

RISK MANAGEMENT: THE IMPACT OF THE FRAMEWORK PLAN TO DOCUMENT THE RISKS PERTAINING TO INSOLVENCY PROCEDURE

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ABSTRACT

In this article, the author examines the role of risk management within the organizational management of economic entities in general and the economic entities undergoing insolvency, in particular. Analysing risk management from a structural standpoint, for the purpose of the topic stated hereinabove, the author argues that the framework plan of substantiation might be important for risk management. In furtherance of her doctoral research in which she outlined the structure of a general plan for the substantiation of risk management from the perspective of an insolvency practitioner, the author subjects this document to the management of the companies in insolvency, in a pilot survey, so that it may be improved and supplemented with specifics of the management of that organization. The document thus structured, referred to as the framework plan to document risk management, was submitted to a new quality research in the form of a questionnaire self-administered by 50 managers of economic entities which underwent or undergo insolvency, in an attempt to identify the elements related to each item of the plan. This quality research lead to a theoretical substantiation of the framework plan of substantiation as an instrument of intervention within risk management. The concrete outcome of the qualitative research was identification of the specifics of each constitutive element of the plan of substantiation, which shall lead to new researches that will detail and elaborate on issues with immediate beneficial effect in rendering efficient the risk management of the companies in insolvency.

KEYWORDS: *insolvency procedure, risk, risk analysis, risk management, risk substantiation plan.*

1. INTRODUCTION: IMPORTANCE OF THE MANAGERIAL DIMENSION IN THE INSOLVENCY PROCEDURE

Ever since 1990, the Romanian laws on insolvency have been reformed, constantly and substantially, in order to respond to two great challenges. First of all, compliance with the EU's *acquis* in the field by harmonizing national and EU regulations. This challenge enabled Romania to have at this point a flexible pan-European regulatory structure in the field of insolvency, realistic enough to pass for best practices as regards other European countries. Second, it allowed our country to aspire to be an economic actor visible on the international market as Romanian laws began to include relevant important aspects that are recognized worldwide (Model Law and the UNCITRAL Legislative Guide).

While this article is not aimed to deal with the efficiency of the regulatory construction in the insolvency procedure, the call for this regulatory measure is one that is necessary to the structure of the scientific survey relating to this material. This national regulatory effort in the field of insolvency created an efficient regulatory framework for the Romanian insolvency practitioners who may now rely on flexible legal tools while exercising their profession. As an insolvency practitioner with over 15 years of expertise in this field, I believe that the national regulatory structure commenced by Law

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no. 64/1995 on the procedure of judicial reorganization and bankruptcy and Law no. 85/2014 on the insolvency prevention and insolvency proceedings, also referred to as the Insolvency Code by practitioners. The legislation also enabled the setup of the insolvency practitioner profession as well as the creation of an abundant, and necessary, jurisprudence and of a professional culture in the insolvency field.

As a general approach, the issue of insolvency is complex, while insolvency is a procedure specific to each country. From this perspective, through the studies I have made over the past years within the scope of my doctoral research, I was able to structure it into four large fields, each one promoting a distinct dimension of the insolvency procedure. Thus, in addition to the (now classical, accepted and promoted by most practitioners) regulatory (Bufan et al., 2014; Turcu, 2007, 2015) and economic dimensions (Dăianu et al., 2004), we promoted the managerial dimension as well as the dimension of security of the insolvency proceeding. Surprisingly enough, the national and international bibliographic references dealing with insolvency from the managerial as well as security perspectives are missing, as we publicly stated and argued in substantiation of our PhD thesis on public order and national security.

In this article, I will continue my research on the managerial dimension of insolvency in an attempt to argue, based on a quality research, the importance of the framework plan documenting risk management as a fundamental instrument to use to manage the risks that are identified in the insolvency procedure.

The strategic analysis of national and supranational economic systems and circuits (regional and international) indicates that these undergo periodically pressure and imbalances that give rise to risks and crises. In time, the insolvency procedure has grown into an intervention instrument by which an economic entity in crisis (inability to make payments) is either restored to the circular flow of income after the successful implementation and completion of a reorganization plan or removed from the circular flow of income as a result of it entering bankruptcy.

The state of insolvency as a warning instrument outlines economic and financial imbalances which generate vulnerabilities and risks to the company in question as well as the economic system in general, and indicates the entry into crisis. Such crisis defining imbalances prompt the adoption of special measures intended to mitigate and to end the crisis, but also to cause the company to turn around, where possible, by risk analysis and by responding to the identified risks. These special measures are set forth in the insolvency procedure.

The architecture of the insolvency procedure, in addition to its regulatory framework, includes a number of specific activities that need to be carried out in order to eliminate the crisis. Furthermore, this procedure is used to designate a professional who will manage and implement these specific activities, efficiently and effectively. For this activity to succeed, the professional will work with other participants in the procedure, the creditors in particular (convened in the meeting of creditors/creditors' committee), and the syndic judge in respect of the review of the lawfulness of the measures taken by the administrator/judicial administrator and, where applicable, the special administrator.

In view of the foregoing considerations, the insolvency procedure has the role to protect the state in that the economic entities facing insolvency have a regulatory framework they may use to either get back in the economic circuit (after a successful reorganization plan) as or to declare bankruptcy (by liquidation of debtor's assets, payment of creditors and de-registration of the debtor from the trade registry records).

The entire intervention philosophy at European as well as at international level is focused on the debtors' turnaround and on giving them a second chance to help them avoid liquidation. An important role that can secure the success of this action is played by the management, namely by the managerial dimension of the insolvency procedure.

Upon its implementation, this dimension takes on multiple valences and enables the insolvency practitioner:

- to become involved in the management of the debtor, at all levels of authority, from the management of operations to the strategic management, by changing the business mentality;
- to use the instruments specific to crisis management in a fashion that enables the insolvency practitioner to take such exceptional measures (permitted under the law) that could never be adopted in the case of common organizational management;
- to use the instruments specific to risk management, taking into account that the debtor entity may be considered as being in a state of economical and business uncertainty/danger;
- to take all the necessary steps together with the appointed special administrator to render the current operations efficient for the payment of all the receivables;

One of the most important of the valences referred to above has to do with the risk management as an important branch of organizational management in any economic entity. (Regester & Larkin, 2003, Drucker, 1999)

The survey does not deal with risk management in its entirety, rather it concerns one specific instrument, which is the framework plan for the substantiation of risk management.

The working hypothesis is that, once this plan has been set up, its implementation into the day-to-day life of an organization will be an indicator of its efficiency and success. For an economic entity in crisis such as a debtor entity, a swift application of the framework plan for the substantiation of risk management may set forth the prerequisites for a successful reorganization plan.

In my activity and my experience as an insolvency practitioner I was able to notice that economic entities do not use this framework plan which would allow them to respond proactively to the crises they are facing; instead, they act after the crisis to repair whatever they can. This is why I consider that the framework plan for the substantiation of risk management is an instrument of know-how, of direct intervention which may be relied upon as template by insolvency practitioners coming into contact with the realities of the debtor entity and which can summarize the main managerial courses of action, the management style, the managerial organization of the daily operations and the perspective that are necessary for success.

2. CLARIFICATIONS REGARDING THE CONCEPT OF RISK MANAGEMENT IN INSOLVENCY PROCEEDINGS

The managerial dimension of the insolvency procedure is about crisis management and risk management, a branch of the organizational management that comprises all the management activities required for the limitation of crises, the management of risks and the resumption of the management activities under normal conditions in a company.

The fundamental concept in crisis management is that of "crisis", which is defined as an internal and external event or set of problems which causes difficulty to accumulate, which threatens the reputation or the existence of an organization. In other words, a crisis is a threat to the existence of an organization. Crisis management (Robbins, 2005) is made, first of all, by a risk analysis, an action that allows the manager to determine the risks, to establish their importance and to find solutions for a response to risk.

By reference to insolvency, a crisis is a perceived threat against an economic entity which, on account of insufficient funds, namely of liquidities, loses its ability to pay the debts when due. This economic reality causes the debtor company or its creditors to request the entry in insolvency. From that moment on, all the turnaround efforts of the company management will focus on maximizing the debtor's wealth for the settlement of the outstanding debts.

On the other hand, as a process, risk management aims to reduce the probability of danger arising from potential risks by information management, organizational measures, plan elaboration, appropriate personnel training, monitoring and control, loss reduction by risk forecasting and planning, etc.

Starting from the classical management process comprised of the main managerial functions - planning, organization, implementation and control - it is important to identify the stages of the insolvency management process.

If we accept the idea that the concept of risk is pivotal in the risk management specific to insolvency procedures, it is only logical that the entire management process be structured based on such concept. The fact that, on the one hand, the specialized literature does not provide for a unanimously acknowledged view on the risk management process and the structure thereof and, on the other hand, does not conceptualize the insolvency management process, I chose to phase the insolvency management process based on risk management. Thus, I opted for a checklist that indicated the stages of the risk management process, which I presented to the insolvency practitioners and asked them to identify the main stages, in their opinion, by taking into account the role and the importance of risk management in insolvency procedures.

For the purposes of this article, I will rely on this research and its findings and I will consider that the risk management process is comprised of the following stages: (Munteanu, 2017)

- risk identification and planning - risk diagnosis based on the risk registry kept by the organization, risk ranking depending on the context of the action to be taken, establishing cascading risk (those risks from which other risks arise) which are being acted upon, relying, for instance, on the Gantt chart of sequencing (establishment of the order of action toward risk), preparing action plans for the complex risks the intervention of which requires a longer period of time, etc.;
- risk analysis - mainly requires selecting the technique or the techniques to be used constantly in the activity of the organization;
- elaboration and implementation of a risk response plan - analyse the consequences arising from the identified risks, determine the consequences with a general impact on the organization, determine the sector-related consequences, analyse the resources available and the time necessary for setting up a summary response plan, elaborate the response plan based on the sequencing feature in risk management, train the managers who participate in the implementation of the risk response plan, establish performance standards associated to the response plan, assess and elaborate full or partial response plans;
- risk monitoring and control - the constant application of the risk diagnosis, depending on the managerial course of action, with a view to outlining any additional risks that may appear in the process, elaboration of checklists to be relied upon by the monitoring plan, intermediary control of risk dynamics to identify, for instance, the risks that generate other risks.

Even if all the stages of the management process are important, having regard to the interdependency of the management process, it is my opinion that, for the achievement of the undertaken goals, the risk analysis (Betford & Cooke, 2001) and the elaboration and implementation of the risk response plan are the most important stages in the risk management pertaining to the insolvency procedure.

Risk analysis is an integral part of the report on causes and circumstances as well as of the immediate measures to be taken right after the appointment, during the observation period. The analysis process allows us to understand not only the level of danger and the specifics of each risk, but also the way in which two or more risks may combine into new risks with a potentially higher level of danger. This analysis also enables us to create effect-related scenarios for a highly accurate forecasting on the impact of risk within the organization. Last but not least, the analysis enables us to create some solution-type scenarios which may be submitted to the managers for discussion so that they may decide which scenario would be the most effective in practice.

If risk analysis still is arguably the most important activity in risk management (Beer, 1985), the framework plan for the substantiation of risk management is the database required for this analysis to be conducted with objectivity, based on objective information and on the best expertise to date in that organization. The framework plan of substantiation structures *a priori* all the information required

for a correct, systematic and proactive understanding of the potential impact of risk on the organization.

Making a less academic comparison, this plan represents by reference to road traffic the ensemble of signs, traffic lights and markings existing on a public road. They direct the insolvency practitioner, as a crisis and risk manager, as well as the entire personnel of the organization who will clearly know their obligations as well as the mandatory courses of action for each step.

3. HOW DOES ORGANIZATIONAL MANAGEMENT PERCEIVE THE EFFICIENCY OF THE FRAMEWORK PLAN FOR THE SUBSTANTIATION OF RISK MANAGEMENT. QUALITY RESEARCH

3.1 The methodology for the elaboration of the framework plan of substantiation of risk

To analyse and validate the hypothesis according to which in order to be effective the risk management process should rely on a framework plan for the substantiation of risk management, for the purposes of this research, I attempted to put together a plan for the substantiation of risk management that can be used at all levels of authority of the organizational management (low-middle-top).

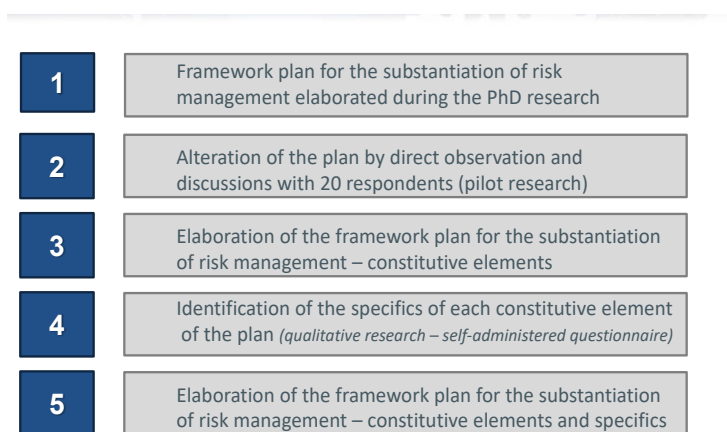


Figure 1. The main stages of the qualitative research conducted

Source: the author

My research was conducted in two stages. I started from the general plan for the substantiation of risk management that I elaborated in my PhD thesis (Munteanu, 2017) having insolvency practitioners acting as respondents. Since the date of my dissertation, I have been able to apply this general plan for the substantiation of risk management in the course of my practical activity as insolvency practitioner. In the discussions with the management of the debtor economic entities, I was able to collect pertinent observations, by direct observation method, about the structure of the general plan for the substantiation of risk management. Initially, this plan had the following constitutive elements:

- *the risk management framework methodology;*
- *risk identification and interpretation;*
- *identified risk levels;*
- *responsible staff;*
- *responsibilities and tasks;*
- *the timing of the response activities;*
- *reporting;*
- *registrations.*

During the first stage of my research, relying on the observations collected from my discussions with the managers of debtor economic entities, I presented to a pilot sample made of 20 managers the general plan for the substantiation of risk management such as it was structured during my PhD research, and I asked them to supplement it based on their risk management preoccupations. After the centralization of the data obtained, I renamed it the framework plan for the substantiation of risk management and I structured it the constitutive elements being the following:

- *the risk management framework methodology;*
- *risk identification and diagnosis;*
- *levels of risk by assessment method;*
- *types of risk by scope;*
- *elaborate risk response strategies;*
- *manage the personnel in charge of implementing the risk response;*
- *methods to implement risk response;*
- *periodical monitoring and assessment of risks;*

During the second stage of my research, I presented to a sample made of 50 managers from all levels of managerial authority, namely lower, middle and strategic, whose economic entities were or are undergoing insolvency, 25 from the public organizational sector and 25 from the private organizational sector, the framework plan for the substantiation of risk management as elaborated during the pilot research. I requested them to specify for each constitutive element the concrete activities and actions required for the elaboration of an efficient framework plan for the organization. This action was aimed to identify as many specifics for each constitutive element of the plan of substantiation. Then, I selected the specifics of each constitutive element of the plan that emerged most frequently in the answers of the interviewees.

3.2 Research results – what is the management’s take on the framework plan for substantiation viewed as a tool to render the activity more effective

After processing and analysing the main information provided by the respondents, I was able to identify the specifics of each element of the plan of research and during the processing of the data, I was aiming to outline those answers considered representative for the public and private sectors alike. The framework plan for substantiation in risk management should be the same with respect to the two organizational sectors. Even if some specifics were disregarded during the data processing and analysis, the logical structure of the substantiation plan, which is comprised of the elements and the specifics, is the same for the public and the private sector alike, which confers this risk management tool predictability regarding all the national organizations.

Regarding the framework management methodology, the following main specifics were identified:

- legal basis;
- the framework concept of the organizational management regarding their approach on risks and crises;
- the registry of the sensitive positions existing in each organization, which comprises the positions with the highest impact on the achievement of goals;
- the registry of risk as a mandatory document in each organization;
- the methods and techniques employed in risk management;
- the procedure for elaborating the entire framework plan for substantiation;
- the methods by which the risks collected from the organizational structures are centralized on a regular basis

Regarding risk identification and diagnosis, the main specifics were:

- the risk identification means;
- the establishment of the main fields in which risks are manifesting (for instance, financial, logistic, work-related, etc.);

- the establishment of the risk diagnosis technique;
- the possibility to use concurrently several diagnosis techniques for accuracy purposes;
- the elements that are envisaged during diagnosis (for instance, the weaknesses, the existing threats to each risk as well as the opportunities, where applicable - the business risk can also include opportunities worth exploring);
- means to check the objectivity of the diagnosis;
- framework scenarios of support for the rapid-growing identified risks.

Regarding the levels of risk by assessment method, their main specifics were:

- the framework concept of assessment of risk subject to indicating the steps to follow;
- establish the assessment items (the most important ones are the impact items and the potential items, but I was able to identify other items, as well);
- identify the levels of risk by items agreed upon;
- rank these levels depending on the interests of the organizational management;
- create an algorithm for each risk.

Regarding the types of risk by scope, the most important specifics identified were:

- the framework view on the theoretical types of risk encountered, by scope;
- establish the types of risk encountered in the organization, by scope (such risks may be individual, group-related, involving several groups, involving the organization in its entirety, involving the organization by reference to the external environment);
- rank risks by importance to prevent ambiguous situations in which various types of risks manifest simultaneously;
- identify cascading risks for each typology;
- response scenarios for cascading risks.

Regarding the elaboration of risk response strategies, the most important specifics identified in the answers of the respondents were:

- the logical structure of the risk response strategy used by the entire organization;
- the constituents of a risk response plan;
- elaboration of concurrent risk response plans;

Regarding the management of the personnel in charge of implementing the risk response, the most important noticed by the respondents were:

- designate the persons to occupy the sensitive positions;
- set up a quality circle at the organization level, which would take over duties, acting as a risk response centre;
- identify the relevant information comprised in the training programs for the risk managers;
- develop the risk management skills and competencies in all the managers (by topics comprised in the manager training program or by training stages conducted outside the organization);
- create a risk manager profile which would include their main habits and competencies that are necessary in the due course of their risk management activity.

Regarding the methods to implement the risk response, the specifics proposed by the interviewees included:

- determine the most effective techniques and methods of implementation existing in the industry;
- concrete methods for the implementation of the response plans;
- designate the individuals that coordinate directly the implementation of the response plans;
- create the framework risk response algorithm viewed as a process;
- set up the standards for a swift assessment of risk response quality.

Last but not least, regarding the periodical monitoring and assessment of risks, the most important specifics identified were:

- establish the monitoring method as well as the monitoring chart;
- establish the main indicators subject to monitoring;

- make a template scenario for the situation in which monitoring reveals the need for swift actions with respect to certain monitored risks;
- the main indicators relied upon for the purpose of the post-implementation risk assessment;
- the necessary stages in the post-risk assessment process.

From my perspective, the items identified in the framework plan for the substantiation of risk management along with the constituents of each such item are subject to improvement during the day-to-day activities. The framework plan of substantiation may become a significant risk management tool and can make for a work base useful in the day-to-day management of organizational risks. This plan can be digitalized; this way, the capacity and the speed of risk management-related response will become even more efficient.

4. CONCLUSIONS

Risk management as a process of identification, analysis and systematic information about risk factors becomes a branch of the organizational management that is pivotal to the strategic management view in relation to the philosophy of undertaking organizational risks and crises. Based on the maximization of probabilities and consequences of positive events and on the minimization of the probabilities and consequences of the negative events within an organization, risk management becomes a practical work tool directly involved in the achievement of the goals by some organizations and in ensuring the intended efficiency, yield and profit.

A brief analysis of the risk management structure points out the particular importance the framework plan for the substantiation of risk management should have, a tool I propose within this research, in terms of structure (constitutive elements) as well as specifics (that I identified for each constitutive element of the plan). This tool, very little used and only sequentially by the Romanian organizations, represents an *a priori* structured data base which may be used by the organizational management for risk management purposes. The identification of the sensitive positions as well as the risk registry kept by the organizations at present are the constituents of this plan and will become much more effective if included in a functional, yet realistic crisis and risk response system.

Starting from the need to provide the organizational management with a complex system of information about risk management, I propose this risk management optimization (identification, analysis and control) tool.

While being unable to claim that I exhausted the entire risk management topic, it is my opinion that this plan is a valid tool capable of rendering efficient the future activities by organizational managers in terms of overcoming the risks they are up against and of capitalizing on all the opportunities that these risks can paradoxically provide. The use of this tool may also pave the way for future researches on risk management and focused on the strategic reorganization, performance management, operative and strategic decision-making, strategic change in the organizational labour process, etc.

This working tool becomes even more important to the economic entities in insolvency, whenever a crisis management based on economically swift, concrete and efficient activities is required, which activities materialize in the reorganization plan, in order to be able to solve with priority the major objective in the situations such as these - maximize the debtor's wealth, make the payments to creditors and reinsert the economic entity undergoing insolvency in the economic flow as a profitable company.

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