Bond restructuring:
A completely new legal regulation in Poland

Przemysław Wierzbicki reports on the new law, finally enabling the restructuring of bonds

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Completely new solutions on bond restructuring will come into force in Poland on 1 July 2015.

The change is crucial – so far, in principle, bond restructuring has been impossible, with the issuers having to resort to partial solutions or being unable to conduct any restructuring at all. The amendment arises from the new Act on Bonds of 15 January 2015 (the "Amendment"). The new rules introduce a number of solutions designed to allow "real" restructuring of bonds – by amending the terms of issue.

It is worth remembering that the new rules of bond restructuring may be applied before bankruptcy is declared or in parallel with bankruptcy proceedings (e.g. in the case of an arrangement with the creditors).

Today – problematic restructuring

In the current legal situation, the possibilities of changing terms of issue are very limited and, in principle, boil down to two situations:

a) a change in the terms of payment of claims arising from bonds under bankruptcy and the creditors' agreement in the insolvency proceedings with a possibility of entering into an arrangement; or
b) individual agreements between the issuer and all the bondholders.

Consequently in most cases, the above, very limited possibilities of changing the terms of issue could, in fact, be applied very late or were too complicated to be implemented (especially in case of bonds admitted to public trading). In our experience, for example, there have been situations where major bondholders acquired bonds from a new series and the yields from the new series repaid earlier series, in which the same bondholders also hold bonds, but alongside them, there were also individual bondholders, who could not be contacted to establish the rules of changing the terms of the bond issue. Additionally, the doctrine of the law questioned whether it was at all possible to change the terms of issue of bonds in the case of bonds which had already been acquired.

New legal instruments

The Amendment is intended to solve these problems. In particular, the Amendment contains provisions allowing for changes in the terms of issue and introducing the institution of bondholders' general meetings ("BM").

First of all, the Amendment confirms that it is possible to modify the terms of the issue after the acquisition of bonds by the bondholders (which was disputed to date), where:

a) a change of the terms of issue will require a resolution of a BM and the consent of the issuer (the terms of issue can, however, also be changed in identical agreements between the issuer and all the bondholders);
b) the issuer may decide to set up a BM in the terms of issue (this was not possible until now) – the bondholders' meeting can therefore only operate if this is decided by the issuer in the terms of issue;
c) A BM may be established for both privately traded bonds and bonds admitted to trading on a regulated market or in an alternative trading system ("listed bonds");
d) in certain cases of technical matters the terms of issue can be changed unilaterally by the issuer (e.g. change of the entity managing the bond register); and
e) if the content of the bond document becomes obsolete as a result of changes of the terms of issue, the issuer will call the bondholders, by means of a notice on its website, by registered post or by courier, to submit the "old" bond document in order to change its content or replace it with a "current" document, under penalty of the cancellation of the bond.

At the same time, the Amendment precisely regulates the institution of the bondholders' meeting, whereby:

a) such a meeting is a representation of all eligible holders of bonds from a given series or of the same code in the meaning of Art. 55, para. 2 of the Act on Trading of Financial Instruments (Journal of Laws No. 211, item 1384); this arises from the assumption that the effects of the decision of a BM are supposed to apply – in principle – to all bondholders;
b) the resolution of a BM may apply to:
    i. qualified terms of issue, e.g. the amount or the method of determining the amount of benefits

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arising from the bonds,
ii. other provisions of the terms of issue;

c) the rules of calling and holding a BM are very similar to those which apply to general meetings of shareholders in joint stock companies, in particular:
   i. in principle, the issuer has the right to call a BM, acting on its own initiative, based on the cases referred to in the terms of issue when a BM needs to be called, or at the request of a bondholder/bondholders holding the appropriate nominal value of bonds,
   ii. in the case of a lack of response by the issuer within 14 days of the request to call a BM, the registration court may authorise the bondholders who submitted the request in question to call a BM,
   iii. A BM shall be announced at least 21 days before the date of the meeting – published on the issuer's website, or (occasionally) in a national daily newspaper; if all the bonds of a certain series are registered bonds, a meeting may be called by registered post or courier (with the consent of the bondholder – even by e-mail),
   iv. A BM is held at the issuer's headquarters or, if the terms of issue so provide, in a different place in Poland (exceptionally in the EU);
d) the following do not authorise participation in a BM: bonds held by entities from the issuer's group and redeemed bonds (the remaining bonds are referred to as "adjusted total nominal value of bonds" - "ATNVB");
e) before the meeting, the bondholders who wish to attend, must:
   i. submit a certificate from a financial institution or a deposit certificate

   confirming that the bonds have been blocked, or
   ii. submit the bond document to the issuer;
f) therefore, the bonds cannot be traded until the end of a BM;
g) A BM is valid if it is attended by bondholders representing at least half of ATNVB (unless the terms of issue require more), each bond gives the right to one vote and resolutions are passed by the bondholders' meeting (unless the terms of issue impose stricter requirements):
   i. in principle – by a three-quarter majority in the case of amendments to the qualified terms of issue,
   ii. exceptionally (for listed bonds and the above qualified changes) – he consent of all bondholders present at a BM is required,
   iii. exceptionally (in the case of reducing the nominal value of the bonds) – also, the consent of all attendees at a BM is required,
   iv. by an absolute majority – resolutions related to other issues;
h) the issuer must agree to changes in the terms of issue within seven days of a BM;
i) minutes of a BM must be drawn up, which, in the case of resolutions changing the qualified provisions of the terms of issue, must be drawn up by a notary public; and
j) a complaint may be filed against resolutions of a BM – in an action to annul the resolution (if grossly detrimental to the interests of the bondholders or contrary to good practices) or in an action to state the resolution invalid (if it is incompatible with the law).

It is worth remembering that the rules of the Amendment only apply to bonds issued after it becomes effective.

In addition, the Amendment introduces the principle that, after establishing those eligible to receive benefits from a paperless bond, the rights from this bond cannot be transferred – therefore, it will not be possible to sell paperless bonds after default. ■

"THE AMENDMENT CONFIRMS THAT IT IS POSSIBLE TO MODIFY THE TERMS OF THE ISSUE AFTER THE ACQUISITION OF BONDS BY THE BONDHOLDERS"