

# Insolvency and restructuring: Reforms in Poland

Jakub Brzeski and Przemysław Wierzbicki outline the new restructuring procedures available for struggling entrepreneurs in Poland



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**W**ith the beginning of 2016, an extensive amendment to the Polish act 'The bankruptcy and reorganisation law' will enter into force.

The solutions adopted by the Polish legislator express the change of approach to the issue of enterprises restructuring and insolvency, which is demonstrated by promoting restructuring mechanisms in order to avoid liquidation of the debtor's company – of course, while ensuring the creditors' rights protection.

In place of the former Act, 'The bankruptcy and reorganisation law', two separate legal acts will be in force. The existing, relatively ineffective and too inflexible restructuring procedures will be replaced with four types of restructuring procedures and important changes will be also brought to the insolvency procedure.

## Restructuring procedures

Starting from the restructuring procedures fit for entrepreneurs who got into mild troubles, and ending with entrepreneurs requiring the deepest restructuring, the following types of the restructuring procedures will be approved in the Polish legal system from 1 January 2016:

1) The **arrangement approval procedure** will be the least formalised procedure, for entrepreneurs who have not fulfilled the insolvency criteria, but have justified grounds for believing that in the near future they will face financial difficulties and are using the support of a

restructuring adviser. The role of the restructuring court will be to approve or deny the arrangement, for which the votes of the creditors will be collected by the debtor himself.

2) The **accelerated arrangement procedure** will make it possible to conclude the arrangement after preparation and approval of the claims by means of the simplified procedure. The restructuring will be possible only when the sum of disputed claims entitling to voting on the arrangement does not exceed 15% of the claims total sum. The preparation of the restructuring plan, the list of claims and the assessment of the arrangement proposals will be the tasks of the court supervisor appointed by the court.

The debtor will maintain his/her own assets, while in particular cases the bankruptcy court will have the possibility to limit or withdraw the management from the debtor and entrust it to the manager selected for that purpose. The debtor will receive protection against enforcement proceedings initiated by the creditors covered by the arrangement – such procedures will be suspended.

The enforcement proceedings conducted on the request of the secured creditors could be suspended for a period of up to three months. Voting on the arrangement will be conducted at the creditors' meeting convened at the request of the court.

3) The **arrangement procedure** will be reserved for entrepreneurs who do not fulfil either the criteria allowing for conducting the arrangement approval procedure or the

accelerated arrangement procedure, and in particular for entrepreneurs whose disputed claims entitling the creditors to vote on the arrangement do not exceed 15% of the claims total sum. It will be a more time-consuming procedure than the accelerated arrangement procedure.

During this procedure, the court supervisor will be obliged to determine the composition of the arrangement's assets. The supervisor will also prepare the list of claims and the restructuring plan, and will be also participating in the administrative and court proceedings with the debtor's involvement. The influence of the arrangement procedure on the ongoing enforcement proceedings will be similar as in case of the accelerated arrangement procedure.

4) The **rehabilitation procedure** has been provided as a restructuring procedure intended for entrepreneurs with the highest level of indebtedness, who are not able to achieve the agreement with creditors by means of other restructuring procedures. The rehabilitation procedure is the only one of the restructuring procedures which can be initiated upon the creditors' request.

Conducting of a rehabilitation procedure will be connected with deep restructuring involving, among others, employees' issues and interference with other entrepreneurs' liabilities. Management over the debtor's assets will be conducted by the court supervisor equipped with competencies to withdraw from the mutual agreements (upon the approval of the judge-

commissioner).

In exceptional cases, the court will be able to allow the debtor to continue managing the company in a limited way, that is only for ordinary activities. Court proceedings with the participation of the debtor would be possible to be conducted and initiated by the manager/debtor only.

The enforcement proceeding, concerning the assets of the debtor, constituting a part of the rehabilitation, initiated before the date of the opening of the rehabilitation proceedings, will be suspended.

### Other important novelties

A new institution in the Polish legal system, which is the restructuring adviser, should be also mentioned. Depending on the type of restructuring procedure, a person with the restructuring adviser licence will be able to fulfil the function of arrangement adviser and supervisor, court supervisor, manager or receiver. Moreover, the Polish legislator ensured mechanisms allowing the creditors to have influence on the choice and to change the person of the restructuring adviser. The institution of the restructuring adviser will open greater possibilities to act for persons already having the receiver's licence.

As regards the restructuring procedures, there is one more novelty worth noting: the possibility of concluding a partial arrangement with the creditors concerning only some of the liabilities, the restructuring of which is of fundamental importance for the company's further functioning. Such an arrangement would be adopted by voting.

In turn, one of the most crucial changes concerning the insolvency procedure involving the debtor's property liquidation is the introduction into the Polish legal order of the institution of the so-called 'pre-pack' (prepared liquidation) known from the legal systems of some other European



and non-European countries.

In pre-packs the debtor should find the entity ready to purchase the company; its organised part or assets constituting a significant part of the company, should agree to the sales terms and conditions with a potential purchaser; and then submit to the court an application concerning the approval of the terms and conditions of sales together with the insolvency petition.

The court will permit the debtor to perform the sale of the company, of its organised part of its assets on the day the bankruptcy is announced. It will allow for faster and more efficient compensation of creditors, whereas the company itself will rapidly begin a "new life" – which will be an element of the greatest importance, even from the perspective of its employees.

### Summary

For the time being the practical functioning of the amended provisions remains uncertain. The implemented amendments are rather favourably received by the experts dealing on a daily basis with the insolvency law. However, sceptical opinions can be heard

about the readiness of the Polish courts to apply for the application of the new law. The arguments concern the insufficient number of judges able to rule in the insolvency departments and the organisational problems of the Polish jurisdiction. Nevertheless, the most important issue as regards the new law's provisions may be the lack of sufficient legal and economic awareness of the majority of Polish entrepreneurs, who may not be willing to apply for restructuring procedures. ■

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