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Bankruptcy and Restructuring Law in Poland

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Abstract: *The aim of this study is to present general description of the bankruptcy and restructuring law in Poland. The insolvency law is of fundamental importance to business transactions and investment security. The law on bankruptcy and entrepreneurs' restructuring is increasingly perceived as an important factor in encouraging economic development and investment as well as a factor favouring entrepreneurs' activity and preservation of jobs.*[1] *Substantive condition of the bankruptcy and restructuring law has a very real impact on the economy.*

Key Words: *Bankruptcy Law; Restructuring Law; Law on Insolvency; European Law; Insolvency; the United Nations Commission on International Trade Law, Creditor; Debtor; Poland.*

Sources of the bankruptcy and restructuring law in Poland

Since the 1st May 2004, Poland has been a Member State of the European Union. For the above-mentioned reason, there are cumulatively two legal systems in force on its territory: first, the Community legal system having priority of application; second, the national legal system. In the area at which our paper is aimed, the latter consists mainly of the 28th February 2003 Bankruptcy Law Act[2] defining the rules for the collective satisfaction of creditors by liquidating the insolvent debtor's assets and the 15th May 2015 Restructuring Law Act[3] setting out the terms of the arrangement between the insolvent (or threatened by insolvency) debtor and the creditors.

In the years 2003 – 2015, the Polish legislator introduced – in one act – a regulation consisting of the possibility of a court order or a bankruptcy involving the liquidation of bankrupt assets or a bankruptcy with the possibility of concluding an arrangement.

[1] For example the Decision of the United Nations Commission on International Trade Law on Part Three and General Assembly Resolution 65/24. In: *UNCITRAL Legislative Guide on Insolvency Law: Part Three: Treatment of Enterprise Groups in Insolvency*. New York: United Nations, 2012, pp. 113-116. ISBN 978-92-1-133803-4.
[2] See the Polish Bankruptcy Law Act of 28th February 2003.
[3] See the Polish Restructuring Law Act of 15th May 2015.

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It should be underlined that many European countries have recently also decided to modernize their own bankruptcy and restructuring laws. Significant changes in this regard took place in Germany, Spain, Austria, Switzerland, Italy, Greece, England, the Czech Republic, etc. The amendment of the law in Poland thus corresponds to a general European trend related to the economic crisis that began at the end of the first decade of the 21st Century.

In the European Union law, the most important legal act is the Regulation (EU) 2015/848 of the European Parliament and of the Council of 20th May 2015 on Insolvency Proceedings.[4] It should be explained that this regulation is an act of secondary law (created by the institutions of the European Union on the basis of an authorisation granted by the Member States in the Treaties). The above-stated regulation is directly applicable to the citizens of the European Union Member States and their organizations and does not require implementation by the national law into internal order.

It is worth mentioning the European Commission's Recommendation of 12th March 2014 on a New Approach to Business Failure and Insolvency (2014/135/EU).[5] As set out in Recital 1, the objective of the mentioned recommendation is to ensure that profitable companies in financial difficulties, irrespective of where they are located in the European Union, have access to national insolvency frameworks that allow for restructuring at an early stage to prevent their insolvency, thus ensuring the maximization of total value for creditors, employees, owners and for the entire economy. This recommendation also aims to allow honest entrepreneurs who have been declared bankrupt to take a second chance within the European Union. Another important document is the European Parliament Resolution of 15th November 2011 with Recommendations to the Commission on Insolvency Proceedings in the Context of Company Law in the European Union.[6]

[4] See *Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on Insolvency Proceedings*. OJ EU L 141, 2015-06-05, pp. 19-72.

[5] See *Commission Recommendation of 12 March 2014 on a New Approach to Business Failure and Insolvency, text with EEA relevance (2014/135/EU)*. OJ EU L 74, 2014-03-14, pp. 65-70.

[6] See *European Parliament Resolution of 15 November 2011 with Recommendations to the Commission on Insolvency Proceedings in the Context of EU Company Law (2011/2006 (INI))*. OJ EU C 153, 2013-05-31, pp. 1-9.

There is a work in progress on a draft of a Directive of the European Parliament and Council on a Preventive Framework for Restructuring, a Second Chance Policy and Measures to Increase the Effectiveness of Restructuring Procedures, Insolvency. In practice, this means unification of restructuring at the Community level. The Restructuring Law Act[7] will fall to the rank of an act implementing the directive. On 22nd November 2016, the European Commission presented a proposal for a new directive that aims to put in place an effective framework for preventive restructuring across Europe to ensure that honest entrepreneurs get a second chance and improve their insolvency proceedings.

The main objective of the project is to introduce an effective preventive restructuring framework in the European Union Member States. The aim of creating such a framework is to encourage entrepreneurs to early restructuring in order to maximize the value of satisfying creditors. The project met with a generally positive opinion, among others, of the European Central Bank of 7th June 2017 on a Proposal for a Directive of the European Parliament and of the Council on Preventive Restructuring Frameworks, Second Chance and Measures to Increase the Efficiency of Restructuring, Insolvency and Discharge Procedures and amending Directive 2012/30/EU.[8]

Place of the insolvency law in the system of law in Poland

In the Polish literature, there is a dispute whether the law of insolvency is a separate branch of law or is only a comprehensive legal regulation. However, it seems that there will be no misuse of the thesis that the bankruptcy law is an independent branch of law. It should be mentioned that the Bankruptcy Law Act[9] and Restructuring Law[10] Act both consist of constitutional rules (regulating some rules of organization of the judiciary in insolvency cases), procedural rules (liquidation of the debtor's property and satisfaction of creditors as well as conclusion of the arrangement take place within the judicial procedure which is recognizable

[7] See the Polish Restructuring Law Act of 15th May 2015.
[8] See *Opinion of the European Central Bank of 7 June 2017 on a Proposal for a Directive of the European Parliament and of the Council on Preventive Restructuring Frameworks, Second Chance and Measures to Increase the Efficiency of Restructuring, Insolvency and Discharge Procedures and amending Directive 2012/30/EU (CON/2017/22)*.
[9] See the Polish Bankruptcy Law Act of 28th February 2003.
[10] See the Polish Restructuring Law Act of 15th May 2015.

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executive civil procedure), material rules, conflict rules and in a very limited scope criminal rules.

Procedure for the liquidation of the debtor's assets in Poland

Bankruptcy proceedings are civil proceedings generally consisting of two main segments (or even three if the debtor is a natural person).

First, the proceedings for the declaration of bankruptcy aimed at resolving the declaration of bankruptcy of the debtor. Proceedings are initiated at the request of the authorised entity which is the debtor and each of his/her personal creditors. The court cannot start proceedings *ex officio*.

The proceedings are conducted before the locally competent commercial court – district court (this is the lowest level of the judiciary in Poland which includes district courts – "Sądy Rejonowe", higher district courts – "Sądy Okręgowe", appellate courts – "Sądy Apelacyjne", the Supreme Court – "Sąd Najwyższy").

Proceedings may be brought against a person who has the capacity – given by the above-mentioned act – to be a bankrupt. Both entrepreneurs and consumers have it in Poland.

The substantive premise of the declaration of bankruptcy is insolvency. It has two separate and independent forms: loss of liquidity and excessive indebtedness.

The condition for the declaration of bankruptcy is the multiplicity of creditors (with the exception of consumer bankruptcy).

In the case of insolvent entrepreneurs, it is important that they have property that at least covers the costs of the proceedings. During the proceedings, in the course of the declaration of bankruptcy, it is possible to secure the debtor's assets, *inter alia*, by suspending execution or limiting the management of the debtor's assets.

What is the second stage? After the bankruptcy is announced by the court, the proper bankruptcy proceedings begin. The date of issuing the bankruptcy order by the court is the date of bankruptcy. The decision on the declaration of bankruptcy is effective and enforceable from the date of its issuance. When declaring the debtor's bankruptcy, the court appoints a judge-commissioner (who is in charge of the proceedings) and a trustee (official receiver – "syndyk") of the bankruptcy estate. The trus-

tee covers the management of the debtor's assets and proceeds to their liquidation into cash.

In cases regarding the bankruptcy estate, the trustee performs legal acts on his/her own name, but with an effect for the bankrupt. The trustee (official receiver) shall not be liable for liabilities incurred in matters relating to the bankruptcy estate. The trustee is liable for damage caused as a result of improper performance of the official receiver's duties.

As a result of the declaration of the bankruptcy, debtor's obligations become immediately payable and non-monetary liabilities are automatically converted into monetary liabilities *ipso iure*. Non-performed synallagmatic contracts (based on a formula *do ut des*) can be executed by the trustee, but the trustee has a possibility to withdraw from them. Enforcement proceedings (executions) are subject to legal withholding.

As a part of bankruptcy proceedings, the trustee (1) establishes a list of claims for the purposes of the proceedings, even if the claim had been confirmed by a former court judgment. The trustee, as a rule, adds to the list of claims only claims that have been reported by the creditors (the trustee adds to the list of claims *ex officio* only receivables from the employment relationships and receivables secured on the debtor's estate).

The trustee (2) liquidates into cash all the debtor's assets. As a rule, the disposal of assets requires estimation and takes place through an auction.

The trustee (3) divides the accumulated funds among the creditors within the so-called dividing proceedings with four categories of satisfaction. The State Treasury receivables are treated equally with private receivables. Claims secured on the debtor's property in a material manner (mortgage, pledge, etc.) are subjected to the so-called rights of separation. Secured creditors receive – with priority over other creditors – the sums obtained from the sale of the encumbered property.

The third stage concerns only natural persons who additionally meet the criterion of payment morality specified in the Bankruptcy Law Act.[11] If, after selling the debtor's assets, outstanding liabilities remain, the court may discontinue them.

[11] See the Polish Bankruptcy Law Act of 28th February 2003.

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Procedure of concluding the arrangement with creditors in Poland

Restructuring is carried out in the following four separate restructuring proceedings:

(a) proceedings for the approval of the arrangement;
(b) accelerated arrangement proceedings;
(c) arrangement proceedings;
(d) sanation proceedings.

The procedure for the approval of the arrangement makes possible to conclude the arrangement as a result of the debtor's independent collection of votes without the participation of the court. An arrangement concluded outside the court between the debtor and the creditors is subject to approval by the restructuring court. Proceedings may be initiated only at the request of the debtor.

Accelerated arrangement proceedings allow the debtor to enter into an arrangement after preparation and approval of the list of claims in a simplified manner. The arrangement proceedings enable the debtor to conclude the agreement after preparing and approving the list of receivables. Both types of proceedings can be initiated only at the debtor's request. The opening of the proceedings results in a moratorium on the performance of obligations subject to the arrangement. The debtor, as a rule, continues to manage his/her property himself/herself. Activities beyond the scope of ordinary management require the consent of the court supervisor.

The sanation proceedings enable the debtor to carry out the sanation measures and to conclude the agreement after preparing and approving the list of receivables. The proceedings may be instituted at the request of the debtor or the personal creditor. Sanation activities are legal and factual actions aimed at improving the economic situation of the debtor and at restoring the debtor's ability to perform obligations, while protecting against execution. The opening of the proceedings results in a moratorium on the performance of arrangement obligations. The debtor is deprived of the possibility to manage his/her property for the benefit of the administrator.

The central concept of restructuring is the arrangement. The arrangement includes personal claims arising prior to the opening of the restructuring proceedings, unless the Restructuring Law Act provides otherwise; interest for the period from the date of opening of the restruc-

turing proceedings; receivables depending on condition if the condition was fulfilled during the fulfilment of the arrangement.

The restructuring of the debtor's obligations includes in particular: postponement of the performance deadline; repayment in instalments; decrease; conversion of receivables into shares or stocks; change, exchange or revocation of the right securing a given claim. The arrangement proposals may indicate one or more ways to restructure the debtor's obligations. The arrangement proposals may also provide for the satisfaction of the creditors by liquidating the debtor's assets. The arrangement proposals may provide for the division of creditors into groups covering particular categories of interests. The terms of restructuring the debtor's obligations are the same for all creditors, and if voting on the arrangement is carried out in groups of creditors, the same for creditors included in the same group, unless the creditor explicitly agrees to less favourable conditions.

A resolution of the creditors' meeting on acceptance of the arrangement shall be taken if (a) the personal majority of voting creditors (majority *per capita*) – who have right of important vote and (b) who represent of at least two-thirds of the amount of debt due to the voting creditors support the arrangement.

The agreement adopted by the collection of votes of creditors is approved by the court, containing the content of the arrangement in the operative part of the court's ruling.

The arrangement binds creditors whose receivables according to the Restructuring Law Act[12] are covered by the arrangement, even if they have not been included in the list of receivables. The arrangement does not bind creditors those the debtor did not disclose and who were not participants in the proceedings. The arrangement does not infringe the creditor's rights against the guarantor and the debtor's co-debtor or the rights resulting from the mortgage, pledge, tax pledge, registered pledge or maritime mortgage, if they were established on the property of a third party. The arrangement does not infringe the rights resulting from the mortgage, pledge, registered pledge, tax pledge or maritime mortgage, if it was established on the debtor's property, unless the authorised party consented to the acceptance of the secured debt by the arrangement.

The arrangement can be changed or cancelled.

[12] See the Polish Restructuring Law Act of 15th May 2015.

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Bankruptcy and restructuring capacity of entrepreneurs, institutions and consumers in Poland

The ability to go bankrupt have the entrepreneurs in the meaning of the Civil Code[13] and limited liability companies and joint-stock companies that do not run a business activity, partners in personal commercial companies bearing responsibility for the companies' obligations – without limiting – with all of their assets, partners of partner companies.

It is not allowed to declare bankruptcy of the State Treasury; local self-government units; public independent healthcare institutions; institutions and legal persons established by law, unless otherwise provided by law; natural persons running a farm who do not conduct other economic or professional activities; universities; investment funds.

Consumers – natural persons are subject to the provisions on consumer bankruptcy.

The ability to start restructuring proceedings have the entrepreneurs in the meaning of the Civil Code[14] and limited liability companies and joint-stock companies that do not run a business activity, partners in personal commercial companies bearing responsibility for the companies' obligations – without limiting – with all of their assets, partners of partner companies.

The provisions of the Restructuring Law Act[15] do not apply, *inter alia*, to the State Treasury; local self-government units; domestic banks; branches of foreign banks; cooperative savings and credit unions; investment companies; insurance and reinsurance undertakings; investment funds; financial institutions.

Possibility of a debt relief in the case of bankruptcy of natural persons in Poland

Proceedings regulated by the Bankruptcy Law Act[16] with respect to natural persons – entrepreneurs should also be conducted in such a way that a reliable debtor can obtain the possibility of a debt relief.

Proceedings regulated by the Bankruptcy Law Act[17] on natural persons not conducting business activity should be conducted in such a way

[13] See the Polish Civil Code of 23rd April 1964, as amended.
[14] See the Polish Civil Code of 23rd April 1964, as amended.
[15] See the Polish Restructuring Law Act of 15th May 2015.
[16] See the Polish Bankruptcy Law Act of 28th February 2003.

as to enable the bankrupt's liabilities not performed in the bankruptcy proceedings to be written off, and if possible – to satisfy the claims of the creditors to the highest possible degree.

Premises for bankruptcy or restructuring in Poland

Bankruptcy is declared in relation to a debtor who has become insolvent. The legislator provided for two grounds of insolvency which are independent of each other. To file for bankruptcy, it is enough to meet any of them.

First of all, the debtor is insolvent if he/she has lost the ability to perform his/her pecuniary obligations. It is presumed (*praesumptio iuris tantum*) that the debtor has lost the ability to perform his or her maturing monetary obligations if the delay in fulfilling financial obligations exceeds three months.

Secondly, a debtor who is a legal person or an organizational unit without legal personality which the separate law grants legal capacity is also insolvent when its monetary obligations exceed the value of its assets and this state persists for a period exceeding twenty-four months. This premise does not apply to commercial partnerships if at least one partner responsible for the company's obligations without limiting with his/her entire assets is a natural person. Property components that do not belong to the bankruptcy estate are not included in the calculation of the asset value. Future liabilities, including liabilities with a condition precedent and liabilities to a partner or a shareholder from a loan or other legal transaction with similar effects, are not included in cash liabilities. It is presumed that the debtor's financial obligations exceed the value of his/her assets if, according to the balance of his/her liabilities, excluding reserves for liabilities and liabilities to related parties, they exceed the value of his/her assets and this state persists for a period exceeding twenty-four months. However, the court may dismiss the bankruptcy petition if there is no threat of the debtor's loss of the ability to perform his/her due financial obligations in a short time.

The court should dismiss the bankruptcy petition if the assets of the insolvent debtor are not sufficient to cover the costs of the proceedings or are sufficient only to cover those costs.

[17] See the Polish Bankruptcy Law Act of 28th February 2003.

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It is possible to distinguish the general conditions for the opening of restructuring proceedings and specific premises dedicated to a particular procedure.

The general premises are as follows. Restructuring proceedings may be carried out against an insolvent debtor or against a debtor threatened by insolvency. The insolvent debtor should be understood as an insolvent debtor within the meaning of the Bankruptcy Law Act.[18] A debtor at risk of insolvency should be understood as a debtor whose economic situation indicates that in the near future he/she may become insolvent. The court refuses to open the restructuring proceedings if the result of the proceedings would be to injure the creditors.

Procedure for approval of the arrangement may be conducted if the sum of disputable claims entitling to vote on the arrangement does not exceed 15 % of the sum of claims entitling to vote on the arrangement.

Accelerated arrangement proceedings may be conducted if the sum of disputable claims entitling to vote on the arrangement does not exceed 15 % of the sum of receivables entitling to vote on the arrangement.

The arrangement proceedings may be conducted if the sum of disputable claims entitling to vote on the agreement exceeds 15 % of the sum of claims entitling to vote on the arrangement.

The court refuses to open the arrangement or sanation proceedings also if the debtor's ability to settle the costs of the proceedings and the liabilities arising after its opening have not become probable.

Importance of "morality payment" of debtor in Poland

The debtor's payment morality, understood as the reason for which the debtor has become insolvent, is of a limited importance. Bankruptcy is treated as a procedure to protect the interests of creditors, which is more advantageous to creditors than individual executions. For this reason, the court will declare bankruptcy even if the bankruptcy occurred as a result of the debtor's bad will (default of insolvency) or when the application for bankruptcy was filed after 30 days of insolvency (late submission of the application has other consequences – liability for damages and sometimes also criminal liability). Payment morality is not examined when opening restructuring proceedings.

[18] See the Polish Bankruptcy Law Act of 28th February 2003.

The fulfilment of the payment morality test is, however, a *sine qua non* condition when the natural person (consumer or entrepreneur) is discharged of debts.

System of authorities those recognise bankruptcy and restructuring cases in Poland

The Polish legal system for insolvency cases is a judicial system. Cases for bankruptcy are heard by a bankruptcy court composed of three professional judges. The district court is an insolvency court – a commercial court.

In consumer bankruptcy, one professional judge decides on the declaration of bankruptcy.

After the declaration of bankruptcy, bankruptcy proceedings are pending in the bankruptcy court which declared bankruptcy.

In the decision on the declaration of bankruptcy, however, the court appoints a judge-commissioner who exercises general supervision over the proceedings. The proceedings in the restructuring proceedings are examined by the restructuring court. The district court is a restructuring court – a commercial court. The court adjudicates as one judge. After opening of the restructuring proceedings, judicial activities in the proceedings are performed by the judge-commissioner, with the exception of actions for which the court is competent.

Objectives of proceedings in Poland

First of all, there should be indicated the objectives of the restructuring proceedings. The aim of the restructuring proceedings is to avoid declaring the bankruptcy of the debtor by allowing him/her to restructure by entering into an arrangement with the creditors, and in the case of sanation proceedings also by carrying out sanation measures, securing the creditors' rights.

Bankruptcy proceedings should be conducted in such a way that creditors' claims can be satisfied as much as possible and, if reasonable reasons allow, the current debtor's enterprise has been preserved. Proceedings regulated by the Bankruptcy Law Act[19] with respect to natural persons – entrepreneurs should also be conducted in such a way that a reliable debtor can obtain the possibility of a debt relief. Proceedings

[19] See the Polish Bankruptcy Law Act of 28th February 2003.

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regulated by the Bankruptcy Law Act[20] on natural persons not conducting business activity should be conducted in such a way as to enable the bankrupt's liabilities not performed in the bankruptcy proceedings to be written off, and if possible – to satisfy the claims of the creditors to the highest possible degree.

Stages of the insolvency proceedings in Poland

The bankruptcy proceedings have in the dynamic approach the following course.

(I) Proceedings regarding the declaration of bankruptcy. They start with the application for bankruptcy. During its lifetime, the property may be secured.

(II) The proper bankruptcy proceedings. The court declaring the debtor's bankruptcy appoints the judge-commissioner and the trustee (official receiver) of the bankruptcy estate.

The bankruptcy trustee (a) prepares – in principle, on the basis of claims filed by creditors – a list of claims that is subject to approval by the judge-commissioner. Creditors and the bankrupt may file objections to the content of the list of claims. Identification of contentious issues takes place in a simplified mode.

The trustee (b) takes over the debtor's assets, makes a list of them and estimates their value. Then the trustee sells the assets – in principle – through an auction or tender, and exceptionally with a free hand. An alternative arrangement with creditors is possible without liquidating the bankruptcy estate.

The trustee (c) satisfies creditors' claims by means of the so-called division plan.

(III) Debt relief proceedings. In the case of insolvent natural person who meets the criteria of payment morality, the court may waive the bankrupt's liabilities not satisfied as a result of the liquidation of the bankruptcy estate.

Procedure for approval of the arrangement is as following.

[20] See the Polish Bankruptcy Law Act of 28th February 2003.

(I) The debtor concludes a private contract with the supervisor of the arrangement and establishes the so-called arrangement day. Obligations created before this day are subject to the arrangement.

(II) The debtor independently, outside the court, collects the votes for the arrangement and if the agreement is accepted by the majority of the creditors, he/she applies to the court for approval of the arrangement.

(III) The court issues a decision on the approval of the agreement.

Procedure for accelerated proceedings, arrangement proceedings, sanation proceedings is as following.

(I) Proceedings regarding the opening of the restructuring proceedings. They begin with a motion to open the restructuring. In the case of application for opening sanation proceedings, the debtor's assets may be secured.

(II) Proper restructuring proceedings. When opening the restructuring of the debtor, the court appoints the judge-commissioner and in the accelerated arrangement proceedings, arrangement proceedings the court supervisor or, exceptionally, the administrator. In the sanation proceedings the court appoints the administrator. The court supervisor does not take over the management of the debtor's assets; the administrator takes over the management of the debtor's assets.

(a) A court supervisor or an administrator *ex officio* prepares a list of creditors.
(b) The creditors vote in favour of the arrangement at the Creditors' Meeting (in writing or orally).
(c) The court rules on the approval of the agreement.

The date of the bankruptcy or restructuring announcement in Poland

The date of issuing the bankruptcy order is the date of bankruptcy. The court does not determine retrospectively when the debtor's insolvency occurred.

The day of issuing the ruling on opening of the accelerated arrangement proceedings, arrangement proceedings or sanation proceedings is the date of opening of the restructuring proceedings. In the proceedings for the approval of the arrangement, it is considered that the effects of

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the opening of the restructuring proceedings arise on the arrangement date indicated by the debtor.

The impact of opening proceedings on the debtor in Poland

The bankrupt is obliged to indicate and to issue to the trustee all his/her property as well as documents regarding his/her activities, assets and settlements, in particular accounting books, other records kept for tax purposes and correspondence. The bankruptcy of this obligation is confirmed by a written statement to the judge-commissioner. The bankrupt is obliged to provide the judge-commissioner and the trustee with all necessary explanations regarding his/her property. The judge-commissioner may decide that a bankrupt who is a natural person does not leave the territory of the Republic of Poland without his/her permission. The above-mentioned principle applies accordingly to the members of the bankrupt's management body.

After the declaration of bankruptcy, the entrepreneur appears under the existing company name with the addition of the sign "in bankruptcy".

After opening accelerated arrangement proceedings, arrangement proceedings, sanation proceedings, the debtor provides the judge-commissioner and the court supervisor or the administrator with all necessary explanations, provides documents regarding his/her company and property and enables the court supervisor to become acquainted with the debtor's enterprise, in particular with his/her accounting records.

After opening accelerated arrangement proceedings, arrangement proceedings, sanation proceedings, the entrepreneur appears under the existing company name with the addition of the sign "in restructuring".

The impact of opening proceedings on debtor's obligations in Poland

The provision of the contract stipulating in the event of filing for bankruptcy or for the declaration of bankruptcy the change or termination of the legal relationships to which the bankrupt is a party is null and void. The provision of a contract to which the bankrupt is a party that makes it impossible or difficult to achieve the purpose of bankruptcy proceedings is ineffective in relation to the bankruptcy estate.

The bankrupt's cash obligations the payment date of which has not yet come, become due on the day the bankruptcy is declared.

Non-pecuniary property obligations change on the day the bankruptcy is declared for pecuniary obligations and become payable as of that date, even if the date of their execution has not yet taken place.

Interest on receivables due from the bankrupt may be satisfied from the bankruptcy estate for the period until the bankruptcy date. This does not apply to interest on claims secured by a mortgage pledge, registered pledge, fiscal pledge or maritime mortgage. These interests can be satisfied only from the subject of collateral.

If, on the date of declaration of bankruptcy, the obligations under the *do ut des* agreement have not been fulfilled in whole or in part, the trustee may, with the consent of the judge-commissioner, fulfil the obligation of the bankrupt and request the other party to settle a mutual consideration or to withdraw from the contract as of the date of declaration of bankruptcy.

The offsetting of the bankrupt with the creditor's claim is admissible if both claims existed on the day the bankruptcy was declared, even if the maturity date of one of them has not yet taken place. A set-off is not admissible if the debtor's debtor acquired a claim by a transfer after the declaration of bankruptcy or purchased it in the last year before the bankruptcy date, knowing that there is a basis for bankruptcy. However, the set-off is admissible if the buyer became the creditor of the bankrupt as a result of repayment of his/her debt for which he/she was personally or by certain property objects responsible, and if the buyer at the time when he/she took responsibility for the bankrupt's debt did not know about the existence of grounds for bankruptcy. A set-off is always acceptable if the acceptance of liability took place a year before the bankruptcy date. A set-off is not permitted if the creditor has become a debtor of the bankrupt after the date of bankruptcy.

And what about restructuring? The provisions of the agreement stipulating in the case of request for the opening of an accelerated arrangement proceedings, arrangement proceedings, sanation proceedings or opening thereof change or termination of the legal relationships to which the debtor is a party are null and void. The provision of a contract to which the debtor is a party preventing or hindering the achievement of the objective of accelerated arrangement proceedings, arrangement proceedings, sanation proceedings is ineffective.

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Personal claims created before the opening of the restructuring proceedings, as a rule, gain the status of arrangement claims that are subject to restructuring.

From the date of the opening of the accelerated arrangement proceedings, arrangement proceedings, sanation proceedings to the day of their completion or the decision on discontinuance of the proceedings, the debtor or the administrator cannot pay debts which are subject to the arrangement.

From the date of the opening of the accelerated arrangement proceedings, arrangement proceedings, sanation proceedings to the day of their completion or the decision on discontinuance becoming final the set-off of mutual claims between the debtor and the creditor, is inadmissible if the creditor:

1) became the debtor's debtor after the opening of the proceedings;
2) being the debtor of the debtor, became after the opening of the proceedings his/her creditor by acquiring, by way of a transfer, a claim created before the opening of the proceedings.

The set-off of mutual claims is admissible if the purchase of receivables occurred as a result of payment of a debt for which the buyer was personally responsible or responsible by certain assets, and if the buyer's liability for the debt arose prior to the submission of the application for opening of the proceedings.

In the sanation proceedings, the administrator may withdraw from a *do ut des* agreement that has not been performed in whole or in part before the date of opening of the rehabilitation proceedings, with the consent of the judge-commissioner, if the performance of the other party resulting from this contract is an indivisible service.

The impact of opening proceedings on debtor's assets in Poland

As of the date of bankruptcy, the estate of the bankrupt becomes a mass of bankruptcy which serves to satisfy the bankrupt's creditors. The bankruptcy estate includes a property belonging to the bankrupt on the day the bankruptcy was declared and acquired by the bankrupt in the course of bankruptcy proceedings, with the exceptions specified in the Bankruptcy Law Act.[21] As of the date of bankruptcy, the bankrupt loses the

[21] See the Polish Bankruptcy Law Act of 28th February 2003.

right of management and the possibility of using assets falling into the bankruptcy estate and disposing of them. Legal acts of a bankrupt are invalid for assets entering into the bankruptcy estate.

The composition of the bankruptcy estate is determined by preparing an inventory list and a list of receivables. Assets that do not belong to the assets of the bankrupt are excluded from the bankruptcy estate.

After the declaration of bankruptcy, the components of the bankruptcy estate may not be charged with a mortgage, pledge, registered pledge, tax lien in order to secure the claim arising prior to the bankruptcy.

On the day of opening of the accelerated arrangement proceedings, arrangement proceedings, the property used to run the enterprise and the property belonging to the debtor become an arrangement mass. In the case of opening of the sanation proceedings, this property becomes a sanation mass.

In an accelerated arrangement procedure, an inventory is not drawn up. Within thirty days of the opening of the arrangement proceedings, the court supervisor, and in the case of opening of the sanation proceedings, the administrator establishes the composition of the arrangement/sanation mass on the basis of entries in the debtor's books and uncontested documents. Determining the composition of the arrangement/sanation mass is done by creating an inventory.

The impact of the opening bankruptcy and restructuring on other procedures in Poland

After the declaration of bankruptcy, the court, administrative or court-administrative proceedings regarding the bankruptcy estate may be initiated and conducted exclusively by the trustee or against him/her. The trustee conducts proceedings for the benefit of the bankrupt, but on his/her own behalf.

Enforcement proceedings addressed to the assets included in the bankruptcy estate initiated before the bankruptcy date shall be suspended by operation of law as of the date of bankruptcy. These proceedings are annulled by virtue of the law after the decision on the declaration of bankruptcy becomes final.

The opening of the accelerated arrangement proceedings, arrangement proceedings and sanation proceedings does not exclude the possi-

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bility for the creditor to initiate the court, administrative, court-administrative proceedings and arbitration proceedings in order to claim receivables subject to inclusion in the receivables register.

Enforcement proceedings regarding receivables subject to the arrangement by virtue of the law initiated prior to the opening of the proceedings are suspended by operation of law as of the date of the opening of the proceedings.

Ineffectiveness of some of the bankrupt's activities in Poland

Some provisions provide for the ineffectiveness of some of the bankrupt's activities. By the way of examples, the following may be mentioned.

Ineffective in relation to the bankruptcy estate are legal acts carried out by the bankrupt within one year before the date of filing for bankruptcy which he/she disposed of his/her property if they were made free or for a fee, but the value of the bankrupt's benefit exceeds the value of the benefit received by the bankrupt or a reserved person for the bankrupt or for a third party.

The security and payment of non-due debts made by the bankrupt within six months before the filing of the bankruptcy petition shall also be ineffective. However, the person who received the payment or security may, by way of an action or plea, demand recognition of these acts as effective if at the time of their execution he/she did not know about the existence of a basis for declaration of bankruptcy.

The judge-commissioner *ex officio* or at the request of the official receiver deems ineffective in relation to the bankrupt's estate a paid legal act performed by the bankrupt within six months before the date of filing for bankruptcy with a spouse, relative or in-line relative, relative or related person up to and including the second degree, person remaining with the actual relationship, a household with whom he or she is cohabited or adopted, unless the counterparty demonstrates that the creditors have not been adversely affected. The decision of the judge-commissioner is subject to complaint.

Position of the creditor in the proceedings in Poland

Based on a very general assessment of the regulation, it can be assumed that in the case of:

1) the bankruptcy of the entrepreneur, the central position belongs to all creditors;
2) the consumer bankruptcy, the central position belongs to the bankrupt – natural person;
3) the restructuring, the central position belongs to the debtor – entrepreneur.

Representation of creditors in the proceedings in Poland

In the bankruptcy and restructuring proceedings (with the exception of the proceedings for approval of the arrangement), the legislator generally provides for two types of representative bodies: the board of creditors and the assembly of creditors.

A creditor in the understanding of the Bankruptcy Law Act[22] is every person entitled to satisfy from the bankruptcy estate, even if the claim does not require notification.

The creditors' council establishes, appoints and dismisses its members the judge-commissioner *ex officio* if he/she deems it necessary, or upon the request. The creditors' board consists of five members and two deputies appointed from the debtor's creditors who are parties to the proceedings. The creditors' board may consist of three members if the number of the debtor's creditors participating in the proceedings is less than seven.

The creditors' council helps the trustee, controls his/her activities, examines the state of the bankruptcy funds, grants permission for activities that can only be carried out with the permission of the board of creditors and expresses opinions on other matters if requested by the judge-commissioner or the trustee. In performing the duties, the creditors' council is guided by the interest of all the creditors.

The creditors' board or its members may submit comments to the judge-commissioner about the official receiver's activities.

Theoretically, it is possible to convene a creditors' meeting in which all creditors can participate.

In the restructuring proceedings (with the exception of the proceedings for the approval of the arrangement), the assembly of creditors is an indispensable forum for the adoption of the arrangement.

[22] See the Polish Bankruptcy Law Act of 28th February 2003.

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Procedures for disposing of property in bankruptcy in Poland

The liquidation of the bankruptcy estate is carried out by a single-source sale or an auction of the bankrupt enterprise in its entirety or organised parts, real estate and movables, claims and other property rights included in the bankruptcy estate or by collecting debts from the bankrupt debtors and executing other property rights.

After the declaration of bankruptcy, a bankrupt enterprise may be continued if it is possible to enter into an arrangement with creditors or it is possible to sell the bankrupt enterprise in its entirety or organised parts. If the trustee runs a bankrupt enterprise, he/she should take all actions ensuring the company's position at least in a non-deteriorated condition. The bankrupt enterprise should be sold as a whole, unless it is not possible. The sale of a bankrupt enterprise may be, after the consent of the judge-commissioner, preceded by a fixed-term lease contract with a pre-emptive right if the economic reasons support it.

The sale made in the bankruptcy proceedings has the effects of an execution sale. The buyer of the components of the bankruptcy estate is not responsible for the bankrupt's tax liabilities arising also after the declaration of bankruptcy. The sale of the real estate results in expiration of the rights and rand personal claims disclosed by the entry in the land and mortgage register or not disclosed in this way, but reported to the judge-commissioner within the prescribed period of time. In the place of the expired law, the right holder acquires the right to be satisfied from the price obtained from the sale of the encumbered property.

The rules for the distribution of accumulated funds between creditors in Poland

Unless a special provision provides otherwise, receivables secured by mortgage, pledge, registered pledge, treasury pledge and maritime mortgage as well as expiration of rights and personal claims on the real estate, perpetual usufruct, cooperative ownership right to the premises or the ship registered in the maritime register are to be satisfied from the amount obtained from the liquidation of the object, less the costs of liquidation of this object and other costs of bankruptcy proceedings in the amount not exceeding a tenth of the amount obtained from liquidation, not more than the part of the costs of bankruptcy proceedings which results from the ratio of the value of the item to the value of the whole

bankruptcy estate. Claims and rights are satisfied in the order of their priority.

Receivables to be satisfied from the insolvency funds are divided into the following four categories.

The first category consists of receivables from the employment relationships, receivables maintenance, etc.

The second category consists of other receivables if they are not satisfied in other categories, in particular taxes and other public taxes and other receivables due to the social security contributions.

The third category consists of interest on receivables included in higher categories in the order in which capital is to be satisfied as well as the court and administrative fines and receivables due to the donations and subscriptions.

The fourth category consists of receivables of partners or shareholders due to a loan or other legal transaction with similar effects, in particular delivery of goods with a deferred payment date made to a bankrupt company being a company within five years before the bankruptcy, including interest.

If the sum to be divided is not sufficient to cover all receivables in full, the receivables of a further category are satisfied only after full payment of the preceding category, and if the sum to be divided is not sufficient to cover all receivables of the same category in full, these receivables are satisfied relatively to the height of each of them.

The division of funds takes place once or several times, as the bankruptcy estate is liquidated after the judge-commissioner approves the list of claims in whole or in part.

Digitalization of proceedings in Poland

In connection with the Article 24 Section 1 of the Regulation of the European Parliament and of the Council (EU) 2015/848[23] regarding bankruptcy proceedings, the legislator intends to introduce into the legal system the National Register of Debtors.

[23] See Article 24 Section 1 of the *Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on Insolvency Proceedings*. OJ EU L 141, 2015-06-05, pp. 19-72.

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Digitalization of restructuring and bankruptcy proceedings will cover, first of all, the introduction of electronic communication with the court and the judge-commissioner, introduction of electronic delivery, introduction of the obligation to prepare letters and documents using templates of letters made available in the system, introduction of the possibility of downloading copies of documents collected from the system in files of the proceedings. Secondly, the principle of automatic notification required by law should be indicated. Thirdly, as part of computerization, the introduction of an automated reporting system of the receiver is assumed.

Accelerated liquidation procedures in Poland

An application for the declaration of bankruptcy may be accompanied by an application for approval of the terms of sale of the debtor's enterprise or its organised part or assets constituting a significant part of the enterprise.

The court shall accept the application for approval of the terms of sale if the price is higher than the amount that can be obtained in bankruptcy proceedings on liquidation under general rules, less the costs of proceedings that should be incurred in connection with liquidation in such mode.

The court may accept the application if the price is close to the amount possible to obtain in bankruptcy proceedings on liquidation under general rules, reduced by the costs of proceedings that should be incurred in connection with liquidation in this mode, if there is an important public interest or the possibility of preserving the enterprise of the debtor.

Taking into account the application, the court in the decision on the declaration of bankruptcy approves the terms of sale, specifying at least the price and the buyer of the assets being the subject of the sale referred to in this part of our paper. In the order, the court may also refer to the terms of sale specified in the draft contract.

Arrangement proposals in Poland

The restructuring of the debtor's obligations includes in particular: postponement of the performance deadline; repayment in instalments; decrease in height; conversion of receivables into shares or stocks; change, exchange or revocation of the right securing a given claim. The arrange-

ment proposals may indicate one or more ways to restructure the debtor's obligations. The arrangement proposals may also provide for the satisfaction of the creditors by liquidating the debtor's assets.

The arrangement proposals may provide for the division of creditors into groups covering particular categories of interests.

The terms of restructuring the debtor's obligations are the same for all creditors, and if voting on the arrangement is carried out in groups of creditors, the same for creditors included in the same group, unless the creditor explicitly agrees to less favourable conditions.

The mode of entering into an arrangement with creditors and its approval in Poland

The arrangement adopted by the assembly of creditors is approved by the court, containing the content of the arrangement in the operative part of the ruling. A hearing designated for recognition of the arrangement takes place no sooner than one week after the end of the creditors' meeting at which the arrangement was adopted. Participants in the proceedings may submit objections in writing to the arrangement.

The court refuses to approve the agreement if it violates the law, in particular if it provides for the granting of public aid contrary to the regulations, or if it is obvious that the agreement will not be executed. The court may refuse to approve the arrangement if its terms are grossly unfair to creditors who voted against the arrangement and raised objections.

Receivables secured by mortgage, pledge in bankruptcy and restructuring in Poland

Unless a special provision provides otherwise, receivables secured by mortgage, pledge, registered pledge, treasury pledge and maritime mortgage as well as expiration of rights and personal claims on the real estate, perpetual usufruct, cooperative ownership right to the premises or the ship registered in the maritime register are to be satisfied from the amount obtained from the liquidation of the object, less the costs of liquidation of this object and other costs of bankruptcy proceedings in the amount not exceeding a tenth of the amount obtained from liquidation, not more than the part of the costs of bankruptcy proceedings which results from the ratio of the value of the item to the value of the whole bankruptcy estate.

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In restructuring, the arrangement does not include a claim secured by a mortgage, pledge, registered pledge, tax lien or sea mortgage in the part covering the value of the collateral, unless the creditor agreed to be covered by the arrangement. Consent to cover the debt by the arrangement is expressed in an unconditional and irrevocable manner, at the latest before voting on the arrangement. Consent can be expressed orally to the minutes of the creditors' meeting. To the claims secured by the transfer to the creditor of the ownership of an item, claim or other right, the above-mentioned principle shall apply accordingly.

The arrangement does not infringe rights resulting from a mortgage, pledge, registered pledge, tax pledge or maritime mortgage if it was established on the debtor's property, unless the authorised party consented to the acceptance of the secured debt by the arrangement. In the case of consent to the inclusion of a secured claim, these rights remain in effect, but they secure the claim in the amount and on the terms of payment specified in the arrangement.

The restructuring law gives the debtor the opportunity to submit arrangement proposals regarding only some of the obligations the restructuring of which has a fundamental impact on the debtor's continuing operations (the so-called partial arrangement). The essence of a partial agreement is, therefore, to restructure only some of the arrangement commitments that the debtor has chosen independently. Under a partial arrangement it is possible – obligatory – to include a system of creditors secured in cash on the debtor's assets, who, without partial layout institutions, would be covered by the arrangement only with their own consent. Thus, in practice, a partial arrangement is a powerful restructuring tool capable of "blocking" debt collection from material security creditors.

As a rule, the coverage of a claim secured by a material means on the debtor's assets and a claim secured by transfer for collateral, the value of which is covered by the collateral, require the consent of the creditor. The creditor, fully secured by object, therefore, has, as a rule, full control over his/her claim in the context of the arrangement. In the case of a partial arrangement, the debtor may "compulsorily" include the creditor secured materially into the orbit of the partial arrangement, even if the secured claim is fully covered by the collateral and the creditor is not interested in entering his/her claim into the arrangement.

Nevertheless, binding the creditor, substantively secured by the restructuring mode, requires certain conditions to be met by the debtor.

First, the debtor should present to the creditor arrangement proposals providing for full satisfaction, within the period specified in the arrangement, of his/her claims along with incidental claims which were provided for in the contract constituting the basis for establishing the collateral, even if the contract was effectively terminated or expired. In practice, the debtor may, therefore, postpone the satisfaction of the creditor secured in a timely manner.

Secondly, alternatively, the debtor should provide the creditor with a settlement proposal providing for satisfying the creditor to a degree not lower than it can be expected in the case of debt recovery together with side receivables from the collateral.

Preference for the State Treasury in the proceedings in Poland

The State Treasury currently has no preferences in satisfying by the division of the bankruptcy estate funds. The State Treasury's receivables are not subject to exclusion from the arrangement in the event of restructuring.

An exception applies to the Social Insurance Institution which, however, has a separate subjectivity from the State Treasury.

The restructuring of liabilities due to the social security and health insurance of the debtor (other obligations of the debtor towards the Social Insurance Institution) may only include spreading into instalments or deferring the payment deadline.

Separate procedures in Poland

Both in bankruptcy and restructuring proceedings, the legislator, in addition to the main mode, introduces separate modes (for developers, bond issuers, etc.).

Separate proceedings are bankruptcy proceedings against natural persons who do not run a business. Separate provisions apply to natural persons whose bankruptcy cannot be declared in accordance with the provisions of the main proceedings. In matters not regulated in separate regulations, the provisions on the main bankruptcy proceedings shall apply accordingly.

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International bankruptcy and restructuring law in Poland

Due to the fact that Poland is a Member State of the European Union, the provisions on international bankruptcy have two levels of regulation – the European Union law and the Polish law.

The insolvency law of the European Union deals with jurisdiction. The courts of the Member State within the territory of which the centre of the debtor's main interests is situated shall have jurisdiction to open insolvency proceedings ("main insolvency proceedings"). The centre of main interests shall be the place where the debtor conducts the administration of his/her interests on a regular basis and which is ascertainable by the third parties. Where the centre of the debtor's main interests is situated within the territory of a Member State, the courts of another Member State shall have jurisdiction to open insolvency proceedings against that debtor only if the debtor possesses an establishment within the territory of that other Member State. The effects of those proceedings shall be restricted to the assets of the debtor situated in the territory of the latter Member State.

The next issue is the scope of applicable law (*lex concursus*). The law applicable to insolvency proceedings and their effects shall be that of the European Union Member State within the territory of which such proceedings are opened (the so-called "State of the opening of proceedings"). The law of the State of the opening of proceedings shall determine the conditions for the opening of those proceedings, their conduct and their closure.

Under the law of the European Union, any judgment opening insolvency proceedings handed down by a court of a Member State which has jurisdiction shall be recognised in all other Member States from the moment it becomes effective in the State of the opening of proceedings.

Finally, the law of the European Union deals with proceedings of members of group of companies.

According to the Polish law, the exclusive jurisdiction of the Polish courts includes bankruptcy cases if the main centre of the debtor's main activity is located in the Republic of Poland. The Polish courts also have jurisdiction if the debtor conducts business or has his/her place of residence or registered office or property in the Republic of Poland. If the jurisdiction of the Polish courts is exclusive, the bankruptcy proceedings have character of the main bankruptcy proceedings. In other cases, the

bankruptcy proceedings have character of the collateral bankruptcy proceedings.

Proceedings regarding the recognition of a decision on the opening of foreign bankruptcy proceedings are initiated at the request of a foreign administrator or a debtor who has been left with the management of his/her own property.

A decision to instigate foreign insolvency proceedings shall be recognised if:

1) it relates to a matter which does not belong to the exclusive jurisdiction of the Polish courts;
2) recognition does not contradict the basic principles of the legal order in the Republic of Poland.

Recognition of a decision on the opening of foreign bankruptcy proceedings does not prevent the Polish court from instituting bankruptcy proceedings. However, if the decision on the initiation of the main foreign bankruptcy proceedings has been recognised, the bankruptcy proceedings instigated in the Republic of Poland are secondary bankruptcy proceedings.

Penal protection in Poland

It is an offense to provide false data in the bankruptcy petition. In the proceedings for declaration of bankruptcy as well as in the bankruptcy proceedings, the principle of truth applies. The principle of truth in proceedings for the declaration of bankruptcy is subject to increased legal protection. Along with the application for declaration of bankruptcy, the debtor is obliged to submit a statement in writing as to the truthfulness of the data contained in the application. This offense is an individual offense which may be committed by the debtor – a natural person filing for bankruptcy, having the bankruptcy capacity, or a natural person entitled to represent the debtor.

It is an offense to give the court false information about the debtor's assets.

It is an offense not to report the company's bankruptcy. Criminal liability of natural persons for failing to file for bankruptcy applies only to certain types of entities that have bankruptcy capacity. Whoever, being a member of the company's management board or liquidator, does not file for bankruptcy of a commercial company despite the establishment

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of conditions justifying the bankruptcy of the company, is subject to a fine, restriction of liberty or imprisonment for up to one year.

Fainting or depletion of the creditor's satisfaction. Whoever, in the event of threat of insolvency or bankruptcy, frustrates or depletes the satisfaction of his/her creditor by removing, concealing, disposing, giving, destroying, actually or apparently encumbering or damaging the components of his/her property, is subject to imprisonment of up to three years. The legislator introduces qualified type of crime, because if the act has caused damage to many creditors, the perpetrator is subject to imprisonment from six months to eight years. If the victim is not the State Treasury, the crime is prosecuted at the request of the victim. At the same time, the debtor is responsible for the debtor who, on the basis of a legal regulation, decision of the competent authority, contract or actual performance, deals with property matters of another legal person, a physical group or a person without legal personality.

Bringing down bankruptcy or insolvency is an offense. Whoever, being a debtor of several creditors, leads to his/her bankruptcy or insolvency, is subject to a penalty of imprisonment from three months to five years. This is, at the same time, an intentional act in a direct or potential intention. Whoever, being a debtor of several creditors in a reckless way (and, therefore, unintentional), leads to his/her bankruptcy or insolvency, in particular by squandering parts of property, incurring liabilities or entering into transactions obviously contrary to the principles of management, is subject to a fine, restriction of liberty or imprisonment up to two years. The debtor is responsible for the debtor who, on the basis of a legal regulation, decision of the competent authority, contract or actual performance, deals with property matters of another legal person, a physical group or a person without legal personality. These crimes are material crimes. This means that for their performance an effect in the form of bringing about bankruptcy or insolvency is required. "Bringing" covers any debtor's behaviour with which the inception of his/her insolvency or bankruptcy should be combined. In the face of a perpetrator of the crime who voluntarily repaired the damage in its entirety, the court may apply extraordinary mitigation of punishment, and even refrain from imposing it. However, in the case of a perpetrator of a crime who voluntarily repaired the damage in a significant part, the court may apply extraordinary mitigation of punishment.

Favouring creditors. Whoever, in the event of threat of insolvency or bankruptcy, unable to satisfy all creditors, repays or secures only some, which acts to the detriment of others, is subject to a fine, restriction of liberty or imprisonment for up to two years.

Acting to the detriment of other creditors in connection with the bankruptcy proceedings. Whoever grants or promises to grant a financial advantage for acting to the detriment of other creditors in connection with bankruptcy proceedings or aimed at preventing bankruptcy, shall be punished by imprisonment of up to three years. A creditor shall be subject to the same penalty.

It is an offense not to let property and not to provide information. This offense is an individual offense that can only be committed by offender who has certain characteristics: a natural person who is bankrupt (even if the declaration of bankruptcy was not legally valid) or a natural person entitled to represent a bankrupt who is a legal person or a commercial company without legal personality. The offense is of a formal (ineffective) nature and must be committed intentionally (in a direct or individual intention). The object of protection is property entering into the bankruptcy estate as well as proceedings aimed at determining the composition of the bankruptcy estate. Acting behaviour is not giving the trustee all assets falling into the bankruptcy estate, accounting books or other documents related to his/her property, not giving the receiver or the judge-commissioner information about the bankrupt's property or failing to provide the receiver with data or documents that allow him/her to fulfil the information obligation assigned to listed companies.

Conclusions

The aim of the study was to present – in general – the Polish law on insolvency which is a modern and – no doubt – quite important regulation in Europe. Legal regulation regarding consumer bankruptcy in Poland will significantly change in the near future. Other remarkable adjustments are also prepared.

The presented paper could be used to compare the Polish law and other systems of law. In the current era of globalization, legal comparisons are extremely necessary instruments. The internationalization of scientific discourse has a positive impact on the development of legal sciences.

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The issues of bankruptcy and restructuring are of interest to various centres with a global reach, which underlines the importance of an effective legal regulation in this area. The United Nations Commission on International Trade Law UNCITRAL has published two important documents relating to the problem of insolvency law. The first one – UNCITRAL Legislative Guide on Insolvency Law[24] – from year 2005, consists of two parts: Part One – Designing the Key Objectives and Structure of an Effective and Efficient Insolvency Law; Part Two – Core Provisions for an Effective and Efficient Insolvency Law. The second document is the UNCITRAL Legislative Guide on Insolvency Law: Part Three – Treatment of Enterprise Groups in Insolvency; published in New York in year 2012.[25] The United Nations Commission on International Trade Law reserves that it is not its intention that recommendations regarding bankruptcy law included in the Legislative Guide become an element of individual legal orders. The Legislation Guide contains important issues that are recommended to consider when creating the norms of the bankruptcy and restructuring law. The United Nations Commission on International Trade Law does not recommend only one solution, but points to various possibilities of solutions that may possibly be used by the legislators, taking into account the local (national) legal context. The Polish insolvency law clearly accepts many of the United Nations Commission on International Trade Law's recommendations.

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[25] See *UNCITRAL Legislative Guide on Insolvency Law: Part Three: Treatment of Enterprise Groups in Insolvency*. New York: United Nations, 2012. 116 p. ISBN 978-92-1-133803-4.

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