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Court Restructuring and Bankruptcy in Poland

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Acknowledgement

INSOL International is very pleased to present a technical paper titled “Court Restructuring and Bankruptcy in Poland” by Karol Czepukojć, *Radca prawny* and *Doradca restrukturyzacyjny*, Wardyński & Partners.

This paper provides members with an overview of the Polish court restructuring and bankruptcy laws and the concept of a licensed and regulated restructuring and insolvency practitioners’ profession in Poland. The paper also examines the issues of court restructuring and bankruptcy in Poland in the cross-border context.

INSOL International sincerely thanks Karol Czepukojć for this analysis and for writing this excellent technical paper.

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Court Restructuring and Bankruptcy in Poland

By Karol Czepukojć*, *Radca prawny* and *Doradca restrukturyzacyjny***, Wardyński & Partners**

1 Introduction

The purpose of this paper is to facilitate foreign practitioners' understanding of the main principles governing Polish court restructuring and bankruptcy laws. The length of the paper, however, required some generalisations, and omissions of certain issues and exceptions to the presented principles.

Polish law provides for two types of court proceedings that may be initiated when the debtor is in crisis - bankruptcy and court restructuring (hereinafter "restructuring").

Bankruptcy proceedings are initiated when the debtor becomes insolvent and are governed by the Bankruptcy Act 2003 (Bankruptcy Act). A modified version of this act came into force on 1 January 2016. One of the amendments it introduced was the 'pre-packaged' bankruptcy.

As an alternative to bankruptcy proceedings, it may be possible for the debtor to enter in to one of the restructuring procedures available under the Restructuring Act 2015 (Restructuring Act), which came into force on 1 January 2016. Restructuring procedures are available to insolvent debtors and also to debtors threatened with insolvency. The main objective of restructuring proceedings is to save the debtor from having to declare bankruptcy by allowing it to restructure under an arrangement with its creditors. In Poland, restructuring processes are given precedence. If a restructuring application and a bankruptcy application are submitted at the same time, in general, the court will first examine the former one.

Since 2009, the Bankruptcy Act has provided consumer bankruptcy as an available option in Poland for consumers and former entrepreneurs. This bankruptcy procedure was thoroughly revised in late 2014 and the new procedure has become very popular among individual debtors.

With regard to cross-border bankruptcy and restructuring proceedings, Poland is a Member State of the European Union and, as such, is a party to Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast). The Regulation applies in assessing the effects in Poland of insolvency and restructuring proceedings opened in one of the EU Member States (except Denmark). In addition, the Regulation applies to all bankruptcy and restructuring proceedings available in Poland, as detailed in Appendix A to the Regulation.

The provisions which apply to cross-border bankruptcy and restructuring proceedings opened in Denmark and countries other than EU Member States and their application in Poland are found in the Bankruptcy Act and the Restructuring Act. The UNCITRAL Model Law on Cross-Border Insolvency 1997 (the Model law) is implemented in these regulations.

2 Profession of insolvency office holders[1]

2.1 Appointment

At the beginning of 2016, a new licensed profession of "*Doradca restrukturyzacyjny*" (Restructuring Adviser) was created. This role is to be performed by persons professionally qualified to hold office in restructuring and bankruptcy proceedings. Restructuring Advisers must have knowledge of law, economics, finance and management. Their professional qualifications are confirmed with a licence. There are more than 1,155 licensed Restructuring Advisers in Poland.

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* The views expressed in this paper are the views of the author and not of INSOL International, London, and Wardyński & Partners.

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[1] This section is a revised version of the publication authored by Karol Czepukojć which first appeared in the INSOL Directory 2017 as part of a larger collective work entitled "Insolvency Practitioners – Qualifications and Appointments Around the World", published by INSOL International in December 2016.

Restructuring Advisers operate under the Bankruptcy Act, the Restructuring Act and the Restructuring Adviser's Licence Act 2007. Each holder of the Restructuring Adviser's licence is exclusively authorised to act as:

- *Nadzorca układu* (arrangement supervisor), *nadzorca sądowy* (court supervisor) and *zarządca* (administrator) appointed for the debtor in restructuring proceedings;

- *Syndyk masy upadłości* (official receiver of the bankruptcy estate) appointed for the bankrupt in bankruptcy proceedings;

- *Tymczasowy nadzorca sądowy* (temporary court supervisor), *tymczasowy zarządca* (temporary administrator) or *zarządca przymusowy* (compulsory administrator) appointed to secure the debtor's assets until a determination as to whether to open restructuring or bankruptcy proceedings has been made.

In bankruptcy proceedings relating to insurance and reinsurance companies, in addition to holding the Restructuring Adviser's licence, the official receiver should also have knowledge of the organisation and operation of insurance or reinsurance companies. Exceptionally, the duties of an official receiver can be performed by another insurance or reinsurance company. This also applies to bankruptcies of banks and credit unions, where the duties of the official receiver can be performed by another bank or credit union respectively.

The position of office-holder in restructuring or bankruptcy proceedings may also be performed by:

- A partnership, whereby the partners are liable for the obligations of the company without restriction on all their assets and hold the Restructuring Adviser's licence; or

- A limited liability company or joint-stock company, whereby the members of the management board hold the Restructuring Adviser's licence.

2.2 Qualifications

The Restructuring Adviser's licensing rules and procedures are determined in the Restructuring Adviser's Licence Act 2007. The licence is granted by the Minister of Justice for an indefinite term. The Minister of Justice maintains a public list of Restructuring Advisers.

Persons who meet the requirements listed below may apply for the Restructuring Adviser's licence:

- Citizens of any EU Member State, Switzerland or Member State of the European Free Trade Association – party to the agreement on the European Economic Area;

- University graduates with a masters' degree or equivalent from any of the above countries. In practice, most persons applying for the Restructuring Adviser's licence hold a graduate degree in law, economics or management;

- Persons who speak Polish to the extent necessary to perform their duties in Polish legal proceedings;

- Persons who have passed the State examination before an Examination Commission appointed by the Minister of Justice. The examination covers issues related to law, economics, finances and management, with a particular focus on the specificities of restructuring and bankruptcy;

- Persons who within 15 years before applying for the Restructuring Adviser's licence have spent at least three years administering a bankrupt estate, enterprise or a separated part thereof in Poland or in any of the above-mentioned countries;

- Persons who have full capacity to enter into legal transactions;

- Persons with an impeccable reputation;

- Persons who have neither been convicted of a common or fiscal offence nor are suspected of nor charged with having committed an offence investigated *ex officio* or a fiscal offence;

- Persons who are not on the register of insolvent debtors maintained by the National Court Register.

Restructuring Advisers are required to engage in continuous professional development to improve their qualifications and professional skills. Persons holding a Restructuring Adviser's licence are not obliged to belong to any professional association.

2.3 Selection

The debtor selects the arrangement supervisor in proceedings for approval of the arrangement *(postępowanie o zatwierdzenie układu)*, this is a restructuring procedure conducted largely out-of-court. Creditors do not have any formal influence over the selection or replacement of the arrangement supervisor. Only the debtor can do that. This gives the debtor the freedom to select an arrangement supervisor from all of the Restructuring Advisers operating in the market.

The court appoints the official receiver, court supervisor and administrator in bankruptcy proceedings and restructuring proceedings (i.e. *przyspieszone postępowanie układowe* - accelerated arrangement proceedings, *postępowanie układowe* - standard arrangement proceedings and *postępowanie sanacyjne* - remedial proceedings). In principle, it is the court that selects the office-holders participating in these proceedings. This also applies to persons appointed as temporary court supervisors, temporary administrators and compulsory administrators.

In bankruptcy proceedings related to banks and credit unions, the court is required to consult with the Financial Supervision Authority, the Bank Guarantee Fund, the chairman and other members of the bank's or credit union's latest management board or commissar board or the liquidator of bank or credit unions in relation to the appointment of the official receiver. In the case of proceedings related to a financial entity that is a subsidiary of the State Treasury, the court is also required to consult with the State authority or such agency as is authorised to exercise the rights deriving from shares owned by the State Treasury.

In bankruptcy proceedings related to insurance and reinsurance companies, the court is required to consult with the Financial Supervision Authority with regards to the appointment of an official receiver.

The debtor, in co-operation with the creditor or group of creditors who jointly hold more than 30% of the debtor's liabilities (with the exception of certain creditors specified in law), may in the application to open restructuring proceedings apply for the appointment of a specific individual as court supervisor or administrator. The court is then bound by the debtor's application, unless it has justified reasons to reject it. The court should also appoint the individual indicated in the debtor's motion as a temporary court supervisor, temporary administrator or compulsory administrator – however this is not something that arises directly from the regulations, but this is considered to be good practice.

In the course of restructuring and bankruptcy proceedings, the creditors' council may adopt a resolution to replace a Restructuring Adviser. The court is bound by the council's resolution, unless the resolution violates the law, flagrantly breaches creditors' interests or there is a justified presumption that the individual selected by the creditors' council will not perform his / her duties properly. The court supervisor and administrator appointed on the initiative of the creditors' council cannot be removed from office at the debtor's request.

2.4 Supervision and liability

The Minister of Justice supervises Restructuring Advisers. The Minister has the right to withdraw the Restructuring Adviser's licence and suspend the rights of the licence holder in situations specified in law, particularly in cases where there has been a flagrant breach of duties.

In turn, in restructuring and bankruptcy proceedings, the judge-commissioner supervises the performance of Restructuring Advisers appointed as office-holders and identifies any violations committed by Restructuring Advisers during proceedings. The judge-commissioner is authorised

to discipline and fine Restructuring Advisers. The judge-commissioner also specifies the actions which office-holders are not permitted to perform without the consent of the judge-commissioner or of the creditors' council. The actions of a Restructuring Adviser appointed to hold office in the proceedings are also audited by the creditors' council. The council may demand explanations from the Restructuring Adviser and also notify his / her perceived transgressions to the judge-commissioner. Each creditor may also report the Restructuring Adviser's perceived transgressions to the judge-commissioner or the creditors' council. The judge-commissioner and / or the creditors' council may summon the office-holder to provide an explanation for his / her actions in the proceedings. In the case of a flagrant violation or failure to improve performance despite an imposed fine, the court may remove the individual from the office held in the proceedings.

The court also supervises the performance of Restructuring Advisers appointed as temporary court supervisors, temporary administrators and compulsory administrators.

Insolvency office-holders in restructuring or bankruptcy proceedings are liable for any damage caused as a result of their improper performance of duties. They are also required to hold a civil liability insurance policy.

2.5 Remuneration

The remuneration of an arrangement supervisor in arrangement approval proceedings is agreed contractually with the debtor. The law does not specify any ceiling for this remuneration. The court's approval is not required and there is no formal procedure allowing creditors to object to the remuneration amount.

In other restructuring proceedings, the court decides on the court supervisor's or administrator's remuneration upon their application. The court supervisor and the administrator may submit a written opinion by the creditors or the creditors' council on the remuneration amount in support of their application. This opinion does not bind the court. The court's decision on the ultimate amount of the court supervisor's and the administrator's remuneration may be appealed by each of the creditors.

The court supervisor's remuneration may range from twice the basic rate[2] in simplest restructuring cases to forty-four times the basic rate in very complex cases. It is fixed as the sum of four parts based on various factors specified in law (e.g. number of creditors).

The administrator's remuneration is fixed as the sum of five statutorily defined parts (e.g. average monthly turnover) and ranges from three times the basic rate in simplest restructuring cases to two hundred and eight times the basic rate in very complex cases.

The administrator's remuneration may also be determined by resolution of the creditors' meeting. The remuneration amount thus determined cannot be lower than the statutory limit. However, the debtor's separate consent is required if this amount exceeds 150% of the statutory limit. Each creditor can appeal the court's decision concerning approval of the creditors' meeting resolution on remuneration. In the event of a failure to accept the arrangement or final refusal to approve the arrangement, the creditors' meeting resolution fixing the administrator's remuneration becomes invalid.

In bankruptcy proceedings, the official receiver's remuneration may currently range from twice the basic rate in simplest bankruptcy cases to two hundred and sixty times the basic rate in very complex cases. It is determined as the sum of five parts dependent on various factors specified in law (e.g. the sum repaid to the creditors). The court decides on the official receiver's remuneration. The court's decision determining the amount of final remuneration may be appealed by each creditor.

In consumer bankruptcy proceedings, the official receiver's remuneration is lower and may currently range from one quarter of the basic rate in simplest bankruptcy cases to four times the basic rate in very complex ones. The court determines the official receiver's remuneration, account is taken of the value of the bankruptcy estate, the level to which creditors have been

[2] In 2017, the basic rate is currently PLN 4,251.21, and in 2018 the basic rate will be PLN 4,509.57.

satisfied, how much work is required, the range of actions taken in the proceedings, their level of complexity and the duration of the proceedings.

The court also determines the remuneration of the temporary court supervisor, temporary administrator and compulsory administrator. Their remuneration may range from one quarter of the basic rate to four times the basic rate. The court decides on the remuneration upon the application of the office-holder. The court's decision can be appealed by any creditor participating in the proceedings.

2.6 Other competences

Apart from holding office in restructuring and bankruptcy proceedings, Restructuring Advisers are entitled to hold office in debt enforcement proceedings (by compulsory administration or by the sale of an enterprise or farm). Since 2016, Restructuring Advisers may also be appointed as attorneys in restructuring and bankruptcy proceedings and provide commercial services in restructuring and insolvency matters. Moreover, since April 2017, Restructuring Advisers may be appointed as compulsory administrators of a business operated by the accused in criminal proceedings.

3 Restructuring

3.1 Grounds for restructuring

The restructuring opportunity under the Restructuring Act is available to debtors who are insolvent[3] or threatened with insolvency[4].

However, the restructuring court will refuse to open restructuring proceedings despite the existing or threatened insolvency of the debtor if the outcome of these proceedings would prejudice the debtor's creditors. Moreover, in the event of a request for the opening of standard arrangement or remedial proceedings, the restructuring court will refuse to open such proceedings unless *prima facie* evidence of the debtor's ability to pay the costs of proceedings as they arise as well as other liabilities that appear after their opening has been provided.

3.2 Restructuring capacity

According to the Restructuring Act, restructuring proceedings are available to:

- Entrepreneurs (individuals, companies and other entities involved in economic activities);
- Limited liability companies and joint-stock companies not involved in economic activities;
- Partners in registered and limited partnerships liable for the partnership's commitments with all their assets without limitation; and
- Partners in professional partnerships.

However, the Restructuring Act provides for certain exceptions. In particular, restructuring proceedings are not available to:

- State Treasury and local self-government units;
- *Bank Gospodarstwa Krajowego* (State Development Bank);
- Insurance and reinsurance companies;
- Investment funds; and

[3] An insolvent debtor shall be interpreted as a debtor who is insolvent in accordance with the provisions of the Bankruptcy Act (see section 4.1.1).

[4] A debtor threatened with insolvency shall be interpreted as a debtor whose economic situation indicates that it may soon become insolvent in accordance with the provisions of the Bankruptcy Act (see section 4.1.1).

- Former sole entrepreneurs and consumers.

It should be noted that Polish law[5] has implemented the EU Directive 2014/59/EU[6] establishing a framework for the recovery and resolution of credit institutions and investment firms. Accordingly, the following Polish entities are subject to mandatory restructuring:

- Domestic banks;
- Branches of foreign banks;
- Saving cooperatives and credit unions;
- Investment firms defined in Article 2 section 14 of the Act of 10 June 2016 on the Bank Guarantee Fund, Deposit Guarantee System and Mandatory Restructuring;
- Financial institutions defined in Article 4 section 1 subsection 26 of EU Regulation No. 575/2013 amending EU Regulation No. 648/2012, whose registered office is located in a Member State of the European Union, if they are subsidiary undertakings as defined in Article 4 section 1 subsection 16 of EU Regulation No. 575/2013 of the credit institution referred to in Article 4 section 1 subsection 16 of EU Regulation No. 575/2013, the entity referred to in subsections 3-9, and/or an investment firm, and are supervised on a consolidated basis in accordance with Articles 6–17 of EU Regulation No. 575/2013;
- Financial holding companies defined in Article 4 section 1 subsection 20 of EU Regulation No. 575/2013, which have their registered office in a Member State of the European Union;
- Mixed financial holding companies defined in Article 4 section 1 subsection 21 of EU Regulation No. 575/2013, which have their registered office in a Member State of the European Union;
- Mixed activity holding companies defined in Article 4 section 1 subsection 22 of EU Regulation No. 575/2013, which have their registered office in a Member State of the European Union;
- Parent financial holding companies located in a Member State of the European Union and defined in Article 4 section 1 subsection 30 of EU Regulation No. 575/2013;
- EU parent financial holding companies defined in Article 4 section 1 subsection 31 of EU Regulation No. 575/2013;
- Parent mixed financial holding companies located in a Member State of the European Union and defined in Article 4 section 1 subsection 32 of EU Regulation No. 575/2013;
- EU parent mixed financial holding companies defined in Article 4 section 1 subsection 33 of EU Regulation No. 575/2013.

No restructuring proceedings can be opened with respect to these entities under the Restructuring Act.

The Restructuring Act also contains provisions which apply solely to restructuring proceedings applicable to real estate developers and bond issuers – these provisions are not discussed in this paper.

3.3 Types of restructuring procedures

The Restructuring Act provides for four types of restructuring proceedings:

[5] Act of 10 June 2016 on the Bank Guarantee Fund, the Deposit Guarantee Scheme and Mandatory Restructuring.

[6] Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms and amending Council Directive 82/891/EEC, and Directives 2001/24/EC, 2002/47/EC, 2004/25/EC, 2005/56/EC, 2007/36/EC, 2011/35/EU, 2012/30/EU and 2013/36/EU, and Regulations (EU) No 1093/2010 and (EU) No 648/2012 of the European Parliament and of the Council.

- *Postępowanie o zatwierdzenie układu* (proceedings for approval of an arrangement);
- *Przyspieszone postępowanie układowe* (accelerated arrangement proceedings);
- *Postępowanie układowe* (standard arrangement proceedings); and
- *Postępowanie sanacyjne* (remedial proceedings).

The purpose of restructuring proceedings is to prevent the debtor from being declared bankrupt by allowing it to restructure by way of an arrangement with creditors and, in the case of remedial proceedings, also by carrying out remedial activities, with due regard given to securing the legitimate rights of creditors.

Restructuring proceedings end on the date of the restructuring court's final decision to approve the arrangement with creditors or the date of the restructuring court's final decision on refusal to approve the arrangement with creditors. The law also provides for a number of situations which may cause early discontinuance of restructuring proceedings.

In some cases, in the event of the failure of accelerated or standard arrangement proceedings, it is permissible to file a petition in a simplified procedure for the opening of remedial proceedings. Moreover, in the event of failure of all above-mentioned restructuring proceedings, one may file a simplified motion for declaration of the debtor's bankruptcy.

3.3.1 Proceedings for approval of an arrangement

Proceedings for approval of the arrangement take place largely out of court. The arrangement with creditors is concluded by way of the debtor collecting creditors' votes independently, without the court's or the judge-commissioner's participation. The collected vote remains valid provided that the debtor's request to the restructuring court for approval of the arrangement is received within three months of the date on which the vote was cast. To be valid, the procedure must end with the approval of the arrangement by the restructuring court.

The process of collecting votes and applying to the restructuring court for approval of the arrangement should generally be completed within three months.

Proceedings for approval of the arrangement may be opened and conducted for the debtor only if the amount of contested creditors' claims giving the right to vote on the arrangement does not exceed 15% of the amount of all creditors' claims giving the right to vote on the arrangement. If this threshold is exceeded, the procedure should not be initiated or continued. The proportion of contested creditors' claims to uncontested creditors' claims is subject to continuous inspection by the arrangement supervisor.

Proceedings for the approval of the arrangement are conducted with the participation of the arrangement supervisor selected by the debtor. The arrangement supervisor oversees the debtor - he can inspect the debtor's enterprise and the debtor's actions regarding its assets. In addition, the supervisor of the arrangement:

- Draws up a restructuring plan and, together with the debtor, prepares the arrangement proposal;
- Draws up a list of creditors' claims and a list of contested creditors' claims;
- Cooperates with the debtor when the latter collects votes from creditors voting on the arrangement, and provides creditors with information about the debtor's financial situation and prospects for executing the arrangement; and
- Files a report to the restructuring court on prospects for the debtor executing the arrangement and the creditors' written objections if any as to the legality of the course of the debtor's independent collection of votes or as to other circumstances that may affect the approval of the arrangement.

It is the debtor who submits the application for approval of the arrangement to the restructuring court. The court should examine it within two weeks (non-binding deadline).

The debtor submits, among other things, the following with the application:

- Arrangement proposal;
- Voting results;
- Collected ballots; and
- The report prepared by the arrangement supervisor.

The arrangement supervisor's report includes, among other things, the following:

- An arrangement acceptance statement;
- Confirmation of the legality of the independent collection of votes;
- Information about the prospects for executing the arrangement;
- The restructuring plan;
- A list of assets with estimated valuation;
- The balance sheet;
- A list of creditors' claims;
- Information as to whether the creditors voted for or against the arrangement; and
- A list of contested creditors' claims.

The list of creditors' claims cannot be challenged in proceedings for approval of the arrangement either by the debtor or by creditors. The objective is to ensure maximum speed for the arrangement acceptance procedure to be completed.

During the proceedings for arrangement approval, the debtor does not generally enjoy any protection against creditors' enforcement actions. Protection against creditors is ensured only during the period from the date of the restructuring court's decision on the approval of the arrangement, with the understanding that this protection does not apply to creditors whose debts are secured on the debtor's assets.

3.3.2 Accelerated arrangement proceedings

Accelerated arrangement proceedings take place entirely in court. From the moment of their opening, they proceed with the participation of the restructuring court and the judge-commissioner. The law provides for these proceedings to be implemented quickly and the arrangement may be implemented within one month of the opening of proceedings.

Accelerated arrangement proceedings, like proceedings for approval of the arrangement, can be opened and conducted by the debtor only if the amount of contested creditors' claims giving rise to voting over the arrangement does not exceed 15% of the amount of all creditors' claims giving rise to voting on the arrangement. The ratio of contested creditors' claims to uncontested creditors' claims is subject to ongoing scrutiny by the court supervisor or the administrator.

The debtor submits an application for the opening of accelerated arrangement proceedings to the restructuring court. The court should examine it within a week (non-binding deadline). The debtor attaches to the application, among other things, the following:

- The arrangement proposal;

- A preliminary restructuring plan;
- The balance sheet;
- A current inventory of assets with estimated valuation of their components;
- A list of creditors;
- The amount of uncontested creditors' claims (both those that are and that are not part of the arrangement); and
- A list and the amount of contested creditors' claims.

The debtor can challenge the court's decision to refuse to open accelerated arrangement proceedings. Creditors are entitled to challenge the court's decision to open proceedings, but only in respect of the jurisdiction of the Polish courts.

Accelerated arrangement proceedings are conducted with the participation of the court supervisor or the administrator appointed by the restructuring court. As a standard, the court establishes a court supervisor for the debtor. An administrator is appointed if, in particular:

- The debtor has violated the law on management and, in consequence, harmed the creditors or exposed them to potential future harm;
- It is clear that management as performed by the debtor does not guarantee the execution of the arrangement;
- The debtor fails to comply with the instructions given by the judge-commissioner or the court supervisor.

The duties of the court supervisor and the administrator include, in particular:

- Notifying creditors of the opening of restructuring proceedings;
- Drawing up a restructuring plan and a list of creditors' claims (uncontested and contested);
- Evaluating arrangement proposals and advising on their changes to ensure their legality and feasibility;
- Taking measures to ensure that creditors submit the largest possible amount of valid votes when voting on arrangement proposals;
- Participating in the creditors' meeting and submitting an opinion on the prospects of implementing the arrangement.

If a court supervisor is appointed for the debtor, the debtor exercises the management of its assets in the ordinary course of business. The court supervisor oversees the debtor's enterprise and activities that affect its assets. The court supervisor's consent is required for the debtor to engage in activities exceeding the ordinary course of business (unless the law requires consent of the creditors' council). Such consent may also be granted after the action has taken place (within thirty days of the date of its execution). Lack of required consent invalidates the action.

If an administrator is appointed for the debtor, the debtor loses the right to manage its assets and the administrator takes over their management. The administrator performs legal acts in his / her own name but to the debtor's account. Legal acts performed by the debtor are invalid.

The restructuring plan (which takes into account restructuring proposals submitted by the debtor) and lists of creditors' claims are drawn up by the court supervisor or the administrator within two weeks of the opening of accelerated arrangement proceedings.

In accelerated arrangement proceedings, the list of creditors' claims is treated in a simplified manner. Only the debtor may raise a reservation as to the court supervisor or the administrator

adding a given receivable to the list. This results in the given receivable becoming a contested receivable. In a situation where, as a result of lodging reservations, the amount of contested creditors' claims exceeds the equivalent of 15% of creditors' claims giving the right to vote, the court is obligated to discontinue the accelerated arrangement proceedings. Creditors cannot question the list of creditors' claims.

Immediately after the court supervisor or the administrator submits a restructuring plan and a list of creditors' claims, the judge-commissioner sets a date for a creditors' meeting which will vote on the arrangement.[7]

3.3.3 Standard arrangement proceedings

Standard arrangement proceedings also take place entirely in court. From the moment of their opening, both the restructuring court and the judge-commissioner participate therein. The law allows that these proceedings may be carried out within two / three months.

Unlike accelerated arrangement proceedings, standard arrangement proceedings can also be conducted when the amount of contested creditors' claims giving the right to vote on the arrangement exceeds 15% of the sum of creditors' claims that give the right to vote on the arrangement. However, there will be no vote on the arrangement until the threshold of 15% or less of contested creditors' claims is achieved, this can lengthen the procedure beyond above-mentioned two / three months.

As in previously discussed restructuring procedures, the debtor submits a request for the opening of standard arrangement proceedings to the restructuring court. The court will examine the request within two weeks (non-binding deadline), unless it is necessary to schedule a hearing. In this case, the request is examined within six weeks (non-binding deadline).

The debtor attaches to its request, among other things, the following:

- The arrangement proposals;
- A preliminary restructuring plan;
- A list of creditors and the amount of uncontested creditors' claims (both those that are and that are not part of the arrangement); and
- A list detailing the amount of contested creditors' claims.

Due to the fact that standard arrangement proceedings take longer than the other restructuring proceedings discussed earlier, the debtor is also required to substantiate its ability to meet the day-to-day costs of arrangement proceedings and liabilities that will arise after the date of their opening.

In addition, as the court has more time to examine the debtor's request than in accelerated arrangement proceedings, it may secure the debtor's assets over that timeframe by appointing a temporary court supervisor. Also, at the request of the debtor or the temporary court supervisor, the court may at this stage suspend enforcement proceedings concerning creditors' claims that are to be included in the arrangement by the force of law and, under certain conditions, prevent the seizure of the debtor's bank accounts. Nonetheless, when that is done, the debtor may use the funds available in its accounts only with the consent of the temporary court supervisor.

The restructuring court's decision concerning the opening of standard arrangement proceedings can be objected to on the same terms as the decisions to open or refusal to open accelerated arrangement proceedings.

Standard arrangement proceedings are conducted with the participation of the court supervisor or the administrator, both appointed by the restructuring court. As a rule, the court appoints a court supervisor for the debtor. The powers of the court supervisor and the administrator referred to in section 3.3.2 supra apply here as well (with some differences).

[7] This procedure will be somewhat different if the debtor is to benefit from state aid during the course of restructuring.

In standard arrangement proceedings, one of the office-holders draws up an inventory of the debtor's assets, which he has to complete within thirty days after the opening of the proceedings (in accelerated arrangement proceedings, the debtor's list of assets with their estimated value is submitted by the debtor jointly with the request to open restructuring proceedings). However, the judge-commissioner may decide that the determination of the composition of the debtor's assets be performed by the debtor itself under the supervision of a court supervisor. In addition, at the same time, the court supervisor or the administrator submits a restructuring plan (which contains the debtor's restructuring proposals) and a list of creditors' claims to the judge-commissioner.

In contrast to accelerated arrangement proceedings, in standard arrangement proceedings the list of creditors' claims is prepared on general rules. Within two weeks of the announcement of the list being drawn up by the court supervisor or the administrator, the debtor and its creditors may submit an objection to the judge-commissioner against placing a given claim on the list of creditors' claims. The debtor can object when the list of creditors' claims is inconsistent with its earlier statement filed with the court supervisor or the administrator. If the debtor has not filed such statement, it can lodge an objection only if it demonstrates that it has not filed the statement owing to reasons for which it is not responsible. Within the above timeframe, the debtor or a creditor whose claim has not been placed on the list may also file an objection to the given claim not having been placed on the list of creditors' claims.

A creditor whose claim is not included on the list of creditors' claims loses any rights granted to participants in the proceedings as of the date of final decision rejecting the objection or the expiry of the time limit for its submission, or the final decision recognising the objection against inclusion of its claim.

The judge-commissioner sets the date of the meeting of creditors convened to vote on the arrangement only after all objections have been duly examined and he / she has approved the list of creditors' claims (in contrast to what happens in accelerated arrangement proceedings, when the list of creditors' claims is approved immediately after it has been filed by the court supervisor or the administrator), with the understanding that the approval becomes possible when the share of contested creditors' claims is 15% or falls below this threshold[8].

3.3.4 Remedial proceedings

Remedial proceedings take place in court and, since their opening, with the participation of the restructuring court and the judge-commissioner. The proceedings should be completed generally within 12 months. Remedial proceedings impose the greatest number of restrictions among restructuring proceedings available under the Restructuring Act, but they also offer the greatest opportunity for carrying out an in-depth restructuring of the debtor.

Remedial proceedings are the only type of restructuring proceedings where it is possible, as a restructuring operation, to sell assets belonging to the debtor with the effect of an enforcement sale (i.e. on terms of a sale by the official receiver in bankruptcy proceedings, see section 4.1.8 below). The sale is conducted by the administrator with the consent of the judge-commissioner and in accordance with the terms and conditions determined by the judge-commissioner.

In addition, this procedure affects employment relations and creates the same effect on the rights and obligations of employees and employer as the declaration of bankruptcy. It is also a source of the official receiver's power to withdraw – on terms specified in the regulations and with consent of the judge-commissioner – from mutual agreements to which the debtor is party.

As in the case of standard arrangement proceedings, remedial proceedings may also be opened if the amount of contested creditors' claims giving the right to vote on the arrangement exceeds 15% of the amount of creditors' claims giving the right to vote on the arrangement. However, as long as this percentage does not fall to 15% or below, there will be no voting over the arrangement.

The application for opening remedial proceedings may be filed in the restructuring court not only by the debtor but also, unlike in other restructuring procedures, by a personal creditor (as opposed to a creditor *in rem*) (this exception, however, applies only to proceedings in relation to debtors

[8] This procedure will be somewhat different if the debtor is to benefit from state aid during the course of restructuring.

who are legal persons and insolvent). The court examines applications for opening remedial proceedings within two weeks (non-binding deadline), unless a hearing is necessary. In this case, the application is recognised within six weeks (non-binding deadline).

The application submitted by the debtor includes, among other things, a preliminary restructuring plan, a list of creditors and the amount of uncontested creditors' claims (both those that are and are not part of the arrangement) and a list and amount of contested creditors' claims. As in the case of a request for opening standard arrangement proceedings, the debtor should also substantiate its ability to meet the costs of remedial proceedings and liabilities arising after the date of opening the proceedings. The debtor is not obliged to submit arrangement proposals with the application, unlike in the case of a request for opening accelerated arrangement proceedings and standard arrangement proceedings. Arrangement proposals are filed during the course of restructuring proceedings.

The above-mentioned documents and information do not need to be included in the creditor's application. However, the court may demand their submission by the debtor. The creditor's application ought to indicate the circumstances justifying it (i.e. the grounds for the opening of the procedure) and, in addition, contain *prima facie* evidence of the creditor's claim.

While the application is being processed, the court may secure the debtor's assets by appointing a temporary court supervisor or a temporary administrator. In addition, the court may also (at the request of the debtor or the temporary court supervisor / administrator) suspend at this stage enforcement proceedings related to creditors' claims included in the arrangement by the force of law and, under certain conditions, prevent seizures of the debtor's bank accounts in the same manner as in proceedings for the opening of standard arrangement proceedings.

When opening remedial proceedings, the court will normally take away the enterprise management from the debtor and appoint an administrator. However, if the successful conduct of remedial proceedings requires the personal involvement of the debtor or its representatives, and at the same time they provide a guarantee of proper management, the court may allow the debtor to exercise management over all or part of the enterprise to an extent not exceeding the scope of ordinary management. The administrator has then powers similar to those of a court supervisor in standard arrangement proceedings. The comments in section 3.3.2 above relating to both the court supervisor and the administrator are also essentially valid here.

The court decision on opening or refusal to open remedial proceedings can be appealed on the same terms as the decision on opening accelerated arrangement proceedings.

In remedial proceedings, the administrator draws up a restructuring plan (in principle, jointly with the debtor), an inventory of the debtor's assets and a list of creditors' claims, within thirty days after the opening of the proceedings. In justified cases, the deadline for submitting a restructuring plan may be extended by the judge-commissioner for up to three months.

The restructuring plan is reviewed by the creditors' council and then approved by the judge-commissioner (in other restructuring procedures there are no such requirements). In addition, the judge-commissioner may prohibit the implementation of some of the measures envisaged in the restructuring plan and order other measures (guided by the objectives of the remedial proceedings and protection of creditors' legitimate rights as well as the rights of third parties not participating in the proceedings).

Once the judge-commissioner approves the restructuring plan, the administrator begins its implementation. As an exception, before the approval of the restructuring plan, the administrator may take steps to restore the debtor's ability to perform its obligations if failure to take these steps promptly would significantly impede the attainment of the purpose of the remedial proceedings. The administrator informs the judge-commissioner of the intention to take these steps, whereas the latter can, within three days, prohibit the administrator from taking them.

The judge-commissioner approves the list of creditors' claims - after the expiry of the time limit for submission of an objection – or, in the case of its submission, after the decision concerning the subject of the objection has become final and binding. The judge-commissioner may, however, approve a list of creditors' claims to the undisputed extent if the amount of creditors' claims giving the right to vote over the arrangement, which is still contested, does not exceed 15% of the amount of creditors' claims giving the right to vote over the arrangement.

The judge-commissioner convenes a meeting of creditors to vote on the arrangement immediately after the execution of all or part of the restructuring plan envisaged to be performed during the remedial proceedings, however not later than within twelve months of the opening of remedial proceedings or immediately upon approval of the list of creditors' claims or completion of the procedure pertaining to state aid (if this happens later).

3.4 Restructuring court

Matters concerning restructuring are recognised by the restructuring court. The restructuring court is one of the commercial divisions of a district court.

The competent court for a particular case will be the court with jurisdiction over the centre of debtor's main interests (COMI) - i.e. the place where the debtor regularly manages its economic activity and which, as such, is identifiable to third parties. The Restructuring Act establishes certain legal presumptions concerning a debtor's COMI:

- In the case of a legal person and an organisational unit without legal personality but which is vested with legal capacity under separate legislation, it is presumed that the COMI is the place of its registered address;
- In the case of a natural person engaged in an economic or professional activity, it is presumed that the COMI is the principal place of carrying on the business or professional activity;
- In the case of a natural person not carrying on a business or professional activity (e.g. a partner in a partnership), it is presumed that the COMI is the place of its habitual residence.

If the debtor does not have a COMI in Poland, the competent court will be the court with jurisdiction over the debtor's place of habitual residence or registered office; if the debtor does not have a habitual residence or registered office in Poland, the competent court is the one in whose jurisdiction the debtor's assets are located.

3.5 Judge-commissioner

After the opening of restructuring proceedings, court functions in the proceedings are essentially performed by the judge-commissioner (except for the functions reserved in the Restructuring Act for the restructuring court or the creditors' council – if established).

The restructuring court appoints the judge-commissioner in the decision on the opening of restructuring proceedings. Where necessary, the restructuring court may appoint more than one deputy judge-commissioners.

The judge-commissioner sets the course of the restructuring proceedings, oversees the performance of the court supervisor and the administrator, indicates which activities the court supervisor and the administrator cannot get engaged in without his / her approval or the approval of the creditors' council, and also points out shortcomings in performance of their duties.

3.6 Participants in restructuring proceedings

Participants in restructuring proceedings beyond the debtor are:

- The debtor's personal creditors with uncontested claims; and
- The debtor's personal creditors with contested claims who proved *prima facie* their creditors' claims and were admitted to the proceedings by the judge-commissioner.

3.6.1 Creditors' meeting

The creditors' meeting is convened and presided over by the judge-commissioner, primarily for the purpose of voting on the arrangement.

The right to vote at the creditors' meeting is vested in creditors whose claims were placed on the list of creditors' claims and in creditors who will appear at the meeting and present the judge-commissioner with an enforcement title confirming their claims. In addition, the judge-commissioner may, at the request of the given creditor and after hearing the debtor, allow every creditor to participate in the creditors' meeting whose claim depends upon a condition precedent or who has proven *prima facie* its title to the contested claim.

A judge-commissioner may revoke a resolution of a creditors' meeting if it is against the law or violates good custom or blatantly violates the interests of the creditor who voted against the resolution. The decision of the judge-commissioner is subject to appeal.

3.6.2 Creditors' council

The creditors' council represents the debtor's creditors. In performing its duties, the creditors' council is guided by the interests of all creditors.

The main competencies of the creditors' council include:

- The right to examine the status of the debtor's assets and the books and documents of the debtor's enterprise, and the right to request explanations from the debtor, court supervisor or administrator;
- Controlling the activities of the court supervisor and the administrator;
- Providing its opinion at the request of the judge-commissioner, court supervisor, administrator or debtor, and commenting to the judge-commissioner on the activities of the debtor, court supervisor or administrator;
- Requesting replacement of the court supervisor or administrator with a candidate nominated by the creditors' council (this requires a resolution voted on by all council members, of whom at least four out of five vote in favour, or as a result of a resolution taken at the request of the debtor; if the council consists of three members, its resolutions are passed unanimously – the court is essentially bound by the will of the council);
- Granting authorisation concerning measures that can only be carried out with the authorisation of the creditors' council.

The following activities performed by the debtor or the administrator require authorisation of the creditors' council (or will otherwise be invalid):

- Encumbering any part of the debtor's estate with mortgages, pledges, registered pledges or marine mortgages to secure creditors' claims not covered by the arrangement;
- Transferring the ownership of a thing or a right to secure a creditor's claim not covered by the arrangement;
- Encumbering any part of the debtor's estate with other rights;
- Obtaining credit or loans;
- Entering into a contract of lease of the debtor's enterprise or its organised part[9], or into another similar contract;
- The sale of the debtor's interest in any real estate or other assets valued at above PLN 500,000.

The creditors' council is established *ex officio* by the judge-commissioner if he / she considers it necessary, or at the request of:

[9] This is a separate set of tangible and / or intangible assets in the enterprise, intended for the realisation of specific economic tasks, which could be performed by an independent enterprise.

- The debtor;
- At least three creditors; or
- A creditor or creditors who collectively own at least one fifth of the total creditors' claims, excluding certain groups of creditors specified in the regulations (e.g. creditors affiliated with the debtor).

The creditors' council consists of five members and two deputies appointed from among the debtor's creditors participating in the proceedings. In small proceedings, the council consists of only three members.

At the request of a creditor or creditors with at least one fifth of the total creditors' claims vested in creditors participating in the proceedings, excluding certain groups of creditors specified in the regulations (e.g. creditors affiliated with the debtor) or their multiple, the judge-commissioner appoints as a member of the creditors' council the creditor indicated by the requestor (one for every fifth part of total creditors' claims). As a rule, the judge-commissioner is bound by such request.

Usually, resolutions of the creditors' council are passed by a majority of votes. Creditors' council meetings may also take place by means of direct remote communication. Members of the creditors' council perform their duties either personally or by proxy. A member of the creditors' council is liable for the damage resulting from improper performance of duties.

Objection to the resolutions of the creditors' council may be made to the judge-commissioner. Only the complainant, the debtor and members of the creditors' council can appeal the decision of the judge-commissioner.

The rules for appointing and removing creditors' council members are specified in the Restructuring Act. For example, a member may be removed if it is not performing its duties properly.

If the creditors' council has not been established, the activities reserved for the creditors' council are performed by the judge-commissioner. The judge-commissioner also performs activities reserved for the creditors' council if the council fails to perform them within the deadline set by the judge-commissionaire.

3.7 The effects of opening restructuring proceedings

The opening of restructuring proceedings (excluding proceedings for the approval of an arrangement) affect the debtor in several ways, namely, for example:

- It is not permitted to encumber any part of the debtor's estate with a mortgage, pledge, registered pledge, tax lien or maritime mortgage in order to secure a claim that arose prior to the opening of restructuring proceedings (the regulations provide for certain exceptions - for example, the debtor's assets may be encumbered upon consent of the creditors' council when the claim is not part of the arrangement);
- The provisions of a contract to which the debtor is party, which prevent or impede the achievement of the purpose of restructuring proceedings, are ineffective in relation to debtor's estate;
- It is inadmissible (with certain exceptions specified in the Restructuring Act) for the debtor or the administrator to make payments out in relation to creditors' claims that by the force of law are part of the arrangement;
- There are certain limitations on the admissibility of offsetting creditors' claims;
- There are restrictions on the admissibility of terminating agreements concerning real estate leases and rentals, credits, leasing, property insurance, bank account, surety, as well as agreements covering licenses granted to the debtor and guarantees or letters of credit.

In addition, contractual provisions stipulating a modification to or termination of legal relationships to which the debtor is a party in the event of a request for opening restructuring proceedings or in the event of their opening are invalid. In relation to proceedings for approval of the arrangement such effect cannot be associated with submission of an application for approval of the arrangement or the approval of the arrangement.

The opening of restructuring proceedings does not preclude creditors whose claims are to be included on the list of creditors' claims from initiating court, administrative, or arbitration proceedings in order to claim these debts. Any such proceedings in progress are continued. They take place (both initiated and continued proceedings) with the participation of a court supervisor or administrator (the Restructuring Act provides certain exceptions). The court supervisor acts jointly with the debtor in the proceedings and the administrator acts in place of the debtor.

During the course of accelerated and standard arrangement proceedings, the law provides the debtor with protection against enforcement actions taken by creditors who are not secured on the debtor's assets. However, secured creditors may enforce their security against a secured asset (there may be a temporary suspension of enforcement when the secured asset is indispensable to the running of the business – however, only up to a maximum of three consecutive months; during this period the debtor should seek an agreement with the enforcing creditor). In remedial proceedings, enforcement is excluded for both unsecured and secured creditors[10]. These restrictions do not apply to the recovery of maintenance payments and pensions compensating for having caused sickness, incapacity for work, disability or death, and on account of the replacement of allowances linked to life estate rights with a life annuity.

In addition, the opening of remedial proceedings:

- Causes the expiration of all proxies and powers of attorney granted by the debtor;
- Affects employment relationships and causes the same effects in terms of the rights and obligations of employees and employer as in bankruptcy;
- Is the source of the administrator's right to withdraw - under the terms specified in the Restructuring Act and with the consent of the judge-commissioner – from mutual agreements to which the debtor is party;
- Results in the ineffectiveness of the debtor's specific legal acts performed with respect to its assets (e.g. legal acts, either gratuitous or for consideration, whereby the debtor has disposed of its assets, if the value of the debtor's performance exceeds to a substantial degree the value of the performance received by the debtor or reserved for the debtor or a third party, made within one year before the date of submission of the application for the opening of remedial proceedings; or collateral which has not been established directly in connection with the performance received by the debtor, established by the debtor within a year before the date of submission of the application for the opening of remedial proceedings).

During the restructuring process, the debtor trades under the existing name followed by the phrase *"w restrukturyzacji"* ("in restructuring").

3.8 Arrangement with creditors

The conclusion of an arrangement with creditors is the purpose of every restructuring proceeding.

Arrangement proposals may be presented by the debtor or by the creditors' council, the court supervisor or administrator, or a creditor or creditors vested jointly with more than 30% in value of total creditors' claims, excluding certain groups of creditors specified in the regulations (e.g. creditors affiliated with the debtor).

The restructuring of the debtor's liabilities as set out in arrangement proposals may provide for, in particular:

[10] It is questioned whether this rule applies also to the pledgee of a registered pledge or a financial pledge if a pledge agreement provides for the possibility to satisfy its claim by the assumption or sale of the collateral subject.

- Postponement of the payment deadline;
- Spreading repayment in installments;
- Decrease of the total amount;
- Conversion of creditors' claims into shares;
- Change, replacement or repeal of the collateral.

The law provides for certain restrictions with regard to restructuring, for example with regard to the debtor's liabilities relating to state aid, liabilities under employment contracts and liabilities for social security contributions by the debtor as employer, liabilities for Labour Fund contributions, and liabilities for contributions to the Guaranteed Employee Benefits Fund and Bridging Retirement Pension Fund.

Arrangement proposals may also provide for the satisfaction of creditors by the sale of the debtor's assets (the so-called 'liquidation' arrangement), or for the division of creditors into groups covering the various interest categories.

The terms of restructuring the debtor's liabilities are the same for all creditors, whereas if voting on the arrangement is carried out in creditors' groups, they are the same for creditors in the same group, unless a creditor explicitly agrees to less favourable terms. Granting more favourable terms for restructuring the debtor's liabilities is acceptable with respect to creditors who, after the opening of restructuring proceedings, have provided or are expected to provide financing in the form of credit, bonds, bank guarantees, letters of credit or other financial instruments needed to implement the arrangement.

The debtor may also present arrangement proposals in relation to part only of its liabilities, the restructuring of which would have a material effect on the debtor's continued operation (the so-called partial arrangement). There are some differences in the procedure for entering into such a partial arrangement.

Only creditors who are covered by the arrangement and are entitled to vote can participate in the vote on the arrangement.

The arrangement covers:

- Personal creditors' claims which arose prior to the date of opening the restructuring proceedings (in the case of proceedings for approval of the arrangement - before the arrangement date);
- Interest for the period started on the day of opening the restructuring proceedings (in the case of proceedings for approval of the arrangement - from the arrangement date);
- Creditors' claims depending on a condition precedent, if the condition was fulfilled during the execution of the arrangement.

The arrangement does not cover, among others:

- Creditors' claims secured on the debtor's assets with a mortgage, pledge, registered pledge, tax lien or maritime mortgage, and also with a transfer of the title of ownership, receivable or other right on the creditor, in the part covered by the value of the collateral, unless the creditor has agreed for that part to be covered by the arrangement (however, under certain conditions, this consent is not required in the case of the so-called partial arrangement);
- Creditors' claims under an employment contract, unless the creditor has agreed to be covered by the arrangement;
- Creditors' claims under the Guaranteed Employee Benefits Fund for reimbursement of benefits paid to the debtor's employees;

- Maintenance claims and pensions disbursed on account of compensation for causing illness, incapacity for work, disability or death;

- Claims for the release of property and cessation of the infringement of rights;

- Claims for which the debtor is liable in connection with the acquisition of an inheritance after the date of opening the restructuring proceedings, after the inheritance is added to the debtor's estate;

- Claims on account of social security contributions in the part financed by the insured, which are paid by the debtor;

- Creditors' claims already covered by another arrangement.

Creditors affiliated with the debtor in a manner specified in the Restructuring Act do not benefit from the right to vote on matters concerning the arrangement.

The resolution of the creditors' meeting on the adoption of the arrangement passes if the majority of voting creditors who jointly hold at least two thirds in value of total creditors' claims has cast a valid vote in its favour.

A vote on the arrangement may also be carried out by groups of creditors. The arrangement is then adopted if the majority of voting creditors in each group who jointly hold at least two thirds in value of total creditors' claims vested in voting creditors in that group have cast a valid vote in its favour. However, the arrangement is also adopted, even if it did not obtain the required majority in some creditors' groups, if creditors holding two thirds of total creditors' claims vested in voting creditors voted in favour of the arrangement, while creditors from the group or groups that voted against the arrangement are satisfied on the basis that the arrangement is no less favourable than if bankruptcy proceedings were conducted instead.

The above rules also apply to proceedings for approval of an arrangement, although voting is not held then at the creditors' meeting.

The judge-commissioner issues a decision on the acceptance of the arrangement at the creditors' meeting. Then the arrangement is approved by the restructuring court.

Participants in the proceedings may raise written objections against the arrangement. The court does not take into account any objections raised after the expiry of one week from the date of adoption of the arrangement. The court refuses to approve the arrangement if it violates the law or if it is evident that the arrangement will not be implemented. In addition, the court may refuse to approve the arrangement if its terms are grossly unfair to creditors who voted and raised objections against it. These grounds are applicable accordingly in the proceedings for approval of the arrangement.

The decision on the approval of the agreement can be subject to an appeal. The appeal ought to be filed within two weeks.

On the date when the arrangement approval decision becomes final and binding, the court supervisor or the administrator assume the function of the arrangement execution supervisor, unless the arrangement provides otherwise.

The arrangement binds creditors whose creditors' claims are covered by it by the force of law, even if they were not included on the list of creditors' claims. However, the arrangement does not bind creditors whom the debtor has not disclosed and who have not participated in the proceedings.

The arrangement does not affect the rights under a mortgage, pledge, registered pledge, tax lien or maritime mortgage if they were established on the debtor's assets, unless the eligible party agreed to the secured receivable being covered by the arrangement. In the event of agreement to the receivable being covered by the agreement, these rights remain in force, except that they secure the receivable in the amount and on terms of payment specified in the arrangement.

The law provides for cases in which an arrangement can be revoked (e.g. when the debtor fails to comply with the provisions of the arrangement), modified (e.g. when the debtor's business experiences a permanent increase or decrease of revenues after approval of the arrangement) or can expire by the force of law (e.g. when the debtor is declared bankrupt during execution of the agreement).

After executing the arrangement or enforcing the creditors' claims covered thereby, the court issues a decision on the final execution of the arrangement. After this decision becomes final and binding, the debtor regains the right to freely manage its assets and dispose of their components - if it had been deprived of it under the terms of the arrangement.

4 Bankruptcy

4.1 Standard bankruptcy

The purpose of bankruptcy proceedings is to ensure that creditors' claims can be met to the fullest extent possible and that, if reasonable considerations allow, the debtor's enterprise is preserved. Where the proceedings are conducted with respect to an entrepreneur who is a natural person, the additional objective is to allow an honest debtor an opportunity to eliminate his or her debts.

Bankruptcy proceedings generally conclude with a total liquidation of the bankrupt's assets and, in the case of entities entered into the register of entrepreneurs[11], deletion of the bankrupt from the National Court Register. It is also possible, on an exceptional basis, to conclude a non-liquidation agreement with the bankrupt's creditors, providing for the restructuring of the bankrupt's debt and continuation of the business.

4.1.1 Causes of bankruptcy[12]

Bankruptcy proceedings are initiated when the debtor becomes insolvent. The Bankruptcy Act specifies two different criteria for establishing debtor insolvency – insufficient liquidity and over-indebtedness. The latter criterion applies only to legal persons (e.g. companies) or organisational units without legal personality that are granted legal capacity under a separate act of law (e.g. partnerships[13]).

With respect to insufficient liquidity, the Bankruptcy Act provides that a debtor is insolvent when it has lost its ability to pay outstanding pecuniary debts. This refers to the debtor's actual ability to pay off due pecuniary debts. The Bankruptcy Act contains a legal presumption to the effect that the debtor loses its ability to pay off its outstanding debts when payment arrears exceed three months. The loss of the ability to repay due debts should be understood as the inability to make good on at least two such obligations. In general, the inability to pay off one debt does not establish the insolvency of the debtor.

As mentioned, the legal person or organisational unit without legal personality that is granted legal capacity by a separate act of law is also insolvent when it carries an excessive debt burden. The debt burden is excessive when the value of the debtor's pecuniary debts[14] exceeds the value of the debtor's assets for a continuous period exceeding 24 months. The Bankruptcy Act contains a legal presumption to the effect that the value of the debtor's financial liabilities exceeds the value of the debtor's assets when it is shown in the balance sheet (as defined in the Accounting Act 1994) that liabilities (excluding reserves for commitments and commitments toward related parties) exceed the value of debtor assets for a period exceeding 24 months. If, in the course of this period, the value of assets equals or exceeds the value of liabilities (even temporarily), the run of the 24-month period starts again. Moreover, the court may reject the request for a declaration of bankruptcy of an over-indebted debtor when there is no immediate threat of the debtor losing its capacity to pay due liabilities (optionally).

[11] Entrepreneurs who are not natural persons are registered in the register of entrepreneurs maintained by the National Court Register.

[12] This section is an updated version of the chapter on Poland by Karol Czepukojć in "Directors in the Twilight Zone V", published by INSOL International in May 2017.

[13] It does not apply to partnerships where at least one partner is liable for the partnership's obligations without limitation and is a natural person.

[14] Pecuniary debts do not include future liabilities, including liabilities dependant on a condition precedent, and liabilities towards a partner or shareholder on account of a loan or another legal act having a similar effect.

The bankruptcy court will also reject the request for a declaration of bankruptcy if:

- The assets of the insolvent debtor are insufficient to cover the costs of the proceedings or are sufficient only to cover these costs (obligatory).

- The debtor's estate is burdened with a mortgage, pledge, registered pledge, tax lien or maritime mortgage to the extent that its remaining assets are insufficient to cover the costs of the proceedings (optionally).

However, the application will not be rejected for the above reasons if:

- It is *prima facie* evidenced that the burden on the debtor's assets is ineffective or has been imposed in order to harm the creditors;

- It is *prima facie* evidenced that the debtor has performed other ineffective legal actions to dispose of assets sufficient to cover the costs of the proceedings, and the circumstances of the case indicate that the application of the provisions of law on ineffectiveness and a challenge of the bankrupt's actions will lead to the acquisition of assets exceeding the amount of the anticipated costs.

Moreover, the court will reject a bankruptcy petition filed by a creditor if the debtor can show that the receivable is entirely contested and that the dispute has arisen between the parties before the filing of the bankruptcy petition.

4.1.2 Bankruptcy capacity

According to the Bankruptcy Act, bankruptcy proceedings may be opened with respect to:

- An entrepreneur and a deceased entrepreneur, if the application for a declaration of bankruptcy was filed within one year of his / her death;

- A limited liability company and a joint-stock company not engaged in any commercial activity; and

- A partner in a registered or limited partnership liable for the partnership's commitments with all their assets without limitation and a partner in a professional partnership.

The Bankruptcy Act also provides for certain exemptions. The following entities cannot be declared bankrupt:

- State Treasury and territorial self-government units;

- Public independent healthcare facilities;

- Institutions and legal persons established by statute, unless otherwise provided for in this statute, and established in the performance of the obligation imposed by statute;

- Natural persons running a farm, who are not engaged in any other commercial or professional activity;

- Higher educational academies; and

- Investment funds.

In addition, an entrepreneur cannot be declared bankrupt in the period between the opening of restructuring proceedings and their completion or final and binding discontinuance. If an application for a declaration of bankruptcy and a restructuring application are filed concurrently, the latter is usually examined first.

The Bankruptcy Act contains provisions defining certain differences in bankruptcy proceedings initiated after the death of an insolvent debtor, and which apply to real estate developers, bond issuers, banks, mortgage banks and saving cooperatives and credit unions, credit institutions,

foreign banks, domestic banks operating abroad, insurance and reinsurance companies, as well as insurance companies and their branches and reinsurance companies and their branches established in the Member States of the European Union or the Member States of the European Free Trade Association (EFTA) - parties to the Agreement on the European Economic Area. These provisions are not detailed further in this paper.

4.1.3 Bankruptcy declaration

An application for a bankruptcy declaration ought to be filed essentially by the debtor itself or any of its personal creditors. In the event of the death of an entrepreneur, a bankruptcy petition may be filed within one year of his / her death, in addition to his / her creditor, by the heirs, the spouse and any children or parents of the deceased, even if they do not inherit his / her estate.

Filing a bankruptcy application is a duty of the debtor. It should do so no later than within thirty days of the date when the insolvency occurred. If the debtor is a legal person or another organisational unit without legal personality which has legal capacity under a separate statute, the obligation to declare its bankruptcy rests with anyone who, under the law, company articles of association or company statute has the right to conduct the debtor's affairs and to represent the debtor, alone or with other individuals.

Persons obligated to file the application for a declaration of the debtor's bankruptcy are liable for damage caused by failure to submit the application within the prescribed time limit. The regulations provide for the possibility of being released from this liability, e.g. in the absence of guilt.

The failure to file a bankruptcy application on time may also result in the following[15]:

- Joint and several liability of (current and former) management board members of a limited liability company for the debts of the company;
- Joint and several liability of (current and former) management board members of a limited liability company or a joint-stock company for the company's tax liability;
- A temporary ban on conducting business activities as a sole proprietor or in a civil law partnership and acting as a member of the supervisory board, a member of the audit committee, a representative or a proxy of a natural person conducting business activities within the scope of these activities, a commercial company, a state enterprise, a cooperative, a foundation or an association. The ban may also be imposed on the person who actually manages the debtor's business (e.g. a shadow director) if it has substantially contributed to a bankruptcy petition not having been filed within the statutory time limit;
- Criminal responsibility.

The application for a declaration of bankruptcy filed by the debtor should include, among other things:

- An indication of the circumstances that justify the application and supporting *prima facie* evidence;
- A current list of assets together with a valuation estimate;
- A balance sheet;
- A list of creditors;
- A list of debtors;
- A list of collateral established against the debtor's assets and a declaration on repayments of liabilities or other debts made within six months before the date of the application.

[15] For more on these and other related risks, see the Poland chapter by Karol Czepukojć in "Directors in the Twilight Zone V", published by INSOL International in May 2017.

If the application for a declaration of bankruptcy is filed by a creditor, it should in the first place substantiate its claims and state and substantiate the circumstances that justify the application.

The debtor and anyone who files the application for a declaration of bankruptcy become participants in the proceedings on bankruptcy declaration. The bankruptcy court recognises the application at a closed session. Setting a hearing is optional. The court should issue its decision on the bankruptcy declaration within two months (this is a non-binding deadline).

When a bankruptcy petition is filed, the bankruptcy court may, upon request or *ex officio*, secure the debtor's assets by appointing a temporary court supervisor (the debtor is restricted in acts exceeding the scope of ordinary management – they require the supervisor's consent on penalty of being null and void; the consent should be granted no later than within 30 days after the act), establish compulsory administration (the debtor is generally deprived of the right to manage its business) and suspend enforcement proceedings and revoke bank account seizures - if this is necessary to achieve the objectives of bankruptcy proceedings.

Payment by the debtor of its liabilities towards the creditor applying for a declaration of the debtor's bankruptcy has no impact on the continuation of proceedings on bankruptcy declaration. On the other hand, if a creditor submits the bankruptcy petition in bad faith, the court, when dismissing the petition, will charge the creditor with the costs of the proceedings and may order it to make a public apology of the relevant content and in the appropriate form. In addition, in the event of a dismissal of the creditor's petition filed in bad faith, the debtor, as well as a third party, are entitled to claim damages against the creditor. The purpose of these regulations is to limit the use of a bankruptcy petition as a tool meant solely to compel the debtor to pay the creditor's claim.

When declaring a bankruptcy, the bankruptcy court appoints a judge-commissioner and an official receiver for the bankrupt. In addition, it calls on creditors to report their creditors' claims within thirty days of the date of the debtor's bankruptcy announcement, and requests that persons with rights, personal rights and claims burdening the bankrupt's real estate (if not disclosed by an entry in the land and mortgage register) report them within the same time limit, under pain of losing the right to refer to them in bankruptcy proceedings. The date of the bankruptcy decision is the date of bankruptcy.

The decision on the declaration of bankruptcy is subject to appeal by the participants in the proceedings. In case of a refusal to declare bankruptcy, it is the applicant and the debtor who are entitled to file an appeal. If bankruptcy is declared, the debtor (if it is not an applicant) and each of the creditors may file an appeal, but the creditors may only appeal in relation to the jurisdiction of the Polish courts.

4.1.4 Bankruptcy court

Bankruptcy cases are recognised by the bankruptcy court. The bankruptcy court is one of the commercial divisions of the district court. The jurisdiction of a bankruptcy court is determined on the same grounds as in the case of the restructuring court (see section 3.4).

4.1.5 Judge-commissioner

Comments made on the appointment and role of the judge-commissioner in restructuring proceedings can be appropriately referred to bankruptcy proceedings (see section 3.5), with the difference that in bankruptcy proceedings there is a mandatory appointment of one deputy judge-commissioner.

4.1.6 Participants in bankruptcy proceedings

Participants in bankruptcy proceedings, in addition to the bankrupt debtor, are persons entitled to be satisfied from the bankruptcy estate.

4.1.6.1 Creditors' meeting

The creditors' meeting is convened and presided over by the judge-commissioner. The creditors' meeting does not usually play any major role in bankruptcy proceedings unless it is necessary to:

- Exclude from the bankruptcy estate certain assets of the bankrupt's estate by way of a resolution;

- In the absence of liquid funds in the bankruptcy estate, adopt a resolution on the creditors' advance payment to cover the costs of proceedings;

- The proceedings are to end in an arrangement with the creditors.

As a rule, those creditors have the right to participate and vote at the creditors' meeting whose creditors' claims have been placed on a list of creditors' claims. However, at the request of a creditor and after hearing out the debtor, the judge-commissioner may admit that creditor to the meeting when its receivable depends on a condition precedent or is substantiated. The official receiver, members of the creditors' council and the bankrupt summoned to give explanations are obliged to appear at the creditors' meeting.

The judge-commissioner may revoke a resolution of the creditors' meeting if it is inconsistent with the law or violates good customs, or grossly violates the interests of the creditor who voted against the resolution. The decision of the judge-commissioner can be subject to appeal.

4.1.6.2 Creditors' council

The creditors' council represents the debtor's creditors and in the performance of its duties is guided by the interests of all creditors. The creditors' council consists of five members and two deputies appointed from among the debtor's creditors participating in the proceedings. In small proceedings, the council consists of only three members.

The main competencies of the creditors' council include:

- The right to examine the status of the debtor's assets and the books and documents of the debtor's enterprise, and the right to request explanations from the debtor or official receiver;

- Providing its opinion at the request of the judge-commissioner or official receiver, overseeing the official receiver's activities and commenting to the judge-commissioner on the activities of the official receiver;

- Requesting replacement of the official receiver with a candidate nominated by the council (this requires a resolution voted on by all council members, of whom at least four out of five voted in favour, or as a result of a resolution taken at the request of the debtor; if the council consists of three members, its resolutions are passed unanimously – the court is essentially bound by the will of the council);

- Granting authorisation concerning measures that can only be carried out with the authorisation of the creditors' council.

The following acts performed by the official receiver require the authorisation of the creditors' council (failing which they will be deemed invalid; the law provides for exceptions in certain situations):

- Continuing the bankrupt's business by the official receiver, if it is to last more than three months from the date of bankruptcy;

- Incurring loans or credits and encumbering the bankrupt's assets with limited property rights;

- Recognising, waiving or concluding a settlement with respect to disputed claims, or submitting the dispute to arbitration;

- Resigning from the sale of the enterprise as a whole;

- Free-hand selling of assets belonging to the bankruptcy estate.

The creditors' council is appointed by the judge-commissioner *ex officio*, if he deems it necessary, or at the request of the bankrupt, at least three creditors, or a creditor or creditors with at least

one fifth of total creditors' claims, excluding certain creditor groups specified in the Bankruptcy Act (e.g. creditors affiliated with the debtor).

At the request of a creditor or creditors with at least one fifth of the total of creditors' claims vested in creditors participating in the proceedings, excluding certain groups of creditors specified in the Bankruptcy Act (e.g. creditors affiliated with the debtor) or their multiple, the judge-commissioner appoints as a member of the creditors' council the creditor indicated by the requestor (one for every fifth part of the total of creditors' claims). As a rule, the judge-commissioner is bound by such request.

As a rule, resolutions of the creditors' council are passed by a majority of votes. Creditors' council meetings may also take place by means of direct remote communication. Members of the creditors' council perform their duties either personally or by proxy. A member of the creditors' council is liable for the damage resulting from the improper performance of its duties.

Resolutions of the creditors' council are subject to complaint to the judge-commissioner. Only the complainant, the bankrupt and members of the creditors' council are allowed to appeal the judge-commissioner's decisions.

The rules of appointing and recalling creditors' council members are specified in the Bankruptcy Act. A member may be recalled, for example, when it is not performing its duties properly.

If the creditors' council has not been established, the activities reserved for the creditors' council are performed by the judge-commissioner. The judge-commissioner also performs activities reserved for the creditors' council if the council fails to perform them within the deadline set by the judge-commissionaire or by the law.

4.1.7 Effects of declaring bankruptcy

Declaring bankruptcy triggers a number of consequences for the debtor, for example:

- The bankrupt has to turn over to the official receiver its right to manage and the possibility of disposing of assets placed in the bankruptcy estate and the ability to use and dispose of those assets;

- The bankrupt's financial obligations, which are not yet due and payable, become payable on the date of bankruptcy declaration. In addition, non-cash liabilities change as of the date of bankruptcy declaration into pecuniary liabilities and become payable as at this date, even if the deadline for their payment has not yet passed;

- Bankruptcy estate assets cannot be burdened with a mortgage, pledge, registered pledge, tax lien or marine mortgage in order to secure a creditor's claim which arose prior to the declaration of bankruptcy[16]. In addition, no compulsory mortgage or fiscal pledge may be established on the assets of a bankruptcy estate, also to secure a creditor's claim which arose after the declaration of bankruptcy;

- A provision of a contract to which the bankrupt is party, which prevents or hinders the purpose of insolvency proceedings, is ineffective in relation to the bankruptcy estate;

- Limitations on the admissibility of offsetting creditors' claims;

- The receiver acquires the power to withdraw - under the terms specified in the Bankruptcy Act and with the approval of the judge-commissioner - from mutual agreements;

- There are special regulations in the Bankruptcy Act governing the validity and termination of lease and rental agreements, as well as leasing agreements, to which the bankrupt is party;

[16] Exception: the motion for entering the mortgage was filed in court at least six months before filing the application for a declaration of bankruptcy.

- Service contracts in which the bankrupt acted as the party who gives a commission, as well as agency contracts, expire. Service contracts concluded by the bankrupt, in which it accepted the commission, can be waived without compensation;

- In the event of bankruptcy of a party transferring an asset for use or a party accepting an asset for use, the contract, if the asset has already been delivered, is terminated at the request of one of the parties. If the asset has not yet been delivered, the contract terminates;

- In case of bankruptcy of one of the parties to a loan agreement, the loan agreement terminates when the loaned money has not yet been paid out. The same applies to a credit agreement when the bankrupt has not received the money from the lender before the bankruptcy date. If a part of the credited funds is made available to the bankrupt prior to the bankruptcy declaration date, the bankrupt loses the right to request payment of the remaining part;

- The ineffectiveness of certain acts performed by the bankrupt with respect to its assets (e.g. legal acts, either gratuitous or for consideration, which the bankrupt has disposed of its assets, if the value of the bankrupt's performance exceeds to a substantial degree the value of the performance received by the bankrupt or reserved for the bankrupt or a third party, made within one year before the date of submission of the application for a declaration of bankruptcy; or providing collateral for or the repayment of a non-mature debt by the bankrupt within six months before the date of submission of the application for a declaration of bankruptcy);

- The entitlement of the judge-commissioner to deem certain acts performed by the bankrupt with respect to its assets ineffective (for example certain legal acts performed by the bankrupt for remuneration within six months before filing the application with close relatives);

- The official receiver may, with the consent of the judge-commissioner, obtain the right to withdraw from an arbitration clause, subject to certain conditions set forth in the Bankruptcy Act (this does not apply to proceedings in progress prior to the commencement of the bankruptcy);

- The bankrupt's corporate rights associated with participation in companies or cooperatives are exercised by the official receiver.

In addition, regardless of whether or not bankruptcy is declared, according to the Bankruptcy Act, the provisions of a contract, to which the bankrupt is party, stipulating a modification or termination of the legal relationship in the event of the filing of a bankruptcy petition or a declaration of bankruptcy are invalid.

After bankruptcy is declared, all court, administrative and arbitration proceedings related to the bankruptcy estate may be instituted and conducted exclusively by the official receiver or against him / her. The official receiver replaces the bankrupt in the proceedings and conducts them on the bankrupt's behalf but in his / her own name[17]. Court, administrative and arbitration proceedings against a bankrupt concerning a creditor's claim, initiated against the bankrupt before the date of the bankruptcy petition, may be proceeded with as against the official receiver if after exhaustion of the procedure specified by the Bankruptcy Act, the claim is not accepted and will not be placed on the list of creditors' claims.

Enforcement proceedings in relation to assets included in the bankruptcy estate, initiated before the bankruptcy declaration date, are suspended by the force of law on the bankruptcy declaration date. These proceedings are discontinued by law after the bankruptcy declaration decision becomes final and binding. Moreover, after the bankruptcy declaration date it is not permitted to enforce an execution against assets belonging to the bankruptcy estate, nor to execute a decision to secure or order to secure as against the bankrupt's assets[18].

[17] This does not apply to proceedings relating to child support owed by the bankrupt and pensions disbursed on account of compensation for bodily harm or health disorders, or loss of the sole supporter, and on account of the replacement of allowances linked to life estate rights with a life annuity.

[18] Exception: security of maintenance creditors' claims and pensions disbursed on account of compensation for causing illness, incapacity for work, disability or death, and on account of the replacement of allowances linked to life estate rights with a life annuity.

After the bankruptcy is declared, the bankrupt trades under its current name followed by the inscription "*w upadłości*" (in bankruptcy).

4.1.8 Liquidation of assets or arrangement with creditors

On the day of declaring bankruptcy the bankrupt's property forms the bankruptcy estate, which henceforth serves to satisfy the bankrupt's creditors. The bankrupt is obliged to indicate and release to the official receiver all of its assets and documentation. The official receiver immediately takes over the assets, manages them, protects them from destruction, damage or removal by strangers, and proceeds with their liquidation. The bankrupt's business may continue to be operated after the bankruptcy is declared if it is possible to reach an arrangement with creditors, or the bankrupt's business may be sold in its entirety or in its organised parts.

The official receiver draws up (within thirty days of the bankruptcy announcement date) the following:

- An inventory and valuation of the bankruptcy estate;
- A list of creditors' claims;
- A financial statement for the day before the announcement of bankruptcy; and
- A liquidation plan.

The liquidation plan specifies the proposed ways of selling the components of the bankrupt's estate, in particular the sale of the enterprise, the date of the sale, the estimate of expenses and the economic justification for continuing to run the business.

The official receiver is obliged to take action to complete the liquidation within six months of the bankruptcy announcement date (in practice this term is generally not observed).

It is presumed that assets in possession of the bankrupt on the date of bankruptcy announcement are part of the bankrupt's estate. However, the official receiver should make sure that all components of the bankrupt's estate that do not belong to the bankrupt are returned to their owners. Nonetheless, should a dispute arise in this relation between the official receiver and the owner of the asset, the latter may apply for the asset to be exempted from the bankruptcy estate. The judge-commissioner may accept the application for exemption from the bankruptcy estate within one month of the date of filing, after hearing from the official receiver. Both the bankrupt and its creditors may appeal the decision to exempt an asset from the bankruptcy estate. If the application is rejected, the applicant may, by way of court action, request the exemption of the asset from the bankruptcy estate. The action ought to be filed with the bankruptcy court within one month of the date of delivery of the judge-commissioner's decision refusing to exempt the asset from the bankruptcy estate.

Liquidation of the bankruptcy estate may be effected through an open market or tendered sale, or by auction (of the bankrupt's enterprise in its entirety or in its organised parts, its real and movable property, its receivables and other property rights which form part of the bankruptcy estate) and / or by collecting its receivables from debtors and exercising its other property rights.

In certain cases, specified in the Bankruptcy Act, the liquidation of movables burdened with a registered pledge and receivables and rights burdened with a registered or financial pledge, may also be effected by the assumption or sale of such assets for the benefit of the creditor who is the registered or financial pledge holder (if the pledge agreement provides for the satisfaction of the pledge in this way).

The division of bankruptcy funds is made during the course of the liquidation of the bankruptcy estate once the judge-commissioner approves the list of creditors' claims in whole or in part.

A sale conducted in the course of bankruptcy proceedings has the effect of an enforcement sale – in principle, estate components are acquired free of burdens. In particular, the buyer of bankruptcy estate components is not responsible for the bankrupt's tax liabilities, including those that arose after the declaration of bankruptcy.

Creditors secured on the bankrupt's assets take priority in being satisfied from these assets, in accordance with the priority rules governing the given security means and account taken of certain deductions required under the Bankruptcy Act (including the costs of liquidation of that particular asset, the costs of insolvency proceedings, or the salaries of the employees performing work on the real property over a period specified in the Act). The remaining creditors' claims as against the insolvency estate funds are divided into categories set out in the Act - from first to fourth, where the first is satisfied before all others and the fourth is satisfied after all others.

The official receiver reports the bankruptcy to those creditors whose addresses are known from the bankrupt's records. The bankrupt's personal creditors who wish to participate in bankruptcy proceedings, if it is necessary to establish their claims, should report their claims to the judge-commissioner within the deadline specified in the bankruptcy declaration. The eligibility to report a claim is also vested in creditors whose claim is secured by a mortgage, pledge, registered pledge, tax lien, maritime mortgage or another entry in the land and mortgage register or register of ships. However, if such a creditor does not report a claim, it will be placed on the list of creditors' claims *ex officio* (this applies to both secured personal creditors and creditors secured only *in rem*). Neither is there any need to report claims under an employment relationship (the Bankruptcy Act also specifies other claims which do not need to be reported). Liabilities on this account are placed *ex officio* on the list of creditors' claims.

The official receiver verifies whether the submitted claim is confirmed in the registers and bankrupt's documents, and summons the bankrupt to state within a specified period whether he acknowledges the claim. If the reported claim is not confirmed in documents and registers, the official receiver summons the creditor to submit within a week the documents proving the existence of the claim under pain of refusal to recognise it. Upon the expiry of the time limit for reporting creditors' claims and after checking the reported creditors' claims, the official receiver draws up without delay a list of creditors' claims, no later than within two months after the expiry of the period set for reporting creditors' claims.

Within two weeks of the date of announcing that a list of creditors' claims has been drawn up, creditors may lodge an objection to the judge-commissioner against the recognition of a claim - in the case of a creditor placed on the list of creditors' claims, and against the refusal to recognise a claim - in the case of a creditor whose claim was not recognised. The bankrupt is entitled to file an objection at the same time, if the list of creditors' claims is not consistent with its applications and declarations. If the bankrupt did not file any statements even though it was summoned to do so, it can object only if it shows that it has not filed any statements for reasons beyond its control. The official receiver, the bankrupt and the creditor whose claim is in dispute may respond to the objection. The judge-commissioner, the deputy judge-commissioner or the designated judge will hear the objection in a closed session within two months of its filing. A hearing is optional. The decision on the objection can be appealed by the bankrupt, the official receiver and each of the creditors. Once the judge-commissioner's ruling on the objection becomes final and binding, and if it is appealed, after the court decision becomes final and binding, the judge-commissioner makes changes to the list of creditors' claims on the basis of this ruling and approves the list of creditors' claims.

A refusal to recognise a claim does not prevent a claimant from commencing proceedings in relation to the claim. However, proceedings may only be commenced after bankruptcy proceedings have been discontinued or completed (unless the proceedings were pending at the time of the declaration of bankruptcy, such proceedings will be suspended upon a bankruptcy declaration but may be re-started after a refusal to recognise a claim in the bankruptcy proceedings).

After completing the distribution of the bankruptcy estate, the court declares the completion of the bankruptcy proceedings. The court completes the proceedings also when all the creditors have been satisfied in the course of the proceedings. The law also provides for a number of situations in which bankruptcy proceedings may be discontinued.

Within thirty days of the date of the notice announcing the completion of the bankruptcy proceedings, the bankrupt who is a natural person may apply to establish a creditors' repayment schedule and redeem the remaining liabilities which have not been satisfied in bankruptcy proceedings. The court will dismiss such application in particular if the bankrupt has led to his / her insolvency or substantially increased its degree intentionally or through gross negligence.

In bankruptcy proceedings, on an exceptional basis, it is also possible to conclude an arrangement with creditors. Arrangement proposals may be filed by the bankrupt, a creditor or the official receiver. Entities authorised to submit arrangement proposals may also submit an application for total or partial suspension of the liquidation of the bankruptcy estate until the arrangement is approved (if the conditions specified in the Bankruptcy Act are met). The judge-commissioner may convene a creditors' meeting to vote on the arrangement if it has been substantiated that the arrangement will be accepted by creditors and performed, and must convene a meeting if the application is supported by a creditor or creditors holding together at least 50% of all creditors' claims vested in creditors entitled to vote on the agreement. The court issues a ruling on completion of the bankruptcy proceedings after the arrangement approval becomes final and binding.

4.2 Pre-packaged bankruptcy[19]

From 1 January 2016, under the Bankruptcy Act, it has been possible for the debtor's whole enterprise, or an organised part or assets representing a significant part of the enterprise to be sold in a pre-packaged bankruptcy. The Bankruptcy Act provides that any entity entitled to file a bankruptcy petition against a debtor is authorised to file an application for approval of the terms of a pre-packaged sale of the debtor's assets. This includes, among others, the debtor itself or a personal creditor, including a creditor secured on the debtor's assets[20].

An entity planning to apply to the court for approval of a pre-packaged sale of the debtor's assets may itself search for a potential buyer and negotiate therewith the terms of the sale. A pre-packaged sale to a buyer affiliated with the debtor is permissible. Interestingly, the applying creditor may also itself become the buyer (although it should be pointed out that, in this situation, it is not possible to set off claims held by the creditor against the purchase price – the payment must be made in cash). The consent of the bankrupt debtor – the owner of the assets is not formally required.

The terms of the sale agreed with the potential buyer are subject to approval by the bankruptcy court along with the announcement of the debtor's bankruptcy. In this situation, the closing of the transaction may occur fairly soon after the bankruptcy is declared. In the sale, the bankruptcy estate is represented by the official receiver.

It is worth noting that a pre-packaged bankruptcy may become an effective debt recovery tool, especially for financial institutions acting as secured creditors, when the debtor is insolvent and the financial institution seeks to quickly realise its collateral at the best price. This can also apply to cases where restructuring proceedings in relation to the debtor have started, but only after bringing them to their earlier discontinuation.

As a debt recovery tool, the pre-packaged bankruptcy may prove particularly attractive if the debtor is not repaying its debt to the creditor (e.g. financial institution) and has no prospects of repaying it in full within a reasonable period, and the creditor that holds tangible security does not agree to restructuring the debt on the terms proposed by the debtor or administrator in restructuring proceedings.

Key information about the course of a pre-packaged bankruptcy is as follows:

4.2.1 Bankruptcy petition with an application for approval of the pre-packaged sale

If along with the bankruptcy petition an application is filed for approval of the terms of the pre-packaged sale of specific assets, the minimum information that the application should convey is the identification of these assets, their prospective buyer and the proposed sale price agreed therewith. The bankruptcy court will prefer to sell the enterprise as a whole, and thus an application covering only an organised part of the debtor's enterprise or assets representing a significant portion of the enterprise will have to be justified out of concern for satisfying the creditors to the greatest possible degree.

[19] This section is revised version of the publication by Karol Czepukojć which first appeared in a web portal "In Principle" under the title "Pre-packaged insolvency: A new debt recovery tool for financial institutions in Poland?", published 25 May 2017.
[20] Justification of the proposed Restructuring Act 2015, 7th Sejm, Print no. 2824, p. 71.

During the course of the negotiations, the applicant may also agree with the prospective buyer on a draft of the asset sale agreement. This can be submitted to the bankruptcy court together with the application for approval of the terms of the pre-packaged sale.

In the court order approving the terms of the pre-packaged sale, the bankruptcy court may refer to the terms of the sale set forth in the draft asset sale agreement. The official receiver, with whom the buyer will formally conclude a contract (as the person acting for the debtor's account), becomes bound in this way by the draft agreement. This is a solution entirely favouring the buyer which can also expedite the pre-packaged sale procedure as it eliminates the need for negotiation of the contract with the official receiver after the debtor's bankruptcy is announced.

4.2.2 Description and valuation of assets

The price at which the debtor's assets can be sold in the pre-packaged transaction cannot be set by the applicant and the prospective buyer arbitrarily. The application for approval of the terms of the pre-packaged sale must enclose a description and valuation of the assets, prepared by an expert from the court's list of experts. There is an exception to this rule only when the sale is to be made to a buyer affiliated with the debtor; then the description and valuation are prepared upon an order of the bankruptcy court.

The requirement to use a court-appointed expert to value pre-packaged assets and to oversee this procedure by the bankruptcy court is intended to ensure the transparency of the procedure and to minimise the risk of a negative public perception of pre-packaged bankruptcy sales in Poland.

Considering the conditions under which a pre-packaged sale is conducted, in particular that the sale will be made in the course of bankruptcy proceedings, it should be expected that the valuation will reflect the conditions of a forced sale, as is assumed in a bankruptcy that involves the liquidation of the debtor's assets under the general rules.

4.2.3 Access to the debtor's assets and related data and information

If an application for approval of a pre-packaged sale is to be filed by a creditor without the debtor's consent or against the debtor's will, it may prove very problematic to prepare a description and valuation of the assets subject to the pre-packaged sale, and for the potential buyer to obtain information about the debtor's assets that will enable the buyer to make a sound business decision concerning the transaction, especially in the case of medium-sized and large undertakings. The debtor may not cooperate voluntarily with the creditor and deny access to its assets, as well as refuse to provide any information about them.

However, because the legislator decided that the creditor should also be able to take the initiative in a pre-packaged bankruptcy, even against the debtor's will, practitioners are faced with the challenge of how to ensure that the creditor can effectively exercise this right when the debtor refuses to cooperate.

4.2.4 Sale price

The estimated value determined by the court-appointed expert may serve as a point of departure in negotiations with potential buyers.

For the purposes of determining the sale price of the assets which the parties are required to include in the application for approval of the pre-packaged sale filed with the bankruptcy court, the valuation may be reduced to reflect the cost of the proceedings which would have been incurred had the assets been liquidated in bankruptcy proceedings under the general rules. If the sale price proposed in the application is higher than the amount of the expert valuation (less the costs referred to), the bankruptcy court will be bound by this price.

Moreover, as an exception, the court can also grant an application in which the offered price is equal to or somewhat lower than the above-mentioned amount, if supported by legitimate public interest (e.g. maintaining jobs) or the possibility of continuing the debtor's enterprise as a going concern.

However, a pre-packaged sale to a buyer affiliated with the debtor is permissible only at a sale price no lower than the valuation.

4.2.5 Approval of the terms of a pre-packaged sale by the bankruptcy court

If the application is granted, in the order declaring the debtor's bankruptcy the court will confirm the terms of the pre-packaged sale, specifying the price and the buyer of the assets in question. In this respect the court is bound by the application; it may not increase or reduce the sale price proposed in the application.

Although it may seem obvious, it should be stressed that the court can approve the terms of the pre-packaged sale only if it also declares the debtor's bankruptcy. This is a necessary condition. If the court finds that the bankruptcy petition should be denied, then the application for approval of the pre-packaged sale becomes moot.

The ruling on the application for approval of the terms of a pre-packaged sale can be appealed. If the application is denied, only the applicant has the right to appeal the denial; if the application is granted, any creditor can appeal the ruling.

4.2.6 Payment of the price and execution of the assets sale agreement

The official receiver is obliged to conclude a sale agreement with the buyer, on behalf of the debtor, within 30 days after the court order approving the terms of the pre-packaged sale becomes legally final (unless the terms of the contract approved by the court provide for some other deadline).

The sale agreement can be concluded only after the buyer has paid the entire price to the bankruptcy estate, or the price paid earlier into the court deposit is released to the official receiver. It is not permitted to postpone payment or to pay in instalments.

The application for approval of the terms of the pre-packaged sale may include a request for the enterprise to be transferred to the buyer on the date of declaration of the debtor's bankruptcy. In that case, proof of payment of the full proposed price to the court's deposit account is enclosed with the application. During the transition period, until the court order approving the terms of the pre-packaged sale becomes legally final and the sale agreement is concluded, the buyer will administer the assets within the ordinary course of business, at its own risk and responsibility.

Within the time granted for the execution of the sale agreement, the official receiver may file an application to the court to set aside or amend the court order approving the terms of the pre-packaged sale if, after issuance of the court order, new circumstances have occurred or have been disclosed which strongly impact the value of the assets that are to be sold. This aspect of the pre-packaged sale procedure is designed to protect the interests of the debtor and its creditors. Participants in bankruptcy proceedings have the right to file an appeal against a court order approving the official receiver's application.

After the court order approving the terms of the pre-packaged sale becomes legally final, the bankruptcy court will order the price paid into the court deposit to be released to the official receiver (either at the court's own initiative or upon the application of the official receiver). Proceeds from the sale of a secured asset make up a separate fund from which the secured creditor has priority in being satisfied over other creditors (also reflecting priority of creditors secured with the same collateral).

4.2.7 Assets encumbered by registered pledge

If assets covered in the pre-packaged sale are encumbered with a registered pledge in favour of a creditor other than the applicant, the pledgee's written consent to the transaction is required. It is not permitted to file an application for approval of the terms of the pre-packaged sale with respect to assets on which a registered pledge is established if the agreement establishing the pledge provides for the possibility of the pledgee claiming satisfaction by taking over or selling the pledged asset, and the pledgee has not consented to the pre-packaged sale.

The only exception is a situation where a disposal of a pledged asset as part of a pre-packaged sale that covers the entire enterprise is more advantageous for the pledgee than a separate sale of the pledged asset. However, the applicant must first prove to the bankruptcy court that this is the case.

Proceeds from the sale of a pledged asset make up a separate fund from which the pledgee has priority in being satisfied over other creditors (also reflecting priority of creditors secured with the same collateral).

4.3 Consumer bankruptcy

In Poland, it is also possible to declare bankruptcy of a natural person not engaged in business (so-called consumer bankruptcy). However, it is a procedure often used not only by consumers in the exact meaning of the term but also by former entrepreneurs or former management board members who, during the course of their business, or as a result of serving as management board members, have fallen into debt (for example, having guaranteed the liabilities of the company which has become insolvent).

The purpose of proceedings against natural persons not engaged in business is to allow the redemption of the bankrupt's liabilities not satisfied in bankruptcy proceedings and, if feasible, to satisfy creditors to the fullest possible extent.

4.3.1 Causes for insolvency

The causes for insolvency of an individual who is not an entrepreneur are the same as that of an entrepreneur who is a natural person. Debtors are considered insolvent if they lose the ability to meet their pecuniary obligations (there is a presumption of insolvency if the delay in paying pecuniary obligations exceeds three months). However, unlike an entrepreneur's insolvency, a non-entrepreneur's bankruptcy can also be announced when he has only one creditor (it is widely accepted that, in general, an entrepreneur must have at least two).

4.3.2 Bankruptcy declaration

An application for bankruptcy declaration ought to be filed by the debtor itself. An exception applies to debtors who are former entrepreneurs and have ceased to conduct their business within a year of the application. In their case, an application for bankruptcy declaration may also be submitted by their personal creditor.

Filing an application for bankruptcy declaration of a natural person who is not an entrepreneur is the latter's privilege. The law does not impose such obligation on the debtor. Therefore, a natural person not engaged in business is not at risk of liability for failure to submit an application for bankruptcy declaration or for its late submission.

In the case of bankruptcy declaration of a natural person, the bankruptcy court appoints a judge-commissioner and an official receiver. The receiver immediately takes over the management of the debtor's estate. The powers of the judge-commissioner and the official receiver are generally the same as in standard bankruptcy proceedings involving entrepreneurs.

Within thirty days of the announcement of the court's decision on bankruptcy, creditors should report their claims to the judge-commissioner. This term also binds persons entitled to right or personal rights and claims which burden the debtor's real estate, if they are not disclosed in the land and mortgage register, under pain of losing their right to invoke them in bankruptcy proceedings.

4.3.3 The rejection of an application for bankruptcy declaration

An application for bankruptcy declaration will be subject to rejection by the bankruptcy court if the debtor has led to its own insolvency or has significantly increased its degree intentionally or through gross negligence. In addition, the court will reject the application[21] (unless the declaration

[21] This does not apply if the application was submitted by a creditor.

of consumer bankruptcy is justified for reasons of equity or humanitarian considerations) if within ten years before the date of filing the application:

- Consumer bankruptcy proceedings were conducted against the debtor and were discontinued (for reasons other than at the debtor's request);
- The debt repayment plan established for the debtor was revoked;
- The debtor failed in its obligation (for example, as an entrepreneur or a member of a company management board) to file an application for declaration of bankruptcy within the deadline;
- A legal action conducted by the debtor was legally recognised as having been performed to its creditors' detriment.

An application for bankruptcy declaration will also be rejected[22] if:

- In the ten years prior to filing the application, bankruptcy proceedings were instituted against the debtor in which all or part of his / her liabilities were cancelled, unless the debtor's insolvency or its extenuation occurred despite his / her exercise of due diligence, or the conduct of the proceedings is justified for reasons of equity or humanitarian considerations;
- The information and figures provided by the debtor in the application was false or incomplete, unless the falsity or incompleteness were insignificant, or the conduct of the proceedings is justified for reasons of equity or humanitarian considerations.

Moreover, the court will reject a bankruptcy petition filed by a creditor if the debtor can show that the creditor's alleged claim is entirely contested and that a dispute has arisen between the parties before the filing of the bankruptcy petition.

4.3.4 Liquidation or arrangement with creditors' options

Consumer bankruptcy proceedings usually include the liquidation of the debtor's assets and the distribution of proceeds between the creditors in accordance with the general principles of the Bankruptcy Act. However, if it is substantiated that the objectives of the proceedings will be met by way of an arrangement with creditors, the judge-commissioner may, at the request of the bankrupt, convene a meeting of creditors to conclude the arrangement with them. The arrangement can be concluded only with the consent of the bankrupt, unless bankruptcy was declared and the meeting of creditors was called at the request of a creditor.

In a liquidation bankruptcy, if the bankruptcy estate includes an apartment or a single-family house in which the bankrupt lives, and the residential needs of the bankrupt and his / her dependents must be satisfied, the sum of the proceeds from the sale of that dwelling will be reduced by an amount to cover the cost of renting suitable accommodation for a period of 12 to 24 months (determined in accordance with the applicable rules and handed over to the bankrupt). When bankruptcy was declared at the request of a creditor and the debtor has led to his / her insolvency or has significantly increased its degree intentionally or through gross negligence, he / she is not granted that amount.

Where the assets of the insolvent debtor are not sufficient to cover the costs of the proceedings or the bankruptcy estate does not contain any liquid funds to cover these costs, they are temporarily covered by the State Treasury.

4.3.5 Creditors' recovery plan and redemption of the bankrupt's liabilities

Generally, natural persons who are not entrepreneurs are not obliged to meet their debts in full if their assets do not allow it.

If proceeds from liquidation of the debtor's assets are not sufficient to satisfy the creditors, the court will establish a creditors' repayment plan (for up to a maximum of 36 months) and determine

[22] This does not apply if the application was submitted by a creditor.

what part of the bankrupt's liabilities incurred before the date of declaration of bankruptcy will be cancelled upon the execution of the plan.

Liabilities created after the bankruptcy declaration and not satisfied in the course of the proceedings are included in the creditors' repayment plan in the full amount (however their repayment can be divided into installments over a period not longer than the scheduled execution of the creditors' repayment plan). The same is true of the costs of proceedings imposed on the bankrupt by the court.

However, in cases where the bankrupt's situation clearly indicates that he / she will not be able to make any repayment under the repayment plan, the court will cancel the bankrupt's obligations (with certain exceptions specified in the Bankruptcy Act) and charge the State Treasury with the costs of bankruptcy proceedings.

After the bankrupt has performed the obligations determined in the creditors' repayment plan, the court issues a decision declaring that the creditors' repayment plan has been executed and cancelling the bankrupt's obligations created before the date of declaration of bankruptcy and not performed within the framework of the execution of the creditors' repayment plan (with certain exceptions specified in the Bankruptcy Act).

If the bankrupt cannot meet the obligations set out in the creditors' repayment plan, the court may modify the plan. The debt repayment date may be extended for a further period not exceeding 18 months. Where the lack of ability to meet the obligations set out in the creditors' repayment plan is permanent and results from circumstances beyond the control of the bankrupt, the court may waive the creditors' repayment plan and cancel the unperformed obligations.

In the event of non-performance by the bankrupt of the obligations set out in the creditors' repayment plan, the court will revoke the plan unless the default is insignificant or further execution of the creditors' repayment plan is justified for reasons of equity or humanitarian considerations. The repayment plan is also revoked if the bankrupt:

- Fails to submit a report on the execution of the plan to the court on time;
- Does not disclose the revenues or assets in the report on the execution of the creditors' repayment plan;
- Performs a legal action without the consent of the court or the court does not endorse that action although, according to the rules, it needs to endorse it;
- Hides assets or performs a legal action recognised as having been performed to the detriment of the creditors.

If the creditors' repayment plan is revoked, the bankrupt's obligations cannot be cancelled.

In the case of bankruptcy proceedings initiated upon a creditor's request, in situations specified by the Bankruptcy Act the provisions on the repayment plan and cancellation of obligations do not apply.

5 Cross-border restructuring and bankruptcy

5.1 EU Member States (with the exception of Denmark)

Poland as a Member State of the European Union is bound by Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on Insolvency Proceedings (recast) (EU Regulation 2015/848).

Polish bankruptcy proceedings against entrepreneurs (individuals, companies and other entities involved in economic activities) and each of the four restructuring proceedings discussed in this paper fall within the scope of EU Regulation 2015/848; they are listed in Appendix A to this regulation. As a result, based on EU Regulation 2015/848, if the Polish courts open main or non-main (secondary or territorial) proceedings, the effects of these proceedings will be recognised within the EU in accordance with EU Regulation 2015/848. In both cases, unless EU Regulation

2015/848 provides otherwise, Polish law as the law of the State of the opening of the proceedings will determine the conditions for the opening of these proceedings, their conduct and their closure.

Polish bankruptcy and restructuring courts set out the basis for their jurisdiction in the declaration of bankruptcy decision or upon opening restructuring proceedings. Where EU Regulation 2015/848 is applicable, the decision also specifies whether the procedure is of main, secondary or territorial character.

On the other hand, if one of the Member States of the EU opens main, secondary or territorial insolvency proceedings within the meaning of EU Regulation 2015/848, its effects, in so far as it is laid down in EU Regulation 2015/848, and subject to the exceptions provided for therein, will be recognised by Polish courts and administrative authorities.

5.2 Non-EU countries and Denmark[23]

The Model Law is implemented in Poland.

Under the Bankruptcy Act and Restructuring Act, Polish courts may make a declaration of bankruptcy in relation to a non-EU or Danish debtor or may open restructuring proceedings if the courts have international jurisdiction in these matters. Polish courts have exclusive jurisdiction over bankruptcy and restructuring matters if the debtor's COMI is in Poland. Polish courts will also have jurisdiction if the debtor conducts business or has its residence / registered address or property in Poland. If the jurisdiction of the Polish court is exclusive, bankruptcy or restructuring proceedings take on the form of main proceedings. In other cases, bankruptcy or restructuring proceedings take the form of territorial or secondary proceedings. In each of these cases, when a Polish court declares bankruptcy or opens restructuring proceedings in relation to a non-EU or Danish debtor, the procedure is governed by the Bankruptcy Act or Restructuring Act. The appointment by a foreign court of a foreign administrator to take measures in Poland does not exclude the domestic jurisdiction of Polish courts. Moreover, agreements as to jurisdiction are not applied in bankruptcy or restructuring matters.

The Bankruptcy Act enables foreign office-holders or debtors (who are permitted to continue managing their business) to seek recognition in Poland of their foreign bankruptcy or restructuring proceedings opened in a non-EU state or in Denmark. As at the date of filing of an application for recognition of a foreign ruling, the court may, at the applicant's request, issue a ruling on establishing security on property located in Poland. A judgment opening foreign bankruptcy or restructuring proceedings may be recognised in Poland if it relates to a matter that does not belong to the exclusive jurisdiction of Polish courts and the recognition is not contrary to fundamental principles of law in Poland. The recognition of a judgment to open foreign bankruptcy or restructuring proceedings results by the force of law in a recognition of the decisions concerning, among others, the appointment of a foreign office-holder issued in its course. If a judgment to initiate bankruptcy or restructuring proceedings in a non-EU state or Denmark is recognised in Poland, the effects of announcing bankruptcy or opening restructuring on the debtor's assets located in Poland, on foreign office-holder or debtor's rights and obligations, and liabilities that have arisen or are to be executed in Poland are governed by the Bankruptcy Act or Restructuring Act.

Immediately upon recognition in Poland of the decision to initiate foreign bankruptcy or restructuring proceedings, the court secures the debtor's property in Poland by establishing a temporary court supervisor. The activities of a foreign administrator or a debtor exercising management over its assets in Poland beyond the scope of ordinary management require the consent of the temporary court supervisor on penalty of invalidity, unless such activities require the consent of a court. The consent of the temporary court supervisor is also required for the removal of the debtor's assets outside of Poland. Establishing security by way of appointing a temporary court supervisor becomes invalid by the force of law when secondary bankruptcy proceedings are instituted, or in a situation of the final and binding dismissal or rejection of a motion for initiation of secondary bankruptcy proceedings, or discontinuance of proceedings in the matter of a request for initiation of secondary bankruptcy proceedings, or failure to file a request for initiation of secondary bankruptcy proceedings within thirty days of the announcement of the recognition of the decision on the initiation of foreign bankruptcy proceedings.

[23] This section is a revised and extended version of the chapter on Poland by Karol Czepukojć which first appeared in "Directors in the Twilight Zone V", published by INSOL International in May 2017.

Enforcement against a bankrupt or debtor on the basis of foreign enforcement titles executable in a State where they have been issued may be conducted in Poland once declared enforceable by the court recognising the decision to open foreign bankruptcy proceedings.

The recognition of a judicial decision to open bankruptcy or restructuring proceedings does not conflict with the Polish court opening bankruptcy or restructuring proceedings in Poland. However, if a decision on opening main bankruptcy or restructuring proceedings is recognised, then bankruptcy or restructuring proceedings opened in Poland become secondary bankruptcy or restructuring proceedings. If a ruling on opening territorial foreign bankruptcy or restructuring proceedings is recognised, bankruptcy or restructuring proceedings opened in Poland are conducted on general terms as main proceedings.

6 Disclaimer

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