

Tackling rising consumer insolvency in Poland

Pawel Kuglarz writes on consumer insolvency in Poland following his presentation at the recent EECC Conference in Riga



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For several years, consumer bankruptcy in Poland has been increasing. In our country, this instrument is still failing because it allows solving the debt problem for a small number of people.

In 2017, 5,535 people were delinquent, in 2016 only 4,436 people (out of 8694 applications filed for bankruptcy). In previous years, it was even worse (only 32 bankruptcies in 2014). Considering the number of applications submitted so far in 2018, a dramatic increase in the number of declared consumer bankruptcies can be expected next year.

In Canada, comparable to Poland in terms of population, annually ca. proceedings related to consumer insolvency more than 100,000, in the US - over 700,000, in France - about 200,000, in England and Wales - about 90,000, in Germany - about 100,000. The present state is still a drop in the ocean of needs, because 1.8 million Polish citizens have debts in the amount of 25,000,000,000 PLN

Personal scope

Consumer insolvency is dedicated to natural persons not engaged in economic activities. Former business activity does not exclude the debtor from filing for consumer bankruptcy. Consumer bankruptcy is also available to natural persons who used to be entrepreneurs, if less than one year has passed from the day of their cancelling their registration in a relevant register.

The debtor is insolvent if he does not perform his due

obligations. There is a presumption that the debtor does not perform his due obligations if he is late more than three months. There is an additional prerequisite for legal persons – over-indebtedness: a state of excessive indebtedness can form the basis for a declaration of bankruptcy only when it lasts more than 24 months.

Negative grounds (exclusions)

There are some restrictions in accessing to consumer bankruptcy proceedings in Poland, based on the concept of a “deserving debtor”. Most of them can be waived in case of compelling equity or humanitarian grounds.

First and foremost, the court rejects the debtor’s or the creditor’s petition for bankruptcy if the debtor has caused insolvency or significantly increased its extent intentionally, or as a result of gross negligence. The above restrictions can be waived by the court if the interest of justice or humanitarian grounds justify the opening of proceedings.

Costs of proceedings

The debtor is charged PLN 30 (8 Euro) when filling a petition. If the assets of an insolvent debtor are not sufficient to cover the costs of proceedings, the costs can be temporarily covered by the State Treasury. If the court cancels the bankrupt’s debts without arranging the repayment plan for the creditors, the costs of the bankruptcy proceedings covered by the State Treasury will be waived.

Legal framework

The proceedings initiated as a result of a debtor’s petition

Consumer bankruptcy involves a sale of the debtor’s assets in ordinary bankruptcy proceedings and subsequent adoption and realisation of a payment plan over a period of up to three years (extendable by a further 18 months). Discharge is also possible without liquidation or without a repayment plan. The debtor loses his or her right to administer, use and dispose of the assets. There is a possibility of concluding an arrangement with creditors.

The proceedings initiated as a result of a creditor’s petition

In principle, consumer bankruptcy involves only the liquidation of the assets of the bankrupt and the satisfaction of the creditors. Debt cancellation is only available if the debtor’s insolvency is not intentional or due to gross negligence. There is still a possibility of concluding an arrangement with creditor.

Special regulations regarding the residential premises

The receiver may authorise the debtor to sell the movables included in the bankruptcy estate. If an apartment or a house where the debtor has lived is included in the bankruptcy estate, and the debtor and his dependents have no other housing available, the debtor is entitled to a housing allowance from the proceeds of the sale of his apartment or house, in an amount equivalent to the average rent of a residential apartment in the same or a neighbouring locality, for 12 to 24 months, to be specified by the judge-commissioner.



A DRAMATIC INCREASE IN THE NUMBER OF DECLARED CONSUMER BANKRUPTCIES CAN BE EXPECTED NEXT YEAR



Problems

The last amendment of consumer bankruptcy replaced previous provisions criticised for their inefficiency on 31 December 2014. The new regulation liberalised access criteria and introduced State financing for debtors with insufficient assets to pay for the costs of the proceedings. But new problems appeared.

One of the biggest problems currently faced by Polish bankruptcy courts is the number of consumer bankruptcies that overwhelms their organisational capabilities, and this causes a significant delay in the treatment of company bankruptcy because:

- there are not enough insolvency courts;
- the insolvency courts are too charged with consumer bankruptcy cases;
- insolvency proceedings take very long; and
- there is no Central Insolvency Register.

From February 1, 2018, it was planned to launch an electronic Central Restructuring and Bankruptcy Register (Central Insolvency Register) which was to streamline the proceedings. There is simplified version of the registry - the National Register of Indebted Persons (hereinafter: KRZ), but KRZ cannot replace the Central Insolvency Register. Poland unfortunately did not establish such a register, although she was obliged to do so till 26 June 2018.

The Ministry of Justice has just presented a draft of a new law liberalising these proceedings.

The new liberalisation project

The proposal wakes hopes and doubts. The positive side is that the new project provides for a prepared liquidation (the so-called pre-pack) in consumer bankruptcy. The project assumes that the essential assets of the bankrupt consumer can be sold already at the start of the consumer bankruptcy proceedings, which will allow even



faster acceleration of this procedure. For the pre-pack the debtor or the creditor can equally apply. The applicant has to submit the valuation of the debtor's assets under the form of a report prepared by a person entered on the list of court experts, the draft of the sale contract, including the price proposal by the investor and the name of the buyer. After two years Poland already has a positive experience with the pre-pack procedure.

The second main change is very controversial.

There are no preconditions for the discharge of any debtor, even if the debtor caused insolvency or significantly increased its extent intentionally or as a result of gross negligence.

As we know, a debtor is considered insolvent if he does not perform his due financial obligations and there is a presumption that debtor does not perform his due financial obligations, if he is late by more than 3 months.

These solutions are similar to those successfully operated, e.g. in the United Kingdom, where the causes of insolvency are not even examined.

The debtor will be able to enter an arrangement with the creditor without declaring bankruptcy, outside the court, with the participation of a licensed restructuring advisor, who will ensure that the arrangement is executed in this way.



AFTER TWO YEARS POLAND ALREADY HAS A POSITIVE EXPERIENCE WITH THE PRE-PACK PROCEDURE



It is planned to introduce four to eight years' repayment plans, depending on the degree of fault in bringing about the insolvency. Improper pre-insolvency behavior will still allow the debtor to declare bankruptcy, but it will extend the repayment plan. The commitments that cannot be repaid because of illness, accidents or death will be included in the repayment plan for up to 3 years and the remaining part of the debt will be written off.

It is not clear, if the new consumer insolvency will extend the grounds of the declaring of the bankruptcy (debts in francs) and introduce the possibility of exempting a natural person from declaring bankruptcy if he or she has no property or income (e.g., is supported by family members). For such people, there is neither liquidation phase, nor repayment plan.

The liberalisation should help consumers, but the result can be the opposite. The banks and other financial institutions can demand additional securities, e.g. land mortgage, privileged in insolvency. The change that even grossly negligent, dishonest consumers can be discharged would not be fair to honest consumers. There is a saying in Polish: "the operation was successful, but the patient is dead". ■

