

# ROMANIA



## Legislative framework

### Legislative framework for insolvency proceedings

The main law governing insolvency proceedings for businesses (including sole traders) in Romania is the Law No. 85/2014 regarding preventative insolvency proceedings and insolvency proceedings (the Insolvency Law), effective from 28 June 2014. The Code of Civil Procedure contains certain provisions with respect to procedural issues relevant for insolvency proceedings.

### Legislative framework for insolvency office holders

In addition to the Insolvency Law, provisions relating to insolvency office holders (IOHs) are found in the Emergency Governmental Ordinance 86/2006 on the Organisation of Activity of Insolvency Practitioners effective from 22 November 2006 (as amended). These are supplemented by the Statute on the Organisation and Exercise of the Insolvency Practitioner Profession, which includes provisions regulating the organisation and function of the National Union of Insolvency Practitioners in Romania (UNPIR), the regulatory body for insolvency office holders (IOHs) in Romania.<sup>1</sup> A statutory code of professional conduct sets out a code of ethics for IOHs.<sup>2</sup>

## Types of insolvency procedures

The Insolvency Law enables both the liquidation and reorganisation of legal entities as a going concern on insolvency or imminent insolvency. Liquidation leads to the liquidation of the debtor's estate and distribution of proceeds in satisfaction of its liabilities. Reorganisation requires the approval of a reorganisation plan aimed at achieving an operational, corporate and/or financial restructuring, which may be proposed by the debtor, by the IOH or by one or several creditors representing at least 20 per cent of the aggregate value of claims against the debtor. In addition, a simplified liquidation procedure exists for certain "qualifying" debtors (including sole traders).

Preventative proceedings contained in the Insolvency Law consist of two debtor-in-possession reorganisation procedures known as the "ad hoc mandate" and "composition" procedures. These are directed at the reorganisation of distressed, but not yet insolvent

debtors. The ad hoc mandate is a confidential procedure, triggered at the request of the debtor, involving the appointment of an ad hoc agent by the court to negotiate a deal with one or more creditors. Composition involves the preparation of a recovery plan by the debtor and its advisor, known as a “conciliator”, which needs to be approved by creditors holding at least 75 per cent of accepted and uncontested claims and to be subsequently ratified by the court.

## **Institutional framework**

### **Judicial liquidation and reorganisation**

Pursuant to the Insolvency Law, the key players in judicial liquidation and reorganisation proceedings in Romania are the insolvency court, the insolvency judge, creditors acting through the assembly of creditors and as represented by the board of creditors and the IOH.

Insolvency proceedings are led by the competent court (being the ordinary court or the specialised insolvency section of the ordinary court, as applicable, where the debtor has had its establishment at least six months prior to the application for commencement of insolvency proceedings). The court allocates a judge, known as a “syndic judge” to oversee the insolvency proceedings.

The syndic judge decides on the opening and closure of the proceedings, monitors the activities of the IOH, decides on any avoidance actions and management liability and confirms the reorganisation plan approved by the creditors, provided that such plan complies with certain mandatory legal requirements. Managerial responsibilities are typically assigned to the IOH, although in exceptional cases the debtor is able to remain in possession and manage its estate, under the supervision of the IOH.

The IOH, known as the judicial administrator or the judicial liquidator depending on the type of procedure, is appointed on a provisional basis by the court and is confirmed or replaced by the assembly of creditors acting by majority or by creditors representing at least 50 per cent of the aggregate value of claims. The judicial administrator, inter alia, examines the debtor’s business activity and may draw up the reorganisation plan. The judicial liquidator submits a report to the court on the evaluation of the debtor’s assets including a proposal regarding the manner of sale of the debtor’s assets. The liquidator’s proposal must be approved by the assembly of creditors, following which the liquidator is required to liquidate the debtor’s estate under the supervision of the insolvency judge.<sup>3</sup>

In all insolvency proceedings the debtor's shareholders are required to appoint a special administrator. The special administrator does not have to be an IOH and may be a natural or legal person. The administrator is required to represent the shareholders' interests in the relevant procedure and manage the debtor's activity if the debtor is allowed to retain managerial control of its business. In reorganisation proceedings, the special administrator is responsible for presenting any reorganisation plan and managing the debtor’s activities under the supervision of the judicial administrator. In liquidation proceedings, managerial control of the debtor is assumed by the judicial liquidator, who runs the debtor's business, whereas the mandate of the special administrator is limited to representing the shareholders' interests.

Creditors, acting through the assembly of creditors and as represented by the board of creditors, oversee the managerial decisions of the debtor and the IOH during insolvency proceedings. The assembly of creditors is the general body of creditors convened by the

judicial administrator/ liquidator, by 30 per cent of all creditors entitled to vote or by the board of creditors, and chaired by the judicial administrator/ liquidator. Any reorganisation or liquidation plan is submitted to the assembly of creditors for their approval. Depending on the number of creditors, the insolvency judge designates a board of creditors comprising three or five creditors holding secured claims, state claims (including tax and other duties) and unsecured claims of the highest value.

The board of creditors is charged with analysing the debtor's financial condition and making recommendations to the assembly of creditors regarding the continuation of the debtor's activity and the reorganisation plan(s). It negotiates the terms of the judicial administrator/ liquidator's appointment and reviews any reports submitted by the judicial administrator/liquidator.

### **Ad hoc and conciliation proceedings**

The key players in ad hoc and conciliation proceedings are the court, the President of the court or the syndic judge (as applicable), the IOH, creditors, acting individually or (in conciliation only) as an assembly of creditors and represented by a creditors' representative and the debtor, acting through his legal or business representatives.

In ad hoc proceedings, the president of the court summons the debtor and its proposed ad hoc agent (selected by the debtor from the body of authorised IOHs) following receipt of a request by the debtor. He decides on the appointment of the ad hoc agent.

The ad hoc agent, acting on behalf of the debtor, is authorised to negotiate with creditors, propose strategies, debt rescheduling or dismissal, termination of ongoing agreements, redundancies and other measures considered appropriate. Such activities take place out of court.

In contrast to ad hoc proceedings, conciliation proceedings are closely overseen by the syndic judge who appoints the conciliator (suggested by the debtor) from among the list of authorised IOHs. The syndic judge ratifies the composition agreement on the request of the conciliator and rules on the interim suspension of any enforcement proceedings in progress against the debtor.

The conciliator supervises the debtor's business activities. He prepares the table of creditors' claims and drafts (together with the debtor) the composition offer, the composition plan and the recovery plan. The conciliator drafts and communicates monthly or quarterly reports regarding his activities and the debtor's business.

Creditors as a whole meet as an assembly of creditors, convened by the conciliator or by creditors representing 10 per cent of aggregate claims. The assembly of creditors approves the reports of the conciliator and, subject to the debtor's agreement, appoints if necessary a replacement conciliator and/or amends the conciliator's remuneration.

## Assessment overview/strengths and weaknesses

Based on the results of the pilot assessment, a reliable and well-functioning legal framework appears to exist for the IOH profession in Romania. Nevertheless, a few minor improvements would be desirable to further improve IOH capacity and performance.

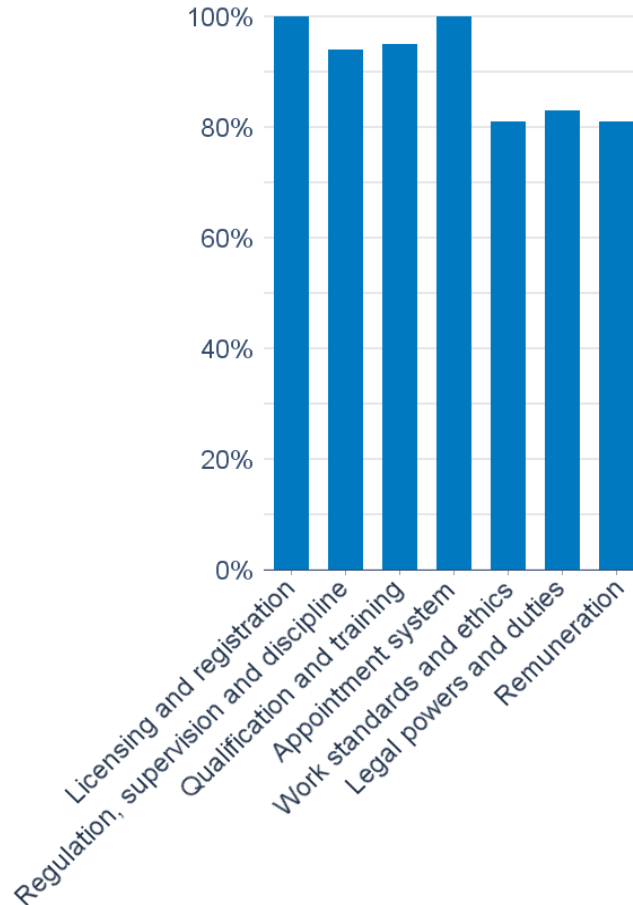
Benchmarks	Strengths of the Romanian IOH professional framework	Weaknesses of the Romanian IOH professional framework
<b>Licensing and registration:</b>	<ul style="list-style-type: none"> <li>• IOHs are required to obtain a licence issued by the National Union of Insolvency Practitioners (UNPIR).</li> <li>• An official list of authorised IOHs is published in the official gazette and is available online on UNPIR's web site.</li> </ul>	
<b>Regulation, supervision and discipline:</b>	<ul style="list-style-type: none"> <li>• UNPIR, a dedicated self-regulatory body for IOHs (public service, autonomous and not for profit) supervises and monitors the activities of its member IOHs. Membership of UNPIR is required for all practising IOHs.</li> <li>• A complaints system is operated by UNPIR and complaints and other disciplinary matters are handled by UNPIR disciplinary courts.<sup>4</sup> Sanctions imposed on IOHs are published on the UNPIR web site.</li> <li>• IOHs are subject to a range of potential sanctions according to the level of misconduct which may be imposed by UNPIR or the court (for example, dismissal or fine).</li> </ul>	<ul style="list-style-type: none"> <li>• There are no specific provisions regarding the regularity of monitoring carried out by UNPIR.</li> </ul>
<b>Qualification and training:</b>	<ul style="list-style-type: none"> <li>• Prospective IOHs must have a tertiary qualification in law or economics and must have at least three years' work experience.</li> <li>• IOHs are required to pass a specific examination for entry into the profession</li> </ul>	

Benchmarks	Strengths of the Romanian IOH professional framework	Weaknesses of the Romanian IOH professional framework
	<p>organised by UNPIR.</p> <ul style="list-style-type: none"> <li>• Licensed IOHs must complete a two years' apprenticeship with a practising IOH (but persons who have worked for more than 10 years as lawyers, magistrates or notary publics or have performed business activities are exempt from such requirement).</li> <li>• There is a prohibition on persons acting as IOHs, who have been convicted by final and irrevocable judgment of intentional crimes likely to prejudice professional reputation, including corruption, and company law related offences. Proof of lack of criminal record is required to be submitted to UNPIR by IOH candidates registering for the specific examination.</li> <li>• Licensed IOHs are required to attend continuing education courses of at least 20 hours per year organised by the National Institute for Training Specialists in Insolvency.<sup>5</sup></li> </ul>	
<b>Appointment system:</b>	<ul style="list-style-type: none"> <li>• In judicial liquidation and reorganisation proceedings, the initial IOH may be nominated by the creditors or the debtor (the creditors' nomination prevails). Otherwise the syndic judge appoints an interim IOH randomly from the list, who can be confirmed or replaced by a majority of creditors at the first creditors' assembly.<sup>6</sup></li> <li>• The majority of creditors (more than 50 per cent by value) may request the replacement of the IOH in the event of misconduct.</li> </ul>	<ul style="list-style-type: none"> <li>• There is no detailed guidance for selection of the interim IOH by the court, although IOHs interested in fulfilling a particular mandate can submit an offer in the court file. Should no such offer be found in the file and no appointment proposals be made by the debtor or creditors, the syndic judge may choose randomly a general list.</li> </ul>

Benchmarks	Strengths of the Romanian IOH professional framework	Weaknesses of the Romanian IOH professional framework
<b>Work standards and ethics:</b>	<ul style="list-style-type: none"> <li>• A clear code of ethics of a binding nature for IOHs is applicable. Compliance by IOHs with the code is monitored by UNPIR; nevertheless, the regularity of such monitoring is not provided by law.<sup>7</sup></li> </ul>	<ul style="list-style-type: none"> <li>• The code of ethics does not contain detailed practical guidance on professional standards related to the conduct of IOH activities, such as management of the debtor's estate in insolvency.</li> </ul>
<b>Legal powers and duties:</b>	<ul style="list-style-type: none"> <li>• IOHs have certain powers to manage the debtor's property in an autonomous way; nonetheless creditors' approval is needed for the sale of assets.</li> <li>• Debtor, government bodies are required by law to provide information to the IOH (and in respect of the debtor, to deliver up any assets to the IOH), but sanctions for non-compliance apply only to the debtor (in the form of a fine). Third parties are required to provide information.</li> <li>• IOHs are required to provide regular reports of their activities (quarterly in liquidation, monthly in judicial reorganisation and quarterly or monthly in conciliation).</li> </ul>	<ul style="list-style-type: none"> <li>• The IOH cannot request third parties to cooperate in the recovery of assets belonging to the debtor's estate; such a request may only be made by the court.</li> </ul>
<b>Remuneration:</b>	<ul style="list-style-type: none"> <li>• A statutory framework for IOH remuneration in judicial liquidation and reorganisation exists, which prescribes the payment of a flat rate fee, a success fee or a combination of the two. The IOH is required to submit a claim for remuneration at the outset of the proceedings, taking into account certain statutory guidance/ criteria.<sup>8</sup></li> <li>• Remuneration of IOHs constitutes a cost of the proceedings and is settled before all unsecured and preferential creditors.</li> </ul>	

The following chart shows us the quality of legal framework related to IOHs in the key areas as listed below.

### Romania



## Key recommendations

As illustrated in the chart above, Romania appears to have developed a strong and well-functioning legal framework for IOH profession which covers the key elements of the profession. Minor reforms that could further improve performance and development of the profession include:

- Monitoring by UNPIR should be carried out regularly and minimum requirements for regular monitoring established by law.
- In addition to the existing code of ethical conduct, further professional rules should be introduced to provide practical best practice guidelines relating to IOH activities,

including guidance on how to manage the debtor's property in insolvency and how to conduct sales of assets from the debtor's estate.

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<sup>1</sup> Republished in the Official Gazette No 33 of 15 January 2015.

<sup>2</sup> Republished in the Official Gazette No. 33 of 15 January 2015.

<sup>3</sup> One issue addressed by the new Insolvency Law is that a creditor's request in respect of the appointment of the interim IOH now prevails over a similar request by the debtor. Another innovation of the Insolvency Law is the unification of the various requests for the opening of the procedure (by the debtor and creditors) filed at different times in order to provide a unitary solution.

<sup>4</sup> The complaints system is set out in Annex 6 of the Regulation on the organisation and functioning of UNPIR.

<sup>5</sup> Pursuant to the decision of the National Institute for Training Specialists in Insolvency dated 2013.

<sup>6</sup> In ad hoc and conciliation proceedings, only the debtor can propose the appointment of the IOH; however, in such proceedings the debtor is technically solvent.

<sup>7</sup> The fundamental principles to be complied with by the IOHs are independence, moral integrity, professional secrecy; avoidance of conflict of interest, unfair competition and anti-competitive practices; and ensuring professional competence and respect for the law.

<sup>8</sup> The fee of the conciliator in conciliation proceedings shall be paid by the debtor and shall consist of a determined sum of money, a monthly and/or a success fee.