

ROMANIAN COMPANIES DURING PANDEMIC TIMES

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Abstract:

The economic, legal and political challenges of 2020 in Romania were exacerbated by the crisis situation generated by the COVID 19 pandemic, the effects of which are still difficult to predict.

The year 2020 can be characterized in one word: CRISIS!: the crisis of the medical system in Romania generated largely by the low level of investment in this field, the crisis of the education system unable to ensure access to all children to online education but also that economy crisis that led to the abyss the private businesses.

The restrictions imposed on the idea of stopping the spread of the virus has profoundly affected the Romanian companies, many of them existing now artificially, being supported by the state.

Keywords: *companies, COVID 19, restrictions, insolvency*

JEL Classification: *K22*

INTRODUCTION

Running any business involves taking risks in order to make a profit. Traditionally, the success of the business depends on a combination of factors. If a large part of the factors that influence any business are under the strict control of management (business strategy, business decision, marketing, planning, human resources, etc), the other factors exceed the control of management. The later target the economic, social, political, legislative environment and occur without prior notice, affecting the conduct of a business. It depends only on the ability of the managers to take quick and appropriate measures so that the company does not suffer deep shocks.

What happened in 2020 is not found in business books, was not mentioned in the factors that can destabilize a business, could not be anticipated by the most diligent manager and consequently had a disastrous effect. A new virus Covid 19, originally perceived as common respiratory infection has stopped the humanity in place!. Released in December 2019 in China, the virus has spread with fantastic speed worldwide, and in March 2020 most countries imposed restrictions on citizens in order to stop the spread of the virus.

The end of 2020 surprises the world in the same emergency situation, in the fight against a virus for which a vaccine is being sought. At the macroeconomic level, the states where deeply affected with huge financial losses, and at the microeconomic level the vast majority of companies are on the verge of insolvency or remain on the market with huge efforts.

Romania in pandemic times

On 26 February 2020 the first case of Covid 19 was diagnosed in Romania. In the context in which countries such as Italy or Spain were already deeply affected by this virus, and Romanian people were returning in large numbers to their home country from areas where the pandemic already existed, to limit infections in the community, a state of emergency was introduced in Romania on March 16, 2020¹. On 14 May 2020² with the end of the state of emergency and the decree of the state of alert, the restrictions imposed on citizens were greatly reduced. Relaxation of restrictive measures during the summer holidays ended with the return of employees to work and the resumption of school activities in September led to a record number of infections in Romania.

The economic, legal and political challenges of 2020 have been exacerbated by the crisis situation generated by the COVID-19 pandemic, the effect of which are still difficult to predict. This unstable economic situation produced real conversions with the installation of the state of emergency in Romania on March 15, 2020 for a period of 60 days, followed by repeated states of alert, which is still in force today³. This first decision to establish a state of emergency found Romanian society completely unprepared, - an identical situation in many countries of the world-, and if we potentiate this economic „apocalypse” with the medical crisis we cannot have an encouraging image.

At the same time, the pandemic revealed major deficiencies, derived mainly from the lack of investments both in the medical system in Romania currently over him, but also in the educational system, which is having great difficulty in ensuring all students access to the online education. In such a context of economic, educational and medical crisis, unprecedented in the last 100 years⁴, the reaction of the Romanian government may seem slow and slightly and inefficient.

The situation of the Romanian companies in pandemic times

The coronavirus pandemic has significantly affected the business environment in Romania, many companies being today in the survival zone without real financial resources in order to continue the activity.

The state of emergency ones established also came with numerous economic restrictions such as shutdowns of productive units, closures or suspensions of activity of service units. The most affected sector in Romania is tourism, which includes hotels restaurants cafés, but there is also a lot of pressure on the other sectors. Very quickly the world realized that the pandemic situation would last sometime and the consumption of non-essential goods for living have dropped dramatically. The significant decrease of the

¹ Decree of the President of Romania no.195/2020 on the establishment of the state of emergency on Romanian territory published in the Official Gazette of Romania, Part I no. 212/16 March 2020 and extended by Decree no. 240/2020

² Government Decision no.24 of 14.05.2020 on the approval of the establishment of the national alert status and of the measures for prevention and control of infections, in the context of the epidemiological situation generated by SARS-CoV-2 virus

³ Government Decision no. 1065 of 11 December 2020 o the extension of the alert status on the Romanian territory starting with 14 December, 2020, as well as the establishment of the measures applied during it to prevent and combat the effects of the COVID-19 pandemic

⁴ Spanish flu pandemic during 1918-1920 has killed somewhere between 20- 50 million people https://en.wikipedia.org/wiki/Spanish_flu

turnover, the decrease of the sales, the sudden degrees of the consumption of goods and service, the accentuated financial blockage are some of the reasons that led many companies to major financial difficulties.

The effect of these restrictions was quickly seen in the larger number of people who lost their jobs overnight. Moreover, the closure of preschool and school units forced parents to stay home to supervise their children. Even though the number of unemployed has increased rapidly in the pandemic, we appreciate that the real situation is not yet visible as the Romanian government has supported keeping jobs through technical unemployment or subsidizing some of the wages of employees.

The Romanian state has taken a serious economic, legal and fiscal measures to help Romanian companies to overcome the difficult period such as:

- Bonus for the advance payment of the profit tax/income tax of micro enterprises
- Postponement of VAT payment for importers of Corvid test kits, medicines and protective equipment for COVID-19;
- Postponement from March 30 to June 30, 2020, of the payment term for the building tax, for the land tax, respectively the tax on means of transport, as well as the term for granting the bonus for the advance payment;
- No interest and late payment penalties will be calculated for the fiscal obligations due after the date of entry into force of GEO 29/21 March 2020¹, unpaid until the expiration of a 30 day term from the date of cessation of the state of emergency, respectively 16 May 2020;
- Modification of the value of the partial advance payments for the taxpayers who declare the annual profits tax, article 8 of the Government Emergency Ordinance 29/2020. Taxpayers can make partial payment due in 2020 at the amount of profit calculated for the first quarter of this year;
- Technical unemployment benefits will be able to be reimbursed from the unemployment insurance budget, within the limit of 75% of the average gross earnings, for employees who reduced or temporarily interrupted the activity totally or partially during the state of emergency;
- Days off granted to parents for the supervision of children, in case of temporary closure of school, for all working days during the state of emergency with an allowance of 75% of the monthly gross salary, but not more than 75% of the average gross salary monthly at national level;
- Aid for SMEs in the form of postponed payments for utility services: electricity, gas, water, telephone and Internet services and the rent payment as well as state guarantees for loans and other grants;
- Suspension of enforcement measures in civil matter by Cesar of civil and commercial claims which has been extended from the state of emergency to the present day.

Even with those measures taken by the Romanian state, those who did not have financial reserves before the crisis or failed to reorganise their business during the crisis and relied only on state aid, with the elimination of protective measures will have to liquidate their business.

¹ Government Emergency Ordinance no. 29/2021 on some economic and fiscal- budgetary measures published in the Official Gazette, Part I no. 230 of March 21, 2020

Insolvency in pandemic times

In this difficult time, a part of the business community has opted for restructuring followed by a reduced supply of credit, lower operating cost to re-carpet recapitalize, laying off employees. One solution for many companies is to access insolvency prevention or insolvency procedure. Preventive composition with creditors¹ is a procedure that can be accessed by those in financial difficulty, as it would allow the coverage in a relatively short time of significant part of the receivables, in order to avoid bankruptcy. The debtor in this procedure may request to the syndic judge the temporary suspension of the forced execution, the suspension of the interest, the penalties, following that these will be suspended by right on the date of pronouncing the decision finding the composition.

The certainty of the establishment of these measures within the preventive composition procedure is preferred to the measures imposed by the state regarding which it is not known how much they will be applied.

As we have shown, the state has taken certain measures to support the survival of companies during the pandemic, but many of them remain on the market artificially, and once the state aid is stopped, they will go into insolvency. Given that the vast majority of measures are applicable until the end of 2020, an exponential increase in insolvency procedures is expected in the first half of 2021.

Naturally, the legislator also took a series of measures regarding the judicial system to ensure its functionality during the pandemic period. Thus, by Decree no. 195/16 March 2020, at chapter V, at art. 42 (1) provided that „during the state of emergency, the trial activity continues in cases of special emergency”. In art.42 (6) „the trial of civil cases other than those mentioned in paragraph 1, is suspended by right during the state of emergency, without the need to perform any procedural act for this purpose”.

Very quickly, the Superior Council of Magistracy, finding the non-unitary practice at the level of courts, by Decision no. 417/24 March 2020 included among the urgent cases that will be judged the request based on article 66 para (11) of Law no. 85/ 2014. Article 66 para (11) of Law no.85/2014 allows the syndic judge to order the temporary suspension of the procedures of force execution of the debtor’s assets until the solution of the request for opening the insolvency procedure is pronounced.

The provisions related to the full suspension of the civil trails initially cause confusion, given the complexity of insolvency cases in which the debtors business is administrated. The clarification was brought by the practice, so that only the insolvency proceedings trials were suspended by law for the entire period of the state of emergency from March 15 till May 15, 2020. Although the suspension of the trails leads to the ban on to perform any procedural act in that case, in reality it was not possible to freeze the administration of the insolvency proceedings. The insolvency procedure is a complex one, that involves a permanent activity of the insolvency practitioner, being impossible to stop the debtor’s activity from a managerial, operational, accounting, economic point of view.

The diversity and complexity of the problems in the insolvency cases, preventive settlement, judiciary reorganization, bankruptcy, observed by the insolvency practitioners, led the National Union of Insolvency Practitioners in Romania (UNPIR) to the decision² to intervene, in order to clarify some issues. Thus, the judicial administrators and liquidators, appointed in the cases have the obligation and the responsibility to continue

¹ Law no. 85/2014 on insolvency prevention and insolvency proceedings, Title I

² Decision of National Union Council of the Insolvency Practitioners from Romania at its meeting on 20 March 2020

exercising their mandate in good faith, with the adoption in the current activity of all the measures to prevent the spread of the coronavirus.

Thus, even if the files for the administration of the insolvency procedure were suspended by law, the managerial side of the procedure consisting in the activity of the insolvency petitioner was not stopped. Mention should also be made of the efforts made by the courts and practitioners, in the sense of streamlining the circuit of documents only in electronic format, strictly respecting the deadline imposed for their submission to the case files.

After the end of the state of the emergency, a state of alert was declared in Romania. In this context, the legislator had as a priority the establishment of temporary measures, valid during the alert period, in order to protect citizens. For this purpose, Law no.55/2020¹ on some measures to prevent and combat the COVID-19 pandemic along with other exceptional measures, was adopted.

In the 8th section of Law no. 55/2020 are provided the temporary measures, which will be applied during the alert state, which persist even today in Romania, in the field of insolvency. In Romania, the legislative framework in the field of insolvency is constituted by Law no. 85/2014 on insolvency prevention and insolvency procedure with subsequent amendments and completions.

According to art. 66 para (3) of Law no.85/2014 the debtor was obliged to formulate the request to open the insolvency procedure within 30 days from the occurrence of the state of insolvency. The 30 day period will start to run from the date of cessation of the alert state. Basically, the legislator comes to give help to the debtors in financial difficulty, a chance to recover the activity during the pandemic period, as they are not obliged to formulate the request to open the insolvency procedure.

Also, in the idea of supporting the business affected by the pandemic, the legislator at art. 47 Law no.55/2020 raised for both the debtor and creditor the minimum value for which it could be requested to open the insolvency procedure from 40,000 RON two 50,000 RON.

Additional conditions have also been imposed on creditors requesting the opening of insolvency proceedings. If before the pandemic the proof of a certain, liquid and due claim was sufficient, the legislator requires now the creditor to prove steps to conclude a payment agreement with the debtor who has interrupted its activity totally or partially as a result of the measures adopted in the state of emergency. It should be noted that this obligation imposed on the creditor only concerns debtors who have ceased their activity in whole or in part as a result of measures taken during the emergency period. The practical application of these legal provisions becomes difficult as it would mean that the creditor must notify the debtor to find out if in during the state of emergency it has partially or totally interrupted activity. Depending on the debtor's response, the creditor will find out whether he can make the request to open insolvency proceedings or is obliged to try to conclude a payment agreement with the debtor prior to the formulation of the request to open the solvency proceedings.

Only on July 8, 2020 in the Official Gazette Part 1 no. 600, Law no.113/2020 regarding the approval of GEO no.88/2018 for the modification and completion of some normative act in the field of insolvency and of other normative acts, at article 5(1) introduces point 12 index 1, being defined „the payment agreement” as the agreement

¹ Law no. 55 from 15 May 2020 on some measures to prevent and combat the COVID-19 pandemic along with other exceptional measures, published in Official Gazette of Romania no.396/15.05.2020

between the debtor and creditor regarding the settlement in one or more tranches of the obligations at other terms than the due according to the contractual or legal provisions.

In the composition with creditors procedure underway on the date of entry into force of Law no.55/2020, the negotiation term on the draft of the composition is extended by 60 days, the term for elaborating the composition offer by a maximum of 60 days, and in case of the debtor, which is in the execution of the composition plan, the term for satisfying the claims established is extended by two months, according to art. 49 of Law no. 55/2020.

The legislator also considered companies that were already insolvent. For those, an extension of terms was granted in the alert period.

If the debtor is on the date of entry into force of Law no.55/2020 during the observation period, it is extended by three months. It is also envisaged to extend by three months the deadline for submitting a reorganization plan. In the case of the debtor in judiciary reorganization, the duration of the execution of the plan is extended by two months. If the debtor in reorganization has completely interrupted his activity as a result of the measures adopted in the state of emergency, he may request the suspension of the execution of the plan for a maximum period of two months.

According to art.51 (3) Law no.55/2020 in the case of the debtor in judicial reorganization on the date of entry into force of this law, which ceased its activity totally or partially as a result of measures adopted by public authorities to prevent the spread of the Covid pandemic, the period of execution of the reorganization plan may be extended without exceeding a total duration of five years and may be amended accordingly.

By establishing this measure, we can see very clearly the intention of the legislator to support the companies in the reorganization, in finding economic and legal solutions during the alert period, in order to try to avoid going bankrupt.

If a reorganization plan was already submitted, but the new economic conditions during the alert period made it inoperable, it was allowed within three months from the entry into force of Law no.55/2020 to submit a new modified reorganization plan, notifying the creditors the intention, through the care of the judicial administrator, within 15 days from the entry into force of Law no.55/2020.

Although it seems a favourable provision for debtors, it is difficult to implement it in practice given the extremely short period of 15 days in which the intention to submit a modified plan must be notified.

We appreciate that the debtors who are forced to execute a plan prefigured in the normal economic period and not in the economic crisis are disadvantaged and the chances to obtain a modification of the plan is very hard to obtain from the creditors.

Analysing in the perspective of the efficiency and usefulness of the measures adopted by Law no.55/2020 regarding companies in financial difficulty during the alert period, we appreciate that, in principle, they respond to the desideratum formulated countless times by the Romanian Government to try to mitigate the social economic impact of the coronavirus pandemic. The immediate consequence of these measures can be seen and found at the end of 2020, when statistical figures show that the number of insolvencies is expected for the second half of 2020 has been greatly reduced. If those in financial difficulty have really benefited from these measures, in the sense of rethinking the business strategy, it will be observed in the first half of 2021.

CONCLUSIONS

So far, after 2 months in the emergency state and 7 months in the alert state, in the general context of the Covid 19 pandemic, we appreciate that only some palliative protection measures have been taken in Romania, through payments made by the state and the extension of some due dates for payments.

Romanian businessmen from the vast majority of economic fields are extremely cautious when questioning the economic perspective in the controversy the context of 2020, when the disturbing factor COVID-19 dominated and condition and in entire activity.

We consider that the measures taken in Romania during the pandemic in the field of insolvency, the vast majority of them consisting in the extension of some procedural deadlines, are not enough to effectively help companies that were already in financial difficulty. The same conclusion is required for small and medium size companies, which operated at the time of the establishment of the state of emergency and most of them reduce their activity by over 50%, in the state of alert, which is still existing today in Romania. Very few companies will survive when the state no longer protects them.

The year 2020 can be characterized in one word: CRISIS! There is no doubt about the impact of Romanian companies during the pandemic, but the real picture of the economic disaster will be outlined only in mid 2021.

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