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## Poland

## Restructuring & Insolvency

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This country-specific Q&A provides an overview of restructuring & insolvency laws and regulations applicable in Poland.

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# Poland: Restructuring & Insolvency

## 1. What forms of security can be granted over immovable and movable property? What formalities are required and what is the impact if such formalities are not complied with?

**Registered pledge**

Registered pledge can be established on movable property and transferable property rights. It is governed by the Act on registered pledge and Registry of Pledges (O.J. 1996, No 149, item 703, as amended). The pledge agreement and entering the pledge into the Register of Pledges are required in order to successfully establish registered pledge. The pledge agreement should be made in writing.

**Mortgage**

Mortgage can be established on immovable property. It is governed by the Act on Land and Mortgage Registers and Mortgage (O.J. 1982, No 19, item 147, as amended). There are two main types of mortgages regulated under the Act on Land and Mortgage Registers and Mortgage: contractual mortgage and compulsory mortgage. The mortgage is established effectively provided that relevant entry has been made in the Land and Mortgage Register. It is also necessary to comply with requirements as to the document that constitutes the basis for entering mortgage into the Land and Mortgage Registry (e.g. notarial deed, Court's decision in the case of compulsory mortgage), as well as requirements as to the form of the document (drawn up in writing with a signature certified by notary, or in the form of a notarial deed).

Mortgage and registered pledge become valid provided that competent Court makes relevant entry into the Land and Mortgage Registry or the Registry od Pledges respectively.

If the application for entering mortgage or registered pledge into respective register does not comply with formal requirements set out in the Polish law, depending on gravity and type of the failure (in particular errors and omissions), the Court requests applicant to remedy any errors or omissions, under the pain of returning application to the party, or dismisses the application if given failure is irremediable.

There also exist less popular securities in the Polish legal system, e.g. pledge, treasury pledge or ship's mortgage.

## 2. What practical issues do secured creditors face in enforcing their security package (e.g. timing issues, requirement for court involvement) in out-of-court and/or insolvency proceedings?

Enforcing the security, in the majority of situations, is executed within the judicial proceedings, hence the biggest practical issue is the necessity of the court's involvement. That is the reason why enforcing the security may take a lot of time. Moreover, often after obtaining the enforcement title in judicial proceedings it is also necessary to initiate the enforcement proceedings with an involvement of a court bailiff. In most of the situations enforcing the security requires a creditor to take a number of actions, which results in their long duration. Furthermore, the initiation of legal proceedings also entails payment of the court fees.

In some cases it is possible to reduce the number of actions that need to be taken in the judicial proceedings (e.g. in case of a notarial deed in which the debtor submits to enforcement), or even to enforce security within extrajudicial proceedings, e.g. in case of taking over ownership of the pledged property or by sale of an asset encumbered with a registered pledge in a public tender conducted by a notary or court bailiff.

## 3. What restructuring and rescue procedures are available in the jurisdiction, what are the entry requirements and how is a restructuring plan approved and implemented? Does management continue to operate the business and / or is the debtor subject to supervision? What roles do the court and other stakeholders play?

In Poland, there are 4 types of restructuring proceedings: arrangement approval proceedings, accelerated arrangement proceedings, arrangement proceedings and remedial proceedings, as well as – as a variant of arrangement approval proceedings – the simplified restructuring proceedings, described in detail below, where many cases are pending, although the proceedings was temporary – to challenge Covid-19.

 

Polish legislature introduced also changes to arrangement approval proceedings and simplified restructuring, making it available for indefinite period of time. The simplified restructuring proceedings was amended by the amendment to the Restructuring Law – introduced by National Debtors Register amendment, in Poland providing that:

1. The announcement on the opening of the proceedings to approve the arrangement will be made by the arrangement supervisor, not the debtor himself;
2. The announcement may be made only after submitting by the debtor the list of receivables and the list of disputed receivables;
3. The arrangement supervisor will list the agreements essential for the functioning of the debtor's enterprise so as to prevent their termination;
4. The court's decision on the cancellation of the effects of making the announcement may be appealed;
5. The case files will be kept by the arrangement supervisor.

The proceedings can be conducted in two variants – public one (with announcement in the National Debtors Register) and private one – when the announcement is only upon filing arrangement approval application, hence without stay of enforcement and protection of contract's termination.

In addition, there is also a possibility to conclude partial arrangement, covering creditors selected based on objective criteria. Conclusion of partial arrangement is allowed in arrangement approval proceedings and accelerated arrangement proceedings.

There are various forms of restructuring of the debtor's obligations within all kinds of restructuring proceedings, for instance debt-for-equity swap, reducing the amount of debtor's obligations or spreading repayment into instalments. It is also permissible, however as an exception, to conclude and adopt the arrangement within bankruptcy proceedings.

One of the most interesting new rescue proceedings is pre-packaged sale (pre-pack), regulated in the Bankruptcy Law. Pre-pack is yet not as popular as it is for instance in the USA or UK, where around 25% of all applications include pre-pack, and one of the highest value acquisitions are made within pre-packaged liquidation procedures. However, there are solid grounds to presume that also in Poland the pre-pack procedure will gain popularity, mainly because while acquiring in pre-pack, investor enjoys execution sale effect, what means that the investor is not liable for liabilities and commitments of the debtor secured on the subject of pre-pack. Moreover, transaction executed within pre-pack procedure is relatively quick and investor acquires enterprise as functioning company, ready to continue conducting business. Pre-pack sale is also possible in favour of affiliated entities, however the price cannot be less than stated by the Court's appraiser. The Court's decision whether to approve or not sale-purchase conditions, is made by the Bankruptcy Court, along with the decision regarding declaring bankruptcy.

Recent amendments to the Bankruptcy Law introduced some changes into pre-pack procedure, in particular auction-like instruments. Where at least two applications for approval of the terms of sale have been filed, an auction shall be conducted between acquirers in order to select the most favorable terms of sale. The submission of the application for approval of the terms of sale shall be announced in order to inform creditors and potential acquirers of the possibility of attaching their application to their own bid for the acquisition of the business in a pre-pack procedure. Pre-pack is intended for selling enterprise as ongoing business, with significant benefit which is execution sale effect, meaning that the investor is not liable for liabilities and commitments of the debtor. The application for approval of the terms of sale may refer to more than one acquirer. In general, recent amendments to the Bankruptcy Law in scope of pre-pack regulation should be regarded as favorable, however a lot depends on how smoothly the Bankruptcy Courts will operate, especially with regard to time issues.

For each of restructuring proceedings the debtor may file upon insolvency or threat of insolvency. For arrangement approval proceedings and accelerated arrangement proceedings, there is additional premise. Those proceedings may be conducted provided that the total sum of disputed receivable debts giving the right to vote on the arrangement does not exceed 15% of the total sum of receivable debts giving the right to vote on an arrangement, while for arrangement proceedings and remedial proceedings, the sum of disputed claims may exceed 15% of the total sum of receivable debts giving the right to vote on an arrangement.

Management of the debtor's enterprise remains in hands of current board members, however is performed, in principle, under supervision of the Court Supervisor (in certain circumstances, for example if the debtor has violated the law with regard to the administration of assets thereby causing or threatening to cause detriment to the creditors, it is possible to revoke debtor's administration of the enterprise). In remedial proceedings however the Court appoints Receiver, who usually takes over the responsibility to manage the debtor's enterprise.

 

Restructuring plan is prepared by the Arrangement Supervisor (within arrangement approval proceedings) or by the Court Supervisor (within accelerated arrangement proceedings and arrangement proceedings). The restructuring plan is then implemented by the debtor under supervision of appointed supervisor.

Within remedial proceedings the restructuring plan is prepared by the Receiver. Receiver is also the person who implements the restructuring plan once it is approved by the Judge – Commissioner. The creditors vote on the arrangement once the restructuring plan is implemented fully or in part.

The Court and the appointed Judge – Commissioner supervise the course of proceedings and issue some ruling thereof.

It is also possible within restructuring proceedings to establish Creditors' Committee (said body may i.a. change the person of the Court Supervisor or of the Receiver, or decide that administration of the enterprise should be kept by the debtor). Creditors may also submit their own arrangement proposals.

There is also simplified restructuring proceedings, entered into restructuring framework based on the Act of 19 June 2020 on interest subsidies for bank loans granted to affected entrepreneurs COVID-19 and the simplified procedure for approval of the arrangement in connection with the occurrence of COVID-19.

Although it was a temporary measure, a lot of cases are still pending and under examination so there is need to draw few lines about this legal possibility.

Simplified restructuring is a kind of arrangement approval proceedings. It is opened by an announcement in the Court and Commercial Gazette (*Monitor Sądowy i Gospodarczy*). Starting from date of opening of simplified restructuring proceedings enforcement proceedings concerning in particular the receivables which are subject to the arrangement by operation of law are suspended by operation of law. Also, starting from that date, it is not allowed to terminate contracts essential for operating of the debtor's business. Application to approve the arrangement should be filed with the court within 4 months of the day of making the announcement. During that time, the arrangement should be concluded, or the proceeding is discontinued by the virtue of law. If the arrangement is concluded between the debtor and creditors, the court examines the application to approve the arrangement and the benefits of the opening of the proceedings still occur. At this moment, the simplified restructuring proceeding is available until 30 November 2021, but there are ongoing legislative works to extend that period. Possibly some amendments may be also introduced to the regulation of simplified restructuring proceedings in the near future.

Simplified restructuring proceeding is meant to serve its purpose during the Covid-19 pandemic, as it came into the Polish legal system through so-called "Anti-Crisis Shield [4.0]", however it may be applied to any financial troubles or potential insolvency, not only those resulted from the Covid-19 pandemic.

Simplified restructuring proceedings rapidly became popular and most frequently used restructuring proceedings because of following 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 i Gospodarczy);
ii. during the proceedings, law provides for a stay of enforcement;
iii. there is also 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 even without their consent, 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 the arrangement.

## 4. Can a debtor in restructuring proceedings obtain new financing and are any special priorities afforded to such financing (if available)?

Such possibility exists, and up to the certain limit new financing may enjoy preferential treatment under certain conditions, especially in the event of unsuccessful restructuring when case leads to the bankruptcy. In such situation financing is satisfied within the first category of claims in bankruptcy proceedings.

## 5. Can a restructuring proceeding release claims against non-debtor parties (e.g. guarantees granted by parent entities, claims against directors of the debtor), and, if so, in what circumstances?

Such possibility exists, but is of extrajudicial, less formal and less strict nature – usually is done within workouts or standstill agreements, instead of formal restructuring

 

proceedings.

## 6. How do creditors organize themselves in these proceedings? Are advisory fees covered by the debtor and to what extent?

Establishing Creditors' Committees is much more common in restructuring proceedings than within bankruptcy proceedings. It is driven, in a broad sense, by nature of the Restructuring law, which is formed for active creditors.

Creditors' Committee exercises control and supervision over the acts of the Court Supervisor and the Receiver. Said body may audit the books and documents of the debtor's enterprise and demand explanations from the debtor. Creditors' Committee is entitled to grant permission for several actions of the debtor, e.g. encumbering components of the arrangement estate or remedial estate with a mortgage, pledge, registered pledge or ship's mortgage in order to secure a receivable debt which is not covered by the arrangement; transfer of ownership of things or rights for securing a receivable debt which is not covered by the arrangement; encumbering components of the arrangement estate or remedial estate with other rights; taking out credits and loans; sale of assets of the value exceeding 500.000 PLN; concluding a contract of tenancy of a debtor's enterprise or an organized part thereof, or any other similar contract.

Members of Creditors' Committees can act with advisers, but funding should be secured by themselves. Creditors' Committee member is entitled to the reimbursement of necessary expenses involved in his participation in a meeting of Creditors' Committees. The Judge-Commissioner may grant a member an appropriate meeting attendance remuneration if it is justified by the kind and degree of complexity of the case and the extent of work performed.

## 7. What is the test for insolvency? Is there any obligation on directors or officers of the debtor to open insolvency proceedings upon the debtor becoming distressed or insolvent? Are there any consequences for failure to do so?

Under the Polish law, a debtor who has lost the ability to fulfill his matured pecuniary liabilities is insolvent. A debtor which is a legal person or an organizational unit without legal personality upon which a separate act confers legal capacity, may be also considered insolvent if his pecuniary obligations are in excess of the value of its assets, excluding conditioned and future obligations as well as those resulting from the loans given by his shareholders, and this state of facts persists throughout a period exceeding twenty-four months.

Any individual authorized to represent a debtor and to manage the debtor's affairs under the law or articles of association (board members in particular) is obliged to file a bankruptcy petition within the due date – which falls 30 days after the grounds for declaring bankruptcy arise.

Article 299 of the Commercial Companies Code (in the case of the management board of a limited liability company), Article 21 para 3 of the Bankruptcy Law, and other legal provisions, including criminal liability and liability for tax obligations, set the board members' and other persons' (upon whom the obligation to file a bankruptcy petition rests) liability towards creditors for obligations of insolvent body in the event the bankruptcy petition is not filed within the due date.

## 8. What insolvency proceedings are available in the jurisdiction? Does management continue to operate the business and / or is the debtor subject to supervision? What roles do the court and other stakeholders play? How long does the process usually take to complete?

In Poland, with regard to insolvency procedures, there exists one insolvency procedure – liquidation bankruptcy. The Bankruptcy Law regulates that in result of declaring bankruptcy a debtor loses the right to manage and operate business. The trustee appointed by the Bankruptcy Court, is the person who takes over temporarily (for duration of bankruptcy proceedings) responsibility to manage and operate the debtor's business. The Court and appointed Judge-Commissioner supervise the trustee and issue several decisions within the course of proceedings. There is also a possibility to establish Creditor's Committee, which receives several competences of the Judge-Commissioner. Individual creditors can also receive information and may play active role within proceedings.

The recent amendments in the Bankruptcy Law introduced new solution for debtors that are natural persons other than sole traders (consumer debtors) by implementing a possibility to conclude the arrangement between a debtor and the creditors. Moreover, consumer bankruptcy proceedings provide for the institution of residual debt release. Once the part of the debtor's obligations are fulfilled under and in accordance with the creditors' repayment plan, the debtor may be released

 

from the rest of his liabilities.

As of today, estimated duration of bankruptcy proceedings in Poland is up to few years. Duration of proceedings is determined by a constantly growing number of consumer bankruptcy, which is conducted in the same Bankruptcy Courts (over 18 th. in 2021, up from 13 th.in 2020). The latest changes in Polish Bankruptcy Law provide new possibilities for the consumers thanks to which declaring bankruptcy is simplified and easier than before. Those who have deliberately accrued their liabilities are now also allowed to declare bankruptcy. Natural persons engaged in business activities now also have the same rights as consumers filing for bankruptcy.

## 9. What form of stay or moratorium applies in insolvency proceedings against the continuation of legal proceedings or the enforcement of creditors' claims? Does that stay or moratorium have extraterritorial effect? In what circumstances may creditors benefit from any exceptions to such stay or moratorium?

Under the Polish Bankruptcy Law, declaring bankruptcy results in stay of enforcement proceedings, and moratorium to commence such proceedings. Regarding other legal proceedings – if the bankruptcy is declared, the court and administrative proceedings in respect of the bankruptcy estate may be initiated and continued by no one other than the trustee, or only against of him instead of the debtor. The trustee conducts the proceedings on behalf of the bankrupt, but in his own name.

The enforcement proceedings initiated prior to a declaration of bankruptcy should be, by operation of law, stayed on the date of declaration of bankruptcy. Once the decision on declaring bankruptcy becomes final and non-appealable such proceedings should, by operation of law, be discontinued. Declaring bankruptcy is not an obstacle for awarding immovable property ownership if the bid for the property was validly knocked down prior to the declaration of bankruptcy and the execution acquirer pays the acquisition price on time.

Said legal instruments have extraterritorial effect.

## 10. How do the creditors, and more generally any affected parties, proceed in such proceedings? What are the requirements and forms governing the adoption of any reorganisation plan (if any)?

In Polish insolvency proceedings there is a possibility to enter into bankruptcy arrangement which is a combination of some reorganization issues within insolvency. Rules regarding arrangement adoption set forth in the Restructuring Law apply accordingly.

## 11. How do creditors and other stakeholders rank on an insolvency of a debtor? Do any stakeholders enjoy particular priority (e.g. employees, pension liabilities, DIP financing)? Could the claims of any class of creditor be subordinated (e.g. recognition of subordination agreement)?

Rank of claims is regulated within the Bankruptcy Law. The main rule is to satisfy with the highest priority (satisfy in the first place) costs of proceedings and other liabilities of the bankruptcy estate. The latest amendments to the Bankruptcy Law introduced also the priority for the amounts received from liquidation of the living accommodation of the bankrupt who is a natural person. It is necessary to satisfy housing needs of the bankrupt and the persons dependent on him, the amount corresponding to the average lease rent of living accommodation for a period from twelve months to twenty four months shall be awarded to the bankrupt from the amount earned from the sale of such accommodation or house. Remaining claims are satisfied in the order specified in Article 342 of the Bankruptcy Law, depending on category to which they fall (claims falling into the lower category may be satisfied only if claims falling into higher categories have been fully satisfied). First category of claims covers among others: employees' claims, maintenance claims and workers' compensation, social security contributions defined in the Social Security System, certain amounts resulting from restructuring proceedings of the debtor.

Apart from the rank of claims, secured creditors enjoy preferential treatment with regard to liquidation of encumbered assets. Except as otherwise provided in specific regulations, secured creditors should be satisfied from the proceeds of the liquidation of the encumbered asset, reduced by the costs related to the liquidation of the asset and other costs of bankruptcy proceedings in an amount not higher than one-tenth of the sum obtained from liquidation, but no more than such part of costs of the bankruptcy proceedings which results from the ratio of the value of the encumbered object to the value of the whole bankruptcy estate.

## 12. Can a debtor's pre-insolvency transactions

 

### be challenged? If so, by whom, when and on what grounds? What is the effect of a successful challenge and how are the rights of third parties impacted?

Under the Polish Bankruptcy Law, particular transactions (or broaden: acts in law), are – by operation of law – ineffective with respect to the bankruptcy estate or may be declared ineffective with respect to the bankruptcy estate by the Judge – Commissioner's decision. In result – said transactions or acts in law are construed within bankruptcy proceedings as they have never occurred.

Acts in law that may be challenged include among others those performed gratuitously (or significantly undervalued) within 1 year before filing the bankruptcy petition, whereby the debtor disposed of his assets. The same applies respectively to the court settlement, admission of an action, and waiver of a claim.

Moreover, ineffective with respect to the bankruptcy estate are securities and payments of an unenforceable debt, given or made by the debtor within 6 months before filing the bankruptcy petition.

There is also possibility to challenge by the Judge-Commissioner transactions with related-parties and/or family, performed by debtor within 6 months preceding the date of filing the bankruptcy petition, as well as encumbrance of the bankrupt's assets with (among others) mortgage or registered pledge, if the bankrupt was not a personal debtor of the secured creditor and if the encumbrance was established within one year prior to the filing of a bankruptcy petition, and the bankrupt did not receive any consideration for the establishment of such encumbrance.

The other party to ineffective transaction/ act in law is obliged to contribute to the bankruptcy estate anything that has been transferred out of, or has not been contributed to, in result of ineffective act.

In certain cases reciprocal consideration provided by other party may be returned to the same. If the consideration cannot be returned, that party may assert its claims in bankruptcy proceedings on a par with other creditors.

On the other hand, party who received the payment or the security may, by bringing an action or charge, seek the recognition of such acts as effective if at the time when the same were performed they were unaware of the existence of grounds for declaring bankruptcy.

### 13. How existing contracts are treated in restructuring and insolvency processes? Are the parties obliged to continue to perform their obligations? Will termination, retention of title and set-off provisions in these contracts remain enforceable? Is there any ability for either party to disclaim the contract?

Restructuring proceedings such as arrangement approval proceedings, accelerated arrangement proceedings and arrangement proceedings, do not affect the existing contracts and assets. Any changes, terminations, withdrawals are subject to civil law regulations. In remedial proceedings it is possible for the receiver to renounce the mutual contract which has not been performed in full or in part.

Under Article 98 of the Bankruptcy Law appointed trustee may, with the prior consent of the Judge – Commissioner, perform the debtor's obligation resulting from contract and demand the other party to render reciprocal performance, or withdraw from the contract with effect as of the date of declaration of bankruptcy. It is also possible to withdraw from a reciprocal contract by appointed Receiver under the Restructuring Law – in remedial proceedings.

Certain contracts' clauses may be questioned under the Bankruptcy Law, e.g. clause stipulating that a legal relation to which the bankrupt is a party, may be modified or terminated if a bankruptcy petition is filed or if bankruptcy is declared. Such a clause under the Article 83 of the Bankruptcy Law is invalid. Clauses preventing or hindering the achievement of the purpose of bankruptcy proceedings have no effect to the bankruptcy estate.

Moreover, as to the: contract of agency, contract of lending for use, contract of loan, contract of lease or tenancy, credit contract, contracts of bank account, contracts of securities account, contracts of derivatives account or settlement account, or contracts of operating an omnibus account, as well as contracts for making safe-boxes available and contracts for safekeeping, leasing contracts or mandatory property insurance contracts, the Bankruptcy Law provides individual and specific regulations reflecting nature of said contracts. In particular, the Bankruptcy Law regulates possibility of expiration of the contract by operation of law, possibility to withdraw from contract or to terminate contract. Similarly, any clause in those contracts stipulating that a legal relation to which the bankrupt is a party is modified or terminated if a bankruptcy petition is filed or if bankruptcy is declared may be considered as invalid. Any provision of the contract to which the bankrupt is a party

 

that prevents or hinders the achievement of the purpose of bankruptcy proceedings shall be of no effect to the bankruptcy estate.

Under the Restructuring Law there are some restrictions as to the possibility of termination of the tenancy contract and lease contract of the unit or immovable property, in which the debtor's undertaking is run.

### 14. What conditions apply to the sale of assets / the entire business in a restructuring or insolvency process? Does the purchaser acquire the assets "free and clear" of claims and liabilities? Can security be released without creditor consent? Is credit bidding permitted? Are pre-packaged sales possible?

In restructuring proceedings the sale of the debtor's assets (including his entire business) can be subject to the arrangement and in this respect is subject to a vote by the creditors' meeting, followed by the approval of the arrangement by the court. It is also possible for a debtor to sell particular assets with the consent of a Court Supervisor, if such sale exceeds the scope of ordinary management. If a real estate or other assets with a value above 500 000 PLN are subject to sale, it is additionally required to obtain the consent of the Creditors' Committee for the sale.

In the bankruptcy proceedings, the sale of assets is one of the basic activities of the trustee, who should aim to sell the debtor's business as a whole. When selling certain assets in way of a tender, it is necessary to obtain the Judge-Commissioner's approval for terms of the tender. In the case of a direct, unrestricted sale of assets, the consent of the Creditors' Committee is required. In case of selling the entire business, it is necessary to prepare a description and valuation of the debtor's business enterprise provided by an expert appointed by the trustee.

Sale of assets/business within bankruptcy proceedings enjoys execution sale effect, what means that the purchaser acquires unencumbered asset ("free and clear" of claims and liabilities), security expires even without the permission of secured creditor, while such creditor is satisfied from money received in result of sale transaction.

In restructuring proceedings sale of assets, made by the Receiver with consent of the Judge-Commissioner, who determines the conditions of their transfer, enjoys execution sale effect only within remedial proceedings. In other restructuring proceedings sale, including the sale executed under the arrangement and in performance of the arrangement which provides for the satisfaction of creditors by liquidation of the debtor's assets, does not have the effects of execution sale. Therefore, the rights and securities established on sold assets remain in force, what may have an impact on the purchase price of the assets. Given lack of execution sale effect the acquirer becomes a limited debtor in the sense that acquirer has to endures enforcement proceedings directed to encumbered asset. It is possible however to release the security with the prior consent of secured creditor.

Credit bidding is planned to be introduced within amendment to the Bankruptcy Law, which is currently in legislative process.

Pre-packaged sale (so-called "pre-pack", also known as "prepackaged administration" or "prepared liquidation") was introduced in the Polish Bankruptcy Law in 2016. Pre-pack transactions are beneficial for all the involved parties and become more and more popular among creditors and debtors.

### 15. What duties and liabilities should directors and officers be mindful of when managing a distressed debtor? What are the consequences of breach of duty? Is there any scope for other parties (e.g. director, partner, shareholder, lender) to incur liability for the debts of an insolvent debtor and if so can they be covered by insurances?

Most important legal duty of the board members relates to filing the bankruptcy petition in the due time. Failure to do so can result in liability towards creditors – directly from the board members' assets.

The management board is obliged also to ensure that all creditors are treated equally, and they are proportionally satisfied. The management board may be liable for the damages caused to the creditors in the event of selective satisfaction of certain creditors, as well as in the case of establishing security in favour of certain selected creditors to the detriment of remaining creditors. Such action of the management board may cause (in certain cases) criminal liability of the board members.

Other parties cannot incur liability for the debts of an insolvent debtor. However, if a given act in law is declared ineffective due to the detriment of creditors, the creditors may be satisfied with a consideration received by other party to the act.

 

Some changes to these provisions are proposed due to the COVID-19 pandemic.

Recently, there was introduced so-called holding law – dedicated to the groups of companies. Some issues regarding directors and officers liability are addressed, like the potential no liability for performing the command from the mother-company. This command however must not lead to insolvency.

### 16. Do restructuring or insolvency proceedings have the effect of releasing directors and other stakeholders from liability for previous actions and decisions? In which context could the liability of the directors be sought?

Under the Polish Law, there is no direct regulation of release of liability for previous actions performed and decisions made by directors or stakeholders. Filing the bankruptcy petition, opening of restructuring proceedings or approving the arrangement within the arrangement approval proceedings – made within 30 days after the grounds for declaring bankruptcy arise, release members of the board (or other persons obliged to take action in accordance with the law) from liability for the insolvent debtor's obligations.

### 17. Will a local court recognise foreign restructuring or insolvency proceedings over a local debtor? What is the process and test for achieving such recognition? Does recognition depend on the COMI of the debtor and/or the governing law of the debt to be compromised? Has the UNCITRAL Model Law on Cross Border Insolvency or the UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments been adopted or is it under consideration in your country?

In Poland, like in other EU countries, foreign (but within EU) proceedings are automatically recognized and there is also a possibility of commencement of secondary insolvency proceedings, limited to the assets located on the territory of Poland.

The recognition depends on the COMI in the sense that the EU court jurisdiction in based upon COMI determination in the first place.

With regard to other countries, recognition is usually regulated in bilateral agreements, most commonly compliant with UNCITRAL.

### 18. For EU countries only: Have there been any challenges to the recognition of English proceedings in your jurisdiction following the Brexit implementation date? If yes, please provide details.

In our practice, we have not observed any challenges to the recognition of English proceedings following the Brexit.

### 19. Can debtors incorporated elsewhere enter into restructuring or insolvency proceedings in the jurisdiction? What are the eligibility requirements? Are there any restrictions? Which country does your jurisdiction have the most cross-border problems with?

Yes, if their place of business (so-called COMI – centre of main interest) is located within the territory of Poland. Moreover, according to the Polish regulations, if the COMI is located in the Republic of Poland, then the main insolvency proceedings are subject to exclusive jurisdiction of the Polish courts (however with a possibility of initiating secondary insolvency proceedings in other EU member states). There are no further eligibility requirements nor any restrictions in that regard.

### 20. How are groups of companies treated on the restructuring or insolvency of one or more members of that group? Is there scope for cooperation between office holders? For EU countries only: Have there been any changes in the consideration granted to groups of companies following the transposition of Directive 2019/1023?

There is a space for cooperation between office holders in the case of groups of companies treated on the restructuring or insolvency of one or more members of that group, but informally, given there is no direct legal basis for such activities. Restructuring and insolvency of groups of companies are regulated under the EU law insofar as they concern international cases, not domestic groups of companies.

Polish draft bill implementing EU Restructuring Directive does not provide specific regulations for corporate groups, although such possibility was proposed.

 

## 21. Is your country considering adoption of the UNCITRAL Model Law on Enterprise Group Insolvency?

Within this regard, no formal draft has yet been published, however this trend is popular in the EU countries and may lead to an adoption of these measures.

## 22. Are there any proposed or upcoming changes to the restructuring / insolvency regime in your country?

There is draft legislation amending the restructuring and insolvency of banks and financial institutions, but the legislative process thereof is still pending.

Poland is also ahead of reform introducing the EU Directive 2019/1023, however, Polish government used the extension possibility provided in the Directive.

An insolvency register, i.e. the National Debtors Register, was finally introduced on 1 December 2021. It is transforming – as people are getting used to it, set up their accounts and learn how to use it and the system is still being improved – the insolvency proceedings practice. Unfortunately, the system does not work as efficiently as it was planned.

Moreover, Poland is ahead of implementation of the EU Restructuring Directive, and as well, the Proposal for a Directive harmonizing certain aspects of insolvency law will be at stake.

The INSO Section of the Allerhand Institute took the initiative to amend the bankruptcy courts' system.

Nowadays, first instance bankruptcy and restructuring cases are processed in district courts (sądy rejonowe), which are the lowest level of Polish courts, irrespective of the value of the case and its complexity. Therefore, a first-instance judge has to deal with both complex restructuring cases valued at billions of Polish zloty and simple consumer bankruptcy cases of relatively small value. The workload is overwhelming. First-instance judges are dealing with approximately 200 consumer bankruptcy cases and ten corporate restructuring cases at the same time – an untenable work load.

A better system would leave consumer bankruptcy cases at the district court level, so that individuals would have easy access to justice, whereas complex restructuring cases should be moved to regional courts.

The authors believe the regional courts should also become specialised second-instance courts for cases from district courts.

Moreover, cases heard in regional courts (sąd okręgowy) could be appealed in appellate courts (sądy apelacyjne), which will help to make judgements more uniform in restructuring cases. Currently Poland struggles with differing judgements in similar cases, which is a pitfall that needs to be addressed.

There is also a need to create a special chamber or unit with the Supreme Court (Sąd Najwyższy), which would be responsible for restructuring and insolvency cases.

## 23. Is your jurisdiction debtor or creditor friendly and was it always the case?

The Polish system of regulations related to insolvency has been amended significantly quite recently because of i.a. lack of effectiveness in satisfaction of creditors and insufficient number of successful restructuring procedures conducted within bankruptcy with a possibility to conclude the arrangement.

After the reform of 2016, there are now 4 new restructuring proceedings, and a new legal institution – pre-packaged liquidation/administration, based on British and American regulations – so called pre-pack, regulated in the Bankruptcy Law.

All these new legal instruments create a beneficial framework of restructuring both for the debtors and active creditors. It should be pointed out however, that the Restructuring Law significantly improved the situation for the debtor in relation to the previous law provisions, and – what is even more important – pre-packaged sale has been introduced in Poland, which is beneficial for all involved parties – insolvent debtors, creditors, investors, the economy and the judiciary.

## 24. Do sociopolitical factors give additional influence to certain stakeholders in restructurings or insolvencies in the jurisdiction (e.g. pressure around employees or pensions)? What role does the State play in relation to a distressed business (e.g. availability of state support)?

In Poland, the state sometimes plays an active role in restructuring by agencies or state-aid, when it is available and allowed under the EU regulations. Quite often it leads to an improvement of the employees' situation and protection of the workplaces. Since Covid pandemic there

 

have been additional financial resources available to help the distressed companies.

### 25. What are the greatest barriers to efficient and effective restructurings and insolvencies in the jurisdiction? Are there any proposals for reform to counter any such barriers?

The greatest barrier to efficient and effective restructuring and insolvencies in Poland is the lack of division in Courts between the complicated and complex restructuring and sometimes small, but numerous consumer bankruptcies whose number is constantly growing. That means that the judges in Bankruptcy Courts are handling too many cases, and thus the Court's decisions are delayed.

There is a significant reform of 2019, addressing also the abovementioned scope, but it did not fully restore effectiveness within Bankruptcy Courts. Currently, Polish government plans to introduce brand new flat-judiciary reform, touching also bankruptcy and restructuring courts.

The amendment was focused on carrying on consumer bankruptcy proceedings by insolvency practitioners (trustees), with much less court involvement. However, given the relaxation of regulation of the consumer bankruptcy, the number of consumer bankruptcy petitions has grown.

Also, individual micro-entrepreneurs are treated as consumers, what also contributes to growing number of petitions.

Plus, these days the National Debtors Register, implemented in December 2021, creates some additional technical and legal problems re e.g. effective delivery. This ICT system is not fully efficient and contains many errors.

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