

## **GENERAL CONSIDERATIONS CONCERNING THE OPENING OF INSOLVENCY PROCEEDINGS OF THE ADMINISTRATIVE-TERRITORIAL UNITS OF ROMANIA**

**CENUSE MELINDA\***

**ABSTRACT:** *The main objective of this paper is to talk about the concept of insolvency of Romanian administrative-territorial units, because during this year the Government elaborated a special Emergency Ordinance referring to the financial crisis and insolvency of Romanian administrative-territorial units. In this paper, we proposed to present in detail the method of starting and ending the procedure for opening insolvency proceedings of administrative-territorial units, since the whole process is a very extensive one and cannot be the subject of a single paper-work.*

**KEY WORDS:** *Romanian administrative-territorial units, insolvency, Local Insolvency Register, the list of creditors.*

**JEL CLASIFICATION:** *M10.*

### **1. THE LEGAL FRAMEWORK FOR INSOLVENCY OF TERRITORIAL ADMINISTRATIVE UNITS**

Due to the elaboration, during the year 2013, of the legislation which governs specifically the issue of the financial crisis and insolvency of administrative-territorial units in Romania, this paper is aimed to talk about the concept of insolvency of administrative-territorial units, in which case, we must admit that, lately, many administrative-territorial units were faced with financial difficulties, some reaching debts that exceed 50% of their budget.

It was one of the reasons for which there was approved the Emergency Ordinance of Government No. 46/2013 regarding the financial crisis and insolvency of administrative-territorial units and the Implementing Regulations for applying the

---

\* Lecturer, Ph.D. Student, University of Petroșani, Romania, [melysz@yahoo.com](mailto:melysz@yahoo.com)

procedures on reporting the financial crisis situations and the insolvency of the administrative-territorial units, respectively.

We want to mention in this context that referring to the insolvency of companies already exists law 85/2006, which gives the following definition for the term “insolvency”: the insolvency is that level of the debtor’s patrimony which is characterized by the shortage of money funds available for the payment of the demandable debts: the insolvency is presumed as being obvious, when the debtor, after 30 days from the date of payment, hasn’t paid his debt to one or more creditors, the insolvency is imminent when it is proved that the debtor won’t be able to pay in time the demandable debts, with the funds available at the date of payment (Dumitrescu & Răvaș, 2006, pp. 65-69). But, in this paper, as we already mentioned, we will present only the insolvency procedure of administrative-territorial units, without referring to the companies’ insolvency, which represents a different subject.

## **2. OPENING THE INSOLVENCY PROCEEDINGS OF AN ADMINISTRATIVE TERRITORIAL UNIT**

As for the opening of insolvency proceedings, any creditor or group of creditors that has one or several certain, liquid amounts receivable from an ATU (administrative and territorial units), amounting to a value that exceeds 50% of its budget over a period of 120 consecutive days, may submit a request to the Court in order to institute insolvency proceedings against the ATU.

Within 30 days of the request of any interested party, the Chief authorizing officer of the ATU has the obligation to provide economic and financial reports and the conclusion whether it qualifies or not as insolvency.

The Chief authorizing officer of the ATU is obliged, within 15 days following the acknowledgement of the state of insolvency which has occurred, to request the opening of insolvency procedures, thus filing a request with the Court within the district where the ATU is located.

Within 5 days of the declaration of insolvency, the Chief authorizing officer shall require its registration in the Local Insolvency Register for ATU within the General Directorate of the County’s Public Finance.

In the Local Insolvency Register of administrative-territorial units shall be entered all ATU facing either the opening or the termination of the insolvency proceedings.

In order to request the registration of the court order that opens insolvency proceedings, the Chief authorizing officer shall submit to the General Directorate of the County’s Public Finance the following documents:

- a) a written demand to register the court order that opens insolvency proceedings;
- b) the court order that opens insolvency proceedings;
- c) the analysis of the situation regarding the opening of insolvency proceedings;
- d) the list of creditors to whom it has outstanding payments that exceed 120 days.

The Director of the General Directorate of the County's Public Finance and that of Bucharest designates the organizational structure of the Directorate which draws up and manages the Insolvency register of administrative-territorial units.

The General Directorate of the County's Public Finance and that of Bucharest records the cases of opening of insolvency proceedings in the order of their submission by the Chief Authorizing Officer.

When verifying the documents referred to above, the General Directorate of the County's Public Finance and that of Bucharest shall take into account the following:

a) a written demand to register the court order that opens insolvency proceedings shall be signed by the Chief Authorizing Officer and shall bear the stamp of the administrative territorial unit. In case the capacity of the main credit release authority is attributed to another person than the Mayor or the President of the County Council, the document delegating the duties of the authorizing officer must also be attached;

b) total expenditure of the centralized general budget of the administrative - territorial unit should correspond with the total expenditure forecasted in the centralized general budget of the administrative - territorial unit, submitted to the General Directorate of the County's Public Finance and that of Bucharest;

c) the amount of payment obligations, liquid and payable, older than 120 days, except for those in commercial dispute should correspond with the amount of outstanding payments older than 120 days as declared in the "Outstanding payments situation" drawn up in accordance with the Order of the Minister of Public Finances no 629/2009;

d) the amount of outstanding salaries should correspond to the value of outstanding payments for employees older than 120 days as declared in the "Outstanding payments situation";

The documentation must be submitted within 5 days of the notification of the court order that opens insolvency proceedings, whereas failure to submit it can be grounds for an offence.

The Chief Authorizing Officers shall be responsible for the accuracy of the data contained in those documents.

Based on the documents submitted by the Chief Authorizing Officer, the General Directorate of the County's Public Finance shall register the court order that opens insolvency proceedings in the local Insolvency Register of the ATU.

The General Directorate of the County's Public Finance and that of Bucharest shall publish, on the website of the Ministry of Public Finance, the Local insolvency register of the ATU which must be regularly updated, whenever an insolvency procedure is opened for an ATU.

On June 17th 2013, not even a month from the entry into force of the law, the insolvency proceedings against Aninoasa within Hunedoara County were already opened.

The already promulgated regulatory act determines/establishes in detail the role and tasks of the appointed judge, of the assembly of creditors and of the official

receiver, as well as the effects of the opening of insolvency proceedings of administrative-territorial units.

In this article, we wanted to present in detail the method of starting and terminating the procedure for opening insolvency proceedings of administrative-territorial units, since the whole process is a very extensive one and cannot be the subject of a single paper-work.

### **3. ENDING THE PROCEDURE OF INSOLVENCY OF THE ADMINISTRATIVE-TERRITORIAL UNIT**

In case the administrative- territorial unit does not meet the condition of insolvency, the appointed judge shall bring in the verdict of terminating the proceedings, even though not all claims/receivables contained in the recovery plan have been cancelled. The verdict of terminating insolvency proceedings is notified by the Chief Authorizing Officer/ the official receiver of the General Directorate of the County's Public Finance in order to be mentioned in the Local Insolvency Register of the ATU. After adopting the court order regarding the termination of insolvency proceedings, the Chief Authorizing Officer shall notify, within five days, the General Directorate of the County's Public Finance of its decision in order to be recorded in the Local Insolvency Register of the ATU.

In order to record the termination of insolvency proceedings in the Local Insolvency Register of the ATU, the Chief Authorizing Officer / the official receiver shall submit to the General Directorate of the County's Public Finance the following documents:

- a) a written demand for recording the termination of insolvency proceedings in the Local Insolvency Register of the ATU;
- b) the verdict of terminating insolvency proceedings;
- c) analysis of the situation regarding the closing of insolvency proceedings.

The analysis of the situation regarding the termination of insolvency proceedings, in accordance with the specimen presented in the annex no. 2a, is to be filled out by the Chief Authorizing Officer / the official receiver with the information recorded on the date of closing insolvency proceedings.

The General Directorate of the County's Public Finance and that of Bucharest registers the written demands regarding the notification of terminating insolvency proceedings of the administrative territorial units in Local Insolvency Register of the ATUs in the order of their submission by the Chief Authorizing Officers / the official receivers.

Based on the documents submitted by the Chief Authorizing Officer / the official receiver the General Directorate of the County's Public Finance and that of Bucharest registers the verdict of terminating insolvency proceedings in the Local Insolvency Register of the ATUs.

The General Directorate of the County's Public Finance and that of Bucharest must publish, on the website of the Ministry of Finance, the indication of terminating insolvency proceedings of the administrative territorial unit in the Local Insolvency Register of administrative-territorial units.

The General Directorate of the County's Public Finance and that of Bucharest shall communicate monthly, but no later than the 10th of each month for the previous month, the opening/closing of insolvency proceedings to the Ministry of Public Finance, to the General Directorate of Budgetary Policy Accounts.

#### **4. ASPECTS OF COMPARATIVE LEGISLATION ON THE REGULATION OF THE INSOLVENCY CONCEPT OF ADMINISTRATIVE-TERRITORIAL UNITS**

Other states have also tied to rules the insolvency of municipalities. It is the case of the **USA** that has developed a legislative code in this respect – the Bankruptcy Code. In this field there is a long-established practice of approx. 70 years, and so far there have been filed over 500 requests for opening proceedings. It targets cities, villages, fiscal districts, school districts and municipalities. The purpose of the procedure is to provide municipalities facing financial problems protection against creditors in order to develop and negotiate a debt restructuring plan by extending their due date, by reducing the debt or the interest or refinancing them by acquiring new loans. The law does not provide the possibility of liquidation. Practically, reconsidering the date of payment and reducing the debt is a form of ending cash-flow /balance sheet insolvency.

On the contrary, in **France**, there is no special regulation concerning the insolvency of administrative-territorial units and no relevant practice in this field.

#### **5. CONCLUSIONS**

It can be noted that the financial crisis is not a judicial procedure, but a purely administrative one which is triggered by the deliberative authority who, as a result of this decision, delegates the authorizing officer to draw up a financial recovery plan.

The main effect of entering a financial crisis is that the administrative-territorial unit will be managed during the period of the financial crisis on the basis of the recovery plan in order to improve the financial situation.

The concept of financial crisis covers one essential aspect of the relationship between local public authorities and various parties, with which they are in collaboration, aiming to unfreeze the activity of providers of goods, services and works which have to collect debts from local public administrations.

We consider that the local public administration played its role in the European integration process through the reforms that were implemented. However, beyond the progress registered after 1990 and because of the need to set up new and modern foundations and in terms of obeying the principle of legality, it is necessary to continue the reform. We believe that one of the main objectives should be to take further measures to strengthen the financial capacity of administrative-territorial units.

We may take this stand because a real decentralization and autonomy cannot be achieved in the absence of financial resources, meaning that as long as local funds are still dependent on transfers from the State budget, the local autonomy of administrative-territorial units is limited and is likely to remain just a propagandistic

concept, whereas small and poor territorial collectivities will never be truly autonomous, but will remain indefinitely dependent on aid given by the State to be able to survive, or, as we could remark that through the adoption of legislative measures which have introduced new concepts in the year 2013, territorial-administrative units may be susceptible to financial crises or even insolvency.

**REFERENCES:**

- [1]. **Dumitrescu, O.; Răvaș, B.** (2006) *New Juridical and Economical Elements Brought by the Innovating Insolvency law*, Annals of the University of Petroșani - Economics, 6, pp. 65-69
- [2]. Legea nr. 273/2006 privind finanțele publice locale, publicată în Monitorul Oficial, Partea I nr. 618 din 18 iulie 2006, cu modificările și completările ulterioare
- [3]. Ordonanța de urgență nr. 46/2013 privind criza financiară și insolvența unităților administrativ-teritoriale, publicată în Monitorul Oficial, Partea I nr. 299 din 24 mai 2013
- [4]. Ordin nr. 821/2247 din 2013 al viceprim-ministrului, ministrului finanțelor publice, și al viceprim-ministrului, ministrului dezvoltării regionale și administrației publice, privind aprobarea Normelor metodologice pentru aplicarea procedurilor privind raportarea situațiilor de criză financiară a unităților administrativ-teritoriale, precum și pentru aprobarea Normelor metodologice pentru aplicarea procedurilor privind raportarea situațiilor de insolvență a unităților administrativ-teritoriale, publicată în Monitorul Oficial, Partea I nr. 410 din 8 iulie 2013
- [5]. [http://discutii.mfinante.ro/static/10/Mfp/buget/sitebuget/Hunedoara\\_anexa2c\\_Reg\\_loc\\_sit\\_i\\_nsolv10032014.pdf](http://discutii.mfinante.ro/static/10/Mfp/buget/sitebuget/Hunedoara_anexa2c_Reg_loc_sit_i_nsolv10032014.pdf) (Accessed by 1 November 2013)