



Shield 4.0 – Simplified restructuring proceedings

The most important assumptions

- » Simplified restructuring proceedings will be available until 30 June 2021. According to the explanatory notes to the Act's draft, this is the period of time for which the negative economic effects resulting from the COVID-19 epidemic are expected to continue.
- » The legislature's intent was to enable debtors to undertake negotiations with their creditors without the need for the courts to formally open proceedings, while simultaneously protecting them from enforcement by their creditors.
- » Consequently, simplified restructuring proceedings combine two currently available court-based restructuring proceedings, i.e. proceedings for the approval of an arrangement and accelerated arrangement proceedings. This type of proceeding may be opened if the total amount of disputed claims giving the right to vote on the arrangement does not exceed 15% of the total amount of claims giving the right to vote on the arrangement.
- » Simplified restructuring proceedings significantly limit the rights of creditors, including creditors secured by collateral, during the debtor's restructuring, which will certainly make proceedings of this type more attractive to debtors in the coming year.
- » The debtor may open simplified restructuring proceedings only once.

Actions required to open the proceedings

- > Conclusion of an agreement for supervision over the course of proceedings for the approval of an arrangement with a restructuring advisor, who will act as the arrangement's supervisor.
- > The debtor's delivery of a list of claims, including disputed claims, and arrangement proposals to the arrangement supervisor.
- > Giving notice of the opening of proceedings for the approval of an arrangement in the Court and Commercial Gazette (Monitor Sądowy i Gospodarczy; "MSiG").
- > Supervisor's notification of the court competent to consider the petition for the approval of an arrangement within three days of its publication and notice.
- » The notice's publication date in the MSiG is the date on which the proceedings for the approval of an arrangement are opened, with all of the consequences thereof.
- » The arrangement date, however, is the date on which the creditors' rights to vote on the arrangement are determined.
- » The arrangement date specified by the debtor must fall within the seven days preceding or following the submission of an application for publication of a declaration on the opening of the proceedings.

Effects of the notice's publication

- » From the date of the notice's publication to the date on which the simplified restructuring proceedings are either discontinued or closed:
 - > Enforcement proceedings concerning claims subject to the arrangement by law, as well as those concerning claims secured by collateral and secured by a transfer of title, **which were initiated prior to the opening of the proceedings, and subject to a promise to pay, are suspended by law;**
 - > The initiation of enforcement proceedings, and the performance of decisions to secure claims or orders to secure claims resulting from claims subject to the arrangement and claims secured by collateral, subject to a promise to pay, **is impermissible;**
 - > **It is impermissible** for the debtor to provide performances resulting from claims subject to the arrangement by law;
 - > Set-offs may only be performed in accordance with the rules foreseen in the Restructuring Law.
- » Significantly, the legislature has also included regulations which were currently applicable to partial arrangements, i.e. the possibility for claims secured by collateral to be subject to the arrangement **without the creditor's consent**, subject to a promise to pay in the arrangement proposals, leading to:
 - > the full satisfaction of the claim within the time specified in the arrangement, together with ancillary claims foreseen in the agreement serving as the basis for the security's establishment, even if such an agreement has been duly terminated or expired; or
 - > the creditor's satisfaction to an extent **no lesser than that which could have been expected if the claim, and ancillary claims on the subject of the security, had been pursued.** In this case, the liquidation value of the security's subject should be determined, by way of an appraisal, reduced by the costs of enforcement and claims with priority over said creditor in accordance with the Code of Civil Proceedings.
- » This regulation may create a real risk to the legal and actual circumstances of secured and privileged creditors during standard restructuring proceedings. The requirement to include such creditors in a separate category of interests should limit this to some extent, by, in principle, strengthening their ability to block the conclusion of an arrangement.

The arrangement supervisor's role

- » **Without the approval of the court supervisor, it is impermissible:**
 - > for a landlord or lessor to terminate a lease or tenancy agreement concerning the premises or real property where the debtor maintains their enterprise.
 - > to terminate agreements or contracts for facilities regarding funds made available to the borrower prior to the date on which the proceedings were opened, leasing, property insurance, bank accounts, sureties, licenses granted to the debtor, and guarantees and/or letters of credit issued before the proceedings were opened.
 - > to perform any actions exceeding normal management of the assets.
- » *However, it should be noted that the arrangement supervisor's approval will not be required if the grounds for an agreement or contract's termination is the debtor's failure to perform their obligations which arose following the date on which proceedings were opened and not subject to the arrangement, or the occurrence of events foreseen in the agreement or contract (e.g. failure to pay rent).*

- » The arrangement supervisor is entitled to call a meeting of the creditors in addition to collecting the votes by mail. At the same time, meetings of the creditors may be conducted by way of electronic means of communication. Therefore this is a change which should be positively assessed, not only due to the risk of epidemic threat.

Financing during the proceedings

- » Granting the debtor financing during the proceedings, or establishing security for such financing is protected prior to their being deemed ineffective in further remediation or bankruptcy proceedings if the court was informed of these actions in the motion to approve an arrangement and then confirmed these actions.

Potential reversal of the effects of notification

- » The court may reverse the effects of the notice's publication at the request of a creditor, the debtor, or the arrangement supervisor, if the proceedings result in harm to the creditors. This provision is intended to counteract abuses and situations where the continuation of these effects would be counterproductive and is the basic measure to protect creditors. The arrangement supervisor shall give notice of the reversal of these effects in the MSiG.

Duration of protection

- » Simplified proceedings for the approval of an arrangement are **discontinued by law if an petition for the approval of an arrangement is not submitted to the court within 4 months of the notice's publication.** if an petition for the approval of an arrangement is submitted within 4 months, **the effects of the proceedings' opening shall continue until the final and binding closure of the proceedings or their discontinuation.**

Liability of members of the management board in relation to the enterprise's insolvency

- » Regardless of whether or not the simplified proceedings for the approval of an arrangement are successful, a debtor, **acting in good faith**, shall be protected from liability under the Bankruptcy Law, Commercial Companies Code and the Tax Ordinance for the late submission of a petition for declaration of bankruptcy.
- » The basic condition for such protection, and the exclusion of liability, is the opening of proceedings for the approval of an arrangement, and the approval of such an arrangement.
- » If the conclusion of an arrangement is impossible, in order to ensure continued protection, the debtor shall be entitled to a 7 day period, starting from the date of the proceedings' discontinuation, in which to submit petition for declaration or bankruptcy or an petition to open restructuring proceedings. In the second case, such protection shall be effective if the proceedings are in fact opened.