

## RELEASE OF RESIDUAL DEBTS

LAVINIA-OLIVIA IANCU

„TIBISCUS” UNIVERSITY TIMIȘOARA, FACULTY OF ECONOMIC SCIENCES  
relicons@yahoo.com

**Abstract:**

*The global event- COVID 19 pandemic has profoundly affected both individuals and legal entities. If for legal entities, the inability to pay the debts ends with their deletion from the registers, the natural persons, regardless of the financial difficulties they face, they must continue their existence. One solution for the financially distressed individual is the release of residual debts allowed by the insolvency law of natural persons.*

**Key words:** *natural person, insolvency, debts*

**JEL classification:** K22

## INTRODUCTION

The COVID 19 pandemic, installed in Romania at the beginning of 2020, has had devastating effects so far for simple citizens both socially, economically and financially. The state has tried by adopting fiscal measures to support the citizens in overcoming this difficult period, but many have reached the situation of over-indebtedness.

For many years the literature<sup>1</sup> claims the necessity of a law to regulate the insolvency procedure of the natural persons who do not carry out a business activity, stating that a balanced procedure, devised on the basis of the *win-win* principle, in the application of a payment plan with the discharge of the residual debts on condition of the restitution of a significant percentage of the liability, the debtor would be jointly interested in making the effort of paying a part of the debt knowing that, in the end, he will be exempt from the remaining part, while the creditor would sustain a much smaller loss.

### Legal regulation

Law No. 151/2015 on the natural person insolvency entered into force as late as the 1st of January 2018. The methodological norms<sup>2</sup> for the application of Law No. 151/2015 on the natural person insolvency entered into force on the 1st of August 2017. The insolvency commissions at the local and central level were established by the

---

<sup>1</sup> R.Bușan, L. Bercea, A.Buta, C.Clipa, M. Comșa and others, Practical insolvency treaty, Ed. Hamangiu, București, 2014, p.1023

<sup>2</sup> The methodological norms for the application of Law No. 151/2015 on the natural person insolvency procedure, which were approved by the Government Decision No. 419 of the 9th of June 2017, published in the Official Journal of Romania No. 436 of the 13th of June 2017, entered into force on the 1st of August 2017.

Government Decision No. 11/2016. Law No. 151/2015 comes to regulate the insolvency of the natural persons whose obligations do not result from the operation of a company. Within such new context, the notion of insolvency acquires a legal definition sanctified by art. 3 point 12 of Law No. 151/2015: “the state of the debtor’s patrimony, which is characterized by insufficiency of pecuniary resources available for the payment of the debts, when they become due. The debtor's insolvency is presumed when, 90 days after the due date, the debtor has not paid his debt to one or more creditors.

The main purpose of this law is the financial recovery of the natural person debtor, so that the protection of the natural person who is in a difficult financial situation becomes a priority for the legislator. The normative act provides the natural person acting in good faith a series of procedures to be accessed so as to offer the opportunity to surpass the solvency issues with a view to the social and economic reintegration of such person.

The financial recovery of the debtor acting in good faith within the context of legal protection of the essential elements of his patrimony for the preservation of a decent living and with the possibility of total or partial debt discharge accounts for the legal framework that gives the insolvent natural person the opportunity of a fresh start.

### **Residual debts**

The notion of „release from residual debts” is a sophisticated one in order to be understood by ant natural person, so that in order to facilitate knowledge but also its importance in insolvency proceedings we consider that it could be replaced by the phrase: „unpaid debt forgiveness” or „economic rehabilitation of the debtor”.

The financial difficulty faced by the debtor cannot be overcome solely by suspending enforcements or accessories, or by granting longer payment terms, the essential thing being to cut off part of the debt for the bona fide debtor. Good faith is a central element of insolvency procedure of natural persons, which must characterize the debtor’s behavior before the opening of the procedure, during the procedure but also after the closure of the insolvency proceedings in order for him to benefit from the release of the residual debts.

The insolvency law defines in art.3 item 11 the release from residual debts as the cancellation, at the closure of the insolvency procedure based on a repayment plan, of the claims that exceed the coverage quota agreed by the repayment plan, the cancellation of the claims remaining uncovered at the end of the application of the simplified procedure, the cancellation of the remaining claims not covered after the period of post-closing supervision of the judicial insolvency procedure by liquidation of assets. The obligations of the co-debtors or third-party guarantors are not extinguished by the release of debts.

The debts concerned are those prior to the opening of the insolvency proceedings and do not include any debts that arose during the procedure. Access to insolvency proceedings by a debtor becomes a real problem for de co-debtors or third parties, because often the debtor’s family or other personas close to the borrower end up in financial difficulty because they have personally secured for the repayment of the loan or have left their assets as collateral. As the secured creditor has the right to claim the payment from co-debtors or third-party guarantors, in international doctrine<sup>3</sup> it has been proposed that national legislators consider increased flexibility in the treatment of those affected by the insolvency of the principal debtor.

---

<sup>3</sup> *World bank- Insolvency and Creditor/Debtor Regimes Task Force*, Report on the treatment of the insolvency of natural persons, Washington, 2014, p.143

From the legal definition it results that this institution of debt cancelation will be applied differently, depending on the type of procedure that was applied to the debtor but also on the behavior of the debtor.

### **The procedure**

Regardless of the form of the procedure, the request for release of residual debts will be made by the debtor, will be submitted to the court, which will rule by sentence. The sentence will be communicated to the debtor and the creditors and can be appealed within 7 days from the communication date. The decision will be published in the *Insolvency Proceedings Bulletin*.

The debtor who was subject to the procedure by repayment plan, who managed to pay the claims assumed by the plan, will be exempted from paying the claims corresponding to the amounts negotiated to be reduced when drawing up the plan. The request for the release of the residual debts may be submitted within 60 days of the issuance of the decision to close the insolvency procedure on basis of a repayment plan. The court will order the release of the debtor from residual debts, consisting in the value of the claims that exceed the coverage quota agreed by the repayment plan<sup>4</sup>.

The debtor who has been subject to the liquidation of assets procedure will continue to make payments after the closing of the procedure and will be released from a variable amount of debts depending on the length of time<sup>5</sup> in which these payments are made, as follows:

- If after one year from the date of closing the procedure, the debtor has covered a share of at least 50% of the total value of the claims, the court, at the request of the debtor, may order the release of debts
- If after three years from the date of closing the procedure, the debtor has covered a share of at least 40% of the total value of the claims, the court, at the request of the debtor, may order the release of debts
- If, despite all due diligence, the debtor has not been able to cover at least 40% even after 5 years from the closure of the procedure, but has complied with his obligations and prohibitions in the procedure, he can obtain debt relief.

During the period of this post-insolvency period, the debtor has express obligations established in art. 72 para.(6) of Law no.151/2015:

- a) to transfer to the liquidation account the amount representing the proportion of the traceable income assigned to the payment of claims, as established by the decision to close the procedure or, as the case may be, by the decision of the insolvency commission, as a result of biannual evaluation;
- b) to inform the liquidator, or, as the case may be, the insolvency commission of any additional income compared to those reported in the last report, in order to recalculate the proportion of this income intended to cover claims and to transfer to the liquidation account at least 40% of any additional income that exceeds the minimum wage in the economy;
- c) to communicate to the liquidator or, as the case may be, to insolvency commission, quarterly, a situation regarding the transfers made;

---

<sup>4</sup> Art. 71 para.(2) Law no.151/2015

<sup>5</sup> see D. Deteşan, *The legal treatment of the over-indebted consumer*, Ed. Hamangiu, 2015, p.189

- d) to carry out, according to his professional skills and training, an income-producing activity or to look for a better paid job and in case of job loss to take all the diligence to obtain a new job;
- e) to inform the liquidator or, as the case may be, the insolvency commission regarding the acquisition, by any title, including from inheritances or donations of goods and services whose value exceeds the minimum wage per economy;
- f) to participate in financial education courses/programs organized by the insolvency commission;
- g) to inform the liquidator or, as the case may be, the insolvency commission about any change of the usual domicile or main residence no later than 5 days from the occurrence of the change.

Also, during the post-insolvency period, the debtor is prohibited from taking out new loans, making donations, refusing donations and inheritances<sup>6</sup>. The existence of this post-insolvency period by liquidation of assets in which the debtor has a series of obligations requires a supervision and control of his activity. Between the closing of the insolvency proceedings by liquidation of assets and the release of residual debts of the debtor, the insolvency commission will set up a post-insolvency proceedings file, will assess biannually the proportion of the claims and an assessment of the manner in which the debtor complied with his legal obligations replaces the liquidator for good reasons, any other duties provided by law.

A number of duties are also imposed on the liquidator during this period: he supervises the debtors compliance with the obligations to benefit from the release of residual debts, transfers to the creditors the amounts from the liquidation account, prepares quarterly reports on payments made by compliance by debtor, notifies the commission regarding the debtors patrimonial changes, draws up evaluation reports with the mention of coverage of the claims and an analysis regarding the observance of the legal obligations as well as any other attributions established by law, ordered by the court or the insolvency commission.

The debtor who has been subject to the simplified insolvency procedure, who has complied with his obligations imposed for 3 years, will obtain from the insolvency commission a decision to terminate the application of the simplified procedure, which establishes the fulfillment by the debtor of the obligation's incumbent on him during the procedure and of the conditions for the release of the residual debts. Within 60 days the debtor can file a claim for residual debt. The court will order the release of the debtor from the residual debts, his debts being erased prior to accessing this procedure.

In order to pronounce the sentence of release from residual debts, the court will verify if the obligations and interdictions imposed on the debtor have been complied with, if the imposed deadlines have been observed, and in case of insolvency proceedings by liquidation of assets will also check the percentages creditors. The court will reject the debtors claim<sup>7</sup> if:

- a) the debtor has violated, during the insolvency proceedings, the obligations imposed by law or by the repayment plan, including negligent or uninteresting behavior regarding the execution of obligations;
- b) the debtor did not comply with the obligations and prohibitions corresponding to the period of post-insolvency supervision;

---

<sup>6</sup> Art. 72 para.(7) Law 151/2015

<sup>7</sup> Art. 75 para.(1) Law no.151/2015

c) during the insolvency procedure, any of the situations provided in art. 4 para. (4) of the law prohibiting the debtors access to insolvency proceedings;

d) it is prematurely introduced in which case the debtor may formulate a new request at the expiration of the legal term.

The rejection of the request for the release of the residual debts gives rise to the obligation of the debtor to pay all the claims registered by the creditors, in their entirety, including interest and penalties, from which will be deducted any amounts paid by the debtor. The same obligations will arise for the debtor if within 3 years after the admission of the application for the release of the residual debts, it is discovered that the debtor has concluded acts in fraud<sup>8</sup> against the creditors before or during the insolvency procedure.

## CONCLUSION

The release of residual debts is a necessary measure in order to restore the debtors financial situation, but the legislator do not grant automatically this benefit to all those who access insolvency proceedings, but only conditional on individuals whose behavior can be characterized as being in good faith.

Although the financial difficulties of individuals caused by the COVID 19 pandemic should have led to the application for the insolvency proceedings in order to obtain a fresh financial start, this did not happen in practice.

Certainly, the Romanian legislator will have to investigate the reasons why a law that can bring benefits to individuals in financial difficulty is not accessed and used to its full potential in the current context.

## REFERENCES

### *Books and articles*

1. R.Bufan, L. Bercea, A.Buta, C.Clipa, M. Comşa and others(2014), Practical insolvency treaty, Ed. Hamangiu, Bucureşti
2. D. Deteşan,(2015) The legal tratment of the over-indebted consumer, Ed. Hamangiu, Bucuresti
3. World bank- Insolvency and Creditor/Debtor Regimes Task Force(2014), Report on the treatment of the insolvency of natural persons, Washington
4. Law no.151/2015 – Insolvency procedure of the natural persons
5. The methodological norms for the application of Law No. 151/2015 on the natural person insolvency procedure

---

<sup>8</sup> Art. 77 para.(1) Law no. 151/2015