning the observing of the plan and fulfilling the measures set out by the plan.

The cessation of the financial crisis is declared by a decision of the decision-making authority with the consultative endorsement of the crisis committee if during a 180-day term the criteria that led to the declaring the financial crisis were no longer visible. In the case when the approaches provisioned in the plan do not lead to recuperating the financial situation and the criteria required for declaring the insolvency state are met, the territorial administrative unit will be submitted to that procedure.

Until the date of this document, April 1, 2015, the next TAUs have been registered with the Ministry of Public Finance as being in the financial crisis procedure:

- Capu Campului commune, Suceava county, on May 22, 2014, the value of payment obligations was Lei 364,000 representing 17% of the total expenses of the centralized general budget of TAU.
- Sacelu commune, Gorj county, on May 23, 2014 the value of the payment obligations was Lei 1,025,000 representing 32% of the total expenses of the centralized general budget of TAU.

The insolvency procedure of the territorial administrative units is judicial and in it the courts of law, syndic judge, judicial administrator (the liquidator misses because the bankruptcy procedure is excluded), the main credit release authority of that TAU, and the decision-making authority (local council or county council) participate.

The request of beginning the insolvency procedure can be submitted only by the debtor by its main credit release authority, to which the documents set out in article 55 of Government Emergency Ordinance no. 46/ 2013 must be attached, or by the creditors. The documents that must be submitted with the petition of beginning the insolvency procedure are the approved budget and copies of the financial – accounting reports concluded until the end of the previous month, list of patrimony assets, list of creditors, list of patrimony payments and transfers made during the 120-day term prior to submitting that petition, and the list of vital public services that the territorial administrative unit will supply.

The clarification that must be brought is that in that case the county directorates general of the public finance manage a local register of insolvency situations of the territorial administrative units. That register, which is a public document, is permanently published and updated on the website of the Ministry of Public Finance.

The main effect of beginning the insolvency procedure is that on the date of rendering the decision, all judicial and extrajudicial actions against the territorial administrative unit are suspended.

No interest, increase of penalty of any type or expense can be added to the receivables that appeared prior and subsequent to beginning the procedure and not guaranteed with a mortgage, pledge, another security, or any kind of retention right.

As well, according to article 67, beginning the procedure suspends any statute of limitation of judicial and extrajudicial actions for achieving the receivables of creditors against TAU.

The creditors of the territorial administrative unit will submit statements of receivables and a table of the creditors will be drafted, which can be then challenged. The employees of the specialty apparatus and those of local / county concern public institutions or service are exempted from submitting the statements of receivables no matter the financing form, whose receivables are registered by the judicial administrator according to the accounting books.

The judicial administrator together with the main credit release authority will draft the recovery plan in 30-day time since appointing the insolvency practitioner and it will be sent to all creditors.

In connection to the content of the recovery plan, it must comprise a schedule of paying the receivables to the creditors, approaches for restructuring the territorial administrative unit, modifications of the administrative apparatus, etc. The recovery plan can disfavor some receivables by modifications concerning the due date, the interest rate, and the penalties. Practically, the recovery will mainly mean re-echeloning, adjusting the receivable as regards the payment schedule, waiving some unessential services, as well as diminishing some costs.

For being submitted for approval, the plan must bear the approval of the directorate general of public finance and the endorsement of the territorial Court of Auditors. The recovery plan will be deemed approved if the vote of the majority of receivables will exist, which will represent 2/3 of the value of receivables.

After the creditors are approved, the plan will be allowed or rejected by the syndic judge when a term will be granted for remaking it. The plan must be implemented in maximum 3 years, a term that will begin to flow from the date when the syndic judge allowed it.

The electricity, gas, water, telecommunication and other similar service suppliers are forbidden that during the insolvency period change, refuse or temporarily cease the supplying of those utilities.

In view of obtaining available moneys, the judicial administrator is allowed to sell the goods that belong to the private area of the territorial administrative unit according to the recovery plan.

In the case when the conditions of the insolvency state of the territorial administrative unit are no longer met, as the law defines it, the syndic judge will give a decision of closing the procedure even if not all receivables included in the recovery plan have been paid. The receivables not paid during the insolvency procedure will be included in the recovery plan of the financial crisis state.

The persons responsible for administering the patrimony of the territorial administrative unit that contributed to that entity entering the insolvency state by committing illicit deeds can be held personally accountable for paying the debts.

Until the date of this document, April 1, 2015, the next TAUs have been registered with the Ministry of Public Finance as being in the insolvency procedure:

- Aninoasa town, Hunedoara county, on June 17, 2013, the value of the payment obligations was Lei 3,378,000, which represented 79% of the total expenses of the centralized general budget of TAU. On November 14, 2014, the procedure was closed with 0 payment obligations older than 120 days that had reached their due dates.
- Naruja commune, Vrancea county, on February 25, 2014, the value of the payment obligations was Lei 1,506,000, which represented 91% of the total expenses of the centralized general budget of TAU.
- Ardeoani commune, Bacau county, on January 10, 2014, the value of the payment obligations was Lei 5.314.084 lei, which represented 269% of the total expenses of the centralized general budget of TAU.
- Nabant commune, Tulcea county, data 31.01.2014, the value of the payment obligations was Lei 39,014,873, which represented 1008% of the total expenses of the centralized general budget of TAU.

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The normative act that regulates the insolvency of territorial administrative units stands out by new elements meant to protect the business environment and to offer a better management of the territorial administrative units. Thus, it can be seen the elimination of protection granted by the Parliament to the territorial administrative units by the Government Ordinance no. 22/ 2002 in connection to enforcing the payment obligations

of the public institutions set out by enforceable documents. Until the date when the Government Emergency Ordinance no. 46/ 2013 entered in force, it was forbidden the enforcement of enforceable documents if the amounts dedicated to that had not been approved in that institution's budget. Not few were the situations when the commercial companies that had contractual relations with TAUs entered the insolvency state due to the impossibility to recover the receivables from those institutions.

Another positive aspect of that regulation is the fact that there is a public register, which can be accessed online, of the territorial administrative units that are in the financial crisis or insolvency procedure. That register becomes particularly useful for the business environment given that declaring the financial crisis state is not mentioned on the documents issued by TAUs, and if the insolvency occurs, the "in insolvency state" comment will appear only on documents concerning their financial or patrimony situation.

It is also commendable the fact that the TAU insolvency aspects were built on the scaffold of Law no. 85/ 2006 concerning the insolvency, the attributions of participants in that procedure being to a great degree similar, with some exceptions.

The normative act concerned can also be criticized. As indicated, the haste by which that document was passed led to a poor quality of the legislative technique, being used terms that the Parliament waived by the entering in force of the Civil Code and Civil Procedure Code.

In connection to the legal provisions in the financial crisis of TAU domain, although the financial crisis plan is well regulated in connection to its drafting, the Parliament set out no term for fulfilling that operation. Also in that context, one must state that there is no punishment for the decision-making authority that, finding out that the conditions for declaring the financial crisis were met, makes a decision to the contrary.

In connection to the legal provisions in the TAU insolvency domain, the opportunity control given to the syndic judge stands out; it is the possibility to terminate all approaches ordered by the judicial administrator, even if they have not been challenged. It must be emphasized that in the common law of insolvency (Law no. 85/ 2006 and the present Insolvency Code) the judge exercises an exclusive lawfulness verification.

As well, the distribution of moneys obtained by the partial selling of TAU's patrimony refers only to two receivable categories, those guaranteed and those unguaranteed, the priorities set out in the common law of insolvency, those for the salary or budget receivables, being ignored.

Conclusions

Even if the regulation chosen by the Parliament for the financial crisis and insolvency of territorial administrative units domain can be criticized, at least the first step concerning that was made; its practical application will prove the effectiveness of the legal text. The need to regulate that domain was seen from its first application year. On the date of this document, there were only two TAUs in a financial crisis and some other 4 in connection to which the insolvency procedure was initiated.

As a conclusion, one can state that by the entering in force of that normative act, the insolvency domain encountered an unprecedented evolution. For the first time in the modern legislation, an instrument was given, which is now available to the territorial administrative units for surpassing the situations in which they face acute financial difficulties.