

Recent Amendments to Romanian Insolvency Law

The recent amendments introduced by Law 239/2025 bring a series of targeted yet significant changes to the Romanian insolvency framework established by Law No. 85/2014. Rather than reshaping the system through a comprehensive reform, the legislator intervenes through punctual adjustments aimed at increasing procedural discipline, limiting abusive practices, and enhancing the overall efficiency of insolvency proceedings. A central aspect of these amendments concerns the regulation of persons closely related to the debtor. At the same time, the amendments introduce stricter conditions regarding the feasibility and implementation of reorganization plans. Another important dimension of the reform lies in the strengthening of legal tools aimed at challenging suspect transactions, particularly those involving persons connected to the debtor. Taken together, these legislative developments point towards a gradual reconfiguration of Romanian insolvency law, characterized by a shift from flexibility towards control, and from tolerance of complex intra-group arrangements towards heightened scrutiny. While these changes may contribute to greater procedural rigor and predictability, they also raise questions regarding the balance between efficiency and the preservation of genuine restructuring opportunities.

Keywords: *insolvency law, reform, reorganization, anti-abuse mechanisms*

Introduction

Insolvency law occupies a central position within contemporary market economies, functioning as a legal mechanism designed to reconcile the competing interests of debtors, creditors, employees, investors and public authorities. Beyond its traditional role of regulating situations of financial distress, modern insolvency legislation has increasingly become an instrument of economic policy, capable of influencing access to credit, market discipline and the overall efficiency of commercial activity.

The Romanian insolvency framework has undergone significant transformations during the last three decades. Following the transition from a centrally planned economy to a market-oriented system, the insolvency regime evolved from the provisions of Law No. 64/1995 to the more sophisticated framework established by Law No. 85/2006 and subsequently by Law No. 85/2014 on insolvency and insolvency prevention proceedings. The latter represented a major legislative codification effort, integrating previous regulations and aligning national law with emerging European standards in the field of restructuring and insolvency.

More than a decade after the entry into force of Law No. 85/2014, the Romanian legislature adopted a new package of amendments through Law No.

1 239/2025¹, introducing substantial changes to the insolvency proceedings. The
2 significance of these legislative interventions extends beyond technical
3 adjustments of procedural rules. Rather, they reflect a broader governmental
4 strategy aimed at increasing the efficiency of debt recovery mechanisms,
5 strengthening fiscal discipline and reducing the economic costs generated by
6 prolonged insolvency proceedings. The adoption of these amendments must also
7 be understood in the broader context of Romania's economic and fiscal
8 challenges. During the period preceding the reform, concerns regarding the
9 sustainability of public finances, the persistence of a significant budgetary deficit
10 and the need to improve the collection of public claims occupied a prominent
11 place in the national policy agenda. Simultaneously, public authorities promoted
12 a wider programme of administrative and economic reforms intended to enhance
13 institutional efficiency and strengthen fiscal consolidation measures. Within this
14 context, insolvency law emerged as one of the legal instruments through which
15 the legislature sought to improve the recovery of assets and reduce opportunities
16 for abusive conduct capable of prejudicing creditors and public budgets alike.

17 A few principal objectives appear to underpin the legislative amendments:
18 procedural efficiency, creditor protection and the prevention of abusive use of
19 insolvency proceedings. The 2025 reform represents more than a technical
20 revision of Law No. 85/2014, it is part of a broader legislative trend towards
21 enhancing procedural discipline, increasing the effectiveness of debt recovery
22 and strengthening accountability mechanisms, while simultaneously raising
23 legitimate concerns regarding the preservation of restructuring opportunities and
24 the balance traditionally maintained between debtor and creditor interests.

25 From a European perspective, the reform also raises important questions
26 concerning the relationship between creditor protection and the rescue culture
27 promoted by Directive (EU) 2019/1023². While the Directive encourages
28 mechanisms facilitating business rescue and restructuring, several of the
29 amendments introduced in 2025 appear to place greater emphasis on procedural
30 efficiency, accountability and the protection of creditors' interests.
31 Consequently, the Romanian reform offers an interesting case study regarding
32 the manner in which Member States seek to reconcile restructuring objectives
33 with the growing demand for effective enforcement and fiscal responsibility.
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35

36 **The legislative and economic context of 2025 Reform**

37
38 The reform introduced through Law No. 239/2025 cannot be understood
39 solely through an examination of the amendments brought to Law No. 85/2014.

¹Law No. 239/2025 on measures for the recovery and efficient use of public resources and for the amendment and supplementation of certain legislative acts, published in the Official Gazette of Romania, Part I, No. 1160 of 15 December 2025, entered into force on 18 December 2025.

²Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks, on discharge of debt and disqualifications, and on measures to increase the efficiency of procedures concerning restructuring, insolvency and discharge of debt, and amending Directive (EU) 2017/1132 (Directive on restructuring and insolvency), OJ L 172, 26 June 2019.

1 It must be analysed in the broader economic and legislative context that
2 characterized Romania during the years preceding its adoption.

3 On 4 June 2025, the European Commission published The country report
4 for Romania³. It assessed Romania's progress in addressing the relevant country-
5 specific recommendations and took stock of Romania's implementation of the
6 recovery and resilience plan. Based on this analysis, the country report identified
7 the most pressing challenges Romania is facing.

8 The Commission concluded that Romania is experiencing excessive
9 macroeconomic imbalances. In particular, vulnerabilities have increased as
10 Romania's twin fiscal and current account deficits widened, and cost
11 competitiveness deteriorated in 2024. Overall, without resolute action on both
12 fiscal and structural reform levers, fiscal and external deficits are likely to remain
13 too high, leaving Romania significantly exposed to changes in investor
14 sentiment and exogenous shocks.

15 By 2024 and 2025, concerns regarding the sustainability of public finances had
16 become a central issue within Romanian public policy. Romania continued to
17 register one of the highest budget deficits among the Member States of the European
18 Union, remaining subject to the excessive deficit procedure initiated by the
19 European institutions. The reduction of fiscal imbalances, the improvement of
20 public revenue collection and the enhancement of administrative efficiency
21 consequently became major objectives of governmental action⁴.

22 At the same time, policymakers increasingly emphasized the need to
23 strengthen the effectiveness of legal mechanisms designed to facilitate the
24 recovery of claims and to prevent the inefficient allocation of economic
25 resources. Insolvency proceedings occupied a prominent position within this
26 debate. Although Law No. 85/2014⁵ had established a modern insolvency
27 framework and had undergone numerous amendments throughout its existence,
28 concerns persisted regarding the duration of proceedings, the relatively low
29 recovery rates achieved in certain categories of cases and the possibility of
30 abusive reliance upon insolvency mechanisms to delay enforcement measures or
31 avoid the satisfaction of legitimate creditor claims.

32 Within this context, in Romania was adopted Law No. 239/2025 regarding
33 measures for the recovery and efficient use of public resources and for the
34 amendment of various legislative acts. The very title of the statute reflects the
35 broader policy objectives pursued by the legislature, namely the strengthening
36 of economic discipline and the improvement of institutional efficiency.
37 Although the law amended numerous legislative acts, its intervention in the field
38 of insolvency was among its most significant components.

39 The explanatory logic underlying the reform appears to have been based on
40 the assumption that prolonged insolvency proceedings generate costs not only

³Council Recommendation on economic, social, employment, structural and budgetary policies in Romania, 8 July 2025, p.2-3

⁴European Commission, *2025 European Semester: Country Report Romania*, Brussels, 2025, p. 8-15.

⁵Law No. 85/2014 on Insolvency Prevention and Insolvency Proceedings, published in the Official Gazette of Romania, Part I, No. 466 of 25 June 2014, entered into force on 28 June 2014, as subsequently amended and supplemented.

1 for private creditors but also for the wider economy. Delays in the administration
2 of insolvency estates, reduced recovery rates and the strategic use of insolvency
3 proceedings may negatively affect commercial certainty, distort competition and
4 diminish the effectiveness of public debt recovery. Consequently, the
5 amendments introduced in 2025 sought to strengthen procedural discipline,
6 improve creditor participation and introduce additional safeguards against
7 abusive conduct.

8 These concerns were not unique to Romania. At the European level⁶,
9 insolvency systems have increasingly been assessed not only from the
10 perspective of debtor protection and business rescue, but also through their
11 impact upon economic competitiveness, investment attractiveness and the
12 efficient functioning of credit markets. Consequently, modern insolvency
13 legislation has become closely connected to broader economic governance
14 objectives, including fiscal sustainability and the promotion of responsible
15 corporate behaviour. While Directive (EU) 2019/1023 promotes preventive
16 restructuring frameworks and the preservation of viable businesses, it
17 simultaneously recognises the necessity of protecting creditors and ensuring that
18 insolvency procedures operate efficiently and transparently⁷.

19 The Romanian legislator appears to have pursued a similar balance, albeit
20 with a stronger emphasis on procedural efficiency and creditor protection than
21 had previously characterized the insolvency framework established by Law No.
22 85/2014. Against this background, Law No. 239/2025 represents more than a
23 technical amendment of insolvency legislation. It forms part of a broader effort
24 to adapt insolvency law to contemporary economic realities, strengthen
25 institutional effectiveness and improve the overall performance of insolvency
26 proceedings within the Romanian legal system.

29 **Main directions of the 2025 insolvency reform**

31 *Procedural efficiency*

32
33 One of the principal objectives pursued by Law No. 239/2025 is the
34 enhancement of procedural efficiency within insolvency proceedings. Although
35 the Romanian insolvency framework established by Law No. 85/2014 was
36 designed to ensure a balance between the interests of debtors and creditors,
37 practical experience accumulated during more than a decade of application
38 revealed persistent difficulties relating to the duration of proceedings, the
39 complexity of decision-making processes and the maintenance of reorganization
40 procedures that no longer had realistic prospects of success. Against this
41 background, the 2025 reform introduced a series of measures intended to
42 streamline the conduct of proceedings, strengthen institutional accountability

⁶Madaus, S., *The EU Preventive Restructuring Framework: A Commentary*, Oxford University Press, Oxford, 2023, p.23.

⁷Paulus, C.G., „European Restructuring and Insolvency Law after Directive 2019/1023”, *International Insolvency Review*, Vol. 29, No. 2, 2020, p. 139.

1 and facilitate the adoption of timely decisions. Rather than pursuing efficiency
2 as an objective in itself, the romanian legislator appears to have sought to
3 maximize the value of the debtor's estate and increase the prospects of creditor
4 recovery by reducing procedural delays and eliminating structural sources of
5 inefficiency.

6 A first category of measures concerns the composition and functioning of
7 the creditors' committee. Prior to the reform, the legal framework offered limited
8 safeguards against situations in which the committee could be influenced by
9 creditors maintaining close economic or personal ties with the debtor. Law No.
10 239/2025 substantially amended Article 50 of Law No. 85/2014, introducing a
11 more sophisticated mechanism for the constitution of the creditors' committee.
12 The amended Article 50 point (1) and (4) now provides that the committee may
13 consist of three, five or seven creditors selected from among the first twenty
14 creditors entitled to vote, while ensuring representation of the principal
15 categories of claims, namely secured claims, employee claims, budgetary claims
16 and unsecured claims.

17 This amendment pursues a dual objective. On the one hand, it increases the
18 representativeness of the committee by ensuring the participation of creditors
19 belonging to different classes. On the other hand, it seeks to improve the quality
20 and legitimacy of the decisions adopted during the procedure. The previous
21 regulatory model occasionally generated criticism because major procedural
22 decisions could be influenced by a limited number of creditors whose interests
23 did not necessarily reflect those of the creditors' body as a whole. By requiring
24 a broader and more balanced representation, the legislature appears to have
25 sought to strengthen the institutional capacity of the committee while
26 simultaneously reducing the risk of procedural deadlock.

27 The reform further enhances transparency through the introduction of new
28 paragraphs (5¹)-(5³) of Article 50. Particularly significant is the rule
29 according to which no more than one creditor belonging to the category of
30 "persons closely connected to the debtor" may serve as a member of the
31 creditors' committee, and such creditor may not hold the position of committee
32 chairperson. In addition, creditors falling within this category are required to
33 disclose their relationship with the debtor, while the judicial administrator is
34 entrusted with the responsibility of verifying the existence of such connections
35 through consultation of the Trade Register, the beneficial ownership register and
36 other relevant corporate records.

37 Although these provisions may initially appear to be directed primarily at
38 preventing abuses, they also serve an important efficiency function. Insolvency
39 proceedings frequently become protracted when conflicts of interest
40 compromise the credibility of collective decision-making mechanisms,
41 generating litigation and procedural challenges. By identifying and managing
42 such conflicts at an early stage, the legislature seeks to facilitate more effective
43 governance of the proceedings and reduce disputes concerning the legitimacy of
44 decisions adopted by the creditors' committee.

45 The objective of accelerating procedural decision-making is also reflected
46 in the amendments introduced to Article 51. Under the revised Article 51(6), any

1 creditor seeking to challenge actions, measures or decisions adopted by the
2 creditors' committee must do so within seven days from the publication of the
3 relevant minutes in the Insolvency Proceedings Bulletin. The establishment of a
4 clear and relatively short time limit contributes to legal certainty and prevents
5 the emergence of prolonged periods of uncertainty regarding the validity of
6 decisions taken during the procedure. In insolvency matters, where delays may
7 rapidly erode the value of the debtor's assets, procedural predictability is often
8 as important as substantive protection.

9 Equally relevant is the amendment of Article 51(7), which authorizes the
10 replacement of members of the creditors' committee who repeatedly act in
11 situations of conflict of interest, repeatedly fail to participate in committee
12 meetings without justification or are subsequently found to belong to the
13 category of "persons closely connected to the debtor". While this provision
14 undoubtedly serves broader anti-abuse objectives, it also contributes to
15 procedural efficiency by ensuring the effective functioning of the committee and
16 preventing situations in which its activity is compromised by members whose
17 conduct undermines the proper administration of the proceedings.

18 Perhaps the most significant efficiency-oriented amendment introduced by
19 Law No. 239/2025 concerns the new Article 58(1)(b¹). Under this provision,
20 the judicial administrator is required to conduct a periodic assessment of whether
21 a genuine possibility of effective reorganization continues to exist and, where
22 such prospects no longer exist, to propose the commencement of bankruptcy
23 proceedings.

24 This amendment reflects a notable shift in legislative philosophy.
25 Traditionally, Romanian insolvency law has displayed a degree of tolerance
26 toward lengthy reorganization attempts, even in circumstances where the
27 prospects of successful restructuring had become increasingly remote. The new
28 provision imposes an affirmative duty upon the judicial administrator to
29 continuously evaluate the viability of the reorganization process. As a result,
30 procedures that no longer serve a realistic rescue purpose may be terminated at
31 an earlier stage, thereby preventing the unnecessary consumption of procedural
32 resources and the further depreciation of the debtor's assets. From an economic
33 perspective, the amendment seeks to distinguish viable enterprises capable of
34 rehabilitation from those whose continued presence in reorganization merely
35 delays the inevitable transition to liquidation.

36 A similar concern for procedural expediency can be observed in the
37 amendments brought to Article 137 regarding the circulation of reorganization
38 plans. The revised provision requires the judicial administrator to publish a
39 notice concerning the proposed plan in the Insolvency Proceedings Bulletin and
40 expressly provides for the electronic transmission of the plan to creditors upon
41 request. Furthermore, the law establishes a structured timetable for voting on the
42 plan, thereby reducing the possibility of administrative delays associated with
43 the dissemination of documentation. These measures are consistent with broader
44 trends toward digitalization and modernization of insolvency proceedings,
45 aiming to facilitate creditor participation while reducing transactional costs.

1 Taken together, the amendments analysed above reveal a coherent
 2 legislative effort to address procedural inefficiencies that had become apparent
 3 during the practical application of Law No. 85/2014. Rather than relying
 4 exclusively upon stricter deadlines, the reform seeks to improve the quality of
 5 decision-making institutions, enhance transparency, identify non-viable
 6 reorganizations at an earlier stage and facilitate more rapid communication
 7 between procedural actors. Consequently, procedural efficiency emerges not
 8 merely as a technical concern but as a fundamental principle underpinning the
 9 2025 reform of Romanian insolvency law.

10 11 *Creditors protection*

12
13 A second fundamental pillar of the 2025 reform is the strengthening of
 14 creditor protection. While Romanian insolvency law has traditionally sought to
 15 maintain a balance between the interests of debtors and creditors, the
 16 amendments introduced by Law No. 239/2025 reveal a legislative shift toward
 17 enhancing the position of creditors within the proceedings and increasing the
 18 chances of effective debt recovery. The reform was adopted against the backdrop
 19 of growing concerns regarding fiscal sustainability, the efficiency of public
 20 revenue collection and the economic consequences generated by lengthy
 21 insolvency proceedings with limited recovery prospects. In this context, creditor
 22 protection emerged not merely as a private interest but as an objective closely
 23 connected to broader considerations of economic discipline and financial
 24 stability.

25 One of the most significant innovations introduced by Law No. 239/2025 is
 26 the establishment of a comprehensive regulatory framework concerning "person
 27 closely connected to the debtor"⁸.

28 A person closely connected to the debtor is any person who, within the two
 29 years preceding the commencement of the insolvency proceedings, has held at
 30 least one of the following positions or relationships:

- 31
- 32 (a) an affiliated person, as defined by Fiscal Code⁹;
 - 33 (b) a member of the debtor's management, administrative, or supervisory
34 bodies;
 - 35 (c) a legal entity whose management, administrative, or supervisory bodies
36 include directors, managers, or shareholders of the debtor;
 - 37 (d) a person having access to non-public information concerning the debtor's
38 business and capable of influencing or controlling its operations,
39 including employees of the debtor, or a person capable of deriving
40 benefits from the debtor's financial position in the capacity of an external
41 adviser, accountant, or auditor;

⁸Article 5, 42² Law no. 85/2014.

⁹Affiliated persons, as defined for tax purposes under article 7(26) Law No. 227/2015 regarding the Fiscal Code, are the parent company and its subsidiaries; companies under common control; significant shareholders or equity holders; persons exercising direct or indirect control over the debtor.

- 1 (e) the spouse or relatives up to the third degree inclusive of the persons
2 referred to in subparagraphs (a) and (b);
3 (f) the debtor's beneficial owner
4

5 The category encompasses not only affiliated entities and members of the
6 debtor's management bodies, but also beneficial owners, relatives, advisers and
7 other individuals capable of influencing the debtor's affairs or benefiting from
8 its financial situation. By doing so, the legislature moves beyond formal legal
9 relationships and focuses instead on the economic reality of influence, access to
10 information and effective control. Prior to the reform, the legislation contained
11 only fragmented provisions addressing conflicts of interest and affiliated
12 creditors. The new law adopts a considerably broader approach by defining and
13 regulating the category of persons whose economic, managerial or ownership
14 links with the debtor may affect the integrity of insolvency proceedings.

15 This innovative future is important, because insolvency proceedings are
16 based upon the collective participation of creditors and the assumption that
17 decisions concerning the administration of the debtor's estate are taken in the
18 common interest of the creditors' body. This principle may be undermined where
19 creditors formally participating in the procedure are, in reality, economically
20 aligned with the debtor or with persons exercising control over it. By expanding
21 the legal significance of relationships between creditors and the debtor, the
22 legislature sought to reduce the possibility that insolvency proceedings could be
23 influenced through affiliated entities acting under the appearance of independent
24 creditors.

25 This objective becomes particularly visible in the amendments concerning
26 the creditors' committee. Under the new Article 50(5¹), only one creditor falling
27 within the category of persons closely connected to the debtor may serve on the
28 creditors' committee, and such creditor is expressly prohibited from holding the
29 position of chairperson. The provision constitutes a significant departure from
30 the previous regulatory framework, under which affiliated creditors could, in
31 practice, exercise substantial influence over the decision-making process.

32 The rationale of this amendment lies in the recognition that the creditors'
33 committee performs a central role in the governance of insolvency proceedings.
34 It supervises the activity of the insolvency practitioner, expresses positions
35 regarding significant procedural measures and influences strategic decisions
36 concerning the future of the debtor's business. Allowing the committee to be
37 dominated by creditors maintaining close connections with the debtor would
38 undermine both the credibility and the effectiveness of the procedure.
39 Consequently, the reform seeks to ensure that the committee remains a genuine
40 representative of creditor interests rather than a mechanism susceptible to
41 indirect debtor influence.

42 The same concern explains the introduction of new disclosure and
43 verification obligations. Creditors who fall within the category of persons
44 closely connected to the debtor must expressly declare this circumstance, while
45 the judicial administrator is required to verify the accuracy of such declarations
46 through the consultation of relevant public registers and available corporate

1 information. The introduction of these obligations significantly increases
2 procedural transparency and reduces the informational asymmetry that
3 frequently characterizes insolvency proceedings.

4 From the perspective of creditor protection, transparency performs a
5 function that extends beyond the mere prevention of conflicts of interest.
6 Effective creditor participation depends upon access to reliable information
7 regarding the identity, interests and affiliations of other participants in the
8 procedure. By strengthening disclosure requirements, the legislature enhances
9 the ability of creditors to evaluate the legitimacy of procedural decisions and to
10 challenge conduct that may prejudice the collective interest of the creditors'
11 body.

12 Another important aspect of the reform concerns the protection of creditors
13 against transactions capable of diminishing the value of the insolvency estate.
14 The amendments introduced by Law No. 239/2025 impose stricter scrutiny upon
15 transactions involving persons closely connected to the debtor, particularly
16 where such transactions concern the acquisition of assets from the insolvency
17 estate.

18 The sale of assets as an independent business unit may be carried out in
19 favour of a person closely connected to the debtor, provided that at least the
20 following requirements are satisfied¹⁰:

- 21
- 22 (a) the sale procedure is open, competitive, transparent, and conducted under
23 market conditions;
 - 24 (b) the person closely connected to the debtor expressly discloses in its offer
25 that it is a person closely connected to the debtor and specifies the nature
26 of its connection with the debtor;
 - 27 (c) persons who are not closely connected to the debtor are granted a reasonable
28 period to submit competing offers, which shall not exceed 10 days;
 - 29 (d) the information referred to in point (b) is disclosed to the creditors'
30 committee and to the other bidders participating in the sale process;
 - 31 (e) an independent valuation report concerning the assets as an independent
32 business unit is prepared by an independent authorised valuer; where
33 such a valuation has already been conducted during the insolvency
34 proceedings, this requirement shall be deemed fulfilled.
- 35

36 These provisions are intended to prevent the transfer of assets to affiliated
37 entities under conditions that may adversely affect creditor recovery prospects.
38 Such concerns are not merely theoretical, because practice has repeatedly
39 demonstrated that affiliated transactions may create opportunities for the
40 extraction of value from the estate to the detriment of creditors, particularly
41 where effective safeguards are lacking.

42 The reform also strengthens creditor protection through measures designed
43 to improve the recovery of claims. Although Romanian insolvency law
44 continues to preserve its collective character and does not formally establish a
45 hierarchy favouring particular categories of creditors beyond the statutory

¹⁰Article 154¹ Law no.85/2014

1 ranking of claims, the overall orientation of the amendments indicates a clear
2 legislative preference for maximizing recovery rates. This objective is reflected
3 in the stricter supervision of reorganization proceedings, the enhanced role of
4 creditors in monitoring the conduct of the procedure and the broader effort to
5 eliminate mechanisms capable of artificially delaying the realization of assets.

6 Particularly relevant in this regard is the relationship between creditor
7 protection and the treatment of public claims. The adoption of Law No. 239/2025
8 formed part of a broader legislative programme aimed at improving the recovery
9 and efficient use of public resources. The title of the law itself reflects this policy
10 orientation. Although the reform does not fundamentally alter the ranking of
11 public creditors within insolvency proceedings, it is difficult to ignore the
12 broader fiscal considerations that influenced its adoption. Increased recovery
13 rates inevitably benefit both private creditors and public authorities, particularly
14 in a period characterized by significant concerns regarding budgetary
15 sustainability and public revenue collection.

16 From a broader perspective, the amendments introduced by Law No.
17 239/2025 illustrate a shift from a predominantly debtor-oriented understanding
18 of insolvency law toward a model placing greater emphasis upon creditor
19 confidence and the protection of collective recovery interests.

20 Taken together, the provisions concerning affiliated creditors, transparency
21 obligations, creditor representation and asset recovery reveal a coherent
22 legislative effort to reinforce the position of creditors within insolvency
23 proceedings. By limiting opportunities for indirect debtor influence and
24 increasing the transparency of procedural governance, the 2025 reform seeks to
25 ensure that insolvency remains an effective mechanism for the collective and
26 equitable satisfaction of creditor claims.

27 *Anti- abuse mechanisms*

28
29
30 A third defining feature of the 2025 reform is the legislature's determination
31 to strengthen the integrity of insolvency proceedings by introducing a series of
32 measures designed to prevent abusive conduct and to increase the accountability
33 of individuals whose actions contribute to the debtor's financial collapse. While
34 the Romanian insolvency framework has traditionally pursued a balance
35 between facilitating business rescue and protecting creditors, practical
36 experience revealed that insolvency proceedings could occasionally be exploited
37 for purposes unrelated to their legitimate objectives. Concerns were frequently
38 expressed regarding the use of insolvency as a mechanism for delaying
39 enforcement actions, preserving control over assets despite financial insolvency,
40 or shielding individuals who exercised de facto control over a company without
41 formally holding management positions.

42 One of the central elements of the reform is the expansion of the legal
43 framework governing persons responsible for the debtor's insolvency. Romanian
44 insolvency law has long recognised the possibility of engaging the patrimonial
45 liability of directors and other individuals whose conduct contributed to the
46 debtor's inability to meet its obligations. However, the practical application of

1 these provisions often encountered difficulties where the individuals exercising
2 effective control over the debtor remained outside the formal management
3 structure. In such situations, decision-making authority could be exercised by
4 shareholders, beneficial owners or other influential actors who were not
5 officially registered as directors, thereby limiting the effectiveness of existing
6 accountability mechanisms.

7 The amendments introduced by Law No. 239/2025 seek to address this
8 problem by broadening the scope of individuals who may become subject to
9 liability proceedings. The reform reflects an increasingly accepted principle in
10 modern insolvency law: responsibility should be linked not merely to formal
11 corporate titles but also to the actual exercise of managerial influence and
12 decision-making power. Consequently, the law moves beyond a purely
13 formalistic understanding of corporate governance and places greater emphasis
14 on the economic reality of control relationships.

15 This evolution is particularly significant because it aligns Romanian insolvency
16 law with broader developments observable in comparative jurisprudence. In several
17 European jurisdictions, courts have progressively recognised the concept of the *de*
18 *facto director* or *shadow director*, allowing liability to be imposed upon
19 individuals who effectively direct the company's affairs despite lacking an
20 official managerial position. Although Romanian law traditionally approached
21 such situations with greater caution, the 2025 reform clearly indicates a
22 legislative willingness to prevent individuals from avoiding responsibility
23 through formal separation from the company's governing bodies.

24 The amendments concerning liability also reveal an increased emphasis on
25 deterrence. Insolvency law traditionally performs not only a compensatory
26 function but also a preventive one. By expanding the circumstances in which
27 liability may be engaged and by facilitating the identification of individuals
28 exercising effective control over the debtor, the legislature seeks to discourage
29 conduct that may contribute to financial distress or prejudice creditor interests.
30 The reform thus signals a broader policy shift toward managerial accountability
31 and responsible corporate governance.

32 The same objective is visible in the amendments concerning persons closely
33 connected to the debtor. As discussed in the previous section, the reform
34 introduces extensive disclosure obligations and restrictions regarding the
35 participation of affiliated creditors in procedural governance. Another important
36 anti-abuse dimension of the reform concerns the supervision of reorganization
37 proceedings. One of the recurrent criticisms directed at insolvency practice was
38 the tendency of certain debtors to prolong reorganization procedures despite the
39 absence of realistic prospects for economic recovery.

40 This development is particularly relevant in the context of contemporary
41 European discussions¹¹ regarding directors' duties in situations of financial
42 distress. Directive (EU) 2019/1023 encourages Member States to ensure that
43 directors take appropriate account of creditor interests when insolvency becomes
44 likely and to establish mechanisms capable of preventing irresponsible conduct

¹¹Gurrea-Martínez A., *Towards an Optimal Model of Directors' Duties in the Zone of Insolvency*, *Journal of Corporate Law Studies*, Vol. 22, No. 1, 2022, p. 25-32.

1 during periods of economic difficulty. Although the Romanian reform goes
2 beyond the minimum requirements established by the Directive in certain
3 respects, it reflects a similar concern with aligning managerial incentives with
4 the objective of preserving enterprise value and protecting creditors.

5 The anti-abuse philosophy underlying Law No. 239/2025 therefore operates on
6 multiple levels. It seeks to prevent the manipulation of creditor representation, reduce
7 opportunities for conflicts of interest, discourage the artificial prolongation of
8 reorganization proceedings and strengthen the accountability of those exercising
9 effective control over financially distressed companies. Rather than treating
10 insolvency solely as a mechanism for distributing losses after business failure has
11 occurred, the reform increasingly views insolvency law as an instrument capable of
12 influencing behaviour before and during financial distress.

13 Taken together, these amendments reveal a legislative effort to reinforce the
14 legitimacy and credibility of insolvency proceedings. By targeting structural
15 vulnerabilities that have historically facilitated opportunistic conduct, the reform
16 aims to ensure that insolvency remains a collective procedure dedicated to the
17 equitable treatment of creditors and the efficient administration of the debtor's
18 estate.

19 20 21 **Critical assessment of the reform**

22
23 The amendments introduced by Law No. 239/2025 constitute the most
24 significant intervention in Romanian insolvency law since the adoption of Law
25 No. 85/2014. Their overall architecture reveals a clear legislative preference for
26 procedural discipline, creditor protection and managerial accountability. While
27 these objectives are legitimate and largely consistent with contemporary
28 concerns regarding economic efficiency and fiscal sustainability, the reform also
29 raises important questions concerning the future balance between creditor
30 interests and the traditional rescue function of insolvency law¹².

31 A first strength of the reform lies in its attempt to address long-standing
32 procedural deficiencies identified during the practical application of Law No.
33 85/2014. The introduction of mechanisms designed to ensure greater
34 transparency in the composition of the creditors' committee, the stricter
35 regulation of persons closely connected to the debtor and the obligation imposed
36 upon judicial administrators to periodically evaluate the viability of
37 reorganization proceedings are likely to reduce procedural abuses and improve
38 the quality of decision-making within insolvency proceedings. In this respect,
39 the reform responds to concerns repeatedly expressed by insolvency
40 practitioners regarding the excessive duration of proceedings and the persistence
41 of reorganization procedures with little prospect of success.

42 The reform may also contribute to increasing creditor confidence in
43 insolvency proceedings. Creditors are more likely to support restructuring efforts
44 and participate actively in insolvency procedures when they perceive the

¹²About "traditional rescue function" see Goode, R., *Principles of Corporate Insolvency Law*, 5th ed., Sweet & Maxwell, London, 2018, p.10.

1 institutional framework as transparent, predictable and resistant to manipulation.
2 By limiting the influence of affiliated creditors and strengthening disclosure
3 obligations, the romanian legislator seeks to enhance the legitimacy of collective
4 decision-making mechanisms and to ensure that insolvency proceedings serve
5 the interests of the creditors' body as a whole rather than those of specific groups
6 connected to the debtor.

7 A further positive aspect concerns the enhanced accountability of
8 individuals exercising control over distressed companies. The expansion of
9 liability mechanisms reflects an increasingly accepted principle of contemporary
10 insolvency law: responsibility should follow actual economic influence rather
11 than formal corporate titles. The reform therefore reduces the possibility that
12 individuals who effectively direct corporate affairs may avoid liability by
13 operating through informal structures of control. Such an approach is
14 particularly relevant in modern corporate environments, where ownership and
15 managerial influence are frequently separated from formally registered
16 positions.

17 Nevertheless, the reform is not immune from criticism. Perhaps the most
18 important concern relates to the potential impact of the new provisions upon the
19 rescue culture promoted by Directive (EU) 2019/1023. One of the central
20 objectives of European insolvency policy over the last decade has been the
21 preservation of viable businesses through early restructuring mechanisms and
22 the avoidance of unnecessary liquidations. The Directive is built upon the
23 assumption that economically viable enterprises should be afforded a realistic
24 opportunity to reorganize before liquidation becomes inevitable. By contrast,
25 several provisions introduced by Law No. 239/2025 appear to prioritise
26 efficiency and recovery objectives over restructuring considerations.

27 This tension becomes particularly visible in the new obligation imposed
28 upon judicial administrators to periodically assess the viability of reorganization
29 and to propose bankruptcy where recovery prospects no longer exist. While the
30 rationale underlying this provision is understandable, its practical application
31 may prove challenging. Determining whether a company remains capable of
32 successful reorganization is rarely a purely objective exercise. Insolvency
33 practitioners are often required to evaluate future economic developments,
34 market conditions and business opportunities that may be difficult to predict with
35 certainty. An excessively restrictive interpretation of viability could therefore
36 encourage premature transitions to bankruptcy and reduce opportunities for
37 genuine business rescue.

38 Another issue concerns the growing emphasis placed upon creditor
39 protection. Although strengthening creditor rights is a legitimate legislative
40 objective, insolvency law has traditionally been based upon a careful equilibrium
41 between creditor recovery and debtor rehabilitation¹³. Certain aspects of the
42 reform may be interpreted as signalling a shift toward a more creditor-oriented
43 model, particularly when considered in conjunction with the broader fiscal and
44 economic context in which the law was adopted. The prominence accorded to
45 recovery rates and procedural efficiency reflects concerns that extend beyond

¹³Fletcher, I.F., *The Law of Insolvency*, 6th ed., Sweet & Maxwell, London, 2024. p.41

1 private creditor interests and include public policy objectives related to fiscal
2 consolidation and public revenue collection. While understandable from a
3 governmental perspective, this orientation may gradually alter the traditional
4 balance characterising Romanian insolvency law.

5 Additional practical difficulties may arise from the application of the
6 concept of "persons closely connected to the debtor." Although the objective of
7 preventing conflicts of interest is fully justified, the broad formulation adopted
8 by the legislature may generate interpretative uncertainties. Insolvency
9 practitioners and courts will inevitably face difficult questions regarding the
10 identification of indirect relationships, beneficial ownership structures and
11 situations involving complex corporate groups. Consequently, some degree of
12 litigation concerning the scope and application of these provisions appears
13 unavoidable during the first years following the reform.

14 The provisions concerning de facto controllers may generate similar
15 challenges. While the extension of liability to individuals exercising effective
16 control represents a welcome development from the perspective of
17 accountability, the evidentiary burden associated with establishing such control
18 may prove substantial. Courts will inevitably face the difficult task of
19 distinguishing between legitimate shareholder influence and actual managerial
20 control, a distinction that has generated considerable debate in comparative
21 insolvency jurisprudence¹⁴. The effectiveness of these provisions will therefore
22 depend largely upon the consistency of judicial interpretation and the ability of
23 insolvency practitioners to gather adequate evidence.

24 Ultimately, the 2025 reform should not be understood merely as a technical
25 amendment to Law No. 85/2014. It represents a policy choice regarding the
26 future orientation of Romanian insolvency law. The legislature has clearly
27 signalled its preference for a more disciplined and economically efficient
28 insolvency system. The challenge for future practice will be to ensure that this
29 objective does not undermine the goal of preserving viable businesses and
30 encouraging successful restructuring efforts.

31 32 33 **Conclusions**

34
35 The reform introduced through Law No. 239/2025 represents one of the
36 most significant developments in Romanian insolvency law since the adoption
37 of Law No. 85/2014. Far from constituting a mere technical revision of existing
38 provisions, the amendments reveal a broader legislative effort to recalibrate the
39 functioning of insolvency proceedings in response to contemporary economic,
40 fiscal and institutional challenges. The reform was adopted in a period marked
41 by increasing concerns regarding public finances, the efficiency of debt recovery

¹⁴Finch V., Milman D., *Corporate Insolvency Law: Perspectives and Principles*, 4th ed., Cambridge University Press, Cambridge, 2022, pp. 654–660; See also *Secretary of State for Trade and Industry v Deverell* [2001] Ch 340, where the Court of Appeal emphasised that the concept of a shadow director must be interpreted in light of the actual influence exercised over corporate decision-making.

1 mechanisms and the need to strengthen economic discipline, all of which influenced
2 the legislative choices reflected in the new regulatory framework.

3 The reform also raises important questions concerning the future orientation of
4 Romanian insolvency law. The increased emphasis on procedural discipline,
5 creditor recovery and accountability may contribute to a more efficient insolvency
6 framework, but it also creates the risk that restructuring objectives could gradually
7 become secondary to recovery considerations. The long-term challenge will
8 therefore consist in maintaining an appropriate equilibrium between efficiency and
9 restructuring, between creditor protection and business rehabilitation.

10 Ultimately, the success of the 2025 reform cannot be assessed solely by
11 reference to the text of the law. Its effectiveness will depend upon the manner in
12 which courts, insolvency practitioners and creditors interpret and apply the new
13 provisions in practice. If implemented in a balanced and coherent manner, the
14 amendments introduced by Law No. 239/2025 have the potential to enhance the
15 credibility, transparency and effectiveness of Romanian insolvency proceedings.
16 Whether they will simultaneously preserve the restructuring opportunities necessary
17 for economically viable businesses remains a question that only future practice and
18 jurisprudence will be able to answer.

19 The 2025 reform thus marks not merely a legislative amendment, but a
20 significant moment in the evolution of Romanian insolvency law, signalling a shift
21 toward a more disciplined, transparent and creditor-conscious system while
22 reopening the debate concerning the proper balance between economic efficiency
23 and the rescue function traditionally associated with modern insolvency regimes.

24 25 26 **References**

- 27
- 28 1. Goode R., *Principles of Corporate Insolvency Law*, 5th ed., Sweet & Maxwell,
29 London, 2018
- 30 2. Gurrea-Martínez A., *Towards an Optimal Model of Directors' Duties in the Zone*
31 *of Insolvency*, *Journal of Corporate Law Studies*, Vol. 22, No. 1, 2022
- 32 3. Fletcher, I.F., *The Law of Insolvency*, 6th ed., Sweet & Maxwell, London, 2024.
- 33 4. Finch V., Milman D., *Corporate Insolvency Law: Perspectives and Principles*, 4th
34 ed., Cambridge University Press, Cambridge, 2022
- 35 5. Madaus, S., *The EU Preventive Restructuring Framework: A Commentary*, Oxford
36 University Press, Oxford, 2023
- 37 6. Paulus, C.G., „European Restructuring and Insolvency Law after Directive
38 2019/1023”, *International Insolvency Review*, Vol. 29, No. 2, 2020
- 39 7. European Commission, *2025 European Semester: Country Report Romania*,
40 Brussels, 2025
- 41 8. European Council Recommendation on economic, social, employment, structural
42 and budgetary policies in Romania, 8 July 2025
- 43 9. Law No. 239/2025 on measures for the recovery and efficient use of public
44 resources and for the amendment and supplementation of certain legislative acts
- 45 10. Directive (EU) 2019/1023 of the European Parliament
- 46 11. Law No. 85/2014 on Insolvency Prevention and Insolvency Proceedings
- 47
- 48