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Insolvency/bankruptcy

 Poland

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European Judicial Network
(in civil and commercial
matters)

1 Who may insolvency proceedings be brought against?

In Poland bankruptcy proceedings within the meaning of Article (1)(1) of Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on bankruptcy proceedings (recast) are governed by two acts:

- the Act of 28 February 2003 - the Bankruptcy Act (*Prawo upadłościowe*), (Journal of Laws (*Dziennik Ustaw*) 2016, No 1520, as amended);

- the Act of 15 May 2015 - the Restructuring Act (*Prawo restrukturyzacyjne*) (Journal of Laws 2022, item 2309, as amended).

The provisions of the Bankruptcy Act govern liquidation proceedings related to insolvency, i.e. 'bankruptcy' (*upadłość*). The Restructuring Act governs restructuring proceedings related to the risk of insolvency, i.e. 'composition approval proceedings' (*postępowanie o zatwierdzenie układu*, Articles 210-226h), 'accelerated composition proceedings' (*przyspieszone postępowanie układowe*, Articles 227-264), 'composition proceedings' (*postępowanie układowe*, Articles 265-282) and 'remedial proceedings' (*postępowanie sanacyjne*, Articles 283-323).

The goal of bankruptcy proceedings (*postępowanie upadłościowe*) is to satisfy creditors' claims in the greatest possible degree and, if reasonably possible, to keep the debtor's enterprise in existence. Bankruptcy proceedings are initiated only at request and involve two stages: proceedings for the declaration of bankruptcy and proceedings after the declaration of bankruptcy.

Composition approval proceedings enable the debtor to enter into a composition by collecting the votes of the creditors on his own without the involvement of the court. Such proceedings may be conducted if disputed claims entitling creditors to vote on a composition account for no more than 15% of all claims entitling creditors to vote on a composition.

Accelerated composition proceedings enable the debtor to enter into a composition after a list of claims has been drawn up and approved in a simplified manner. Such proceedings may be conducted if disputed claims entitling creditors to vote on a composition account for no more than 15% of all claims entitling creditors to vote on a composition.

Composition proceedings enable the debtor to enter into a composition after a list of claims has been drawn up and approved. Such proceedings may be conducted if disputed claims entitling creditors to vote on a composition account for no more than 15% of all claims entitling creditors to vote on a composition.

Remedial proceedings enable the debtor to take remedial measures (intended to reorganise the debtor's enterprise) and to enter into a composition after a list of claims is drawn up and approved. Remedial measures include legal and practical measures intended to improve the debtor's economic situation and to restore their ability to meet their obligations, while protecting them against enforcement.

Bankruptcy proceedings may be brought against an entrepreneur. Pursuant to Article 43(1) of the Polish Civil Code, an entrepreneur is a natural person, a legal person or an organisational unit without legal personality and in which legal capacity is vested by statute and which conducts business or professional activity on its own behalf.

A bankruptcy application may be filed by a debtor and by any of their personal creditors.

Bankruptcy proceedings may also be brought against:

1. limited-liability companies and simple joint-stock companies not conducting business activity;
2. partners in business partnerships who bear unlimited liability, in respect of their entire assets, for meeting their partnership's obligations;
3. partners in a professional partnership.

Bankruptcy proceedings may also be brought against natural persons who do not conduct business activity (Article 491(1) et seq. of the Bankruptcy Act). Such proceedings are conducted only at the debtor's request, unless the debtor is a former entrepreneur, in which case a bankruptcy application may also be filed by a creditor up to one year after the entrepreneur's removal from the relevant register.

Restructuring proceedings may be opened in relation to:

1. entrepreneurs within the meaning of Article 43(1) of the Civil Code;
2. limited-liability companies and simple joint-stock companies not conducting business activity;
3. partners in business partnerships who bear unlimited liability, in respect of their entire assets, for meeting their partnership's obligations;
4. partners in a professional partnership.

Restructuring proceedings under the Restructuring Act are not opened in relation to natural persons not conducting business activity. Restructuring proceedings are conducted only at the debtor's request, except for remedial proceedings, which may also be opened at a creditor's request if the debtor is insolvent.

The Bankruptcy Act provides for a special form of restructuring proceedings to be initiated in respect of natural persons not conducting business activity, i.e. proceedings to enter into a composition at the creditors' meetings by a natural person not conducting business activity (Article 491(25) - 491(38) of the Bankruptcy Act). Pursuant to these provisions, a debtor who is a natural person not conducting business activity and who has become insolvent may apply to an insolvency court to open proceedings to enter into a composition at the creditors' meetings. A debtor that has filed a bankruptcy application may be referred by a court to proceedings to enter into a composition at a creditor's meeting, except where in the bankruptcy application the debtor has refused to participate in proceedings to enter into a composition at a creditors' meeting. The court grants the debtor's application to open proceedings to enter into a composition at a creditor's meeting or may refer the debtor to such proceedings where the debtor's earning capacity and occupational situation indicate that debtor is able to cover the cost of the proceedings to enter into a composition and that it is possible for a composition with the creditor's to be entered into and implemented.

2 What are the conditions for opening insolvency proceedings?

Bankruptcy proceedings are opened against a debtor who has become insolvent (Article 10 of the Bankruptcy Act).

A debtor is insolvent if they are no longer able to meet their pecuniary obligations that have fallen due. A debtor is presumed to have lost the ability to meet their pecuniary obligations if the delay in meeting them exceeds three months. A debtor that is a legal person or an organisational unit without legal personality in which legal capacity is vested under a separate statute is insolvent also when its pecuniary obligations exceed the value of its assets and this state of affairs continues for more than 24 months. A court may reject a bankruptcy application if there is no short-term risk that the debtor will be unable to meet their pecuniary obligations as they fall due.

Restructuring proceedings may be opened in respect of an insolvent debtor or a debtor at risk of insolvency. An insolvent debtor is a debtor that is insolvent within the meaning of Article 10 and Article 11 of the Bankruptcy

Act. A debtor at risk of insolvency is a debtor whose economic situation suggests that they may become insolvent in the short term.

The court refuses to open restructuring proceedings if they would be detrimental to creditors.

Furthermore, the Restructuring Act also lays down specific conditions for opening each type of restructuring proceedings.

Composition approval proceedings and accelerated composition proceedings may be conducted if disputed claims entitling creditors to vote on a composition account for no more than 15% of all claims entitling creditors to vote on the composition.

The court refuses to open composition proceedings and remedial proceedings if there is no prima facie evidence that the debtor will be able to cover the cost of proceedings and the obligations arising after their opening on an ongoing basis.

3 Which assets form part of the insolvency estate? How are the assets treated which are acquired by or which devolve on the debtor after the opening of the insolvency proceedings?

In bankruptcy proceedings the bankruptcy estate includes the assets owned by the bankrupt party on the day of the declaration of bankruptcy as well as the assets acquired by that party in the course of the *bankruptcy* proceedings (*Article 62 of the Bankruptcy Act*). *Exceptions to this rule* are specified in Articles 63-67a of the Bankruptcy Act.

The bankruptcy estate does not include assets excluded from enforcement pursuant to the Code of Civil Procedure (*Kodeks Postępowania Cywilnego*) of 17 November 1964 (Journal of Laws 2023, item 1550), the bankrupt party's pay for work in the part not subject to attachment, the amounts obtained through the enforcement of a pledge or a mortgage if the bankrupt party acted as pledge or mortgage administrator, in the part falling to other creditors in accordance with the administrator agreement, as well as cash held in a blocked account of a qualified entity within the meaning of Article 119zg(2) of the Tax Code Act (*Ordynacja podatkowa*) of 29 August 1997 (Journal of Laws 2021, items 1540). Where a natural person without dependants is declared bankrupt, the bankruptcy estate also does not include a proportion of the bankrupt person's income which - including income excluded from the bankruptcy estate pursuant to (1) - corresponding to 150% of the amount defined in Article 8(1)(1) of the Social Assistance Act (*Ustawa o Pomocy Społecznej*) of 12 March 2004 (Journal of Laws 2021 item 2268 and 2270 and Journal of Laws 2022, item 1, 66 and 1079). Where a natural person with dependants is declared bankrupt, the bankruptcy estate also does not include a proportion of the bankrupt person's income which - including income excluded from the bankruptcy estate pursuant to (1) - corresponding to the product of the number of persons dependent on the bankrupt person plus the bankrupt person multiplied by 150% of the amount defined in Article 8(1)(2) of the Social Assistance Act of 12 March 2004.

At the request of the bankrupt party or of the receiver, the bankruptcy judge may otherwise define the proportion of the bankrupt person's income that is not included in the bankruptcy estate in line with (1a) or (1b), taking account of the special needs of the bankrupt person and the dependants, including their health status, housing needs and how they can be met.

Furthermore, a resolution of the creditors' meeting may exclude other assets of the bankrupt party from the bankruptcy estate.

The bankruptcy estate also excludes assets intended to assist the bankrupt party's employees and their families, in the form of cash held in a separate account of a company social benefits fund set up pursuant to the provisions on the company social benefits fund, together with amounts to be paid into that account after the declaration of bankruptcy, including the repayment of housing loans, the payment of bank interest accrued in respect of the cash held by the fund and fees collected from persons using the social services and benefits financed by that fund and organised by the bankrupt party.

In restructuring proceedings the composition estate includes assets used for the operation of the enterprise and assets owned by the debtor (Articles 240, 273 and 294 of the Restructuring Act).

4 What powers do the debtor and the insolvency practitioner have, respectively?

In bankruptcy proceedings (proceedings aimed at liquidating the debtor's assets) the debtor is deprived of the right to manage their assets. The management of the assets (the bankruptcy estate) (*masa upadłościowa*) is taken over by the receiver (*syndyk*). The receiver also takes over other responsibilities related to the operation of the debtor's enterprise - managing the workplace, meeting the reporting obligations etc.

As a participant in bankruptcy proceedings, the bankrupt debtor is entitled to the legal remedies defined in the Bankruptcy Act in respect of certain decisions handed down in the course of the proceedings by the court and the bankruptcy judge, and entitled to make submissions in the course of the proceedings in line with Bankruptcy Act.

In restructuring proceedings the debtor's and the insolvency practitioner's powers differ according to the type of proceedings.

In composition approval proceedings the debtor may perform all actions, save during the period between the day on which the decision approving the composition is issued and the day on which that decision becomes final. During that period the rules applicable are the same as in accelerated composition proceedings, i.e. the debtor may perform routine management actions. Actions other than routine management require the consent of the composition supervisor.

In accelerated composition proceedings and composition proceedings the debtor may perform routine management actions; but actions other than routine management require the consent of the court supervisor, unless they require the consent of the creditors' committee.

In remedial proceedings the debtor is deprived of the right to manage and actions are performed by the insolvency practitioner, unless they require the consent of the creditors' committee.

If the effective conduct of remedial proceedings requires the personal participation of the debtor or of their representatives and at the same time they guarantee proper management, the court may permit the debtor to manage all or part of their enterprise to an extent that does not exceed routine management.

5 Under which conditions may set-offs be invoked?

In bankruptcy proceedings the claims of the bankrupt party may be *set off* against the creditor's claims if both claims existed on the day of declaration of bankruptcy, even if one of them was not yet due (Article 93 of the Bankruptcy Act).

A set-off is not admissible if the bankrupt party's creditor acquired the claim by assignment or endorsement after the declaration of bankruptcy or acquired it in the 12 months before the declaration of bankruptcy, knowing that there were grounds to declare bankruptcy, unless the acquisition was linked to the repayment of a debt for which the acquiring party was liable (personal liability or liability secured by a specific property). (Article 94 of the Bankruptcy Act)

A *set off* is inadmissible if the creditor became the bankrupt party's debtor after the day on which bankruptcy was declared (Article 95 of the Bankruptcy Act).

The creditor who wishes to use the right of *set-off* submits a statement to that end no later than on the day when the claim is lodged (Article 96 of the Bankruptcy Act).

In restructuring proceedings the general rules for setting off mutual claims are subject to the following limitations:

- a creditor became the debtor's debtor after the day on which the restructuring proceedings were opened;
- after the opening of the restructuring proceedings the debtor of the debtor subject to restructuring proceedings became his creditor through the acquisition, by assignment or endorsement, of a claim that arose before the day on which restructuring proceedings were opened.

Mutual claims may be set off if the claim was acquired as a result of the repayment of a debt for which the acquiring party was liable (personal liability or liability secured on specific property) and if the acquiring party became liable for the debt before the day on which the application for accelerated composition proceedings was submitted.

A creditor who wishes to take advantage of a *set-off* in restructuring proceedings submits a statement to that end to the debtor or, if the debtor is deprived of the right of management, to the insolvency practitioner no more than 30 days after the opening of restructuring proceedings or, if the grounds for the *set-off* arose later, no more than 30 days after the grounds for the *set-off* arose. A statement is also valid if submitted to a court supervisor (Articles 53, 273 and 297 of the Restructuring Act).

6 What effect do insolvency proceedings have on current contracts the debtor is a party to?

Specific provisions regarding the effects of the declaration of bankruptcy on the bankrupt party's obligations are to be found in Articles 83-118 of the Bankruptcy Act, on inheritances acquired by the bankrupt party in Articles 119-123 and on the bankrupt party's matrimonial property regime in Articles 124-126.

Articles 81-82 of the Bankruptcy Act prohibit encumbering assets included in the bankruptcy estate with a pledge, registered pledge or mortgage.

Provisions of a contract to which the bankrupt individual is a party that prevent or hinder the achievement of the goal of bankruptcy proceedings are void in relation to the bankruptcy estate. A contract transferring the ownership of property, a claim or another right concluded in order to secure a claim is valid in relation to the bankruptcy estate if it was concluded in writing at a certified date, unless it is a contract establishing a financial security (Article 84 of the Bankruptcy Act).

Articles 85 and Article 85a lay down detailed rules on framework contracts concerning forward financial transactions or the sale of securities under repurchase agreements.

The bankrupt party's financial obligations that are not yet due fall due on the day on which bankruptcy is declared. On the day on which bankruptcy is declared non-monetary obligations become monetary obligations and become payable on that day, even if the time limit for their performance has not yet lapsed (Article 91 of the Bankruptcy Act).

A claim arising from a contract concluded upon the acceptance of an offer submitted by the bankrupt party may be asserted by the creditor in bankruptcy proceedings only if the statement accepting the offer was submitted to the bankrupt party before declaration of bankruptcy.

If on the day of the declaration of bankruptcy obligations under a mutual performance contract have not been performed in full or in part, the receiver may, with the consent of the bankruptcy judge (*sędzia komisarz*), perform the bankrupt party's obligations and request the other party to perform the mutual obligation or withdraw from the contract with effect from the day of the declaration of bankruptcy. If on the day of the declaration of bankruptcy the bankrupt party is a party to any contract other than a mutual performance contract, the receiver may withdraw from that contract, unless otherwise provided for by statute.

At a request submitted by the other party at a certified date, the receiver declares within three months whether they withdraw from the contract or demands its performance. The receiver's failure to submit such a declaration within that time frame is deemed to constitute withdrawal from the contract.

The other party that is required to perform its obligation earlier may suspend the performance of its obligation until the mutual obligation has been performed or mutually secured. The other party is not entitled to do so if at the time of concluding the agreement it knew or should have known of the grounds for declaring bankruptcy (Article 98 of the Bankruptcy Act).

If the receiver withdraws from the contract, the other party is not entitled to the return of the performed obligation, even if it forms part of the bankruptcy estate. In bankruptcy proceedings a party may seek redress for the performed obligation and the losses incurred by submitting those claims to the receiver through the ICT

system that supports the court proceedings (Article 99 of the Bankruptcy Act).

A seller may demand the return of a movable asset - including securities - sent to the bankrupt party without receiving the price, if that asset was not acquired before the declaration of bankruptcy by the bankrupt party or by a person authorised by the bankrupt party to dispose of that asset. In addition, the consignee who sent the asset to the bankrupt party is entitled to its return. The seller or consignee to whom the asset has been returned refunds the costs that have been or are to be incurred and advance payments. However, the receiver may keep the asset if they pay or secure the price payable by the bankrupt party and the costs. The receiver is entitled to do so within a month of the return having been requested (Article 100 of the Bankruptcy Act).

Commission or consignment agreements concluded by the bankrupt party in which the bankrupt party was the commissioning party or consignor, as well as securities management agreements concluded by the bankrupt party, expire upon the declaration of bankruptcy. Claims arising from the loss thus incurred may be asserted in bankruptcy proceedings.

On the day when bankruptcy is declared it is possible to withdraw, without compensation, from commission or consignment agreements concluded by the bankrupt party and in which the bankrupt party was the commissioned party or the consignee (Article 102 of the Bankruptcy Act).

Agency contracts expire as of the day when either party declares bankruptcy. In the event of the commissioning party's bankruptcy the agent may, in the bankruptcy proceedings, claim the loss it incurred because of the contract's expiry (Article 103 of the Bankruptcy Act).

If the lender or the borrower declares bankruptcy, the loan for use agreement, if its subject has already been lent, is terminated at either party's request. If the subject has not yet been lent, the agreement expires (Article 104 of the Bankruptcy Act).

If either party to a loan agreement declares bankruptcy, the loan agreement expires if the object of the loan has not yet been lent (Article 105 of the Bankruptcy Act).

A real property rental or lease agreement binds the parties if the subject of the agreement has been made available to the tenant or lessee (Article 107 of the Bankruptcy Act). Pursuant to a decision issued by the bankruptcy judge the receiver terminates the real property rental or lease agreement concluded by the bankrupt party at three months' notice, even if it would have been inadmissible for the bankrupt party to terminate that agreement. In bankruptcy proceedings, the other party to the terminated agreement may seek compensation on account of the property rental or lease agreement having been terminated prior to the contractual deadline by submitting those claims to the receiver through the ICT system that supports the court proceedings. The above provisions apply mutatis mutandis to the rent or lease of an enterprise or an organised part thereof (Article 109 of the Bankruptcy Act).

A credit agreement expires upon the declaration of bankruptcy if the lender has not made the funds available to the bankrupt party before that date. The lender may seek damages in bankruptcy proceedings by submitting those claims to the receiver through the ICT system that supports the court proceedings (Article 111 of the Bankruptcy Act).

The declaration of bankruptcy does not affect the bankrupt party's bank account agreements, securities account agreements or collective account agreements (Article 112 of the Bankruptcy Act).

In restructuring proceedings, from the day on which they are opened to the day of their closure or the day on which the decision to discontinue proceedings becomes final, it is inadmissible for the debtor or insolvency practitioner to perform obligations arising from claims that are, by law, covered by a composition.

Contractual provisions stipulating the modification or termination of a legal relationship to which the debtor is a party if a request to open restructuring proceedings is filed or if such proceedings are opened are void.

The provisions of a contract to which the debtor is a party that prevent or hinder the achievement of the objective of restructuring proceedings are void in relation to the composition estate.

Article 250 of the Restructuring Act lays down detailed rules on framework contracts concerning forward financial operations or the sale of securities under repurchase agreements.

From the day of opening restructuring proceedings to the day of their closure or the day when the decision to discontinue proceedings becomes final, it is inadmissible for the lessor to terminate, without the consent of the creditors' committee, the rental or lease agreement for the premises or real property where the debtor's enterprise operates.

The aforementioned rules applicable to rental or lease agreements apply *mutatis mutandis* to credit agreements in respect of funds made available to the borrower before the day of opening the proceedings, to lease, property insurance, bank account agreements, guarantee agreements, agreements covering licences granted to the debtor and guarantees or letters of credit issued before the day of opening the restructuring proceedings and other agreements of fundamental importance for the management of the debtor's enterprise (Articles 256, 273 and 297 of the Restructuring Act).

Moreover, in remedial proceedings the insolvency practitioner may withdraw from a mutual performance contract that has not been performed in full or in part before the day when the remedial proceedings are opened, with the consent of the bankruptcy judge, if the other party's performance of that contract is indivisible. If the other party's performance of the contract is divisible, that provision applies *mutatis mutandis* to the extent to which the contract was to be performed by the other party after the opening of the remedial proceedings. If the insolvency practitioner withdraws from the contract the other party may claim the return of the performance rendered after the opening of the remedial proceedings and before that party received the withdrawal notice, if that performance forms part of the debtor's assets. If that is impossible, the other party may only seek redress for the performance and for the losses it incurred. Those claims are not subject to composition (Article 298 of the Restructuring Act).

7 What effect does an insolvency proceeding have on proceedings brought by individual creditors (with the exception of pending lawsuits)?

The court may, at the request of the debtor, temporary supervisor or the creditor who filed the bankruptcy application, suspend enforcement proceedings and repeal the attachment of the bank account if that is necessary to achieve the objectives of bankruptcy proceedings (Article 39 of the Bankruptcy Act).

Bankruptcy *enforcement* proceedings in respect of the assets included in the bankruptcy estate, opened before the declaration of bankruptcy, are suspended by law as of the day on which bankruptcy is declared. The proceedings are terminated by law when the decision on the declaration of bankruptcy becomes final (Article 146 of the Bankruptcy Act).

After the declaration of bankruptcy, court proceedings, administrative proceedings or administrative court proceedings concerning the bankruptcy estate may be opened and conducted only by the receiver or against the receiver (Article 144 of the Bankruptcy Act).

In restructuring proceedings enforcement proceedings regarding a claim subject to composition by law, commenced before the opening of restructuring proceedings, are suspended by law as of the day of opening those proceedings (Article 259, Article 278 of the Restructuring Act). In remedial proceedings the suspension applies to all enforcement proceedings in respect of the debtor's assets included in the remedial estate (Article 312 of the Restructuring Act).

On the day when the decision approving the composition becomes final, security and enforcement proceedings conducted against the debtor in order to meet the claims subject to composition are terminated by law. Suspended security and *enforcement* proceedings conducted against the debtor in order to meet claims not subject to composition may be resumed at the creditor's request (Article 170 of the Restructuring Act)

The opening of composition proceedings, accelerated composition proceedings or remedial proceedings does not preclude the creditor from opening court proceedings, administrative proceedings, administrative court proceedings or proceedings before courts of arbitration in order to assert claims subject to inclusion in the list of claims (Articles 257, 276 and 310 of the Restructuring Act).

8 What effect does an insolvency proceeding have on the continuation of lawsuits pending at the moment of the opening of the insolvency proceeding?

Following the declaration of bankruptcy the court suspends proceedings ex officio if they concern the bankruptcy estate, i.e. if their outcome may affect the bankruptcy estate (they concern an object included in the bankruptcy estate) and bankruptcy has been declared and if a compulsory administrator has been appointed in proceedings to declare bankruptcy (Article 174(1)(4) and (5) of the Code of Civil Procedure). The court calls upon the receiver or compulsory administrator to take part in the proceedings (Article 174(3) of the Code of Civil Procedure). If the bankrupt party (debtor) is the claimant, the court resumes the suspended proceedings ex officio and as soon as the receiver (compulsory administrator) has been designated (Article 180(1)(5) of the Code of Civil Procedure).

Proceedings may be brought against the receiver only if, in bankruptcy proceedings, a claim is not included in the list of claims after the possibilities prescribed in the Code have been exhausted. (Article 145 of the Bankruptcy Act).

In restructuring proceedings ongoing court proceedings (pending at the moment of opening the proceedings) are suspended if the proceedings concern the composition estate (or remedial estate) and an insolvency practitioner has been appointed in restructuring proceedings or if a temporary administrator has been appointed in proceedings to open remedial proceedings and the proceedings concern assets covered by security (Article 174(1)(4) and (5) of the Code of Civil Procedure). The court calls upon the temporary administrator or insolvency practitioner to take part in the proceedings (Article 174(3) of the Code of Civil Procedure).

The admission of a claim, the waiver of a claim, composition or the admission of relevant facts of the case by the debtor in such cases without the consent of the court supervisor has no legal effect (Article 258 of the Restructuring Act).

9 What are the main features of the participation of the creditors in the insolvency proceeding?

The participation of creditors in bankruptcy proceedings is governed by Articles 189-213 of the Bankruptcy Act). Creditors whose claims have been admitted are entitled to take part in the creditors' meeting and vote.

The bankruptcy judge establishes the creditors' committee ex officio if deemed necessary, or upon request, and appoints and dismisses the committee's members. The committee assists the receiver, monitors his actions, examines the state of the funds forming the bankruptcy estate, grants permission for actions that may be performed only with the permission from the creditors' committee and expresses its opinion on other matters if requested by the bankruptcy judge or receiver. The creditors' committee may request the bankrupt party or the receiver to provide clarification and it may examine books and documents concerning the bankruptcy in so far as that does not infringe business confidentiality.

The permission of the creditors' committee is necessary if the following actions by the receiver are to be valid:

1. the continued management of the enterprise by the receiver if it is to last more than three months after the declaration of bankruptcy;
2. waiving the sale of the enterprise as a whole;
3. the direct sale of the assets included in the bankruptcy estate;
4. contracting loans or credits and encumbering the bankrupt party's assets with limited proprietary rights;
5. the admission, waiver of entering into a composition regarding disputed claims and bringing a dispute before a court of arbitration.

An exception may be invoked when one of the above actions has to be performed immediately and concerns a value of no more than PLN 10 000, in which case the receiver, court supervisor or insolvency practitioner may perform it without the consent of the committee.

Moreover, no permission from the creditors' committee is required for the sale of movable assets if the estimated value of all movable assets included in the bankruptcy estate, as indicated in the inventory, is no

higher than PLN 50 000 and for the sale of claims and other rights, if the nominal value of all claims and other rights included in the bankruptcy estate, as indicated in the inventory, is no higher than PLN 50 000.

In bankruptcy proceedings the creditor may submit a composition proposal.

Creditors may also challenge the decision of a bankruptcy court or a bankruptcy judge concerning the approval of the receiver's accounting reports, decisions concerning the list of claims, also in respect of other creditors' claims, the distribution plan, the receiver's remuneration and the decision to discontinue or terminate bankruptcy proceedings.

The participation of creditors in restructuring proceedings is governed by Articles 104-139 of the Restructuring Act. The creditors whose claims have been included in an approved list of claims as well as the creditors who appear at the creditors' meeting and submit to the bankruptcy judge a writ of execution confirming their claim are entitled to participate in the creditors' meeting and vote.

At the creditors' meeting a composition may be reached if at least a fifth of the creditors entitled to vote on a composition participate in the meeting.

The bankruptcy judge establishes the creditors' committee and appoints and dismisses its members ex officio or on request. The creditors' committee assists the court supervisor or insolvency practitioner, monitors their actions, examines the state of the funds forming the composition estate or remedial estate, grants permissions for actions that may be performed only with the permission from the creditors' committee and expresses its opinion on other matters if requested by the bankruptcy judge, court supervisor, insolvency practitioner or debtor. The creditors' meeting and its members may submit their comments on the activity of the debtor, court supervisor or insolvency practitioner to the bankruptcy judge. The committee may request the debtor, court supervisor or insolvency practitioner to provide clarification and it may examine the debtor's books and documents in cases when that does not infringe business confidentiality. In other cases and in the event of doubts the bankruptcy judge specifies the scope of the prerogatives of the members of the creditors' committee as regards examining the books and documents of the debtor's enterprise.

To be valid, the following actions by the debtor or insolvency practitioner require the consent of the creditors' committee:

- encumbering elements of the composition or remedial estate with a mortgage, pledge, registered pledge or maritime mortgage in order to secure a claim not subject to composition;
- the transfer of the ownership of an object or a right in order to secure a claim not subject to composition;
- encumbering elements of the composition or remedial estate with other rights;
- contracting credits or loans;
- concluding an agreement on the leasing of the debtor's enterprise or an organised part thereof or another similar agreement.

(The above actions performed with the consent of the creditors' committee cannot be considered invalid in respect of the bankruptcy estate.)

- the sale, by the debtor, of real property or other assets worth over PLN 500 000.

Creditors may also challenge decisions of a restructuring court or a bankruptcy judge concerning the approval of accounting reports by the insolvency practitioner, decisions concerning the list of claims (composition proceedings and remedial proceedings) and other creditors' claims, the remuneration of the court supervisor or insolvency practitioner and decisions to discontinue or terminate bankruptcy proceedings.

10 In which manner may the insolvency practitioner use or dispose of assets of the estate?

In bankruptcy proceedings, after the declaration of bankruptcy the receiver draws up an inventory, estimates the

bankruptcy estate and drafts a liquidation plan. The liquidation plan defines the proposed manner of selling the bankrupt party's assets, in particular the enterprise, the time of the sale, an estimate of expenditure and the economic rationale for the continuation of the business activity (Article 306 of the Bankruptcy Act). After drawing up the inventory and financial report or after submitting a general written report the receiver liquidates the bankruptcy estate (Article 308 of the Bankruptcy Act)

After the liquidation the receiver may continue to manage the bankrupt party's enterprise if a composition with the creditors is possible or if it is possible to sell the whole of the bankrupt party's enterprise or organised parts thereof (Article 312 of the Bankruptcy Act).

In restructuring proceedings, i.e. accelerated composition proceedings and composition proceedings, the debtor as a rule continues to manage his enterprise. Pursuant to Articles 239(1) and 295 of the Restructuring Act the debtor may be deprived of the right to manage the enterprise if:

- (1) the debtor, intentionally or otherwise, infringes the law in the context of management resulting in a detriment to the creditors or the possibility of such a detriment in the future;
- (2) it is obvious that the manner of management does not guarantee the implementation of the composition or a trustee (*kurator*) has been appointed for the debtor pursuant to Article 68(1);
- (3) the debtor does not comply with the instructions issued by the bankruptcy judge or court supervisor, in particular by failing to submit lawful composition proposals within the time limit set by the bankruptcy judge.

In remedial proceedings, if the effective conduct of such proceedings requires the personal participation of the debtor or of their representatives and at the same time they guarantee proper management, the court may permit the debtor to manage all or part of their enterprise within the scope of routine management (Article 288(3) of the Restructuring Act).

In composition approval proceedings the debtor manages their enterprise throughout the duration of the proceedings.

11 Which claims are to be lodged against the debtor's insolvency estate and how are claims arising after the opening of insolvency proceedings treated?

A bankrupt party's personal debtor wishing to participate in bankruptcy proceedings is obliged to submit their claim to the receiver through the ICT system of the National Register of Debtors within the deadline specified in the declaration of bankruptcy if it is necessary for the debtor's claim to be established. A claim may also be lodged by a creditor whose claim was secured with a mortgage, pledge, registered pledge, fiscal pledge, maritime mortgage or another entry in the land and mortgage register or shipping register (if it is not lodged by the creditor it will be included in the list *ex officio*). Claims under an employment relationship are included in the list *ex officio* (Articles 236(1) and (2) and 237 of the Bankruptcy Act).

The costs of bankruptcy proceedings are covered first, before the bankruptcy estate liabilities arising after the declaration of bankruptcy, without a distribution plan being drawn up.

In restructuring proceedings the list of claims covers the personal claims in respect of the debtor that arose before the opening of the restructuring proceedings (Article 76 of the Restructuring Act). The list of claims separately indicates claims subject to composition by law and claims subject to composition with the creditor's consent (Article 86 of the Restructuring Act).

In restructuring proceedings claims are not lodged. The list of claims is drawn up by the supervisor or insolvency practitioner based on the debtor's accounting books, the debtor's other documents, entries in the land and mortgage register and other registers.

The composition is binding for creditors whose claims are, pursuant to the Act, subject to composition, even if they are not included in the list of claims. The composition is not binding for creditors who have not been disclosed by the debtor and who have not participated in the proceedings (Article 166 of the Restructuring Act)

The composition cannot cover maintenance claims, benefits paid as compensation for causing illness, inability to work, disability or death and annuity granted in exchange for rights under an annuity agreement; claims for the transfer of property and for the cessation of the infringement of rights; claims for which the debtor is liable in connection with acquiring an inheritance after the opening of restructuring proceedings, after the inheritance's inclusion in the composition or remedial estate. The composition also does not include claims under an employment relationship and claims secured on the debtor's property by means of a mortgage, pledge, registered pledge, fiscal pledge or maritime mortgage, in the part whose value is covered by the security, unless the creditor consents to their inclusion in the composition (Article 151 of the Restructuring Act).

12 What are the rules governing the lodging, verification and admission of claims?

The rules governing the lodging, verification and admission of claims in bankruptcy proceedings are laid down in Article 239a-266 of the Bankruptcy Act.

In bankruptcy proceedings the responsibility for lodging claims rests with the creditors. The deadline for submitting a claim is 30 days from the date of the declaration of bankruptcy being published in the ICT system of National Register of Debtors (Krajowy Rejestr Zadłużonych).

Claims under an employment relationship do not have to be lodged. Claims of this type are included in the list of claims ex officio (Article 237 of the Bankruptcy Act).

The creditor lodges their claim through the form available in the ICT system of the National Register of Debtors. The lodgement should include the creditor's first name, surname or registered name, the creditor's PESEL (personal identification) or KRS (National Court Register) number, or failing that, details enabling clear identification of the creditor, the company under the name of which the creditor who is a business operator is acting, the creditor's place of residence or registered office, their address or NIP (tax ID) if given, a description of the claim together with the incidental dues and the value of the non-monetary claim, evidence confirming the existence of that claim (it is sufficient to invoke the claim's admission in the list of claims drawn up in restructuring proceedings), the category in which it may be included, the securities linked to it, the creditor's bank account number if the creditor has a bank account and the status of the case if the claim is dealt with in court proceedings, administrative proceedings, administrative court proceedings or arbitrary court proceedings. If the bankrupt party is not a personal debtor in respect of the claim lodged, it is necessary to indicate the subject of the security to be used to meet the claim.

The receiver who verifies whether the lodged claims are confirmed by the bankrupt party's accounting books or other documents or by entries in the land and mortgage register or other registers and calls upon the bankrupt party to declare within a specified time limit whether it admits the claim. If the lodged claim is not confirmed by the bankrupt party's accounting books or other documents or by entries in the land and mortgage register or in other registers, the receiver calls upon the creditor to submit, within a week, the documents indicated in the lodgement of the claim under pain of refusal to admit the claim. This deadline can be neither extended nor re-established. However, the receiver may take into account documents submitted after that deadline unless that results in late submission of the list to the bankruptcy judge.

Within two weeks of the announcement that the list of claims has been added to the proceedings' file, the creditor may raise an objection with the bankruptcy judge. The bankrupt party may also raise an objection, if the draft list of claims does not reflect its requests or statements. If the bankrupt party has made no statements despite having been called upon to do so, it may only raise an objection if it proves that it has made no statement for reasons beyond its control.

The bankruptcy judge modifies the list of claims once the decision concerning the objection becomes final (or, if that decision is challenged, once the court's decision becomes final) and approves the list of claims. If no objection is made, they approve the list of claims once the deadline for submitting objections has lapsed. The bankruptcy judge may modify the list of claims ex officio. If it is found that claims that are fully or partly non-existent have been included in the list of claims or that claims required to be included in the list ex officio have not been included in it, the bankruptcy judge may modify the list of claims ex officio.

If a claim has been lodged after the deadline specified for lodging claims or a claim that is not required to be

lodged has been disclosed after that deadline, such a claim is included in the supplement to the list of claims. The list of claims is to be corrected in accordance with final judgments. A change in the amount of a claim that occurs after the list of claims is drawn up is taken into account when drafting the distribution plan or when voting at the creditors' meeting.

After the closure or discontinuation of bankruptcy proceedings an extract from the list of claims approved by the bankruptcy judge, indicating the claim and the amount received towards it by the creditor, serves as a writ of execution against the bankrupt party. The bankrupt party may request that a claim included in the list of claims be declared not to exist or to exist to a lesser extent, if the bankrupt party has not admitted a claim lodged in bankruptcy proceedings and no final judgment applicable to it has been handed down yet. Once the extract from the list has been declared enforceable, the bankrupt party may raise the objection that the claim included in the list of claims does not exist or exists to a lesser extent, by bringing an action to declare the writ of execution unenforceable.

The issue of determining the list of claims in restructuring proceedings is governed in Articles 84 - 102 of the Restructuring Act.

The list of claims is drawn up by the supervisor or insolvency practitioner based on the debtor's accounting books, the debtor's other documents, entries in the land and mortgage register and other registers. In remedial proceedings opened on the basis of a simplified request, the list of claims is drawn up in so far as possible on the basis of the list of claims drawn up in the preceding restructuring proceedings. If a composition proposal involves dividing the creditors into groups, the list of claims is drawn up taking account of the proposed division.

The list of claims separately indicates claims subject to composition by law and claims subject to composition with the creditor's consent.

In accelerated composition proceedings the debtor may object to the inclusion of a claim in the list of claims. Such a claim is considered to be a disputed claim. In this case the bankruptcy judge modifies the list of claims and the list of disputed claims accordingly.

In composition proceedings and in remedial proceedings, within two weeks of announcement of the date of submitting the list of claims and the list of disputed claims, the participants in the proceedings may raise an objection to the inclusion of a claim in the list of claims with the bankruptcy judge. The debtor may object if the list of claims is not in line with their statement on admitting or refusing to admit a claim. If the debtor has made no statement they may only raise an objection if they prove that they have made no statement for reasons beyond their control. Within the same time-limit a debtor or creditor who has not been included in the list of claims may object to a claim having been omitted from the list.

An objection made after that time-limit, an objection inadmissible for other reasons or an objection that contains deficiencies not remedied by the objecting party or in respect of which the party has not paid the payable fee within the specified time limit is rejected by the bankruptcy judge.

The bankruptcy judge ignores statements and evidence not included in the objection unless the objecting party proves prima facie that it did not include them in the objection through no fault of its own or that including late statements and evidence will not delay the examination of the case.

Facts justifying the objection may only be proven by documentary evidence or an expert opinion. If the claim is ascertained by a final court judgment, the objection against the inclusion of the claim in the list of claims may only be based on events occurring after the closure of the hearing in the case in which the judgment was passed.

The objection is examined at a non-public session within two months of having been submitted by the bankruptcy judge, his deputy or an appointed judge. If the judge examining the objection decides that a hearing is needed, they notify the court supervisor or insolvency practitioner, the debtor and creditor who raised the objection and the creditor whose claim has been objected to. Their failure to appear, even if justified, does not prevent the issuing of a decision. The bankruptcy judge, their deputy or an appointed judge may waive the taking of evidence based on an expert opinion if the expert has issued an opinion in other proceedings before a court, court of arbitration or administration body. In this case the documents containing the expert opinion are evidence.

A decision concerning the subject of an objection is open to appeal by the debtor, court supervisor or insolvency practitioners and creditors.

The list of claims is modified in so far as specified in the decision after the decision upholding the objection becomes final. In accelerated composition proceedings the list of claims is approved by the bankruptcy judge at the creditors' meeting.

In composition and remedial proceedings the bankruptcy judge approves the list of claims upon the lapse of the time limit for objections or, if an objection is raised, after the decision concerning the objection becomes final.

The bankruptcy judge approves the list of claims not affected by objections that have yet to be the subject of a final ruling if the sum of the claims concerned by those objections accounts for no more than 15% of all claims entitling creditors to vote on a composition. Proceedings concerning those objections are discontinued by the court or bankruptcy judge if they have not been the subject of a final ruling by the time of voting on the composition.

If the list of claims is found to include a claim that is non-existent in full or in part or falls to a person other than the one named as a creditor in the list, the bankruptcy judge may remove the claim from the list ex officio. The decision to remove the claim from the list is served upon the creditor it concerns, the debtor and supervisor of insolvency practitioner. Those persons cannot appeal against the decision.

The supervisor or insolvency practitioner drafts a supplement to the list of claims if after submitting the list a claim is disclosed that has not been included in the list.

After the final refusal to approve a composition or the final discontinuation of restructuring proceedings an extract from the approved list of claims (indicating the name of the creditor and his claim) serves as a writ of execution against the debtor.

After the final approval of a composition an extract from the approved list of claims along with an excerpt from the final decision approving the composition serves as a writ of execution against the debtor and the party that provided the security guaranteeing the implementation of the composition, if a document confirming the security has been submitted to the court, and against the party required to make an additional payment, if the composition provides for additional payments between creditors.

The debtor may request that a claim included in the list of claims be established not to exist or to exist to a lesser extent, if the debtor has made an objection in restructuring proceedings and the court has yet to deliver a final ruling on the claim.

After the extract from the approved list of claims is declared enforceable the debtor may raise the objection that a claim included in the list of claims does not exist or exists to a lesser extent by bringing an action to have the writ of execution declared unenforceable.

13 What are the rules governing the distribution of proceeds? How are claims and the rights of creditors ranked?

In bankruptcy proceedings the rules governing the distribution of proceeds are laid down in Articles 335-351 of the Bankruptcy Act.

The costs of proceedings have priority, followed by other bankruptcy estate liabilities (if the funds of the bankruptcy estate suffice) as the relevant sums are added to the bankruptcy estate.

Maintenance claims for the period after the declaration of bankruptcy are satisfied by the receiver when they fall due, until the final distribution plan is drafted, each time for every entitled party in an amount not higher than the minimum wage. The remainder of those claims is not satisfied from the bankruptcy estate.

The claims to be paid out of the bankruptcy estate (after covering in full the costs of proceedings, bankruptcy estate liabilities and maintenance claims) fall into the following categories:

the first category - claims under an employment relationship for the period prior to the declaration of

bankruptcy, except claims in respect of the remuneration of the bankrupt party's representatives or of a person performing actions in the context of the management of, or supervision over, the bankrupt party's enterprise, farmers claims' under contracts for the supply of produce from their own farms, maintenance claims and benefits paid as compensation for causing illness, inability to work, disability or death and annuity granted in exchange for rights under an annuity agreement for the last three years prior to the declaration of bankruptcy, claims in respect of social insurance contributions within the meaning of the Social Insurance System Act of 13 October 1998 (Journal of Laws 2022, item 1009, 1079 and 1115) and claims that arose in restructuring proceedings attributable to the insolvency practitioner's actions or claims attributable to the debtor's actions performed after the opening of restructuring proceedings, not requiring the consent of the creditors' committee or the consent of the court supervisor or performed with the consent of the creditors' committee or consent of the court supervisor, if bankruptcy was declared as a result of the examination of a simplified bankruptcy application, as well as claims concerning credits, loans, bonds, guarantees or letters of credit or other financing provided for in the composition adopted in restructuring proceedings and granted in connection with the implementation of that composition, if bankruptcy was declared as a result of the examination of a bankruptcy application submitted no later than three months after the final annulment of the composition;

the second category - other claims, if not met in other categories, in particular taxes and public levies as well as other claims in respect of social insurance contributions;

the third category - interest on claims included in the categories above, in the order in which the principal amounts are paid as well as court and administrative fines and claims regarding donations and legacies;

the fourth category - partners' or shareholders' claims regarding a loan or another legal act with similar effects, especially the supply of goods on deferred terms to the bankrupt party that was a capital company in the five years preceding the declaration of bankruptcy, with interest.

If the sum to be distributed is not enough to meet all the claims, the claims of the next category are satisfied only after meeting in full the claims of the preceding category and if the sum to be distributed is not enough to meet all the claims of a given category, those claims are met in proportion to the amount of each of them.

Claims secured with a mortgage, pledge, registered pledge, fiscal pledge and maritime mortgage, as well as rights expiring according to the provisions of the Act and the effects of disclosing personal rights and claims encumbering real property, perpetual usufruct, a cooperative member's ownership right to residential premises or a sea-going vessel entered in the shipping register, are satisfied from the amount obtained through the liquidation of the encumbered party minus the costs of liquidating that party and other costs of bankruptcy proceedings in an amount not exceeding a tenth of the amount obtained through the liquidation; however, the deducted part of the costs of bankruptcy proceedings cannot be higher than the part corresponding to the proportion of the value of the encumbered object to the value of the total bankruptcy estate. Those claims and rights are met in the order of their priority. If the amount obtained through the liquidation of the encumbered party is used to meet both claims secured by a mortgage and expiring rights as well as personal rights and claims, the priority depends on the moment when the entry of a mortgage, of a right or claim in the land and mortgage register begins to have effect.

Collateral claims covered by the security pursuant to separate provisions are met in an equal measure with the above claims. The amount falling to the creditor is counted first of all towards the main claim, then to interest and other collateral claims, with the costs of proceedings being covered at the end.

If real property, a right to perpetual usufruct, a cooperative member's ownership right to residential premises or a sea-going vessel entered in the shipping register is sold before claims secured with a mortgage or a maritime mortgage and other rights, including personal rights and claims that encumbered the object sold and that expired as a result of the sale are satisfied, maintenance claims are met as well as benefits paid as compensation for causing illness, inability to work, disability or death and annuity granted in exchange for rights under an annuity agreement for the period after the declaration of bankruptcy and the remuneration for employees' work performed on the real property, vessel or premises for the three months preceding the sale but only up to three times the amount of the minimum wages.

In restructuring proceedings claims are met according to the composition approved by the court. The rules governing the meeting of claims are laid down in Articles 155-163 of the Restructuring Act.

The composition may provide for the division of creditors into groups encompassing different categories of interests, in particular:

- creditors with claims under an employment relationship who have agreed to being covered by the composition;
- farmers with claims concerning the supply of produce from their own farm;
- creditors whose claims are secured on the debtor's assets by means of a mortgage, pledge, registered pledge, fiscal pledge or maritime mortgage as well as by the transfer of the ownership of an object, claim or another right to the creditor and who have agreed to being covered by such composition;
- creditors who are partners or shareholders of a debtor that is a capital company, holding the company's shares providing them with at least 5% of votes at the partners' meeting or at the general shareholders' meeting.

Dividing creditors into groups is obligatory if a composition proposal includes secured creditors.

The terms of restructuring the debtor's liabilities are the same for all creditors and if voting on the composition is conducted in groups of creditors, the same for creditors included in the same group, unless a creditor expressly agrees to less favourable terms.

More favourable terms of restructuring a debtor's liabilities are admissible in respect of a creditor who, after the opening of restructuring proceedings, granted or is to grant financing in the form of a credit, bonds, bank guarantees, letters of credit or based on another financial instrument, necessary for the implementation of the composition.

The terms of restructuring claims under an employment relationship cannot deprive the employees of the minimum wage.

Restructuring applies equally to financial and non-financial obligations. If - within a week of receiving a notification of the date of the creditors' meeting with a copy of the composition proposal - the creditor objected to the restructuring of his claim as a non-monetary claim, by submitting a statement to the supervisor or insolvency practitioner, or where restructuring is impossible owing to the nature of the non-monetary claim, that claim is transformed into a monetary claim. That effect arises on the day of the opening of proceedings.

The terms of restructuring claims that are secured on the debtor's assets by means of a mortgage, pledge, registered pledge, fiscal pledge or maritime mortgage as well as by the transfer of the ownership of an object, claim or another right, may be differentiated according to the creditors' priority.

14 What are the conditions for, and the effects of closure of insolvency proceedings (in particular by composition)?

Bankruptcy proceedings are declared to have been concluded by the court once the final distribution plan has been implemented or when in the course of the proceedings all the creditors have been satisfied.

On the day on which the decision concluding the bankruptcy proceedings becomes final the bankrupt party regains the right to manage and dispose of its assets.

Following the conclusion of the bankruptcy proceedings any pending proceedings opened by the receiver to declare void an action performed by the bankrupt party to the detriment of the creditors are discontinued and mutual claims for the recovery of procedural costs lapse. In other civil proceedings the bankrupt party replaces the receiver.

Within thirty days of the announcement of the decision closing bankruptcy proceedings a bankrupt party that is a natural person may submit a request for drafting a creditor payment plan and for the discharge of the remaining debt that has not been met in the bankruptcy proceedings. Within the same time limit a bankrupt party that is a natural person may also submit a request for the discharge of debt without drafting a creditor payment plan if the personal circumstances of the bankrupt party make it clearly evident that it is permanently unable to make any payments under the creditor payment plan. If the inability to make any payments under the creditor payment plan arising from the bankrupt's party personal circumstances is not permanent, the court

discharges the debt of the bankrupt party without drafting a creditor payment plan provided that within five years of the day on which the decision concerning the conditional discharge of the debt of the bankrupt party without drafting a creditor payment plan becomes final neither the bankrupt party nor any of the creditors submits a request for drafting a creditor payment plan, as a result of which the court repeals the decision concerning the conditional discharge of the bankrupt party's debt without drafting a creditor payment plan and drafts a creditor payment plan having concluded that the bankrupt party is no longer unable to make any repayments under a creditor payment plan.

The aforementioned request will be rejected by the court if:

1. the bankrupt party has caused its own insolvency or intentionally increased the degree of it in a significant way, in particular by squandering its assets and by an intentional failure to meet its obligations that have fallen due;
2. in the period of ten years preceding the submission of the bankruptcy application the bankrupt party was subject to bankruptcy proceedings in which all or part of its obligations were discharged

- unless where granting the application referred to in (1) or (1a) is justified on the grounds of equity or humanitarian need.

In its decision on drafting the creditor payment plan the court determines whether the bankrupt party has caused its own insolvency or intentionally increased the degree of it in a significant way intentionally or through gross negligence and specifies to what extent and in what time (no longer than 36 months) the bankrupt party must perform the obligations admitted in the list of claims and not performed in the course of bankruptcy proceedings in accordance with distribution plans and what part of the bankrupt party's obligations arising before the declaration of bankruptcy will be discharged once the creditor payment plan has been implemented. If the bankrupt party has been found to have caused their insolvency or to have increased the degree of it intentionally or through gross negligence, the creditor payment plan may not be established for a period shorter than 36 months or longer than 84 months. Where the creditor has paid at least 70% of their obligations admitted in the list of claims as a result of implementing the distribution plans and the creditor payment plan, the creditor payment plan may not be established for a period of more than a year. Where the creditor has paid at least 50% of their obligations admitted in the list of claims as a result of implementing the distribution plans and the creditor payment plan, the creditor payment plan may not be established for a period of more than two years.

While the creditor payment plan is being implemented, enforcement proceedings cannot be opened in respect of claims that arose before the declaration of bankruptcy (except claims arising out of the obligations referred to in Article 370f(2) of the Bankruptcy Act and claims not disclosed by the bankrupt party if the creditor did not participate in the proceedings), nor may the bankrupt party perform legal actions that might undermine its ability to implement the creditor payment plan (in exceptional cases the court may, at the bankrupt party's request, consent to or approve such a legal action).

By the end of April each year, the bankrupt party must submit to the court a report on the implementation of the creditor payment plan for the preceding calendar year, disclosing the revenue generated, the amounts repaid and assets acquired with a value exceeding the average monthly remuneration in the enterprise sector excluding the payment of a dividend on profits in the third quarter of the preceding year.

The court may amend the creditor payment plan if the bankrupt party is unable to meet the obligations laid down in that plan, at that party's request and after hearing the creditors. It may also extend the period for repaying debts by up to 18 months.

If the bankrupt party's economic situation improves materially while the creditor payment plan is being implemented and that improvement is attributable to causes other than an increase in wages or revenue generated by the commercial activity performed personally by the bankrupt party, the creditor and the bankrupt party may submit a request for the creditor payment plan to be amended. The court issues a decision on an amended creditor payment plan after hearing the bankrupt party and the creditors included in the payment plan.

The court, acting ex officio or at the creditor's request, annuls the creditor payment plan if the bankrupt party fails to perform the obligations specified in the creditor payment plan after hearing the bankrupt party and the creditors included in the payment plan, unless the failure to perform obligations is insignificant or the discharge of the remainder of the bankrupt party's debt is justified on the grounds of equity or humanitarian need. The

above provision applies mutatis mutandis if the bankrupt party:

1. has not submitted a report on the implementation of the creditor payment plan on time;
2. has failed to disclose revenue generated or assets acquired in the report on the implementation of the creditor payment plan;
3. has performed a legal action that might undermine its ability to implement the creditor payment plan without the consent of the court or an action that has not been approved by the court;
4. has concealed assets or is found, by a final ruling, to have performed a legal action to the detriment of creditors.

If the payment plan is annulled, the bankrupt party's obligations are not discharged.

The court issues a decision confirming the implementation of the payment plan and discharging the bankrupt party's obligations that arose before the declaration of bankruptcy and were not satisfied through the implementation of the creditor payment plan after the bankrupt party has performed the commitments specified in the creditor payment plan. Maintenance claims, obligations relating to benefits paid as compensation for causing illness, inability to work, disability or death, payable fines imposed by the court as well as obligations to compensate for the damage and suffering inflicted, obligations to pay supplementary damages or cash benefits imposed by the court as a penal or probationary measure as well as obligations to compensate for damages resulting from a crime or offence established by a final judgment and claims that the bankrupt party intentionally failed to disclose, if the creditor did not take part in the proceedings, are not discharged.

Changes in legal relationships made pursuant to the provisions of the Bankruptcy Act are binding for the bankrupt party and for the other party also after the conclusion of bankruptcy proceedings, unless the provisions of a separate legislative act stipulate otherwise.

Restructuring proceedings are concluded when the court's decision approving or refusing to approve the composition becomes final. It is also then that the debtor regains the right to manage his assets if he was deprived of it or if that right was limited, unless the composition stipulates otherwise (Article 171 of the Restructuring Act).

After the implementation of the composition or after the enforcement of the claims covered by the composition the court, at the request of the debtor, composition supervisor or another person entitled under the composition to implement or supervise the implementation of the composition, issues a decision confirming the implementation of the composition (Article 172 of the Restructuring Act).

15 What are the creditors' rights after the closure of insolvency proceedings?

If after the conclusion of bankruptcy proceedings against natural persons conducting economic or professional activity a payment plan is drawn up, the creditor may request the court to annul the creditor payment plan if the bankrupt party fails to perform obligations specified in the plan or fails to submit a report on the plan's implementation on time, fails to disclose revenue generated or assets acquired in the report on the implementation of the creditor payment plan, performs without the consent of the court a legal action that might undermine its ability to implement the creditor payment plan or an action that has not been approved by the court, fails to disclose his assets or is found, by a final ruling, to have performed a legal action to the detriment of creditors (Article 370e of the Bankruptcy Act). Furthermore, after the conclusion or discontinuation of bankruptcy proceedings, the creditor may apply for an extract from the list of claims approved by the bankruptcy judge, indicating the claim and the amount received towards it by the creditor, to be declared enforceable with a view to recovering (in enforcement proceedings) the liabilities that have not been paid in bankruptcy proceedings (Article 264 of the Bankruptcy Act).

In restructuring proceedings the creditor may request the court to annul the composition if the debtor does not comply with its provisions or if it is obvious that the composition will not be implemented (it is presumed that the composition will not be implemented if the debtor fails to meet the obligations arising after the composition approval). The requesting party may appeal against a decision rejecting the request (Article 176 of the Restructuring Act).

If the composition is annulled or expires, the existing creditors may assert their claims in the original amounts and the sums paid out based on the composition are counted towards them. A mortgage, pledge, registered pledge, fiscal pledge or maritime mortgage secures a claim up to the amount that has yet to be satisfied (Article 179 of the Restructuring Act).

16 Who is to bear the costs and expenses incurred in the insolvency proceedings?

In principle, bankruptcy proceedings involve two stages, i.e. proceedings for the declaration of bankruptcy and proceedings after the declaration of bankruptcy.

The costs of proceedings for the declaration of bankruptcy are covered in the first instance out of the advance payment made by the applicant in an amount equivalent to the average monthly remuneration in the enterprise sector excluding the payment of a dividend on profits in the third quarter of the preceding year, as announced by the President of the Central Statistical Office. If proceedings are opened at the creditor's request, their costs are borne by the bankrupt party if bankruptcy is declared or if the request is rejected owing to the scantiness of the estate.

The costs of proceedings after the declaration of bankruptcy are covered out of the bankruptcy estate. If the insolvent debtor's assets are insufficient to cover the costs of proceedings or suffice only to cover those costs, the court rejects the bankruptcy application.

The creditor is not entitled to reimbursement of expenses incurred in bankruptcy proceedings. However, the costs incurred by the creditor in proceedings initiated by an objection to admit a claim of another creditor are reimbursed if, as a result of the objection, the admission of the contested claim was refused. Advance payments towards the cost of proceedings paid at the request of the bankruptcy judge or pursuant to a resolution of the creditors' meeting are also reimbursed if the funds of the bankruptcy estate suffice. A creditor lodging a claim after the specified deadline bears the flat-rate costs of bankruptcy proceedings resulting from that lodgement in the amount equivalent to 15% of the average monthly remuneration in the enterprise sector of even if the delay excluding the payment of a dividend on profits in the third quarter of the preceding year as announced by the President of the Central Statistical Office, even if the delay was through no fault of the creditor, unless the lodgement of a claim after the deadline was due to the receiver having corrected the return or some other settlement document.

The costs of restructuring proceedings are borne by the debtor. The costs payable by a debtor deprived of the right to manage are paid by the insolvency practitioner at the request of the court or of the bankruptcy judge.

Participants in proceedings bear the costs related to their participation.

The costs of proceedings opened following an objection to the inclusion of another creditor's claim are payable by the debtor to the objecting creditor if the objection resulted in a refusal to include the contested claim, unless the debtor challenged the inclusion of the claim in the list of claims in a statement submitted pursuant to Article 86(2)(9) of the Restructuring Act or raised an objection.

17 What are the rules relating to the voidness, voidability or unenforceability of legal acts detrimental to the general body of creditors?

In bankruptcy proceedings the legal actions performed by the bankrupt party in respect of the bankruptcy estate are void. The disposal by the bankrupt party of all or part of an inheritance or of an inheritance share is also void, as is that party's disposal of a share in an object included in the inheritance and that party's consent for another heir to dispose of a share in an object included in the inheritance.

Under pain of nullity, the consent of the creditors' committee is required for the following actions (Article 206 of the Bankruptcy Act):

1. the continued management of the enterprise by the receiver if it is to last more than three months after the declaration of bankruptcy;

2. waiving the sale of the enterprise as a whole;
3. the direct sale of the assets included in the bankruptcy estate;
4. contracting loans or credits and encumbering the bankrupt party's assets with limited proprietary rights;
5. the admission, waiver of entering into a composition regarding disputed claims and bringing a dispute before a court of arbitration.

An exception may be invoked when one of the above actions has to be performed immediately and concerns a value of no more than PLN 10 000, in which case the receiver, court supervisor or insolvency practitioner may perform it without the consent of the committee.

Moreover, no permission from the creditors' committee is required for the sale of movable assets if the estimated value of all movable assets included in the bankruptcy estate, as indicated in the inventory, is no higher than PLN 50 000 and for the sale of claims and other rights, if the nominal value of all claims and other rights included in the bankruptcy estate, as indicated in the inventory, is no higher than PLN 50 000. This also applies to consent for the sale of claims and other rights if the nominal value of all claims and other rights included in the bankruptcy estate, as indicated in the list of claims, is no higher than the equivalent of PLN 50 000.

An entry in the land and mortgage register or another register encumbering the bankrupt party's assets with a limited right in rem made without the consent required pursuant to (1) is subject to removal ex officio. The basis for the removal is a final decision by bankruptcy judge finding the entry to be inadmissible (Article 206(5) of the Bankruptcy Act).

The bankruptcy judge specifies the actions that must not be performed by the receiver without his consent or without the consent of the creditors' committee. This means that the bankruptcy judge may extend the catalogue of actions mentioned in Article 206 that require the consent of the creditors' committee under pain of nullity.

Legal actions by which the bankrupt party disposed of its assets in the 12 months before submitting the bankruptcy application are null if they were performed free of charge or against payment but the value of the bankrupt party's performance manifestly exceeded the consideration obtained by that party or reserved for that party or for a third party. This rule also applies mutatis mutandis to a court settlement, claim admission and claim waiver.

Also the security for and repayment of a debt not due for payment have no effect if performed by the bankrupt party in the six months before the bankruptcy application was submitted. However, the party who obtained the payment or security may, by way of a claim or objection, seek the admission of those actions as effective if it was not aware of the existence of grounds for bankruptcy at the time when those actions were performed.

The above rules do not apply to securities established before the declaration of bankruptcy in connection with forward financial operations, loans of financial instruments or the sale of securities under repurchase agreements referred to in Article 85(1).

At the request of a third party the bankruptcy judge may order that person's mutual performance to be returned out of the bankruptcy estate, if that performance was rendered in connection with a legal action by that third party and the bankrupt party concerning property included in the bankruptcy estate. The provisions on undue performance apply mutatis mutandis to this type of performance. The return of that performance may be ordered if the legal action occurred after the declaration of bankruptcy and before the publication of the bankruptcy decision in the Register, while the third party exercising due diligence could not have been aware of the declaration of bankruptcy.

The assignment of a future claim has no effect in relation to the bankruptcy estate if that claim arises after the declaration of bankruptcy, unless the agreement assigning the claim was concluded no later than six months before the submission, at a certified date, of a written bankruptcy application.

A legal action performed in relation to the bankruptcy estate against payment is declared invalid by the bankruptcy judge ex officio or at the receiver's request if it was performed by the bankrupt party in the six months before submitting the bankruptcy application with the party's spouse, blood relative or relative by marriage in the direct line, a blood relative or relative by marriage in the collateral line up to and including the

second degree, with a person in an actual relationship with the bankrupt party, a person who is running a household with the bankrupt party or is the party's adoptive parent or child, unless the other party to the action proves that the creditors' interest was not damaged. The decision of the bankruptcy judge may be appealed against.

The above rule also applies to actions performed by the bankrupt party with a company in which that party is a board member or sole partner or shareholder and with companies in which persons named in the previous paragraph are board members or sole partners or shareholders. It also applies mutatis mutandis to actions performed by a bankrupt party that is a company or legal person, if performed with its partners, their representatives or spouses and with affiliated companies, their partners and the representatives and spouses of those persons and to actions of a bankrupt party that is a company performed with another company, if one of them was a parent company or if that company is the parent company of both the bankrupt party and the other party to the action.

Acting ex officio or at the receiver's request, the bankruptcy judge declares a specific part of remuneration, due in respect of a period before the declaration of bankruptcy but no more than six months before the submission of the bankruptcy application, invalid in relation to the bankruptcy estate if the remuneration for work performed by a person representing the bankrupt party or an employee performing enterprise management tasks or the remuneration of a person providing services related to the management of, or supervision over, the bankrupt party's enterprise specified in an employment contract, a service contract or a resolution of the bankrupt party's management body concluded or passed before the declaration of bankruptcy is manifestly higher than the average remuneration for this type of work or services and is not justified by the amount of work, even if that remuneration has already been paid.

The bankruptcy judge may declare the remuneration of the above-mentioned persons for the period after the declaration of bankruptcy wholly or partly invalid in relation to the bankruptcy estate, if it is not justified by the amount of work on account of the management having been taken over by the receiver.

At the receiver's request the bankruptcy judge also declares the following actions invalid in relation to the bankruptcy estate:

- encumbering the bankrupt party's assets with a mortgage, pledge, registered pledge or maritime mortgage, if the bankrupt party was not a personal debtor to the secured creditor and the encumbrance was established in the 12 months before the submission of the bankruptcy application and no performance was rendered to the bankrupt party in connection with its establishment;
- encumbering the bankrupt party's assets with a mortgage, pledge, registered pledge or maritime mortgage, if the property encumbrance was established in return for a performance of a value disproportionately low compared to the value of the established security;
- the above encumbrances regardless of the value of the performance, if they secure the debts of persons referred to in Article 128 of the Bankruptcy Act (persons close or related to the bankrupt party), unless the other party proves that the creditors' interest was not damaged;
- contractual penalties stipulated for the non-performance or improper performance of an obligation, if the obligation was largely performed by the bankrupt party or if the contractual penalty is manifestly exorbitant.

Legal actions performed by the bankrupt party to the creditors' detriment in matters not covered by the Bankruptcy Act are governed mutatis mutandis by the provisions of the Civil Code on the protection of the creditor against the debtor's insolvency.

In restructuring proceedings, in accordance with Article 129 of the Restructuring Act, under pain of nullity the following actions by the debtor or the insolvency practitioner require the consent of the creditors' committee:

- encumbering elements of the composition or remedial estate with a mortgage, pledge, registered pledge or maritime mortgage in order to secure a claim not subject to composition;
- the transfer of the ownership of an object or a right in order to secure a claim not subject to composition;
- encumbering elements of the composition or remedial estate with other rights;

- contracting credits or loans;
- concluding an agreement on the leasing of the debtor's enterprise or an organised part thereof or another similar agreement.

(The above actions performed with the consent of the creditors' committee cannot be considered invalid in respect of the bankruptcy estate.)

- the sale, by the debtor, of real property or other assets worth over PLN 500 000.

The provisions of a contract to which the debtor is a party that prevent or hinder the achievement of the goal of accelerated composition proceedings are invalid in relation to the composition estate (Article 248, Article 273, Article 297 of the Restructuring Act).

In remedial proceedings the debtor's legal actions through which he disposed of his assets, if the value of the performance rendered by the debtor is substantially higher than the value of the performance rendered to the debtor or reserved for the debtor or for a third party, which took place in the 12 months before the submission of the request to open remedial proceedings, are invalid in relation to the remedial estate. This rule also applies *mutatis mutandis* to a court settlement, claim admission and claim waiver.

Securities in respect of the remedial estate are also invalid if they have been not established in direct connection with performance being rendered to the debtor, established by the debtor in the 12 months before the submission of the request to open remedial proceedings and securities in the part which, on the day of establishing the security, exceeds by more than a half the value of the secured performance rendered to the debtor along with the collateral claims specified in the document forming the basis for the establishment of the security, established in the 12 months before the submission of the request to open remedial proceedings (Article 304 of the Restructuring Act).

In remedial proceedings the bankruptcy judge, acting *ex officio* or at the insolvency practitioner's request, declares a specific part of remuneration, due in respect of a period prior to the declaration of bankruptcy but not longer than three months before the submission of the request to open remedial proceedings, invalid in relation to the remedial estate if the remuneration for work performed by the debtor's representative or employee performing enterprise management tasks or the remuneration of a person providing services related to the management of or supervision over the debtor's enterprise specified in an employment contract, a service contract or a resolution of the debtor's management body concluded or passed before the opening of remedial proceedings is manifestly higher than the average remuneration for this type of work or services and is not justified by the amount of work, even if that remuneration has already been paid. The bankruptcy judge may declare the remuneration of the above-mentioned persons, due in respect of the period after the opening of remedial proceedings, wholly or partly invalid in relation to the remedial estate, if it is not justified by the amount of work on account of the management having been taken over by the insolvency practitioner (Article 305 of the Restructuring Act).

The insolvency practitioner may institute proceedings to declare actions invalid and other proceedings in which a claim is based on the invalidity of an action. An action cannot be declared invalid after one year has elapsed since the opening of remedial proceedings, unless that power expired earlier pursuant to [the Civil Code](#). That time limit does not apply if the request to declare an action ineffective was made by way of an objection. Legal actions performed by the bankrupt party to the creditors' detriment in matters not covered by the provisions discussed above may be challenged accordingly pursuant to the provisions of [the Civil Code](#) on the protection of the creditor against the debtor's insolvency (Article 306-308 of the Restructuring Act).

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