

# Pre-packs in Poland: Developments and amendments to Bankruptcy Law

**There have recently been important changes to Bankruptcy Law in Poland. They mainly regard consumer bankruptcy but they also had an impact on other areas of insolvency. The pre-packs (pre-packaged administration) have also been affected as the Act of 30 August 2019 amending Bankruptcy Law and other legal acts<sup>1</sup> changes materially the pre-pack legislative framework.**

First of all, from this law's entering into force as of 24 March 2020, it will be clear that the pre-pack application may indicate more than one acquirer and the pre-pack is available also in consumer bankruptcy. At present these issues are not expressly regulated within Bankruptcy Law and courts issue inconsistent judgements in different regions of Poland.

Moreover, a mandatory bid bond (also called a security deposit) will apply to pre-pack applications in the amount of 1/10 of the proposed price (offer). This should eliminate offers submitted only to raise the price, with no real intention to actually finalise the transaction.

Additionally, secured creditors will be informed about a pre-pack application being submitted and the petitioner will have a duty to inform them about such an application by regular mail bearing their postal addresses, and besides, creditors will be asked for their opinion regarding the planned transaction. However, it seems that they will not be part of the proceedings within the meaning of Article 26 of Bankruptcy Law.

It will be also mandatory for the court to appoint a temporary court supervisor as soon as the bankruptcy petition with a pre-pack application is presented to the court. This change should be beneficial for the transparency of



the proceedings and it should ensure a fair price, meeting the requirements stipulated in the law and allowing the court to thoroughly examine the pre-pack application.

Aiming to make the whole procedure more transparent, the fact of filing the pre-pack application will be announced in the official Court Gazette (*Monitor Sadowy i Gospodarczy*) until the electronic Bankruptcy Register will come into existence – hopefully on 1 December 2020.

A completely new auction procedure will apply when multiple offers are submitted from different acquirers, as stipulated in Article 56ca (also referred to as a tender), whose aim will be to quickly decide the winner and the final acquirer. An auction will be conducted in conformity with the Polish Civil Code<sup>2</sup>, its terms will be accepted by the bankruptcy court composed of one judge and it will be held by the temporary court supervisor.

It is also important to mention that the acquirer will

have an expressly stipulated right to file with the court an application requesting that the ruling approving the terms of the sale be set aside or amended if subsequently to the issuance of the ruling, some circumstances with a significant influence on the value of the property asset subject to sale have changed or have been revealed.

Summing up, the Polish Bankruptcy Law system will be significantly amended, and some changes will obviously enhance the pre-pack sale, thus making it more transparent and efficient. However, not all changes should be regarded as beneficial for the pre-pack procedure and the involved parties, but this problem can be overcome by a correct interpretation of the new law. ■

#### Footnotes:

- 1 Journal of Laws 2019, item 1802.
- 2 Uniform text; Journal of Laws 2019, items 1145 and 1495, as amended.



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