Standard Summary Project Fiche

1. Basic Information

1.1 Désirée Number: RO-2002/000-586.04.17
1.2 Title: Support for the improvement and the enforcement of legislation and judicial decisions on bankruptcy
1.3 Sector: Justice
1.4 Location: Romania

2. Objectives

2.1 Overall Objective:

To improve financial discipline in the Romanian economy by developing the legislation and the jurisprudence on bankruptcy

2.2 Project Purposes:

- To improve the legal and institutional framework on bankruptcy in order to render more effective procedures;
- To create a best practice manual and a software application in the bankruptcy field to be used by courts (tribunals and appeal courts) and the practitioners involved in insolvency proceedings (judges, syndic judges, liquidators, creditors, lawyers);
- To improve the skills of syndic (bankruptcy) judges and of other parties involved in the enforcement of insolvency legislation in order to create a uniform jurisprudence in bankruptcy field.

2.3 Accession Partnership and NPAA priority

In the 2001 Accession Partnership one of the priorities and intermediate objectives for the economic criteria is to “promote competitiveness through market driven enterprises restructuring including… implementing new bankruptcy procedures.

In the 2002 Regular Report of the European Commission on Romania's progress towards accession, the Commission pointed out related to the economic criteria that “bankruptcy legislation has only limited effectiveness, as procedures are often long and difficult. The number of liquidation procedures during 2001 is unchanged relative to 2000”.

In the NPAR 2001, chapter 2001, it is set up as short priority: “Completing the national legal framework to regulate the legal cross-border bankruptcy procedure
according to Council Regulation No 1346/2000 on insolvency proceedings (Position Paper commitment)."

2.4 Contribution to National Development Plan

Not Applicable

2.5 Cross Border Impact

Not Applicable

3. Description

3.1 Background and justification:

Legislation

Bankruptcy cases’ peculiarities make them different to any other civil cases. In Romania, the bankruptcy cases are tried by tribunals and the appeals against the decisions thereof are ruled upon by the regional appeal courts. However, there is no unitary case law throughout Romania.

Considering the existing legal framework on bankruptcy, the Romanian Government asked for an objective assessment performed by qualified and experienced experts. This assessment should clearly identify the shortcomings of the actual legislation, especially at the level of the procedures and institutional framework, in order to find the best solutions for speeding up the procedures and also for making them more efficient. Although many changes have been done in this area, the constant transformations and reforms in the Romanian economy require permanent updating of the commercial legislation. Consequently, it becomes necessary to have effective insolvency legislation for ensuring the functionality of the entire economic system.

In this respect, the World Bank’s Private Sector Adjustment Loan II for Romania recommended an assessment of the current bankruptcy and collateral legislation. The contract for assessment was signed in mid February 2002 and will be finished by the end of May 2002. The Terms of Reference (ToR) for the World Bank study will include the history of insolvency, current structure and status, legal framework for insolvency, institutional framework, insolvency regulatory framework, reorganization and insolvency alternatives, commercial and financial issues, systemic crisis and state-owned enterprises insolvencies, credit, investment institutions and insurance company’s insolvencies, shipping and air company’s insolvency, insolvency of public utilities, cross-border insolvency. The WB Consultant will draw up an action plan to consist of 4 parts: amendments of the current legislation, the best solutions for speeding up the resolution of the insolvency cases, improvements of the institutional framework, training needs for judges and administrative staff. Another loan of 280 000 USD will further support the implementation of some measures included in the action plan drawn up by the WB Consultant.
The action plan to be elaborated till the end of May 2002 could constitute a serious documentation for the proposed Phare project. The EU experts will review the legislation and the institutional framework especially taking into consideration the existing Council Regulation No 1346/2000 on insolvency proceedings aiming to harmonize the national procedures.

**Best Practice Manual**

The amendments of the legislation in the field and the most relevant cases decided by the national and European courts will constitute the starting point for the elaboration of a *Best Practice Manual*. A working team composed by EU and national experts will gather the relevant information and will elaborate the Manual. It will constitute the basis of training for the Romanian magistrates and lawyers in bankruptcy, and will also offer a more comprehensive perspective on the theoretical and practical issues on the subject-matter.

Also, for the efficiency of insolvency procedures, standardized forms constitute an appropriate solution. The interested parties (i.e. creditors, insolvent debtors, employees) will have access to this facility when facing a bankruptcy case. The data processing will become easier and the acknowledgement of debtor’s status more accurate. The voluntary and involuntary petition forms, disclosure statement, reorganization and liquidation plan etc could be incorporated in standardized forms. The standardized forms will be designed in accordance with the new law and will become widely available for the parties involved in bankruptcy cases (judges, syndic judges, clerks, lawyers, accountants, etc). These forms will also be included in the Manual and in the future software application. For this purpose, a bankruptcy software application will be inserted in the Case and Document Management system developed under Phare Ro 9705.02.

**Training**

A significant aspect for improving the enforcement of bankruptcy legislation is the training of the judges and parties involved in bankruptcy procedures. Although the bankruptcy judges were discharged of their previous economic responsibilities (selling of assets, sealing goods, etc.), they still are in charge with the merits of the cases. Therefore, the bankruptcy judges need a solid training in accounting. They also need periodical meetings to share the various difficulties encountered on enforcing the current legal bankruptcy provisions and the solutions they reached for working them out.

It is necessary to train relevant players in bankruptcy, such as lawyers and accountants together with the syndic judges in order to have a multidisciplinary approach in fields like assessment of business plans and liquidation procedures. The training will be based on the new legislation and the best practice guide. The design of the training package will take into consideration the proposal resulted from the action plan drawn up by the WB Consultant. All these activities will contribute to edifying the actual Romanian economy within the framework of EU accession and to a better enforcement of legislation on bankruptcy.
3.2 Linked activities:

3.2.1 Phare activities
No other Phare programme has been developed on this topic. Under Phare 1997 regarding the automation of the court, there will be created a soft including all the standardized forms used by the courts in solving cases.

3.2.2 Other donors in the field
The US Government, through USAID (United States Agency for International Development) supported a 4-year project (1996-2000) to improve the bankruptcy system in Romania. The assistance was comprised of various components, as follows:

- legal training
- assessment of the legislation in force and proposing amendments;
- drafting a survey and assessing the results thereof, alongside of the Ministry of Justice, pertaining the necessary amendments to be made to the Bankruptcy Law no.64/1995 and bankruptcy system.
- a public campaign aiming at promoting the bankruptcy concepts and explaining the advantages of an appropriate bankruptcy system.

In 2000, the International Bank for Reconstruction and Development (BIRD) included among the subjects of the Private Sector Adjustment Loan (PSAL) I the amending of the bankruptcy system. At that moment, a selection process of hiring a foreign consultant was initiated with a view of drawing a comparative assessment of the current Romanian bankruptcy system and the worldwide trends. Unfortunately, the selection process didn’t finished successfully. Therefore, in 2001 the above mentioned assessment was re-included by BIRD under their assistance loan as an important component of technical assistance. Actually, the selection process is ongoing. On Mid February 2002, the contract with the WB Consultant was signed. The assessment will be finalized by mid May 2002 and will include recommendations for amending the existing legislation. The WB will approve also a loan of 270 000 USD to implement further measures on the insolvency after the completion of the study.

3.3 Results:

Result 1 - To *improve the legal and institutional framework* on bankruptcy in order to render the procedures more efficient;
A short-term technical assistance is foreseen to assist the Ministry of Justice in assessing the existing bankruptcy system and in proposing amendments to the bankruptcy legislation. The analytical phase will take into consideration the results of the study drawn up by the WB Consultant

Result 2 - A *software application* and a *Best Practice Manual* will be created, comprising relevant insolvency cases from Romania and EU countries and standardized forms to be used by all interested parties. The manual will be a useful and comprehensive tool for all the practitioners in bankruptcy.
Result 3 - *Specialized training* will be organised for judges, lawyers, liquidators, accountants, clerks.

3.4 Activities:

Result 1:
- Evaluate the legal and the institutional framework on bankruptcy by short-term EU missions, considering the conclusions of the assessment made under IBRD’s programme and comparing the results of the evaluation with EU standards
- Propose recommendations for the improvement of the enforcement/amendment of the legislation in the field

Result 2:
- Propose standardized forms to be used in courts, based on the amended bankruptcy law;
- Introduce the standardized forms in the software application for case and document management system (CDMS), created for the courts through a previous Phare 1997 project
- Introduce standardized forms in the Manual in order to be used by all parties involved in bankruptcy cases;
- Collect bankruptcy cases ruled upon by the Romanian and EC courts to be included in the Manual,
- Edit the Best Practice Manual and distribute it to courts and the other parties involved in the bankruptcy cases.

* The European Union experts will develop all these activities together with a working team composed by Romanian specialists from MoJ, RBI, National Union of Practitioners in Reorganization and Liquidation in Romania and National Institute for Magistrates. The working team will collect the relevant data and will draft the practical guide.

Result 3
- to create a training network of 35 persons selected among judges, liquidators, economists, financial experts, accountants involved in bankruptcy procedures;
- to deliver intensive training for the trainers network
- to deliver intensive training for judges and other practitioners on financial issues (e.g. accounting), the assessment of the business plans, the amended legal and institutional framework and other relevant subjects;
- to deliver intensive training for clerks working in the commercial sections of the courts on the procedural aspects of the bankruptcy cases;

* The members of the trainers network will be involved in designing and teaching at the intensive training seminars for judges and other practitioners.
* Other training topics may be identified after the completion of the WB study and during the training of trainers course.
3.5 Lessons learned

NOT APPLICABLE (no other previous Phare programmes provided in the filed of bankruptcy).

4. Institutional Framework

The institutions involved in the project are the Ministry of Justice, the courts, the Romanian Bankruptcy Institute (RBI), the National Institute for Magistrates (NIM) and the Training Centre for Clerks (TCC).

There are 41 tribunals (county courts) and Bucharest tribunal, having jurisdiction upon bankruptcy cases. Many of these courts have specialized commercial sections. Each year, the president of the court designates the syndic judges that will solve the bankruptcy cases. It is possible that the assessment of the institutional framework done through the WB study would recommend specific measures in order to speed up the bankruptcy procedures.

The RBI was created in 1997 with the aim to improve the insolvency law application in Romania using the multi-disciplinary perspective of different parties actively involved in the process (judges, administrators, liquidators, creditors, etc). The most important actions of the Institute were to gather feedback from insolvency law practitioners for the purpose of developing proposals for improvement of the law and to improve the skills of all professionals involved in insolvency procedures.

The NIM is a specialized educational body of training the law graduates for becoming judges and prosecutors (initial training) and of continuous training for sitting magistrates. The significance of the training provided by the NIM is considerable and offers the opportunity of combining the theoretical and practical aspects. The NIM and its regional centers will assure the national coverage of the training courses by involving representatives of judges from all the courts.

The TCC is a specialized institution for training of the clerks. The Centre is in charge with both initial and continuous training for clerks.

Other institutions involved in the project, are the National Union of Practitioners in Reorganisation and Liquidation in Romania and the National Office of the Trade Register.
5. Detailed Budget

### Phare Support

<table>
<thead>
<tr>
<th>Support for the enforcement of legislation and judicial decisions on bankruptcy</th>
<th>Investment Support*</th>
<th>Institution Building</th>
<th>Total Phare (=I+IB)</th>
<th>National Cofinancing ***</th>
<th>IFI**</th>
<th>TOTAL</th>
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<td>Result 1 - To improve the legal and institutional framework on bankruptcy</td>
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<td>Result 2 – A software and a manual will be create comprising standardized forms</td>
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<td>Result 3 – Specialized training</td>
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<td>Total</td>
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<td>1.55</td>
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<td>2.107</td>
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* In cases of co-financing only

** Annex 4 - Explanatory note

*** The contribution of the beneficiary to the activities within Result 3

### Implementation Arrangements

#### 6.1 Implementing Agency

- For the whole project the Implementing Agency will be Central Finance and Contracts Unit (CFCU) which will be responsible for tendering, contracting, administration, accounting, payments and financial reporting.
- Contact detail: PAO- Mrs. Ruxandra Radulescu, director general, CFCU, 36-38 Mendeleev street, 4th floor, room no.157, sector 1, Bucharest, phone no. 401/313.66.30, fax no. 401/315.35.36
- The Implementing Authority (IA) is the MoJ with direct beneficiaries the courts. The PIU from the MoJ will be responsible for all procedural and administrative management of the project.

#### 6.2 Non standard aspects

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\* The amount represents the reimbursable BIRD loan
The project will be managed according to the Practical Guide to PHARE, ISPA & SAPARD contract procedures.

6.3 Contracts

Contract 1: Improvement of the legal and institutional framework on bankruptcy

Contract 2: Software and a manual to be created comprising standardized forms

Contract 3: Specialised training

7. Implementation Schedule

7.1 Start of tendering/call for proposals
March 2003

7.2 Start of project activity
May 2003

7.3 Project Completion
November 2004

8. Equal opportunity

The Implementing Authority is an equal opportunity employer. Equal participation in the project by women and men will be assured and women’s participation will be enforced at the start of the project. All periodical progress review reports and other interim reports will include a specific explanation on measures and policies taken with respect to this equal opportunity for women and men and will provide measurements of achievement of this goal.

9. Environment

N/A

10. Rates of return

N/A

11. Investment criteria
12. Conditionality and sequencing
N/A
<table>
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<tr>
<th>LOGFRAME PLANNING MATRIX FOR Project</th>
<th>Programme name and number</th>
<th>RO-02.XX</th>
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<tr>
<td><strong>Support for the improvement and the enforcement of legislation and judicial decisions on bankruptcy</strong></td>
<td>Contracting period expires 31 November 2004</td>
<td>Disbursement period expires 31 November 2005</td>
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<td>Total budget: 2,107 MEuro</td>
<td>Phare budget: 1,55 MEuro</td>
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<table>
<thead>
<tr>
<th>Overall objective</th>
<th>Objectively verifiable indicators</th>
<th>Sources of Verification</th>
</tr>
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<tbody>
<tr>
<td>To improve financial discipline in the Romanian economy by developing the legislation and the jurisprudence on bankruptcy</td>
<td>By 2005, the bankruptcy procedures will be more efficient</td>
<td>Reports and statistics; contractor &amp; MoJ; quarterly and biannual Interviews; regularly; parties involved in bankruptcy procedure</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Project purpose</th>
<th>Objectively verifiable indicators</th>
<th>Sources of Verification</th>
<th>Assumptions</th>
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<tbody>
<tr>
<td>To improve the legal and institutional framework on bankruptcy in order to render more effective procedures; To create a best practice manual and a software application in the bankruptcy</td>
<td>By 2005 the legal and institutional framework on bankruptcy will be amended</td>
<td>• Romanian Official Journal: 2004, 2005 • Regular reports of the Commission, Governmental reports, annual;</td>
<td>Approval of the Parliament of the amendments initiated by the MoJ; completion of a well documented study of WB Cooperation of relevant</td>
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</tbody>
</table>
field to be used by courts (tribunals and appeal courts) and the practitioners involved in insolvency proceedings (judges, syndic judges, liquidators, creditors, lawyers);

To improve the skills of syndic (bankruptcy) judges and of other parties involved in the enforcement of insolvency legislation in order to create a uniform jurisprudence in bankruptcy field.

<table>
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<tr>
<th>Results</th>
<th>Objectively verifiable indicators</th>
<th>Sources of Verification</th>
<th>Assumptions</th>
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<tbody>
<tr>
<td>Result 1 – improved legal and institutional framework on bankruptcy in</td>
<td>By 2005, the legislation on bankruptcy will be amended</td>
<td>Romanian Official journal Statistics; MoJ and NIM; 2005</td>
<td>The WB and EU recommendation are assimilated</td>
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<tr>
<td>order to render the procedures more efficient</td>
<td>By 2005, a manual and a software will be created and available for relevant beneficiaries</td>
<td>Reports; Contractor and the EC experts/; quarterly</td>
<td>Relevant cases can be gathered; standardised forms to address the new legislation; design of a proper software</td>
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<tr>
<td>Result 2 – a software application and a Best Practice Manual will be</td>
<td>Increased number of well trained participants</td>
<td>Statistics; reports; Government; Commission; annual</td>
<td>Training seminars fully completed</td>
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<td>created</td>
<td>An operational trainers network is created</td>
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<td>Trainers network developed</td>
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<td>Results 3 - Specialized training organised for judges, lawyers,</td>
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<td>All training activities finalised</td>
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<td>liquidators, accountants, clerks</td>
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<tr>
<td>Activities</td>
<td>Means</td>
<td>Assumptions</td>
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| **Result 1:**  
- Evaluate the legal and the institutional framework on bankruptcy by short-term EU missions, considering the conclusions of the assessment made under IBRD’s programme and comparing the results of the evaluation with EU standards  
- Propose recommendations for the improvement of the enforcement and/or amendment of the legislation in the field  | EU short-term experts  
Phare project working meetings  
Training seminars | WB study will be successfully finalised middle 2002  
The cooperation in gathering relevant information  
Willingness and active interest of Romanian participants to assimilate new information  
Proper collaboration between the involved institutions |
| **Result 2:**  
- Propose standardized forms to be used in courts, based on amendment of the bankruptcy law;  
- Introduce standardized forms in software applications for the case and document management system (CDMS), created for the courts through a previous Phare 1997 project  
- Introduce standardized forms in the Manual in order to be used by all parties involved in bankruptcy cases;  
- Collect bankruptcy cases ruled upon by the Romanian and EC courts to be included in the Manual, | | |
• Edit the Best Practice Manual and distribute it to courts and the other parties involved in the bankruptcy cases.

**Result 3:**
• Create a training network of 35 persons selected among judges, liquidators, economists, financial experts, accountants involved in bankruptcy procedures;
• Deliver intensive training for the trainers network
• Deliver intensive training for judges and other practitioners on financial issues (e.g. accounting), the assessment of the business plans, the amended legal and institutional framework and other relevant subjects

<table>
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<th>Preconditions</th>
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<td>Co-ordination with the WB assistance regarding the strategy on bankruptcy</td>
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<td>Activities</td>
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<td>----------------------------------------------------------------------------</td>
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<tr>
<td>Evaluate the legal and the institutional framework on bankruptcy by short-term EU missions, considering the conclusions of the assessment made under IBRD’s programme and comparing the results of the evaluation with EU standards</td>
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<td>Propose recommendations for the improvement of the enforcement/amendment of the legislation in the field</td>
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<tr>
<td>Edit the Best Practice Manual and distribute it</td>
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to courts and the other parties involved in the bankruptcy cases.

to create a training network of 35 persons selected among judges, liquidators, economists, financial experts, accountants involved in bankruptcy procedures;

to deliver intensive training for the trainers network

to deliver intensive training for judges and other practitioners on financial issues (e.g. accounting), the assessment of the business plans, the amended legal and institutional framework and other relevant subjects;

to deliver intensive training for clerks working in the commercial sections of the courts on the procedural aspects of the bankruptcy cases;

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D = Design
C = Contracting
I = Implementation
X = Closure
ANNEX 3

CUMULATIVE CONTRACTING AND DISBURSEMENT SCHEDULE

“Support for the improvement and the enforcement of legislation and judicial decisions on bankruptcy”

All figures in million EURO

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NB: 1. All contracting should normally be completed within 6-12 months and **must** be completed within 24 months of signature of the FM.

2. All disbursements **must** be completed within 36 months of signature of the FM.
ANNEX 4

Explanatory Note

The proposed project fiche on bankruptcy is conceived in direct relation with the assistance offered by the World Bank.

In the early 2002, the comment of the European Commission stated that the proposed fiche should be coordinated with the IBRD assistance with respect to the legislative and institutional framework on insolvency. European Commission stated that „It is not the case that there are specific requirements on bankruptcy resulting from the EU acquis, going beyond what would be required under sound international practice, which need to be assessed under a Phare project”.

The ongoing IBRD loan will carry out an in-depth analysis of both the institutional and legislative framework on bankruptcy until June 2002 and will provide measures of further implementation.

The proposed Phare fiche will therefore continue the efforts of strengthening the legislative and institutional framework and will include a short-term technical assistance to assist the Ministry of Justice in assessing the existing bankruptcy system and in proposing amendments to the bankruptcy legislation. The analytical phase will take into consideration the results of the study drawn up by the WB Consultant.

The main consistent parts of the project fiche Phare 2002 will be structured on elaborating practical tools for practitioners (i.e. software application and a Best Practice Manual will be created, comprising relevant insolvency cases from Romania and EU countries and standardized forms to be used by all interested parties) and on delivering specialized training for judges, lawyers, liquidators, accountants, clerks.

These activities are suitable for a Technical Assistance Phare procedure.

As regards the Twinning procedure, the fiche proposed under Phare 2002 is not entirely suited for the twinning concept, since the legislative and institutional framework will be assessed and improved in line with international standards, including the specific requirements of EU. Under twinning procedures, with EU support, the vast body of Member States' expertise is made available to the candidate countries, through the long-term secondment of civil servants and accompanying expert missions, in order to support them in their efforts to adopt, implement and enforce key areas of the acquis.

Therefore, we request for TA for the Bankruptcy Project, considering that the specific activities for a twinning programme (legislative and institutional assessment) have already been undertaken through IBRD assistance programm