

EBRD INSOLVENCY LAW ASSESSMENTS PROJECT 2003

POLAND

The assessment is based on the Law on Bankruptcy and Redress (2003) of the Republic of Poland.

This is another law of recent origin. It indicates an improvement on the previous law.

The areas relating to the obligations of a debtor concerning the delivery up and safeguarding of assets and the provision of information are uniquely thorough, as are the provisions relating to the avoidance of pre-bankruptcy transactions.

Nonetheless, there are a number of areas of non-compliance with the standards of this assessment, among which are the following:

- The somewhat vague and unclear 'financial condition' criteria.
- The quite extensive documentation that a debtor is required to file, including a cash flow account for the last 12 months.
- Absence of an appropriate stipulation that requires an initiating application to be heard and determined speedily (the law allows at least 2 months).
- Absence of clear statement regarding the effect of the opening of a proceeding on secured creditors.
- Absence of a requirement for direct notification to creditors of the opening of a proceeding.
- Insufficient requirements for a debtor to deliver up assets and provide relevant information to the functionary.
- Imposition of a penalty upon a creditor for the late filing of a claim (can only participate in future distributions).
- Absence of any provision for ongoing financing in a reorganisation.
- Absence of clear provisions regarding the effect of a liquidation on claims of creditors.
- Absence of sanctions for breach/disregard for the requirements of the law.

The assessed score indicates medium compliance (see compliance rating chart below) with the core essentials of international standards on insolvency.

KEY	
Y	Substantial compliance
Y/?	Compliance with reservations
N/?	Doubtful compliance
N	Non compliance
N/A	Not applicable

COMPLIANCE RATING
very high compliance
high compliance
medium compliance
low compliance
very low compliance

PART A - COMMENCEMENT	YES / NO	ARTICLE	COMMENTARY
<p>1. APPLICATION OF THE INSOLVENCY LAW</p> <p>Does the law apply to the following enterprises engaged in commercial activity:</p> <p>1.1 natural person enterprises;</p> <p>1.2 legal person enterprises;</p> <p>1.3 state owned/controlled enterprises?</p>	<p>Y</p> <p>Y</p> <p>Y</p>	<p>5</p> <p>5</p> <p>5</p>	
<p>2. COMMENCEMENT ELIGIBILITY</p> <p>Does the insolvency law permit an insolvency proceeding to be initiated by a:</p> <p>2.1 debtor enterprise;</p> <p>2.2 creditor of a debtor enterprise?</p>	<p>Y</p> <p>Y</p>	<p>20</p> <p>20</p>	
<p>3. COMMENCEMENT CRITERIA</p> <p>3.1 Does the law clearly state the type of financial condition that must apply to a debtor enterprise before an insolvency proceeding may be initiated?</p> <p>3.2 Does this financial condition refer to a situation in which a debtor is unable to pay its mature debts?</p> <p>3.3 Does this financial condition refer to a situation in which a debtor's liabilities exceed its assets?</p> <p>3.4 Does this financial condition also include the circumstance that a debtor will or may become unable to pay its mature debts?</p>	<p>Y/?</p> <p>Y/?</p> <p>Y/?</p> <p>N/?</p>	<p>11</p> <p>11, 12</p> <p>11</p> <p>492</p>	<p>The criterion of "not fulfilling obligations" is vague.</p> <p>Notwithstanding the fulfilment of this financial condition, the court may reject the bankruptcy filing if the delay in the performance of the debtor's mature debt does not exceed three months and the value of the debtor's enterprise.</p> <p>A debtor may 'publish' the anticipation of insolvency and thereafter seek relief under the bankruptcy law.</p>

<p>3.5 Does the law permit an insolvency proceeding to be initiated by a debtor with reasonably minimal formalities?</p> <p>3.6 Does the law provide any specific means to enable a creditor to establish the financial condition referred to in 3.2 (such as failure to satisfy a demand for payment of an undisputed debt)?</p> <p>3.7 Does the law permit a single creditor to commence proceedings?</p> <p>3.8 If the law prescribes any further criteria (other than jurisdictional and financial condition bases) for commencement of proceedings, is that criteria clear and sufficiently practicable to permit proceedings to be commenced?</p>	<p>Y/?</p> <p>N</p> <p>Y</p> <p>Y/?</p>	<p>22,23,25</p> <p>22, 24</p> <p>20</p> <p>23</p>	<p>The debtor is obliged to file comprehensive documentation including, inter alia, a current list of assets with their valuation, current financial statements or, in the absence of the debtor's duty to prepare such financial statements, a balance sheet prepared for the purposes of the bankruptcy proceedings dated not earlier than 30 days prior to the bankruptcy filing, as well as a cash flow account for the last 12 months.</p> <p>See (5) above.</p>
<p>4. COURT / TRIBUNAL JURISDICTION</p> <p>4.1 Does the law clearly identify the court or tribunal in which proceedings should be commenced?</p> <p>4.2 Does the law provide for the proceedings to be under the control or supervision of that court or tribunal?</p> <p>4.3 Is the court a special bankruptcy or commercial court (or division)?</p>	<p>Y</p> <p>Y</p> <p>Y</p>	<p>18, 19</p> <p>Various</p> <p>18</p>	
<p>5. REMEDIES</p> <p>5.1 Does the law provide for alternative remedies of bankruptcy (liquidation) and reorganisation (rescue)?</p> <p>5.2 Does the law provide for the conversion from one type of remedy to the other?</p>	<p>Y</p> <p>Y</p>	<p>14, 15 various</p> <p>16, 17 various</p>	

<p>6. INTERIM RELIEF</p> <p>6.1 Does the law provide for interim relief to protect the assets of the debtor?</p>	<p>Y/?</p>	<p>38</p>	<p>If the bankruptcy filing has been made by a creditor, the court can demand that the creditor justifies the legal grounds for bankruptcy before interim relief is decreed.</p>
<p>7. HEARING AND DETERMINATION OF PROCEEDINGS</p> <p>7.1 Do the rules and procedure for the opening of an insolvency proceeding provide for: -</p> <p>i) an early (timely) consideration of the case;</p> <p>ii) a fair and proper process of notice and hearing of a disputed case;</p> <p>iii) the right to appeal from a decision in a case?</p> <p>7.2 Does the law provide that the court/tribunal must open an insolvency case if a debtor or a creditor satisfies the legislative formalities required for the opening of an insolvency proceeding?</p> <p>7.3 Does the law permit a case to be opened and fully administered where the assets are insufficient to meet the costs and expenses of such administration?</p>	<p>Y/?</p> <p>Y</p> <p>Y</p> <p>Y/?</p> <p>N</p>	<p>27</p> <p>30, 35 various</p> <p>33, various</p> <p>28</p> <p>13</p>	<p>The court may take two months to consider the bankruptcy filing; however this time limit is not legally binding on the court.</p> <p>Except where the assets are insufficient to meet the costs of the proceedings or where the encumbrances over the assets leave no assets sufficient to meet the costs of the proceedings.</p>
<p>8. IMMEDIATE EFFECTS OF OPENING PROCEEDING</p> <p>8.1 Does the law provide that, without any further determination, the opening of proceedings has the following effect:</p> <p>i) all enforcement action or proceedings against the debtor's assets are stayed;</p> <p>ii) the commencement or continuation of any individual action or proceedings concerning the debtor's assets is stayed;</p> <p>iii) the right to transfer, secure or otherwise deal with the debtor's assets is suspended?</p>	<p>Y/?</p> <p>Y</p> <p>Y/?</p>	<p>140</p> <p>140</p> <p>77, 81</p>	<p>Except in certain cases where the debtor has been granted the right to continue the administration of it's assets.</p>

<p>8.2 In the absence of such a provision, does the law provide that the court/tribunal may make orders to the same effect upon or shortly after the opening of the case?</p> <p>8.3 Do the prohibitions above extend to:</p> <ul style="list-style-type: none"> i) a secured creditor; ii) a third party who owns property that is used, occupied or in the possession of the debtor; iii) a supplier under retention of title terms? <p>8.4 Does the law specify the rights of any of the persons mentioned in 8.3 to apply for relief from the stay?</p> <p>8.5 Does the law provide for effective notification of the commencement of proceedings to:</p> <ul style="list-style-type: none"> i) the public generally; ii) all known creditors individually; iii) all relevant regulatory authorities? <p>8.6 Does the law provide for the appointment of an independent functionary to either</p> <ul style="list-style-type: none"> i) take full control of the debtor's business and assets; or ii) supervise the debtor's business and assets? 	<p>N/A</p> <p>Y/?</p> <p>Y</p> <p>N</p> <p>N/A</p> <p>Y</p> <p>N</p> <p>Y</p> <p>Y</p> <p>Y</p>	<p></p> <p>327</p> <p>90</p> <p></p> <p>53</p> <p>53</p> <p>53</p> <p></p> <p>51, various</p> <p>57</p>	<p></p> <p>Except for a pledgee who holds a registered pledge.</p> <p></p> <p></p> <p></p> <p></p>
<p>9. ADMINISTRATION OF AN INSOLVENCY CASE</p> <p>9.1 Does the law specify the qualifications of a person who may be appointed an independent functionary to administer the insolvency?</p> <p>9.2 Does the law provide for the appointment of a functionary through the court or the creditors?</p> <p>9.3 Does the law provide for the possible removal and replacement of a functionary?</p>	<p>Y/?</p> <p>Y</p> <p>Y</p>	<p>157</p> <p>51</p> <p>170</p>	<p>The details of qualifications required for a licence are not set out in this law.</p> <p></p> <p></p>

PART B – ASSETS OF THE ESTATE	YES / NO	ARTICLE	COMMENTARY
<p>10. ASSETS OF THE DEBTOR</p> <p>10.1 Does the law adequately define the assets forming the debtor estate?</p> <p>10.2 Does the law clearly state that the ownership rights of third parties and secured property rights are preserved?</p> <p>10.3 Does the law require that the debtor safeguard, deliver up or make available all assets belonging to the estate to the relevant functionary?</p> <p>10.4 Does the law provide that a third party in possession of assets of the estate of a debtor is required to deliver up such assets or make them available to the relevant functionary?</p>	<p>Y</p> <p>Y/?</p> <p>Y</p> <p>N</p>	<p>62</p> <p>101</p> <p>57</p>	<p>Reservation of this title or transfer for security is preserved if the agreement has a certified date.</p>
<p>11. PROVISION OF INFORMATION TO A RELEVANT FUNCTIONARY</p> <p>11.1 Does the law require the debtor (or relevant persons connected to the debtor) to provide all information concerning the assets and financial affairs of the debtor?</p> <p>11.2 Does the law require relevant third parties to provide all information concerning the assets and financial affairs of the debtor?</p>	<p>Y</p> <p>N</p>	<p>57</p>	

12. AVOIDANCE OF PRE-BANKRUPTCY TRANSACTIONS			
12.1 Does the law provide for the avoidance or setting aside of transactions made prior to the opening of insolvency proceedings that involves the transfer, disposal or granting of security in relation to assets of the debtor (including the payment of money):			
i) in favour of a creditor, if as a result of the transaction a creditor is preferred over other creditors;	Y/?	127	Only applies to payment of non-matured debt and if the creditor acted in good faith.
ii) in favour of a third party, if the transaction is a transaction at an under value as regards the debtor;	Y	127	
iii) in favour of a third party, if the transaction was made with the intention of defeating, prejudicing or otherwise defrauding creditors of the debtor?	Y/?	131	
12.2 Does the law provide clear criteria (including time periods) that must be established before any such transaction may be avoided or set aside?	Y	127	The respective provisions are included in the Polish civil code.
12.3 Does the law also provide for establishing lesser criteria to avoid or set aside transactions such as those mentioned above where the other party involved in the transaction is closely connected to the debtor?	Y	128	
12.4 If the law provides for the setting aside of transactions such as those mentioned above, does it provide for recovery from the third party?	Y	131, 134	
12.5 Does the law provide for the avoidance or setting aside of a transfer, disposal or grant of a security in relation to the assets of the debtor that is made subsequent to the opening of proceedings without proper authority?	Y	77, 81	

PART C – CREDITORS	YES / NO	ARTICLE	COMMENTARY
<p>13. CLAIMS OF CREDITORS</p> <p>13.1 Does the law provide for creditors (including secured and foreign creditors) of the debtor to be notified of any requirement to lodge claims?</p> <p>13.2 Does the law enable claims to be made and accepted in respect of all debts and liabilities (including liability for a civil wrong) of the debtor?</p> <p>13.3 Does the law provide for set-off?</p> <p>13.4 Does the law allow creditors to claim at any time before a dividend is paid?</p> <p>13.5 Is there provision for judicial or other review of the claim of a creditor that is rejected or disallowed by the relevant functionary?</p>	<p>Y/?</p> <p>Y</p> <p>Y/?</p> <p>Y/?</p> <p>Y</p>	<p>51</p> <p>189, 246</p> <p>93-96</p> <p>244, 252</p> <p>256</p>	<p>No provision for individual notification</p> <p>No exclusion contained in the law.</p> <p>Subject to particular conditions provided.</p> <p>Creditors are only able to participate in future dividends.</p>
<p>14. INVOLVEMENT OF CREDITORS</p> <p>14.1 Does the law provide for adequate participation in an insolvency case either by the creditors as a whole or through a representative committee?</p> <p>14.2 Does the law require meetings of the creditors and/or creditors' committee?</p> <p>14.3 Does the law require that creditors be informed of the progress of the administration of an insolvency case at relevant stages?</p> <p>14.4 Do creditors have access to a court or tribunal to review aspects of insolvency case that affect their interest/s to which they object?</p>	<p>Y</p> <p>Y</p> <p>N/?</p> <p>Y</p>	<p>191</p> <p>191</p> <p>283</p> <p>various including 33, 56</p>	<p>The courts supervisor's report is given during meetings of creditors.</p>

<p>15. PRIORITY OF CLAIMS AND EQUALITY BETWEEN CREDITORS</p> <p>15.1 Does the law provide that the costs and charges involved in the administration of an insolvency case rank in priority to creditors' claims?</p> <p>15.2 Does the law clearly otherwise state the priority for the payment of creditors claims?</p> <p>15.3 With the exception of the above priorities, does the law provide for equal treatment for all creditors of the same class?</p>	<p>Y</p> <p>Y</p> <p>Y</p>	<p>342</p> <p>342</p> <p>344</p>	
PART D - REORGANISATION PROCEEDINGS	YES / NO	ARTICLE	COMMENTARY
<p>16. REORGANISATION PROCEEDINGS</p> <p>16.1 Does the law clearly provide who has the power of continued management in a case of reorganisation?</p> <p>16.2 If the debtor (or representative/s of the debtor) may continue to manage, does the law provide for any supervision by a relevant functionary and/or the replacement of the debtor by a relevant functionary if circumstances require it?</p> <p>16.3 In a case of a proposed reorganisation, does the law specifically prohibit or restrict the termination of:</p> <p> i) the supply of essential services including gas, electricity and telecommunications to the debtor;</p> <p> ii) other essential contracts to which the debtor is a party?</p> <p>16.4 Does the law require that a decision regarding a proposed reorganisation be reached within a specified time frame?</p>	<p>Y</p> <p>Y</p> <p>N</p> <p>N</p> <p>Y</p>	<p>Various</p> <p>Various</p> <p></p> <p>Various</p>	

<p>16.5 Does the law clearly state who is responsible for the preparation of a proposed plan of reorganisation?</p> <p>16.6 Does the law require that material information in connection with a proposed plan be fully disclosed to creditors?</p> <p>16.7 Does the law provide that an independent analysis of a proposed plan of reorganisation be made available to creditors?</p> <p>16.8 Does the law provide that a reorganisation plan must comply with specified minimum 'protective' requirements (e.g. that the anticipated return to creditors will be at least equal to the return they would obtain in a liquidation) or otherwise provide against possible commercial abuse?</p>	<p>Y</p> <p>Y</p> <p>Y/?</p> <p>Y</p>	<p>267, 268</p> <p>280</p> <p>283</p> <p>288</p>	<p>To be made by a court supervisor or administrator.</p>
<p>17. REORGANISATION FINANCING</p> <p>17.1 Does the law provide for financing the on-going needs of the business that is attempting a reorganisation?</p> <p>17.2 If so, does the law provide for a commercially sound process by which such finance may be obtained and repaid?</p>	<p>N</p> <p>N</p>		
<p>18. APPROVAL OF REORGANISATION PLAN</p> <p>18.1 Does the law provide that a prescribed percentage of creditors (whether in number, value or both) is required to approve a plan of reorganisation of the affairs of the debtor?</p> <p>18.2 If so, is the approval required no more than 75% and more than 50%?</p> <p>18.3 Does the law provide for restrictions on voting on a reorganisation plan by 'insider' creditors (e.g. shareholders, directors of the debtor)?</p>	<p>Y</p> <p>Y</p> <p>N</p>	<p>285</p> <p>285</p>	

18.4 Does the law provide that a sufficient vote of approval binds all creditors (including dissenting creditors)?	Y	290	The court's approval does not depend on the majority of creditors voting in favour.
18.5 Does the law enable a dissenting creditor to appeal against a reorganisation plan?	Y	287	
18.6 Does the law require that a reorganisation plan be approved/confirmed by a court/tribunal?	Y	287	
18.7 Does the law provide that the bona fide approval of the relevant majority of creditors cannot be over-ruled by the court?	N	288	
18.8 Does the law enable a case of reorganisation to be converted to a case of liquidation in the event that either a plan of reorganisation is not prepared within time, a plan is not approved by creditors or a plan is not approved/confirmed by a court/tribunal?	Y	286, 289	
19. POST APPROVAL			
19.1 Does the law provide for any supervision in the implementation of a reorganisation plan?	Y/?		Supervision is possible
19.2 Does the law enable a plan of reorganisation to be amended/modified with the approval of creditors?	Y	298	
19.3 Does the law clearly state the effect of a failure to implement a plan of reorganisation?	Y	302	

PART E – TERMINAL PROCEEDINGS	YES / NO	ARTICLE	COMMENTARY
<p>20. LIQUIDATION</p> <p>20.1 Does the law provide for the termination of the powers and authority of the management of an insolvent debtor enterprise once it has been determined that the debtor enterprise should be liquidated?</p> <p>20.2 Does the law provide for an independent functionary to administer the liquidation?</p> <p>20.3 Does the law provide for the sale of the assets of the debtor by either public auction or private sale?</p> <p>20.4 Does the law make provision for the timely conduct of a liquidation?</p> <p>20.5 Once a liquidation commences, does the law provide for a lifting of any stay in respect of actions and proceedings against the assets of the debtor in so far as it affects secured creditors and other persons who own property that is in the possession or occupation of the debtor?</p>	<p>Y</p> <p>Y</p> <p>Y</p> <p>N</p> <p>N</p>	<p>306</p> <p>306</p> <p>311</p>	
<p>21. DISCHARGE/ RELEASE OF DEBTS</p> <p>21.1 Does the law provide for the discharge/release of all debts and liabilities on the completion of the proceedings?</p> <p>21.2 If not, is it clear what liabilities survive discharge?</p>	<p>N</p> <p>N</p>		<p>No express statement to this effect.</p>
<p>22. ENFORCEMENT & SANCTIONS</p> <p>22.1 Does the law provide sanctions for persons who breach or fail to fulfil obligations under the law?</p>	<p>N</p>		

23. CROSS-BORDER INSOLVENCY			
23.1 Does the law provide for the recognition of an insolvency case that has been opened in another jurisdiction?	Y	Part 2	
23.2 If so, does the law enable a court or tribunal to assist and co-operate in respect of such foreign proceedings?	Y	Part 2	