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Insolvency 2024

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Moldova: Trends & Developments

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MOLDOVA

Trends and Developments

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Gladei & Partners has been recognised by all major international legal directories as the leading Moldovan business law firm. The firm's lawyers are active both in advisory and dispute resolution, and have advised and represented international financial institutions, multinational enterprises, and foreign and local clients in all areas of business law. The firm assisted buyers in major Moldovan recent M&A deals, has been advising foreign investors entering the Moldovan market, and provides complex legal assistance to Moldovan companies with foreign investments throughout all stages of corporate life. In the insolvency area, Gladei & Partners is active both in regulatory reform and client representation. In addition, the firm's lawyers have been retained to assist in pre- and out-of court negotiations and restructurings. Currently, Gladei & Partners is assisting the Moldovan government in reshaping the insolvency legal regime and transposing the EU aquis.

Authors

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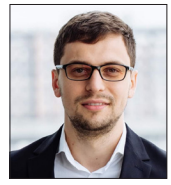

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Overview of Moldova's Insolvency Regulatory Framework

The regulatory landscape governing insolvency in Moldova primarily consists of the Insolvency Law No 149 (adopted on 19 June 2012 and enacted in March 2013, as further amended) (the "Insolvency Law"). Related aspects, such as the legal status of the insolvency administrators, are regulated by special laws (ie, the Law No 161/2014 on Authorised Administrators, enacted in January 2015).

The Insolvency Law is the cornerstone of the country's insolvency regime, governing the insolvency procedure from the starting point where the creditor/debtor files the insolvency petition until the finalisation of the insolvency procedure (resulting in either debtor's liquidation or restructuring). The scope of the Insolvency Law (provided in Article 1) is to establish the legal framework that creates a collective procedure designed to satisfy the creditors' claims from the debtor's estate. The law lays out two principal pathways with regard to the achievement of this scope – namely, bankruptcy and restructuring proceedings.

The bankruptcy proceeding facilitates the sale of the debtor's assets, with the subsequent distribution of the sale proceeds to the creditors in accordance with the established priority rankings. The outcome of the bankruptcy proceeding is the debtor's liquidation, without prioritising the preservation of the debtor's business. Conversely, the restructuring proceeding aims to create an opportunity for the revival of the debtor's activity based on a pre-approved restructuring plan. This option is designed to maximise the claims recovery rates (regulated as a statutory requirement under the Insolvency Law) and maintain the debtor's existence.

A significant reform made back in 2020 has dealt with the accelerated restructuring proceeding, designed to be used by the debtors in financial distress. This tool aims to allow such debtors to prevent insolvency by negotiating a compromise with the main creditors, which is further transposed into a restructuring plan to be endorsed by the court (the pre-negotiated plan). A due execution of such restructuring plan would ultimately avert insolvency and the debtor a second chance. The 2020 reform included several other essential amendments, such as:

- exclusion of the creditor obligation to obtain a prior final court judgment in order to commence the insolvency proceeding;

- creation of the option for the debtor to protect itself from abusive insolvency petitions by claiming damage compensation;
- facilitation of the post-commencement funding; and
- strengthening the protection of the debtor's estate value by imposing mandatory independent valuation and by limiting the decrease in the sale price.

In practice, even though the bankruptcy proceeding is still most favoured, creditors remain hesitant to embark on uncertain and lengthy restructurings. Also, the restructuring proceedings – both general and accelerated – are quite often misused to delay the recovery of the creditors' claims.

More recently, however, there have been more cases where the debtors – with the creditors support – have managed to restore financial soundness and get back to business as usual.

Ongoing reform of Moldovan insolvency law

During recent years, fair criticism has been directed at both the quality of the law on the books and the law in action. In response, in early 2024, the Ministry of Economic Development and Digitalisation (with the support of the World Bank Group) initiated a new legislative reform aimed at resolving the major issues flagged by the market participants.

As the Informative Note to the draft Amendment Law has pointed out, the Amendment Law aims to ensure a more correct and effective application of the provisions of the Insolvency Law and ensure the promotion of legal solutions to remedy the deficiencies identified during recent years in the process of implementing the law. Against that background and for that purpose, it was supposed that the Amendment Law will solve the legislative gaps identified in the decisions of the Constitutional Court but will also ensure the implementation of mechanisms aimed at reducing the delays found in insolvency procedures and optimising the satisfaction of creditors' claims from the debtor's estate.

In a nutshell, the Amendment Law aims to:

- address the issue of sourcing payment for the provisional administrator remuneration in the case of no assets;
- regulate the e-meetings of the creditors;
- equip the debtor representative with the right to contest the creditors' committee decisions;
- address the appraiser's potential conflict of interest with the debtor and the insolvency administrator/liquidator;
- clear up the issue of encumbered assets' sale proceeds distribution;
- clearly differentiate the enforcement rights of the no-claim creditors, depending on whether the claim is or is not due and payable;
- protect the secured creditors from abusive enforcement of the security interest, including over a floating pool of assets; and
- prevent creditors with temporarily validated claims voting on the restructuring plan.

The above-mentioned amendments are designed to resolve the issues highlighted by the stakeholders, such as:

- cases where the expenses incurred in the observation period can be charged to the members of the debtor's governing bodies;
- status and enforcement procedure of the encumbered assets in the restructuring proceeding;
- abuses and uncertainty created by the debtor's restructuring plan being approved with the vote of creditors whose claims were

provisionally validated (until the appeals are resolved) but rejected thereafter, and also by the contingent claims; and
- prohibition on enforcing security rights on public property, especially in the restructuring of state and municipal enterprises.

Under the draft Amendment Law's Regulatory Impact Assessment (RIA), the behaviour of the participants in the insolvency proceedings was found to contribute to the above-mentioned issues. Indeed, concerns have been fairly voiced regarding bad-faith actors misusing the insolvency proceedings in various ways, such as:

- debtors misusing the restructuring by proposing draft plans that would not ensure effective protection of secured creditors whose encumbered assets are used in the restructuring process; or
- creditors (usually affiliated with the debtor) having no claim against the debtor but requesting validation in order to be able to vote (based on provisional validation) on a restructuring plan favourable to the debtor, even if their claim ends up being rejected.

The above-mentioned reform has gained substantial interest among stakeholders, highlighting the complex nature of the insolvency issues that require legislative intervention. Moreover, given their magnitude and the social impact, some proposed amendments – notably, the controversial matters – have generated strong debates. They reflect a true interest from the interested stakeholders, but also emphasise the need for a collaborative approach.

This project has, however, clearly shown to decision-makers that there is a strong need for a deeper and broader reform that would address the issues faced by practitioners from several points of view. Thus, it obvious that – in the process of harmonising the domestic legislation with the *acquis communautaire* (as part of the forthcoming EU accession) – the Moldovan authorities should go beyond mere transposition of Directive (EU) 2019/1023 (the "EU Directive on Restructuring and Insolvency") and reset the whole insolvency legal framework.

Transposing the EU Directive on Restructuring and Insolvency as first priority

After the conclusion of the Association Agreement with the EU (on 30 August 2014), Moldova initiated the process of harmonising its domestic legislation with that of the EU, as a way of supporting the country's efforts to develop its economic potential – one aim of the Association Agreement. Following the designation of the Republic of Moldova as an EU candidate in June 2022, however, aligning the domestic legislation with EU standards has become imperative.

From this perspective, the transposition of the EU Directive on Restructuring and Insolvency has become crucial, as it would align Moldovan insolvency law with EU standards in respect of the early insolvency prevention proceedings. In response, the Moldovan government has initiated a new wave of legislative reform that aims not only to address and resolve the practical issues already flagged or to be identified during the ex ante RIA but also to align Moldovan laws with EU laws, learning from the experience of the neighbouring EU countries.

Specifically, transposition of the EU Directive on Restructuring and Insolvency would create a legislative enabler offering a second chance to distressed Moldovan companies, including in the energy and agriculture sectors. And, last but not least, the new reform would increase the transparency of insolvency proceedings

by regulating the functioning of the centralised registry of insolvency proceedings – something long awaited and highly required by market participants.

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