

# **INSOL Europe/LexisNexis COVID-19 Tracker of Insolvency Reforms—Poland**

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**Restructuring & Insolvency analysis: We look at the reforms to the insolvency law of Poland prompted by the coronavirus (COVID-19) pandemic. Written by Michal Barlowski, attorney-at-law, INSOL Europe Country Coordinator to Poland, member of the EU expert group of the EU Commission on Recast Regulation 848/2015 insolvency proceedings and on Directive (EU) 2019/1023 on preventive restructuring frameworks, senior counsel at Wardyński and Partners.**

## **Introduction**

Measures to combat the economic effects of coronavirus have been introduced in phases and are commonly referred to as 'Anti-Crisis Shield 1.0' (Parliamentary Act of 2 March 2020 on special solutions associated with preventing, counteracting and combating coronavirus, other contagious diseases and crisis situations they precipitate and certain other acts, which entered into force on 8 March 2020, and amendments on 31 March 2020; Parliamentary Act of 31 March 2020 amending the Act on special solutions associated with preventing, counteracting and combating coronavirus, other contagious diseases and crisis situations they precipitate and certain other acts) and further amended and supplemented by 'Anti-Crisis Shield 2.0' (Parliamentary Act of 16 April 2020 on specific support instruments in connection with the spread of the virus SARS-CoV-2, which entered into force on 18 April 2020). Further changes to these acts are expected in due time.

Measures adopted to combat the crisis are wide-ranging and sometimes very detailed. They range from measures addressed to specific industries that are most affected, to measures aimed at the judiciary (courts and proceedings) and SMEs etc. They also tackle liquidity issues, employment and social security matters (loans and release from payment of health insurance contributions, etc.). In addition, they affect insolvency laws—the Restructuring Law of 15 May 2015 (RL) and the Bankruptcy Law of 28 February 2003 (BL).

## **Exclusion of support (application) provided by Anti-Crisis Shield 2.0 for entrepreneurs not affected by coronavirus and/or to those covered by bankruptcy and/or restructuring proceedings**

The Anti-Crisis Shield 2.0 is intended to provide the necessary support to allow a business to survive and then continue to function, where an entrepreneur has been affected economically by the restrictions imposed to combat coronavirus.

There are two general exceptions, where the above will not apply to entrepreneurs:

- where an entrepreneur's financial difficulties are not a consequence of coronavirus (see Article 3 point 3 of Anti-Crisis Shield 2.0—(...) a decline in turnover—which means a decline in sales or services in the meaning of Article 15g(9) of the Act of 2 March 2020 on special solutions associated with preventing, counteracting and combating coronavirus, other contagious diseases and crisis situations they precipitate and certain other acts (Journal of Laws items 374, 567, 568 and 695).), and
- where an entrepreneur has been declared bankrupt or restructuring proceedings have been opened regarding the entrepreneur

For entrepreneurs regarding which motions for the opening of bankruptcy proceedings have been filed or/and one of the types of restructuring proceedings has been opened, the procedure for granting support is suspended until a final (non-appealable) ruling is issued in the case.

## **Bankruptcy Law (BL)—suspension (stay) of the obligation to file a motion for the opening of bankruptcy proceedings**

The BL requires a debtor or a debtor's representative to file a motion with a court for the declaration of bankruptcy within 30 days from the time an entrepreneur becomes insolvent. The term 'insolvent' has a statutory definition (Article. 11(1) and (2) BL: (1) A debtor is considered insolvent if they are no longer able to pay their debts as they fall due. 2. A debtor who is a legal person or an organisational unit without legal personality that is granted legal capacity by a separate act of law is also considered insolvent when their debts exceed the value of their assets and this state of affairs persists for a period longer than twenty-four months. (...). This definition of 'insolvency' entails a cash flow test and, as a separate basis—an over indebtedness test.

Anti-Crisis Shield 2.0 has suspended the 30-day deadline for filing a petition for bankruptcy. Specifically, the 30-day period will not commence while the state of epidemiological threat or an epidemic exists (the state of the epidemiological threat was declared by the government on 14 March 2020), and is suspended if commenced, subject to both of the following two conditions being fulfilled:

- insolvency occurred during the state of epidemiological threat or epidemic, and
- insolvency occurred because of coronavirus (it is presumed that insolvency was a result of coronavirus if it occurred during the state of epidemiological threat or epidemic)

When the state of epidemiological threat or epidemic comes to an end, the 30-day deadline for filing a petition for bankruptcy recommences.

## **Stay of judicial/procedural time limits and stay or extension of substantive law deadlines; special treatment of restructuring proceedings**

Two general principles affecting the judiciary and legal proceedings before courts have been introduced. As a general rule, procedural and judicial time limits do not commence, and those already underway are suspended for the duration of the state of epidemiological threat or epidemic due to coronavirus. This solution essentially applies to all proceedings (with some exceptions, including proceedings related to coronavirus measures; Article 15zzs and 15zzt of Anti-Crisis Shield 1.0). Also, time limits in substantive civil and administrative law do not commence, and those already commenced are suspended for the duration of the state of epidemiological threat or epidemic due to coronavirus.

Considering the above limitations, where courts have stopped performing their functions, under Anti-Crisis Shield 1.0, in special situations, urgent matters will be continued or dealt with. Further, Anti-Crisis Shield 1.0 regulates the possibility of moving cases to an appropriate court (when the original cannot function) to handle a case, to transfer court files to that court, and also to qualify a given case as an urgent one.

Anti-Crisis Shield 2.0 has extended the catalogue of urgent cases to include motions filed under the Restructuring Law (RL). As the RL covers four types of restructuring proceedings, motions regarding the following will be treated as urgent:

- approval of an arrangement adopted by creditors in arrangement approval proceedings
- opening of accelerated arrangement proceedings
- opening of arrangement proceedings, and
- opening of rehabilitation proceedings

## **Exclusion of insolvent entrepreneurs or entrepreneurs undergoing restructuring from financial support granted under the Anti-Crisis Shield**

Among other things, Anti-Crisis Shield 1.0 establishes conditions under which entrepreneurs can obtain financial support to cover remuneration and other payments due to employees, and persons working under other types of agreements and providing services can obtain financial assistance in order to cover costs of self-employed business activity.

One of the requirements/conditions to apply for such support is the making of a representation by the entrepreneur that no grounds exist for that entrepreneur to be declared bankrupt. This implies that an entrepreneur cannot be insolvent when the filing for support is made.

### **Other pending reforms**

At the time of writing, there are already advanced discussions about the implementation of Anti-Crisis Shield 3.0. The Polish legislator is also working on the transposition of EU [Directive \(EU\) 2019/1023](#) of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks (see Practice Note: [Harmonising insolvencies and restructurings across Europe](#)).

### **INSOL Europe/LexisNexis COVID-19 Tracker of Insolvency Reforms**

A tracker of insolvency reforms globally produced by Lexis Nexis in partnership with INSOL Europe is now available: [Coronavirus \(COVID-19\) Tracker of insolvency reforms globally](#).



We look at various countries worldwide which are expediting reforms to their restructuring and insolvency laws, temporarily suspending onerous insolvency law provisions, increasing limits for statutory demands, suspending enforcement powers and introducing other measures to deal with the coronavirus crisis. As the situation is rapidly evolving with more countries adding new measures daily, you should contact local lawyers in the relevant jurisdiction to check the current measures in force.