

„Preventive Settlement" (*concordat preventiv*) for avoiding insolvency

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Insolvency proceedings are natural part of a functioning free market economy, even if they are often associated with considerable disadvantages for those affected. However, there are situations where institutional support for the debtor is necessary to effectively avert insolvency. For such cases, Romanian law provides for the instrument of the "preventive settlement" (rum. *Concordat Preventiv*), which is frequently used in practice.

What is the preventive settlement?

A '*Concordat Preventiv*' is a court-ordered restructuring procedure that may only be requested by companies that are not yet insolvent (i.e. still solvent) and is intended to avoid insolvency.

To initiate the procedure, the company must be facing serious financial difficulties which, without coordinated measures, would most likely lead to insolvency.

The procedure is overseen by a judicial administrator who supervises the debtor throughout the process.

The core of the procedure is a restructuring plan, which outlines measures to restore the company's economic viability, including:

- Reduction of liabilities (*hair-cut*),
- Reorganization of operational processes;
- Changes to the corporate or management structure.

The restructuring plan must be approved by the majority of the creditors involved in the procedure.

What distinguishes the settlement from insolvency proceedings?

Although the preventive settlement is handled by the same court (Tribunal) as regular insolvency proceedings), it has several differences:

➤ Partial publicity

Basic information – such as the application and the opening of the procedure – is publicly accessible via Romania's electronic justice portal. However, detailed documents (e.g., the court's decision to open the case, the restructuring plan, or the list of creditors) are only partially accessible.

➤ No requirement to involve all creditors

Unlike in insolvency proceedings, where all creditors must be involved, the preventive settlement allows the debtor to select which creditors to involve in the process.

➤ **Limited publication requirements**

In insolvency, all documents must be published in the Insolvency Bulletin. In the preventive settlement, there is no such obligation for the court decisions, restructuring plan, or other measures.

Advantages for the debtor – risks for creditors

To support the restructuring process, Romanian law provides various protection mechanisms for debtor companies. The most important of these concerns enforcement proceedings:

- From the opening of the procedure, all ongoing enforcement actions against the debtor are suspended;
- New enforcement actions cannot be initiated;
- Lawsuits against the debtor can continue and be decided, but cannot be enforced during this period.

Originally, this suspension effect was to apply only after court approval of the restructuring plan. However, the law was changed to move the effective date to the opening of the procedure. Enforcements are initially suspended for 4 months, to allow for preparation of the restructuring plan. This period may be extended by up to 8 additional months.

Protective measures for creditors

To minimize the risks of asset depletion by the debtor through the preventive settlement, Romanian law offers several safeguards for creditors, which should be used proactively. These include:

- Collateral such as mortgages
- Retention of title (ownership remains with the seller until full payment), etc.

When properly arranged, these instruments:

- Increase the chances of successful debt recovery
- Provide a stronger negotiating position during the restructuring process.

Security interests over personal property should be registered in the Romanian Electronic Archive for Secured Transactions over Movable Property (AEGRM).

Finally, the court decision on the opening of the "Concordat" may be appealed, usually on the grounds that the debtor is, in fact, already insolvent

Conclusion

The preventive settlement is a restructuring-friendly instrument under Romanian law, offering companies in financial distress a structured path to avoid imminent insolvency.

From a creditor's perspective, this may complicate debt collection. However, Romanian law balances debtor protection with creditor safeguards and legal remedies. Creditors – especially those with significant claims – should arrange appropriate collateral or guarantees already during contract negotiations in order to effectively protect their interests.

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