

## PRESS RELEASE

## CHANGES IN RESTRUCTURING MAY IMPACT THE BANKING SECTOR

**Warsaw, 18 September 2020 – The regulations contained in Poland's anti-crisis shield 4.0 will facilitate the restructuring of some companies, but may also adversely affect the banking sector, notes Lech Giliciński, Partner and head of the restructuring, insolvency and distressed investments team at the Wolf Theiss office in Poland.**

The new regulations concerning approval of arrangement in the so-called simplified restructuring procedure were introduced for 12 months, i.e. until 30 June next year. They assume, among others, that debtors will be able to obtain protection on the basis of their statement published in Monitor Sądowy i Gospodarczy (MSiG). In order to start the procedure, it will be necessary to conclude an agreement with a restructuring advisor that will supervise the arrangement. The new procedure may also involve a cram-down of secured debt, for example bank loans, which may pose a considerable challenge for the banks.

This procedure is intended to ease the burden on the courts. Even before the declaration of state of pandemic, some applications had to wait several months to be recognised. "Almost 470 restructuring proceedings were opened last year. Assuming that in 2020 this number may double or even triple, with 1500 active licences of restructuring advisers, the new regulations should improve the process of opening restructuring proceedings itself. Of course, assuming that the publication in the MSiG will take place without any delay," indicates Joanna Gąsowski, licensed restructuring advisor and counsel at Wolf Theiss.

The restructuring mandates under the new regulations will be most suitable for the restructuring advisors with track record in previous restructuring projects and transactions in distressed assets whose pool in the market is limited. "A restructuring advisor should not only have a purely supervisory function over the activities of the debtor, but also, as the name itself indicates – an advisory function – with regard to the consequences of opening such proceedings or any possible attempt by the debtor to transfer assets to another entity or to take other actions to the detriment of creditors. Few entrepreneurs may be aware that once the information on the opening of proceedings for the approval of an arrangement is published by the Ministry of Economy, there is a certain risk of losing the right to apply for government assistance or a risk of having to repatriate funds already received. This is the case, among others, with subsidies from the Polish Development Fund," adds Joanna Gąsowski.

In July 2020, 62 corporate bankruptcies were revealed in the MSiG. For comparison, the year before, their number amounted to 46. [391 insolvencies have been declared since the beginning of 2020, while between January and July 2019, 351 bankruptcies were declared.](#)

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296 restructuring proceedings were also initiated in 2020 until the end of July. The record in this respect was just July, when 71 such proceedings were initiated. According to the Central Economic Information Centre, in July 2020, 30 entrepreneurs relied on the simplified proceedings for the approval of the arrangement introduced under the anti-crisis shield 4.0, which contributed to the record result.

"At this point we do not yet see the impact of the pandemic on the number of company bankruptcies and restructuring proceedings. Many entities have received state support and have survived the worst period. However, the money is running out, and a wave of bankruptcies and restructurings is expected in the autumn and winter. The biggest chances for survival are for large entities, which can save themselves at the expense of their subcontractors or suppliers. When a debtor pays for the services of the supervisor of the arrangement, and it is the debtor who decides with whom he will conclude the contract, the position of the creditors is weaker," notes Giliciński.

Signals from the banking community indicate that the degree of seniority of the debt, as well as the potential cram-down of secured debt in the arrangements, may adversely affect the whole banking sector. Nine business organisations that are part of the Entrepreneurship Council have criticised the regulations. The Polish Bank Association announced that it will offer companies additional restructuring tools and warns that the portfolio of non-performing loans may triple within 2.5 years, which means an increase in lost loans to a record value of PLN 150 billion.

"The situation is very serious, and we have a fundamental change of rules of playground for at least a year. In difficult situations, on the verge of bankruptcy, the priority should be to repair the company, preserve jobs or the production of goods and services. It is often necessary to make difficult decisions, for example, to sell assets to a new investor or to separate parts of the company. Time will show whether the protection of the debtor in a simplified restructuring procedure was not excessive. On the other hand, it will also open new opportunities for investors interested in taking over and acquiring distressed assets," concludes Lech Giliciński.

## 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 countries, over 80% of the firm's work involves cross-border representation of international clients. Combining expertise in law and business, Wolf Theiss develops innovative solutions that integrate legal, financial and business know-how.

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