

# Digitalisation of Polish bankruptcy and restructuring proceedings: implications all creditors should know

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The National Register of Debtors is a new system designed to speed up Polish bankruptcy and restructuring proceedings. But it's more than that. Thanks to the system's ability to verify contractors, it should contribute to increased protection of economic turnover. This article outlines how the system operates for data searches on entities and natural persons, as well as the scope of information it makes available.

Poland introduced its National Register of Debtors (the 'Register') on 1 December 2021.<sup>1</sup> The Register is a breakthrough in bankruptcy and restructuring proceedings and should considerably speed up proceedings. Its introduction also imposes several new formal requirements on all creditors, including foreign creditors. These new requirements are outlined below.

The Register is the crowning achievement of the long process of digitising Polish bankruptcy and restructuring proceedings. Cases with an application filed after 30 November 2021 will both be recorded on the Register and conducted via it. The intention is to require any motions in bankruptcy and restructuring proceedings to be submitted online only. In other words, cases that have been initiated on an application filed, or the basis for disclosure has arisen, since 30 November 2021 will only be proceeded in the Register.

The Register is available at <https://prs.ms.gov.pl/krz>. It is a free public portal for anyone wishing to browse announcements and search for information on a natural person, organisational unit or company that has been subject to restructuring or bankruptcy proceedings. The portal also allows users to check whether a given entity was subject to court or administrative enforcement proceeding which, due to their ineffectiveness, were discontinued. Additionally, anyone can check whether a business ban or enforcement procedure has been initiated against a given person. It is also possible to search for components of bankruptcy estates, browse the noticeboard and, finally, search for a restructuring advisor.

## Four portals: different functions

The Register is divided into four portals: Public Portal, Registered Users Portal, Register for Public Administration Bodies, and Industry Users Portal. The Public Portal is available to any user with no need to create an account. The others are dedicated to specific user groups and require an account to be created.

The Registered Users Portal is for anyone about to submit pleadings in the course of proceedings, for example, a creditor, debtor or their lawyers. This portal is used to communicate with courts and authorities handling bankruptcy and restructuring proceedings. A very important point that should be borne in mind is that, in cases where a petition for restructuring proceedings or bankruptcy petition was filed after 30 November 2021, letters and documents must be submitted via the system. Yet the new process does not produce the legal effects that the law prescribes for the submission of a letter or a document to the court, temporary court supervisor, administrator or syndic. Therefore, if, for example, a creditor wishes to file objections regarding the costs incurred by the syndic, they may do so within 30 days of posting a report containing these costs into the system and the objections must be submitted via the portal. Charges submitted in writing, as under the old system, will not be recognised.

The Register for Public Administrations Bodies portal enables, for example, bailiffs to enter information on persons and entrepreneurs against whom judicial or administrative enforcement have been executed but

dropped due to ineffectiveness. This portal can be used to check information about people against whom the execution of maintenance benefits, or the execution of receivables of public budget arising in connection with the payment of maintenance benefits, is pending. The fourth portal is the Industry Users' Portal. Through its use, receivers, supervisors and administrators may perform their activities in restructuring and bankruptcy proceedings. The functionality of three of the portals is described below. This article excludes the Register for Public Administrations.

## The Public Portal

The Public Portal consists of several sub-portals. The first is for searching for entities and viewing proceedings. It allows the user to search for information on consumers, entrepreneurs and companies. Searches are based on the company name (the full name or its fragment should be entered), and first and last name or identifiers (KRS,<sup>2</sup> NIP, PESEL or another identifier). Portal users may also search for information by the reference number of the proceedings; in this case the form of business is irrelevant.

In the next sub-portal, the user can find information about partners in commercial partnerships and companies<sup>3</sup> that are liable for the company's debts without limitation of all their assets. This information may not only facilitate but also speed up execution in future. It should be remembered that Polish law allows unlimited execution from the private assets of partners who are responsible for the company's debts. Consequently, the declaration of bankruptcy of a company and, in particular, the lack of company assets does not necessarily mean a loss for the creditor. On the Public Portal it is possible to find information about the dismissal of a petition to declare company bankruptcy if its assets are insufficient to cover the costs of the proceedings or are only sufficient to cover these costs or if the debtor's assets are encumbered with a mortgage, pledge, registered pledge, fiscal pledge or maritime mortgage to such an extent that the remaining assets are insufficient to cover the costs of the proceedings.

An interesting feature of this portal is the possibility of searching for components of a bankruptcy estate. Different criteria may be applied to the query, for example, first name and surname, trader's ID or consumer's PESEL. The component can also be searched by entering the file reference, type, type of component or locality. When searching for components of the bankruptcy estate, it is important to remember that bankruptcy claims are disclosed at a later stage. Information on bankruptcy claims are only disclosed once a resolution of creditors' council or the judge-

commissioner's approval for the sale of claims has been published in the Register. This is because, after bankruptcy, the bankrupt party's debtors can pay their debts to the bankrupt party and there are no grounds for making information about these debts public.

The next sub-portal is the noticeboard, which displays information published in the *Court and Commercial Monitor*.<sup>4</sup> The benefit of this sub-portal is the possibility of quickly finding information about a specific entrepreneur or consumer by entering just one of the available parameters, for example, PESEL, KRS or company name. It is also possible to search for notice by its date or category of proceedings. Other important content available on this sub-portal includes the submission of an application for restructuring made by a debtor, application for opening proceedings to conclude an arrangement at a meeting of creditors, bankruptcy application, an application for the opening of secondary insolvency proceedings, as well as information about a valid return, dismissal or rejection of debtor's application, or discontinuation of the proceedings to examine such an application, and in case of an application for restructuring, information about the valid refusal to open proceedings. All this information was previously only available to the creditor *post factum*. Now, only a few details such as PESEL or KRS number need be entered and all notices relating to specific consumer companies will be displayed. Until now, this information could only be found in different *Monitors*, and a daily review of the *Monitor* is time-consuming. Furthermore, publishing a notice in the *Judicial and Economic Monitor* has always required a fee, whereas placing a notice on the sub-portal's table of announcements is free. The *Monitor* has not been discontinued, as it also publishes information about, for example, companies.

The noticeboard therefore greatly facilitates the collection of information on proceedings and an entrepreneur's history, with the caveat that it only concerns information that may be disclosed in accordance with the Act on the National Debt Register. It does not contain information on changes made in the National Court Register.<sup>5</sup>

The final component of the Public Portal is the restructuring advisors sub-portal. This allows users to view and search the list of persons licensed as restructuring advisors. Search criteria can be by, for example, name, licence number or city. This functionality has another advantage over the register of advisers maintained by the Ministry of Justice; in the Public Portal, it is possible not only to check the licence qualification but also find out whether a given restructuring advisor has been suspended from their duties.

## Registered Users Portal

Motions and pleadings in restructuring proceedings, bankruptcy proceedings or business interdiction proceedings can be submitted via this portal. When lodging a pleading, the user must use the active forms available, which contain all elements of a pleading specific to the proceedings. Moreover, when filling in a given form, the system does not permit the use of further fields if the user has not filled in the fields that are formal deficiencies of the letter, making it impossible to recognise the letter. Therefore, a creditor who wishes, for example, to submit his claim to bankruptcy may do so without the support of a lawyer. This portal is also used to deliver documents to participants in proceedings. Here, very important changes have occurred. Letters and orders addressed to a person or an entrepreneur who does not have an account in the system shall be left on the case file with the effect from which they have been served. The letter shall be considered delivered at the time indicated in the electronic confirmation of receipt of the correspondence or, if there is no such confirmation, 14 days after posting the letter in the information and communication system. The system allows annexes to be attached in electronic form. If the annexes are in paper form, electronically certified copies of documents<sup>6</sup> or electronic copies of documents must be attached. If a user has only attached electronic copies of documents, they must remember to submit the originals or certified copies to the court within three days of submitting their letter. The system allows for annexes to be attached in electronic form. This is providing the annexed documents were drawn up in paper form, users will have to attach electronically certified copies of documents or electronic copies of documents. If the user only attaches electronic copies of documents, he they must remember to submit the originals or copies certified as true copies to the court within three days of filing the letter. There is a major drawback with the electronic certification of copies of documents: the system treats each scan of an attachment introduced into the system as electronically certified, meaning it is not possible to enter a non-certified document. And yet, the lawyer has the right only to certify documents if the originals have been seen.

There are only two exceptions when pleadings and documents are not filed through the system. These are pleadings and documents that include classified information, as set out within the meaning of the Classified Information Protection Act of 5 August 2010 (*Journal of Laws* of 2019, item 742) and bids filed during the tender or auction. Such documents must be signed either with a qualified electronic signature or

with a trusted signature or through authentication in a manner ensuring the possibility to confirm the origin and integrity of the verified data in electronic form.

The Registered Users portal also makes it possible to view files of proceedings in which the user participates. The intention of the Polish legislator is to eliminate the paper form completely. A creditor willing, for example, to review files at a receiver's, will not receive paper documents but instead have access to the system. As already mentioned, access to files via the Register is available to participants in proceedings as well as to anyone who sufficiently justifies the need to review court files. The publication of judgments also takes place exclusively through the system. Similarly, decisions are only published through the system. The court must provide information on the time limit and form of filing an appeal or a notice of appeal not being allowed. Appeals must be filed through the Register, too.

## Branch User Portal

This portal is only accessible to restructuring advisors. Through this portal, restructuring advisors perform statutory duties in connection with, for example, performing the function of a syndic or supervisor of a settlement. For instance, via this portal, the syndic is obliged to register receipts and expenses of the bankruptcy assets in the system on an ongoing basis. Also through this portal, the syndic establishes the composition of the bankruptcy estate and debts, and registers all changes. Thus, the portal is where a register of income and expenses is kept as well as the syndic's activities, distribution of funds after the liquidation of assets, and verification of objections to the notification of claims as described by the syndic.

## Discontinuing the disclosure of data in the Register

As a rule, data contained in the Register cannot be deleted, unless otherwise provided by law. The period for which data is available in the Register depends both on particular disclosure proceedings and the data subject matter.

In bankruptcy and restructuring proceedings, data will automatically cease to be disclosed ten years after the date of the final termination or discontinuance of the proceedings to which it pertains, unless otherwise provided by law. This is applicable to debtors and partners.

In proceedings where an arrangement has been validly approved, data shall automatically cease to be disclosed after three years from the date on which the decision on the performance of the arrangement

becomes final, or ten years from the date the decision on annulling the agreement or expiry of the agreement by force of law becomes final.

In proceedings where a creditor's repayment plan has been legally established or debts have been legally written off without establishing a creditor's repayment plan (consumer bankruptcy), data automatically ceases to be disclosed after the lapse of three years from the date when the decision on the confirmation of execution of the creditors' repayment plan and write-off of the bankrupt's liabilities or write-off of liabilities without establishing a creditor's repayment plan becomes final, or ten years from the date when the decision on repealing the creditor's repayment plan becomes final.

In proceedings where bankruptcy was conditionally discontinued without establishing a plan for the repayment of creditors (concerns consumer bankruptcy), data cease to be disclosed after the lapse of three years from the date of expiry of the five-year deadline from the date of validity of the decision on conditional discontinuance of the bankrupt's liabilities without establishing a plan for repayment of creditors or ten years from the date of validity of the decision on revocation of the decision on conditional discontinuance of the bankrupt's liabilities without establishing a plan for the repayment of creditors.

The data of a person who has been validly banned from exercising an economic activity or a specific function, along with the particulars of the proceedings leading to the ban, shall cease to be disclosed after a period of three years from the day following the end of the period of the ban.

Data relating to a person against whom enforcement proceedings have been discontinued ceases to be disclosed after seven years from the date of its publication. Data related to consumers against whom enforcement proceedings for alimony are under way ceases to be disclosed after seven years from the date of posting information about the completion of enforcement proceedings or information about the repayment of all claims in the event of their notification by the body that paid benefits granted in the event of ineffective enforcement of alimony.

## Summary

The Register is a very new facility. Although we have not used it personally, there are articles in the press about the system crashing and problems when recording information in applications. As the Polish legislator had not anticipated such difficulties, there are no emergency

regulations in case of system failure. However, the system is not yet completely finished. The Ministry of Justice is continually working to improve and enhance it. The most important benefits of the system are the acceleration of proceedings, access to information during proceedings, and security of cooperation with Polish contractors. The only disadvantage is that the data in the Register is only published in cases for which the application was filed after 1 December 2021. Unfortunately, proceedings initiated before this date are conducted under the previous rules.

### Notes

- 1 The Register was introduced by the Act of 6 December 2018 on the National Register of Debtors (*Journal of Laws*, 2019, item 55, as later amended).
- 2 The KRS number consists of a ten-digit number starting with several noughts.
- 3 The following types of commercial partnerships are recognised in Polish law: general partnership, partnership, limited partnership and limited joint-stock partnership.
- 4 The national official journal in which notices and announcements required by, for example, the Code of Commercial Companies, the Code of Civil Procedure, the Accounting Act and other acts are published.
- 5 It is a type of public register, maintained by selected district courts and the Ministry of Justice for companies, associations, foundations and other social and professional organisations, as well as for public healthcare institutions.

### About the authors

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