

International Insolvency Law

15. Polish international insolvency law provisions applicable in non-EU cases

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Scope of application

- ▶ provisions of Polish international insolvency law apply only outside the scope of application of EU law:
 - in proceedings with COMI outside the EU or in Denmark (results from the scope of application of the EIR)
 - to effects of Polish proceedings outside the EU or in Denmark (effectively to the extent allowed by local law)

General structure of Polish insolvency law

- ▶ **Bankruptcy Law of 28 February 2003** (*Prawo upadłościowe*): **bankruptcy proceedings** (*postępowanie upadłościowe*)
 - aimed at winding up of the debtor's enterprise and satisfaction of creditors (→ see traditional functions of bankruptcy) but restructuring also possible in some cases
- ▶ **Restructuring Law of 15 May 2015** (*Prawo restrukturyzacyjne*): **4 restructuring proceedings** (*postępowania restrukturyzacyjne*), aimed at restructuring the debtor:
 - arrangement approval proceedings (*postępowanie o zatwierdzenie układu*);
 - fast arrangement proceedings (*przyspieszone postępowanie układowe*);
 - arrangement proceedings (*postępowanie układowe*);
 - reorganization proceedings (*postępowanie sanacyjne*)

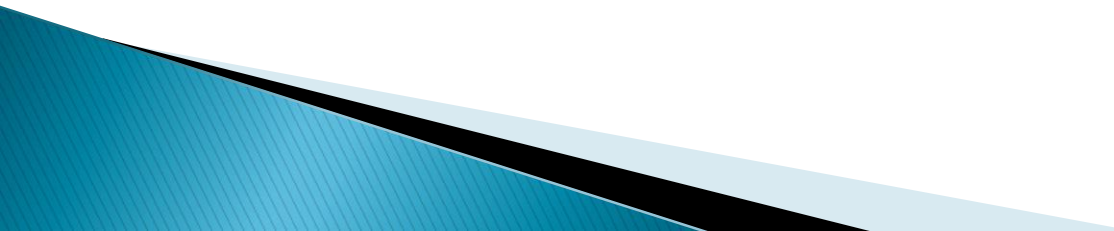
Structure of Polish provisions on international insolvency

- ▶ after the 2015 reform: division between restructuring and bankruptcy proceedings causes a problem for the regulation of international insolvency, as both types of proceedings are considered insolvency proceedings for the purposes of conflict-of-law rules
- ▶ solution: a narrow regulation for restructuring proceedings (Art. 338–348 of the Restructuring Law), covering only international aspects of Polish restructuring proceedings
- ▶ a comprehensive regulation in the Bankruptcy Law (Art. 378–417 BL), covering also recognition and effectiveness of foreign insolvency proceedings in Poland
- ▶ modelled on the 1997 UNCITRAL Model Law but not an exact implementation; changes from 2015 take changes introduced by the recast EIR into regard

Regulation in the Restructuring Law

- ▶ rights of foreign creditors
 - equal treatment (Art. 339 RL)
 - mandatory representative for deliveries in Poland (Art. 340 RL)
- ▶ jurisdiction of Polish courts (Art. 342 RL)
 - COMI in Poland → exclusive jurisdiction [the EIR applies anyway in such cases]
 - business activity, residence or seat, or assets in Poland [cf. 'establishment' under the EIR] → joint jurisdiction, grounds for opening territorial proceedings in Poland
- ▶ cooperation and exchange of information with foreign courts and insolvency practitioners (Art. 345–348 RL)

Regulation in Bankruptcy Law

- ▶ jurisdiction of Polish courts
 - ▶ recognition of decisions opening foreign proceedings
 - ▶ law applicable
 - ▶ secondary proceedings in Poland
 - ▶ rights of foreign creditors
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Jurisdiction of Polish courts

- COMI in Poland → exclusive jurisdiction (Art. 382(1) BL) [EIR applies anyway in such cases] → COMI defined in line with the EIR (Art. 19(1a) - 1(c) BL)
- business activity, residence or seat, or assets in Poland (Art. 382(2) BL) [cf. 'establishment' under the EIR] → joint jurisdiction, grounds for opening ancillary (territorial) proceedings in Poland
- Contractual arrangements over jurisdiction are not effective (Art. 383 BL) → provisions on jurisdiction are mandatory (similarly to the EIR)

Recognition of foreign proceedings

- ▶ exact technical term: recognition of the decision opening foreign proceedings, but effects are extended to the entire proceedings (Art. 394 BL)
- ▶ on request of the foreign administrator (insolvency practitioner) or of the debtor-in-possession to the Polish bankruptcy court (Art. 386 BL)
- ▶ proceedings broadly corresponding to the request for the opening of bankruptcy proceedings
- ▶ an advance for costs of the proceedings of ca. 5100 PLN to be paid by the requesting party (Art. 386(6) BL)
- ▶ temporary measures to secure the estate are possible (Art. 390 BL)

Recognition of foreign proceedings

- ▶ narrow grounds for refusing recognition of foreign proceedings (Art. 392 BL):
 - exclusive jurisdiction of Polish courts
 - public policy clause (fundamental rules of the legal order in Poland)
- ▶ decision on recognition of foreign proceedings includes a call to the creditors to submit claims (Art. 393(2) BL)
- ▶ a temporary court supervisor is appointed for protection of local interests until secondary proceedings are opened or validly refused (Art. 393a BL)
- ▶ effects similar to the opening of bankruptcy proceedings: divestment of the debtor (Art. 397(1) BL)
- ▶ coordination in case of recognition of multiple proceedings against the same debtor (Art. 417 BL)

Law applicable

Polish law applies to:

- effects of the recognition of foreign insolvency proceedings on pending court, enforcement, administrative or arbitration proceedings and the possibility of initiation of new proceedings against the debtor; the nature of foreign proceedings (winding-up or restructuring) to be taken into regard (Art. 397(1) BL)
- composition of the of the estate in Poland and its liquidation (Art. 401 BL) – liquidation plan to be approved by Polish court; liquidation according to other rules may be approved subject to the public policy clause
- effects on estate located in Poland and on obligations originated or to be performed in Poland (Art. 403(1) BL)
- rules on legal acts detrimental to the creditors concerning assets located in Poland (Art. 403(2) BL)
- satisfaction of creditors secured by rights in rem on assets located in Poland (Art. 404 BL)

Secondary proceedings in Poland

- ▶ opened if foreign main proceedings have been recognised (Art. 405 BL)
- ▶ subsequent secondary proceedings (Art. 406 BL)
- ▶ opened on request of creditors (Art. 407):
 - with residence, seat or COMI in Poland;
 - with claims resulting from the debtor's economic activity in Poland
 - with claims secured with rights in rem on assets located in Poland
- ▶ rebuttable presumption of insolvency of the debtor (Art. 408 BL)

Secondary proceedings in Poland

- ▶ in case of an arrangement in foreign main proceedings, Polish creditors vote on recognition of the foreign arrangement in Poland (Art. 410a – 410b BL)
- ▶ in case of liquidation, any surplus remaining in Polish secondary proceedings is to be transferred to the main proceedings (Art. 412 BL)

Rights of foreign creditors

- ▶ equal rights (Art. 380(1) BL)
- ▶ mandatory representative for deliveries in Poland (Art. 380(2) and (3) BL)
- ▶ foreign public law claims:
 - satisfied in Polish proceedings only if enforceable in Poland under general rules
 - in 2nd category (for general claims)
 - exception: fines and monetary penalties – 3rd category (subordinated claims)