

## Thirty days for a withdrawal of the petition to declare bankruptcy - an Event of Default in the IETA Master Agreement

Under the point 12.2 (d) (iv) of the IETA Master Agreement (Emissions Trading Master Agreement for the EU Scheme version 3.0) a party to the IETA agreement has only 30 days to cause the withdrawal of the petition to declare bankruptcy, filed to the court with respect to it. If it fails to do so, the other party of the IETA agreement is entitled to terminate the agreement because of occurrence of Event of Default. It may be expensive and is the major risk taking into account, that in some countries of the European Union judicial procedures are not so efficient and the period of 30 days is far too short to do anything in this respect. Let's see, how it is working on the Polish market.

There is an event of default under IETA Master Agreement, when a Party or any Credit Support Provider of that Party

*„institutes or has instituted against it a proceeding seeking a judgment of insolvency or bankruptcy or any other relief under any bankruptcy or insolvency law or other similar law affecting creditors' rights, or a petition is presented for its winding-up or liquidation, and, in the case of any such proceeding or petition instituted or presented against it, that proceeding or petition (A) results in a judgment of insolvency or bankruptcy or the entry of an order for relief or the making of an order for its winding-up or liquidation or (B) is not withdrawn, dismissed, discharged, stayed or restrained in each case within thirty days of the institution or presentation of that proceeding or petition”.*

This provision seems to be logic, but its enforceability in the reality of some judicial systems may evoke some doubts.

We owe some explanations to people, who doesn't know particulars of insolvency legal proceedings. This is the rule, that everybody can at any time present a petition in order to institute against a party a proceeding seeking a judgment of insolvency or bankruptcy. It can be also a petition, that doesn't have any grounds and appropriate – in legal terms - justification. Even such flawed petition initiate a judicial proceeding and a court of law is obliged to verify circumstances of the case and legitimacy of the petition.

According to article 27 section 3 of the Polish statute - The Insolvency and the Reorganization Law, the court of law shall issue a decision on the declaration of bankruptcy within two months of the date of the filing of the petition to declare bankruptcy.

So, the statutory regulation provides for a period of two months – two times longer, than specified in the standard IETA Master Agreement. Furthermore, the term specified in the above mentioned art. 27 section 3 of the Insolvency and the Reorganization Law is a technical term – this mean, that it isn't binding on the court (it is only a guidance).

Decision on the declaration of bankruptcy can be - in principle – subject to an appeal. On such a occasion appropriate periods for the procedure of the appeal must be added.

Even though there are not any appeals, there should be also taken into account such things as for instance a disease of the judge of the insolvency department of the court.

The entrepreneur – a party to the IETA Agreement – may be leaved alone with this problem and if he fails to cope with it, it may be very expensive for him.

In addition, you can find on the market offers to enter into IETA agreement, where specified above, thirty days period for withdrawal of the filed to the court petition to declare bankruptcy, is even shorter – for instance 5 days. This shows exactly, that specified above provisions of the IETA Master Agreement, should be the subject of a particular interest of parties – before the agreement is concluded.

Taking into account that English law is, in the IETA Master Agreement, a default judicial system, we admire the efficiency of the English courts - but at the same time we have some doubts, whether in other countries point 12.2 (d) (iv) of IETA Master Agreement is – in principle – executable.

In any case we definitely prescribe to thoroughly consider this regulation.

Parties to the agreement can - with no major obstacles – to extend this period.

In addition it must be noted, that art. 34 of the cited Polish Insolvency and the Reorganization Law relates to the effects of the petition filed in bad faith. If the creditor filed the petition in bad faith, the court, when dismissing the petition to declare bankruptcy, shall charge the cost of the proceedings to the creditor and may order the creditor to make public retraction with appropriate contents and in an appropriate form.

Upon the dismissal of a petition to declare bankruptcy filed in a bad faith by the creditor, the debtor, as well as a third party, shall be entitled to claim against the creditor to have the damage redressed.

Provision of art. 34 of the cited Polish Insolvency and the Reorganization Law so does not however protect the party of the IETA Agreement from above mentioned unpleasant results of lack of the rejection of the petition to declare bankruptcy in the thirty days period – for this simple reason, that the other party to the IETA Agreement can only be not unveiled principal of the official proponent of the petition. Such an action would be an offence – but you have to possess same evidence when you want to go into the court.

The provision of the point 12.2 (d) (vii) of the IETA Master Agreement pertains to the distress, execution, attachment, sequestration of assets and consequently should be evaluated on the same basis. In this respect the required term amounts only to 15 days.

Summing up, an oblivion in this respect, either when negotiating an IETA Agreement or later in performance of a concluded agreement, can be very expensive.

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