

Poland

Rescue procedures in insolvency

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| Phase | Act of 15.05.2015 - Restructuring Law; Act of 28.02.2003 - Bankruptcy Law (until 31.12.2003 under the name - Bankruptcy and Reorganisation Law) |
| Native name | Ustawa z dnia 15.05.2015 r. - Prawo restrukturyzacyjne; Ustawa z dnia 28.02.2003 r. - Prawo upadłościowe (do 31.12.2015 r. pod nazwą - Prawo upadłościowe i naprawcze) |
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Article

Article 9, 11, 150, 180 - Act of 15.05.2015 - Restructuring Law; Article 342, 347 - Act of 28.02.2003 - Bankruptcy Law

Description

Since the beginning of 2016, the government has been implementing the New Opportunity (Nowa Szansa) policy. The legal framework is set out in the new Restructuring Act and the substantially amended Bankruptcy Act. Both laws entered into force on 1 January 2016 and regulate the situation of insolvent entrepreneurs - both at an early stage of insolvency (the threat of liquidity loss) and at an advanced stage (so-called bankruptcy). This has brought about a significant change in the way companies in financial difficulties are dealt with. The legislator considered that the preferred form of solving insolvency problems is restructuring, the purpose of which is to reach an agreement with creditors and, consequently, the survival of the entrepreneur on the market.

Four restructuring procedures have been introduced:

- arrangement procedure * (postępowanie o zatwierdzenie układu)*; accelerated procedure (fast track)

- accelerated (fast-track) arrangement procedures (przyspieszone postępowanie układowe);
- (ordinary) arrangement procedures (postępowanie układowe); (postępowanie układowe)
- sanation procedure (postępowanie sanacyjne).

An employer may choose the most appropriate procedure for its situation. The Restructuring Act establishes the priority of restructuring over bankruptcy. If a restructuring petition and a bankruptcy petition are filed at the same time, the court will grant the restructuring petition first. The Restructuring Law also contains provisions allowing the employer to obtain public aid. Public aid may be granted for the purposes of the restructuring plan. According to the Restructuring Act, public aid cannot be the sole instrument enabling the debtor to restore its long-term competitiveness on the market. Public aid may be used for the repayment of public debts (social security contributions, taxes) and for the purchase of necessary fixed assets.

Arrangement approval procedure (postępowanie o zatwierdzenie układu)

This procedure is available to debtors who are able to reach an out-of-court agreement with the majority of their creditors. Under this procedure, the debtor continues to manage its business, but with the involvement of a licensed supervisor (administrator or nadzorca układu), whose role is limited to certain activities related to the procedure, including

- preparing a restructuring plan;
- working with the debtor to prepare composition proposals;
- preparing a list of claims;
- assisting in the voting of the plan;
- Preparing a report on the feasibility of the proposed arrangement.

Accelerated arrangement procedure (przyspieszone postępowanie układowe)

This procedure is available to debtors whose disputed claims do not exceed 15% of the total claims. Enforcement proceedings relating to the claims to be covered by the arrangement are suspended by operation of law. The court is more involved in this procedure than in the previous procedure and is obliged to organise a meeting with the creditors. The creditors cast their votes at the meeting (rather than in writing as in the arrangement approval procedure). In general, the debtor continues to manage its affairs throughout the procedure. However, the procedure involves the appointment of a court supervisor (nadzorca sądowy), who is given supervision over the management of the debtor's affairs. In exceptional cases, an external manager (zarządca) may be appointed to take over the entire administration of the debtor's estate.

Settlement procedure (postępowanie układowe)

This option applies in cases where the disputed claims exceed 15% of the total claims. Although more formal, this procedure is similar to the accelerated arrangement procedure in terms of its impact on the debtor's management rights and protection from creditors.

Sanation procedure (postępowanie sanacyjne)

This is the most advanced restructuring procedure. It provides the debtor with a relatively high level of protection from creditors and includes more tools for restoring the company's stability. Typically, in such procedures, the debtor's business is managed by an administrator (zarządca), although in exceptional cases where the debtor's involvement is necessary and only if the debtor guarantees proper management, the court may leave the management to the debtor-in-possession. This procedure corresponds to the former bankruptcy with the possibility of a composition.

The Law on Restructuring provides for the establishment of a central register for restructuring and bankruptcy. It will contain a search engine for restructuring and bankruptcy cases, a list of syndicates, restructuring advisors, experts and model forms required for the procedures. The main purpose of the register is to centralise information on all insolvency and restructuring cases. The registry will be operational from February 2018.

Commentary

Although it is too early to assess the effects of the new legislation, some preliminary data is available. In 2016, fewer bankruptcies were filed than in the previous year. More than 200 restructuring proceedings were opened (data as at the end of November 2016). A comparatively large number of proceedings relate to the accelerated arrangement procedure (134 by the end of November 2016). On a national scale, these may not seem large figures, but they are significant when taking into account historical data. In the whole implementation period of the previous Bankruptcy and Reorganisation Law (2003-2015) only about 50 corrective procedures (restructuring of businesses threatened by insolvency) were initiated.

The opinions of the social partners in relation to the newly introduced procedures are diverse. While most employers regard the new legislation favourably, trade unions fear that new arrangements and sanation procedures may not sufficiently take into account the interests of the employees

Additional metadata

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| Cost covered by | Employer National government |
| Involved actors other than national government | Other Court |
| Involvement (others) | Creditors, administrators |
| Thresholds | Affected employees: No, applicable in all circumstances Company size: No, applicable in all circumstances Additional information: No, applicable in all circumstances |

Sources

- [European Commission, 'Bankruptcy - Poland'~~~ Dz.U. 2015 poz. 1595~~~ Restructuring Law \(in Polish\)~~~ Bankruptcy Law \(in Polish\)~~~ Rzeczpospolita \(2017\), 'Nowe prawo restrukturyzacyjne i prawo upadłościowego', 20 January~~~](#)

Citation

Eurofound (2016), Poland: Rescue procedures in insolvency, Restructuring legislation database, Dublin