GENERAL CONSIDERATIONS ON THE DISSOLUTION AND LIQUIDATION OF ROMANIAN COMPANIES

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Abstract: *All stakeholders are interested in whether a firm has a good and stable financial situation, even though they all have different stakes in it. However, not all companies can succeed and operate profitably. The purpose of the study is to examine the peculiarities of dissolution and liquidation in Romania and the characteristics of liquidation of companies, according to their legal form. From examining the general causes of dissolution to specifics of different type of companies, all elements have a great importance in understanding how to avoid this procedure.*

Key words: dissolution, liquidation, insolvency law, going concern
JEL classification: G33, K19

INTRODUCTION

The insolvency concept represents a theme continuously studied by lawyers specialized in commercial law or by economists. All their efforts were translated into reforms of the legislation. However, an improvement of insolvency law should also be accompanied by institutional reforms.

A success of the implementation of insolvency procedures means a simple procedure, which involves low costs and not too much time; this kind of procedure should balance the interests of both debtors and creditors.

Currently, the legal framework in Romania on the liquidation of companies is essentially defined by Law no. 85/2006 on insolvency proceedings, which sets rules applicable when a company is unable to pay its liabilities, together with the Companies Law no. 31/1990. The latter covers dissolution of companies in a separate chapter (Title VI, Chapter I "Dissolution of companies", articles 227-237) and liquidation of companies in a separate title (Title VII "Liquidation of companies", articles 252-270). The present insolvency regulation is the one that realizes the process of harmonization with the European legal aspect in this area and the facing of the regulation with the actual economic situation.

Table 1: Evolution of insolvent companies in the European Union countries

Country	2010	2009	Evolution 2010/2009
Austria	6.657	7.050	-5,57%
Belgium	9.620	9.430	2,01%
Bulgaria	462	361	27,98%
Czech Republic	5.752	5.396	6,60%
Denmark	6.460	5.600	15,36%
Estonia	1.047	1.112	-5,85%
Finland	2.870	3.310	-13,29%
France	51.060	55.800	-8,49%
Germany	32.100	34.300	-6,41%
Greece	355	360	-1,39%
Hungary	17.883	14.971	19,45%
Ireland	1.525	1.400	8,93%
Italy	10.923	9.098	20,06%
Latvia	2.705	2.219	21,90%
Lithuania	1.635	1.844	-11,33%
Luxembourg	918	698	31,52%
Netherlands	7.340	10.500	-30,10%
Poland	655	691	-5,21%
Portugal	5.144	4.450	15,60%
Romania	21.262	18.421	15,42%
Slovakia	808	669	20,78%
Slovenia	377	529	-28,73%
Spain	4.770	4.900	-2,65%
Sweden	7.510	5.215	44,01%
United Kingdom	17.690	20.300	-12,86%
TOTAL	217.528	218.624	

Source: Coface Europe

Only by taking a look at the above table we can understand the importance of the insolvency law. The number of companies that are affected by the legislation on insolvency is high not only in Romania, but also in other countries. So, this legislation has an effect on the whole economic environment, due to the impact that the entering in this procedure by an undertaking has not only on its activity, but also on the activity of their partners.

1. PECULIARITIES OF DISSOLUTION AND LIQUIDATION IN ROMANIA

Unfavorable economic situations are often the main caused of dissolution and liquidation of companies, leading to their disappearance. These two processes can occur in a company at a certain moment and finally lead to the end of the existence of the company. However, these two procedures

significantly differ from one another. The dissolution of a company leads to its removal from the Register of Trade, meaning the legal disappearance of it. Liquidation is, on the other hand, the transformation of companies assets into cash in order to pay its debts and it is done prior to the dissolution of a company.

The reasons that can determine the dissolution of a company are various. A company can get to be in this situation because of:

- Passage of time that was fixed for the duration of the company; the dissolution will begin once the shareholders have decided not to extend its duration;
- Achieving the proposed object of activity established by statute or the inability to achieve it;
- Declaration of invalidity of the company;
- A decision taken by the General Assembly;
- A court decision made on the valid premises, such as the request of one of the shareholders, explained by misunderstandings between partners, which affects the operation of the enterprise;
- Bankruptcy;
- Other causes mentioned in the constitutive act or in the legislation.

The dissolution of a company usually has as an effect on the entry of the firm in a liquidation procedure. However, there are situations in which the dissolution is made without a previous liquidation. Usually, this occurs in a case of merger or full division of a company.

The moment of dissolution of a company is, according to the causes for dissolution, the date of expiry of the time limit for the duration of the company or the date of the decision of the General Assembly or of a court to dissolve the company (Georgescu et al., 2009, p. 115). From this moment on, the people in charge of the company management can no longer perform new operations Directors or managers will personally and jointly respond for such operations if they are performed.

Legal personality of the company is maintained during the company's liquidation and disappears upon completion of liquidation proceedings.

In the liquidation stage of the company, and possible in the dissolution phase, shareholders will respond according to the responsibility that they have in the firm during its life. In this sense, if one partner has unlimited liability for the obligations of the company during its operation, during the dissolution and liquidation of the company he will also have unlimited liability for its obligations. Instead, if an associate has a limited responsibility to its capital contribution, in case of dissolution or liquidation of the company (in which he is an associate with limited liability), he will

answer for the company's obligations within his the capital contribution. However, if an associate with limited responsibility is using the legal personality of the company and its assets as personal property or he manages to decrease the company's assets for his personal gain or to support a third party, thus affecting the company's ability to meet its obligations to third parties, the associate will answer unlimited to the unpaid obligations of the dissolved firm.

Regarding the conditions under which the two operations take place, dissolution and liquidation of companies can be voluntary or forced. Differences between voluntary and forced liquidation are given by:

Reasons of dissolution and liquidation of the company. Voluntary liquidation is usually caused by motives such as expiration of the duration established for the company, failure to achieve the main activity as mentioned in the statute, decrease of the number of associates or shareholders to one, decrease of the amount of capital below the limit allowed by the company's law or any other cause that determines the General Assembly to decide the dissolution of the undertaking. Forced liquidation has as a main reason the company's inability to pay its liabilities as a result of financial deterioration; this situation is reflected through liquidity and solvency indicators;

Involvement of the court in the procedure of forced liquidation is called judicial liquidation. The decision to liquidate the firm is given in this case by a court of law and it also appoints a liquidator. In case of voluntary liquidation, liquidation decision is taken by the General Assembly, designating a liquidator, who can be either an administrator, an associate or a third party capable of performing this function;

In the case of voluntary liquidation, the old administrators of the company will continue to manage it during the process of liquidation, while in case of judicial liquidation, the company is taken over and administered by a syndic administrator;

When liquidation decision is voluntarily taken, assets will be gradually sold at a liquidation value wich are equal to the normal market values; judicial liquidation requires immediate sale of assets at lower values (liquidity values) because the company's debts are immediately due.

Dissolution and liquidation of companies lead to operations that trigger the termination of the company. Regarding the companies' liquidations, the Companies Law no. 31/1990 states in the beginning the need to specify the way of dissolution and liquidation of a company in the constitutive act (articles 7 and 8).

Entering a process of dissolution or liquidation affects the accounting principles used in preparation of accounting documents and annual financial reports of the firm. For elaboration of

financial statements prior to liquidation, it is necessary to take into consideration the accounting principles, the going concern being the one that is the most affected.

Going concern is based on the idea that a company will operate normally in the future, without being unable to continue its activity (meaning the possibility of entering a bankruptcy procedure) or without a significant decrease of it. Otherwise, the company's financial statements will include information about this condition and the causes that made further activity impossible. The means of preparation of financial statements have to be mention. The importance of this principle also lies in the fact that it is included in the General Framework for the Preparation and Presentation of Financial Statements as a basic concept for their preparation, together with accrual accounting (Horomnea et al., 2010, p. 60).

2. CHARACTERISTICS OF LIQUIDATION OF COMPANIES, ACCORDING TO THEIR LEGAL FORM

Dissolution of an undertaking varies depending on the nature of the company.

There are different causes for dissolution that appear only in the case of certain types of companies. For example, a stock company or a company limited by shares may be dissolved when it has less than two shareholders for a period exceeding nine months or has net assets of less value than half the share capital. In the first case, any interested person may request the dissolution of the company in court. However, if the company will have the minimum requested number of shareholders before a final court decision of dissolution, the operation will be canceled. The reduction of net assets to less than half of the subscribed paid capital occurs when losses are recorded and are settled by convening an extraordinary meeting of shareholders that could decide the company's dissolution. If, until a stay final judgment of dissolution the value of net assets is increased beyond that limit, the company will not dissolve. The extent to which the net assets can be reduced may be greater than half the share capital if this it is established in the constitutive act. Whatever this limit is, the same procedure of convening an extraordinary general meeting is followed. This situation can not produce the dissolution of a limited liability company.

For companies in partnerships, limited partnerships or limited liability companies special cases that can determine the dissolution of such companies may occur. We may mention the case of the decrease in the number of associates in a firm of this type to one as result of bankruptcy, death, exclusion, withdrawal or incapacity of others, when further activity is not stipulated to heirs or a decision to change the legal form to a limited liability company with a unique associate is not taken.

For companies in partnerships, limited partnerships or limited liability companies whose dissolution was determined by the associates, it is not absolutely necessary to fulfill the liquidation procedure as set by the companies law, if the extinction of the liabilities is assured and the associates give their unanimous agreement on the distribution of the remaining assets. If the sharing method of the remaining assets after payment of creditors is not accepted with a unanimous vote, the liquidation procedure will continue as stated in the Companies law.

CONCLUSIONS

Even with new regulations regarding insolvency, in Romania there are still gaps in their implementation. An unconsolidated legal system, commercial legislation often ambiguous, involvement of the state by excluding from the scope of bankruptcy the public sector and increasing state aid favors a difficult bankruptcy procedure.

State aid should be directed to encouraging neglected areas, namely research and development or training. Therefore, as important as defining legislation is, it is more important to find solutions to improve implementation of the actual legal system. New procedures can be implemented in ordder to facilitate access to advice on difficult situations and how to face them and find the most effective solution. Also, a more transparent report of the financial and accounting situation would better show whether a company has difficulties or not.

It is necessary to prepare judges, by specializing them on bankruptcy laws and procedures, because they must have knowledge not only of legal aspects, but also about economic and financial elements in order to better understand certain operations. Another goal would be preparing insolvency practitioners to always find the most effective option for resolving cases of insolvency.

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