

Country Reports

Summer 2015

Updates from Poland, Cyprus and Latvia



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Poland: New restructuring law to avoid liquidation

In 2014, Poland was listed at 32nd place in the Doing Business Ranking with respect to insolvency because of the long duration of the insolvency proceedings, their high costs and the average recovery to creditors. The new Restructuring Law seeks to remedy this situation.

On April 9, 2015, the lower house of the Polish parliament adopted a new Restructuring Law. The main goal of the new law is to introduce an effective mechanism to restructure a debtor's business and prevent its liquidation. Generally, the continuation of a business is more favourable to creditors; it preserves jobs and allows the uninterrupted execution of contracts.

The Restructuring Law has three components:

- (i) an amendment to the Bankruptcy and Reorganisation Law, which after entry of the new statute, will apply only to liquidation proceedings;
- (ii) a new statute regarding restructuring; and
- (iii) various regulations implementing the changes.

Companies in financial difficulties will be able to use the following proceedings to restructure:

- procedure for approval of a plan after creditors' vote;
- accelerated arrangement procedure;
- ordinary arrangement



- procedure; and
- rehabilitation proceedings.

We will focus on the procedure for approval of a plan after the creditors vote on such a plan and the rehabilitation proceedings.

The procedure for approval of a plan subject to creditors' votes is a simplified procedure

where the debtor lists its claims and liabilities, obtains creditors' consents for a plan and cooperates with the supervisor of the plan. This procedure is short and the court has a limited role because it either approves or rejects the plan adopted by the creditors.

The debtor who fails to agree on a plan with the creditors may

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use the rehabilitation proceedings. This proceeding allows the use of various tools such as: (i) the possibility to reject contracts unfavourable to the debtor, (ii) the ability to adapt the employment level to the debtor's needs, and (iii) the possibility of sale of redundant assets. In this type of proceedings, the court appoints an administrator – usually, a highly qualified restructuring advisor who has obtained an appropriate licence.

Such powers will be automatically granted to current official receivers but lawyers can also obtain the licence.

In order to accelerate and simplify the procedures, unified forms will be introduced and those forms will be submitted electronically. In addition, a central restructuring and bankruptcy register will be created. It will include a search engine for all the bankruptcy cases, official receivers and

experts. Using the registry will be free of charge.

Some commentators have criticized the new regulations. Some believe that bankruptcy cases should be within the jurisdiction of the regional courts (the higher level courts) where judges are more experienced as opposed to the district courts (the lower level courts) which usually resolve simple cases. Experts are concerned that the debtors may not receive enough support during their restructurings because the restructuring advisor and the judge of the district court may be insufficiently prepared to manage such large and complex proceedings.

Whether the new law will lead Polish companies to restructure rather than liquidate will only be assessed in a few years. The Restructuring Law, however, is certainly a step in the right direction.



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