



Proposals for changes to Polish bankruptcy and restructuring law

Analysis of the current situation

- »» Currently **there are no available draft laws proposed by the government changing Polish bankruptcy and restructuring law** – however, at the same time many businesses in a variety of sectors (e.g. retail, F&B, transport) already face the threat of insolvency or are likely to become insolvent as a consequence of the present situation. According to media reports, a draft bill amending both the bankruptcy and restructuring laws has been prepared by the Ministry of Justice in cooperation with the Ministry of State Assets. This draft is expected to be part of the next special law related to the COVID-19 pandemic.
- »» Court-supervised restructuring proceedings aimed at preserving debtors' enterprises and enabling their return to the market, while also securing their assets from actions taken by their creditors, should become more accessible, in particular, to small and medium-sized enterprises.
- »» Due to the already **significant burden on bankruptcy and restructuring courts** (as well as a foreseen increase in their workload) legislative changes should be considered, in order to allow for debtors' assets to be adequately protected more quickly than by opening restructuring proceedings (which can take months to commence from the day a restructuring motion is submitted).
- »» Likewise, there is a **need to simplify the formal requirements of bankruptcy applications and their annexes - the preparation of annexes to a bankruptcy application currently requires a considerable amount of time** on the part of both the company and its accountants, and the process of opening bankruptcy proceedings often takes months - by which time there is frequently nothing left to save.

Key proposals

- »» **Suspending the presumption of insolvency for the duration of the state of epidemic and for a reasonable period thereafter**, which consists of the assumption that a debtor is no longer able to fulfil their due pecuniary obligations if the delay in their performance exceeds three months; (Article 11(1a) of the Bankruptcy Law). However, such a suspension should apply only to entities whose financial situation deteriorated as a result of the declarations of a state of epidemic threat and a state of epidemic due to COVID-19.
- »» Introducing a solution similar to that adopted in Spain - **suspending the possibility for creditors to file bankruptcy applications during the state of epidemic and for a reasonable period thereafter**. It is relatively common for creditors to file bankruptcy applications as a substitute to enforcement proceedings or in order to force a debtor to pay the applicant where there are no grounds to declare bankruptcy. This solution would also relieve the bankruptcy courts of an unnecessary burden during this critical period.
- »» For a period following the state of epidemic: (i) simplifying procedures to commence restructuring and bankruptcy proceedings, or (ii) streamlining the process by which the bankruptcy courts and interim supervisors secure and supervise a debtor's assets, so as to enable the bankrupt/restructured company's assets to be promptly secured (in Western European jurisdictions, a debtor's assets are often secured by and under the supervision of the bankruptcy courts or the supervisor/trustee within a matter of several days at the most; while in Poland, this still takes weeks, and sometimes months).
- »» **It is worth noting that the so-called "Anti-Crisis Shield" Act, signed on 31 March 2020, provides for the support of entrepreneurs who are not in arrears with social security contributions or taxes. This means that currently almost all of those entrepreneurs forced to either suspend or delay payments of public law liabilities due to the state of epidemic will be deprived of assistance. Moreover, the Anti-Crisis Shield conditions the receipt of support on the submission of a declaration stating that a given entrepreneur does not satisfy the "conditions for the declaration of bankruptcy", which may also significantly limit the availability of support to those who need it the most. Proposals for further special laws should clarify these requirements, by specifying that only where they were not fulfilled prior to the declaration of a state of epidemic threat, will the possibility of receiving support be excluded.**