

# Scope of the simplified procedure regulated by Law no. 151/2015 concerning the insolvency of natural persons in Romania

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## **Abstract**

*The paper deals strictly with one of the three procedures established by Law no. 151/2015 on the insolvency of natural persons, namely the simplified insolvency procedure, meaning its field of application. This field of application has been identified by correlating Article 3 (12) of the law defining insolvency, with Article 4, which refers to the general scope of Law 151/2015 and Article 65, which refers to the scope of the simplified insolvency procedure. The conclusion is that this regulation is useful for bona fide borrowers who are in difficult situations in their lives.)*

**Keywords:** *insolvency, simplified procedure, obligations, debtor, good faith (bona fide), insolvency committee.*

**JEL Classification:** K35

## **1. Introduction**

Law no. 151 of 2015 on Insolvency Procedure for natural persons<sup>2</sup>, entered into force on the 1st of January 2018 and was amended by Government Emergency Ordinance 61/2015, Government Emergency Ordinance 98/2016 and Government Ordinance. 6/2017.

“A much-anticipated regulation in the Romanian legal space, Law no. 151/2015 on the Insolvency Procedure for natural persons, entered into force on January 1st, 2018, as no normative act has been issued that could postpone this moment. Previously, the Government of Romania had postponed the entry into force of this law three times, the last document issued in this respect being Government Ordinance. no. 6/2017, published in the Official Gazette no. 614 of July 28, 2017 (approved by Law no. 234/2017), which ordered the postponement of the date of entry into force of the law until the 1st of January 2018”<sup>3</sup>.

The purpose of this regulation, according to art. 1 of the Law, is the establishment of a collective procedure for the recovery of the financial situation of

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<sup>2</sup> Published in the Official Gazette no. 464 of June 26, 2015.

<sup>3</sup> Nistor Adriana Violeta, *Considerations on Insolvency Law of natural persons (since January 1, 2018)*, in [www.juridice.ro/consideratii-privind-legea-insolventei-persoanelor-fizice-\(in-vigoare-de-la-1-ianuarie-2018\).html](http://www.juridice.ro/consideratii-privind-legea-insolventei-persoanelor-fizice-(in-vigoare-de-la-1-ianuarie-2018).html), (consulted on 1.10.2018).

the natural person debtor, in good faith, covering his liabilities as much as possible and the discharge of debts under the present law.

Also, art. 5 of Law 151/2015 provides that insolvency procedures governed by law are:

- a) The insolvency procedure based on a debt repayment plan;
- b) Insolvency procedure by liquidation of assets;
- c) Simplified insolvency procedure.

In art. 3 of the same law, in point 12, insolvency is defined as the state of the debtor's patrimony, characterized by the insufficiency of available funds for the payment of debts as they become due. The insolvency of the debtor is presumed when, after a period of 90 days from the due date, he has not paid his debt to one or more creditors. This assumption is relative.

## **2. Field of application of the simplified procedure**

This important aspect is regulated by art. 4, paragraph 1, point a) and b) and paragraphs 2, 3 and 4 in conjunction with art. 65 of Law 151/2015 on insolvency procedure of natural persons, as follows:

The procedures provided by the present law shall apply to the debtor, natural person, whose obligations do not arise from the exploitation of an enterprise within the meaning of Art. 3 of the Civil Code<sup>4</sup>, and which:

a) has domicile, residence or habitual residence for at least 6 months prior to the filing of the application in Romania;

b) is insolvent, within the meaning of art. 3 (12) (insolvency defined above), and there is no reasonable likelihood that, within a maximum period of 12 months, it will be able to fulfill its obligations as contracted, while maintaining a reasonable standard of living for and for the persons in his/her maintenance; the reasonable probability is assessed by considering the total amount of the liabilities in relation to the realized or expected revenues to be achieved in relation to the level of professional training and expertise of the debtor;

c) the total amount of its obligations is no more than 10 minimum wages;

d) has no traceable goods or income;

e) is over the standard retirement age or has lost total or at least half of his/her work capacity;

The debtor is habitually resident in Romania if he stays permanently in the country even though he has not fulfilled legal registration formalities, has property and/or earns income in Romania.

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<sup>4</sup> For registered sole trader (PFAs, individual enterprises, family businesses), in the event of insolvency, it will be applied the simplified procedure provided by Insolvency Law no. 85/2014, published in the Official Gazette no. 466 of June 25, 2014, Law that was modified by the Government Emergency Ordinance no. 88/2018 for amending and completing some normative acts in the field of insolvency and other normative acts.

There are also several categories of debtors who can not benefit from the simplified insolvency procedure, as follows:

- the debtor who was previously subject to such a procedure, finalized with the issuance of residual debt, less than 5 years before the opening of the new insolvency proceedings;

- the debtor in respect of whom it was closed, for reasons attributable to him/her, a simplified insolvency procedure less than five years prior to the filing of a new application for the opening of insolvency proceedings;

- the debtor who has been fully convicted of committing a tax evasion, offense of forgery or intentional offense against the patrimony by disregarding bona fide;

- the debtor who was dismissed in the last 2 years for reasons attributable to him;

- the debtor who, although able to work and without a job or other sources of income, has not taken the necessary diligence to find a job or has unduly refused a proposed job or another income-generating activity;

- the borrower who has accumulated new debts by voluptuous expenses while knowing or ought to have known he is insolvent;

- the debtor who determined or facilitated his/her way to insolvency, intentionally or through gross negligence; it is assumed to have had this effect:

1. contracting, in the last 6 months prior to the opening of the insolvency proceedings, of debts representing at least 25% of the total amount of the liabilities, exception making only the excluded obligations;

2. the undertaking, in the last 3 years prior to the filing of the application, of excessive obligations in relation to its patrimonial status, and to the advantages it derives from the contract or to all the circumstances that have contributed significantly to the debtor's inability to pay his debts, other than those due by him/her to the persons he/she contracted with;

3. making, over the last 3 years, prior to the application, preferential payments, which have significantly contributed to reducing the amount available for the payment of other debts;

4. transferring, during the last 3 years prior to the filing of the application, goods or property in his/her patrimony to another natural or legal person while knowing or ought to have known that through such transfers he/she will become insolvent;

5. the termination of an employment contract by agreement of the parties or by resignation in the last 6 months preceding the opening of the request for the opening of the procedure.

The assumptions provided in paragraphs 1 to 5 are relative;

- the debtor who has already opened another insolvency procedure at the time of the opening of the insolvency proceedings.

The president of A.N.P.C. (National Authority for Consumer Protection), Marius Pîrvu, announced<sup>5</sup> in April 2018 that "at the level of the county insolvency offices there were registered 4 requests for opening the insolvency procedure on the basis of debt repayment". So, by April 2018, the insolvency committee organized at the county insolvency office level had not received any request to open the simplified insolvency procedure governed by Law 151/2015.

### 3. Conclusions

"The advantageous provisions introduced by the Insolvency Law of Individuals should not be such as to encourage dangerous or even fraudulent behavior by potential debtors. Therefore, fortuitous events, which do not depend on the debtors' behavior, such as: health problems, job loss, divorce, etc. should be the case in which the insolvency procedure would become applicable. In other words, what counts is the appreciation of good faith or, on the contrary, the bad faith of the debtor when the state of insolvency occurs and throughout the proceedings. The penalty that occurs if the debtor fails to comply with his obligations during the insolvency proceedings is the closure of the proceedings. On the other hand, even after the procedure has been completed, the debtor may be required to cover the liability in its entirety, in so far as it finds, within three years of the issuance of the debt decision, that the debtor has concluded fraudulent acts, which resulted in the prejudice of its creditors"<sup>6</sup>.

In conclusion, we do not deny that the new legislation on insolvency of the individual brings a series of particularly important benefits to less fortunate debtors. In spite of this, however, a thorough analysis of each case is required in order to verify the way in which the state of insolvency occurred, i.e. whether or not the debtor was in good faith in the management of his debts.

In the legal world, judicial training and the simplified procedure are expected to be able to better analyze the impact of Law 151/2015 in force on the 1st of January 2018 on certain categories of debtors and the usefulness of such regulation.

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<sup>5</sup> In the counter [banca.ro/stiri/legea-insolventei-persoanelor-fizice-trebuie-modificata-inainte-de-a-se-putea-aplica-la-trei-ani-de-la-adoptare/13800](http://banca.ro/stiri/legea-insolventei-persoanelor-fizice-trebuie-modificata-inainte-de-a-se-putea-aplica-la-trei-ani-de-la-adoptare/13800), consulted on 1.10.2018.

<sup>6</sup> Judge Daniela Deteșan, *Categories of debtors who are not allowed access to the procedures provided by Law 151/2015*, in the „Romanian Business Law Review”, no. 7/2015, excerpt from [www.juridice.ro/405487/categoriile-de-debitori-carora-nu-li-se-permite-accesul-la-procedurile-prevazute-de-legea151/2015.html](http://www.juridice.ro/405487/categoriile-de-debitori-carora-nu-li-se-permite-accesul-la-procedurile-prevazute-de-legea151/2015.html), consulted on 1.10.2018.

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