

## **CERTAIN CONSIDERATIONS REGARDING RISK MANAGEMENT IN INSOLVENCY PROCEEDINGS**

*Nicoleta MUNTEANU<sup>1</sup>*

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### **ABSTRACT**

*In this article I have tried to analyze the manner in which risk management, as a branch of organizational management, can be applied in insolvency proceedings. In order to reach this general objective, I have structured a few specific objectives: the identification of the type activities in insolvency proceedings and the identification of the risk generating sub-activities; the drafting of a matrix for risk ranking; identification of the elements of the risk management process in insolvency proceedings and also of the elements of the risk documentation plan. Using the Delphi technique, through a questionnaire administered to the insolvency practitioners, in a first stage, I have identified the type activities specific to the insolvency proceedings, which, in my opinion, can be constituted in an insolvency management. In the second stage of the research, I have identified, for each type activity, the risk generating sub-activities in insolvency proceedings. Starting from the classic risk indicators (frequency and effect), I have built a matrix for the ranking of the risk generating sub-activities in insolvency proceedings. In the third stage of the research, I have proposed, based on the answers offered by the questioned persons, the elements of the risk management process in insolvency proceedings. Starting from the importance of risk analysis, I have considered adequate to structure a risk documentation plan, questioning the insolvency practitioners through the Delphi technique and, also, for 10 of them, I have administered, in order, a brainstorming and a focus-group.*

**KEYWORDS:** *insolvency, insolvency proceedings, risk, risk analysis, risk management, risk prevention*

**JEL CLASSIFICATION:** *K22*

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### **1. INTRODUCTION: RISK MANAGEMENT IN INSOLVENCY PROCEEDINGS**

Every year, starting with 2009, at European Union level, 200,000 companies enter in insolvency and, among others, about 1.7 million work places are lost. The material welfare of a state or of the European Union, on the whole, lays in the increase of the economic balance. The economic cycle does not include only periods of economic growth, when the material welfare is automatically ensured, but includes also periods of economic downfall, caused by the economic crises or unfavorable contexts when the risk for an economic entity to enter in insolvency is high. Today, Europe crosses such a period of downfall, facing a severe economic and social crisis, being under the necessity of performing actions of economic recovery, of stimulating the investments and keeping the work places. As the president of the European Committee, José Manuel Barroso, said in a letter addressed to the president of the European Parliament in the framework of the Statement regarding the condition of the Union on September 12, 2012, the adoption of such measures of durable economic growth and prosperity is an absolute political priority.

In the framework of these measures for economic growth, one solution is represented by the creation of an efficient system of recovery and reorganization of the enterprises in difficulty, to

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<sup>1</sup>Euro INSOL SPRL,Romania, nicoleta.munteanu@euroinsol.eu

offer them a "second chance" in the business field. This is valid not only in the case of the large multinational companies but also in the case of the about 20 million small and medium sized enterprises which are the spine of the EU economy. The efficient treatment of the insolvency cases is an important aspect for the European economy and for the assurance of a durable economic growth.

This undertaking involves, on one hand, a modern legislation of the member states in insolvency matter and, on the other hand, a community acquis in the field which leads to fast and efficient procedures, both for the interest of the debtors and of the creditors, contributes to the keeping of the work places, helps the suppliers to keep their clients and the owners of the enterprises to keep the value of the performed investments.

In this manner, the insolvency proceedings become an efficient instrument in the economic mechanism, being considered a special undertaking, through which an economic activity is managed in a special manner, making efforts to reduce its bankruptcy risk. Even if, for a long period of time, insolvency was mistaken, at the level of the public opinion, for bankruptcy, and the difference between the two proceedings was known only at the level of the practitioners, lately, insolvency is seen as a "fancy" phenomenon through which the debtor, in difficulty, requests the protection of the court to be able to reorganize its activity for the reintroduction of the company within the economic cycle. However, the purpose of the legal regulations through the institution of the collective procedure is not represented by the automatic granting of the chance to return within the economic circuit, but to cover the liability of the debtor (Law no. 85/2014) and, as the case may be, when possible, the granting of the possibility to redress its activity.

The purpose of this study is to identify the type activities, from the point of view of the insolvency proceedings management, which are foreseen in the Law of the insolvency prevention proceedings and insolvency (85/2014) and to correlate these activities with the risk management. In the course of the study, I shall try to particularize aspects of the risk management process (risk identification and planning, risk analysis, drafting and implementation of the action plan in case of risks, risk monitoring and control) to insolvency proceedings.

Through its logics, the insolvency proceedings management is related to a crisis management due just to the opening of the insolvency proceedings, which generates a large range of specific activities which role is to generate a decisional option to answer to the question if the company must be liquidated or not. On the other hand, the opening of the proceedings enables the management to start fast actions, which would normally necessitate more time (the termination of unprofitable agreements, conclusion of transactions, release of debts, waiving of certain real guarantees, provided that these operations are confirmed by the syndic judge).

This activity falling into the crisis management, is exposed to a multitude of risks having multiple sources. Through the identification of the type managerial activities, I try a reconfiguration of the possible risks based on these activities and the promotion of concrete action plans, strictly correlated to the concerned activities. This undertaking shall help me not only for an easier identification of risks or an efficient implementation of the action plan but also for an efficient control and monitoring.

## **2. METHODOLOGY OF RISK ANALYSIS IN THE INSOLVENCY PROCEEDINGS**

In general, risk management is that branch of management who manages the organizational risks, which may appear at external level (economic sector, competitive environment, stakeholders) and internal level (labor nature, organizational structure, quality of resources, management quality). The risk management is a complex process, which involves several stages (Bedford and Cooke, 2001). Beyond the diversity of the options regarding these stages, from my point of view, they are reduced to: risk identification and planning, risk analysis / assessment, drafting and implementation of the action plans in case of risks; risk control and monitoring. The entire process has the role to help the management of the organization to understand the particular nature of the risks it faces in different

stages (pre-event where the risk is only potential, during the event, the reaction towards a manifest risk and post-event, the reduction of the consequences of a produced risk). Within the risk management process, the most important stage is the one related to the analysis / assessment of the risk. The purpose of this stage is to establish the hierarchy of the risks based on their level of danger (given by the combination of the indicators probability of emergency and impact), necessary counter-measures, the correlations which may be established between certain risks and the consequences of these correlations. To understand the role and useful character of the risk analysis, it is necessary for us to understand, in an objective manner, the risk concept.

## 2.1 Risk concept

Risk is present in any human activity or action. If the human action can be analyzed based on the benefit / loss ratio, this means that the individual is orientated to actions from which it shall have benefits and it shall stop actions if no benefits shall appear. When the individual loses, it feels uncertainty and risk.

The same happens in the economic space. The companies, through the managerial instruments, perform economic activities in order to obtain profit. Through the same managerial instruments, the companies take precaution measures to avoid the economic activities through which they can lose, activities considered risky.

Even if the dynamics of the economic environment is beyond the control and understanding of the organizations, through management, they take measures to control and manage risk and uncertainty. The efforts of the companies to manage risk and uncertainty are subscribed, today, to risk management.

To be able to understand the useful character of risk management, it is important for us to understand what risk is.

In the online DEX (Explanatory Dictionary), risk is defined as the "possibility to get into a dangerous situation, to have to face a difficulty or to bear a damage".

OCDE (1983) defines risk as being "the possibility for an act with undesired consequences to produce".

In the Webster dictionary (1990) the risk is defined as being the "possibility of a loss or damage, hazard, danger, distress".

In the Larousse dictionary (1995) the risk is defined through "danger, inconvenience more or less probable to which somebody is exposed".

British Standard Institute (2000) defines risk as the "uncertainty ... which affects the possibility to fulfill the objectives".

A small comparative analysis shows us that:

- in most cases, risk is associated with something negative, with the emergence of something which prejudices, harms or creates unbalance.
- risk is associated to a certain probability of emergence of unpredictable and unfavorable consequences.
- risk is associated with uncertainty, it is something which consequences cannot be calculated.

The understanding of risks, of the consequences and phenomena related to them, became more and more complex because of its multidimensional character in proportion to the different social fields: political, economic, cultural, environmental and safety field. The risk concept has meanings derived based on the main fields of knowledge, based on the received values or the applicability of the analyzed specialized field. This is why, in the specialty literature, the definitions are different based on the field.

The risk, in the economic field, is manifested as the probable emergence of certain circumstances and factors with a negative influence over the results of an economic activity. The complex economic life generates, inevitably, unpredictable phenomena, which can affect not only the planning but also the entire management process. The plan for risk management, as I shall analyze within this article, refers, in fact, to the plan of the risk management process. The risk concept has,

in the economic area, several meanings and appears as: contractual risk, insured risk, currency risk, bankruptcy risk, etc (*Figure 1*).



**Figure1. Risk concept in the economic area**

*Source: adaption after Vagu (1985)*

The definitions of the risk concept in the economic area, offered by the specialty literature are (Vagu, 1985):

- **contractual risk** means to take the patrimonial consequences of the creditor's exemption from its correlative obligation, by the debtor of the obligation, impossible to be executed, following the damage or loss of the reference good of the obligation which couldn't have been executed and related to which the debtor is not culpable.
- **insured risk** means that phenomenon or complex of phenomena for which the insurer shall pay to the insured party the due amount. In order to be considered an insured risk, the following elements must apply: to have an occasional character; to be subjected to the statistical evidence; its occurrence must not depend on the will of the insured party.
- **currency risk** represents the difference in value of the foreign currency between the date of the conclusion of the agreement and the date of the effective payment. The currency risk is appreciated as being directly proportional to the instability of the exchange rate.
- **bankruptcy risk** is the assessment of the capacity of the company to be able to adjust its obligations in due time, based on the concrete economic - financial conditions in which it develops its activity.

Through a small comparative analysis, we can see that all definitions have in common elements as indetermination / uncertainty and the impact over the result (Constantinescu, 1984):

- the risk represents possible losses bigger than it was considered.
- the risk represents the variable possible result based on a probable, precariously event.
- the risk represents an undetermined damage
- the risk represents the probability of the emergence of a situation with undesired consequences.
- the risk represents a result possibly different from the expected one.
- the risk represents a future and probable event which emergence could cause certain losses

From practice, we can see the fact that the organizations ensure the fulfillment of the risk criteria, managing it through the identification, analysis of the risk factors and their treatment. The organizations make public the necessary information, consult with the interested actors (stakeholders) and, for the efficient treatment of the risk, they monitor and verify its level, and also the means through which control can be provided.

Notwithstanding the type and size of the organization, it is useful the management of all specific risks which may appear and which may affect the fulfillment of the planned objectives. The management, especially through the exercising of the evaluation function, identifies, through risk analysis, the level and manner in which the objectives may be affected, and also the correlation

between the consequences and emergence probability of the risks, subsequently establishing if immediate correction measures are necessary, of stage or process.

## **2.2 Certain specifications regarding risk analysis and the type activities of insolvency management.**

Considering the increased dependence of the managerial systems on the proper information, activities as: the opportunity of its acquisition and use; the circulation speed of information within the company and also the quality of its capitalization, in order to increase the quality and efficiency of products and services, become very important for the activities of the current management and we can find them grouped around risk management and risk analysis.

The starting point in risk management is represented by the awareness of its action, before the emergence of the unwanted effects, the efficiency of the risk management being represented by the dynamics of the development of the process on the entire operation period, being supported by many employees of the company, management personnel and execution personnel.

The reaching of the organizational objects involves the knowledge and assuming of all specific risks, appeared following the changes in the internal and external environment, and also the performance of realistic strategies, based on efficient strategical analyses which include the understanding and monitoring of the competitive environment. If the external risks can only be controlled indirectly by the managerial team, through these strategical analyses, the internal risks are easier to identify, monitor and control by the management system.

Even if in the specialty literature, when we refer to the risk management process, we notice different stages based on certain authors, the element which remains almost unchanged in all these ideas, is risk analysis.

Risk analysis, as a process, is performed, first of all, through the realistic management of the threats and vulnerabilities identified in the internal and external environment. The finality of risk analysis is represented by the analytical products on which all decisional options on all levels of management are based, with priority on the strategical level of management. More than that, from my point of view, risk analysis must consider the type activities which represent the base of the operational management of the technological process of the basic activity. In other words, I cannot analyze the specific risks to the insolvency proceedings until I identify the type activities which can be subsequently constituted, within an insolvency proceedings management. Considering that, I have not identified these type activities in the specialty literature, as the insolvency management is not currently structured, I have chosen the direct questioning, through Delphi technique, a number of 25 insolvency practitioners regarding the main type activities which can be found in any Romanian insolvency proceedings and which, as I have already stated, can represent the base for the developing of an insolvency management. The Delphi questionnaire was a simple one and, in the first stage, I requested the identification of the common activities of the insolvency proceedings. In the second stage of the questionnaire, I have asked the subjects to identify a few sub-activities for each type activity, which, in their opinion, can generate risks, and, implicitly, vulnerabilities. The list presented below includes the main 12 activities, as they have resulted following the application of the questionnaire and, also, the risk generating sub-activities, which have met most of the scores. So, the technological process of the insolvency proceedings, performed by the insolvency practitioner, the one who applies the proceedings, can consist of the following type activities:

- *the notifications for the opening of the proceedings.* The appointed insolvency practitioner - official receiver / trustee in bankruptcy, notifies the opening of the proceedings both to the debtor (the company against which the insolvency proceedings were opened), and also to all creditors in the debtor's list and trade register office. The official receiver publishes the opening of the proceedings in a well-known paper and in the Insolvency proceedings report.
- *examination of the debtor's economic situation.* The examination consists of the analysis of the financial - accounting documents without limitation to balance sheets, loss and profit account and accounting balance sheets for the last 2 years before the opening of the proceedings; the

complete list of all assets of the debtor, including all accounts and banks through which it turns its funds; the complete list of all debtor's creditors, notwithstanding the nature of their receivables, respectively: certain or under a condition, liquid or non-liquid, due or not due, appealed or not appealed.

- *restructuring of the debtor's accounting documents.* If the debtor do not present financial - accounting documents for the analysis of the evolution of the main economic indicators, the official receiver shall perform all necessary actions for the restructuring of these documents.
- *drafting of reports.* Besides the monthly activity reports drafted by the official receiver, it is obliged to draft two additional reports, very important for the proceedings, namely: within 20 days from its appointment, the report regarding the causes and circumstances which led to the emergence of the insolvency state, mentioning the possible signs or preliminary elements regarding the guilty persons, the observation regarding the existence of the premises for the personal patrimonial liability of the guilty persons and also the identification of the real possibilities of reorganization of the debtor's activity or the reasons which do not enable the reorganization. In case of bankruptcy, at every three months calculated from the starting date of the liquidation, the official receiver presents to the committee of the creditors a report regarding the funds obtained from liquidation and receivables cashing, and also a distribution plan among the creditors; and at the termination of the proceedings, the final report;
- *inventory and evaluation of the debtor's patrimony.* Within 60 days from the date of the opening of the proceedings, the official receiver must perform the inventory procedure of the assets of the debtor. The evaluation of the assets is performed by an ANEVAR assessment expert and must be accomplished until the date established for the submission of the preliminary table of receivables. If the debtor is in bankruptcy procedure, after the inventory of the patrimony, the official receiver shall apply seals and shall take all adequate measures for the conservation of the patrimony.
- *verification of the receivables.* The verification procedure of the receivables involves a detailed analysis of all documents on which each debt claim is based.
- *drafting of the receivables tables.* At the dates established by the syndic judge, the official receiver publishes in the general procedure the preliminary and final table of receivables and in the bankruptcy proceedings, the additional table and the consolidated final table.
- *presiding of assemblies.* The official receiver / trustee in bankruptcy convokes, presides and provides the secretariat of the Assembly of the Creditors and Creditors' Committee.
- *drafting of the reorganization plan* of the debtor's activity. The reorganization plan must be drafted within 30 days from the date of the publishing of the final table of receivables. Through the reorganization plan there are indicated the perspectives of recovery in proportion to the real possibilities and the specific of the debtor's activity, with the available financial means and also the schedule for the payment of the receivables. The reorganization plan, which may have a duration of 3 years, calculated from the date of its confirmation by the syndic judge, can foresee either the restructuring and continuation of the activity of the debtor, or the liquidation of certain goods in its patrimony, or a combination of the two reorganization options;
- *entire, respectively partial management of the debtor's activity.* When the insolvency proceedings are opened, the management of the debtor company is taken over by the special director, under the supervision of the official receiver, if the debtor company continues to have administration rights or by the official receiver if the debtor company no longer has administration rights.
- *introduction of legal actions.* For the maximization of the fortune of the debtor, the official receiver / trustee in bankruptcy shall file actions for the cancellation of the fraudulent acts or operations of the debtor, concluded to the prejudice of the rights of the creditors, and also of certain transfers with patrimonial character, of commercial operations concluded by the debtor, which could prejudice the rights of the creditors. For the recovery of receivables, the official

receiver / trustee in bankruptcy shall prosecute claims for the cashing of the debtor's receivables and shall terminate the agreements concluded by the debtor, which prejudice the company.

- *the liquidation* is done through the sale of the goods in the debtor's patrimony through public auction, direct negotiation or a combination of the two types of sale. This type activity includes also the distribution of the amounts obtained following liquidation.

The risk analysis, operationally defined, is the rational, logic and systematic process of the assessment of the risks specific to an analysis unit (company, enterprise, institution, country). Through analysis, each risk is described through the emergence probability, through the severe character of its consequences, it is prioritized in proportion to other risks, establishing its place in the hierarchy of risks and also the direct or indirect causality relations with other risks.

Practically, risk analysis means the examination of the impact of each sub-activity through related risks, analyzed both through frequency – its probability of emergence, and through the produced effect – impact/consequences, and the estimations made are concretized in qualitative and quantitative assessments of the forecast effects. When these risks are ranked, the risk emergence probability and its impact over the project are considered. From the combination of the two indicators, there are four major categories of risks.

<b>Emergence probability</b>	+	+	<b>Impact/ consequences</b>
	+	-	
	-	+	
	-	-	

**Figure 2. Risk prioritization.**

*Source:* the author

These categories are:

- risk with a high emergence probability and with a strong impact over the efficiency of the organization (rejection of the reorganization plan by the creditors; non-fulfillment of the payment schedule in the reorganization plan; insufficiency of the asset for the satisfaction of the group of creditors).
- risk with a high emergence probability and with a small impact over the efficiency of the organization (the observance with delay of the payment schedule in the reorganization plan; extension of the procedure term - preliminary table, report on causes, extension of the goods inventory procedure, etc).
- risk with a low emergence probability and high impact over the efficiency of the organization (repossession of the legal rights of a creditor within a reorganization procedure in progress; approval of a forced execution within the bankruptcy proceedings, see the case of the debtor Autonomous Entity for Nuclear Activities, which represents the object of file no. 9089/101/2013, on the dockets of Mehedinti Court; cancellation of an active capitalization procedure in progress);
- risk with a low emergence probability and with a small impact over the efficiency of the organization (non-confirmation of the reorganization plan by the syndic judge; appearance of a creditor after the finalization of the bankruptcy proceedings and the deletion of the company).

For instance, the most dangerous are the risks with a high emergence probability and high impact / consequences over the efficiency of the activity. The less dangerous are the risks with a low emergence probability and with a small impact / consequences over the efficiency of the activity.

In the framework of the risk management process, risk analysis remains the most important and complex stage, being, maybe, the most efficient instrument for the improvement of risk management and an easy to apply method through which there are provided reliable information regarding the emergence probability of a situation with side effects over the system (FRONTEX, n.d., [http://frontex.europa.eu/assets/Publications/Risk\\_Analysis/Fran\\_Q1\\_2015.pdf](http://frontex.europa.eu/assets/Publications/Risk_Analysis/Fran_Q1_2015.pdf)).

As a stage of the risk management process, the risk analysis is complex and it concretizes in many types of analysis, the best known being the qualitative and quantitative ones. Besides them, based on the actions followed by the management, we can find comparative, descriptive, preliminary or predictive risk analyses.

Even if many authors (Popescu, 2013) introduce in the risk analysis stage also the identification of risks, maybe to underline the importance of the adequate identification of risks in their assessment process, I consider that risk identification is an independent, important stage and different from risk analysis.

An efficient risk analysis is based on a correct and objective identification of risks. From this point of view, I consider that this very important stage must, in apriority manner, be based on a well-structured method.

The main modalities, among others, through which risks can be identified within a company, or in relation to certain labor processes or work procedures are: (*Figure 3*):

- drafting of control lists - with potential risk sources (environment conditions, expected results, personnel, modification of objectives, design errors and omissions of the action ideas, cost estimations in the use of the resources, etc;
- analysis of the information available in the database - for situations similar to the current ones (information regarding situations which must be faced by profile institutions or structures)
- the use of the experience of the personnel - many times the persons involved in the proper activity are aware of certain risks and issues which are not noticed by the persons in the offices, and this is why their experience is very useful;
- identification of the risks imposed from outside - legislative changes, significant changes of the activity, etc, participation of personnel at professional meetings, at exchanges of experience or training programs, at the study of the specialty publications in the field of interest, etc.



**Figure 3. Risk identification methods**

*Source:* the author

### 2.3 Risk analysis components and actions in case of risk

Risk analysis, as a work instrument and method, has a variety of forms based on the objectives of management, context of the competitive environment and interest of the stakeholders. Beyond this diversity, from a structural point of view, we can speak about certain components which can be found in any risk analysis, which I shall name "type components". For methodological reasons, I included in these components also the actions performed in case of risk. I mention that, within this stage, we talk about the identification of the answer in case of risk with the highest efficiency probability, and, in the following stage, an action plan in case of risk shall be drafted and implemented.

The main components of the risk analysis are:

- *the reference field* which refers to the fields within the company which must be protected based on the institutional interests of the departments involved in the economic flow. From

this point of view, we can speak about a general reference field, related to the company on the whole, or departmental reference fields.

- *the probable threats* (specific to the external environment of the company) and *vulnerabilities* (specific to the internal environment of the company) represent important components of the analysis for the identification of the risks and can be established, among others, through mathematical equations, as follows:

$$R_{(\text{risk})} = A_{(\text{threat})} \times V_{(\text{vulnerability})} \quad (1)$$

The risk represents the threat multiplied by vulnerability. If A or V have the value equal to 0, then the risk does not exist. In the framework of the risk management process, vulnerabilities can be identified through the assessment of the main key aspects from an organizational and functional point of view within the organization: organizational structure; human resources, information availability and updating; over-regulation; the discrepancy between the expectations of the management and the realities of the economic environment; disloyal competition, loss of the trust of the stakeholders; technology, investments reported to performances, etc.

- *risk level*. Once identified and analyzed, the risk imposes the establishing of the disturbing factors which, on their turn, establish a certain risk level, through the establishing of the consequences of its manifestation, by combining the two structuring indicators, analyzed above, the risk emergence probability and the impact / consequences of it, therefore estimating the values of the concerned risk.
- *the answer at risk* represents a decisional option based on all elements included in the establishing of the risk level and consists of a complex of legal, organizational, economic, technologic and informational measures, as a plan, able to prevent the action of the risk factors to reduce or cancel their consequences. As decisional option, the answer at risk, can have different possible alternatives:
  - **Risk acceptance** - adopted only in the case of the risks with low impact or for the ones with a minimum emergence probability. If it is situated under the accepted level of tolerance and/or agreed management cost, acceptance can be efficient. This approach is not indicated for high and medium level risks.
  - **Risk monitoring** - to see if the emergence probability changes in time. This approach is adequate for significant risks with low emergence probability. A plan is drafted only when there are obvious signs that the risk shall be materialized. The advantage is represented by the use of the resources only for those risks with high emergence probability and only when it emerges.
  - **Risk avoidance** -removal of the condition which creates the issue. It represents a very efficient manner, but, obviously, it can be used only in certain circumstances. This type of answer can be used, for instance, to avoid the bankruptcy of an organization / company if it has real reorganization premises.
  - **Risk transfer** - the liability for the risk management can be removed through the transfer of the risk to another entity or third party (the outsourcing of a function to a third party, which may have the specific expertise in the field, which enables it to perform the activity without risk, can remove the risks related to the management of a certain activity);
  - **Risk diminution** -the most adequate approach in most of the cases. Usually, proactive actions must be initiated to ensure the fact that the risk shall not materialize. Another purpose of risk diminution is the reduction of the impact (effect) of the risk, if it materializes.

- **Risk introduction (positive risk)**- the concept of opportunity risk (positive risk) supports the managerial team to obtain an efficient result in the future, based on the principle that if you don't risk you don't win.

### 3.RISK MANAGEMENT PROCESS IN INSOLVENCY PROCEEDINGS

When we refer to risk management, we refer to a process structured in stages, the correct phrase being risk management process. Even if, in the specialty literature, there is no unanimously accepted point of view regarding the stages of the risk management process, in general, we have found little information about risk management process in insolvency proceedings.

In the third stage of the research, I have asked the subjects to identify, from their point of view, the main stages of the risk management process in insolvency proceedings, making available to them a check-list which includes the main stages proposed for the risk management process, in the specialty literature. The answers of the subjects, based on frequency, led me to the structuring of the following stages.

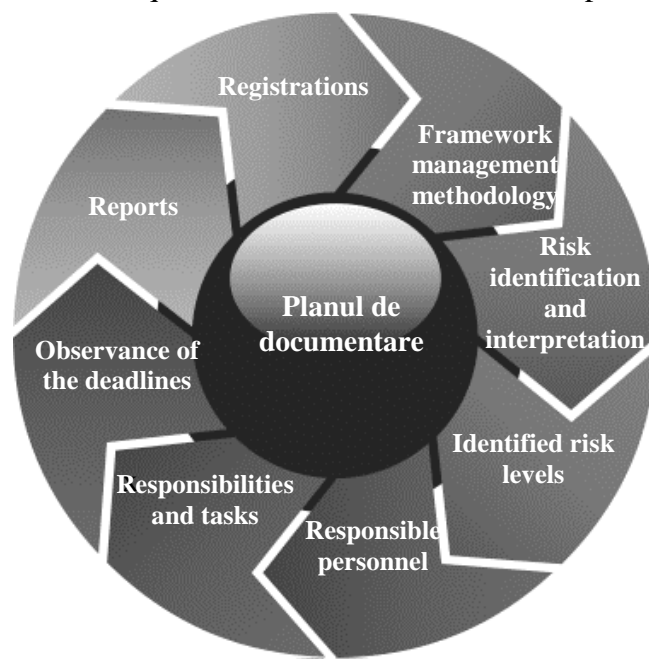
- risk identification and planning;
- risk analysis;
- drafting and implementation of the action plan in case of risks;
- risk monitoring and control.

#### 3.1.The structure of a documentation plan of risk management

Considering that the risk management process, in order to be efficient, must be based on a general plan of risk management which should include the framework conception for the performance of the entire cycle of the risk management process, starting with the identification and planning of risks and finalizing with their monitoring and control, I have tried, through research, to structure a documentation plan of risk management, particularized to the insolvency proceedings, using the brainstorming and focus-group techniques. A documentation plan regarding risk management in insolvency proceedings should include, among others:(*Figure3*):

- *Framework methodology of administration* concretized in a model, a pattern in which there are defined the approach manners, means and databases or information which can be used in risk management (periodical meetings, information system for the monitoring of the trial dates, information system regarding the management of the documents, special methodology for the protection of the movable goods, etc);
- *Risk identification and interpretation* refers to the adequate qualitative and quantitative methods of analysis, used in risk assessment, which shall be applied during the development of the entire risk management process. A method agreed by the insolvency practitioners, is the SWOT diagnosis analysis method based on which there can be identified, correlated and interpreted the main aspects encountered in their field of activity (wrong interpretation of certain legal provisions, the existence of an uneven practice in that matter, non-unitary practice of the courts, etc).
- *The identified risk levels* based on which there are started the specific activities of answer in case of risk, are the ones established through the risk matrix promoted in this study and which targets four levels.
- *The liable personnel* to which there are established and distributed tasks regarding the activities related to risk management (the appointment of the personnel is done during the stage of identification and planning of risks) in insolvency field. The liable personnel is the insolvency practitioner (the official receiver or trustee in bankruptcy).
- *The liabilities and tasks* distributed to the liable personnel, through the implementation activity of the measures of answer in case of risk are foreseen in the insolvency law.

- *The observance of the deadline of the answer activities.* The conclusions in the risk analysis supplied in time represent the base of the periodically adopted decisions by the management of the company.
- *The reports* drafted by the liable persons in certain stages of the application of the answer measures by the risk management team.
- *The registrations* performed during the risk management process for the purpose of the identification of the future requirements and resulted learned aspects.



**Figure 4. Documentation plan of risk management**

Source: the author (interpretation of the answers of the subjects questioned through the Delphi technique)

Risk management is a process of identification, analysis and systematic information regarding the risk factors and involves the maximization of the probabilities and consequences of the positive events and the minimization of the probabilities and consequences of the negative events, manifested within an organization. In other words, risk management uses the results obtained for the identification of the decisional options used as an answer to risk. When implemented, it targets the same objective valid for the entire management system, namely *efficiency through the achieving of maximum results with minimum efforts and resources* (Popescu 2013).

$$\text{Efficient management} = \frac{\text{Results}}{\text{Effort} + \text{Resources}} \quad (2)$$

The risk management orientated to the reduction of the action of the negative effects is concentrated on risks based on legal or physical nature causes or, in the case of the financial risk management, on the risks which can be managed by using negotiated financial instruments. For this purpose, risk management must be applied through a sustained and consistent planning, which involves the establishing, with priority, of the risks which involve the biggest loss and a high probability of emergence. For risk identification, the matrix proposed by me in this study can be used.

In practice, this process can be very difficult, the highest number of identification errors being registered where it must be established the hierarchy between the risks with a high probability of emergence, but which involve minor losses and risks with a low probability of emergence, but which involve major losses, which the organization can't afford. (Bujoreanu, 2006).

A manner to counter-balance this difficulty is to operate with the check list which means an apriority listing of all risks through the matrix I have presented, followed by their prioritization based on the objectives of the management, competitive environment, stakeholders' interest, etc. To reduce the negative effects, it would be ideal for the risk management to act with a minimum consumption of resources, this being possible through the structuring of a management process of integrated type, with decisions assumed by the entire management of the company, which can be advised by experts in the field.

### **3.2 The cyclic character of the risk management process**

The management process should have a cyclic character (it gives the possibility to correct any dysfunctionality, to standardize certain activities and procedures and also the possibility to learn from the critical situations, fructifying the experience and opportunities offered by the previous cycles) and should contain, among others, the following elements:

- the drafting of the action plan in case of risk. The plan is the document which includes concrete and enforceable measures, planned results, quantifiable modalities, and for efficiency there are 4established the necessary responsibilities and authority to enforce the measures and also their implementation deadlines.
- the drafting of the elements in the plan - application of the planned measures for the reduction of the effects of the identified risks.
- plan review and assessment - information can be added according to the dynamics of the events and also the possibility to take certain measures for the limitation of the possible risks.

In the risk management process, not only the risk evaluation and analysis stage is important but, from my point of view, also the structuring manner of the documentation plan and the drafting of the action plan in case of crisis. Through these two instruments, the company management ensures the fact that the risks which can emerge are kept under control, and their manifestation does not endanger the objectives assumed by the company.

## **4. APPLICABILITY OF A RISK ANALYSIS METHOD IN THE INSOLVENCY PROCEEDINGS**

Risk analysis as an activity integrated in risk management, developed a significant number of qualitative and quantitative methods through which risks can be assessed. An efficient analysis method I use and recommend for its simplicity and efficiency is the SWOT diagnosis analysis. It bears the name from the initials of the four structuring indicators used in the analysis, as follows: **S**trengths (strong points / plus points), **W**eaknesses (weak points/weaknesses), **O**pportunities (opportunities / favorable occasions resulted from the internal environment) and **T**hreats (threats / unfavorable occasions resulted from the external environment).

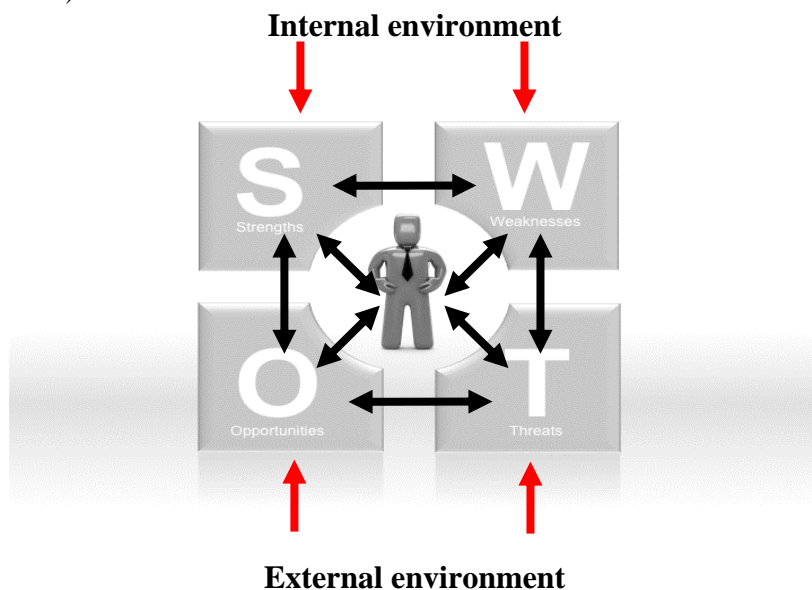
It is a method used to identity and quantify the strong and weak points and there can be assessed the opportunities and threats regarding the fulfillment of an objective or performance of an action and it can also be used as element for the performance of the assessment of the activity for a longer period of time (quarter, semester, year or multiannual).

There are two manners for the use of the SWOT analysis:

- for professional purposes - to measure the efficiency of an action or the efficiency with which an objective is fulfilled.
- for personal purposes - to monitor the career of a person, noting the abilities and issues he/she has.

The method usually used for the analyses performed at strategic, tactic and operational level represents the attempt to combine the internal and external environment elements, and it is also called matching or alignment model, and also for the generation of strategic variants. There are analyzed the possibilities of transformation of the weak points into strong points, the use of the strong points to limit the weak points and the threats into opportunities, the use of the opportunities

to limit threats. Based on it, conclusions can be derived and proposals can be made for risk management (Figure 6).



**Figure 6. Classical division of a SWOT analysis**

*Source: the author*

With respect to the insolvency proceedings, SWOT analysis involves the identification of the internal and external elements, corresponding to the four reference points and the keeping of the relevant ones (Figure 7).

STRENGTHS	<ul style="list-style-type: none"> <li>▪ Modern legislation in the field;</li> <li>▪ Professionalism of the syndic judge;</li> <li>▪ Expertise of the insolvency practitioner;</li> <li>▪ The advantages offered by the judicial reorganization;</li> <li>▪ The abilities of the official receiver in the management of the proceedings</li> </ul>
WEAKNESSES	<ul style="list-style-type: none"> <li>▪ The delayed reaction speed of the insolvency practitioner in proportion to the procedural terms.</li> <li>▪ Disputes and conflicts between creditors;</li> <li>▪ High number of appeals within different stages of the proceedings;</li> <li>▪ The tendency of the creditors to recover fast the receivables, a fact which leads the debtor to bankruptcy</li> </ul>
OPPORTUNITIES	<ul style="list-style-type: none"> <li>▪ Existence of the good practices in the field;</li> <li>▪ Community Acquis;</li> <li>▪ Ad-hoc mandate and arrangement with creditors;</li> <li>▪ Existence of a professional body;</li> <li>▪ Existence of the Insolvency Proceedings Report</li> </ul>
THREATS	<ul style="list-style-type: none"> <li>▪ Uneven practices;</li> <li>▪ Non-unitary practice of courts;</li> <li>▪ Inexistence of a unitary idea regarding insolvency management;</li> <li>▪ Unfavorable economic context, the danger generated by economic crises;</li> <li>▪ Unsustainable economic policies.</li> </ul>

**Figure 7. SWOT analysis of the insolvency proceedings**

*Source: the author*

SWOT analysis is materialized through the identification of the aspects regarding the action possibilities in managerial / execution plan (analysis of the possibility to transform weak points into strong points and threats into opportunities, and in some situations, the transfer of these negative aspects to other structures with the necessary competence and expertise for their adequate management). In the analysis made by me, for instance, the opportunity regarding the existence of the Insolvency Proceedings Report can lead to the limitation of the weak point, respectively the reaction speed of the practitioner, meaning that he can constantly document in the pages of the report, improving his professional abilities.

## 5. CONCLUSIONS

Starting from the idea that the activities regarding the insolvency proceedings act in what is called an open system, there is the possibility of emergence of certain risks generated not only by the external environment but also by the internal environment, related to those risks. Through the identification of type activities at insolvency level, and the structuring of an insolvency management, it is created the possibility to apply risk management in the insolvency proceedings. Starting from the risk concepts, risk analysis and answer to risk, I tried to build an identification matrix of risks through which I analyzed the type activities in the sense of the identification of the main sub-activities exposed to risk and, also, I tried to structure a general modality modality to increase the efficiency of the risk management process through the structuring of the documentation plan of risk management. This documentation plan offers the possibility to create a risk management model, functional, which can be implemented by the management of the company. I have also identified, through SWOT analysis, the main aspects concretized in strong / weak points, threats / opportunities, at insolvency proceedings level.

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