

SOME ASPECTS REGARDING PROCEDURES OF COMPANY'S LIQUIDATION

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In case a company reached to far in the view of rehabilitation, then it has to be closed. It is indicated that liquidation has to take place when the company values more dead than alive or when the possibility of achieving the profit is much more distanced.

A) Liquidation outside the law of bankruptcy and of insolvability: By this procedure, the costs as concerns the bankruptcy procedure are gained in time. Liquidation can be made on two ways: the mandate and voluntary liquidation. B) Liquidation by the law of bankruptcy and of insolvability: The law of bankruptcy has three main functions during liquidation, meaning:

In conclusion, the bankruptcy mechanism doesn't have to be abuse used, in the view of making easy certain taking of control. The signs for starting the bankruptcy have to be also adequately established for not forcing the bankruptcy start of certain companies potentially available. The instances have to manifest a careful, responsible and professional attitude, thus offering to the enterprise time interval, in the view of saving by reorganization, thus increasing the chances of supervising the business.

Key words: *bankruptcy, state of failure, financial decision, creditor, judicial reorganization, insolvency and insolvabilit*

In the view of assuring not only the survival, but also the development, an enterprise needs financing sources on long term. For this thing, an economical entity refers either to internal financing or self-financing, or to an external financing, by the call to stockholders creditors. Those two solutions presented dispose of own financing modalities. The external financing, by means of stockholders performs two characteristic features:

1. *is residual*, because attracting the capital by transmission of shares occurs as being more expensive due to the risk assumed; at the same time, remuneration of own capital is residual, and the remuneration of stockholders is not considered a deductible expenditure; moreover, distribution of dividends is considered by some financial executives as being against self-financing, thanks to the fact that, both distribution of dividends, and self-financing have the same accomplishing basis – the net profit.

2. *is conjuncture*, because the economic entity has to own the moment of increasing the capital, in the sense of advancing or delaying the date of transmission of new shares and of establishing the value to which increasing will be performed.

Within a company's economic life, certain recessive and of failure moments can appear, which lead to putting under financial supervision, reorganization/restructuring and finally to liquidation. The failure can be interpreted in more ways, depending of problems involved or not by the collapse and dissolving that company, associated with a loss in total investment of creditors. In this way, clarifying the following terms becomes necessary¹: **the economic failure** signifies the fact that a company's incomes do not cover the total costs, including the capital's cost; **the company's failure** refers to any company which stop its activity, having as result a loss for creditors; **technical insolvency**. A company will be considered technically insolvable if it cannot respect the current observations on their becoming payable. A company being in this situation is considered in technical stopping of paying the obligations. The technical insolvability denotes the lack of financial difficulties to customers; **the insolvency in bankruptcy** appears when within an enterprise, the total of duties exceeds the real value of assets. This situation is much more severe than the technical insolvency, because it generated the company's liquidation.

Within the Romanian regulations for the judicial reorganization and bankruptcy procedure, distinction is made between the **insolvency and insolvability**. **The insolvency (inability of payment)** comes when the debtor do not have necessary liquidities for paying his real, liquid and due debts. The insolvency or debtor's stopping of payment has to be delimited of so that called "financial constraint", which consists on just being lack of necessary liquidities for duties acquit. It is possible that, in short time, the debtor to cash the debts from his own debtors and to financially redress.

The insolvability consists on debtor's impossibility of respecting his obligations towards the creditors, both from liquidities' lack and other goods among which the creditors' debts have to be satisfied.

The economic failure of a company is caused by more factors, among which the following can be presented: incompetence and managing failure (60%); the unfavorable evolution of the market (about 20%); the natural phenomenon, fire, calamities, Earth quakes (10%); other causes (10%).

It can be observed that the main cause has in view the failures of managing processes and of knowing the market. Therefore, the managers have to identify in time the signals of deteriorating the financial situation of enterprise, such as:

- achieving the negative net financial results;
- existence of a negative working capital;
- the impossibility of reimbursement the credits to their normal date of payment;

¹ Halpern, P. ș.a. - *Finanțe manageriale*, Editura Economică, București, 1998, p. 882.

- the bankruptcy of some providers or main customers for the enterprise;
- the reduced impossibility or non-availability of a manager.

The bankruptcy is a judicial procedure in the view of reorganizing or liquidation of a company, when reorganizing or liquidation is organized by special courts. The bankruptcy can be of two types: **voluntary**, when the bankrupted company presents to judicial instance a request and no order of supervising exists, and the manager of real patrimony/syndics is directly named; **involuntary**, when the company's creditors presents to judicial instance a request and prove that the debtor do not respect the duties on date of payment. In this case, the instance institutes the order of supervision over the debtor and names the patrimony managers.

The creditors can anticipate the incapacity of debtor for respecting the obligations to date of payments, upon the basis of bankruptcy deeds, which this committed, being the following: **the false pretences transfer** represents a transfer of properties towards a third party, on inadequate conditions, with intention of prejudicing the creditors; **the preferential transfer** represents the money or assets transfer by a insolvable debtor towards a creditor, giving to creditor a bigger part of duties unto other creditors will receive to liquidation. The preferential transfer is also called "false pretences preference"; If the debtor disappears in the view of cheating or delaying towards the creditors, then a request of bankruptcy can be submitted; **admittance to a creditors' meeting**. The debtor will commit a bankruptcy act if at a meeting of creditors, he presents a declaration of assets and duties which show that he is insolvable or admits in write that is unable of paying the duties.

MATERIAL AND METHOD

In case a company reached to far in the view of rehabilitation, then it has to be closed. It is indicated that liquidation has to take place when the company values more dead than alive or when the possibility of achieving the profit is much more distanced. The clearance can take place both outside the Law of bankruptcy and by the procedure performed under the jurisdiction of a bankruptcy court.

A) Liquidation outside the law of bankruptcy and of insolvability

By this procedure, the costs as concerns the bankruptcy procedure are gained in time. Liquidation can be made on two ways: the mandate and voluntary liquidation.

1. **The mandate** represents an informal procedure in the view of clearing the duties and assures, usually to creditors, a greater amount in comparison to liquidation by law of bankruptcy. By mandate, the title over the debtors' assets has to be transferred to a third person, named **mandatory** or **trustee**. The mandatory has the task of liquidating the assets by private sale or public auction and then of distributing the creditors' encashment, proportionally. The mandate does not automatically absolve the debtors from obligations. If a company does not exist anymore and gets out of business world, it will not mean that it stops all the pretences about it.

The mandate presents certain advantages, meaning: more reduced time of solving and the lack of expenses and formalities, characteristic to an injustice activity. The mandatory disposes of properties with much more flexibility than a bankruptcy

manager. **Voluntary liquidation.** In case a company reaches the bankruptcy, it can take a series of decisions. Such a possibility consists in performing a voluntary liquidation, without involving the bankruptcy process, accompanied by certain costs.

By understanding the voluntary way, the management takes a deliberate decision of selling the company, either to other company, or to a concern. If the managers take decisions towards stockholders interest, the voluntary decision has to be the most advantageous for the stockholders. This fact can be possible, in measure when managers own a certain number of company's stocks. As result, to a voluntary liquidation analysis, the percentage of liquidation is greater than the market value of company's stocks, which would continue the activity.

B) Liquidation by the law of bankruptcy and of insolvability

The law of bankruptcy has three main functions¹³ during liquidation, meaning:

- assures the protection against the debtor's fraud;
- assures an equitable distribution of debtor's stocks towards the creditors;
- allows to insolvable debtors to be absolved of all duties and to establish new companies, without the hardness of previous debts.

By all these, liquidation consumes a lot of time, is expensive and has as effect the enterprise's closing. Putting an enterprise in liquidation status supposes accomplishing the following activities : managing the bankruptcy procedures by the experts within judicial and financial field; evaluating and selling the company's assets ;establishing the priority order and of customers' satisfaction proportion.

A very sensitive problem is represented by **the order in which the duties of debtors are paid**, much more important as it is very possible that a part of the passive will remain unpaid and after the integral end of the patrimony and social capital.

The debts payment has to be done on terms, in manners and in accordance to the measure established by plan. The payment program has to respect the order of satisfying the debts foreseen by law. The payment program foreseen by program represents a concrete application of legal priority order for satisfying the debts.

The debts will be paid in the following order:

- taxes, postmarks and any other expenses afferent to procedure, including those for preserving and managing of goods form debtor's patrimony, as well as of remunerations coming form persons employees for accomplishing the procedure of judicial reorganization and o bankruptcy;
- the debts representing the credits, with afferent interests and expenses, offered to bank companies after the opening of procedure, as well the debts that result from continuing the activity of debtor;
- debts representing the amounts given by the debtor to third parties upon basis of certain obligations of maintenance, allocations for minors or of payment certain periodical amounts intended for assuring the existence means;
- debts representing the bank credits with the expenses and interests afferent to those resulted from delivering of products, services performing or other works, as well as from rents;
- debts subordinated, in preference order established by the law. The debts subordinated come from credits given to the debtor judicial person by an associate or stockholder owning at least 10% of the social capital, respectively of vote rights, within the general meeting of associates, depending on situation, by a member of economic interest group. Simultaneously, there are debts subordinated to those coming from acts with free title;
- debts of members, associates and stockholders, debtor judicial persons, coming from the residual right of their quality, in accordance to legal and statutory provisions.

The debts can be: **debts of first degree (bank credits)**, named as guaranteed debts with insurance of first degree; **debts of second degree (commercial credits, duties)**, named as guaranteed debts upon basis of the active left after paying the previous obligations.

On applying the liquidation procedure, two principles are aimed: fastness of operations; liquidation of goods in more advantageous manner, for satisfying the creditors' debts; The last liquidation act is represented by the net asset's distribution between the associates. Such an operation is possible only if after the payment of company's entire passive, assets of companies left, whose value cannot be shared. The balance sheet and the censors' report as concerns the liquidation are mentioned in Registry of Commerce and are published in Monitorul Oficial.

RESULTS AND DISCUSSIONS

In the view of analyzing the efficacy of own efforts, we will succinctly present some results that come from paper analysis:

1. The enterprises have access to two types of financial resources: own and loan. The manner of combining of these two types of resources define the financing structure, both performing a cost.
2. Establishing a target financial structure has to base upon strategic financial decisions. In the view of defining it adequately, the behavior anticipations belonging not only to capital providers have to be taken into consideration, but also of financial decisional of the enterprise, which may manifest a larger or smaller opening towards the risks related to each financing source.
3. In the view of accomplishing an optimization of the financial structure of an economic entity, there have to be preliminarily certain preoccupations for improving the financing structure – especially of current financing.
4. Trying to accept a financial structure generally-available for all enterprises occur to be superflue, this because the multitude of factors that perform over the financial structure modify and individualize each enterprise.

CONCLUSIONS

For establishing a financial decision in case of bankruptcy, the financial service proceeds on determining the most of financial information.

At the beginning, by the legislation research as concerns the companies, the bankruptcy law and other judicial provisions, the methodological information is established. Upon their basis, the information as regards the financial expenses and financial incomes are determined. The information as concerns the financial expenses refers to expenditure made in the view of process managing of bankruptcy and to eventual organizations and restructuring, being thus determined by the procedure of quotation. The payment obligations refer to amounts payment towards creditors and their proportion, the payment of wages for the staff and to the level foreseen by the law of bankruptcy, the payment of taxes remained towards the central and local budget.

The information as concerns the financial incomes are determine by the market value of the asset sold by public auction by the bankruptcy process managing. The financial decision as concerns the bankruptcy makes part of the documentation that attaches the company's bankruptcy, being the last financial distribution in the name of economic agent in discussion.

BIBLIOGRAPHY

1. Aglietta, M., 2002 – *Macroeconomie financiară*, Editura Coresi SA, Bucharest.
2. Halpern, P., 1998 – *Finanțe manageriale*, Editura Economică, București.
3. Lepage, H., Wajsman, P., 1999 – *Vingt économistes face a la crise*, Édition Odile Jacob, Paris.
4. Onofrei, M., 2004 – *Finanțele întreprinderii*, Editura Economică, București.
5. Pasca, V., 2005 – *Bancruta frauduloasă*, Editura Lumina Lex, Bucharest.