

## DIRECTORS' DUTIES – CRISIS MANAGEMENT CHECKLIST – ROMANIA

WHAT DUTY?	WHAT DOES IT MEAN?	WHEN DOES IT APPLY?
<p><b>MAINTENANCE OF SOLVENCY</b></p> <p><b>MANAGEMENT OF BUSINESS RISKS</b></p>	<ul style="list-style-type: none"> <li>• best efforts to <b>preserve</b> company's <b>liquidity</b> and <b>sound financial structure</b></li> <li>• <b>duty to manage</b> and continuously assess <b>credit risk, market risk, operational risk</b> and <b>liquidity risk</b> <ul style="list-style-type: none"> <li>◦ <b>CAVEAT:</b> <i>liquidity support via <b>shareholder loans</b> will result in <b>equitable subordination</b> of such loans (NB: <u>irrespective of whether or not the loan was granted in "crisis" of the recipient company</u>) resulting in subordinated status in potential subsequent insolvency / possible claw-back of repayments prior to insolvency</i></li> </ul> </li> </ul>	<p><b>Pre-crisis and post-crisis</b></p> <p><b>Enhanced scrutiny in respect of known crises</b></p>
<p><b>SUSPENSION OF NON-ESSENTIAL PAYMENTS</b></p> <p><b>PROHIBITION OF UNEQUAL TREATMENT OF CREDITORS</b></p>	<ul style="list-style-type: none"> <li>• <b>payments should be limited</b> (not an express obligation but advisable to avoid liability on the basis of unequal treatment of creditors and claw-back in bankruptcy) to include: <ul style="list-style-type: none"> <li>◦ <b>employment-related expenses</b> such as wages and related social contributions, severance payments etc.)</li> <li>◦ regular <b>operating expenses</b> (electricity, water etc.)</li> <li>◦ <b>regular/scheduled payments to suppliers</b></li> <li>◦ <b>tax liabilities</b></li> </ul> </li> <li>• general <b>prohibition of unequal treatment of creditors</b></li> <li>• transactions resulting in <b>preferential treatment of certain creditors</b> and/or <b>reduction of net value of company's assets</b> may be challenged/subject to claw-back in hypothetical subsequent bankruptcy proceedings</li> </ul>	<p><b>Onset of Insolvency * ("T")</b></p>
<p><b>PREPARATION FOR RESTRUCTURING</b></p>	<ul style="list-style-type: none"> <li>• preparation of <b>financial restructuring measures</b>: <ul style="list-style-type: none"> <li>◦ description of financial position/<b>reasons for insolvency</b></li> <li>◦ assessment as to <b>possible out-of-court (including capital increase) restructuring</b> and <b>preventive restructuring measures</b></li> </ul> </li> </ul>	<p><b>Any time prior to filing for insolvency proceedings</b></p>
<p><b>CAPITAL INCREASE</b></p>	<ul style="list-style-type: none"> <li>• if a <b>capital increase is required/feasible</b>, management <b>may call a shareholders' meeting in this respect</b></li> </ul>	<p><b>Any time prior to filing for insolvency proceedings</b></p>
<p><b>FILING FOR INSOLVENT REORGANISATION (COMPULSORY SETTLEMENT)</b></p>	<ul style="list-style-type: none"> <li>• if: <ul style="list-style-type: none"> <li>◦ attempts of share <b>capital increase/out-of-court restructuring fail</b> <i>but</i></li> <li>◦ management assessment (see above) establishes a chance of <b>success of compulsory settlement</b></li> </ul> </li> <li>• management must file for compulsory settlement</li> <li>• management is obliged to file the claim for compulsory settlement in 30 days after the onset of insolvency. Should the 30 day deadline be exceeded by more than 6 months, management may be subject to criminal liability</li> </ul>	<p><b>T + 30 days</b></p>
<p><b>FILING FOR BANKRUPTCY</b></p>	<ul style="list-style-type: none"> <li>• if management's assessment establishes <b>low chances of success of insolvent reorganisation/compulsory settlement</b> (and any of <b>out-of-court restructuring</b>/share capital increase attempts have failed) managers <b>must file for bankruptcy</b></li> <li>• management is obliged to file for bankruptcy in 30 days after the onset of insolvency. Should the 30 day deadline be exceeded by more than 6 months, managers may be subject to criminal liability</li> </ul>	<p><b>T + 30 days</b></p>

\* **ONSET OF INSOLVENCY: presumed** when the debtor is unable to pay its due debts in the amount of more than RON 40,000 (or 6 average gross salaries) for more than 60 days.

**NOTE:** the debtor may not file the opening of insolvency proceedings in case the quantum of affected debt owed to the Romanian State exceeds 50% of all affected debt owed by the debtor.

## RESTRUCTURING TOOLBOX – CRISIS MANAGEMENT CHECKLIST – ROMANIA

WHAT TOOL?	WHAT DOES IT DO?	WHAT IS REQUIRED?
<b>OUT-OF-COURT RESTRUCTURING</b>	<ul style="list-style-type: none"> <li>arrangement between <b>company</b> and <b>its creditors</b> (typically financial creditors) where: <ul style="list-style-type: none"> <li>creditors agree to postpone enforcement of payment claims for limited period of time such that terms of restructuring can be agreed ("<b>stand-still</b>") <i>and</i></li> <li>if negotiations are successful, creditors and company enter into master restructuring agreement ("<b>MRA</b>")</li> </ul> </li> <li>freedom of contract: <ul style="list-style-type: none"> <li>parties are <b>free to shape contents</b> of standstill/MRA <i>but</i></li> <li><b>all affected parties</b> (company and relevant creditors) <b>must agree to stand-still and MRA</b></li> </ul> </li> <li>In Romania it is not a common practice when dealing with a large number of creditors</li> </ul>	<b>Consent by all affected creditors</b>
<b>PREVENTIVE RESTRUCTURING</b>	<ul style="list-style-type: none"> <li>legal tool aimed at enabling eligible <b>distressed Romanian companies to avoid insolvency</b> by entering into MRA with <b>financial creditors</b> under the supervision of an administrator outside compulsory settlement proceedings <ul style="list-style-type: none"> <li>based on a reasoned application by the distressed company, the competent insolvency <b>court may impose a stay of enforcement proceedings in respect of the affected claims</b> until the MRA is approved/rejected ("<b>stand-still</b>")</li> <li>if creditors holding <b>75% of company's claims</b> agree to MRA and the <b>court confirms</b> it (formal test of conditions only), <b>terms of MRA are compulsory</b> for all affected creditors ("<b>cram-down</b>")</li> </ul> </li> <li><b>stand-still</b> and <b>cram-down</b> will apply to <b>Romanian and non-Romanian creditors</b></li> </ul>	<ul style="list-style-type: none"> <li><b>75% of creditors agree to MRA</b></li> <li><b>Limited involvement of court</b></li> </ul>
<b>COVID-19 MORATORIUM</b>	<ul style="list-style-type: none"> <li>legal tool (emergency COVID-19 measure) enabling COVID-19 affected <b>companies (it also applies for natural persons and liberal professions)</b> to apply for <b>suspension of payment obligations</b> under <b>bank loan agreements for a period of 9 months but no later than</b> until <b>31/12/2020</b></li> <li>affected company must <b>file application with bank</b> setting out amongst others: <ul style="list-style-type: none"> <li>that they do not register overdue payments and their loan has not reached maturity and it has not been accelerated before 16 March 2020 (date of establishment of the state of emergency in Romania)</li> <li>their activity is completely or partially shut down following authorities' decisions (demonstrated by presenting a government-issued 'Emergency Certificate')</li> <li>that they are not insolvent at the date of the application for moratorium</li> </ul> </li> <li>only available in respect of debts owed to <b>Romanian bank lenders</b></li> </ul>	<ul style="list-style-type: none"> <li><b>Filing of application</b></li> <li><b>COVID-19 Emergency Certificate</b></li> <li><b>Romanian bank lender</b></li> </ul>
<b>COMPULSORY SETTLEMENT (INSOLVENT REORGANISATION)</b>	<ul style="list-style-type: none"> <li>legal tool aimed at enabling eligible <b>insolvent Romanian companies to regain solvency</b> in context of <b>court-supervised restructuring</b> proceeding</li> <li>key features: <ul style="list-style-type: none"> <li>debtor must demonstrate <b>insolvency</b>, potential for <b>restoring solvency</b> and that <b>creditor recovery terms will be more favorable</b> than in hypothetical bankruptcy</li> <li>commencement of proceedings will result in some restriction to activities in <b>ordinary course of business</b>, supervision by <b>insolvency administrator/court</b></li> <li>opening of proceedings will result in <b>enforcement holiday / stand-still</b> in respect of the company</li> <li>if <b>approved by requisite majority</b> of creditors (separate voting in affected classes), terms of settlement will result in <b>cram down</b></li> </ul> </li> <li><b>new financing</b> in the observation period (prior to restructuring period) will enjoy <b>statutory super seniority</b> in case of subsequent bankruptcy</li> <li><b>stand-still</b> and <b>cram-down</b> will apply to <b>Romanian and non-Romanian creditors</b></li> </ul>	<ul style="list-style-type: none"> <li><b>Formal declaration of insolvency of debtor company</b></li> <li><b>Application with court</b></li> </ul>
<b>OTHER COVID-19 SUPPORT MEASURES</b>	<ul style="list-style-type: none"> <li><b>various support measures</b> available that aim at preventing companies from becoming insolvent due to the COVID-19 pandemic</li> <li>an ongoing updated <b>overview</b> of most relevant COVID-19 support measures can be found here: <a href="https://www.schoenherr.eu/publications/publication-detail/cee-legislation-tracker-romania/">https://www.schoenherr.eu/publications/publication-detail/cee-legislation-tracker-romania/</a></li> </ul>	<ul style="list-style-type: none"> <li><b>Application</b></li> <li><b>Company must fulfil certain requirements</b></li> </ul>

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