

Polish Law Update: Personal Bankruptcy Now Available in Poland

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Effective March 31, 2009, the Polish government has amended its bankruptcy laws to allow, for the first time, individuals to file for personal bankruptcy protection. The new statute, passed by the Polish legislature on December 5, 2008, extends the protections of bankruptcy proceedings to private individuals. Prior to this amendment to the bankruptcy code, only business entities were eligible to file for bankruptcy protection under Polish law to restructure their operations.

The new law presents a significant shift in the Polish legislation towards favoring court assistance in the payment of some individual liabilities, but the procedure remains very strict and is not available to everyone. The new statute allows individuals to file for personal bankruptcy only in extraordinary circumstances that are beyond their control, such as unexpected illness, loss of employment or theft. Individuals who lose their property due to alcoholism or other addictions are not eligible to file for bankruptcy protection, as is likewise the case for those who were terminated from employment "for cause" or by way of settlement with their employer. Debtors who have taken on additional liabilities while "insolvent" are also not eligible to file for personal bankruptcy. A debtor may file for personal bankruptcy only once in every ten years.

Under the new procedures for personal bankruptcy cases, the bankruptcy court determines what portion of the debtor's personal wealth should be sold before eliminating the debtor's other liabilities pursuant to a plan approved by the court. The amount, frequency and type of payments will all be decided by the court. The debtor will be required to make the necessary arrangements to carry out the plan. Typically, courts will mandate that a debtor sell his property, such as his or her house or vehicle, to pay for a portion of his or her debt. Debtors are also typically given a certain period of time, not to exceed five years, to pay off their liabilities. During that time, the debtor will not be permitted to take additional credit or buy goods on an installment basis.

In addition, a debtor filing for personal bankruptcy in Poland is now required to submit monthly statements to the bankruptcy court handling the case, which must include information as to the debtor's salary and any expensive purchases made by the debtor. Failure to disclose any requested information would result in dismissal of the bankruptcy proceedings. Courts will work with tax authorities to examine the debtor's filings in order to ensure proper reporting.

The court mandated repayment plan will not affect the obligations of any guarantors of a debtor's debt; creditors will still be able to pursue claims against guarantors to cover the amounts not paid under the repayment plan. The court approved repayment plan can be amended by the court at the debtor's or a creditor's motion, especially if the debtor's financial circumstances change.

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