

PRESS RELEASE

POSTPONING RESTRUCTURING UNTIL AFTER THE PANDEMIC THREATENS CREDITORS AND THE ECONOMY AS A WHOLE

Warsaw, 25 May 2020 – Postponing the obligation to file for bankruptcy for a period after the outbreak has been declared may be abused. There is a serious risk that an unreliable debtor in the insolvency zone will use the extra time to siphon assets outside a company. In the long run, this type of activity will result in huge payment bottlenecks and a wave of bankruptcies, meaning the losses to creditors. "The lack of solutions to encourage restructuring will hit companies which should react now before it is too late to recover," – warns Lech Giliciński, partner and head of the Restructuring, Insolvency and Distressed Assets practice at the Wolf Theiss Warsaw office.

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The latest data of the Central Economic Information Centre (COIG) shows the limited activity of courts and the possibility introduced in the anti-crisis shield legislation to withhold a motion to declare bankruptcy resulted in the smallest monthly number of bankruptcies ever. There were only 34 bankruptcies and 26 restructuring proceedings in April. For comparison, a year earlier, 42 bankruptcies were declared, while 35 applications for restructuring proceedings were filed¹.

"The bankruptcy filing grace period offered to companies in the anti-crisis shield, apart from releasing the debtors' boards from liability for not submitting applications, will not have a long-term positive effect, or even a negative effect on creditors. Postponing the obligation to declare bankruptcy will make it easier for dishonest managers to transfer or hide assets, which will make subsequent restructuring or liquidation sale in bankruptcy ineffective or even impossible due to a lack of available assets," says Lech Giliciński from Wolf Theiss.

As experts point out, delays in the recovery of claims, among others due to the impossibility of obtaining an order for payment, already reaching several months.

"The government has started to work on a simplified restructuring procedure. Could the current situation be changed by its introduction? Much will depend on adequate safeguards for creditors' rights, however we are unable to make an in-depth assessment until the bill is published. We can imagine that within 30 days after the state of the epidemic is repealed, the courts will be flooded with an avalanche of bankruptcy applications, which will end in the liquidation of companies. Therefore, such a solution seems to be directionally correct, unless it is used for the fraudulent removal of assets. It is partly consistent with the proposals of the Polish Association of Restructuring Practitioners (Stowarzyszenie Praktyków Restrukturyzacji, SPR) for greater use of restructuring processes," adds Giliciński. However, SPR proposed to release from the liability for not filing a

¹ <https://www.coig.com.pl/lista-upadlosci-firm.php>

bankruptcy petition only if the debtor applied for the opening of restructuring proceedings or started proceedings to approve an arrangement. In return, a company with financial problems could count on obtaining protection against creditors.

"Many companies are neglecting the solutions that should be put in place at internal level to strengthen the recovery of debts for the sale of their goods and services. Such enhanced protection becomes a necessity should there be unforeseen circumstances disrupting the liquidity of settlements, especially for companies with deferred payment transactions. One of the first signs of trouble is when debtors cease communication or actively avoid contact with a creditor. Unreliable counterparties can exploit their privileged position. It is common to transfer the assets of a company losing liquidity to another entity, or satisfy only selected creditors, but these actions can be penalized under Article 300 or Article 302 of the Penal Code. It should be remembered that, despite the state of the epidemic, creditors still have the possibility of filing an application for bankruptcy of their counterparty or opening deep reform restructuring proceedings, and in justified cases, of filing a notice of suspicion of a crime," – notes Arkadiusz Matusiak, former prosecutor, and currently head of the White-Collar Crime team at Wolf Theiss Warsaw.

KUKE S.A., a transaction insurer from the Polish Development Fund (Polski Fundusz Rozwoju) group, already points out that the deadlines for settling liabilities in almost all sectors have been significantly extended². In 2012, the crisis hit construction companies in particular, which resulted in more than 800 bankruptcies in the same year, and the same number in 2013. Later, the number gradually decreased to reach 'merely' 586 bankruptcies in 2019³. In the current situation, many sectors are at risk. There may be a unprecedented wave of company closures in the near future.

ABOUT WOLF THEISS

Wolf Theiss is one of the leading European law firms in Central, Eastern and South-Eastern Europe with a focus on international business law. With 340 lawyers in 13 offices located in Albania, Austria, Bosnia and Herzegovina, Bulgaria, Croatia, Czech Republic, Hungary, Poland, Romania, Serbia, Slovakia, Slovenia and Ukraine, Wolf Theiss represents local and international industrial, trade and service companies, as well as banks and insurance companies. Combining law and business, Wolf Theiss develops comprehensive and constructive solutions on the basis of legal, fiscal and business know-how.

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² https://www.kuke.com.pl/download/gfx/kuke/pl/defaultaktualnosci/132/49/1/upadlosci_marzec_2020.pdf

³ <https://www.coig.com.pl/lista-upadlosci-firm.php>