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LOAN AND SECURITY AGREEMENTS IN LIGHT OF THE BANKRUPTCY LAW REFORM

On 15 May 2015, the Polish Sejm adopted a new Restructuring Law (the "Law"), which is now expected to enter into effect on 1 January 2016. It is not only intended to revolutionise restructuring options for Polish companies facing financial difficulties, but will also substantially modify the currently applicable legal provisions on bankruptcy, i.e. the Bankruptcy and Reorganisation Law from 28 February 2003 (the "BRL").

The aim of this newsletter is to indicate only those modifications of the BRL that are likely to affect the contents of loan and security agreements, and more specifically the scope of rights and obligations of creditors and debtors. Given that the scope of this document is limited, and we only wish to announce certain modifications, below we present the most important, in our view, of the adopted solutions.

LIMITATION OF EVENTS OF DEFAULT

The Law invalidates any contractual provisions that stipulate the change or termination of a legal relationship upon a party filing for bankruptcy (to date the provision applied only upon being declared bankrupt). This means that filing for bankruptcy can no longer be considered a breach of a loan agreement resulting in the termination of the loan agreement. Simply stipulating this event as automatic grounds for terminating a loan agreement is invalid (amended Article 83 of the BRL).

ASSIGNMENTS OF SECURITY

An agreement on the assignment of future receivables as security can only be concluded with a certified date. A failure to maintain this form when concluding agreements on an assignment that takes place less than six months before the bankruptcy will result in the ineffectiveness of future receivables assignment agreement with respect to the bankruptcy (new Article 128a of the BRL).

INFORMATION OBLIGATION

An excerpt from the newly launched Central Bankruptcy and Reorganisation Register should now be among the documents required as a condition precedent.

WHAT TO DO WITH A GUARANTEE DEPOSIT?

The Law amends Article 98 of the BRL (by adding a new section 1c), which will now state that the receiver has the right to terminate non-reciprocal agreements. In effect (as underlined in the explanatory memorandum to the Law), a guarantee deposit is now returned to the bankruptcy estate, and guarantee claims will be met through raising claims to the estate. It will only be possible to withdraw from an agreement only with the permission of the judge commissioner. This may be important both for assignments of security, the object of which is a claim to the guarantee deposit, and guarantee deposits (hedging) issued by the debtors of banks.

NEW FINANCING DURING REORGANISATION

The Law also sets out that, if the attempted reorganisation proves unsuccessful and bankruptcy is declared, all credit and loan facilities, along with other types of financing granted during the reorganisation process, will have a privileged ranking and will be satisfied as part of first category of claims (amended Article 342 section 1 point 1 of the BRL).

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