



Protecting third-party rights in insolvency proceedings after annulment of fraudulent capital markets trades

June 2026

Main highlights

Insolvency courts confirmed the client's creditor status for approx. EUR 4 million, overturning the judicial liquidator's finding of bad faith and recognising that the client acted in good faith in connection with previously annulled capital markets sell-out transactions.

High standard for good faith analysis in insolvency

The courts reaffirmed that good faith is presumed, must be assessed at the time of the transactions, and requires proof of a concrete intent to defraud – mere involvement in investigated transactions is insufficient.

Recovery secured following good faith recognition

By establishing creditor status retroactively from the date of reimbursement, the client secured inclusion in distributions and recovery of a substantial portion of its losses.

After more than a decade of multi-disciplinary litigation involving insolvency, criminal investigations, and capital markets regulatory investigations, Clifford Chance Badea secured a landmark victory, confirming the client's good faith and obtaining definitive recognition of its multimillion-euro claim in insolvency proceedings – despite the previous annulment of fraudulent transactions. Most recently, the client also obtained a favourable court decision in the insolvency proceedings, covering a large part of the damages incurred due to such fraudulent capital market transactions.

Key points

- 1 Landmark insolvency victory after long-running disputes:** After parallel insolvency, criminal, and regulatory proceedings, the courts definitively confirmed the client's good faith and recognized its multi-million EUR claim, notwithstanding the annulment of transactions later found fraudulent.
- 2 Coordinated, multi-disciplinary strategy proved decisive:** Success was driven by a tightly coordinated approach across capital markets, white-collar crime, insolvency, and litigation, leveraging evidence from criminal investigations to overturn the judicial liquidator's decisions and secure effective distributions to the client.
- 3 Precedent-setting guidance on good faith in insolvency:** Beyond the client's recovery, the rulings have broader reference value, reinforcing the legal standards for assessing the good faith of third parties in transactions annulled as fraudulent in insolvency scenarios.

Context

Under Romanian Insolvency Law, contracts concluded in fraud of creditors within two years prior to the opening of insolvency proceedings may be annulled at the request of the judicial administrator/liquidator. In practice, courts often not only annul such contracts but also order the counterparty to return the value received under them. However, if the counterparty acted in good faith, they are entitled to register a corresponding claim in the insolvency proceedings.

In this case, a Romanian capital markets broker (the “**Broker**”) had entered into a series of sell-out transactions, including with our client. Months later, the Romanian regulator identified serious irregularities, revoked the Broker’s trading license, and bankruptcy proceedings were initiated. The court annulled the transactions with our client and ordered the return of approx. EUR 4 million – the value of the shares involved. Criminal proceedings followed, targeting the Broker’s employees for unauthorized sale of client assets.

Clifford Chance Badea led a multi-layered litigation strategy. **First**, in the criminal proceedings against the Broker’s employees, our client intervened and extensive evidence were taken, with our client aiming to substantiate its good faith. **Second**, in Broker’s insolvency proceedings and based on the evidence resulted from the criminal investigations also, the client obtained a final court decision overturning the judicial liquidator’s decision to reject the client’s claim against the Broker and definitively acknowledged client’s good faith in the unlawful capital markets trades. **Third**, after client’s good faith was acknowledged, the insolvency court further granted another challenge submitted by the client and ordered the Broker’s judicial liquidator to effectively distribute certain amounts to the client, thus covering a substantial amount of the client’s damages occurred.

This outcome reinforces the importance of a coordinated legal strategy between various areas of expertise (capital markets, white collar crime, insolvency and general litigation), which ultimately led to the protection of client’s rights and overall reputation in the market, given the good faith definitively acknowledged by the court.

Standard of good faith analysis and prospects for recovery in insolvency

Following the annulment of the sell-out transactions and the resolution of the criminal proceedings, the client was able to return to the insolvent debtor an amount of approx. EUR 4 million – i.e., the value of the shares involved in the unlawful sell-out transactions.

Shortly thereafter, relying on its good faith, the client submitted a claim seeking recognition of a claim of approx. EUR 4 million in the Broker’s insolvency proceedings. The claim was, however, rejected by the judicial liquidator, who instead decided to distribute this amount to the other creditors. The judicial liquidator took the view that the client acted in bad faith, on the basis that it was a part in the unlawful capital markets transactions.

In December 2024, the client challenged both (i) the judicial liquidator’s decision rejecting the client’s claim in the insolvency proceedings and (ii) the client’s exclusion from the distribution made to creditors. Both

challenges were upheld by the court, through two separate court decisions.

First, in June 2025, the court granted the challenge and confirmed the client's status as a creditor, expressly acknowledging the client's good faith in relation to the unlawful capital markets transactions.

The court emphasized the following **principles that must be considered when assessing the good faith** of a counterparty to an insolvent debtor:

- i. **Good faith is presumed**, and it was for the judicial liquidator to prove the client's bad faith.
- ii. The judicial liquidator is required to prove the client's **concrete intention to defraud** the Broker's creditors, and not only a bad faith in abstract terms.
- iii. The client's **good faith must be assessed at the time when the unlawful transactions** were concluded, irrespective of any subsequent actions taken by the client after the execution of those transactions.
- iv. The mere fact that the client was subject to investigations by capital markets or criminal authorities in connection with the unlawful transactions does not constitute proof of bad faith. On the contrary, the evidence resulting from the regulatory and criminal investigations reinforced the client's good faith.

Second, in February 2026, the court granted the client's challenge against the judicial liquidator's refusal to include the client among the creditors benefiting from the distribution of approx. EUR 4 million.

The main defence raised by the judicial liquidator was that the client did not have creditor status at the time it submitted the challenge against the distribution (December 2024), and that this status was confirmed only by the court decision rendered in June 2025. The court dismissed this argument, holding that the client became a creditor of the debtor as of the date on which it reimbursed the Broker with the value of the shares that were the subject of the unlawful sell-out transactions.

As a result, the client managed to recover, through the insolvency proceedings, a substantial portion of the damages incurred due to the sell-out transactions, which had previously been found to be unlawful and carried out in fraud of the Broker's creditors. The Broker's insolvency proceedings are ongoing, and the client continues its efforts to maximize recovery prospects.



Radu Ropota
Partner, Bucharest

radu.ropota@cliffordchancebadea.com
+40 21 6666 135



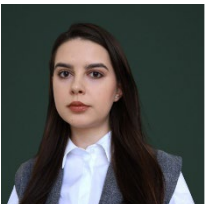
Sabina Crangasu
Senior Counsel, Bucharest

sabina.crangasu@cliffordchancebadea.com
+40 21 6666 274



Alexandru Viespe
Counsel, Bucharest

alexandru.viespe@cliffordchancebadea.com
+40 21 6666 260



Raluca Mocanu
Associate, Bucharest

raluca.mocanu@cliffordchancebadea.com
+40 21 6666 133

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Clifford Chance Badea, Excelsior Center, 12th floor, 28-30 Academiei St, Bucharest, 010016

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