

Insolvency and Restructuring of Pandemic-affected Businesses

Liquidity and access to cash are in all probability the main challenges facing businesses affected by the Covid-19 pandemic. Many businesses may have become technically insolvent or are on the verge of bankruptcy. In consequence, company directors must also consider their duties to timely file for bankruptcy.

In this context, the so-called Anti-Crisis Shield 2.0, which entered into force on 18 April 2020, finally relaxed insolvency rules with respect to insolvency-filing time limits. It also introduced measures intended to secure the continuous handling of restructuring matters by courts:

- The statutory time limit for debtors to file a petition for bankruptcy does not begin to run or is suspended if the grounds for bankruptcy have arisen during a state of epidemic threat or actual epidemic announced due to Covid-19, and – furthermore – the insolvency was caused by Covid-19. Once the restrictions are lifted, such time limits will begin to run anew.
- If a business becomes insolvent during a state of epidemic threat or actual epidemic announced due to Covid-19, it will be presumed that its insolvency was caused by Covid-19.
- Applications for opening restructuring proceedings are to be examined by courts as ‘urgent’. This means that they will be examined even if the competent court is temporarily closed due to the epidemic. This is important as the effects of restructuring proceedings that are crucial from the perspective of businesses (most notably – avoiding board member liability) materialise only upon the opening of such proceedings rather than upon relevant applications being filed.

The above solution offers considerable relief for company directors who are experiencing financial difficulties as a consequence of Covid-19. Directors may focus mainly on restoring balance to their organisations. Businesses which do not yet qualify for bankruptcy may apply for State financial relief offered under the Anti-Crisis Shield 2.0. The availability of some support schemes is pending approval by the EU, but once in place, it should offer significant relief for distressed businesses. For details see [here](#).

The Anti-Crisis Shield 2.0 does not make any funds available for the specific purpose of financing restructuring procedures including professional turn-around advice.

However, the respective draft Act on State Support for the Purpose of Rescuing and Restructuring Businesses was tabled with the Speaker of the Polish Lower House of Parliament (*Sejm*) on 26 March 2020 and we may expect it to be processed soon. According to the draft, businesses in distress, including ones meeting criteria for bankruptcy, will be eligible for three types of state-financed support: (a) rescue packages, (b) provisional restructuring funding and (c) restructuring support. Once passed and implemented, the new regulation will further facilitate turn-around exercises of Poland-based businesses.

In summary, having been offered some extra time before being obliged to file for bankruptcy, businesses should explore all available restructuring options. Firstly, businesses should negotiate with financing banks as part of soft restructuring efforts (credit holidays, standstill agreements, mezzanine financing) which is especially recommendable in the case of SPVs holding real property-based assets. Then they should reach out to shareholders and potential investors. Finally, it is important to consider one of the four voluntary, court-supervised restructuring mechanisms available in Poland: (i) pre-pack deals, (ii) expedited arrangements, (iii) arrangements, and (iv) remedial proceedings.

Contact

Daniel Klementewicz, Adwokat / Partner
daniel.klementewicz@penteris.com, +48 664 003 923