

How to transfer all rights and obligations onto another entity in Poland

INTRODUCTION

While dealing with complex transactions or agreements, one often encounters a contractual clause that enables a party (or both parties) to transfer all its rights and obligations stemming from that contract onto a third party. Such a clause may give that party a right to appoint a third party that would assume their rights and obligations, e.g., become a proper party to the agreement. This scheme is often present if an entity is part of a group of companies or in M&A transactions, as well as preliminary agreements regarding real estate.

Until recently, the admissibility of these clauses under Polish law was not entirely settled, and this served as a basis for a lively discussion on whether such clauses at all are enforceable and admissible in Poland.

The Supreme Court's recent judgement of 8 November 2023, file ref. no. II CSKP 313/23, is of significant importance. It has provided a clear legal stance on the issue, thereby helping to define the current legal landscape.

ASSUMING THE RIGHTS AND OBLIGATIONS OF A PARTY UNDER POLISH LAW

The Supreme Court clarified that Polish law does not recognize the notion of the transfer of all rights and obligations from an agreement to another third party. It does, however, provide for a possibility for the creditor to transfer the claim onto a third party (assignment), as well as the possibility of a third party to take the place of a debtor who is then relieved of the debt (takeover of debt).

The Supreme Court's findings have practical implications. It clarified that the replacement of a party to an agreement, involving the assumption of all rights and obligations, can only occur through a simultaneous assignment of a claim by a creditor and takeover of a debt. The Court also noted that the sequence of these two legal acts, whether simultaneous or successive, is irrelevant.

For a successful replacement of a party in a contract, the legal acts of assignment of a claim and debt takeover must meet specific conditions. These conditions are crucial in determining the effectiveness of both acts, as provided for under Polish law.

CONDITIONS FOR A SUCCESSFUL TRANSFER OF RIGHTS AND OBLIGATIONS OF A PARTY UNDER POLISH LAW

Under Polish law, the assignment of a claim does not generally require the debtor's consent. That may be the case, for example, if parties so agree; however, generally speaking, the creditor may assign their claim without the debtor's consent.

Debt takeover is regulated differently. Under the Civil Code, the agreement on the assumption of a debt may either be concluded between the creditor and a third party taking over the debt with the consent of the debtor or via an agreement between the debtor and a third party taking over the debt with the consent of a creditor. In accordance with this provision, a creditor's consent to the debt takeover is ineffective if the creditor did not know that the person taking over the debt was insolvent.

Therefore, the effectiveness and enforceability of an agreement to take over a debt require the consent of all interested parties. This is crucial when determining whether the transfer of all rights and obligations was successful, as it is necessary to determine whether the consent for the debt takeover required by the law was present in the agreement.

ADMISSIBILITY OF CREDITOR'S BLANKET CONSENT TO THE DEBT TAKEOVER

In the case evaluated by the Supreme Court, the court of second instance found that the blanket consent given by the creditor for the takeover was ineffective (the agreement did not indicate a specific third party that would assume the debt), which was inadmissible – in the court's view – in the light of Art. 519 § 2 of Civil Code.

The Supreme Court then cited two contradictory views presented in case law and literature on the issue of whether blanket consent was effective and could be the basis of a successful debt takeover.

The Court indicated that the conditions for effective consent vary but may be divided into two categories: consents that serve as a control and consents that serve as authorization. The view that consent may be given only in relation to a specific legal act, defined in terms of a specific subject and object, is appropriate only with regard to consents that serve as a control and is not applicable to the consents that serve as an authorization.

The Supreme Court found that if one may grant a power of attorney authorizing the performance of legal acts exceeding the scope of the ordinary course of the business, then it is also possible to effectively grant consent to an act of a specific type.

On this basis, the Supreme Court found that a creditor may give their blanket consent to a debt takeover. Since this type of consent can refer to an act that is identified by nature (debt takeover) and therefore unspecified in terms of its subject and personal matter, there is no obstacle to a creditor consenting to the assumption of a debt by a third party that is not yet designated at all, or that is only designated by nature.

The Supreme Court also objected to the view that such blanket consent would limit the protection of a debtor and creditor stemming from the provisions regarding debt assumption, namely the ineffectiveness of the creditor's consent if the third party is insolvent. The Supreme Court found that this regulation would also apply to blanket consent. If the creditor did not know that the third party was insolvent at the time of giving its blanket consent, then such consent would also be ineffective.

The Supreme Court rejected the view that the admissibility of blanket consent would somehow endanger the certainty of the legal order as well. There is no doubt that the extent of the creditor's risk when blanket consent is given is more significant than when consenting to the assumption of a debt by a known and specific third party. However, it should be borne in mind that the principle of party autonomy takes precedence and should not deprive the creditor of the possibility of knowingly taking such a risk. Moreover, the creditor is protected by virtue of the general provisions on debt takeover, e.g., its ineffectiveness if a third party is insolvent.

ADMISSIBILITY OF CREDITOR'S BLANKET CONSENT TO THE DEBT TAKEOVER BY FURTHER THIRD PARTIES

The Supreme Court also evaluated whether it is admissible to grant blanket consent if a debt is taken over not by one but by multiple subsequent third parties. The Supreme Court presented a view that this scenario cannot be excluded. Since a creditor can consent to the takeover of a debt by an unspecified third party, there is nothing to prevent the creditor from consenting in advance to the first third party entering into subsequent third-party debt takeover agreements. This interpretation is supported by the fact that the party taking over also takes over the power to transfer the debt (to another person).

In some instances, the interpretation of the parties' agreement may lead to a different conclusion, i.e., that a one-time consent was given. This would, however, require the courts to interpret parties' intent in accordance with the general principles of interpretations embodied in art. 65 of the Civil Code.

CONCLUSION

The discussed Supreme Court judgement has a significant impact on the Polish legal community, as it related to significant and not yet settled issues that impact the success of many legal transactions. The Supreme Court acknowledged and confirmed the admissibility of transferring all rights and obligations under Polish law while emphasizing the importance of the principle of party autonomy. The Court also provided the parties and their counsel with guidance on how to shape their contractual clauses regarding the change of the parties.

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