

Law on restructuring

On 9 April the Polish Parliament adopted a bill implementing the so-called “second chance” policy for businesses, pursued at the EU level. The Act introduces new instruments into the Polish legal system that enable the restructuring of viable undertakings and restoring the financial capacity of insolvent debtors and those threatened with insolvency.

New proceedings – structure

The Act introduces a clear separation between restructuring proceedings and bankruptcy proceedings. As the latter are commonly perceived as stigmatising, the initiation of bankruptcy can hinder successful restructuring. The new Act introduces four new types of restructuring proceedings, i.e.:

- (i) proceedings regarding approval of the arrangement,
- (ii) fast-track restructuring proceedings,
- (iii) (ordinary) restructuring proceedings, and
- (iv) sanation proceedings.

The Act provides that any of the above proceedings is available to both insolvent undertakings and those only threatened by insolvency. Each of the proceedings is intended to lead to an arrangement with creditors upon obtaining consent from the relevant majority of them (i.e. constituting two thirds of the total amount of claims).

Structure of the new proceedings

The structure of the new proceedings is designed to reflect the rule of so-called “gradation”, where the scope of protection given to the debtor and restructuring instruments available in the relevant proceedings correspond with the scope of managerial powers that the debtor needs to give up.

Proceedings regarding approval of the arrangement

The first type of proceedings is available for debtors whose contested liabilities do not exceed 15% of their total debt and who are capable of obtaining on their own (i.e. without court participation) approvals for the arrangement terms from creditors whose votes constitute at least two thirds of all creditors. In these proceedings a court motion is filed only after the required majority’s approvals are obtained, and the only decision on merits issued by the court is on the acceptance or rejection of the motion. Note that information on the restructuring will be disclosed only at the moment the motion is filed with the court. Within these proceedings the debtor is free to choose a “restructuring advisor”, whose task is to provide the debtor with support in obtaining creditors’ votes and assuring that the information subsequently provided to the court in order that it is able to determine whether the required approval threshold is reached, is accurate. The debtor and the restructuring advisor will enter into a civil law agreement, the provisions of which cannot in any way prejudice the debtor’s right to manage its assets.

Fast-track restructuring proceedings and (ordinary) restructuring proceedings

In fast-track restructuring proceedings creditors will deliver their votes directly to the court. The entire proceedings are intended to be fairly informal. That is why they are designed for debtors whose contested liabilities do not exceed 15%.

For debtors who are unable to meet the above criterion, the Act provides for a possibility to initiate arrangement proceedings carried out pursuant to the current rules applicable to bankruptcy proceedings with the possibility of arrangement. However, the debtor’s right to manage its enterprise will be limited (i.e. supervised by a court supervisor).

Sanation proceedings

Sanation proceedings are intended to enable deep economic restructuring of the debtor’s assets and obligations. Within the framework of such proceedings it will be possible for instance to **adjust the employment level to the needs of the reorganised undertaking** (the rules so far reserved for bankruptcy proceedings will apply) or to **rescind disadvantageous reciprocal contracts** (“*cherry picking right*”) which so far has been the privilege of a receiver in liquidation bankruptcy proceedings. As a rule, in sanation proceedings the debtor will be deprived of its managerial powers; however, the Act provides for the possibility of the debtor to manage its assets (under certain conditions) within the scope of the debtor’s ordinary management activities.

Protection against creditors

In all new proceedings, except for proceedings regarding approval of the arrangement, **a debtor may be granted protection against its creditors**. All enforcement proceedings concerning claims covered by the arrangement will be stayed by operation of law upon the commencement of fast-track or ordinary restructuring proceedings. Such protection against enforcement goes even further in sanation proceedings, where a stay of all pending enforcement proceedings and a prohibition on commencing any new proceedings may also encompass creditors holding *in rem* security interests on the assets of the distressed undertaking (which, as a rule, are not covered by the arrangement).

No termination of credit agreements by the banks

Furthermore, **the bank must not terminate a credit agreement** entered into with a company under restructuring in reference to the events arising prior to the commencement of restructuring proceedings. The Act also provides for an express prohibition with regard to the termination of tenancy and lease agreements concerning real property where the entity under restructuring conducts its business operations (debtor’s premises). The above prohibitions are applicable respectively to lease and insurance agreements, bank account agreements, sureties, guarantees and letters of credit issued before the institution of restructuring proceedings.

Arrangement with some of the creditors

The Act introduces a possibility to enter into an arrangement with only some creditors. This legal instrument is mainly dedicated to large and very large enterprises, where the most effective method of restructuring is an arrangement with a specific group of creditors, singled out on the basis of objective, unambiguous and economically reasonable criteria (e.g. with banks). In such a situation, an arrangement with all the creditors could be pointless, particularly if the debtor may reasonably assume that as a result of entering into an arrangement with some groups of creditors it will be possible to satisfy 100% of the claims of the rest of them.

New investment possibilities

The Act also introduces major changes as regards the Bankruptcy and Rehabilitation Law. Apart from removing the majority of restructuring-related elements from it, the amendment brings to the Polish legal system, i.a. the institution of “prepackaged sale” (in short “pre-pack”).



The essence of “pre-pack” is that all of a bankrupt’s enterprise or an organised part of it or assets constituting a substantial part of its enterprise is/are sold on terms negotiated with a potential buyer before formal proceedings are commenced. The court will consider a motion for acceptance of the terms and conditions of the sale simultaneously with a bankruptcy petition. An approved sale will operate as an enforced sale (i.e. excluding encumbrances) and a buyer will not be held liable for the debtor’s obligations (including tax duties).

Stricter rules for hardening security interests

Another important change in the provisions regarding bankruptcy proceedings is the fact that the “hardening period” for security interests will be extended from two to six months.

Furthermore, the scope of current sanctions regarding the ineffectiveness of a debtor establishing security interests at the “pre-bankruptcy” stage has been extended to cover “pre-sanation” (i.e. one of the newly introduced restructuring proceedings). The Act provides for the possibility of declaring the ineffectiveness of “overcollateralised” security interests, i.e. part of the collateral which on the date it is established exceeds the value of consideration received by the debtor by more than half and was established within a year before the motion for the institution of sanation proceedings was filed.

Hardening periods will not apply to financial pledges and some other types of securities specified in the Act on Specific Financial Collateral of 2 April 2004.

Restructuring first

A motion to institute restructuring proceedings could be filed exclusively by the debtor itself, with one exception however, i.e. in sanation proceedings the creditor will enjoy the right to move for restructuring. A restructuring motion will have priority over a bankruptcy petition. Such solution reflects a subsidiarity rule in bankruptcy proceedings promoted by the Act, where bankruptcy proceedings are treated as *ultima ratio* if restructuring proceedings prove ineffective.

Computerisation of restructuring and bankruptcy proceedings

The Act also provides for the creation of an electronic Central Restructuring and Bankruptcy Register (CRRiU). The Register will contain all the decisions and rulings issued in the course of proceedings as well as documents and other communications concerning each respective restructuring and bankruptcy case. The CRRiU is designed to enable participants in proceedings to file the required motions and documents. The CRRiU is intended to operate not only as a communication and information system, but also as a “case-law” portal.

The provisions referred to above will enter into force on **1 January 2016** (apart from the regulations pertaining to CRRiU, which will become effective on 1 February 2018, and the part concerning public aid, which will enter into force within two weeks after the Act is made public).

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Our lawyers provide legal advice on all aspects of complex **financial in- and out-of-court restructuring, as well as insolvency matters**. We are experts in various industries and cooperate with corporate, dispute resolution, commercial, regulatory and intellectual property lawyers to ensure all aspects of restructuring and insolvency matters are covered. Our teams are tailored to the specific circumstances of each case and aim to find the optimal solution for the restructured entity and its creditors. The restructuring team consists of banking, commercial, restructuring, bankruptcy and litigation experts, including:



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