

Polska



Securing business: Bankruptcy and restructuring

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On January 1st 2016 amendments were adopted to the 2013 Bankruptcy and Restructuring Act and restructuring law was introduced with them.

Bankruptcy law pertains to both private and corporate bankruptcies. In the event a motion for bankruptcy is filed together with restructuring motion, the court focuses on the restructuring motion, as a restructuring motion has priority over a bankruptcy motion (at least at the beginning of a hearing).



According to the Polish Bankruptcy and Restructuring Law Act, a declaration of bankruptcy should be issued for an insolvent debtor. A debtor is insolvent if he loses his ability to perform his pecuniary obligations. It is presumed that the debtor lost the ability to perform his pecuniary obligations if a delay in the fulfillment of pecuniary obligations exceeds three months. A debtor who is a legal entity shall also be deemed insolvent when his obligations exceed the value of his assets for a period exceeding 24-months. The court may dismiss a bankruptcy petition if there is no risk of losing the debtor's ability to perform his due pecuniary obligations in a short time. The court dismisses the bankruptcy petition filed by the creditor if the debtor proves, that the claim is entirely of a disputable character, and if a dispute arose between the parties before filing for bankruptcy. The court will also dismiss a bankruptcy petition in which the assets of the insolvent debtor are not sufficient to cover the costs of court proceedings. The court will also dismiss a bankruptcy petition in which the assets of the insolvent debtor are not sufficient to cover the costs of court proceedings. A bankruptcy petition may be filed by the debtor or by any of his creditors. A petition may also be filed against a legal entity, by a company representative. Importantly a debtor needs to file a bankruptcy petition no later than 30 days from the day from which the declaration of bankruptcy stems. If a debtor is a legal entity, the aforementioned duty shall be laid on whoever is authorized to represent the company (individually or jointly). Those persons are liable for any damages that may arise through failure to file the petition within the time limit indicated above.

The debtor attaches a written statement to the bankruptcy petition testifying to the accuracy of the data contained therein. If the statement is inaccurate, the debtor is liable for any damage caused by testifying to inaccurate data included in the bankruptcy petition.

One of the innovations in Bankruptcy law is the so called "pre-packaged deal". It allows to establish conditions of sale of the debtor's company, dealing in particular with matters connected to the buyer and the price. The sales price cannot be lower than the price recommended by an expert. The prepackaged deal can prevent bankruptcy proceedings. It also enables a sale of the enterprise on much more favorable terms and conditions than a sale during liquidation. At the same time, the enterprise avoids degradation on the market, and debtor avoids loss of reputation, which in the long term allows them to continue their business activity.



Restructuring

On January 1st 2016 changes in the Restructuring Law Act came into force. The main purpose of the new regulations pertains to the restructuring of a debtor's enterprise, and allows for the debtor's continued business activity as opposed to ruling liquidation. The Restructuring Law Act distinguishes 4 types of restructuring proceedings:

- proceedings regarding approval of the arrangement,
- fast-track restructuring proceedings,
- restructuring proceedings,
- sanation proceedings.

Any of the above mentioned proceedings are available to debtors who are already insolvent as well as those who are only threatened by insolvency at a given time. Each type of these restructuring proceedings is intended to allow for a settlement between the debtor and their creditors. Debtors whose contested liabilities do not exceed 15% of their total debt and who can obtain approval of the creditors for terms of the settlement (at least 2/3 of them) are eligible to access these proceedings. This type of proceedings allows for reaching a settlement with some of the creditors (partial arrangement). Fast-track restructuring proceedings resemble proceedings regarding approval of arrangement settlement under the condition that consented liability shall not exceed 15% of the total debt of the debtor. The basic difference is that the creditors approve the terms of the settlement during a meeting of creditors. This type of proceeding also allows for reaching a partial settlement. The third type of proceedings - restructuring proceedings - is a reflection of the arrangement proceedings stipulated by the Bankruptcy Law Act in its wording before January 1st 2016. The debtor is still entitled to manage their enterprise, but their management is supervised by the court and the creditors. The arrangement proposals need to be included in the petition. Sanation proceedings allow to conduct an advanced restructuring process of the debtor's assets, obligations, and workforce. The debtor may be deprived of their right to manage their enterprise, but in practice courts tend to allow management supervised by an officer of the court. This type of proceedings is addressed to debtors who are already insolvent, but with a prospect of further business activity after restructuring.



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