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# Poland: Shield 2.0 Tolls Bankruptcy Filings Deadlines, but It Does Not Support Enterprise Restructuring

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On April 9, 2020, the Polish Sejm (lower House of Parliament) passed the Act on special support instruments with regard to the spread of SARS-CoV-2 virus and COVID-19 disease caused by it (the so-called Shield 2.0), featuring much anticipated changes to the deadlines for filing for bankruptcy.

According to the current rules, such applications should be filed within 30 days following the occurrence of the grounds for announcing bankruptcy. Insolvency constitutes such grounds, and is defined as, becoming incapable of meeting due pecuniary liabilities if the delay in fulfilling same exceeds three months. For commercial companies, insolvency also occurs when an entity's liabilities exceed its assets and such state of affairs continues for more than 24 months.

The Act modifies this rule in that the course of the deadline to file a bankruptcy announcement application, referred to in Article 21 of the Bankruptcy Law Act, shall not commence, that which has commenced shall be tolled and the deadline will resume thereafter if:

- Grounds for announcing a debtor's bankruptcy occurred during the state of COVID-19 epidemic hazard or the state of COVID-19 epidemic
- The condition of insolvency occurred due to COVID-19

The 30-day deadline has not been automatically extended, but the legislator has interrupted its course. The 30-day period hitherto in effect will commence once the state of COVID-19 epidemic hazard or the state of COVID-19 epidemic has been lifted (which will also be determined by virtue of a legislative act and which ought to be precisely determinable).

The intention of the statutory tolling of the bankruptcy announcement application deadline is to give entrepreneurs time to take measures to save their operations without the pressure of the impending ramifications of untimely filing the application (chiefly, compensatory and criminal liability of management board members). However, there are concerns that extending the deadline may serve other purposes than those intended by the legislator, particularly that it may encourage fraudulent practices of transferring out assets.

The new regulation has also introduced a presumption that the condition of insolvency has been caused by COVID-19 if it occurred during the state of COVID-19 epidemic hazard or the state of

COVID-19 epidemic. The introduction of such presumption means that a creditor wishing, for instance, to sue a management board member for damages due to company liabilities will have to prove that such creditor's insolvency has been caused by entirely different circumstances than the epidemic.

Matters to acknowledge restructuring applications have been classified as urgent, for the hearing of which a court may be appointed in the event that a common court within the appeal area has ceased its operations (or all courts within the appeal area).

Unfortunately, entrepreneurs who have already had bankruptcy or restructuring procedures instigated will not be able to benefit from the shield. For entrepreneurs, with regard to whom applications in the procedures have been filed, the support granting procedure provided for in the Act will be suspended until they have been finally processed.

This restriction raises the eyebrows of restructuring practitioners because of its harsh treatment of entities which, through restructuring efforts, attempt to save their businesses and do right by their creditors. Paradoxically, despite the legislator's intentions evident from the draft act, the shield in its current shape may adversely affect honest entrepreneurs and favour those escaping debt enforcement.

The Polish version of this article is also available to view online.



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