

LAW No. 83/1998
on Bankruptcy Proceedings for Banks

The Parliament of Romania passes the present law.

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CHAPTER I
GENERAL PROVISIONS

Art. 1. The banks legally set up in Romania, which are insolvent shall be subject to the bankruptcy proceedings set forth by the present law.

Art. 2. A bank is deemed insolvent, if it undergoes one of the following predicaments:

- a) the bank has not fully paid its firm, liquid and exigible obligations for at least 30 days;
- b) the value of the bank's liabilities exceeds the value of its assets.

The value of the bank's assets and liabilities shall be calculated in compliance with specific regulations issued by the National Bank of Romania.

CHAPTER II
PREROGATIVES OF THE BODIES APPLYING THE BANKRUPTCY
PROCEEDINGS

Art. 3. According to the present law, the main prerogatives of the court shall be the following:

- a) to appoint the syndic and, following NBR's approval, the liquidator, to supervise their activity and supersede them, if required;
- b) to approve the appointment of experts authorised by law to assist the syndic in fulfilling his duties;
- c) to judge the petition for cancellation of the right of the debtor bank's administrators to manage its business;
- d) to judge the syndic's writ of execution on cancelling some asset transfers that occurred prior to the registration of the petition;
- e) to judge appeals of the debtor bank or of its creditors against measures taken by the syndic;

- f) to confirm the distribution of proceeds from liquidation;
- g) to solve the syndic's objections to the interim and final reports;
- h) to issue the orders of commencement and closure of the bankruptcy proceedings.

Art. 4. The court orders are final and executory. They may be appealed consistent with the law.

Art. 5. The syndic shall be appointed by the chairperson of the court, by virtue of Law No. 92/1992 on court organisation.

Art. 6. In fulfilling his duties implying enforcement of several banking regulations, the syndic may require the opinion of the National Bank of Romania, as the banking supervisory authority.

Art. 7. According to the present law, the main duties of the syndic are the following:

- a) to go over the debtor bank's operations, in terms of the de facto situation, to draw up a detailed report on the causes and circumstances which led to the cessation of payments, to nominate the persons who might be responsible for it, and to submit the report to the court within 30 days from his appointment;
- b) to conduct the activity of the persons he hired to assist him;
- c) to initiate legal action in court in order to annul fraudulent documents concluded by the debtor bank to the prejudice of the creditors' rights as well as to annul selected asset transfers, some commercial operations performed by the debtor bank, and annul collateral granted by the latter;
- d) to carry on or cancel selected contracts concluded by the debtor bank;
- e) to agree on the liquidation plan of the debtor bank's assets so as to cover its liabilities;
- f) upon commencement of the bankruptcy proceedings, to affix seals, to take stock of the debtor bank's assets and to take expedient measures for their preservation;
- g) to examine the claims and forward objections against them, as the case may be;
- h) to monitor collection of the debtor bank's claims, resulting from asset or cash transfers performed by the former prior to the registration of the petition;

- i) to liquidate the debtor bank's assets;
- j) to receive payments on behalf of the debtor bank and record the amounts, within 24 hours, in an account opened with the National Bank of Romania in the name of the debtor bank, with the exclusive usage right under the bankruptcy proceedings;
- k) to notify the court of any questions which might require a court order;
- l) to draw up any proceedings under the present law.

Art. 8. The debtor bank and any of the creditors may appeal against the measures taken by the syndic, in the specific cases laid down by the present law. Such an appeal shall be registered within 10 days from the date the measure was taken and a resolution should be made within 30 days at most. When necessary, the court shall hold a session to summon the author of the appeal, the debtor bank, its creditors, and the National Bank of Romania, with the participation of the syndic.

Art. 9. At any stage of the bankruptcy proceedings, the court, by way of righteous conclusion issued by the Court Chamber may supersede the syndic.

Art. 10. In all cases of bankruptcy, the court shall appoint a liquidator upon the proposal of the syndic and with the National Bank of Romania's approval. This should be an expert legal entity, established according to law.

Art. 11. A liquidator is vested with managing and controlling powers over the debtor bank and may take the measures s/he deems necessary to liquidate and realise the debtor bank's assets, even in the cases when the debtor bank's licence has been revoked. Such measures refer to the following aspects:

- a) to rightfully continue or break off any operation;
- b) to borrow money, against collateral consisting in the debtor bank's assets, or without collateral;
- c) to re-set the interest rates on the debtor bank's liabilities provided any new level of interest rates be no lower than the lowest interest rate in the banking system;
- d) to hire the staff required by liquidation;
- e) to conclude any document on behalf of the debtor bank, to initiate, or defend and co-ordinate, on his behalf, whatever action or legal proceeding.

The liquidator shall draw up a monthly report on the current stage of the bankruptcy proceedings, report that will be submitted to the syndic for approval, and then he shall send it to the National Bank of Romania. The report shall include information about the total amount of claims on the debtor bank and the total value of the debtor bank's assets, which were sold off.

CHAPTER III THE COURT NOTIFYING PROCEDURE

Art. 12. The bankruptcy proceedings shall start based on a petition presented by the debtor bank, its creditors, or the National Bank of Romania.

The court competent to solve the petition is the court under whose jurisdiction the debtor bank's head office is located.

Art. 13. The bankruptcy proceedings for a bank are usually initiated after the National Bank of Romania finds that the special supervision measures taken in view of recovering the respective bank failed to avert insolvency.

Art. 14. The debtor bank that is unable to pay its debts in full with the amounts available may take a petition to the court to be subjected to the provisions of the present law.

The persons who, according to the law, are entitled to represent the bank shall sign the bank's petition.

Art. 15. The debtor bank's petition should be accompanied by the following documents:

- a) the balance sheet and copies of the current ledgers;
- b) a list of all its assets; for immovable assets, the data from the registers of real-estate advertising shall be written down;
- c) a list of the creditors' names and addresses, whatever their claim might be – firm or under condition, liquid or non-liquid, due or undue, uncontested or contested – naming the amount, the cause and the preferential rights;
- d) profit and loss account for the year prior to the submission of the petition.

Art. 16. Any creditor that has a firm, liquid and exigible claim may present a petition in court against the debtor bank that has ceased payments for at least 30 days.

The creditor cannot submit the petition without proving that, as a result of commencing the action of enforced execution on the debtor bank's account, the National Bank of Romania previously reported, as the third custodian party, that the respective bank had ceased payments for more than 30 days.

Art. 17. The National Bank of Romania, as the banking supervision authority, may file a petition against the bank upon which special supervision and administration measures were imposed and failed to recover the bank that was unable to make full payments.

Art. 18. After the registration of the petition presented according to Art. 14, 16 and 17 hereof, the court shall notify the interested parties and the Companies Registration Office where the debtor bank was registered, in order to make the specification.

All expenses incurred by these measures shall be borne by the debtor bank.

Art. 19. On its first session, the court shall examine the petition and, in the event that the debtor bank has not appealed the insolvency declaration, it shall issue the bankruptcy order for the debtor bank at once.

The appeal against the bankruptcy order may be presented within 5 days from the registration date.

The court shall make a decision on the appeal within 10 days, a period that might be but once extended by 10 more days.

The bankruptcy order shall be immediately sent to the Bank Deposit Insurance Fund with a view of enforcing the regulations on payment of insured deposits.

Art. 20. The court shall notify the National Bank of Romania about the bankruptcy order. The National Bank of Romania shall immediately freeze the debtor bank's accounts opened with the National Bank of Romania and open a new one under the specification "bank in liquidation". All amounts extant in the bank's accounts by that time shall be transferred to the new account. Subsequently, the financial operations of the bank in liquidation shall be performed solely through this account.

Art. 21. Other liquidation proceedings are laid down by Law No. 64/ 1995 on the legal re-organisation and bankruptcy proceedings, with its subsequent amendments, Chapter III, Section 6 "Bankruptcy", which shall apply to the bankruptcy proceedings for banks accordingly.

CHAPTER IV RESPONSIBILITY OF MANAGEMENT AND AUDITORS OF THE BANK IN LIQUIDATION

Art. 22. The court may decide that a portion of the insolvent bank's liabilities be incurred by the management – administrators, superintendents and, as the case may be, auditors – if they contributed to the bankruptcy of the bank by one of the following infractions:

- a) used the bank's assets or loans in their own interest;
- b) performed commercial operations in their own interest, allegedly on behalf of the bank;

- c) ordered to carry on a business, in their own interest, which was obviously leading to cessation of payments;
- d) kept fictitious accounting records, concealed them or failed to keep accounting records in accordance with the law;
- e) embezzled or concealed part of the bank's assets or fictitiously increased the bank's its liabilities;
- f) used ruinous means to procure funds for the bank to delay cessation of payments;
- g) paid or ordered to make preferential payments to a creditor to the prejudice of other creditors in the month prior to ceasing payments.

The enactment of provisions under par. 1 shall not hinder the enactment of the criminal law for infractions.

Art. 23. The amounts paid according to Art. 22, par.1 shall become part of the debtor bank's assets and be destined for honouring obligations.

Art. 24. In order to enforce the measures under Art. 22, par. 1, the court may be notified by the syndic, by any of the creditors, by the National Bank of Romania or may act ex officio based on the data in the case file, and shall decide insurance measures.

Art. 25. The execution for debt made against the persons laid down under Art. 22, par. 1 shall be performed according to provisions in the Civil Law.

Art. 26. The bankruptcy proceedings shall end when the court approves the final report, when all funds or assets of the bank in liquidation are distributed and the unclaimed funds are deposited with the National Bank of Romania. Following the writ issued by the syndic, the court shall affirm a decision to end the bankruptcy proceedings. The decision shall be sent in writing to all creditors, to the debtor bank and to the National Bank of Romania, which shall close the account "bank in liquidation" and transfer the amounts left to the state budget. Entitled persons may claim these amounts within the legitimate prescription term.

CHAPTER V FINAL AND TRANSITORY PROVISIONS

Art. 27. The provisions of the present law shall be supplemented, according to their consistence with the provisions of the Civil Law.

Art. 28. The re-organisation and judiciary liquidation proceedings for banks, commenced prior to the enforcement of the present law shall be carried on and ended pursuant to the provisions of Law No. 64/1995 on the judiciary re-organisation and bankruptcy with its subsequent amendment and supplementation.

Art. 29. The present law shall come into force within 30 days from the date of its publication in the Official Gazette of Romania, Part I.

Art. 30. On the date of its enforcement, any contrary provisions to this law are repealed.

The Senate passed the law in its meeting held on 30 March 1997 in compliance with the provisions of Art. 74, par. (1) of the Constitution of Romania.

p. PRESIDENT OF THE SENATE

RADU VASILE

The Chamber of Deputies passed the law in its meeting held on 30 March 1998 in compliance with the provisions of Art. 74, par (2) of the Constitution of Romania.

p. PRESIDENT OF THE CHAMBER OF DEPUTIES

VASILE LUPU