

This quick guide summarises the duties that directors of companies incorporated in Poland are subject to and how those duties change when the company is insolvent or at risk of being insolvent.

It also gives an overview of the personal risk to directors when the company is in financial difficulty.

This note is intended as an overview and should not be relied on as legal advice. Should you require legal advice in relation to your specific circumstances, please contact the Restructuring & Insolvency team member listed at the end of this note.

### Directors' Duties When Solvent

- Each member of the management board of a Polish limited liability company (sp. z o.o.) or the joint-stock company (S.A.) (hereinafter director) has a general obligation to manage the company's affairs and represent the company to third parties, with the diligence of a prudent business person.
- They must also exercise their duties in compliance with applicable laws, the company's articles of association and bylaws, any resolutions of the shareholder meetings and the obligations under their employment agreement (if any).

**Financial Distress**



### Directors' Duties When Insolvent, or at Risk of Being Insolvent

- If the company is close to insolvency, the directors should analyse and consider whether the company can reorganise or restructure (as provided for by Polish Restructuring Law of 2015 (as amended)) and agree a settlement with its creditors or whether to file for insolvency.
- Directors are obliged to file for insolvency without undue delay and at the latest within 30 days after the company is (i) unable to pay its debts when due (with presumption that the company is insolvent when delay in payment exceeds three months) or (ii) over-indebted, i.e. the liabilities exceed assets and such state of affairs persist for over 24 months.
- Currently the obligation to file for bankruptcy is suspended if bankruptcy is caused by the COVID pandemic.



It is important for directors to understand their directors' duties, as well as how their actions and the decisions the board makes when the company is in financial distress could expose them to personal liability and risk.

Below is an overview of the potential claims and potential exposure for directors if the company is insolvent or at risk of insolvency.

### Professional Liability

The directors may be precluded from future director positions or carrying out commercial activity for a period from one to 10 years if they fail to file for insolvency in due time.

### Liability for Company's Debts

In the case of a limited liability company, the directors may become personally liable for the debts of the company including unpaid taxes. In the case of a joint-stock company or a corporation, liability is limited to unpaid taxes. However if the directors file for insolvency in a timely manner this may exonerate them from such liability.

### Personal Liability

The directors are liable, with a rebuttable presumption of fault, for any damage to the company caused by action or inaction breaching the law or articles of association, e.g. where the directors fail to file for insolvency in a timely manner.

The directors are also personally liable for any payments made to the shareholders in breach of the law or articles of association.

### Criminal Liability

Failure to file for insolvency in a timely manner constitutes a criminal offence.

## Practical Tips to Mitigate Liability

- Directors should consider whether they can receive indemnification from the company
- D&O insurance might be available
- Directors can mitigate their risk by acting upon resolutions of the shareholders or if the shareholders ratify the directors' previous actions (although this may be ineffective against company claims)
- Properly document the basis for decisions
- Constantly review the commercial and financial situation of the company to assess whether it is solvent, can survive the crisis and react to changes in circumstances as necessary
- In some cases, where the company accrues losses exceeding certain thresholds, the directors should convene a shareholders' meeting seeking a resolution whether the company should continue.
- Prepare and review short-term and mid-term liquidity forecasts to assess whether the company is illiquid and, therefore, obliged to file for insolvency
- Consider whether they can make use of available government support, as not doing so may be considered a failure to act like a prudent businessperson and result in liability (see below for a link to the financial support measures available)

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