'BABEŞ-BOLYAI' UNIVERSITY CLUJ-NAPOCA

FACULTY OF LAW

PhD THESIS

Insolvency Proceedings in Case of Groups of Companies in Romania

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ABSTRACT

The effort of the Romanian legislator to introduce special regulations on the insolvency of members of the group of companies is commendable, even if the legal provisions introduced under Chapter II, Title II of Law 85/2014 are not fully harmonized with the other legal provisions and they present shortcomings not only in terms of terminology, but also in terms of regulated content. The introduction of rules governing the coordination of insolvency proceedings of the members of the group of companies is a beneficial measure that creates a favorable legal framework for both the members of the groups of companies on which the insolvency proceedings are opened and their creditors, even if the interpretation and practical application of these provisions is a major challenge for national courts, as there is currently a lack of uniform judicial practice in multiple respects.

The need for a detailed analysis of the insolvency proceedings in the case of group of companies arises from the fact that this is a new, dynamic and challenging field, that the groups of companies are becoming increasingly important in the national and international social and economic environment, which is why insolvency proceedings of this type will become increasingly common. As the number of procedures opened towards members of the group of companies increases, new challenges will arise which will initially have to be

addressed by case law and doctrine and then the regulation of the field itself will have to be reviewed and adapted to the challenges posed by the constantly changing social and economic environment.

As concluded in this paper, although from a terminological point of view the legislator wanted to regulate the insolvency of the group of companies, it is wrong to consider that the provisions of Title II, Chapter II of Law 85/2014 concern the insolvency of the group itself. These provisions concern only the insolvency of the members of the group of companies and not of the group of companies itself, since the conceptual level of the model implemented by the Romanian legislator is limited only to aspects relating to the administration and coordination of the various insolvency procedures opened against the members of the group of companies, and the provisions introduced do not affect in any way the principle of legal separation of the members of the group of companies. It is important to understand this difference between the terminology used and the conception and intention of the legislator, because only in this way will we be able to establish the reference point from which to start in interpreting and filtering the legal provisions introduced by the legislator in Title II, Chapter II of Law 85/2014.

Throughout the paper we have shown that, despite the fact that the group of companies itself often meets the specific elements of a legal person, in many cases can be qualified as a '*company of companies',* we will not be able to recognize the legal personality of the group because it is not a legally established entity, but only an economic entity recognized in certain branches of law, but which is not established for the purpose of its registration or recording with a public authority, in accordance with predetermined rules.

The group of companies represents a system of organization of an enterprise, namely a conglomerate of other legal entities under common control exercised in fact, which, however, challenges the independence, organization and the assets of the legal entities composing it. The member companies are functionally integrated into the complex economic activity of the group and act in accordance with the interest of the group as a whole, they are merely the legal instruments necessary to carry out the activities necessary to achieve its purpose and interest.

As we have pointed out in the paper, the legislator has unfortunately defined the group of companies in different areas of regulation such as tax law, competition law or insolvency law. In our opinion, it would have been more appropriate for the legislator to recognize this complex entity in a uniform manner, at the legislative level, by regulating it under the company law. Subsequently, the general concept can be used in the construction of

a set of specific and coordinated rules covering the activity of the group of companies in each regulatory area.

In Law 85/2014, the Romanian legislator used two criteria to define the group of companies, namely that of control and that of the qualified shareholding, criteria usually used alternatively and not cumulatively. Throughout the paper, we have demonstrated why, in our opinion, it would be appropriate to eliminate the separate criterion of the qualified shareholding used in the definition of the group of companies and why, with regard to control, we consider that, in order to qualify a company as part of a group, it is necessary to identify a control exercised with a view to promote its interest, not just a potential one. To the extent that control is only potential, the company in question would in fact act and operate in accordance with its own interest as an independent legal person and not as a member of the group, so we would not be in the presence of a company functionally included in a group of companies, but a genuine independent company. Consequently, we believe it would be appropriate to amend the definition of group of companies and the definition of control by introducing the concept of control exercised for the purpose of enforcing the group interest instead of the current definition, which also covers the mere ability to exercise control in appointing the management bodies and in influencing the decisions of the management bodies of a company.

In our view, control is not the only defining element of the group of companies, the group interest, derived from the joint operation of the same undertaking, being in fact the main element linking the member companies. Control is only the instrument used to enforce the group interest. Member companies may also be under the control of a single person but a group of separate persons acting in a coordinated manner in accordance with a common interest. Consequently, we believe it would be appropriate for the national legislator to amend the definition of the group of companies to include the statement that control is exercised over the member companies in accordance with the interest of the group of companies, and that control may be exercised not only by one person but also by a group of persons acting in a coordinated manner.

We consider that the definition of controlled member of the group is redundant and incomplete considering that it does not cover the situation where the members of the group of companies are under the joint control of a natural person and not only of the parent company, contrary to the situations identified in the national judicial practice.

Continuing the analysis of the provisions in the matter of the insolvency of the group of companies, we found that, according to the express provisions of Law 85/2014, only the

entities incorporated according to Law 31/1990 can be members of the group. This choice by the legislator is incomprehensible, given that the reasons for which we recognize some companies as members of the group and for which we recognize the need to coordinate their insolvency proceedings clearly also apply to other categories of debtors that are not companies incorporated under Law 31/1990, which is why we believe that legislative intervention is also necessary in this regard.

As we have extensively demonstrated in this paper, although the Romanian legislator has implemented the system of procedural consolidation in the case of insolvency of the members of the group of companies, we consider that in situations aimed at invoking in bad faith the legal personality, in order to conceal fraud, abuse of law or violation of public order, the Romanian courts will be able to substantially consolidate the assets of two or more group companies, even in the insolvency proceedings, by applying the provisions of Article 193 paragraph (2) of the Civil Code. The two forms of consolidation are not mutually exclusive in Romanian law, but complement each other. Of course, substantial consolidation in insolvency proceedings is an exception and should only be used and implemented only in the cases listed *above.* Where the provisions of Article 193 paragraph (2) of the Civil Code do not apply, and we are not in the presence of a 'legal person' acting artificially through multiple drives, with the purpose of defrauding third parties or the law, we will be in the presence of insolvency of the members of the group of companies, and the provisions adopted by the legislator for the purpose of procedural consolidation will be applied.

The duty of the courts and insolvency practitioners to cooperate is the main measure imposed by the legislator to coordinate the insolvency proceedings of the members of the group of companies, and is limited to matters related to the administration of the proceedings opened against the members of the group, with the member companies retaining their separate assets and legal individuality. This obligation consists of four components: a) the obligation of insolvency practitioners and courts to exchange information on insolvency proceedings opened against the members of the group of companies, in particular on the claims of debtors, their assets and the measures taken by the insolvency administrators or liquidators of the members of the group; b) the obligation of the courts to open insolvency proceedings against the members of the group of companies at the same time, where one or more joint applications for the opening of insolvency proceedings have been made against two or more members of the group of companies; c) the obligation of the courts and insolvency practitioners to set the procedural time limits and the meetings of creditors of the members of the group in a coordinated manner; d) the obligation of the practitioner appointed

in the insolvency file concerning the parent company or the company with the highest turnover according to the last published annual financial statements to coordinate communication between the insolvency practitioners appointed by the insolvency proceedings of the members of the group of companies.

The legislator did not explicitly and directly define the notion of coordinating practitioner anywhere in Law 85/2014 but for the reasons stated in the paper, we consider that it will be the insolvency practitioner appointed in the insolvency proceedings opened against the parent company or the company with the highest turnover according to the last published annual financial statements.

Given that the Romanian legislator has not expressly provided for the sanctions applicable in the event of violation of the duty to cooperate by the bodies applying the proceedings, we have shown in this paper that the general provisions set out in Law 85/2014, as well as those of the Code of Civil Procedure, i.e., the Civil Code supplementing the provisions of Law 85/2014 under Article 342 paragraph (1) of this law.

Thus, in the case of the insolvency practitioner, we consider that the flagrant or repeated breach of the duty to cooperate may be considered a solid reason to justify its replacement, and the failure to perform or late performance of its duties may trigger the applicability of the provisions of Article 60 paragraph (2) and (3) of Law 85/2014.

Moreover, if the administrator or the liquidator appointed in the insolvency proceedings opened against a member of the group of companies takes a measure in breach of the duty to cooperate, resulting in harm to the debtor, the other members of the group of companies, creditors or any other interested person, they will be able to lodge an appeal against the activity report in which the challenged measure is mentioned, since the said measure is a procedural act in respect of which the conditions of a relative conditional nullity my be fulfilled, according to the provisions of Article 175 paragraph (1) of the Code of Civil Procedure.

Last but not least, the same provisions may be incidental if the insolvency judge delivers a judgement in breach of the fundamental principle of coordinating insolvency proceedings and the duty to cooperate imposed on it, thereby causing damage, that is to say, harm, which can be remedied only by setting aside the judgement delivered.

We have thoroughly considered the concept of a joint application for the opening of insolvency proceedings against two or more members of the group of companies, its content, the conditions for the introduction of such an application, the way in which its effects may be extended and how the insolvency judge may decide on such a joint application. Last but not

least, we have analyzed in detail the conditions under which a member of the group of companies which is not in a state of insolvency or imminent insolvency may submit a request to subscribe to a joint application for the opening of insolvency proceedings made by other members of the group of companies, showing in this respect that that member will have to prove the existence of concrete grounds justifying that, although it is not at that time in a state of insolvency or imminent insolvency, there is a reasonable likelihood that insolvency proceedings will be opened against it following the resolution of the joint application for the opening of proceedings made by the other members of the group of companies, within a reasonable period calculated from that moment. The length of this reasonable time may also be assessed by reference to the specific grounds put forward by the holder in support of its application and by reference to other criteria such as the complexity of the intra-group relationships, the turnover or the development of the market on which the members of the group of companies operate.

In this paper we have considered which court will have jurisdiction to settle a joint application for the opening of proceedings made by the members of a group of companies or by a creditor holding claims against two or more members of the group of companies. We pointed out that according to Article 185 of Law 85/2014 this court will be the court in the territorial district of which the parent company or the company in the group with the highest turnover according to the last published financial statement, as the case may be, and this court will remain competent to hear all applications, appeals and actions based on the provisions of Law 85/2014 regarding the debtors against whom the insolvency proceedings have been opened. Although the legislator did not establish an order of priority with regard to the criterion applicable for determining the competent court, namely that of the seat of the parent company or of the company with the highest turnover according to the last published financial statements, we believe that its intention was to apply the first criterion - the court of the seat of the parent company - with priority.

In the alternative, where the group of companies does not have a parent company or the parent company is not among the members in respect of which the joint application for the opening of insolvency proceedings has been made, the criterion of the company with the highest turnover according to the last published financial statements will be used. In some situations, as a result of several concurrent applications for the opening of insolvency proceedings regarding the members of a group of companies, both joint and individual applications, we may be in a situation where the effects of a joint application that originally

concerned only certain members of the group of companies are extended to members who were not originally mentioned in the original application.

Since the exception provided for in Article 185 of the law is of strict interpretation, it does not, in our opinion, allow the extension of the jurisdiction provided *above* and where several individual and successive applications for the opening of insolvency proceedings are made, which concern members of the group of companies, although we believe that the implementation of this measure by the legislator would have been appropriate. In the latter case, the court in the district of which each debtor had its registered office at least 6 months prior to the date on which the court was seized will be competent to hear each application, while the courts hearing the insolvency cases of the members of the group of companies will have a general obligation to cooperate in accordance with the provisions of Article 5, paragraph 39 of the law.

Last but not least, as regards the issue of jurisdiction, as we have shown in the paper, the Romanian legislator has not established the obligation for debtors or creditors to file a joint application for the opening of insolvency proceedings, so that the holder of the application has the option of making a joint application or several individual and subsequent applications. Moreover, having the option of making a joint application for the opening of insolvency proceedings or separate *(not simultaneous) applications,* the holder or holders of the application for the opening of insolvency proceedings may choose the court they consider favorable*, thus posing a real danger of 'forum shopping'.*

With regard to the appointment of the provisional insolvency administrator or liquidator, for the reasons stated in the paper, we believe that the insolvency judge does not have the obligation to appoint the same insolvency practitioner for all members of the group of companies, as Article 188 of Law 85/2014 only requires the appointment of the same final insolvency administrator or consortium of administrators for all the members of the group of companies when the creditors holding at least 50% of the insolvency estate are the same for each member. However, we consider that it would be appropriate to appoint the same provisional insolvency administrator in the insolvency proceedings opened against the members of the group with a view to better procedural coordination, regardless of whether they have been opened following the filling of a joint application for the opening of insolvency proceedings, or as a result of filling of individual and successive applications for the opening of insolvency proceedings.

With regard to the appointment of the administrator or the final liquidator, we consider that the combination of the provisions of Article 188 and Article 191 of Law

85/2014 means that the meetings of the creditors of the members of the group of companies or the majority creditor, as the case may be, will have the obligation to appoint the same insolvency practitioner both as administrator and as liquidator for the members of the group of companies where the creditors holding at least 50% of the insolvency estate are the same. We also believe that this obligation will apply both where the insolvency proceedings have been opened against the members of the group of companies as a result of the submission of a joint application, and where they have been opened as a result of the submission of individual and successive applications for the opening of insolvency proceedings. However, given that there may be difficulties in appointing a single insolvency practitioner as the sole insolvency administrator, we have shown that a compromise solution could be to appoint a consortium of insolvency administrators, and the duties and obligations of the insolvency practitioners comprising the consortium and the way in which it will operate will be contained in a consortium contract concluded between the practitioners. Last but not least, in this context, we have analyzed the consequences of breaching this obligation.

Particular attention must be paid in this context to avoiding a conflict of interest in the case of the appointment of the sole insolvency administrator. In this respect, we emphasize that we may find ourselves in a situation where the confirmation or appointment of an insolvency practitioner as administrator/liquidator in the insolvency proceedings of a member and the establishment of its remuneration are subject to the vote in the meeting of creditors controlled by the other members of the group over which the insolvency proceedings have been opened and which are, as the case may be, under the administration, supervision or even management of the same insolvency practitioner in respect of whom the vote is to be exercised.

For the reasons set out in the paper, we consider that in this case, the insolvency practitioner in question will be in a situation of conflict of interest and will have to inform the insolvency judge of the existence of this situation and to refrain from using the voting rights of the members of the group of companies in the general meeting of the debtor, and by applying the provisions of Article 80 paragraph (4) and Article 58 paragraph (3) of the Code of Civil Procedure, the insolvency judge may appoint a trustee to represent the members of the company strictly for the purpose of voting in the meeting of debtor's creditors, with regard to the appointment and determination of the remuneration of the insolvency administrator. Last but not least, as we have already shown, the appointment of a trustee may also be a solution if the members of the group of companies have conflicting interests when concluding contracts or carrying out operations, and where the management of the activities

of these members is carried out by the sole insolvency administrator. In the decision appointing the trustee, the insolvency judge shall determine the limits and duration of the representation.

In this paper, we have also analyzed the method to appoint the coordinating practitioner, the obligation to conclude the cooperation protocol and the content of this document which must be filed within 10 days from the date of opening the procedure to the insolvency file in which the coordinating practitioner has been appointed for approval by the insolvency judge. As we have shown, in our opinion, the 10-day period is a relatively short period that does not allow the various insolvency practitioners appointed to be aware of all the facts necessary to draw up a cooperation protocol adapted to the situation of the group of companies. Under these circumstances, the protocol may contain only general provisions regarding the ways of carrying out the economic, legal and operational activities, the conclusion of the protocol being more a bureaucratic condition to be complied with, rather than a measure that could establish a framework adapted to the coordination of the insolvency procedures of the members of the group of companies.

Last but not least, in the context of analyzing the particularities regarding the participants in the insolvency proceedings, we have presented the specific duties and obligations of the insolvency administrators appointed in the insolvency proceedings opened against the members of the group of companies. We have also reviewed the conditions for the under which an insolvency administrator of a group member may bring an action for the annulment of the creation or transfer of property rights, or for the liability for insolvency, against another member of the group of companies.

We have pointed out in this context that, if a single insolvency administrator is not appointed for all the members of the group of companies, each of the insolvency administrators appointed in the insolvency proceedings of a member of the group will be able to attend (but not obliged to do so) the meetings of the creditors and the meetings of the creditors' committees of any member of the group, without the right to vote, unless the members of the group of companies which these insolvency administrators represent are creditors of the debtor.

At the same time, the legislator provided that any of the insolvency administrators of the members of the group of companies may propose a reorganization plan in the insolvency proceedings of the other members of the group of companies. As we have shown, given the legal provisions, we consider that this right belongs only to the insolvency administrators of the group members, not to their insolvency liquidators.

According to the law, in order to ensure the most efficient procedural coordination, the insolvency administrators have the obligation to make available to the other judicial administrators the information necessary for them to draw up compatible and coordinated reorganization plans. This information will be subsequently made available by the insolvency administrator to the special administrator and creditors, in order to draw up and propose a coordinated reorganization plan for the debtor. The mismatching of the reorganization plans of the members of the group may affect the viability of the group, the chances of recovery of the debtors, and the rights of the common creditors of the members of the group of companies, respectively how their claims will be collected.

Another obligation imposed on the insolvency administrators appointed in the insolvency proceedings of the members of the group of companies is to give prior notice to the other insolvency administrators and to the coordinating practitioner the intention to bring an action for the annulment of the constitution or the transfer of assets against another member of the group. As we have shown, although the difference in treatment is not justified, the legislator has imposed this obligation only on the insolvency administrator, and not on the liquidator. Neither the creditors' committee nor the majority creditor have this obligation, although they too can bring an action for the annulment of fraudulent transfers if the administrator or the liquidator fails to lodge it. We consider that the sanction applicable in the event that the insolvency administrator brings an action for the annulment of the creation or transfer of property rights against another member of the group, in breach of the prior obligation to inform and consult, is to dismiss it as premature.

The obligation to provide prior information to the other insolvency administrators and to consult with the creditors' committees of the members of the group of companies has not been imposed by the legislator on the insolvency administrator or the liquidator if he/she wishes to bring an action for establishing the liability of another member of the group for its contribution to the debtor's insolvency, pursuant to Article 169 of Law 85/2014.

With regard to the creditors of the members of the group of companies and the drawing up of the lists of claims, we have pointed out in the paper that the role of a creditor may be virtually and artificially amplified due to the fact that the legislator has provided that, if a creditor holds a claim against several joint debtors who are members of the group of companies, it will be fully included in all the lists of claims of the joint debtors. Under these circumstances, the role of this creditor is magnified compared to the value of the claim it has to recover, in relation to the consolidated creditor's group of companies, to the detriment of the other creditors.

In the following, we have analyzed the situation of intra-group claims, prior to the opening of the insolvency proceedings and the manner in which they will be entered in the lists of claims of the group members. Unsecured intra-group claims shall be deemed to rank as subordinated claims. However, as we have already stated, intra-group claims benefiting from collateral held by the members of the group of companies, arising prior to the opening of the insolvency proceedings will not be treated as subordinated claims, in which case, in our opinion, the provisions of Article 159 of Law 85/2014 will apply. However, if the collateral was created with the aim of defrauding the interests of creditors, actions for annulment may be brought against the instruments creating these collaterals, according to Article 117 paragraph (2) (c) and (e), and if these actions are admitted, the claims will be subsequently entered in the order of priority provided for in Article 161 paragraph 10 of the Law.

We have also considered how group member companies may credit each other or provide collateral for the purpose of obtaining loans, during the period in which they are under the observation or reorganization. In this respect, we have stressed the need to obtain the consent of the creditors' committees, both of the member of the group of companies to which the loan is granted, and of the member granting the loan or securing the loan taken out by another member. For this current claim, the member of the group that granted the loan will hold against the estate of the borrower member a claim having the order of priority provided for in Article 161 paragraph 4 and not the one provided for in Article 161 paragraph 2 of Law 85/2014.

Next, we have considered the situation of the creditors' committees and meetings and have shown that, given that there is no legal prohibition to this effect, one or even more members of the group of companies may be appointed as members of the creditors' committee in the insolvency proceedings of another member of the group. This could lead to a situation where the creditors' committee of a group member includes other group members against whom insolvency proceedings have been opened and whose business is managed by the same insolvency administrator. In other words, it is therefore possible for the insolvency administrator of a debtor to attend the meetings of the creditors' committee, both as the insolvency administrator of the debtor and as the legal representative of other members of the creditors' committee.

Given the powers of the creditors' committee, there will undoubtedly be situations in which the sole insolvency administrator of the group will be in a clear conflict of interests. In such a case, we believe that the insolvency administrator will have to inform the insolvency

judge of the insolvency proceedings of the member he/she represents in the creditor's committee that there is such a conflict of interest, and the insolvency judge will appoint a strict trustee to represent the member with regard to voting on those items on the agenda which are subject to the conflict. We believe that this solution should also be applied in the case of the sessions of the creditors' meetings in which the sole insolvency administrator has a conflict of interests due to its dual role, that of insolvency administrator of a debtor and that of representative of other creditors who are members of the same group of companies.

Furthermore, the members of the group of companies who will also be members of the committee of creditors of another company of the group will, in our opinion, also be prone to find themselves in certain cases in a conflict of interest with the competitive interest of the creditors participating in those proceedings, when they have to cast a vote at the meeting of the creditors' committee. In such a situation, they will have the obligation to abstain from casting a vote, otherwise the decision of the creditors' committee may be annulled, if the majority required to adopt the decision without the vote of the members in conflict has not been reached. At the same time, the members of the creditors' committee who have breached their obligation to abstain may be held liable for all the damages caused to the debtor's assets by this breach.

As we have shown in the paper, unlike voting in the creditors' committee, in the case of voting in the creditors' meeting, the legislator has not regulated the obligation to abstain from voting in the case of a creditor's interest which is in conflict with the competitive interest of the creditors in the insolvency proceedings. However, strictly in the case of the voting in the creditors' meeting on the debtor's reorganization plan, the right to vote of the members of the group of companies may be exercised only if the payment schedule in the reorganization plan does not provide them with any money for the claims they hold against the debtor or if the payment schedule provides for these creditors less than they would receive in the event of the debtor's bankruptcy.

In the context of analyzing the particularities regarding the participants in these proceeding, we have also analyzed the situation of the special administrator. According to the law, in the case of insolvency of members of the group of companies, the general meetings of shareholders or members, as the case may be, have the obligation to appoint the same special administrator for each member of the group. This duty to cooperate imposed on the members or shareholders of the group of companies will apply both where the members of the group of companies have been opened to insolvency proceedings as a result of a joint application for

the opening of proceedings, and where they have been opened to proceedings as a result of separate and successive applications.

As we have shown extensively in the paper, the application of this measure gives rise to difficulties in practice because the legislator does not provide for the option of which the general meeting has priority or what the criteria for establishing priority are. The practice has also revealed another problem, namely the fact that it would often be impossible for the sole special administrator to manage the activity of a sometimes large number of companies with extensive activity, which is why the obligation to appoint the same special administrator for all the members of the group of companies has been simply ignored.

We consider that in the event of breach of this obligation to appoint the same special administrator for all members of the group of companies, the provisions of Article 132 and Article 196 of the Companies Law 31/1990 on the exercise of an action for annulment against the decision of the general meeting of shareholders by which the special administrator was appointed in breach of the provisions of Article 187 of Law 85/2014 will be applicable. Once the action for annulment has been brought against the decision of the general meeting of shareholders appointing the special administrator of the debtor in breach of the provisions of Article 187 of Law 85/2014, the plaintiff will be able to request the suspension of the challenged decision by means of interim measures, until the settlement of its request for the annulment of the decision. Otherwise, each resolution of the meeting of shareholders by which the special administrator was appointed is a presumed valid act, which will take effect until its annulment, the appointed special administrator not being subject to confirmation by the insolvency judge, as is the case of the insolvency administrator appointed in the insolvency proceedings of the debtor.

Law 85/2014 does not contain provisions on the coordination of the insolvency prevention proceedings of the members of the group of companies, but at the time of writing this paper, a draft amending and supplementing this law is under public debate, which aims to transpose into the national legislation Directive (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. Accordingly, the last section of the paper is dedicated to the analysis of this draft, on which occasion we have highlighted the main changes proposed and we have shown that, in our opinion, the extension of the procedural consolidation to the insolvency prevention proceedings of the members of the group of companies is a welcome measure. The

reorganization or recovery of group member companies in such proceedings can only be designed in coordination with the insolvency prevention proceedings of the other members, i.e. in coordination with the activity of the entire group of companies.

Throughout this paper we have presented both the positive aspects of the current regulation and the many shortcomings of the rules introduced by the legislator in the field of insolvency of the members of the group of companies, but these are to some degree inherent to any attempt to regulate a new and dynamic field.

We hope that this work will be useful and will serve as a point of reference and inspiration, both for the legal practitioners who have been put in the situation of applying the provisions adopted by the legislator in the field of insolvency to the members of the group of companies, and for the legal theorists who will analyze in the future the regulations introduced by the legislator in Chapter II, Title II of Law 85/2014. Why not, we hope that the legislator will also take into account our proposals of *lege ferenda* in the perspective of a possible amendment of Law 85/2014.