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**Consumer Insolvencies in Poland AD 2020**

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*Introduction*

The bankruptcy of natural persons not conducting economic activity has been in use in Poland since 2009. Initially, the legislation on so-called consumer bankruptcy did not fulfil its purpose. It was mainly because a consumer filing a petition for bankruptcy was obliged to prove that his or her assets were sufficient to cover the costs of proceedings. Also, the so-called “morality threshold” was set too high: the debtor had to prove that he or she had become insolvent by not acting recklessly and negligently (for reasons not attributable to him/her).

In the period from the entry into force of the regulations to their amendment, only about 60 bankruptcy proceedings were conducted against persons not conducting business activity, compared to the overall population of 38 million people in Poland.

The situation improved as a result of changes in the bankruptcy law passed in 2014. The new regulations did not make the possibility of declaring consumer bankruptcy dependent on the consumer having assets to cover the costs of proceedings. This translated into a significant increase in the number of motions to declare consumer bankruptcy and the number of pending proceedings. Just in 2015, 2112 consumer bankruptcies were declared, and in the following years the number of declared bankruptcies increased: 2016 - 4434, 2017 - 5535, 2018 - 6570, 2019 (Jan-Sep) - 5640. It is estimated that by the end of 2019, the number of declared consumer bankruptcies will amount to over 7000.

Despite the increasing number of announced bankruptcies, the Polish legislator decided that the regulations concerning consumer bankruptcy should be further liberalised and the whole procedure should be simplified and shortened. In this way, in a relatively short period, the consumer’s debt will be reduced, which will translate into greater state revenue.[[1]](#footnote-1)

The effect of work on the regulations concerning the so-called consumer bankruptcy is the amendment of the regulations, which will come into force on 24 March 2020. The new regulation introduces many significant changes.

**Purpose of the Procedurę**

The current regulation of bankruptcy law identifies the satisfaction of creditors as the main objective of the proceedings. In practice, this means that the first place in the proceedings is given to the interests of creditors.

After the amendment comes into force, the only purpose of bankruptcy proceedings against consumers is to discharge the debtor. Bankruptcy proceedings will have to be conducted in such a way as to enable the cancellation of the debtor’s obligations not satisfied in the course of bankruptcy proceedings.

**Grounds for declaring Bankruptcy**

Now, the court, when deciding on the motion for declaring consumer bankruptcy, examines the prerequisites for declaring bankruptcy as well as grounds for the discharge. It assesses the debtor’s actions to make him/her insolvent, as well as significantly increasing the degree of insolvency intentionally or as a result of gross negligence. As a result of the Court’s determination of the existence of the above-mentioned circumstances, it is obligatory to dismiss the consumer’s application.

In practice, this regulation was a very frequent basis for rejecting the application. Few consumers could show that they did not fall into the so-called “debt spiral” and that they did not pay some of their obligations with others. Moreover, in view of the steady increase in the number of consumer bankruptcy petitions, some Courts examined in great detail the circumstances presented in the consumer’s petition in order to reject it.

Once the amendment comes to force, it will be impossible for the Court to dismiss the application on the grounds that the consumer has become insolvent or has deliberately or grossly negligently increased his degree of insolvency. The only basis for rejecting the consumer’s application will be the lack of insolvency of the consumer. This is an important change that will enable many consumers whose applications would have been rejected so far to benefit from insolvency proceedings and debt relief.

**Procedure following the Declaration of Bankruptcy**

As for now, the insolvency proceedings as of the bankruptcy judgment do not differ significantly from bankruptcy proceedings conducted for entrepreneurs in terms of the procedure. When the court issues a decision on the declaration of bankruptcy, it appoints a judge-commissioner to supervise the trustee and the proceedings. It sets a deadline for the creditor to file a claim with the judge-commissioner. The trustee, in the course of the proceedings, prepares a list of claims, liquidates the assets of the bankrupt and prepares a plan of division. At the same time, the regulations require the trustee to obtain the consent of the judge-commissioner to perform certain actions, e.g. in the scope of lowering the sale price of an asset included in the bankruptcy estate.

The above regulations have a significant impact on the time of the bankruptcy proceedings. Due to the number of cases pending, the judge-commissioner is not in a position to submit claims to the trustee on an ad hoc basis. He is also not able to consider applications for permission to sell. On the other hand, the receiver cannot prepare a list of receivables without notifications of receivables and, without a list of receivables, cannot prepare a plan for the distribution of funds obtained from the liquidation of the debtor’s assets. As a result, the proceedings cannot be terminated and the consumer cannot be discharged.

After the amendment to the bankruptcy law comes into force, the consumer bankruptcy proceedings are to be significantly shortened. The court will no longer appoint a judge-commissioner and creditors will submit their claims directly to the trustee. The trustee will not draw up a list of receivables, as the amendment generally excludes the application of provisions on drawing up, supplementing and appealing a list of receivables. The claims will be verified by him and taken into account at the stage of preparing the repayment plan.

As regards the choice of the method of liquidation of the components of the bankruptcy estate, the trustee will not need the consent of the judge-commissioner or the council of creditors. The trustee will notify the court and creditors about the choice of the method of liquidation concerning assets exceeding five times the average monthly remuneration in the business sector.

The introduced solutions, due to, for example, shortening the circulation of documents between courts, the trustee and creditors, will significantly shorten the duration of bankruptcy proceedings.

**Analysis of the Debtor’s Attitude at the Stage of Debt Reduction**

The idea behind the introduction of regulation on consumer bankruptcy was to give a second chance to the debtor. After the bankruptcy proceedings, the consumer was to be able to write off his debts. Currently, only a portion of the debtors has the possibility to take advantage of this privilege, as a significant part of motions to declare consumer bankruptcy are rejected.

Under the new regulation, the analysis of a debtor’s attitude at the stage of examining a petition for bankruptcy has been abolished and moved to the stage of examining the possibility of debtor’s debt reduction.

At the stage of determining the creditors’ repayment plan or debt write-off, the Court will verify whether the debtor has caused his/her insolvency or has significantly and purposefully increased the level of his/her indebtedness, in particular by squandering components of assets and purposefully failing to settle mature liabilities. It will also examine whether, within ten years before the date of filing the bankruptcy petition, the debtor was subject to bankruptcy proceedings in which all or part of his/her liabilities were written off.

The results of the analysis of the debtor’s attitude will have an impact on the consumer’s ability to repay, as well as on the period during which the consumer will implement a possible repayment plan. If the Court determines that the debtor has caused its insolvency or significantly increased its degree of insolvency intentionally or as a result of gross negligence, the Court will be obliged to establish a repayment plan for the creditors for a period not shorter than thirty-six months and not longer than eighty-four months, i.e. three to seven years. On the other hand, in the situation of a reliable debtor, the Court will be able to establish a creditors’ repayment plan for a maximum period of 36 months.

Also, the legislation also provides for the cancellation of the debts without a creditor repayment plan in a situation where the debtor is permanently unable to make any payments under the creditor repayment plan**.**

**Harmonisation of Case Law**

The case law on consumer bankruptcy is not uniform. When Polish courts examine the grounds for bankruptcy differently, they assess the same circumstances. For example, courts do not adjudicate uniformly when a debtor enters a spiral of debt due to gambling addiction. Some courts recognise that the indicated circumstance constitutes the basis for mandatory rejection of the application. The above means that depending on the court which will examine the application, it may be assessed in a completely different way.

At present, a consumer whose application is rejected may only file a complaint, which will be examined by the court of second instance. However, if the second instance court upholds the decision on rejection of the application, no provisions are allowing the debtor to appeal against the decision to the Supreme Court. This situation affects discrepancies in the assessment of circumstances constituting obligatory grounds for dismissing the petition for bankruptcy.

The introduced provisions are intended to change this situation. The court, when considering the petition to declare bankruptcy, will not declare the consumer bankrupt, only if it comes to the conclusion that the consumer is solvent. On the other hand, moral issues of a debtor will be assessed by the Court at the stage of determining the repayment and redemption plan. The above solution will enable the debtor to file a cassation appeal with the Supreme Court, which will be able to identify irregularities in the interpretation of the regulations by the courts of first and second instance. The aforementioned regulation should, therefore, contribute to the unification of jurisprudence in the area of consumer bankruptcy.

1. At present, many consumers in bankruptcy proceedings are employed based on minimum wage contracts, despite much higher qualifications and earning opportunities. The reason for this is that obtaining higher wages does not translate directly into an amount released from execution, with any funds above the minimum wage being used to satisfy creditors. [↑](#footnote-ref-1)