

# Poland: New developments in restructuring law



**A new restructuring tool has recently been introduced into Polish restructuring law, namely simplified restructuring proceedings.**

Although simplified restructuring proceedings were meant to serve only during the Covid-19 epidemic having been adopted as part of the Polish legal system through the so-called “*Anti-Crisis Shield [4.0]*”, they can be applied to any financial troubles or potential insolvency, not only the ones due to the Covid-19-related financial difficulties.

Simplified restructuring proceedings rapidly became popular and are most frequently used because of their features:

- (i) Opening of the proceedings is done by the debtor (entrepreneur) himself – by publishing an announcement in the Court and Commercial Gazette (*Monitor Sądowy Gospodarczy*);
- (ii) During the proceedings, the law provides for a stay of enforcement;
- (iii) There is a ban on termination of agreements essential for the debtor’s enterprise;
- (iv) There is a possibility to cover the secured creditors with the arrangement, under certain conditions;
- (v) The Creditors’ Meeting may be carried out by means of remote direct communication;
- (vi) The court is involved only at the final stage of the proceedings, to approve (or not) the arrangement.

As research shows<sup>1</sup>, after the first quarter of 2021, simplified restructuring proceedings were opened in more than 750 cases (three months from their introduction), and constituted around 80% of all restructuring proceedings.

What is even more important, in more than 166 cases the arrangement was concluded in about 60% of such cases. Previously, the percentage of concluded arrangements in similar proceedings was around 28%. This increase especially shows that both debtors and creditors see the bright side of the simplified restructuring proceedings, thanks to the possibility to reach an agreement.

However, when the restructuring case finally moves to the court, there are some slowdowns and the debtor may have to wait up to nine months for the court decision on the approval of the arrangement. Nevertheless, only in two cases so far the courts have refused to approve the concluded arrangement. Additionally, only in 16 cases the courts have cancelled the effects of making the announcement, which basically meant that the proceedings were harming for the creditors. A cancellation implies that the enforcement proceedings may be conducted and the termination notice may be given so that even after the cancellation the arrangement can still be concluded and presented (again) to the court to approve.

All the above-mentioned facts clearly show that in the current situation in Poland, the out-of-court restructuring proceedings are the easiest, the fastest and the most predictable ones.

Simplified restructuring proceedings may be initiated only until the end of November 2021 (after recent changes), and moreover, an amendment to introduce these proceedings permanently has already been statutory law in Poland and is to enter into force in December 2021.

Our observations on the way in which simplified restructuring proceedings work have led us to a

conclusion that some improvements in the course of the proceedings could be made.

Namely, the amendment to the Restructuring Law in Poland provides that:

- (i) The announcement on the opening of the proceedings to approve the arrangement will be made by the arrangement supervisor, not by the debtor;
- (ii) The announcement may be made only after the debtor has submitted the list of receivables and the list of disputed receivables;
- (iii) The arrangement supervisor will list the agreements essential for the functioning of the debtor’s enterprise so as to prevent its termination;
- (iv) The court’s decision on the cancellation of the effects of making the announcement may be appealed;
- (v) The case files will be kept by the arrangement supervisor.

Additionally, there will be no time limit for the proceedings to be opened, which means that this new legal provision will be permanent in the Polish restructuring framework.

Summing up, the data and statistics show that simplified restructuring proceedings are a very popular restructuring tool in Poland. The legislative decision to make it a new permanent possibility seems to be a very good one especially in light of the ongoing discussions on how to implement the EU Restructuring Directive 2019/1023 into the Polish legal system. ■

#### Footnote:

- 1 See: Reports on Simplified Restructuring published on INSOL Europe’s website: [www.insol-europe.org/technical-content/national-insolvency-statistics-poland](http://www.insol-europe.org/technical-content/national-insolvency-statistics-poland) [access: 10/05/2021].



**KAROL TATAŁA**  
Tatara & Partners Restructuring  
& Insolvency Law Firm, Poland



**MATEUSZ KALIŃSKI**  
Tatara & Partners Restructuring  
& Insolvency Law Firm, Poland



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