

Poland: Impact of COVID-19 on insolvency proceedings



The Polish economy has only just begun to recover after the first lockdown caused by the COVID-19 pandemic, and another wave of illnesses and further restrictions have already come.

In order to mitigate the effects of the first lockdown, many legal solutions were introduced, including the suspension of the obligation to file for bankruptcy and the introduction of a new type of restructuring procedure, the so-called simplified restructuring (hereinafter “UPR”). The entrepreneurs were also supported with public funds.

Suspension of the obligation to file for bankruptcy

Due to the expected wave of bankruptcies, the obligation to file bankruptcy petitions resulting from the COVID-19 pandemic has been suspended. Despite the assumed increase, the number of declared bankruptcies remains stable, i.e. 587 declared in 2020 compared to 586 in 2019.

The above figures result not only from the suspension of the obligation to file an application for bankruptcy, but also from the fact that the entrepreneurs have used the solutions provided by the anti-crisis shield in order to obtain subsidies for employee salaries. Moreover, the number of submitted bankruptcy petitions was also influenced by the possibility to use the UPR.

Simplified restructuring

Due to the economic problems of the entrepreneurs, the Polish legislator introduced a new type of restructuring procedure, the so-called simplified restructuring. Its main goal is to help entrepreneurs who are not able to repay their debts due to a drop in revenue caused by the COVID-19 crisis.

Despite the short duration of the regulations (24 June 2020 – 24 March 2021), already 400 entrepreneurs decided to take advantage of this form of

restructuring. The interest appeared only a few days after the regulations came into force, and with the passing of time, it systematically grew. In December almost five times more applications were filed than in July.

The new solution is most willingly used by entrepreneurs conducting a business activity in the form of sole proprietorship (43%) and by companies with limited activity (32%), these being the most frequently chosen forms of conducting a business activity in Poland.

The above solution is used not only by small entrepreneurs, but also by well-known and large companies. At the beginning of September, RAFAKO S.A., a company with 70 years of experience in providing specialist solutions for the energy, heating and oil and gas sectors in Poland and abroad, announced its intention to open a simplified restructuring procedure. Only in 2019 RAFAKO S.A. recorded a loss of 473 million PLN. Its current situation results mainly from the execution of unprofitable contracts and making revaluation write-offs.

The greatest interest in the UPR was shown by business entities operating in the sectors related to wholesale and retail trade, industrial processing, transport and warehouse management and construction. The total number of applications submitted by enterprises from the indicated industries constituted 60%.

Entrepreneurs choose UPR because of the relatively short duration of the proceedings (up to 6 months) and the protection against initiation of enforcement proceedings and termination of contracts, including financing agreements and lease or rental agreements. They also choose UPR because of the possibility to cover creditors who have established material security on their assets.

The Polish government is currently working on a proposal to introduce a permanent solution of similar nature to take effect from 1 July 2021.

State aid for restructuring

The Act of 16 July 2020 on granting public aid for rescuing or restructuring entrepreneurs introduced the New Opportunity Policy, which is an aid instrument offered to entrepreneurs by the Industrial Development Agency. The prepared programme provides entrepreneurs with the opportunity to benefit from public support in order to be saved by developing and implementing restructuring measures.

Within the framework of the New Opportunity Policy programme, the Industrial Development Agency prepared three forms of support for entrepreneurs:

1. Rescue aid: provide the company with financial liquidity in the period necessary to develop the restructuring plan,
2. Temporary restructuring support: provide financial support to the company to take corrective action based on a simplified restructuring plan,
3. Restructuring aid for companies that have developed a restructuring plan: Bear the costs of its implementation.

The budget of the project is maximum 120 million PLN per year for 10 years, which gives a maximum of 1.2 billion PLN and funds from the COVID-19 Counteraction Fund in the years 2020-2021, min. 600 million PLN in 2020.

Predictions

Despite the introduction of the above solutions, it is expected that the number of insolvency proceedings due to the COVID-19 pandemic will gradually increase. Industries, especially those related



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to tourism and transport, even with state support, will not be able to withstand the introduced restrictions due to fixed costs and low revenues.

This is already pointed out by owners of travel agencies, airlines and airports, who have suffered significant losses due to the decisions of individual countries to close their borders. The situation was not improved by the “holiday” unfreezing of the economy, because recently the restrictions have been reintroduced.

In addition, the funds earmarked for aid will run out one day and the economic situation of a given entrepreneur may prevent him/her from taking advantage of further programs. This may translate into a wave of insolvency proceedings which will overflow the courts. The question is only when. ■