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The enterprise risk profile - a financial and managerial health indicator - comparative study

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Abstract. *The current paper explores the role that risk profile analysis plays in maintaining the financial and managerial health of companies, within the reorganization process (a phase of insolvency procedure). During the modern era, the attempts to regulate insolvency proceedings, in order to redefine the principles governing them, have made possible a strong international collaboration and have generated a set of reforms designed to effectively address the global phenomenon of insolvency. The main purpose of the new regulations is to give a second chance to the honest debtor and to support him and his/her business in their recovery efforts. Thus, the reorganization of companies becomes an essential attribute of the free, functional market economy, based upon free competition. EU-wide statistics for 2016 show that over 200,000 businesses are annually affected by bankruptcy, which leads to the loss of more than 1.7 million jobs each year. The situation is particularly important for the economies of all countries involved, regardless of the development level. Because of constant business threats, managers should be aware at all times of the economic and financial indicators, seeking for the vulnerable areas of their business and for those with development potential. Identifying a company's risk profile involves analyzing all the risks that affect the entity (market risk, bankruptcy, liquidity risk, operational risk etc.). A very important factor concerning the reorganization of a company is the tax policy and this paper further explores the subject, by focusing on Romania's business patterns, compared to the international framework, based upon the statistics for reorganization procedures, the applicable legal framework, the creditors' policy to encourage recovery etc. The purpose of this study is to highlight the causes that might limit the recovery of companies, during the reorganization procedures in Romania and, as a further research, to analyze the opportunity of developing an economic risk analysis model able to predict the future reorganization of companies. It would represent a barometer of financial and managerial health.*

Keywords: enterprise risk profile, reorganization proceedings, reorganization plan, insolvency, debt cancellation, reorganization revenue, taxable income from reorganization.

Introduction

The recovery of companies through the judicial reorganization procedure is a controversial topic of great relevance, regarding the evolution of the Romanian business environment, the practical experience in the field, as well as the information and data structuring needs, at an early stage, for the time being (Stroie & Mirea, 2016).

In a relatively short time horizon – i.e. 50 years – the introduction of the notions of risk and uncertainty in the economic theory has reoriented the research programs in

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economic sciences, the knowledge degree of the human behavior being significantly expanded.

Identifying a company's risk profile in order to respond to the ongoing changing business conditions involves analyzing all risks (internal and external, micro and macroeconomic) that may affect the company.

In the current context, the reorganization of companies – related to the social impact, the maintenance of trade connections, compared to the effort of starting new ones, the contagious nature of the decline, and the interest of capital owners – represents an essential attribute of the free, functional market economy, which justifies the free competition.

The judicial reorganization process is associated with important changes within the organization, in order to improve its financial performance and make it possible to re-enter the economic circuit.

Incident taxing policies for these insolvency procedures influence the recovery chances of companies. If a state encourages the reorganization procedures, the latter should be accompanied by appropriate fiscal measures.

In this study, we intend to highlight the causes that limit the judicial reorganization in Romania, compared to the situation at the international level, by reference to the incumbent accounting and tax rules, the statistics of reorganization procedures, the applicable legal framework etc.

The ultimate goal of this research is to provide an aggregate set of additional information in order to help build an economic model predicting the possibility of a company's reorganization, taking into account the specific risk profile that can be a barometer of financial and managerial health.

Literature review and the international framework on reorganization proceedings

The survival of a company in difficulty is of great importance, both for the owners, as well as for the social impact, the maintenance of commercial connections, etc. A company's failure or decline is generally defined through the notions of bankruptcy/ liquidation or by the failure to achieve its objectives (Cochran, 1981; Pretorius, 2009; Laitinen et al., 2016).

A company's decline is analyzed in other studies in terms of maintaining the company in the economic circuit (Robbins & Pearce, 1992; Barker & Duhaime, 1997).

The literature on management strategies for the recovery of companies in the economic circuit is vast (Chandler, 1962; Liou and Smith, 2007; Smith and Graves, 2005), compared to the one on the companies under insolvency proceedings (Laitinen, 2008; Routledge and Gadenne 2004; LoPucki and Dohrety, 2002).

A possible reason may be represented by the limited number of companies under insolvency proceedings, compared to those in the civil circuit, or by the difficulty in accessing the data related to these companies (Barker & Duhaime, 1997; Pearce & Robbins, 1992; Lohrke et al., 2004).

Different insolvency systems allow companies to survive in the context of encouraging certain arrangements with creditors, which is beneficial to equity holders.

Usually, in the literature, the term "financial turnaround/ recover from financially distressed conditions" is often used with reference to the companies from the economic circuit (Furman & McGahan, 2002; Liou & Smith, 2007). At the same time, the companies under special insolvency proceedings will enter the judicial reorganization phase, i.e. the "reorganization/ rehabilitation/ restructuring/ safeguard proceedings under the insolvency procedure" (Laitinen, 2008, 2011, 2016; Routledge & Gadenne, 2004).

The particularities of the reorganization proceedings at the international level

The international collaboration of states has created modern regulations in addressing the global phenomenon of insolvency. In this context, giving a second chance to the honest debtor and supporting it in business recovery efforts becomes the fundamental principle of company reorganization.

Almost ninety countries improved their legislation on insolvency after World War II (Gine and Love, 2006) by encouraging reorganization proceedings.

Conceptually, there are two insolvency systems: the system that favors the creditors in the procedure and pro-debtor systems. Seen from this perspective, the insolvency systems in the US and France are primarily aimed at encouraging the restructuring of the debtors' activities, while Germany has adopted a pro-creditor system, whose main purpose is to liquidate the assets and distribute funds among creditors.

The particularities of the insolvency system in the US

The US legislation on insolvency proceedings is seen as one of the most effective, being taken over as a model in most EU countries. In 1800, the US Congress adopted the first federal law on bankruptcy, appropriately called the Bankruptcy Act (1800). This law allowed only a minimum debt discharge. The 1867 law was the first to include the protection of companies and grant the second chance to honest debtors. In 1979, the Bankruptcy Code was adopted, amended largely in 2005.

The reorganization proceedings is governed by the U.S. Code, Title 11 - BANKRUPTCY.

As a general rule, if the debtor has a minimal reorganization chance, it has at hand the protection granted by company reorganization.

In the absence of fraud or other offense, the management bodies are generally not responsible for the debts of an insolvent debtor.

The statistics of insolvency proceedings from 2009 to 2015, presented below, highlight that only 1% of all insolvency proceedings are reorganization procedures; from these reorganization procedures, only 1-6% represents admitted reorganization plans:

Table 1. The situation of the insolvency proceedings in the USA, 2009 - 2015

Insolvency proceedings	2009	2010	2011	2012	2013	2014	2015
Chapter 7 Liquidation proceedings	961.025	1.116.745	1.012.133	853.471	735.524	625.892	534.480
Chapter 11 Reorganization proceedings	14.295	13.680	11.499	10.208	9.249	7.392	6.789

% Reorganization proceedings in total insolvency proceedings (chapter 7+11)	1%	1%	1%	1%	1%	1%	1%
Applications for the confirmation of reorganization plans	202	246	292	586	520	277	257
% Approved plans in total reorganization procedures	1%	2%	3%	6%	6%	4%	4%

(Source: Authors' own research based on Activity Annual Reports of United States Department of Justice - Executive Office for United States Trustees -www.justice.gov).

Regarding the situation of partial debt discharge through the reorganization plan, the US fiscal legislation states that it falls within the category of the exemptions from taxable incomes. The general rule states that the income resulting from debt cancellation is included in the gross income of a company for that year. The exemption from the rule is represented by debt discharge under a confirmed reorganization plan.

The particularities of the insolvency system in France

The French law on insolvency (French Law no. 85-89 of 1985 on judicial recovery and liquidation) was largely amended in 2005. One of the main objectives of the 2005 reform was to promote the reorganization at the preventive stage and to encourage creditors to play a more active role in insolvency proceedings, in particular by creating a safer environment for them, in order to extend new credit facilities during the pre-insolvency and insolvency phases.

Business rescue procedures include pre-insolvency procedures: the ad-hoc mandate, conciliation procedures and insolvency procedures, i.e. safeguard and judicial reorganization procedures.

The French legislation includes both general and simplified insolvency proceedings, depending on the size of the respective companies.

The general insolvency proceedings start with the observation period (also called supervision), when the debtor's economic situation is analyzed. The Judicial Administrator proposes the reorganization plan within 6 months, with two extensions of successive 6-month periods, up to 18 months.

Under the simplified proceedings, the reorganization plan can also be drafted by the statutory administrator within 15-30 days. The period may be extended to up to 4 months by the court, provided that it is informed about the stage of the proceedings, and this extension is required.

During the observation period, if the company is solvable but has financial problems that can lead to insolvency, the safeguard procedure can be used, involving the re-capitalization of the company, debt restructuring, debt-to-equity swap, the partial sale of assets and the partial sale of the business. If the company becomes insolvent, the court may order the replacement of the safeguard procedure with the rehabilitation or liquidation proceedings. The next step, following the observation, is the reorganization. If the plan is not viable or if the reorganization has failed, the court decides to liquidate the company.

The liability of the management bodies may incur in connection to the management of insolvency proceedings, when, as a result of management errors, the company's assets do not cover its debts. An action in the event of maladministration (other than mere negligence), which applies only to winding-up (liquidation) proceedings, may lead to the liability of an insolvent company for all or part of its debts.

The insolvency statistics in France for 2011-2015, presented below, show that only 2-3% of the total proceedings are safeguarding, 30-32% are judicial reorganization procedures, and the remaining is represented by liquidation proceedings:

Table 2. Insolvency statistics in France, 2011 – 2015

Proceedings	2011	2012	2013	2014	2015
Judicial liquidation procedure	40.211	41.817	43.579	42.874	43.178
Judicial reorganization proceedings	18.807	18.726	18.740	18.092	18.370
Safeguard procedures	1.419	1.516	1.664	1.620	1.533
% Reorganization proceedings in total insolvency proceedings	32%	31%	30%	30%	30%

(Source: http://www.altares.com/IMG/pdf/2016_-_altares_-_bilan2015_-_defa-sauveg_france-regions.pdf?483/3c1299b96a6348d2b891c1162321672017c5871e.

In the context of restructuring insolvent companies, creditors will often accept a partial recovery of their claims or other conversion thereof into shares of the debtor company. The plan is not voted on categories of claims; at the meeting for the approval of the plan, only the creditors whose rights are affected shall vote.

If a company is not bankrupt, the settlement of a claim for a lower amount shall be made in compliance with Article 80, 2 let. c (the Law on Income Tax): "Applying the rules of debt discharge".

Therefore, in debt restructuring as part of a reorganization plan, debts are discharged/ reduced.

The particularities of the insolvency system in Germany

The German insolvency system is a pro-creditor one. The main purpose of the proceedings is this time to satisfy the creditor's interests. The debtor's reorganization ranks second.

If there are any reasons for initiating the insolvency proceedings (the liquidity tests being probatory in this respect), the company managers must present an insolvency application. This must be done without undue delay, in any event, no later than three weeks after the occurrence of the circumstances justifying the initiation of insolvency proceedings. Any person who does not fulfill this obligation is subject to criminal prosecution and is personally liable for insolvency, for the payments made by the company to third parties (with limited exceptions). If a company is insolvent, the management bodies are generally not liable for the company's debts. The management bodies are liable for the payments made after the insolvency or for over-indebtedness.

A business can be saved through pre-insolvency proceedings or judicial reorganization.

The debtor may apply for the judicial reorganization procedure (restructuring) within 3 weeks from the initiation date of the preliminary insolvency proceedings, on reasonable grounds (with presentation of the financial and accounting features and the reorganization perspectives). The restructuring application must be accompanied by the opinion of a person with experience in insolvency. At the same time, the debtor shall request that the administration be retained in order to manage the business further. Subsequently, the court shall approve the timeframe for preparing and presenting the restructuring plan (which shall not exceed 3 months) and to the extent that the debtor has not retained its administration right or, if inappropriate, the court shall appoint a special administrator (custodian).

Creditors cannot propose a reorganization plan, but at a creditors' meeting they can ask the court administrator to propose the plan. The plan is voted on by categories of claims only by the creditors whose rights are affected. The purpose of an insolvency plan is to attempt a higher satisfaction of the claims held by creditors.

Analyzed through the lens of the initiated insolvency proceedings/ reorganization plans, from all the insolvency proceedings, the reorganization accounts for 10% of all insolvency proceedings; 40-45% represents rejections of the reorganization applications due to the lack of the necessary assets/ unviable business, and the rest is represented by the procedures resulting in the liquidation of assets. The statistics per years (2008-2015), provided by the Institute of German Statistics, are presented below:

Table 3. Insolvency statistics in Germany, 2008-2015

Proceedings	2008	2009	2010	2011	2012	2013	2014	2015	2016
Insolvency proceedings	140.979	147.974	153.549	145.702	137.653	129.269	123.231	115.847	111.197
Rejected judicial reorganization proceedings	12.107	12.935	12.770	11.798	10.826	10.264	9.924	9.711	9.347
Approved plans	2.116	1.998	2.139	1.918	1.819	1.799	1.716	1.880	1.970
% Reorganization proceedings in total insolvency proceedings	2%	1%	1%	1%	1%	1%	1%	2%	2%

(Source: www.destatis.de).

The issue of taxing the benefits resulting from debt discharge, through reorganization (restructuring plan), was widely debated in Germany. In order to harmonize the legislation on insolvency proceedings that allowed for the partial debt discharge and the extra burden resulting from their discharge (generating a taxable income), the Ministry of Finance issued the Restructuring Decree of 07.02.2017 based on the Decision of the Grand Senate of the Federal Fiscal Court from 28.11.2016.

According to the Decree, there were exempted from tax the earnings resulted from operating business capital or the operating income resulted from debt discharge for restructuring purposes. Until 1997, the profits resulted from restructuring were exempted from taxation. The period elapsed after 1997 until the issue of the Restructuring Decree was considered to have harmed/ hindered the reorganization of companies. Including between 1997 and 2017, there were attempts to exempt from taxation the profits resulted from restructuring (Rehabilitation Decree of March 27, 2003).

The particularities of the judicial reorganization procedure in Romania

The Romanian legislation on insolvency has taken over, adapted and implemented the "best practice" rules at international level, in particular the recommendations of the World Bank.

With regard to business restructuring, the national rules (Law 85/2006 on Insolvency Proceedings, which was amended by Law 85/2014 on insolvency prevention and insolvency proceedings - LPI) are based on the recommendations, rules and interpretations also inspired by the European Commission's communications.

The main stages of the insolvency proceedings in Romania are presented according to Figure no. 1. Thus, according to LPI, when talking about insolvency, we refer to any phase of the procedure, whether it is the observation period (IO), the reorganization (IR) or the bankruptcy (IF - bankruptcy general procedure, IPS- simplified bankruptcy, IT - simplified bankruptcy derived from the procedures for voluntary liquidation, Law no. 359/2004 and Law no. 31/1990).

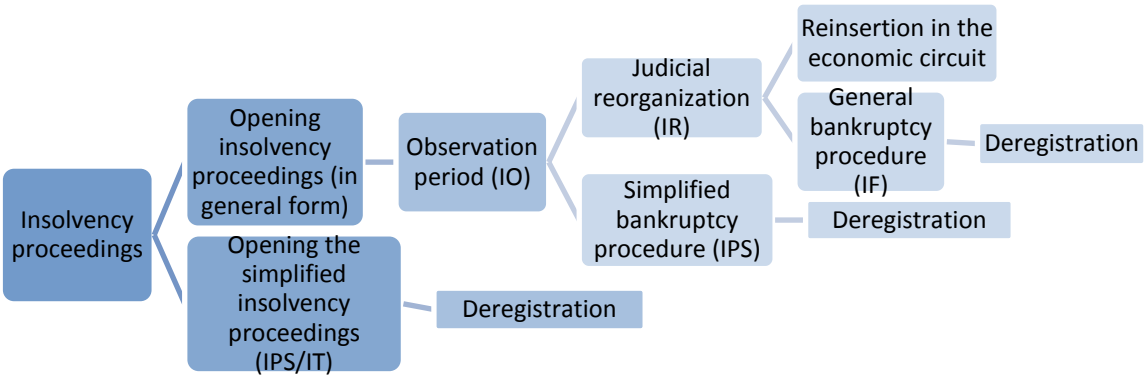

Figure 1. Main stages of insolvency proceedings in Romania

(Source: Authors' own research).

In Romania, in order to save businesses, there are pre-insolvency proceedings, i.e. the ad-hoc mandate and arrangements with creditors, as well as the judicial reorganization, which is an insolvency proceeding.

According to the statistical data provided by the National Trade Register Office in Romania, the total number of the legal entities active during 2009-2015 was approx. 700

thousand legal persons. The numerical situation of the insolvency files during 2008 – 2015, according to the data provided by UNPIR, is presented in Table no. 4:

Table 4. The numerical situation of the insolvency files in Romania, 2008 – 2015

Period/ Proceeding	IR	TOTAL	% IR in Total files	PJ total number	% insolvencies in total PJ
2009	406	29.857	1%	690021	4%
2010	636	29.178	2%	631989	5%
2011	904	32.607	3%	653418	5%
2012	1.488	36.564	4%	695492	5%
2013	1.686	36.553	5%	719258	5%
2014	1.674	42.013	4%	747699	6%
2015	1.724	35.373	5%	773781	5%
Total	8838	270191			

(Source: Authors' own research based on Activity Annual Reports of UNPIR).

Corroborating the data provided by ONRC and UNPIR (and by eliminating from our comparison, for the accuracy of the results, the files under the observation period, as this is an intermediate period) between 2009 and 2015, it was revealed that, on average, 5% of the Romanian companies went through insolvency proceedings .

From all the files, the reorganization procedures represented 5% in 2015, and the trend had been increasing, compared to the other procedures. Graphically, the situation of the judicial reorganization procedures, from all insolvency proceedings, is presented in Figure no. 2.

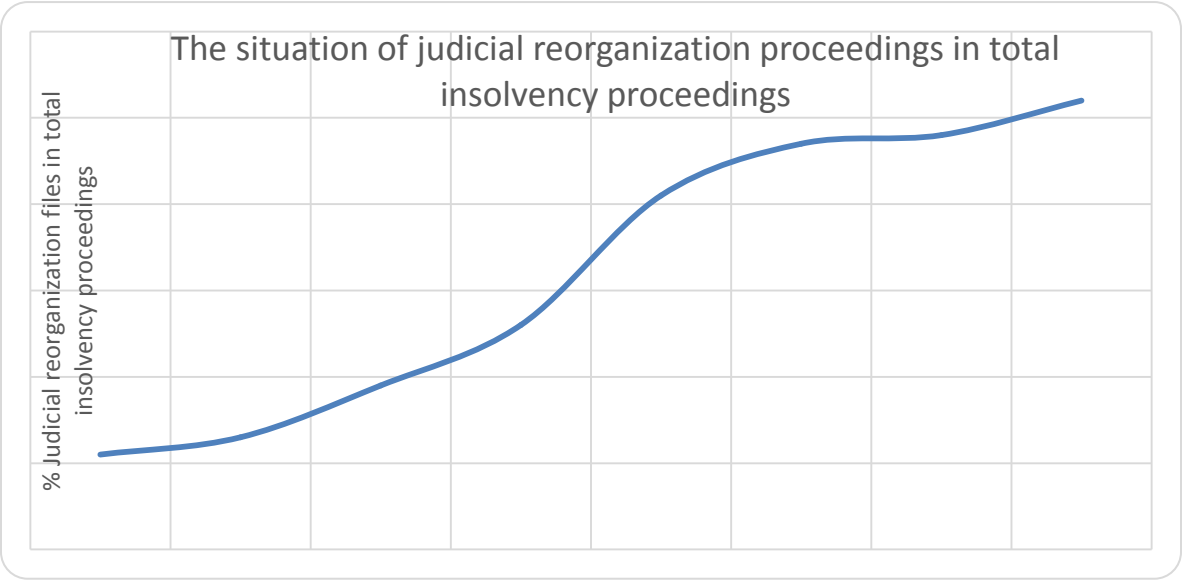

Figure 2. The evolution of judicial reorganization proceedings in Romania in total insolvency proceedings, 2008 - 2015

(Source: Authors' own research based on Activity Annual Reports of UNPIR).

In Romania, there are no official statistics of the companies reinserted in the civil circuit, after undergoing reorganization procedures. The various institutions involved in the procedure (tax, bankers, etc.) estimate a reinsertion rate in the civil circuit of less than 3%.

Judicial reorganization is an option for both debtors and creditors, in order to rescue a business.

After the publication of the list of creditors, within 30 days, the plan for reorganizing the debtor's activity shall be drawn up. It may be proposed by the debtor (if not previously denied), by the creditors or by even the legal administrator.

The debtor in insolvency proceedings is entitled to a partial debt discharge through the reorganization plan. Of course, this partial debt discharge cannot be achieved below the level of the debts that it could cover in the event of bankruptcy.

The plan is voted on by categories of claims, and the reorganization plan shall be confirmed by the syndic judge.

The debt discharge helps debtors to survive; however, this facility specific to insolvency proceedings must be analyzed also by the accounting and tax rules for this operation, in order not to jeopardize the reorganization.

In relation to the reorganization plan, the accounting rules require the registration of the list of creditors and subsequently the registration of the debts discharged through the reorganization plan.

The Romanian Tax Law identifies the category of non-taxable income, which leads us to the idea that what is not taxable shall be taxable. If the income resulted from the discharge of some debts is assimilated to the taxable income, a tax on profit shall be generated, which should be paid by the companies undergoing the reorganization procedure. Being a current tax (born in the procedure), payment maturity shall intervene in the first quarter of the reorganization plan. The legal regulation is unclear and is generated because the debtor’s situation is exceptional, the obligation to record the list of creditors and/ or the debt discharge being specific only to insolvency proceedings (the period when the principle of activity continuity is not applicable), and the expenses and revenues do not result from carrying out the activity under normal conditions. The accounting rules state only theoretically the non-application of the accounting rules in order to present a fair financial statement.

Certain interpretations in Romania, expressed in *Phoenix* Insolvency Journal (Bufan, 2017), qualify the income resulting from debt discharge through the plan as "upfront income". This recording postpones the corporate tax debt until the condition of the reinsertion into the economic circuit has been met, without the possibility of returning to the value of the debts registered in the final list (and hence the adjustment, in the opposite direction, of the income resulting from debt discharge). The opinion is based on the specific features of the insolvency law. This law rules that if a reorganization plan fails (including the partial debt discharge), or in the case of bankruptcy, the situation established by the final list shall be reinstated (i.e. the creditors' original debts against the debtor, in the amount set before the debt discharge).

In the absence of clear income tax rules, in the sense of exempting from taxation the income resulting from debt discharge in insolvency proceedings, the fiscal creditor's

tendency is to calculate the corporate tax. This will lead to the bankruptcy of the companies under reorganization procedures even in the first quarter of the plan, although the rules for the interpretation of tax provisions lead us to the idea that ultimately the unclear regulations should be interpreted in favor of the taxpayer's/ payer's interest. The accounting regulations also show that the application of the accounting rules distorts the true image of the assets, debts and financial position (practically, the presentation of unrealistic profits, resulting from the discharge of some debts through the plan), respectively that the provisions do not apply and this fact must be presented in the notes annexed to financial statements.

Methodology

We have used a qualitative research methodology, based on an extensive literature analysis alongside with observation and case studies approach.

The research questions this paper relies upon are:

1. Which are the main reasons that limit the companies' recovery in the reorganization procedures in Romania?
2. Is the companies' reorganization system based on a worldwide pattern?
3. Is there an economic risk analysis model used for companies within the reorganization procedure?

The purpose of this research is to identify the correlations between the different insolvency systems and the applicable fiscal policy, in order to analyze the causes limiting the reorganization of companies in court proceedings.

The company's risk profile, as a factor of financial and managerial health, should be projected by referring to the companies' internal and external factors.

One of the company's external factors is also represented by the tax-setting policies for reorganization procedures (more precisely, taxing the profits resulting from the partial debt discharge through a reorganization plan).

In this respect, we analyzed the insolvency phenomenon (implicitly the reorganization of companies) in Romania, compared to the insolvency systems in the USA, France and Germany, countries with insolvency systems with a long history and seen as effective.

The primary information source of our research was represented by the data provided by the national legislation specific to insolvency proceedings, as well as by the tax legislation for setting the fees for the reorganization procedure.

Regarding the insolvency systems, in relation to Romania - LPI, for the US, we analyzed the Bankruptcy Code adopted in 1979 and substantially amended in 1984 and 2005. Concerning Germany, we studied the German Insolvency Code – Insolvenzordnung – in force since 1999; as far as the French system was concerned, we analyzed the French Law (LFLR), in force since 1985.

We analyzed the policy for setting the fees for the insolvency procedure from the perspective of debt discharge through the reorganization plan. Thus, we analyzed the Romanian Tax Code; for the US fiscal system - the U.S. Code; for Germany - the Corporate Taxes/ Profit Tax (KStG); and the French Income Tax Act (LRC, 1985).

The analysis of insolvency proceedings was carried out based on official data, information provided by Thomson Reuters Practical Law, the National Union of Insolvency Practitioners, the National Trade Register Office - ONRC, Insol Europe, as well as by the statistical data collected from the institutes of statistics of the economies analyzed.

Results and discussions

The various insolvency systems, connected to specific tax-setting policies, create the premises for the companies' reorganization option.

The systems adopted by different countries are external risk factors for the reorganization of companies as part of judicial insolvency proceedings.

In order to analyze the Romanian insolvency system and interpret the results, we designed the following comparative analysis table with the main features of the insolvency systems in the USA, France and Germany, including the reference to the tax-setting policies for the profits arising from the reorganization resulted from debt discharge. We have to specifiy that it is the first time this approach is used and tested, in connection to this subject.

As far as the reorganization of companies is concerned, the main features of the insolvency systems are: the existence of pre-insolvency proceedings, procedures for rescuing the companies in court proceedings, the need to speed up the insolvency proceedings for the removal from the economic circuit of the companies with liquidity problems and the application of recovery measures, the existence of clear insolvency tests, the creation of conditions for higher recovery by reorganization only in case of bankruptcy, the voting conditions of the plan, and the existence of fiscal measures to encourage recovery.

By scoring (with 1 or 0) the different features and adding these scores, the strength of the reorganization system was established in each of the countries under analysis.

This situation is presented in the table below:

Economy analyzed / Main features of the insolvency systems and the tax-setting policies specific to the reorganization procedures	**USA**	**Germany**	**France**	**Romania**	**Majority score**
Type of insolvency system	Pro debtor	Pro creditor	Pro debtor	Pro debtor	1 pro debtor and 0 pro creditor
Are there any restructuring/ pre-insolvency proceedings prior to the court proceedings?	Yes	Yes	Yes	Yes	1 Yes and 0 No
Existence of the judicial reorganization procedure	Yes	Yes	Yes	Yes	1 Yes and 0 No
Is the debtor obliged to request the initiation of	Yes	Yes	Yes	Yes	1 Yes and 0 No

insolvency proceedings?					
Nature of sanctions for not declaring insolvency	Involving the liability for the state of insolvency, practicing contractual liability sanctions	Criminal, involving the liability for the state of insolvency, as well as for the payments made after the lack of liquidity	Involving the liability for the state of insolvency, involving the liability of the parent company if it controls the subsidiary	Involving the liability for the state of insolvency	2 - drastic measures - criminal, contravention, limitation of payments after insolvency; 1 - average measures - insolvency, contractual, according to practice and 0 - minimum (regulation by insolvency proceedings)
In order to identify the debtor's insolvency, does the insolvency law regulate the passing of certain tests?	Yes	Yes	Yes	No	1 Yes and 0 No
Are the distributions through the reorganization plan more than the minimum that the creditors receive in the event of bankruptcy?	Yes	Yes	No	Yes	1 Yes and 0 No
It is the reorganization plan voted by the creditors whose rights are affected?	Only by the creditors whose rights are affected	Only by the creditors whose rights are affected	Only by the creditors whose rights are affected	By all creditors; the non-disadvantaged claims are considered to have voted on the plan	1 Only by the creditors whose rights are affected and 0 by all creditors
Creditors vote on categories of claims	Yes	Yes	No	Yes	1 Yes and 0 No
Taxation of the profits resulting from debt discharge through reorganization/ restructuring	No	No	No	Yes	1 Yes and 0 No
Strength of the reorganization system	**10 points**	**10 points**	**8 points**	**6 points**	

The maximum possible score is 12 points, of which Romania has scored 6 points.

The results revealing the strength of the reorganization systems indicate dysfunctions of the reorganization procedures in Romania. The system is deficient due to the lack of conditions to discipline the debtors' conduct in insolvency proceedings, which is

left to chance because the legislation does not contain clear tests whose application would lead to the idea that the company must undergo the insolvency proceedings.

The lack of economic models/ indicators/ insolvency tests generates delays in the initiation of insolvency proceedings/ perpetuation of the insolvency for other companies. The non-recovery of debts from insolvency debtors is one of the most common causes of insolvency in Romania.

A low score was triggered by the voting procedures for the reorganization plan. In practice, in Romania, the debtors secure the success of the vote of the reorganization plan based on the vote of close or controlled creditors. However, the most commonly met fiscal creditor in Romanian insolvency does not have tests/ models approved by the analysis in order to vote on the reorganization plans and most of the time his/her vote is negative and unfounded.

Finally, it should be underlined that Romania is the only country, from the analyzed ones, that did not corroborate the purpose of the specific insolvency legislation, i.e. to encourage the reorganization of companies through the partial debt discharge, with appropriate tax measures for the non-taxation of these profits, which do not have a correspondent in the company's cash-flow.

The practice and the history of the developed countries are evidence that support such measures encouraging the reorganization. In their absence, companies with a very large patrimony and reorganization chances will end up in liquidation, which is not an alternative for a strong economy.

Conclusion

One cannot talk about reorganization proceedings unless the specific insolvency legislation encourages it, by issuing specific rules/ policies in order to ensure their implementation. The insolvency system and the tax-setting policies for specific taxes are external factors that affect the companies in a possible reorganization process.

We are fully aware of the limitations of the comparative study because the analysis was carried out starting from the insolvency systems with a long history and assessed as effective according to the literature, and by granting a score according to the most common situations.

However, the comparative study involved only 4 countries, namely Romania, USA, Germany and France. In the future, we will try to make a comparative study that will also integrate less developed countries, in order to analyze more thoroughly the results of the reorganization proceedings and provide solutions to improve the proceedings in this area, in the context of a company's development.

A qualitative research based on the interview would be interesting in order to analyze other types of risks affecting the companies that undergo insolvency proceedings, which will be further tested by quantitative tools (effectively on companies undergoing these proceedings).

We intend to address these issues in several future research studies. We also intend in a future research to design a risk analysis model of the companies under reorganization proceedings, based on the scores of different risks affecting the company, in order to determine their financial and managerial health status.

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