FINANCIAL RECOVERY AND BANKRUPTCY OF INSURANCE AND AGRICULTURAL COMPANIES IN THE CONDITIONS OF THE FINANCIAL CRISIS

REDRESAREA FINANCIARĂ ŞI FALIMENTUL SOCIETĂŢILOR DE ASIGURARE ŞI DIN AGRICULTURĂ ÎN CONTEXTUL CRIZEI FINANCIARE

CRISTINA MIHAELA NAGY [1]

[1] West University Of Timisoara, Faculty Of Economics And Business Administration; cristinanagy2009@yahoo.com

Abstract: *Financial recovery is a fairly rare procedure used in most sectors of activity, and therefore, also in agriculture the debtor must recognize its insolvency state, and express his intention to reorganize its activity. This happens pretty hard in Romanian companies, their administrators failing to recognize easily that their companies are in insolvency, and seek to save them themselves without requiring the supervision of an expert. Thus failing to solve the problems related to insolvency, they finally end up in an insolvency procedure and proposing a reorganization plan is delayed.*

Key words: *Operational restructuring, general insolvency procedure, simplified insolvency procedure, bankruptcy, judicial reorganization*.

INTRODUCTION

Operational restructuring (reorganization) is a process which seeks to change the way a business works with the purpose of improving its profitability and/or solvability. In this context, it should be noted that the major difference between the judicial reorganization (in insolvency procedure) and operational reorganization (deliberate) derives from the establishment of the state of insolvency or an imminent insolvency status[71].

The judicial reorganization procedure is governed by Law no. 85/2006 on insolvency. Insolvency represents the state of the debtor's

[71] Duca Alina, Duca Emilian – Soluţii fiscale pentru perioade de criza. Reorganizarea afacerilor. Aspecte fiscale, Editura Universul Juridic, Bucureşti, 2009, p. 80

patrimony that is characterized by insufficient financial funds available for the payment of outstanding debts.

Because of the complexity of the insurance companies they have a law different from that of commercial companies from other fields, and the law governing the financial recovery and bankruptcy of insurance companies is Law no. 503/2004.

MATERIAL AND METHOD

The financial recovery procedure involves any intervention of the ISC for taking the measures needed to restore the financial situation of the insurance company, in order to prevent the state of insolvency and avoiding the triggering of the bankruptcy procedure.

The triggering of the insolvency procedure of insurance companies is an exceptional measure, that appears in certain special conditions (triggering the state of insolvency), and especially in a situation where financial recovery measures have not achieved their desired purpose.

According to the Law 85/2006 on insolvency procedure, the general procedure applies to all categories of commercial companies' debtors; companies; cooperative and agricultural organizations, economic interest groups and any legal persons governed by private law that also carry out economic activities.[72]

For an entity to be able to propose a reorganization plan for the continuation of business and payment of creditors, it must meet the minimum conditions, respectively to have in its patrimony assets with which it can continue operating, to conduct accounting records and the manager of the debtor company, as well as the headquarter of the company to exist, to be found and to provide to the court the documents under article 28 paragraph 1, within the period prescribed by law.

The *development concept* of an entity refers to the upward changes in its volume and structure (i.e., the evolution of an entity from an individual company to a giant company or a group of companies).

The *restructuring concept* of an entity, aimed at its structural change while maintaining the volume. But restructuring can also mean the reduction of an entity's volume of activity. Among the means of restructuring focusing on the continuation of the activity are: Acquisition of securities or entities; actual groups, alliances, sharing of interests; changes in the internal

[72] Legea 85/2006 privind procedura insolvenţei art.1 alin.1 (Law 85/2006 on insolvency procedure, article 1, paragraph 1)

organization; internal restructuring through the modification of the articles of association; mergers or divisions.

The restructuring operations focusing on the reduction of the activity are mainly carried out through: dissolution, liquidation, reorganization, bankruptcy[73].

The financial recovery of insurance companies is an administrative measure, ordered by the only specialized autonomous administrative authority, namely the Insurance Supervisory Commission, which intervenes in one of the three circumstances expressly provided by Law no. 503/2004 (recovery, reorganization or bankruptcy). The financial recovery measures do not preclude the opening, by the Member State of origin, of a bankruptcy procedure.

In the financial recovery procedure, established by Law no. 503/2004, are involved the Insurance Supervisory Commission and the special manager, in addition to the insurer's governing bodies with a role in running the financial recovery procedure: the board of directors, directorship and the supervisory board, the sole manager.

An insurance company falls within the financial recovery procedure if:

a) if, in any way, there is a non-compliance with the provisions of art. 6 paragraph (2) [74], of Law 503/2004, as well as with any other legal provisions relating to the insurance activity, putting in danger the honor of the obligations assumed towards the insurance creditors;

b) the available solvency margin drops below the minimum limit prescribed by the regulations issued by the Insurance Supervisory Commission;

c) the available solvency margin drops below the minimum limit prescribed by the regulations in force for safety fund.

The opening of a financial recovery procedure can be performed through one of the following methods:

---

[73] Georgescu Iuliana, Istrate Costel, Huian Carmen – Impactul reorganizării societăţilor comerciale asupra calităţii informaţiei contabile, Editura Universităţii „Alexandru Ioan Cuza", Iaşi, 2009, p. 17

[74] La cererea Comisiei de Supraveghere a Asigurărilor, societatea de asigurare este obligată să determine şi să comunice acesteia, în termen de 48 de ore de la solicitare, situaţia financiară, precum şi marja de solvabilitate minima (At the request of the Insurance Supervisory Commission, the insurance company is required to determine and communicate within 48 hours since the request, the financial situation, as well as the minimum solvency margin.)

a) recovery of the insurance company based on a financial recovery plan;
b) recovery of the insurance company through special management.

The decision to open the procedure for financial recovery is published in the Official Gazette of Romania, Part I, as well as in two national newspapers.

The initiation of the reorganization procedure for a company in difficulty has the following advantages: from the date of the commencement of the judicial reorganization procedure all judicial or extra-judicial actions will be suspended, with the purpose of achieving claims against the debtor or its assets, the overdue debts will be paid only on the basis of a reorganization plan, without paying interest or penalties, the possibility of rescheduling the payment of claims to creditors etc.

RESULTS AND DISCUSSIONS

As a result of the commencement of the insolvency procedure, accepted by the court, the debtor has two fundamental options – liquidation or judicial reorganization. In case of reorganization a reorganization plan should be elaborated.

Through generic name of "bankruptcies" there have been taken into consideration all registered cases of insolvency, namely, companies for which a bankruptcy procedure was triggered (general or simplified) or in judicial reorganization and companies for which the bankruptcy procedure was closed.

From Table no. 1 we can observe that the total number of insolvency cases increased from year to year, from 14.483 files in 2008 to 22.650 files in 2011.

Table 1

The composition of companies in bankruptcy by sectors of activity

Sector of activity	Total bankruptcies 2008	Total bankruptcies 2009	Total bankruptcies 2010	Total bankruptcies 2011
Retail trade	3553	3.501	4.262	4423
Wholesale and distribution	2932	3.684	4.178	4358
Construction	1666	2.497	3.172	3548
Transport	811	1.237	1.555	1596
Other service activities provided in the main companies	718	979	1.340	1402
Hotels and restaurants	782	1.022	1.275	1385

Wood and wooden products manufacturing	793	927	955	866
Textiles, clothes and shoes' manufacturing	705	762	793	645
Agriculture	**575**	**934**	**668**	**686**
Food and beverages industry	627	573	641	672
Metal industry	38	496	625	609
Real estate transactions	159	281	366	459
Other personal service activities	114	204	279	294
Recreational, cultural and sportive activities	111	157	260	232
Chemicals and chemical products' manufacturing	158	223	216	232
Drainage and waste removal, sanitation and similar activities	163	206	198	193
Financial intermediation	**78**	**139**	**197**	**227**
IT	132	172	193	200
Machinery and equipment industry	94	166	171	215
Postal services and telecommunications	97	129	139	168
Extractive industry	131	54	101	113
Health and social assistance	19	47	70	84
Production and supply of electricity and thermal energy, water and gas	27	31	38	43
Total	**14.483**	**18.421**	**21.692**	**22.650**

Sursa:http://www.coface.ro/CofacePortal/RO/ro_RO/pages/home/cine_suntem/StiriSiEvenimente/StudiisiAnalize

In the agricultural field they reached a maximum level in 2009 with a no. of 934 files on roll in insolvency, in 2010. their number decreasing by almost 30%, this being mainly due to the development of forms of State support and the resumption of some used before the year 2007 (for example support for ensuring agricultural production by subsidizing 50% or 70% of the insurance premium according to the insured risks, and also support for foundation and investment, the support being linked to the value of the marketed production).

The financial mediation sector, which includes the insurance sector, has registered throughout the analyzed period an increase of almost 300%,

from 78 files in 2008 to 227 files in 2011, this being due mainly to the fact that companies from the financial mediation sector were the first that felt the crisis approaching, the enormous profits and bonuses announced by brokers in previous years becoming history. From the beginning of the crisis in Romania, the volume of credits granted to the population decreased dramatically, the financial mediation market restricting at maximum, being marked by lower liquidity, reduced number of transactions, almost non-existent commissions, which determined an increase of the number of insolvencies.

The total number of insolvency cases includes both the cases opened in 2011 and the files contained in the balance at January 1, 2011, coming from previous years and still unresolved.

By analyzing the evolution of insolvency cases on the roll from the last 4 years, it can be seen a tendency of strengthening the volume's degree of concentration in the first 3, respectively 5 sectors. Thus, the share of the first 3 sectors that have registered the highest number of insolvency cases on the roll in absolute figures, has varied over the past 4 years between 52% and 56%, while the top 10 sectors including agriculture are located between 86%-91%.

According to data provided by ISC[75] in the insurance field in 2008 there were submitted 25 applications for bankruptcy and just one financial recovery, in the year 2009 there have been submitted 4 bankruptcy requests,

[75] Raport asupra pieţei de asigurări şi a activităţii desfăşurate pentru anii 2008-2010 - emise de Comisia de Supraveghere a Asigurărilor (Report on the insurance market and the activity carried out for the years 2008-2010 - issued by the Insurance Supervisory Commission)

and in 2010, 2 bankruptcy requests have been submitted.

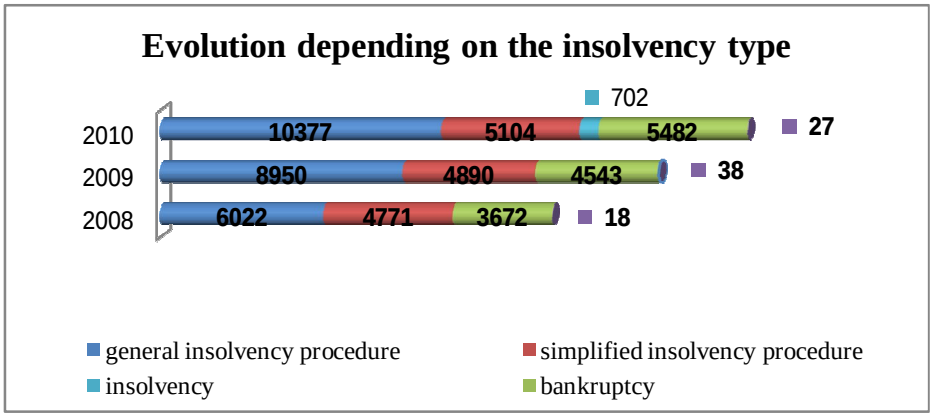


Fig. 1. Evolution depending on the insolvency type

Sursa:http://www.coface.ro/CofacePortal/RO/ro_RO/pages/home/cine_suntem/StiriSiEvenimente/StudiisiAnalize

From the above figure can be seen that:

- in 2008 a total of 14.483 companies 6.022 companies were in general insolvency procedure, 4.771 in simplified insolvency procedure, 3.672 in bankruptcy and 18 in judicial reorganization.
- in 2009 a total of 18.421 companies 8.950 companies were in general insolvency procedure, 4.890 in simplified insolvency procedure, 4543 in bankruptcy and 38 in judicial reorganization.
- in 2010 a total of 21.692 companies 10.377 companies were in general insolvency procedure, 5.104 in simplified insolvency procedure, 5.482 in bankruptcy, 702 in insolvency and 27 in judicial reorganization.

We can observe that depending on the type of insolvency procedure throughout the analyzed period, the files that are in the general insolvency procedure have the largest share (42% in 2008, 48% in 2010), and in the

judicial reorganization procedure the share is insignificant ranging in the recent years between 0.1% and 0.2%.

However, compared to 2008, when the number of reorganizations was only 6, in 2010 this procedure was used much more (27 times), especially by those debtors, who under the pressure from creditors, have chosen this method of protection in an attempt to save their business.

According to data published in the Bulletin of insolvency[76] we can observe that more and more companies (see Figure 2) are primarily thinking about finding solutions for the financial recovery by issuing a reorganization plan.

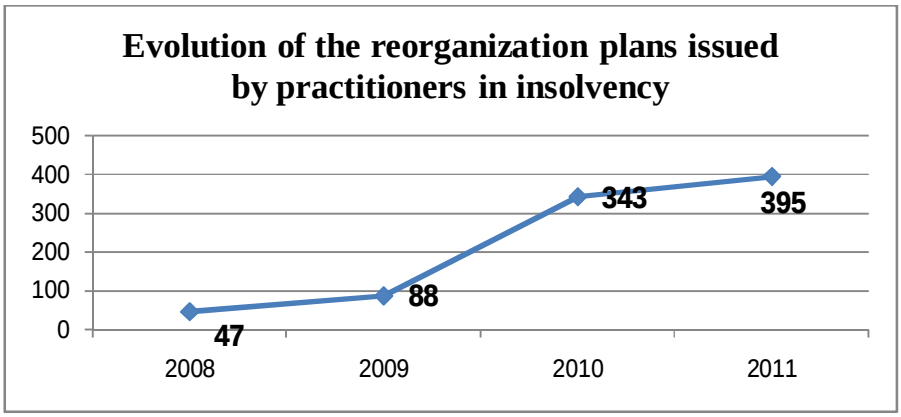


Fig. 2 Evolution of the reorganization plans issued by practitioners in insolvency

According to statistics, the confirmation percentage of the reorganization plans is extremely lower compared to cases of insolvency and the percentage of cases in which this plan succeeds is even smaller. In these conditions the perception is that once the debtor has entered into insolvency he will end up bankrupt. For this reason, the new law on preventive concordat had established since article one that the law is

[76] http://www.buletinulinsolventei.ro/index.php?pagina=statistici

applicable to legal persons in economic difficulty, but which are not yet in an insolvency state.[77]

CONCLUSIONS

With the emergence of the economic crisis, the insolvency procedure was just a way of finding a fact situations, namely that the failure of Romanian companies in paying off the growing debt. More and more companies have used the insolvency procedure to determine their debtors to react and to pay their debts, but through the effects of the economic crisis, most companies haven't succeeded amicably and they entered into the insolvency procedure.

In the absence of an adequate infrastructure, the evolution of agriculture in Romania continues to be very dependent on weather conditions. Thus, the unfavorable weather in 2009 and declines in the price of agricultural products have made the previous year one of the toughest years for agriculture, and this has made its mark also upon the number of bankruptcies in this area, reaching 936 companies.

However, in insurance companies this is an administrative measure, ordered by the sole specialized autonomous administrative authority, namely ISC.

For a company in a precarious financial situation that wants to prevent the deterioration of the economic situation of the reorganization, the proposal would be the early application for judicial reorganization, bearing in mind that for a successful reorganization plan provided by the insolvency

[77] Studiu privind situatia insolventelor din Romania in anul 2009 si primul trimestru al anului 2010 – disponibil pe http://www.coface.ro/CofacePortal/RO/ro_RO/pages/home/cine_suntem/StiriSiEvenimente/StudiisiAnalize (Study on the situation of Romanian insolvencies in 2009 and the first quarter of 2010 - available on http://www.coface.ro/CofacePortal/RO/ro_RO/pages/home/cine_suntem/StiriSiEvenimente/StudiisiAnalize)

law, a long period of time is needed for its achievement, starting from the confirmation of the plan until its completion.

The financial mediation sector is one of the safest sectors with a share in the total insolvencies of ~ 1% (0.54% in 2008 and 1% in 2011), while in agriculture the share in total insolvencies has varied over the past 4 years between 3% and 5%.

REFERENCES

1. **DUCA ALINA, DUCA EMILIAN** (2009) – Soluţii fiscale pentru perioade de criza. Reorganizarea afacerilor. Aspecte fiscale, Editura Universul Juridic, Bucureşti.
2. **GEORGESCU IULIANA, ISTRATE COSTEL, HUIAN CARMEN** (2009) – Impactul reorganizării societăţilor comerciale asupra calităţii informaţiei contabile, Editura Universităţii „Alexandru Ioan Cuza", Iaşi.
3. *** Legea 85/2006 privind procedura insolvenţei (Law 85/2006 on insolvency procedure)
4. *** Raport asupra pieţei de asigurări şi a activităţii desfăşurate pentru anii 2008-2010 - emise de Comisia de Supraveghere a Asigurărilor (Report on the insurance market and the activity carried out for the years 2008-2010 - issued by the Insurance Supervisory Commission)
5. ***http://www.coface.ro/CofacePortal/RO/ro_RO/pages/home/cine_suntem/StiriSiEvenimente/StudiisiAnalize, 26 Mar 2012 23:10
6. ***http://www.buletinulinsolventei.ro/index.php?pagina=statistici 26 Mar 2012 15:51