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**Simplified Restructuring Proceedings in Poland: Risks for Creditors**

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*Introduction*

As a result of the COVID-19 outbreak, a new type of restructuring procedure was introduced in Poland: the “simplified restructuring procedure” (SRP), which, in principle, corresponds to the “scheme of arrangement” known to English law. There are, however, material nuances of the new regulations, which may have a negative impact on the rights of the foreign creditors. In this article, we provide also the most important solutions which foreign creditors can use to defend their interests.

A special feature of the new regulation is its temporary nature, which has been tied to the anticipated duration of the impact of the pandemic. As such, simplified restructuring procedures can be initiated as of 24 June 2020 (date of the entry of the new regulation into force) till 30 June 2021.

*SRP – What does it mean?*

The simplified restructuring procedure assumes that the restructuring is carried out with limited participation by the court, but under the supervision of a restructuring advisor chosen by the debtor. On the basis of an agreement that has been concluded, the arrangement administrator controls the activities of the debtor and ensures an efficient and compliant course of proceedings. The debtor, together with the arrangement administrator, will prepare arrangement proposals and conduct the process of collecting creditors’ votes. The commencement of simplified restructuring proceedings requires an announcement to be placed in the Polish nation-wide Official Journal: The *Monitor Sądowy i Gospodarczy* (MSiG).

The sequence of the SRP involves the following steps:

1. Conclusion of an agreement with a restructuring advisor acting as an administrator of the arrangement;
2. Appointment of an arrangement day (only claims arising prior to the arrangement day will be subject to restructuring);
3. Publication in the MSiG of the initiation of restructuring: the date of publication of the announcement is the date of commencement of proceedings;
4. Preparation of the arrangement proposals, conducting creditors' voting procedure and (in the case of acceptance of the arrangement) filing a motion for approval of the arrangement: if no motion for approval of the arrangement is filed within 4 months from the date of the announcement, the proceeding is discontinued by virtue of the law;
5. Approval of the arrangement by the court – with the court’s decision capable of being appealed; and
6. Effective performance of the arrangement after approval by the court.

The pre-condition for effective carrying out of the simplified restructuring procedure is approval of the arrangement by the restructuring court. Refusal to approve the arrangement means the failure of the simplified restructuring procedure.

*Key Effects of the SRP*

The following are the key effects of opening an SRP process:

1. **Protection from Enforcement Proceedings and of Court-ordered Injunction Proceedings**

As of the date of publication of the announcement, the initiation of enforcement proceedings and execution of any decision to grant an injunction becomes inadmissible. The protection for the debtor lasts until the completion of the restructuring proceedings or its discontinuance, which takes place if no application for approval of the arrangement is filed within 4 months from the date of publication.

1. **Significance of the Arrangement Day**

The arrangement day may not fall earlier than 7 days before the filing of the application for publication of an announcement in the MSiG and no later than 7 days after its filing. The arrangement day determines the extent of the claims to be restructured. Claims arising after the composition date should be paid by the debtor in a timely manner.

1. **Limitations on the Termination of Certain Agreements**

As of the date of publication of the announcement, the debtor is protected (with certain limitations) against the termination of, *inter alia*, a tenancy, loan, lease, property insurance or bank account agreements, sureties, guarantees or letters of credit.

1. **Limitations on the Debtor’s Actions**

In the course of simplified restructuring proceedings, the debtor is restricted in its right to manage its assets. From the date of publication of the announcement, the debtor may only perform ordinary management actions, while, for actions exceeding the scope of ordinary management, the consent of the arrangement administrator is required.

1. **The Inclusion of Claims secured on Property within the Arrangement**

It is not necessary to grant consent for claims secured on property to be included in the arrangement, if the arrangement proposals provide for full satisfaction of the claims (principal and ancillary claims) or satisfaction to a degree not lower than what the creditor could obtain from the collateral. The *in rem* creditors do not have to vote “in favour” of the arrangement, but they may be outvoted by other creditors (which does not happen in a “standard” restructuring scenario).

1. **Rules on Adoption of the SRP Arrangement**

Pursuant to the general rules of procedure for adoption of the arrangement, the debtor may collect votes by correspondence on ballot papers, the draft of which has been determined by virtue of the law. The new regulations also allow for voting on the arrangement at a creditors’ meeting (instead of or in addition to collecting votes by correspondence). Voting at a creditors’ meeting may be carried out using electronic means of communication, in particular real-time transmission. A personal majority (more than half of the creditors) and a capital majority (at least 2/3 of all claims) are required to adopt the arrangement. The adoption of the arrangement is stated by the administrator in the report.

*Notable Risks for Foreign Creditors*

Amongst other risks that can be envisaged, we think that an SRP conducted by a debtor based in Poland may give rise to the following problems for foreign creditors:

1. The risk of ineffective termination of the agreement by the landlord, lender, lessor, insurer or licensor, based abroad, where the other party to the agreement has in the meantime publicized the opening of the SRP in the MSiG (permission of the administrator of the arrangement is required for termination in such a case), even if it concerns, for example, real estate outside Poland, which is rented by a Polish company undergoing the SRP process;
2. The reduced capabilities for foreign creditors to comply with the effects of announcements in the MSiG: a problem for creditors without continuous access to the database of announcements in MSiG;
3. The automatic suspension of enforcement and execution of court-ordered injunctions: the law provides for suspension of such proceedings, including where they involve a foreign judgment or a court decision on an injunction;
4. The possibility for inclusion of claims secured on the debtor’s property in the arrangement agreement without the knowledge of a foreign creditor: foreign *in rem* creditors may be surprised (having received ballot papers) that they are included in the arrangement and may be voted out of it;
5. The possibility for collusion between some of local creditors and the debtor;
6. The right of the debtor to freely choose the date of arrangement, which determines the extent of claims to be restructured;
7. The limited liability of the debtor for opening an SRP even in bad faith; and
8. The limited responsibility of the arrangement administrator for the failure of SPR proceedings – as a result of improper supervision of the debtor’s activity.

*Conclusion*

On balance, despite the risks associated with the SRP for a foreign creditor, the utility of the procedure, particularly given the ongoing pandemic, during which it will be available, is undoubtedly recognisable for debtors. It remains only for foreign creditors to be vigilant in respect of the risks and impact on secured collateral and contractual termination clauses.