



Insolvency and Creditor/Debtor Regimes Report (ICR ROSC) **Romania**

Key challenges in the restructuring and insolvency
framework

NEW INTERNATIONAL DEVELOPMENTS

UNCITRAL (recent) projects

(2005- on-going)

1. Directors' and officers' obligations
2. Enterprise groups in insolvency
3. Cross-border insolvency

Directors' obligations in the period approaching insolvency

- What should be the obligation? What should be required of directors at the time approaching insolvency?
- To whom are the obligations owed?
- When should the obligation arise?
- Who should be the persons owing the obligation?
- How can provisions on directors' obligations be enforced



Balancing between goals

1. Promote commercial risk taking and business reorganization
2. Ensure responsible behavior and protect creditors



UNCITRAL Legislative Guide Part Four (www.uncitral.org)

The law should specify that from the point in time .. [when the person knew or ought reasonably to have known that insolvency was imminent or unavoidable], the persons specified ...[directors; persons with factual control] will have the obligations to have due regard to the interests of creditors and other stakeholders and to take reasonable steps to avoid insolvency; and where it is unavoidable, to minimize the extent of insolvency... reasonable steps might include: (a) evaluating the current financial situation of the company ...; seeking professional advice...; protecting the assets...; considering the structure and functions of the business to examine viability...; continue to trade in circumstances where it is appropriate...; holding negotiations with creditors or commencing other informal procedures... ; (b) commencing or requesting the commencement of formal reorganization or liquidation ..

Treatment of enterprise groups in insolvency

- Most legal systems- no specific rules for enterprise groups
- **UNCITRAL Legislative Guide Part Three (and World Bank Principles)** recognized the prevalence of groups and the need for specific provisions
- Romania's insolvency law now includes such provisions!



Balancing between goals

- Respect of the corporate form
- Applying solutions that more accurately reflect the economic reality of modern business



Joint applications; procedural coordination; substantive consolidation

(Legislative Guide, Part III)

- Insolvency proceedings may commence with respect to two or more enterprise group entities
- **Procedural** coordination through the appointment of the same representative; cooperation; same committee etc.
- Applying solutions that more accurately reflect the economic reality of modern business; e.g. facilitate joint reorganization plans
- **Substantive** consolidation in cases of fraud or where assets and debts were intermingled

[cf. Romania's regime]

Cross-Border Insolvency

(and the development of the **UNCITRAL Model Law on Cross-Border Insolvency**)

- Romania enacted the Model Law!
- The challenges of effective application
 - Recognition: interpreting 'COMI' and dealing with 'forum shopping' (revision of the enactment guide)
 - Relief and assistance
- Further on-going developments- insolvency of international groups



Remember...

- To have regard to new developments..
International standards keep evolving
- Take part in international standard setting

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THANK YOU

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