**Contracts with companies undergoing insolvency proceedings**

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Insolvency proceedings usually have a significant impact on a company's activities. For example, there are statutory changes to the company's decision-making procedures, or a new managing director must be appointed (the so-called special administrator, who acts separately from the insolvency administrator), or certain activities require the consent of the insolvent company's creditors. So what does insolvency mean for a company's current and new contracts?

## Current contracts at the date of the opening of insolvency proceedings are usually unaffected

Art. 123 of the Romanian Insolvency Law no. 85/2014 establishes a generally applicable rule, namely that current contracts are not affected by the opening of insolvency proceedings. These continue to run in accordance with the contractual provisions and the parties are generally subject to the contractual obligations. Remarks to the contract, that it will end legally in the event of insolvency, are deemed unwritten.

One reason for this rule is the need to maintain the principle of legal certainty. Insolvency proceedings are usually opened without disclosing any creditors (the opening takes place in public court proceedings, but creditors are generally not informed of this). Terminating all contracts solely due to the opening of insolvency proceedings would likely cause considerable chaos.

However, in practice it has been found that this rule cannot be applied to all situations. A number of exceptions have therefore been introduced through amendments to the law.

## Insolvency administrators may terminate any contracts

At the beginning of the proceedings, insolvency administrators analyze the economic situation of the debtor (the “company”) in order to determine whether the company can be restructured or whether bankruptcy is unavoidable (if the company does not enter bankruptcy directly). This analysis may also include the profitability of current contracts for the company. If the insolvency administrator determines that a contract is not beneficial to the insolvent company, the insolvency administrator could terminate this contract.

The conditions for such termination are:

- The contract was not executed in full or in overwhelming proportion by either party;
- Notice of termination must be given within 3 months of the opening of insolvency proceedings.

The other party may request the insolvency administrator to terminate or maintain the current contract within these 3 months, but may not file for termination due to the opening of insolvency proceedings. If the contract is obtained by the insolvency administrator, the latter must report on a quarterly basis whether or not the debtor has the resources to execute the contract.

**Aspects relating to older contractual obligations**

If there are outstanding liabilities on the date of the opening of insolvency proceedings, these must be registered in the insolvency proceedings. Such claims are subject to registration, even if the due date is after the opening of the insolvency proceedings or are affected by various legal conditions. Liabilities incurred prior to the opening of insolvency proceedings may only be paid as part of the insolvency proceedings.

For current contracts, this means that liabilities already incurred up to the date of the opening of insolvency proceedings may not be used as a reason for terminating the contract. This also applies if the insolvency administrator determines to keep the contract.

**Concluding new contracts**

The insolvent company is not prohibited from concluding new contracts. These must either fall within the scope of normal activity, if prior approval by the insolvency administrator is required. If new contracts are outside normal activity, their conclusion must be authorized by the company's creditors.

Representation of the company for the conclusion of new contracts is ensured by the special administrator (if the company has retained the right to manage the company). However, all new contracts must be approved by the insolvency administrator to ensure compliance with legal requirements for the conclusion of the contract.

**Conclusion**

Insolvency does not only mean the liquidation of a company. Under Romanian law, insolvency proceedings can also lead to restructuring. In addition, certain measures must also be taken in bankruptcy. Contracts of the insolvent company are therefore of paramount importance. How these contracts are handled must be determined on a case-by-case basis.

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