

Poland: Preventing the insolvency of businesses due to COVID-19



In order to combat and prevent the detrimental consequences of the COVID-19 pandemic, the Polish legislature introduced a series of laws collectively referred to as Anti-Crisis Shields.

Under these laws, Polish entrepreneurs in various sectors have benefited from individual support instruments.

The first law to regulate the bankruptcy and restructuring matters during the COVID-19 pandemic was the so-called Shield 2.0 which provided for the suspension of the deadline for filing bankruptcy petition. The law entered into force on 13 April 2020.

In order to meet further needs of businesses in Poland, on 24 June 2020 the so-called Shield 4.0 was introduced. Under the Bill the financial support measures were significantly extended and simplified restructuring proceedings were introduced ("SRP"). The SRP were designed with the insolvent businesses and businesses in danger of insolvency in mind. The proceedings are based on the framework of the already functioning proceedings for the approval of an arrangement between debtors provided for in the Restructuring Law, subject to substantial modifications introduced by Shield 4.0. The SRP is aimed at making the restructuring procedure easier, more efficient and less time-consuming for the debtor. Under these regulations the debtor may enter into negotiations with the creditors and become protected against enforcement without the need to receive a formal ruling of the court on the formal opening of the restructuring process.

Simplified restructuring proceedings step by step

A debtor who wishes to commence the SRP needs to

enter into an agreement with a restructuring advisor for the provision of services of the arrangement supervisor who oversees the proceedings. Next, once the arrangement proposals have been prepared, and a list of receivables and disputed receivables has been drawn and handed over to the arrangement supervisor, the debtor publishes a pertinent notice in the Monitor Sądowy i Gospodarczy (e.g. Polish official journal), which is tantamount to formal commencing the proceedings.

The debtor has four months since the publication of the announcement in the official journal, i.e. the commencement of the proceedings, to negotiate and establish an arrangement and agree on the principles of restructuring the debt (for instance: reduction of the debt, payment of the debt in instalments).

During the four months the debtor benefits from special protection designed to enable him to effectively carry out the restructuring process. By operation of law the enforcement of debts which arose prior to the commencement of the SRP (including those secured with a mortgage if the arrangement proposals provide for the full satisfaction of such liabilities) is stayed. What is more, the debtor is not allowed to voluntarily pay the debts originating prior to the commencement of the SRP (moratorium on payment of debts).

The successful closure of the restructuring process and entering into an arrangement is the basis for the debtor to file an application with the restructuring court for the approval of the arrangement. It is only at this stage that the proceedings are reviewed by the court. The court verifies whether the arrangement was duly entered into, in accordance with the procedural

requirements and the substantive law. Should the arrangement be finally approved, the debtor begins to implement it. Until a ruling on the approval of the arrangement is issued by the court, the debtor enjoys protection against enforcement and a moratorium on payment of debts.

If, however, the debtor fails to file a motion on the approval of the arrangement within four months from the commencement of the SRP, the restructuring process is discontinued by operation of the law.

The SRP also provides for measures to protect creditors against the abuse of the procedure by unreliable debtors. If the debtor commences the SRP in bad faith (e.g. to evade payment of debts by means of a phony restructuring process), he is liable towards the creditors and third parties for the damage caused. In addition to that, each creditor may demand that the restructuring court invalidates the consequences of the announcement on the commencement of the SRP, should they be aimed at harming the creditors.

Temporary nature of new regulations

The SRP is a transitional measure in force until 30 June 2021. In the period until the expiry of the regulation each debtor will be entitled to benefit from the simplified restructuring procedure only once. Irrespective of the above, Poland needs to implement by 17 July 2021 the provisions of the Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on preventive restructuring frameworks (...). It is thus possible that the SRP or a similar procedure will permanently enter into the Polish legal system as part of the process of implementing the Directive. ■



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