

1. Scope of application of the Law

Bankruptcy Law applies primarily to entrepreneurs, the term denoting natural persons, legal persons, and entities not being a legal person but operating a business (production; construction; trade; services; searching for, reconnaissance in terms of, and extraction of minerals from deposits; as well as professional activities carried out in an organized and continuous manner). The Bankruptcy Law also applies to commercial companies that do not operate a business, partners in professional partnerships, and partners in partnerships that bear unlimited liability with all their assets (i.e. partners in registered partnerships and general partners in limited partnerships and limited joint-stock partnerships).

Entities that have not been expressly specified by the legislator as subject to bankruptcy cannot be declared bankrupt. These include the State Treasury, local authorities, public independent health care facilities, legal persons and institutions established under a statute, higher education institutions, investment funds, and farmers.

As for restructuring proceedings, the entities that may utilize this procedure are nearly the same as in the case of bankruptcy proceedings. The difference concerns the entities that the Restructuring Law does not apply to. Restructuring proceedings cannot be opened with respect to the State Treasury, local authorities, national and mortgage banks, insurance and reinsurance companies, and investment funds.

2. Types of restructuring proceedings vs bankruptcy proceedings

The main purpose of restructuring proceedings is to avoid the debtor's bankruptcy. Restructuring may consist in reaching an arrangement with the creditors that will allow for an optimum restructuring of the debts and for the business to remain a going concern. Reaching an arrangement with creditors is possible in three types of proceedings.

The first one, proceedings for the approval of an arrangement, is the simplest and the least formalized type of restructuring proceedings. It is intended for debtors whose sum of disputable liabilities (obligations) does not exceed 15% of the total sum of liabilities (obligations). In this proceedings, the debtor himself proposes an arrangement and collects the votes of the creditors without any participation from judicial authorities. The debtor enters into an agreement with a restructuring advisor who performs the function of an arrangement supervisor. The role of judicial authorities is limited to a court approving the arrangement reached by the parties. The request for approval of an arrangement is filed only after the restructuring proceedings proper has been completed (i.e. once the votes of all creditors have been obtained).

The other two types of proceedings—summary arrangement proceedings and regular arrangements proceedings—are carried out by a court and commence with filing a request with a court for initiating restructuring proceedings. In these types of proceedings, an inventory of liabilities is produced and then the arrangement is approved. Summary arrangement proceedings may be carried out if the sum of disputable liabilities (obligations) does not exceed 15% of the total sum of liabilities (obligations). In summary proceedings, there is no possibility of making an objection with respect to the list of liabilities that has been made. More possibilities in this respect are available in regular arrangement proceedings that may be carried out if the sum of disputable liabilities (obligations) exceeds 15% of the total sum of liabilities (obligations).

Restructuring may also consist in remedial actions understood as legal and factual actions intended to improve the economic situation of the debtor and reinstate his ability to carry out his obligations, at the same time protecting him against enforcement. Such actions, taken before an arrangement is made and

after the list of liabilities has been produced and approved, are possible in the course of a procedure known as remedial proceedings. Characteristically, in this proceedings, the debtor is deprived of the right to manage his assets. It is also the most formalized type of restructuring proceedings.

In turn, in bankruptcy proceedings, no arrangement is made. This purpose of this proceedings is to liquidate the debtor's assets. The debtor is deprived of the right to manage his assets. The business is taken over by a trustee who should attempt to sell it as a whole. If this is not possible, particular assets are sold. The funds raised in this way are used to satisfy the creditors.

3. Reasons for commencing restructuring and declaring bankruptcy

Restructuring proceedings may be carried out with respect to a debtor that is insolvent or is facing insolvency. In turn, bankruptcy proceedings concern only insolvent debtors.

An insolvent debtor, as defined in the Bankruptcy Law and the Restructuring Law, is a debtor that is unable to pay his financial liabilities that have become due. A debtor is deemed to be unable to pay his financial liabilities if he is late with payment by more than three months.

Furthermore, with respect to legal persons and entities without legal personality that have legal capacity (except for partnerships in which at least one of the partners bearing unlimited liability for the partnership's liabilities with their entire assets is a natural person), insolvency occurs also if the debtor's financial liabilities exceed the value of his assets (this is deemed to have taken place if, according to the balance sheet, the liabilities, excluding provisions for liabilities and liabilities to affiliates, exceed the value of the assets) and this situation has continued for more than two years. In spite of such a situation, the court may dismiss the request for declaring bankruptcy if there is no threat that the debtor will soon become unable to pay his financial liabilities that are due.

A debtor facing insolvency is a debtor whose economic situation suggests that he could soon become insolvent.

In certain cases restructuring proceedings will not be initiated even though the above reasons have occurred. First of all, the court will refuse to open restructuring proceedings if this would cause harm to the creditors. Furthermore, the court will refuse to open arrangement or remedial proceedings if the debtor's ability to cover the ongoing costs of the proceedings and pay the liabilities arising after the proceedings has been opened has not been substantiated.

Bankruptcy will also not be declared in the several specific cases provided for in the Bankruptcy Law. If the request for declaring bankruptcy was filed by a creditor and the debtor demonstrates that the entire liability is disputable and that the dispute had occurred before the request for declaring bankruptcy was filed, the court will dismiss the request. If the debtor's assets are insufficient to cover the costs of the proceedings or are sufficient to cover only these costs, the court will dismiss the request for declaring bankruptcy. The court may also dismiss the request for declaring bankruptcy if the debtor's assets are encumbered with security established on tangible property (mortgage, pledge, registered pledge, fiscal pledge, or ship mortgage) to such an extent that the remaining assets are insufficient to cover the costs of the proceedings.

4. Persons authorized to file requests

A request for the declaration of bankruptcy may be filed by the debtor himself and by each of his personal creditors. If the debtor is a natural person, they file the request personally. If the debtor is a legal person (e.g. a private limited company or a joint-stock company), the request is filed, in principle, by the bodies authorized to represent this legal person. The Bankruptcy Law specifies a list

of special entities that may file a request for announcing claims (e.g. in the case of partnerships, the right to file such a request rests with each of the partners bearing unlimited liability for the partnership's debts).

A different procedure for filing requests that initiate proceedings is provided for in the Restructuring Law. In restructuring proceedings, the right to file the request rests, in principle, exclusively with the debtor. This is understandable, as the debtor is the party most interested in taking restructuring actions in order to avoid being declared bankrupt. The Restructuring Law provides for a single exception from the above rule. In the case of remedial proceedings concerning a legal person, in addition to the debtor himself, the request for initiating proceedings may also be filed by any of the debtor's personal creditors.

5. When a request for commencing restructuring or declaring bankruptcy may be filed and when it must be filed

The persons authorized to file a request in accordance with the preceding section may file the request if, in their opinion, there are reasons for opening restructuring proceedings (i.e. if the debtor is facing insolvency or is insolvent).

As regards the request for declaring bankruptcy, it may be filed by the debtor's personal creditors. The debtor is obliged to file a request for declaring bankruptcy with a court not later than 30 days from the day on which the reason for declaring bankruptcy occurred.

If the debtor is a legal person or an entity without legal personality that has legal capacity, the obligation to file a request for declaring bankruptcy rests with everyone who has the right to manage the debtor's affairs and represent him (independently or jointly with other persons).

Importantly, the persons obliged to file the request are liable for the damage done as a result of failing to file the request within 30 days from the day on which the reason for declaring bankruptcy occurred, unless they are not at fault, and in particular if restructuring proceedings is opened or an arrangement is approved within the deadline for filing the request for declaring bankruptcy.

6. Formal requirements for requests

The request for opening bankruptcy or restructuring proceedings filed by an authorized person must meet the formal requirements specified in statutory regulations. First of all, the request is a court submission, which means that it must meet the relevant requirements specified in the Code of Civil Procedure.

Each request for declaring bankruptcy, regardless if filed by the debtor or a creditor, must first of all contain the following general information:

- The debtor's basic data (first and last name or business name, the PESEL number or the National Court Register number, and if these do not exist, other data allowing for identifying the debtor; place of residence or registered office; address; if the debtor is a partnership, a legal person, or another entity without legal personality but with legal capacity granted under separate statutory regulations, then also the first and last names of the representatives, including liquidators (if appointed); and, for partnerships, the first and last names and addresses of the partners that bear unlimited liability for the partnership's liabilities with all their assets);
- Specification of the debtor's principal place of business (the rules of determining the location of this place are discussed in the section concerning the competent courts);

- Specification of the circumstances that justify the request and their substantiation—the request must describe the circumstances suggesting that there may be reasons for declaring the debtor bankrupt (these circumstances are discussed in the preceding sections of this document).

If the request for declaring bankruptcy is filed by the debtor himself, the following detailed information must also be attached to the request:

- A current list of assets, including their estimated value;
- A balance sheet as of a day within the period of 30 days preceding the day of filing the request;
- A list of creditors, stating their addresses and the value of the liabilities towards each of them, as well as the payment deadlines, and a list of securities established by creditors on the debtor's assets, including the dates of them being established;
- A representation on the repayments of liabilities or other debts made within the six months preceding the date of filing the request;
- A list of entities with financial liabilities towards the debtor, including their addresses and specifying the liabilities, the date of their arising, and their payment deadlines;
- A list of enforcement titles and writs of execution against the debtor;
- Information on proceedings concerning the establishment on the debtor's assets of mortgages, pledges, registered pledges, fiscal pledges, and ship mortgages and other encumbrances subject to entering into a land and mortgage register or another relevant register, as well as on other court, administrative, court/administrative, and arbitration proceedings concerning the debtor's assets;
- Information on the place of residence of the representatives of the company or the legal person and the liquidators (if appointed).

Similar formal requirements apply to requests for opening restructuring proceedings. The request is usually filed by the debtor, which means that he must provide the above general and detailed information. Additionally, in most cases, a restructuring plan (as discussed in the following sections) should be attached to the request.

The number of requirements is the smallest for a request for an approval of an arrangement, which is a natural consequence of the low formalization of this type of proceedings. Attachments to the request should include arrangement proposals and the results of works on an arrangement, as well as the voting cards collected by the debtor and a report produced by the arrangement supervisor.

In the other proceedings, the requirements are similar to those presented above. Importantly, the list of current assets, including their estimated value, and a balance sheet must be attached to the request for opening summary arrangement proceedings. These documents are not required either in regular arrangement proceedings or in remedial proceedings. In remedial proceedings, arrangement proposals do not have to be attached to the request, but it is necessary to substantiate the debtor's ability to satisfy, in an ongoing manner, the costs of the remedial proceedings and the liabilities arising after the opening of this proceedings.

The common requirements for the request for opening summary arrangement proceedings, regular arrangement proceedings, and remedial proceedings include the need to provide the debtor's data, submit a provisional restructuring plan, specify the location of the debtor's business or his other assets, provide a list of creditors and a list of liabilities, and specify the sum of liabilities.

7. Restructuring plan and initial arrangement proposals as key elements of the request for commencing restructuring proceedings

A provisional restructuring plan is an attachment to a request for opening restructuring proceedings. It should contain an analysis of the reasons of the debtor's difficult economic situation, a provisional review of the planned restructuring measures and the related costs, and a provisional schedule of implementing the restructuring measures.

In turn, a full restructuring plan should contain a description of the debtor's business, including an analysis of current and future demand and supply in the market sector in which the business operates; an analysis of the reasons of the debtor's difficult economic situation; a presentation of the proposed future strategy of running the debtor's business and information about the levels and types of risks; a full description and a review of the planned restructuring measures and the related costs; a schedule of implementing the restructuring measures and the final deadline for implementing the restructuring plan; information about the production capacity of the debtor's enterprise, including its utilization and reduction; a description of the methods and sources of financing, including the utilization of the available capital, sales of assets in order to finance restructuring, financial liabilities towards shareholders and third parties, in particular banks and other loan providers, the amount of public aid, *de minimis* aid, and *de minimis* aid in agriculture and fishing requested and granted, specifying the needs in this respect; projected profits and losses in the next five years based on at least two forecasts; first and last names of the persons responsible for carrying out the arrangement; first and last names of the authors of the restructuring plan; the date of drafting the restructuring plan.

A formal requirement for most requests for opening restructuring proceedings is the submission of arrangement proposals that should specify the manner of restructuring the debtor's liabilities. The restructuring of the debtor's liabilities may consist e.g. in deferring the deadline; spreading the repayment into installments; reducing the value of liabilities; converting liabilities to shares; or changing, exchanging, or waiving the right securing a given liability. Arrangement proposals may also provide for satisfying the creditors by means of liquidating the debtor's assets. Arrangement proposals may also provide for dividing creditors into groups covering particular categories of interests. Importantly, the conditions for restructuring the debtor's liabilities are identical for all creditors; in the event of a division into groups, the restructuring conditions should be identical for the creditors belonging to the same group.

8. Coincidence of a request for restructuring and a request for declaring bankruptcy

If, with respect to the same debtor, requests for both declaring bankruptcy and restructuring have been filed, the examination of the request for declaring bankruptcy should be suspended until the request for restructuring has been examined (i.e. a final and binding ruling is passed in this respect).

The suspension of examining the request for declaring bankruptcy does not exclude the possibility of granting protection (e.g. by appointing a temporary court supervisor or suspending enforcement proceedings).

If the suspension of the examination of the request for declaring bankruptcy could violate the interest of all creditors (the interest of the creditors being for their claims to become satisfied to the maximum extent possible), the bankruptcy court may examine the request for declaring bankruptcy and the request for restructuring together. In such case, only one proceedings will be carried out, ending with one decision, in which the court will either order the opening of restructuring or will declare the debtor bankrupt.

The bankruptcy court may also conclude that examining the request for declaring bankruptcy and the request for restructuring together may lead to a significant delay in passing a ruling, as a result examining exclusively the request for declaring bankruptcy.

If restructuring proceedings is opened, but no arrangement is reached, it will be possible to file a summary request for declaring bankruptcy on the basis of the documents gathered in the course of restructuring proceedings.

9. General procedural regulations. Courts competent to carry out bankruptcy and restructuring proceedings

Bankruptcy and restructuring proceedings are almost comprehensively regulated in the Bankruptcy Law and the Restructuring Law. The matters not regulated in these Laws are governed by the Code of Civil Procedure. Adjudication in closed sessions is a principle. In general, no evidence in the form of an opinion of a court-appointed expert is admitted. Complaints may be filed in the cases specified in statutory regulations. In both types of proceedings, extraordinary complaint measures, such as a cassation complaint, a complaint that a final and binding ruling is in discordance with law, or a complaint that proceedings should be reopened, are not possible.

For both types of proceedings, statutory regulations provide that the proceedings should be carried out by the court competent for the debtor's principal place of business. Statutory regulations provide for a presumption that for a legal person or an entity without legal personality that has been granted legal capacity under separate statutory regulations, the principal place of business is the registered office, and for a natural person—the principal place of economic activity or the usual place of residence of this person. The district commercial court is the competent court. Cases for declaring bankruptcy are examined by a panel composed of three professional judges, while in restructuring proceedings, the case is examined by one judge.

10. Special participants of restructuring and bankruptcy proceedings: supervisor, administrator, and trustee in bankruptcy and their role in the proceedings

The adoption of the Restructuring Law resulted in the profession of a trustee in bankruptcy being changed into the profession of a restructuring advisor. Persons holding a restructuring advisor's license and not excluded under special regulations may perform the function of an arrangement supervisor, a court supervisor, or an administrator in restructuring proceedings.

The arrangement supervisor is not appointed by the court, but performs his function under an agreement concluded directly with the debtor. The arrangement supervisor also plays a role in the proceedings for arrangement approval. This role is to produce the restructuring plan and assist the debtor in carrying out the restructuring process, as well as to assist in drafting arrangement proposals and voting them. In principle, the arrangement supervisor does not limit the debtor in managing his assets.

A court-appointed supervisor takes part in summary arrangement proceedings and regular arrangement proceedings. The key competence of a court-appointed administrator is expressing consent to the debtor taking actions exceeding the scope of normal management (lack of such consent means that the given legal transaction is invalid). This is related to the fact that in summary arrangement proceedings and regular arrangement proceedings, without the court-appointed supervisor's consent, the debtor may only take actions within the scope of normal management.

An administrator takes part in remedial proceedings. Since in this proceedings the debtor is deprived of the right to manage his assets, the administrator's role is to take over this right from the debtor.

Therefore, immediately after the opening of remedial proceedings, the business is handed over to the administrator. The administrator also has powers that enable him to carry out the restructuring plan.

The competences of an administrator in remedial proceedings are in principle identical with the rights of a trustee in bankruptcy proceedings. A trustee in bankruptcy is obliged to immediately take over the bankrupt's assets, manage them, protect them against destruction, damage, or appropriation by outsiders, and commence the liquidation of the debtor's assets.

11. The rights and the role of creditors in restructuring and bankruptcy proceedings

The interests of creditors are protected already at the stage of making the decision on whether to open restructuring proceedings due to the possibility of a refusal to open such proceedings if this would cause harm to the creditors (as already discussed above).

The board of creditors is an important element of protecting the creditors in restructuring proceedings. This body is provided for both in the Restructuring Law and the Bankruptcy Law. The function of this body is to control the debtor's actions. Only the debtor's personal creditors may sit on the board of creditors. The board is appointed by the judge-commissioner if he deems it necessary. The board is also appointed at the request of the debtor, at the request of at least three creditors, or at the request of creditors holding at least 20% of the sum of the debtor's liabilities. The board of creditors adopts resolutions concerning matters related to managing the debtor's assets. In some cases, lack of a resolution of the board will result in a legal transaction being invalid. The board is also authorized to demand a change of the court-appointed supervisor or the administrator.

In bankruptcy proceedings, the fundamental right of the creditors is to report their claims (the debtor's liabilities towards them) in the course of the proceedings. Once a list of claims has been produced, the creditors may object to particular claims being recognized or not. Objections are examined by the judge-commissioner at a hearing. Bankruptcy proceedings also involve a board of creditors, which works in the same way as in restructuring proceedings.

12. Protection in the course of the proceedings for the declaration of bankruptcy

In the course of the proceedings for the declaration of bankruptcy, it is possible to protect the debtor's assets. The relevant decision may be made *ex officio* or at a request. Importantly, the regulations of the Code of Civil Procedure that allow for suspending the enforcement of a challenged decision until the challenge is examined do not apply in bankruptcy proceedings. Protecting the debtor's assets may consist in particular in appointing a temporary court-appointed supervisor. In such case, after the supervisor is appointed, the debtor may only carry out actions within the scope of normal management. Actions beyond the scope of normal management require consent from the temporary court-appointed supervisor or otherwise are invalid. Furthermore, at the request of a petitioner, the debtor, or the court-appointed supervisor, enforcement proceedings may be suspended and the attachment of the bank account may be canceled. In certain cases, it is also possible to use other forms of protection, including establishing compulsory administration of the debtor's assets.

13. The new procedure of arranged liquidation

The so-called arranged liquidation procedure is an essential element of the new Bankruptcy Law. It allows for simplifying liquidation procedures and increasing the efficiency of bankruptcy proceedings. The debtor is himself looking for an entity interested in acquiring the entire business, agrees with this entity on the purchase price, and requests the bankruptcy court for consent to effect the transaction. As a result, a business with no liabilities is acquired, free from any encumbrances, and a sum to be then divided in the course of bankruptcy proceedings goes to the bankruptcy estate.

The request for arranged liquidation should be filed already as part of the request for declaring bankruptcy. The request may concern the entire business, an organized portion thereof, or assets that constitute a significant portion of the business. The request should contain a description and a valuation of the elements covered with the request (produced by a court-appointed expert); it must also specify the acquiring party and the price.

The court is obliged to agree to the terms and conditions of sale of the business if the price is higher than the sum that could be obtained in bankruptcy proceedings through liquidation in accordance with the general rules less the costs of proceedings related to such liquidation. The court may admit the request if the price is close to the sum that could be obtained in bankruptcy proceedings through liquidation in accordance with the general rules less the costs of proceedings related to such liquidation if important public interest or the possibility of keeping the debtor's business a going concern justify such a decision.

When admitting the request, the court specifies the acquisition price and the acquiring party in the decision on declaring bankruptcy. Within 30 days, the trustee in bankruptcy should conclude an agreement of sale on the terms and conditions specified in the court's decision.

Considering the fact that acquisition is made of a business free from any encumbrances, this procedure is interesting from the point of view of potential investors that can acquire an organized and functioning business that is free from any encumbrances.

14. Consequences of commencing restructuring proceedings

The consequences of restructuring proceedings depend on the particular types of proceedings. In general, one of the assumptions is to protect the debtor against such actions of creditors that could result in the restructuring turning out to be ineffective due to a disruption of the normal functioning of the debtor's business. Therefore, the legislator has provided for suspending, by operation of law, enforcement proceedings concerning the liabilities covered with the arrangement at the moment of opening arrangement proceedings or summary arrangement proceedings. Similarly, in remedial proceedings, enforcement from the debtor's assets that are elements of the remedial estate is suspended by operation of law on the day of opening restructuring proceedings. In turn, in proceedings for arrangement approval, enforcement decisions as to the liabilities covered with the arrangement expire at the moment of the decision on approval of the arrangement becoming final and binding. Importantly, mortgage debtors may carry out enforcement only with respect to the things that constitute the object of security.

On the other hand, the regulations limit the possibility of terminating agreements that are significant for the functioning of the debtor, such as agreement of lease concerning the property in which the debtor's business operates and credit facility agreements. Furthermore, in remedial proceedings, the administrator may rescind agreements in the part in which they have not been carried out yet. This makes it possible to terminate legal relationships that are not beneficial for the debtor.

15. Consequences of declaring bankruptcy

The main consequence of declaring bankruptcy is the fact that all financial liabilities of the bankrupt that are not yet due become due on the day of declaring bankruptcy. Non-financial obligations are transformed into financial obligations and also become due on the day of declaring bankruptcy. If the agreement does not specify the due date or it has been stipulated that the due date depends on termination by one of the parties, this stipulation becomes void, and the liability becomes due on the day of declaring bankruptcy. In the case of liabilities with no due date (payable upon demand), the

declaration of bankruptcy is treated as a demand for payment, meaning that the liability becomes due on the day of declaring bankruptcy.

After bankruptcy has been declared, the bankrupt that is an entrepreneur continues his operations under the existing name, with the words “w upadłości” (“in bankruptcy”) added to it.

As of the day of declaring bankruptcy, the bankrupt’s assets become the bankruptcy estate, which is used to satisfy the bankrupt’s creditors. The bankruptcy estate is determined by producing an inventory and a list of liabilities. At this moment, the bankrupt is deprived of the right to manage his business and the assets that are elements of the bankruptcy estate. The legal transactions of the bankrupt that concern the assets that are elements of the bankruptcy estate are invalid. It should be taken into account that after the debtor is declared bankrupt, the assets in the bankruptcy estate cannot be encumbered with a mortgage, pledge, registered pledge, fiscal pledge, or ship mortgage in order to secure a liability that arose prior to the declaration of bankruptcy.

All contractual provisions that stipulate amendments to or termination of the agreement if a request for declaring bankruptcy is filed or if bankruptcy is declared are invalid. Any provision of an agreement the bankrupt is party to that prevents or hinders the achievement of the purpose of bankruptcy proceedings is ineffective with respect to the bankruptcy estate.

Obligations under mutual agreements that have not been performed yet depend on the decision of the trustee in bankruptcy. If, on the day of declaring bankruptcy, obligations under such an agreement have not been performed in full or in part, the trustee, with consent from the judge-commissioner, may either rescind the agreement or perform the debtor’s obligation and demand that the mutual performance is carried out by the other party. This is intended to increase the efficiency of the liquidation proceedings by performing only those agreements that are beneficial for the bankruptcy estate. Legal regulations provide for detailed solutions in terms of particular types of agreements.

Court, administrative, and court/administrative proceedings concerning the bankruptcy estate that were initiated after the declaration of bankruptcy are suspended *ex officio*.

Enforcement with respect to the assets that are elements of the bankruptcy estate that had been initiated before the declaration of bankruptcy are suspended by operation of law on the day of declaring bankruptcy. Such enforcement is discontinued by operation of law once the decision declaring bankruptcy has become final and binding. If bankruptcy is declared with respect to one of the spouses, joint matrimonial property regime is canceled by operation of law.

16. Reporting claims

Bankruptcy proceedings proper commences at the moment of the court issuing a decision declaring the debtor bankrupt. The decision, apart from specifying the debtor and/or appointing the judge-commissioner and the trustee in bankruptcy, contains a call to the creditors of the bankrupt to report their claims within 30 days from the day of announcing the decision declaring the debtor’s bankruptcy. Therefore, the creditors need to carefully follow the proceedings for declaring bankruptcy and the announcements made by the court in the course of the proceedings.

Reporting a claim is a prerequisite for the creditor’s participation in bankruptcy proceedings. In principle, claims are reported in writing, in two copies, by filling out the relevant form available on the website of the Ministry of Justice.

Elements of a claim report include:

- The creditor’s basic data: first and last name or business name and, respectively, the place of residence or the registered office, address, the PESEL number or the number in the National Court Register, and if these do not exist, other data allowing for identifying the creditor;
- Specification of the claim, including incidental amounts due and the value of non-financial claims;
- Evidence confirming that the claim actually exists;
- Category into which the claim should be put;
- Security related to the claim;
- The state of affairs in the case, if any proceedings is pending with respect to the claim;
- The number of shares held and their type, if the creditor is a partner or a shareholder in the debtor’s partnership or company.

17. Restructuring proceedings proper: restructuring actions and remedial actions; an arrangement in restructuring proceedings

Restructuring actions

The purpose of restructuring proceedings is for the debtor to avoid being declared bankrupt by allowing him to restructure through an arrangement made with his creditors. The restructuring of the debtor’s liabilities covers primarily actions such as deferring the due date, spreading the payment into installments, reducing the amount of the liability, converting liabilities to shares, and changing, exchanging, or waiving the right securing a given liability. Arrangement proposals may provide for a number of ways to restructure indebtedness. Therefore, in each individual case, the restructuring process should be adapted to the debtor’s needs. With respect to property developers, the purpose of restructuring is to satisfy the buyers of apartments or houses by means of transferring ownership to them, as long as this is reasonably possible. In the case of issuers of bonds, the purpose will be the protection of bond holders, which is important especially if their number and identity are unknown. As for banks, the purpose is to satisfy the claims of all of the bank’s creditors that take part in the proceedings.

Remedial actions

Remedial proceedings is intended for entrepreneurs who, for various reasons, cannot make an arrangement with their creditors. This is a special proceedings because of the widest catalog of available restructuring measures in comparison with other types of proceedings. The purpose of this proceedings is to comprehensively transform the business into an efficient economic entity. The scope of remedial actions covers debt removal and implementation of remedial activities, i.e. legal and factual actions that are intended to improve the economic situation of the debtor, implement the proposed arrangement, or make more beneficial arrangement proposals to the creditors, as well as to make the debtor able to perform his obligations again, at the same time protecting him against enforcement. Remedial proceedings allow for utilizing exceptional legal instruments thanks to the right to rescind agreements that are not beneficial for the debtor and adjusting the employment level through a deep restructuring of employment in the business, which in practice means less protection for the employees against having their contracts terminated. In this respect, reducing employment will be intended not only to save the business itself, but also to protect the other jobs in this business. Another important legal instrument is the possibility of selling the unnecessary assets with the effect of an enforcement sale.

With respect to an employer's rights and obligations, remedial proceedings produces the same effects as declaration of bankruptcy; in this case, the rights of a trustee in bankruptcy are exercised by an administrator. Opening remedial proceedings also results in the ineffectiveness of certain debtor's actions taken with respect to the remedial estate. An example would be gratuitous or paid-for actions taken by the debtor in order to use his assets within the year before the filing of the request for opening remedial proceedings, if the value of the performance greatly exceeds the value of the performance received by the debtor or reserved for the debtor or a third party.

The above regulations make remedial proceedings quite distinct from other restructuring proceedings. In remedial proceedings, in addition to restructuring the debtor's liabilities, which takes place as part of making and approving an arrangement, it is possible to utilize instruments allowing for restructuring assets, contracts, employment, etc. These regulations, in combination with almost full protection against enforcement, may actually remedy the situation of the business.

Arrangement

The purpose of restructuring is to satisfy creditors to the maximum extent possible. A correct restructuring should satisfy the claims of all creditors to the maximum extent possible. A restructuring arrangement covers the debtor's personal liabilities that arose before the date of opening restructuring proceedings, including interest for the period from the date of opening the proceedings. In the case of liabilities that have a condition, they are covered with the arrangement if the condition is met in the course of implementing the arrangement. Liabilities under a mutual agreement that was not performed in full or in part before the date of opening proceedings are covered with the arrangement only if the performance of the other party is divisible and only to the extent to which the other party carried out the performance before the date of opening proceedings and did not receive the mutual performance in return. As part of the arrangement, arrangement proposals are made, presenting specific ways of restructuring the debtor's liabilities. These are made by the debtor. Arrangement proposals can also be made by the board of creditors, the court-appointed supervisor, the administrator, and a creditor or creditors holding more than 30% of the sum of the debtor's liabilities. In practice, arrangement proposals are usually made by a restructuring advisor acting under an agreement concluded with the debtor. It is the role of the restructuring advisor to draft arrangement proposals in a way that corresponds to the condition of the debtor's business, so that these proposals are acceptable for the creditors, at the same time creating an opportunity to carry out an efficient restructuring of the business. As a professional, the restructuring advisor should have knowledge and experience necessary to properly evaluate the condition of the debtor's business. This will allow for taking the relevant steps to save this business. Specifying the manner of restructuring the debtor's liabilities is a necessary element of arrangement proposals.

18. Liquidation of the bankruptcy estate

The bankruptcy estate is liquidated after the declaration of bankruptcy; the relevant actions are carried out by the trustee in bankruptcy.

Liquidation of the bankruptcy estate takes place by means of:

- 1) Selling the bankrupt's business or an organized portion thereof, in a tender or auction or without one; in principle, the business should be sold as a whole;
- 2) Selling immovables and movables, claims, and other property rights;
- 3) Enforcing claims from the bankrupt's debtors and disposing of or exercising property rights.

Should need be, e.g. due to the funds being insufficient to cover the costs of proceedings, the trustee may even sell real property with no tender without permission from the board of creditors. Furthermore, the trustee may sell the movables whose condition deteriorates quickly, which lose value, or the storage of which entails high costs.

A sale made in the course of bankruptcy proceedings produces the same effects as an enforcement sale. In principle, the business is acquired free of any encumbrances, except for the cases specified in statutory regulations and except for real properties constituting elements of the business.

Liquidation of real properties encumbered with a registered pledge and claims and rights encumbered with a registered or financial pledge may also take place by means of them being taken over by the creditor who is the pledgee in the registered pledge or the financial pledge, provided that the agreement establishing the pledge provides for satisfying the pledgee by means of him taking over the object of the pledge.

19. Completion of bankruptcy proceedings

Bankruptcy proceedings may end in discontinuation of proceedings. Such a decision will be issued e.g. if the value of the assets left after excluding the elements encumbered with a mortgage, pledge, registered pledge, fiscal pledge, or ship mortgage is insufficient to cover the costs of the proceedings or if all creditors that reported their claims demand that the proceedings be discontinued. In the event of discontinuation due to the first of the above reasons, the bankruptcy court decides whether the materials gathered in the case are a reason for dissolving the debtor (if he is entered into the National Court Register) without carrying out liquidation proceedings.

The final and binding decision on discontinuing bankruptcy proceedings is a basis for deleting entries on bankruptcy from land and mortgage registers and other registers. As of the day of the decision on discontinuing bankruptcy proceedings becoming final and binding, the bankrupt regains the right to manage his assets.

In turn, after full implementation of the final division plan, the court concludes the completion of bankruptcy proceedings. The same conclusion is made if all creditors have been satisfied in the course of the proceedings.

20. Completion of restructuring proceedings, simplified request for the declaration of bankruptcy

Restructuring proceedings ends on the day of the decision approving an arrangement or refusing to do so becoming final and binding. Furthermore, the court discontinues proceedings if continuation would harm the creditors, if the debtor requested discontinuation and the board of creditors agreed, if the proposed arrangement was not approved, and if the decision declaring the debtor bankrupt has become final and binding. In certain cases, the court may discontinue proceedings, in particular if the debtor's actions suggest that he will not implement the arrangement made.

The court discontinues arrangement proceedings or remedial proceedings if the debtor is no longer able to cover, in an ongoing manner, the costs of the proceedings, the liabilities arising after the opening of the proceedings, and the liabilities that cannot be covered with an arrangement. The court discontinues remedial proceedings if there are no real possibilities of making the debtor able to perform his obligations again.

On the day of completing proceedings or the decision on discontinuation becoming final and binding, the debtor regains the right to manage his assets if he had been deprived of it or if it had been limited, unless the arrangement provides otherwise.

Importantly, a person authorized to file a request for declaring the debtor bankrupt in accordance with the Bankruptcy Law may file a summary request for declaring bankruptcy, within the deadline for making a complaint with respect to the decision on discontinuing restructuring proceedings or the decision on refusal to approve the proposed arrangement .

21. Summary

The recent legislative changes have created a wide range of procedures that can be used accordingly to the debtor's situation. In general, the worse the financial situation of the debtor, the more justified it is to commence bankruptcy proceedings rather than restructuring proceedings. The latter makes sense if the debtor is in a poor financial situation, but there are chances to keep the business as a going concern and make an arrangement with the creditors. Bankruptcy proceedings is a last resort measure and is more likely to be less effective due to the necessity of carrying out the procedure of liquidating the debtor's assets, which is usually quite lengthy. In turn, the arranged liquidation procedure is an attractive form of bankruptcy proceedings, as it enables a new investor to acquire a functioning business and shortens the time necessary to liquidate the assets.