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## Poland: Rescue procedures in insolvency

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Poland

Phase:

Management

Type:

Rescue procedures in insolvency

Last modified: 15 February, 2023

Native name:

Ustawa z dnia 15.05.2015 r. - Prawo restrukturyzacyjne; Ustawa z dnia 28.02.2003 r. - Prawo upadłościowe (do 31.12.2015 r. pod nazwą -Prawo upadłościowe i naprawcze)

English name:

Act of 15.05.2015 -Restructuring Law; Act of 28.02.2003 - Bankruptcy Law (until 31.12.2003 under the name - Bankruptcy and Reorganisation Law)

### Article

Article 9, 11, 150, 180 - Act of 15.05.2015 -Restructuring Law; Article 342, 347 - Act of 28.02.2003 - Bankruptcy Law

### Description

Since the beginning of 2016 the government has put forward the policy of the New Opportunity (*Nowa Szansa*). The legal framework is set out in the new Restructuring Law and the thoroughly amended Bankruptcy Law. Both acts entered into force on 1 January 2016 and regulate the situation of insolvent entrepreneurs - both at an early stage of insolvency (the threat of liquidity loss) and at an advanced stage (so-called bankruptcy). This has introduced a significant change in the way of dealing with companies in financial difficulties. The legislator considered that the preferred form of solving problems of insolvency is restructuring, the purpose of which is the conclusion of the agreement with creditors, and consequently the survival of the entrepreneur on the market.

Four reparation and debt recovery procedures (restructuring procedures) were introduced:

- arrangement approval procedures (*postępowanie o zatwierdzenie układu*);
- accelerated (fast-track) arrangement procedures (*przyspieszone postępowanie układowe*);
- (ordinary) arrangement procedures (*postępowanie układowe*);
- sanation procedures (*postępowanie sanacyjne*).

An employer can choose the optimal procedure for his or her situation. The restructuring law establishes the priority of restructuring prior to bankruptcy. If both restructuring application and the bankruptcy petition are filed simultaneously, the court first recognises the request for restructuring. The restructuring law also contains provisions allowing the employer to obtain public aid. Public aid may be granted for the purpose of the restructuring plan. According to the restructuring law, public aid cannot be an exclusive instrument enabling the debtor to restore his/her long-term ability to compete in the market. Public aid may be used to help with the repayment of public obligations (social security contributions, taxes) and purchase of necessary fixed assets.

#### Arrangement approval procedure (*postępowanie o zatwierdzenie układu*)

This procedure is available to those debtors capable of reaching an arrangement with the majority of their creditors outside of court. Under this procedure, the debtor continues to manage its business but wit the involvement of a licensed supervisor (administrator or nadzorca układu), whose role is limited to certain activities related to the procedure, including:

- preparing a restructuring plan;
- cooperating with the debtor in preparing arrangement proposals;
- compiling a list of claims;
- assisting in the voting of the plan;
- preparing a report containing a feasibility study of the proposed arrangement.

## Accelerated arrangement procedure (przyspieszone postępowanie układowe)

This procedure is available to debtors where disputed claims do not exceed 15 % of the total claims. Execution proceedings relating to claims to be covered by the arrangement will be stayed by operation of law. The court is more involved in this procedure as opposed to in the previous procedure, and is obliged to organise a meeting with creditors. The creditors cast their votes during the meeting (and not in writing, as in the arrangement approval procedure). As a general rule, the debtor continues to manage its business throughout the procedure. However the procedure involves the appointment of a court supervisor (*nadzorca sądowy*), who is granted oversight over the management of the debtor's affairs. In exceptional cases an external manager (*zarządca*) may be appointed to take over the entire management of the debtor's estate.

## Arrangement procedure (postępowanie układowe)

This option applies in cases where disputed claims exceed 15% of the total claims. Although more formal, this procedure is similar to the accelerated arrangement procedure, in terms of the impact on the debtor's management rights and protection from creditors.

## Sanation procedure (postępowanie sanacyjne)

This is the most advanced restructuring procedure. It gives the debtor a relatively high level of protection against creditors and includes more tools for returning the business to stability. Typically in such procedures the debtor's business will be managed by an administrator (*zarządca*), although in exceptional cases, where the debtor's involvement is necessary and only where the debtor guarantees proper management, the court may leave the management to the debtor-in-possession. This procedure corresponds to the earlier bankruptcy with the possibility of arrangement.

The establishment of a central register of restructuring and bankruptcy is provided for by the restructuring law. It will include a search engine for restructuring and bankruptcy cases, a list of syndicates, restructuring advisors, experts, as well as sample forms required for the procedures. The main task of the register is to centralise information on all insolvency and restructuring proceedings. The register will be operational as of February 2018.

## Comments

Although it is too early to assess the effects of the new legislation, some preliminary data is available. In 2016, less bankruptcies were filed than in the previous year. More than 200 restructuring proceedings were opened (data as at the end of November 2016). A comparatively large number of proceedings relate to the accelerated arrangement procedure (134 by the end of November 2016). On a national scale, these may not seem large figures, but they are significant when taking into account historical data. In the whole implementation period of the previous Bankruptcy and Reorganisation Law (2003-2015) only about 50 corrective procedures (restructuring of businesses threatened by insolvency) were initiated.

The opinions of the social partners in relation to the newly introduced procedures are diverse. While most employers regard the new legislation favourably, trade unions fear that new arrangements and sanation procedures may not sufficiently take into account the interests of the employees.

### Cost covered by

Employer  
National government

### Involved actors other than national government

Other

### Involvement others

Court, creditors, administrators

### Thresholds

No, applicable in all circumstances

### Sources

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- Dz.U. 2015 poz. 1595
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