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**Pre-pack – Great opportunity for creditors,   
debtors and investors in Polish bankruptcy law**

Starting from 1 January 2016, there is an exceptional way of acquiring businesses in crisis in Poland. This opportunity is pre-pack, introduced to Polish law by the Restructuring law, which significantly amended Insolvency law, adding i.a. Articles 56a – 56h, regulating pre-packaged liquidation.

A pre-pack motion can be filed in the Bankruptcy Court together with a motion to declare bankruptcy, but can be also a separate motion, filed either by the debtor in crisis or the personal creditor. What is more, the debtor’s pre-pack motion may be an answer for creditor’s motion to declare bankruptcy.

A mandatory attachment to the pre-pack motion is an expert appraiser’s valuation of the insolvent company. The petitioner should indicate the price and the name of the entity purchasing the company – the investor. It is also possible to attach a draft sale-purchase agreement, which may be affirmed by the Court.

The subject of the pre-pack can be:

1. The enterprise as a whole;
2. A going concern; or
3. Important assets of the enterprise.

The investor can be also an affiliated company, but in such cases the price should be no less than the market value estimated by the expert appraiser appointed by the Court.

My Law Firm advised on several such transactions, including the first pre-pack in Poland (in general, before the Krakow Bankruptcy Court), the first pre-pack with immediate issuance of the enterprise to the investor as well as the first proceeding with direct control of Higher Instance Court (third-party appealed the Bankruptcy Court’s decision, but the appeal was rejected).

The pre-pack is usually a very quick procedure, because it takes only approx. four months from the expert appraiser’s valuation to signing the contract with the trustee of the insolvent company. However, when the appeal is filed, the time may extend to six to nine months (depending however on the occupancy and efficiency of the Higher Court).

There are plenty of advantages of the pre-pack procedure with relation to traditional bankruptcy proceedings when time is a relevant factor, but not only.

The pre-pack is much quicker than a traditional liquidation bankruptcy, because in a traditional bankruptcy, the time-consuming process is claim lodgement together with the possibility to appeal the trustee’s decision regarding the claim of creditor, and afterwards completion of tender to purchase the enterprise as a whole. Sometimes, the complete procedure took even a year or longer after filing the motion to declare bankruptcy.

In such circumstances, it is obvious that the enterprise lost much of its value by the unsure situation of the insolvent company – and an excellent solution is the pre-pack, where there is no tender and the Court approves the sale-purchase conditions at the very beginning of the bankruptcy – together with the decision to declare company insolvent.

The pre-pack is also convenient to the investor because it is connected with the execution sale effect, which means that the purchaser is not responsible for old liabilities of the acquired, insolvent company. What is more, all licenses, permits, approvals and exemptions granted to the bankrupt shall be transferred to the purchaser of the enterprise, unless a law or the decision on granting such license, permit, approval or exemption provides otherwise. Therefore, after finalizing the sale-purchase transaction, the investor may immediately continue business. What is more in the above-mentioned context, complicated due diligence is in practice not required.

Restricted fields and grounds of appeal is also an advantage of the pre-pack in Poland, because the decision on dismissing the application for approval of the terms of the sale-purchase may be appealed against by the applicant and a ruling granting the application – by any creditor, therefore the appellee should enjoy the status of the creditor.

When it comes to the price, it is mandatory for the Court to approve sale-purchase conditions when the price is higher than an amount obtainable in bankruptcy proceedings through liquidation, reduced by costs of proceedings to be incurred in connection with liquidation under that procedure. It is, however, not mandatory for the Court, but it is possible to approve the pre-pack conditions, where the price approximates the amount obtainable in bankruptcy proceedings through liquidation, reduced by costs of proceedings to be incurred in connection with liquidation under such procedure, if this is warranted by an important public interest or if the debtor’s enterprise could be thus preserved. Such circumstances usually occur when there is possibility of safeguarding work places. Usually, such situation is also beneficial to creditors, because they receive payment of their claims quicker than in traditional bankruptcy.

The price estimated by the expert appraiser should be also reduced by the fire sale discount, which can be a relevant factor for investor – especially when concerning purchasing the company.

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