

COLLECTION OF USUAL ANNOTATED LAWS

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No. 27

**L A W**

OF THE

**PREVENTIVE BANKRUPT  
IN ROUMANIA**

Promulgated and published in the «Official Moniteur»  
Nr. 149 bis from 10 July 1929



BUCAREST (Roumania)  
EDITURA „CURIERUL JUDICIAR” S. A. Artei, 5  
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1929

# THE PREVENTIVE CONCORDAT LAW

## CHAPTER I.

### Opening of Proceedings.

ART. 1. — Any merchant, being for at least three years in business, and having a registered firm or licenced industry, may apply to the district Court for a Preventive Concordat, as to avoid being declared bankrupt. The request may also be made on behalf of a deceased merchant, by his rightful heir, who has not renounced the inheritance. This request, in itself, should not be considered as a deed of acceptance of succession, even if the request was admitted and the concordat homologated, but the continuance of the commerce by the heir implies an acceptance. In case of more than one heir, the consentment of all heirs is necessary.

Where division of property is already effected, the application on behalf of the deceased merchant may be signed by the heir who took over the trading funds existing in the patrimony of the defunct.

Legal representatives of minors may also apply for a Concordat, under obligation of

obtaining, prior to the date of the creditors meeting, the authorisation of the tutelary organs.

The legally constituted commercial companies, even when in course of liquidation, may apply for a Concordat. Request should be made by their legal representatives, the companies being however under the obligation to prove, before the day of the creditors' meeting, that the proposed Concordat has been ratified as follows:

a) Unlimited partnerships, and limited joint-stock companies, with the consentment of all partners.

b) Joint-stock companies and Mutual Insurance companies, through the decision of the share-holders, taken with the same necessary majority as for modifying the statutes.

c) Companies with limited responsibility, by a vote representing three fourths of the quota.

d) The co-operative companies by the voting of not less than half the total number of their members — as provided by art. 49 of the 1929 law for the organization of Co-operation.

ART. 2. — The request for the Preventive Concordat, will be addressed to the Bankruptcy Court.

In the application will be shown its motives, the amount offered in payment, of not less than 50% of credences proven by written documents; the term of payment, no longer than three years in any case; the modality of paying inside of the proposed term; the real or personal securities, and any other conditions the merchant offers to the creditors.

Together with the application, the merchant will submit proof of the firm's registration or the industrial licence; the obligatory books properly kept for no less than three years previous to the request; a detailed list of all valued assets; a list of names and addresses of all his creditors mentioning the amount due to each of them, and indicating the degree of relationship, if they are relations of the debtor; a summary of his commercial activity; also evidence that the third Warrantor consents to vouch in the case when such security is offered.

The commercial companies will also present proof that they were properly constituted.

ART. 3. — The presiding magistrate will, immediately after receiving the application, appoint the day of inquiry — not later than 15 days from that date — and dispose the summoning of the merchant.

At the appointed day the court examines the request, which is rejected; if:

a) The merchant does not fulfil the conditions provided by the preceding paragraphs.

b) Sentenced for fraudulent bankruptcy, or has not fulfilled the obligations taken by a previous preventive or post bankruptcy Concordat.

c) If less than 5 years elapsed since expiration of payments term of a previously accorded Concordat.

d) The summoned merchant is not present to sustain his case.

No creditor may intervene at this sitting of the court.

ART. 4. — The court finds on the request through a decision given in the Court's chamber of council.

ART. 5. — The merchant may appeal, against judgement for rejection of a Preventive Concordat application, within 15 days from the sentence.

The court of appeal decides urgently on the appeal in the chamber of council after hearing also the merchant. If appeal is admitted the brief is returned to the Court to proceed in conformity with article 7 of this Act.

ART. 6. — The court, when rejecting a request for Preventive Concordat will also decide if the merchant ought to be declared bankrupt, in which case the provisions for bankruptcy will be applied.

ART. 7. — When the court finds the request admissible in principle decrees through decision, without right of appeal, the convocation of creditors before the delegated judge for debating and pronouncing upon the application.

The court, for this purpose:

a) Will appoint a delegate judge.

b) Will fix the place, day and hour of the meeting within a term not less than 30 days and no more than 45 days from the date of decision.

c) Will decide the necessary amount for covering cost of the Concordat proceedings and fix the term within which the sum must be deposited, as proceedings will begin only after the deposit is made.

ART. 8. — For covering the fees of the de-

legated judge and of the clerk and office expenses, the State shall collect 1<sup>0</sup>/<sub>0</sub> of the entire sum which the merchant is found liable to pay to the creditors, whose credences have been reduced, and besides that, 2<sup>0</sup>/<sub>0</sub> of the difference in his advantage. The amount will be deposited within the fixed term, as provided by art. 7, section c. of this act. The Court however, appreciating the circumstances, may allow that payment should be made in instalments, deciding that necessary security should be taken.

ART. 9. — The clerk of the Court has the duty to send the Court's decision to the „Monitorul oficial“ and to the Chamber of Commerce, to be published in their bulletins, also to the registry to be entered in the books. The clerk will attend that the application should be entered in the Register of Firms or Licences, respectively.

The publication in the „Monitorul oficial“ will be made at least 15 days prior to the day of meeting.

The decision shall also be posted on the door of the Court.

ART. 10. — The delegated judge will send, by registered mail, personally to each creditor, or to his representative a summon containing a summary of the application for Concordat and of the conditions thereof, mentioning the place, day and hour of the creditors' meeting.

The letters addressed to creditors living abroad should also be written in the french language.

The registered letters should be sent within five days from the date of the Court's decision.

## CHAPTER II.

**Effects of the opening of proceedings.**

ART. 11. — The delegated judge will immediately upon his appointment, countersign the merchant's books, mentioning the Court's decision, returning them afterwards to the merchant.

He will, upon examination of the books, documents and any data he may collect, draw up the inventory of the merchant's property; set forth the amount of credences and debts with additions resulting from the examination made; draw a minute report about the debtor's behaviour and economic situation. For the purposes above mentioned, the delegated judge may ask the interested persons for all elucidations he thinks necessary and may make use also of experts, either authorised or from amongst the creditors:

The inventory, together with the list of creditors and debtors and with the report shall be sent to the registry — to be at the disposition of the interested persons for examination — at least 5 days prior to the creditor's meeting.

ART. 12. — The merchant, during the proceedings of the Preventive Concordat, will continue to administrate his property, but from the moment of admission in principle of his request, his commerce is under the supervision of the delegated judge who may object to any of the merchant's acts of administration.

The delegated judge may, if necessary, assign this supervision to the judge of the petty Court



in the circumscription of which the merchant resides.

The delegated judge will formulate his opinion in a decision, communicated to the merchant by registered letter with signed receipt.

The decision is executory.

Appeal may be lodged against it with the president of the court within 15 days from date of communication.

The Court will urgently dispose of the case, in the chamber of council, after summoning the merchant and the deputy judge.

ART. 13. — Deeds of alienation not entering into the normal exercise of the commerce, mortgages, loans, endorsements, accorded, and generally all deeds outside of the normal carrying on of the trade cannot be placed against the creditors, if not so authorised by the delegated judge on the basis of an obvious necessity or utility.

Against the delegated judge's decision refusing authorisation or modifying conditions requested by the merchant, appeal may be lodged as provided in the final section of the preceding article.

ART. 14. — From the date of presenting an application for Concordat and until its final homologation, no creditor may — for clause or title prior to the court's decision — apply or continue sequestrations; use executory writs; gain any rights in preference, over the personal property of the debtor, or enter mortgages.

Exception is made for the mortgage entries made—in pursuance of title recognised as valid— prior to the introduction of the request for a concordat.

Limitations, prescriptions and forfeitures, which might be interrupted through the above acts, shall remain suspended.

The above provisions do not apply to direct or indirect taxes due to the state, nor to mortgages or privileged credences.

ART. 15. — The sums realised through the continuance of the commerce will be deposited by the delegated judge, on his own name, at the National Bank of Roumania; at the Suitor's fund; or at the State's financial administrations, excepting the necessary amounts fixed by the deputy judge for business transactions, and for the debtor's sustenance and of his family.

Against the delegated judge's decision in this regard, the merchant may appeal according to provisions of art. 2, final section.

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### CHAPTER III.

#### **The Meeting of Creditors.**

ART. 16. — At the appointed day for the creditor's meeting, the delegated judge, assisted by the clerk of the Court presides the meeting and proceeds with the verification of the credences, afterwards submitting to the voting of the meeting the proposal for the Concordat.

The creditors will come at the meeting, either in person, or send representatives, with special power of attorney, under their own signature, given even upon the letter by which each creditor has been informed.

Those who claim to be creditors and who,

by not appearing on the list presented by the merchant, have not been called to the meeting of the creditors, could present themselves and ask for the valorification of their credences on the appointed day for the meeting.

The merchant shall be served with a subpoena and obliged to present himself in person. Only the delegated judge may exempt him from this obligation in case of a legitimate obstacle. If the merchant is absent from the meeting, the proposal for the Concordat is considered as withdrawn.

ART. 17. — After the reading of the report drawn up by the delegated judge the meeting will proceed to the discussion of the request for a Concordat.

Any creditor can contest the credences, setting forth the reasons for believing the debtor is not deserving the benefit of the Concordat, or reasons why the proposals should not be accepted.

The merchant shall give all explanations required by the presiding magistrate, and, in his turn, may contest the credences and oppose the affirmations of the creditors.

The delegated judge will decide through a Proces-Verbal upon all contestations.

When the creditors, in the majority required by art. 10, of the present Act, are admitting in principle the Concordat but modify the proposed conditions, the merchant may accept the new conditions, with the right of likewise making new proposals, improving the first offer. In both cases the new proposals may be made or accepted also by representatives of commer-

cial companies under the obligation to submit, on the day of homologation, evidence of ratification as provided by art. 1 of the present Act.

ART. 18. — The debates, if not terminated in one day, will be continued on the following working day, without any other notice for those absent, continuing thus until a resolution is reached.

ART. 19. — Resolutions on the Concordat will be passed by voting of the creditors representing three fourths of unprivileged credences and debts unguaranteed by mortgage or other security.

When the offered quota is not less than 80%, a voting representing two thirds of the total credences, should be sufficient.

The resolution shall mention the quota, the term, the modality of payment and all other conditions accepted by the creditors.

ART. 20. — Are considered as privileged, and therefore also excluded from voting the Concordat: the credences admitted as privileged in cases of bankruptcy.

ART. 21. — The creditors with rights of preference upon the debtor's property, may also vote if they renounce to the mortgage, security or privilege, such renunciation being implied by the participation to the voting. Effects of such renunciation are rightfully discontinued if the preventive Concordat does not take place, or if it has been repealed afterwards.

The right of preference held through sequestration, use of executory writs, within the last

60 days before the lodging of the petition for Concordat, lawfully cease after the admission of the petition, excepting the rights of preference held for public debts. If the Preventive Concordat is not granted, or being granted, has later been annulled, these rights enter again in force.

ART. 22. — The debtor's wife or husband respectively, his direct ascendants or descendants, uncles, brothers, nephews and alliance relations of the same degree, as grantees of the formers for at least six months before the date of the application for Concordat, as well as the creditors subsequent to the admission in principle, cannot participate at the Concordat and their credences will not be considered in the calculation or the fixing of the necessary three fourths, or the two thirds quota.

ART. 23. — Pecuniary prestations, without rights in preference, declared by the debtor as existing at the moment of the request for concordat, are considered as arrived to maturity and bearing no more interest in the relations between creditors

If there are credences bearing no interest, legal interest will be deduced — in order to fix their quantum — counted from the date of the Preventive Concordat proceedings to the date when they become due

Credences giving no right to cash prestations, or the amount of which is not determined in the country's currency, are calculated according to their value on the day of application for Concordat.

ART. 24. — The bonds issued by a company which applied for Preventive Concordat are taken

at the price of emission, deducting what has been paid as amortishments or restitution of capital.

The drawn-off bonds for an amount above their nominal value, are calculated at a value equal to the capital obtained by reducing it at its actual value on the basis of compound interest of 5% over the entire sum of the bonds not yet drawn.

The value of each bond is given by the quota obtained when this capital is divided by the number of the unliquidated bonds.

In no case, a value less than the price of emission can be attributed to these bonds.

ART. 25. — Are excluded from the voting, the creditors whose credences in high currency have been provided for by the law of June 3-d, 1923, the law of September 21-st, 1923, and by the conventions with the Italian, Belgian and Swiss creditors, and by any other laws and agreements relating to this matter.

The total of these credences is excluded from the calculation of the sum totalising the liabilities which will determine the voting.

The rights of these creditors remain absolutely unaffected by the obtained Concordat on the part of the debtor merchant.

ART. 26. — The delegated judge will make a Proces-verbal signed by himself and countersigned by the clerk, comprising:

a) The summary of the debates.

b) A table showing the quæsta of voting creditors, indicating the name of each, how each voted, and specifying the contested creditors.

c) Decisions given in regard to the contestations.

d) The resolution taken upon the proposal for a Concordat.

ART. 27. — Any creditor opposing the admitted Concordat is obliged to motivate his opposition in writing, and submit same to delegated judge within 10 days from the date of decision, and giving as residence an address in the same town with the Court — that, under penalty of nullifying his opposition.

#### CHAPTER IV.

##### Homologation of the concordat.

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ART. 28. — Any contesting or contested creditor, and the merchant as well, may appeal within 15 days from judgement against decision of delegated judge upon the contestations. Appealing creditors must, under penalty of nullifying the appeal, state fixed residence in same town with the Court. The writs of appeal will be handed to the delegated judge.

ART. 29. — The delegated judge, upon the expiration of appeal term, shall forward to the court the dossier together with all documents deposited with the declared opposition as provided in art. 27, and the writs of appeals in conformity with art. 28 — of the present Act.

ART. 30. — The court will, inside a term of 10 days from the date of receiving the dossier, fix the date for the trial of contestations, and within twenty days, the date for trial of oppo-

sitions and for the homologation of the Concordat.

The interested parties shall be summoned by letter sent by registered mail, five days before the term.

The merchant shall be invited to depose, at the Registry-office of the Court, two days before the date fixed for homologation, the books, in order that his activity displayed from the date of application for Concordat, may be examined.

ART. 31. — The Court on the appointed day for trying the contestations, after hearing the contesting party or parties and the merchant, in the consulting chamber of the Court pronounces itself in one decision only, upon all contestations.

ART. 32. — Any contested creditor whose credence was rejected from the voting of the Concordat, has the right, if the Concordat was definitely homologated, to valorify his credence by bringing direct action against the debtor but only within the limit of the concordat quota.

ART. 33. — On the appointed day for trying the oppositions and homologate the Concordat, the Court, after the hearing of the opposing parties, the merchant and of the delegated judge, finds, in the consulting chamber of the Court, in one decision only, for all oppositions and homologates the Concordat if convinced, that the request meets all the conditions required by Law, that the offered securities are good and sufficient, and that the merchant deserves the benefit of the Concordat.



The Court will designate at the same time a person who will have the right to ask in the name of the creditors the securities offered.

ART. 34. — Formalities for delivering of the securities will be fulfilled within five days from the findings of the Court.

ART. 35. — The court's sentence is executory from the moment when the fulfilment of obligations provided by art. 34 of this Act is ascertained.

A copy of the sentence shall be sent for publication to the „Official Monitor“ and another copy to the Chamber of Commerce to be posted in the premises and also to the Court or its respective (funduary) section of the place where the real estate is situated. A copy should also be posted on the door of the respective Court.

ART. 36. — When homologation is refused the Court finds also if there is a case for declaration in bankruptcy.

ART. 37. — Against Court's decision rejecting a Concordat, the merchant may appeal within 15 days from judgement. The appeal shall be declared at the Registry-office and communicated to the deputy judge and to the opposing creditors at the same time as the summons.

ART. 38. — Against sentence rejecting opposition and homologating Concordat, appeal may be made inside a term of 15 days by any creditor opposed to Concordat.

The appeal shall be registered at the Registry-office and communicated to the Delegated judge and to the merchant, at the same time as the summons, as provided by art. 28 of this Act.

ART. 39.—The Court of Appeal tries and finds on the appeals in the Court's consulting chamber.

When the appeal of opposing creditors is admitted and request for Concordat rejected, the Court of Appeal return dossier to Commerce Court to decide as provided by art. 36 of this Act.

ART. 40. — If, during the proceedings for concordat, an application for declaration in bankruptcy is pending same is suspended. The Instance called to find on the concordat will likewise find on such application as provided by art. 36, of the present Act when homologation of the Concordat is rejected.

## CHAPTER V.

### BCU Effects of the Concordat. Cluj

ART. 41. — The functions of the delegated judge, when sentence of the Concordat homologation remains final, are coming to an end.

ART. 42.— A concordat becomes obligatory, through sentence of homologation, for all anterior creditors to the application for concordat.

The creditors, while voluntarily adhering to the concordat, are maintaining their full right against co-obligors, fidejussor of the debtors and against obligations by way of regress.

The benefit of the Concordat accorded to unlimited partnership companies is also extended over to their members.

The sentence of homologation constitutes an executory title for the credence of each creditor.

ART. 43. — For credences reduced by the

effect of the Preventive Concordat, and during the entire term of payment, smaller interest than the legal may be fixed and even total exemption of interest may be accorded.

In absence of such provisions, legal interest is charged, excepting when anterior conventions between debtor and creditor have stipulated lower interest — in which case such interest is charged.

ART. 44. — No debtor may, before integrally executing the obligations of the concordat, alienate or mortgage his real estates, pledge or dispose of his property, otherwise than according to nature of his business, excepting when different provisions were made in the agreement for the Concordat.

Any deeds against the above provisions could not be opposed against anterior to the application for Concordat.

ART. 45. — If any merchant is declared bankrupt, prior to integrally fulfilling the obligations provided for in the concordat, the *bona fide* creditors are not compelled to refund the amounts already received on the strength of the Concordat.

## CHAPTER VI.

### Annulment and Revocation of Concordat.

ART. 46. — Any creditor may request the court, within a year from final homologation of the concordat, for the annulment of same and for a declaration of insolvency, if he

proves that the merchant has fraudulently exaggerated his liabilities or concealed part of his assets.

ART. 47. — Any creditor may request the Court — when conditions of the concordat are not fulfilled by merchants, fidejussors, or warrantors mentioned in the agreement of the Concordat, for the repeal of same and for the declaration of the merchant bankrupt.

ART. 48. — Any creditor, in the cases provided for by the preceding articles — may integrally valorify his credence on the merchant's bankruptcy estate, deducting the amounts received as entitled to quota provided for by the concordat, and for the part yet unpaid the real and personal securities shall be maintained.

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## CHAPTER VII.

### Final, Penal and Transitory Dispositions.

ART. 49. — Any promise made by debtor to any of his creditors over and above the provisions of the concordat, is null and void.

ART. 50 — The creditors, whose credences have been reduced through the effects of the Concordat, may bring action against the merchant for that part of capital reduced from their credences, without being entitled to ask for any interest.

Action may be brought however only after the expiration of the term for payment provided for by the Concordat concerning all creditors in the Concordat. It remains without effect 5 years after that date.

The action cannot be admitted unless the claimant proves that the merchant's assets exceed with 20% the liabilities.

ART. 51. — A declaration of insolvency cannot be asked for on the basis of title obtained according to the preceding article.

ART. 52. — Any merchant is liable to a fine, not exceeding 100.000 lei, and imprisonment for not more than two years, who, for the purpose of obtaining a concordat has:

- a) concealed part of his assets.
- b) fraudulently omitted any of his creditors or favoured others.
- c) agreed to pay to anyone of his creditors a superior quota than that declared before the homologating Court.
- d) entered false credences in the books, balance-sheet, or on the list of creditors in order to get the required majority.
- e) willingly committed any fraudulent act so as to avoid being declared bankrupt.

ART. 53. — The final condemnation of a merchant in conformity with the preceding article, causes the declaration of insolvency of the merchant. For this purpose the Criminal Court will send the dossier to the competent Court.

ART. 54. — The expert, who, in the exercise of his given duties, intentionally conceals the real situation of the merchant and the executed operations, will be punished with imprisonment not more than six months and a fine not higher than 50.000 lei.

ART. 55. — Any one who may have willingly aided the merchant in committing any of the

offences mentioned in the preceding articles are punished as accomplices.

ART. 56. — When a commercial company has reached an agreement with part of its creditors, prior to the entering into force of the present Act, for a reprieve of payment of the entire debt, less interest, may obtain a Concordat within the provisions of the present Act bringing forth at the meeting of creditors for voting purposes the agreements concluded as they appear in the books or any other legal evidence.

The amount of expenses collected by the State is fixed at 1<sup>o</sup>/<sub>0</sub> on the social capital, in derogation with art. 8, of this Act, for the companies referred to in the present article.

At the appointed day for the meeting shall be summoned only the creditors with whom no previous agreement was concluded.

ART. 57. — A merchant who has obtained a moratorium may also apply for a Preventive Concordat in the conditions provided by the present Act.

ART. 58. — The merchants who entered an application for moratorium before the 11-th of june 1929, may benefit of the Concordat, even if they have not exercised the commerce for three previous years prior to the application for moratorium.

ART. 59. — The provisions of the commercial code in reference to moratorium and those provided by the law of December 10-th 1914 for the preventive concordats, now in force in Bucovina, are abrogated from the day of entering into force of the present Act.

The provisions of these laws refer from now

on only to applications for moratorium or to compelled concordat entered before the promulgation of the present act, if the merchant may insist upon such applications.

ART. 60. — All terms referred to in the present Act are counted by working days.

ART. 61. — Any law, by-law or decree contrary to the present Act are abrogated.

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## I

# The Preventive Concordat Law

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