

Credit bidding in insolvency: Time for reform in Poland?



Credit bidding is a mechanism allowing secured creditors to offset the value of their claim against the purchase price when acquiring a debtor's asset in restructuring or insolvency proceedings. Rather than paying cash, a creditor may "bid" using the value of the claim itself, a tool widely used in the United States and recognized in other common law jurisdictions.

But is credit bidding available and effective in Poland – and should Polish law be reformed to accommodate it?

The Concept of Credit Bidding

In insolvency or, less commonly, restructuring proceedings, a debtor's assets are typically sold by an administrator or insolvency practitioner, often through public auction. In most cases, the law requires that buyers pay the full price in cash; the proceeds are subsequently distributed among creditors, especially those holding security rights over the asset sold.

However, in some jurisdictions, an exception is possible: secured creditors may set off their claims against the purchase price, simplifying the flow of funds and reducing transactional friction. This approach reflects a simple logic: if an asset is subject to a creditor's security, and the creditor wishes to take possession via auction, the funds paid would ultimately be returned to them through the distribution process. So why not permit the set off in the first place?

Polish law: Current position

Polish law does not currently allow for credit bidding in insolvency or restructuring proceedings. Even if a secured creditor would eventually receive a large portion, or all, of the sale proceeds, participation at auction

requires a cash outlay, which is then redistributed. There is no statutory mechanism in the Polish Insolvency or Restructuring Acts that enables a creditor to simply offset their claim against the purchase price – this differs significantly from the US Bankruptcy Code (notably section 363(k)), where credit bidding is expressly allowed.

While some related concepts exist in the Polish law (for example, Article 968 of the Code of Civil Procedure that allows limited set off possibilities during debt enforcement sales, but does not extend these to insolvency and restructuring sales.

International comparisons: The US, UK, and Canada

- **United States:** Credit bidding is an established and protected right for secured creditors in bankruptcy sales, enabling them to protect their interests by avoiding the forced sale of collateral below its secured value.
- **United Kingdom:** No statutory right exists, but credit bidding is widely accepted in practice, especially in administrations and "pre-pack" sales.
- **Canada:** Credit bidding is not codified but is used in practice, recognized by courts as economically logical and efficiency-enhancing.

The economic logic for credit bidding is clear: it can increase auction competition, raise final sale prices, protect secured creditors from losses, and better reflect the true value of assets. It also streamlines proceedings by removing unnecessary cash flows and reduces transaction costs for all parties involved.

The case for reform in Poland

The absence of credit bidding in Polish proceedings is frequently

criticized for creating unnecessary complexity and cost. Secured creditors, often banks, are required to deal with auctions where the sale price of assets is significantly lower than their market value.

Adopting a credit bidding mechanism – possibly with safeguards for transparency and protection of junior creditors – would:

- Increase auction participation and competitive bidding;
- Limit transaction costs for all participants;
- Reduce the chance of assets being sold below the secured value; and
- Make the Polish market more attractive to institutional investors and distressed asset funds.

Such a reform would require careful design. In particular, credit bidding might be limited to only those creditors with legally recognized security interests, while other creditors' rights are protected. Oversight would be necessary to prevent abuses and ensure fair process.

Conclusion

Credit bidding represents an established international practice that protects secured creditors and increases the effectiveness of insolvency outcomes. The time may be for Poland to consider its adoption, at least in a limited form, to enhance the competitiveness and efficiency of Polish insolvency proceedings in line with international standards. ■



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