

**DEBT RECOVERY IN ROMANIA**  
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According to Romanian Law, if a debtor does not pay the amount due, the creditor may initiate court action against the debtor within the 3-year prescription period. After the expiration of this period, the debtor may willfully pay the amount due, but no court action may be initiated against the debtor for said amount.

**1. Court proceedings that may be taken for the collection of a debt**

If the debtor refuses to pay, the following court proceedings may be considered for the collection of the debt:

**a. The payment summon procedure**

The payment summon is a special and immediate court procedure that may only be used for the collection of debts of a certain amount of money and which result from a contract or other written instrument, signed by both parties.

The competent court for this procedure may be the local or the county court, depending on the amount of the debt in question.

In this procedure, only documents directly pertaining to the debt may be presented as evidence (contracts, letters between the parties, invoices etc.). Depositions or expert reports are not allowed as evidence.

If, during the trial, the debtor pays the amount due or reaches an agreement with the creditor for payment of the amount due, the file will be closed and a Judgment will be delivered, which states the payment amount or the terms of the agreement between the parties, as case may be. The Judgment memorializing the agreement between the parties represents a writ of execution (it does not need to be vested with a special executory clause) and may be force-executed against the debtor, if the debtor does not pay, pursuant to the terms of the agreement.

If, during the trial, the parties do not reach an agreement regarding payment, the judge will examine the case based on the documents presented by the parties and based on the parties' testimony. The following results are possible:

- If the judge finds that the creditor's claim is valid, the judge will deliver a payment summon judgment against the debtor, stipulating a payment term between 10 and 30 days from the issuing of the judgment. The debtor may file an application for the annulment of the judgment. If the debtor does not file such an application, or if the debtor's application is dismissed by

the court, the payment summon judgment may be vested with an executory clause and enforced against the debtor.

- If the judge finds the creditor's claim invalid (or if, for the litigation of the creditor's claim, depositions, experts' reports etc. are deemed necessary), the judge will dismiss the creditor's claim. No appeal or annulment application may be filed against the dismissal judgment. However, the creditor may open a new court case against the debtor for the collection of the debt, using the common procedure presented at point **b.** below.

The court fee for the payment summon procedure is a fixed amount of approximately EUR 12, regardless of the value of the creditor's claim.

The set amount of the court fee and the immediate nature of the action (which allows that a judgment is delivered in about 2-3 months) are the main **advantages** of this procedure.

The main **disadvantage** of this procedure is that it may be used only when the existence, the due date and the amount of the debt is substantiated with documentation, given that no other evidence is allowed in court.

#### **b. The common procedure**

This procedure is used in most of the cases involving the collection of a debt.

According to the Romanian Law, before opening the court case, the creditor must attempt to settle the matter amicably.

In this respect, the creditor must send a written notice to the debtor, inviting him to a meeting to negotiate an amicable settlement. The notice must have all the documents proving the creditor's claim attached and must be sent at least 15 days prior to the date of the proposed meeting.

If the parties succeed in settling amicably, the debtor pays the amount due and no court case is opened.

If the parties do not reach an agreement, or if the parties reach an agreement, but the debtor breaches it, then the creditor may open a court case and attach all documents proving that the parties have tried an amicable settlement to the application filed with the court. Without such documents, the application will be dismissed.

As in the case of the payment summon procedure, the competent court for the common procedure is the local or the county court, depending on the amount of the debt in question.

This procedure is as follows:

- The creditor files the application with the court, presenting the grounds for the claim and the evidence the creditor considers necessary to the proof of same;
- The debtor may file a response to the creditor's application, in which the debtor will present his/her/its case and the evidence for same;
- The judge determines which evidence, presented by the parties, is relevant to the case and allows only the relevant evidence;
- The parties present their evidence. Depending on the complexity, the evidence may be presented in one or more hearing dates (for example, an expert report may take several months to be prepared and submitted).
- After all the evidence is presented and the parties argue their case in a public hearing, a judgment is delivered.

Depending on the amount of the creditor's claim, an appeal or a recourse to the judgment may be filed as follows:

- If the value of the claim is of less than approximately EUR 30,000, only a recourse may be filed;
- If the value of the claim is of more than EUR 30,000, an appeal may be filed against the judgment delivered by the first court.

In the cases where an appeal is allowed, a recourse may also be filed against the judgment delivered by the appeal court. Considering that, according to Romanian Law, the recourse is an extraordinary remedy; the recourse may be filed only if the grounds of such recourse are among those expressly provided by the law.

The judgment delivered by the recourse court is final and binding.

The judgment delivered by the first court may be vested with an executory clause and forced execution proceedings may be opened against the debtor. The forced execution proceedings are not suspended if the debtor files an appeal or, as case may be, a recourse against the judgment delivered by the first court.

The court fees the creditor must pay for an application filed with the first court in a common procedure may vary between 1% to 7-8%, of the amount of claim. The court fees for an appeal and a recourse are 50% of the amount of the court fee paid to the first court.

According to Romanian Law, the losing party may be compelled, upon the request of the winning party, to pay all of the expenses of the litigation (including court fees, lawyers' fees, expert fees etc).

In conclusion, the greatest **disadvantages** of the common procedure are the amount of the court fees and the duration of the trial (first court, appeal and recourse), which may sometimes take 2-3 years before a final and binding judgment is delivered.

On the other hand, these procedures are more frequently used than the payment summon procedure because of the kind of evidence that is allowed in court as, most of the time, the creditor needs more than documents to prove his/her/its claim.

**c. Insolvency proceeding**

An insolvency proceeding may be initiated as follows:

- by the debtor, if there are insufficient funds to pay the amount owed to the creditor;
- by the creditor, if the debtor delays in paying the amount due by more than 30 days.

Generally, this proceeding is opened against a debtor legal person, but it may also be opened against a debtor natural person, if the debtor has independent commercial activities.

When an application for the opening of an insolvency proceeding is filed, the debtor may request that the court approve a plan by which the debtor intends to reorganize in an effort pay his/her/its debts. The judge may confirm or deny the plan.

If the judge determines that the application filed by the creditor or debtor is sound, if the debtor does not propose a reorganization plan, or if the reorganization plan is dismissed, the judge opens an insolvency proceeding and appoints a judiciary administrator for the debtor legal person.

The main consequences of opening of an insolvency procedure are as follows:

- The prescription term for all the claims of the creditors is suspended;
- No penalties or interest may be added to claims filed before the opening of the procedure;
- The debtor may no longer run his/her/its own business and all of the managerial tasks of the business are taken over by the judiciary administrator.

After the opening of such proceedings, the judiciary administrator will notify all of the creditors who are registered in the accounting books of the debtor and inform them of the terms under which they may register their own claims against the debtor with the court.

The judiciary administrator will inventory of all the debtor's assets and may, based on the decision of the creditors approved by the judge, sell said assets, the proceeds of which may be distributed to the creditors and be used to pay the expenses of the insolvency procedure.

Romanian Law establishes the order in which the creditor's claims will be satisfied (for example, the amounts obtained from the selling of assets which are subject to a guarantee will be paid to the creditors for whom the guarantee was set up and, only

after the satisfaction of these creditors' claims, may the remaining proceeds – if any – be distributed to the other creditors. Public institution claims and salary claims will be paid prior to the claims of the other creditors.

The biggest **disadvantage** to this procedure is that the duration of the trial is generally very long (it may sometimes extend for a period of 10 years) and the amount of money collected from the selling of the debtor's assets is often insufficient to cover all of the creditors' claims.

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