Law for International Business

Protecting the Collective Interests of Creditors in International Insolvency Proceedings

As companies extend their operations across national borders, some flourish but some go bust. Council Regulation (EC) No. 1346/2000 on Insolvency Proceedings coordinates actions against a debtor's assets and introduces uniform choice-of-law rules in cross-border insolvencies throughout the EU, equalizing treatment of creditors and preventing forum-shopping by debtors.

The regulation requires the main insolvency proceeding to be commenced in the EU member state where the debtor has the centre of its main interests. Secondary proceedings may be brought in another member state if necessary to wind up an establishment of the debtor's located there.

Any creditor located in a member state other than the one where a proceeding is commenced—including national tax and social security authorities—may file a proof of claim in the insolvency proceeding, following simple procedures set forth in the regulation.

The procedure and effects of an insolvency proceeding are determined in accordance with the law of the member state where the proceeding is commenced. The regulation provides for direct recognition in all other member states of judgments concerning commencement, conduct and closure of insolvency proceedings.

Regulation 1346/2000 implements the principle of protection of the interests of creditors and equal treatment of creditors. In facilitates joint enforcement of claims by creditors against a debtor whose assets are located in different member states.

Anna Zabielska
Attorney-at-law

Concluding an Arbitration Clause

Businesses, particularly in international trade, often include arbitration clauses in their contracts. An arbitration clause must be properly drafted so that it effectively insures that any dispute will be decided quickly by a qualified panel of arbitrators, avoiding prolonged proceedings before the state courts. This issue requires particular attention when a party uses general terms and conditions containing an arbitration clause.

Under Polish law, an arbitration clause must be in writing. It may be included in the main agreement, but it need not be signed at the same time by both parties. Instead, the clause may be included in other writings exchanged by the parties (such as e-mails, faxes, a written offer accepted by the other party, or general terms and conditions). When the arbitration clause is not in the parties' main contract, the contract itself must be in writing and expressly refer to the additional terms incorporating the arbitration clause into the contract.

The regulations in international treaties concerning conclusion of an arbitration clause are similar to the rules under Polish law.

If an arbitration clause is not concluded in the proper manner, it is invalid. Errors in preparing an arbitration clause may then result in rejection of a petition filed before the arbitration court, making it necessary to re-file the action before the state court. But by then the statute of limitations may have run, and it will be too late. Thus it is crucial to be sure that the arbitration clause is properly formulated at the very beginning.

Małgorzata Majkowska
Attorney-at-law

MIKULSKI & WSPÓLNICY
attorneys - at - law

ul. Kielecka 19, 31-523 Cracow, Poland
tel. (+48) 12 410 77 00,
fax (+48) 12 410 77 01
office@mikulski.krakow.pl
www.mikulski.krakow.pl