This country-specific Q&A provides an overview of restructuring & insolvency laws and regulations applicable in Romania.

For a full list of jurisdictional Q&As visit here
1. **What forms of security can be granted over immovable and movable property? What formalities are required and what is the impact if such formalities are not complied with?**

   The following types of securities can be found in the Romanian legislation: immovable mortgages, movable mortgages, special privileges, retention rights and pledges. The formalities of registration of such securities in special registers (e.g. Land Book, AEGRM – Electronic Archive of Security Interests) are required in order to be effective as against third parties, and their lack thereof may sometimes lead to the invalidation of such securities (e.g. if the movable property, object of the movable mortgage, is not specifically identified).

2. **What practical issues do secured creditors face in enforcing their security (e.g. timing issues, requirement for court involvement)?**

   As a rule, once the insolvency procedure has been opened, all judicial, extrajudicial and individual enforcement measures are stayed.

   Secured creditors may initiate or continue the enforcement proceeding against those persons who are co-guarantors or personal guarantors for the debtor.

   A secured creditor may request that he be granted appropriate protective measures if there is a risk of:

   a) The reduction of the value of the collateral or the existence of a real danger that it will suffer an appreciable reduction in value;
   
   b) The reduction of the value of the secured part of a lower-ranking debt, as a result of the accumulation of interests, increases and penalties of any kind on a secured senior claim;
   
   c) The lack of insurance of the object of the security against the risk of destruction or damage.

3. **What is the test for insolvency? Is there any obligation on directors or officers of the debtor to open insolvency procedures upon the debtor becoming distressed or insolvent? Are there any consequences for failure to do so?**

   According to the applicable legal provisions, insolvency is characterized by the insufficiency of available funds for payment of certain, due and payable debts. Such a state is presumed to exist if the debtor has debts older than 60 days and higher than RON 40,000.

   A debtor company must file the claim for the opening of an insolvency proceeding within a maximum of 30 days from the occurrence of the state of insolvency.
As such, if the legal representatives of a debtor company fail to submit, in due time, the petition for the opening of the insolvency proceeding (exceeding, by more than six months, the above stated term of 30 days) they may be liable for criminal prosecution.

4. **What insolvency procedures are available in the jurisdiction? Does management continue to operate the business and/or is the debtor subject to supervision? What roles do the court and other stakeholders play? How long does the process usually take to complete?**

A debtor may be subjected to a reorganization procedure, a simplified bankruptcy procedure, or a general bankruptcy procedure. Preceding the reorganization and general bankruptcy procedure is an “observation period”, during which the debtor, under supervision of the judicial administrators, and its creditors may opt for either reorganization or bankruptcy, depending on the particularities of each case.

As a general rule, during observation and reorganization, the debtor’s management continues to operate the business, through a Special Administrator appointed by the shareholders, the exception being if the shareholders fail to agree upon such an administrator, and the general and simplified bankruptcy procedure.

A reorganization procedure may take as long as 3 years (with the possibility for extending the reorganization plan for another year), while the recommended duration of the observation period is of 1 year, resulting in a total of 4-5 years. There is no time limit for a bankruptcy procedure.

However, the duration of the observation period frequently exceeds 1 year, resulting in the extension of the whole insolvency procedure.

5. **How do creditors and other stakeholders rank on an insolvency of a debtor? Do any stakeholders enjoy particular priority (e.g. employees, pension liabilities)? Could the claims of any class of creditor be subordinated (e.g. equitable subordination)?**

In insolvency (excluding bankruptcy), the law sets out the following order of payment of receivables:

- Taxes and any other expenses relating to the proceeding, including the official receiver’s/judicial liquidator’s fee.
- Receivables deriving from financings granted during the proceeding (super-priority).
- Receivables arising from employment relations.
- Receivables resulting from the continuation of the debtor’s business
- Budgetary receivables

In bankruptcy, the following order of payment of claims is set out:
- Taxes and any other expenses relating to the proceeding, including the official receiver’s/judicial liquidator’s fee.
- Receivables deriving from financings granted during the proceeding (super-priority).
- Receivables arising from employment relations.
- Receivables deriving from the continuation of the debtor’s business.
- Budgetary receivables.
- Receivables the debtor is bound to cover under support obligations, allowances to minors or payment of periodical amounts destined to ensure the means of support.
- Unsecured receivables.
- Subordinated receivable

The recent legislative changes have brought a preferential position for certain claims, in that for debts accumulated during insolvency proceedings which are older than 60 days, forced execution can be started, provided that certain conditions are met as regards the claim.

6. Can a debtor’s pre-insolvency transactions be challenged? If so, by whom, when and on what grounds? What is the effect of a successful challenge and how are the rights of third parties impacted?

A debtor’s pre-insolvency transactions (concluded during the 2 years prior to the opening of the proceedings) may be challenged by the judicial administrator or liquidator, if one of the below listed cases is applicable:

a) Free-of-charge transfers made during the 2 years prior to the opening of the procedure; humanitarian sponsorship is exempted;

b) Operations in which the debtor’s performance manifestly exceeds that received during the six months preceding the opening of the procedure;

c) Acts concluded during the 2 years prior to the opening of proceedings, with the intent of all the parties involved to hide goods from the creditors or to damage their rights in any other way;

d) Acts of transfer of ownership to a creditor for the settlement of a previous debt or for the benefit of the creditor, incurred in the 6 months prior to the commencement of the proceedings, if the amount that the creditor could obtain in the event of the debtor’s bankruptcy is less than the value of the transfer document;

e) The establishment of a right of preference for a claim that was unsecured in the 6 months preceding the opening of the procedure;

f) Early repayments of debts incurred in the 6 months preceding the opening of the
proceedings, if the maturity of said debts had been due for a date subsequent to the opening of the proceedings;

g) The transfer documents or the assumption of obligations by the debtor within a period of 2 years prior to the opening of the procedure, with the intention to hide/delay the state of insolvency or to damage a creditor’s rights.

The provisions above (excepting d-f) shall not apply to acts concluded in good faith in the performance of an agreement with creditors concluded as a result of out-of-court negotiations for the debtor’s debt restructuring, provided that the agreement was reasonably able to lead to the financial recovery of the debtor and not have the purpose of prejudicing and/or discriminating against creditors.

There are, also, a number of acts or transactions concluded by the debtor during the two years prior to the opening of the procedure with persons which have a legal relation with the debtor, that may also canceled and the benefits recovered:

a) With a limited partner or associate holding at least 20% of the capital of the company or, as the case may be, of the voting rights in the general meeting of the associates, in the case where the debtor is that limited partnership, respectively an agricultural company, in collectively or with limited liability;

b) With a member or administrator, when the debtor is a group of economic interest;

c) With a shareholder holding at least 20% of the shares of the debtor or, as the case may be, of the voting rights in the general meeting of the shareholders, if the debtor is that joint stock company;

d) With an administrator, director or a member of the debtor’s oversight bodies, a cooperative society, a limited liability company or, as the case may be, an agricultural company;

e) With any other natural or legal person, having a controlling position on the debtor or his activity;

f) With a co-owner or dear owner of a common good;

g) With the spouse, relatives or affinity up to the fourth degree included, of the natural persons listed underlet. a) -f).

The acquiring third party in the course of a patrimonial transfer, cancelled according to the provisions stated above, will have to return the asset transferred to the debtor or, if the asset no longer exists or there are impediments of any kind for its return, the third party will
reimburse the value of the asset from the date of the transfer. In the case of restitution, the parties will be reinstated in the previous situation.

The acquiring third party, who has returned to the debtor’s property the good or the value of the asset transferred to him by the debtor, shall have against the debtor’s property a claim equal to the price paid, to which may be added the value in increase of the property determined by the possible investments made by the third party, provided that the latter has accepted the transfer in good faith and without the intention of preventing, delaying or deceiving a creditor. Upon his request, the third-party acquirer of good faith shall be entered in the Creditor’s Table with the receivable arising from the return of the asset or its value and may participate in any distribution. Any lack of good faith must be proven.

The third party that acquired the asset free of charge, and in good faith, shall return the goods in the state in which they are found and, failing that, shall return the difference in value with which they have been enriched. In case of lack of good faith, the third party will return, in all cases, the entire value of the asset, as well as any fruits.

7. **What form of stay or moratorium applies in insolvency proceedings against the continuation of legal proceedings or the enforcement of creditors’ claims? Does that stay or moratorium have extraterritorial effect? In what circumstances may creditors benefit from any exceptions to such stay or moratorium?**

All enforcement proceedings against, judicial actions, extrajudicial actions and any other enforcement measures for the realization of the receivables against the debtor’s estate the debtor in insolvency have stayed as an effect of the law.

The insolvency procedure, as a whole, including the stay on foreclosure, will be acknowledged by a third state.

As an exception stipulated in the secured creditors’ favor, there is the possibility for such a creditor to request the lifting of the stay and the immediate sale of the asset pledged as collateral, provided that the conditions specified in question 2 above are met.

8. **What restructuring and rescue procedures are available in the jurisdiction, what are the entry requirements and how is a restructuring plan approved and implemented? Does management continue to operate the business and/or is the debtor subject to supervision? What roles does the court and other stakeholders play?**

The legislation includes an in-court restructuring process, namely a reorganization phase of the insolvency procedure. A restructuring plan must be approved by the shareholders, by the Creditor’s Assembly and approved by the syndic judge.

As a general rule, during reorganization, the business is run by the special administrator,
under supervision of the judicial administrator, but the business in run on a “business as usual” principle.

The stakeholders may or may not decide to approve the reorganization plan, and, should the reorganization plan fail to be fulfilled by the debtor, they may file for bankruptcy.

9. **Can a debtor in restructuring proceedings obtain new financing and are any special priorities afforded to such financing (if available)?**

Yes, a debtor facing restructuring proceedings can obtain new funding. Such funding shall be given priority on repayment, as provided for in art. 133 par. 4 lit. b of Law 85/2014.

Fundings approved by the plan and granted during the reorganization period receive priority on repayment, according to art. 159 para. (1) point 2, or, as the case may be, according to art. 161 pct. 2 (which makes reference to art. 87 para. 4)

As per art. 87 para. 4, these fundings are guaranteed mainly by the allocation of goods or rights which are not the subject to preferential cases and, alternatively, in the absence of such goods or rights available, with the consent of the creditors who are beneficiaries of those preferential cases.

Moreover, ensuring access to sources of financing in insolvency prevention procedures during the observation and reorganization period by creating an appropriate regime for the protection of these claims is even a fundamental principle of insolvency and insolvency prevention procedures provided by art. 4 point 8 of Law 85/2014.

10. **Can a restructuring proceeding release claims against non-debtor parties (e.g. guarantees granted by parent entities, claims against directors of the debtor), and, if so, in what circumstances?**

The provisions of Law 85/2014 stipulates the conditions under which it may be triggered the liability of the managers and members of the board of directors/managing board in order to recover all the liabilities.

The jurisprudence also note the circumstances under which even the liability of the director-in-fact could be involved. This hypothesis relates the situation in which an individual carries out a managerial activity with important material resources and it is not expressly empowered as a director.

In both above mentioned situations, the legislation provides a number of eight circumstances in which the liability of these individuals can be triggered, namely if they:

1. have used the goods or credits of the legal person for their own benefit or for that of
another person;
2. have been manufacturing, trading or providing services for personal benefit under the cover of the legal person;
3. have, for personal benefit, ordered the continuation of an activity that obviously led the legal person to cease payments;
4. kept a fictitious account, made some accounting records disappear, or did not keep accounting in accordance with the law. If the accounting documents are not forwarded to the judicial administrator or the liquidator, both the fault and the causal link between the act and the prejudice are presumed. The assumption is relative.
5. misused or concealed some of the legal entity’s assets or fictitiously increased its liability;
6. have used damaging means to procure funds to the legal person for the purpose of delaying the cessation of payments;
7. in the month preceding the cessation of payments, have paid or have been willing to pay with a preference to a creditor, to the detriment of the other creditors;
8. committed intentionally any other act, which has contributed to the debtor’s insolvency status, as determined by the provisions of this title.

11. **Is it common for creditor committees to be formed in restructuring proceedings and what powers or responsibilities do they have? Are they permitted to retain advisers and, if so, how are they funded?**

As a general rule, a Creditor’s Committee is formed during a restructuring procedure. The creditors’ committee has the following duties:

a) to analyze the debtor’s situation and to make recommendations to the Creditors’ Assembly on the continuation of the debtor’s activity and on the proposed reorganization plans;

b) to negotiate with the judicial administrator or the liquidator who wishes to be appointed by the creditors in the insolvency file the conditions of appointment;

c) to take note of the reports drawn up by the judicial administrator or the liquidator, to analyze them and, if necessary, to lodge complaints against them;

d) to draw up reports for the Creditors’ Assembly on the measures taken by the judicial administrator or the liquidator and their effects, and to propose, in a justified manner, other measures;

e) to request the debtor’s right of administration be lifted;

f) To bring actions for the annulment of fraudulent acts or operations, made by the debtor at the expense of the creditors, when such actions have not been brought by the judicial administrator or by the liquidator.
As a general rule, the Creditor’s Committed does not retain specially appointed advisor.

12. **How are existing contracts treated in restructuring and insolvency processes? Are the parties obliged to continue to perform their obligations? Will termination, retention of title and set-off provisions in these contracts remain enforceable? Is there any ability for either party to disclaim the contract?**

The contracts in progress are considered to be maintained at the date of the opening of the procedure. Any contractual clauses to terminate the contracts in progress, to cancel the benefit of the time limit or to declare the anticipated eligibility due to the opening of the procedure are null and void.

The provisions relating to the maintenance of ongoing contracts and the nullity of termination or acceleration clauses are not applicable to qualifying financial contracts and bilateral clearing operations under a qualified financial contract or bilateral clearing agreement.

In order to maximize the value of the debtor’s assets within a 3-month limitation period from the date of the opening of proceedings, the court administrator/liquidator may terminate any contract, unexploded leases, other long-term contracts, as long as these contracts have not been executed wholly or substantially by all parties involved.

13. **What conditions apply to the sale of assets / the entire business in a restructuring or insolvency process? Does the purchaser acquire the assets “free and clear” of claims and liabilities? Can security be released without creditor consent? Is credit bidding permitted? Are pre-packaged sales possible?**

During the insolvency procedure, the assets can be capitalized under the conditions imposed by art. 39 para. 6 of Law 85/2014, before the appointment of a committee of creditors and under the condition of art. 87 para. 2 of the mentioned law, after the appointment of a committee of creditors, with the approval of the last mentioned.

In both situations, the scope of the purpose of capitalization during the observation period is to obtain funds for the ongoing activity of the debtor, so, we appreciate that, during the observation period, the sale of the business is not possible.

During the insolvency procedure, both individual goods and the whole business can be capitalize with the condition that the reorganization plan must contain all this measures. (art. 133 para. 5 let. c of Law 85/2014)

The purchaser acquire the assets “free and clear” of claims and liabilities, as it is stipulated on art. 91 para. 1 of Law 85/2014.
14. **What duties and liabilities should directors and officers be mindful of when managing a distressed debtor? What are the consequences of breach of duty? Is there any scope for other parties (e.g. director, partner, shareholder, lender) to incur liability for the debts of an insolvent debtor?**

The directors shall manage the company in such a way so as to protect the interests of the company; however, in case of threatening insolvency situation the directors shall primarily protect the interests of the creditors. If the insolvency cannot be avoided the directors shall file for insolvency.

The liability stipulated by art. 169 of Law 85/2014 is not an extension of a bankruptcy procedure to the members of the board of directors/managing board, but it is a personal responsibility that only intervenes when, by carrying out any of the activities listed in the text of the law, the responsible persons have contributed to placing the debtor company in an insolvency status.

15. **Do restructuring or insolvency proceedings have the effect of releasing directors and other stakeholders from liability for previous actions and decisions?**

According to Law 85/2014, the judicial administrator, the creditors committee or in their absence, the creditor whose claim represents more than 30% of the total amount of the receivable against a Romanian company in insolvency, can file a claim of personal liability against the manager or members of the board of directors/managing board, if they consider them responsible for the company’s situation.

Regarding the insolvency provision, the persons who can be responsible for bringing the company into insolvency are:

- directors of the debtor that act individually or as members of board of directors;
- managers and managing directors of the debt having the powers of management and disposal of the company’s assets;
- members of the supervision committee – auditors, accountants, censors;
- any other persons who contributed to the insolvency – associates, accountants, other persons who supervise the company’s activity.

Under art. 169 of Law no. 85/2014, at the request of the judicial administrator or the liquidator, the syndic judge may order that all or part of the debt of the legal person who has become insolvent, without exceeding the damage linked to that action, shall be borne by the members of the management and/or supervisory bodies within the company, as well as any other person who has contributed to the debtor’s insolvency, by acting as described expressly by Law 85/2014.
However, in the case of plurality of persons causing the company's insolvency, the liability of the mentioned persons is joint under the condition that the commencement of the insolvency is contemporary or prior to the period of time when they exerted their mandate or when they held the position in which they contributed to the state of insolvency.

16. **Will a local court recognise concurrent foreign restructuring or insolvency proceedings over a local debtor? What is the process and test for achieving such recognition? Has the UNCITRAL Model Law on Cross Border Insolvency or the UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments been adopted or is it under consideration in your country?**

According to art. 25 of UNCITRAL Model Law on Cross Border Insolvency (the “Model Law”), the competent courts of the states that adopted the Model Law will cooperate, in the matters that form the object of the Model Law, defined therein in art. 1, with the courts and foreign representatives “to every possible extent”. Model law does not impose any limitation on this cooperation, but advocates cooperation to the widest possible extent. Furthermore, the Model Law imposes a binding character on this cooperation.

In Romania, Law no. 637/2002 takes over and adapts the provisions of the Model Law. Law no. 637/2002 on the regulation of private international law reports on insolvency entered into force on 1 July 2003. This law is not applicable to the insolvency private international situations regulated by EU Regulation 2015/848 on insolvency proceedings (recast).

17. **Can debtors incorporated elsewhere enter into restructuring or insolvency proceedings in the jurisdiction?**

Taking into consideration the provisions of CE Regulation 1346/2000 on insolvency proceedings, subsequently repealed by EU Regulation 2015/848 on insolvency proceedings (recast), the Romanian legislation (i.e. Law 85/2014) was updated and the chapter entitled *Border Insolvency* was inserted within the new version of the law.

According to these provisions, the insolvency proceedings are opened against the debtor in the Member State where he has the *center of his main interests* - presumed to be the within state where the debtor has its registered office.

In order to ensure proper administration of the debtor’s assets, the mentioned Regulation parallels secondary procedures to be opened in other Member States – procedures that apply only to goods located in those States.

As far as the applicable law is concerned, it is the law of the Member State where the insolvency procedure was opened – a law regulating the conditions for the opening, conduct and closure of the procedure.
Decisions on these matters are recognized without further formalities in all other Member States as soon as they have effect in the State where the procedure was opened.

18. **How are groups of companies treated on the restructuring or insolvency of one of more members of that group? Is there scope for cooperation between office holders?**

The companies involved in such a procedure will be treated independently regarding the insolvency procedure and the procedures related to the insolvency. This means that the remaining part of a group is not affected by the insolvency of a company within the group. For this type of companies, the law, allows them to stick at the common petition to insolvency, in which case, the claim will be approved.

Even if it will operate a legal prorogation of jurisdiction, the competent court will create a file for each company and appoint judicial administrators.

The Norms regulating the insolvency of the group of companies were enacted by a need to have a joint approach in the case of complex groups of companies. Until Law 85/2014 there were not available such specific instruments for the restructuring or liquidation based on the economic logic of the business. These provisions are meant to ease the restructuring procedures and the sale of assets belonging to a sole entity.

19. **Is it a debtor or creditor friendly jurisdiction?**

Neither the debtor nor the creditor are granted more rights or a special treatment or a more favorable position by a court of law in Romania. The Romanian civil proceedings guarantees the exercise of procedural rights, on an equal and non-discriminatory basis. (art. 8 of the Civil procedure code)

Even though Law 85/2014 is qualified as a special law (thus, creating a regime derogatory from the general law, such is the Civil procedure code), it will be completed with the general principles of civil law.

20. **Do sociopolitical factors give additional influence to certain stakeholders in restructurings or insolvencies in the jurisdiction (e.g. pressure around employees or pensions)? What role does the state play in relation to a distressed business (e.g. availability of state support)?**

Generally, the state does not influence the affairs of a private company in distress in the course of a liquidation or restructuring and remains in a neutral position in the vast majority of cases.

Formally, there is no state support available for a distressed business. In practice, there have
been seen cases where distress businesses relate to or affect the state-owned enterprises. In these cases the state-owned enterprises often would take certain actions (buyout partially/entirely the distressed business) to ensure that they would not be affected by or could overcome the effect of such distress business.

21. **What are the greatest barriers to efficient and effective restructurings and insolvencies in the jurisdiction? Are there any proposals for reform to counter any such barriers?**

The most recent amendments to the insolvency matters are given by the entry into force in 2018 of the Governmental Emergency Ordinance no. 88/2018 ("GEO 88/2018") for the amendment and supplement of certain normative acts related to insolvency. This GEO 88/2018 takes into consideration *inter alia*:

- The necessity to improve the mechanisms for recovering the budgetary receivables from the companies in insolvency, respecting the chances of their recovery;
- The avoidance of harm to the competitive environment by abusive insolvency procedures by some borrowers using the mechanisms provided by these law in order to avoid paying the amounts due to the general consolidated budget;
- Improving the legal framework to create the premises for a balanced vote of creditors that respects both the immediate budgetary interest and the general economic and social interest of Romania.