

Law for International Business

Setoff of claims in different currencies under Polish law

Unless limited by contract, setoff of one monetary claim against another is one way a debtor can satisfy a claim. But what if the claims on each side are in different currencies?

Contractual setoff

If both parties agree on the possibility of setoff, set the date for making the conversion and indicate which claim is to be converted to which currency, then there is nothing preventing the debtor from satisfying a claim (in foreign currency or Polish currency) by setoff.

Statutory setoff

The situation is more complex if there is no agreement, and a creditor holding a claim in PLN is presented with a claim in foreign currency for setoff, or vice versa, a creditor in a foreign currency is asked to reduce the claim by setoff against a claim the debtor holds in Polish currency. Is either party required to convert its claim into the other currency, or is currency conversion impermissible without agreement?

a) Polish currency rule

Following a 2009 amendment to Civil Code Art. 358, absent any other specific legal requirement, a person who owes a debt in foreign currency may elect to pay in PLN instead. A debtor making this election must convert the claim into PLN at the exchange rate for the date the claim became due and payable, unless otherwise agreed. (The debtor may not make such election if it is in default; then the creditor decides on the currency of payment.)

b) setoff of claim in PLN

If a creditor demands payment of a claim in foreign currency, the debtor may present for setoff a claim that it holds in Polish currency. Since the debtor could pay the claim in Polish currency, there is no reason it cannot elect PLN when "paying" via setoff. The claim in foreign currency is converted into Polish zloty at the exchange rate from the date the claim became due and payable, and then the two zloty amounts are set off.

c) setoff of claim in foreign currency

This does not work if the creditor's claim is in zloty and the debtor demands that the claim be reduced by its own claim presented in foreign currency. In that case, the debtor holding a claim in foreign currency has no right to elect the currency of payment (unless the other party is in default) and may not demand payment in PLN or unilaterally convert the amount into PLN. Nor does it have a right to convert its own debt in PLN into the other currency. Without consent, a debt in Polish zloty may not be paid in foreign currency. Barring agreement, there is thus no legal basis for stating the mutual claims in the same currency, and setoff is not allowed.

Inequality of creditors

Under Civil Code Art. 358 the position of creditors is unequal. A creditor with a claim in Polish currency may always demand payment, while a creditor with a claim in foreign currency must accept setoff. A creditor holding a claim in Polish zloty is effectively protected from setoff by a claim in foreign currency.



Katarzyna Leśniak
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