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Global Restructuring & Insolvency Guide

Poland

General Comments

The Law on Bankruptcy and Reorganization of 28 February 2003 (Journal of Laws 2009 No. 175, item 1361) (the "**Act**") came into force on 1 October 2003. The Act regulates principally all bankruptcy issues, including special procedures concerning the insolvency of banks, insurance companies, bond issuers and − since 2009 − the insolvency of individuals.

The Act provides for two separate types of proceedings related to insolvency of business entities. The bulk of the legislative provisions constitute norms for bankruptcy proceedings conducted against an insolvent business entity. This is supplemented with regulations on Reorganization proceedings initiated by financially troubled business entities and aimed at avoiding insolvency, as well as with regulations on insolvency of individuals.

Purpose of Bankruptcy and Reorganization Proceedings

The general purpose of the Act is to enable the proceedings to be conducted in such a manner that the claims of the creditors would be satisfied to the maximum extent possible, and if reasonable, for the existing company of the debtor to continue to operate.

Capacity to be Declared Bankrupt

"Capacity to be declared bankrupt" means that an entity may be declared bankrupt under the Act. Such capacity to go bankrupt is enjoyed only by those business entities which are individuals, legal persons or organizational units without legal personality yet with legal capacity, conducting business activity on their own behalf or conducting professional activity.

Capacity to be declared bankrupt is also enjoyed by limited liability and joint-stock companies not conducting any business activity whatsoever; partners in commercial partnerships bearing liability for the obligations of the company without limitation with their entire property; and partners in professional partnerships.

Entities which may not be declared bankrupt include the State Treasury, units of territorial self-government and entities created by a legislative act.

Grounds for Bankruptcy

The basic prerequisite for the declaration of bankruptcy is insolvency of the debtor, meaning the debtor's failure to pay its debts or perform other pecuniary obligations as they fall due.

With respect to legal persons and organizational units without legal personality yet enjoying legal capacity, a distinct prerequisite for the declaration of bankruptcy is excessive indebtedness, meaning that liabilities exceed the value of all the assets of such entity. Under such circumstances, bankruptcy may be declared regardless of whether the debtor is paying its current liabilities.

Bankruptcy Procedures

The basic bankruptcy procedure results in the liquidation of the assets of the debtor ("**liquidation bankruptcy**"). However, if it is possible that, by means of an arrangement, creditors will be satisfied to a greater extent than as a result of liquidation bankruptcy, the debtor is declared bankrupt with the right to enter into an arrangement ("**arrangement bankruptcy**"). Both types of bankruptcy differ considerably, as discussed below.

The bankruptcy procedure is determined by the court upon the declaration of bankruptcy. Depending on the circumstances one bankruptcy procedure may be replaced with the other in the course of the proceedings.

Proceedings Concerning Declaration of Bankruptcy

Bankruptcy is declared by the district commercial court with jurisdiction over the main business unit of the debtor.

Bankruptcy Petition

Bankruptcy proceedings are commenced at the initiative of an entitled entity – primarily the debtor and each of its creditors. Moreover, the following types of entities, as specified by the Act, are entitled to request that bankruptcy be declared with respect to:

- Commercial partnerships – each partner responsible without limitation for the liabilities of the partnership;
- Legal persons and other organizational units without legal personality upon which a separate Act of law confers legal personality – anyone authorized to represent them individually or jointly with another person;
- A state enterprise – its founding body;
- A sole shareholder of a state Treasury company – the minister competent for the state Treasury;
- A legal person or commercial partnership in liquidation – each liquidator;
- Legal persons entered in the National Court Register – a trustee appointed pursuant to article 26, paragraph 1 of the National Court Register Act (in cases where the entity fails to fulfil its statutory obligations of filing certain documents with the Register);
- A debtor to whom public aid in excess of EUR 100,000 was granted – the aid-granting entity.

The debtor is obliged, no later than two weeks from the moment the appropriate legal grounds arise, to file a bankruptcy petition with the court. The same time limit is binding on the authorised representatives of legal persons and other organizational units. Those who fail to comply with this obligation are liable to creditors for any losses caused by the failure to comply. Furthermore, persons who fail to comply with the obligations may be prohibited from conducting business activity on their own account for three to ten years, as well as from holding the position of member of supervisory board or representative or proxy in a commercial company, state enterprise, co-operative, foundation or association.

Decision on Declaration of Bankruptcy

The court has two months to adjudicate the declaration of bankruptcy.

The court may dismiss the bankruptcy petition if the debtor defaults in the performance of liabilities for no more than three months and outstanding liabilities account for no more than 10% of the balance-sheet value of the debtor's business. However, the petition may not be dismissed if the failure to perform liabilities is of a permanent nature or if such a dismissal may be detrimental to the creditors.

The court is obliged to dismiss the bankruptcy petition if the assets of the debtor are insufficient to cover the costs of the bankruptcy proceedings. The court may dismiss the petition if the debtor's assets are encumbered to such an extent that they are insufficient to cover the costs of the proceedings.

Accepting the bankruptcy petition, the court issues a decision in which it:

- Specifies the manner of conducting the proceedings (namely, liquidation or arrangement proceedings);

- Specifies the scope and manner of management by the bankrupt entity of its assets in the case of arrangement bankruptcy;

- Calls upon the creditors of the bankrupt entity to file notices of their receivables within a prescribed deadline, no shorter than one month and no longer than three months; and

- Appoints a judge commissioner and a receiver, court supervisor or administrator.

The decision is immediately announced in *Monitor Sądowy i Gospodarczy* (the "*Court and Economic Journal*") and in the local newspaper. The date on which the court issues the bankruptcy decision is the bankruptcy date.

The duties of the judge commissioner, appointed in the court decision, include directing the course of actions in the bankruptcy proceedings; supervising the actions of the receiver, court supervisor or administrator; and specifying the actions which may not be taken without the authorisation or approval of the board of creditors.

A receiver is appointed in the case of declaration of liquidation bankruptcy. The receiver is responsible for the administration of the assets of the bankrupt entity and its liquidation. A court supervisor is appointed if arrangement bankruptcy is declared, provided the bankrupt entity has retained the right to manage its own assets. In such a case the supervisor monitors the actions and the business of the bankrupt entity. If the bankrupt entity has been deprived of the right to manage its own assets, an administrator is appointed in order to exercise that right. The administrator takes any actions related to the day-to-day running of the business of the bankrupt entity and keeping the bankruptcy estate in a non-deteriorated condition.

If a bankruptcy petition is filed by a creditor acting in bad faith, the court dismisses the petition and charges the creditor with the costs of the proceedings. The court may order that the creditor make an applicable public statement. The creditor is also obliged to redress the damage caused by its actions.

An appeal regarding the decision of the court declaring bankruptcy may be filed only by the bankrupt entity. A complaint regarding the decision of the court dismissing the petition can only be filed by the petitioner. It is not possible to file a last resort appeal ("*kasacja*") against the decision of the court of second instance.

Consequences of Announcing Bankruptcy

Declaration of bankruptcy gives rise to a number of consequences both for the bankrupt entity itself and its creditors. These consequences affect the bankrupt entity, its assets and liabilities, as well as any pending proceedings, but vary depending on the type of bankruptcy proceedings, i.e., liquidation proceedings or arrangement proceedings.

Consequences for the Bankrupt Entity

In the case of liquidation proceedings the most important consequence for the bankrupt entity is the obligation to disclose and make available to the receiver all of its property together with accompanying documentation. The judge commissioner may issue an order preventing a bankrupt individual or members of the bodies of a bankrupt company from travelling outside of Poland.

In the case of arrangement proceedings the bankrupt entity is under an obligation to provide the judge-commissioner and the court supervisor with all necessary information and also to allow the court supervisor access to all business and accounting records. If the bankrupt entity has been deprived of the right to manage its assets, the above-described regulations relating to liquidation proceedings apply accordingly.

Consequences for the Bankrupt's Assets and Liabilities

As of the announcement of bankruptcy, the bankrupt entity's assets (excluding specific assets such as: proceeds acquired out of mortgage or pledge enforcement with respect to which the bankrupt acted as a security trustee up to the value to which the pledgees or mortgagees are entitled; the limited amount of remuneration the bankrupt is entitled to under a labour agreement; or some

personal belongings (clothing), a limited number of farm animals, food supplies necessary for the period of one month for the bankrupt and his family, necessary pharmaceuticals used by the bankrupt) become the bankrupt entity's estate from which the bankrupt entity's creditors can satisfy their claims.

Following the announcement of liquidation bankruptcy, the bankrupt entity loses the right to manage, use and dispose of those assets that are included in the bankrupt entity's estate. The receiver administers the bankrupt entity's estate. Effective as of that moment, the bankrupt's assets cannot be encumbered with any limited right in property, and limited rights in property cannot be entered in any public registers except for a mortgage, provided that the request to record a mortgage was filed within six months preceding the date of filing the petition for bankruptcy declaration.

In an arrangement bankruptcy the bankrupt administers its estate under supervision of the court-appointed supervisor, provided, however, that the court has not appointed an administrator. If the latter is the case the bankrupt is, in the majority of cases, deprived of the administration of its estate. The court appoints the administrator if the bankrupt does not warrant proper exercise of the administration. The court *ex officio* revokes the administration by the bankrupt and appoints an administrator in the event that:

- The bankrupt has violated the law, even if without fault, when performing administration; or
- The manner in which the bankrupt exercises administration does not guarantee the implementation of the arrangement.

As a matter of principle, the bankrupt performing administration has the right to perform acts of ordinary administration. The consent of the court supervisor is required for the performance of acts of extraordinary administration, unless the Act requires the consent of the committee of creditors.

The provisions in agreements or contracts which stipulate that in the event of bankruptcy the legal relationship to which the bankrupt entity is a party is to be amended or terminated are legally invalid. Such a legal relationship can only be amended or terminated if such an option is provided for under a specific provision of law.

An announcement of liquidation bankruptcy has far-reaching consequences for the bankrupt entity's contractual obligations. The following is a non-exhaustive list of the consequences that take effect from the date on which liquidation bankruptcy is announced:

- The bankrupt entity's monetary liabilities that are not yet due become payable;
- Non-monetary financial liabilities are converted into monetary liabilities that become payable on the date bankruptcy is announced;
- The rules governing offsetting of liabilities are modified;
- Acceptance of offers submitted by the bankrupt entity is not legally valid;
- The retention of ownership title, as stipulated in a sales agreement and agreements on transfer of rights as a security, become legally invalid in relation to the items of assets that have been included in the bankrupt entity's estate, unless they have been executed in a written form with a certified date;
- Sale, consignment sale, service, agency, free use, loan and lease agreements are modified, or in certain cases are terminated;
- Loan agreements expire with respect to the sums of funds that have not yet been extended to the bankrupt entity;
- Security deposit box agreements expire; bank account agreements and securities account agreements remain in full force and effect.

In the case of an arrangement bankruptcy, the major consequences that take effect on the date on which the arrangement bankruptcy is announced are:

- Modification of the manner in which the offsetting of claims may be performed; and

- Retention of ownership title, as stipulated in a sales agreement and agreements on transfer of rights as a security, becomes legally invalid in relation to the items of assets that have been included in the bankrupt entity's estate, unless they have been executed in written form with a certified date.

In the event the obligations under a mutual agreement have not yet been performed, the receiver may perform the bankrupt entity's obligations and demand that the other party to such a mutual agreement perform its obligations; alternatively the receiver may withdraw from the agreement. The other party to such a mutual agreement has the right to request that the receiver decide whether it will withdraw from the agreement or demand the performance of the obligations under the agreement, and the receiver is required to announce its decision within three months from receiving the other party's request.

Upon consent of the judge-commissioner, the receiver may terminate a leasing agreement under which the bankrupt entity acted as a lessee, within two months from the date of announcement of bankruptcy.

Invalidity of Bankrupt Entity's Actions

The following actions performed with respect to the bankrupt entity's assets are legally ineffective against the bankrupt entity:

- Legal actions performed by the bankrupt entity within one year prior to the filing for bankruptcy in relation to any use and/or disposal of the bankrupt entity's assets, both for consideration and free of charge, as long as the value of those actions performed by the bankrupt entity was substantially larger than the value of the actions of the counterparty;

- Securing and payment of unmatured debt by the bankrupt entity within two months preceding the date of filing for bankruptcy unless the beneficiary was unaware of there being any grounds for the declaration of bankruptcy;

- Legal actions performed by the bankrupt entity on a fee basis, within six months preceding the date of filing a bankruptcy petition, with the bankrupt entity's related parties (i.e., in the case of a bankrupt entity being an individual: with his family members; and in the case of a bankrupt entity being a company or a legal person: with its shareholders, commercial representatives or their spouses, its affiliated companies or their shareholders, commercial representatives or their spouses, its parent company or its subsidiary company).

The following may be deemed to be legally ineffective if raised or made with respect to the bankrupt entity's estate:

- Claims for a certain portion of remuneration of the persons administering the bankrupt entity's business or performing related services where the amount of such remuneration is grossly overstated and does not relate to the amount of time and effort actually contributed by such persons;

- Encumbering the bankrupt entity's estate with limited rights in property to secure the debt of another person, if the bankrupt entity was not personally liable for the debt, if such limited rights in property were imposed within one year preceding the date of filing of the petition for bankruptcy declaration, and if in consideration for such encumbrance the bankrupt entity received no advantage or the value of advantage the bankrupt entity received is incommensurably small as compared with the value of the security; in the event the bankrupt entity's estate was encumbered to secure the debts of the bankrupt entity's relatives or associated companies, such encumbrance is legally ineffective regardless of the value of the consideration received by the bankrupt entity.

Consequences for Pending Proceedings

Following the declaration of bankruptcy, the bankrupt entity loses its capacity to be a party to pending proceedings involving the assets included in the bankrupt entity's estate. As of that very moment, such proceedings may only be conducted by, or against, a competent bankruptcy authority or body (receiver, court supervisor or administrator).

Court and administrative enforcement proceedings and proceedings to secure claims are suspended on the date of filing for bankruptcy.

Other Consequences

Commercial proxies' authorisations granted by the bankrupt entity also expire upon the entity being declared bankrupt.

Bankruptcy Proceedings

Bankruptcy proceedings are conducted after the declaration of bankruptcy before the court that declared the bankruptcy. In the event that the proceedings are initiated in several courts of competent jurisdiction, the court that was the first to have issued the bankruptcy declaration is legally competent to conduct the proceedings.

During the bankruptcy proceedings the bankruptcy bodies perform actions aimed at the establishment of the bankrupt entity's estate, the drawing up of the list of claims as well as: actions aimed at the liquidation of the bankrupt entity's estate and the distribution of the funds among the bankrupt entity's creditors, in the case of liquidation bankruptcy proceedings; or actions aimed at reaching an arrangement agreement with the creditors, in the case of arrangement bankruptcy proceedings.

Drawing up the List of Claims

To be able to participate in bankruptcy proceedings, the bankrupt entity's creditors should file their claims against the bankrupt with the judge commissioner within the time set in the declaration of bankruptcy. Only claims recorded in public registers are automatically ("*ex officio*") placed on such a list. Upon the lapse of the time limit set for notification of claims, the receiver, court supervisor or administrator verifies the claims and draws up a list.

After examining the objections, which may be lodged by the creditors, the judge commissioner approves the list of claims. The list of claims drawn up in accordance with the above-described procedure constitutes the basis for participation in the bankruptcy proceedings; an extract from this list serves as a writ of enforcement against the bankrupt entity upon discontinuance or completion of the bankruptcy proceedings.

Arrangement Agreement between the Bankrupt Entity and Creditors

An arrangement agreement between the bankrupt entity its and creditors may be reached even before the declaration of bankruptcy, during the initial meeting of creditors. In principle, however, arrangement agreements are concluded at a later stage, provided such proceedings allow for such an agreement to be reached. Proposals to conclude an arrangement agreement may be put forward by either the bankrupt entity or the creditor whose bankruptcy petition led to the declaration of bankruptcy. In the case of liquidation bankruptcy proceedings the bankrupt, the receiver and the board of creditors may also put forward proposals to conclude an arrangement agreement.

An arrangement agreement generally covers all claims against the bankrupt entity that arose prior to the date of announcing bankruptcy, save for, *inter alia*, pension and/or disability and sickness insurance contributions, claims arising out of employment relationships and claims secured by limited rights in property imposed on the bankrupt entity's assets unless the secured creditor has consented to having them included in the arrangement agreement.

In arrangement bankruptcy proceedings, the creditors may be put into separate groups based on the nature of their claims and interests. In such instances the voting on the final arrangement, upon the decision of the judge commissioner, may be conducted in such groups of creditors.

The terms and conditions of restructuring the bankrupt entity's liabilities and obligations that are set down in the proposed arrangement agreements should be identical for all the creditors or, if the judge commissioner decides that voting on the arrangement is to take place in groups of creditors, identical for creditors included in the same group, unless the creditor expressly consents to less favourable conditions. More favourable terms and conditions of restructuring may be granted to the creditors with minor claims and to the creditors who extended, or are about to extend, a loan after the declaration of bankruptcy in order to allow for the performance of the arrangement agreement.

The Act does not contain a limited list of methods of restructuring the bankrupt entity's liabilities and obligations. Among the examples of such methods is the extension of the deadline for performance of liabilities or obligations, consent to repay debts in installments, reduction of debts, conversion of debts into shares, and modification of security. Arrangement proceedings may also be conducted through the liquidation of the bankrupt entity's assets, for example by the creditor taking over such assets.

An arrangement agreement is approved by the creditors' meeting that has to be convened within one month from the approval of the list of claims. The arrangement is adopted, as a matter of principle, if creditors holding jointly at least two-thirds of the total sum of the receivables giving the right to vote are in favour thereof.

The approved arrangement agreement is then submitted for approval to the court. The decision the court issues in that respect is appealable. The execution of the arrangement agreement concludes the bankruptcy proceedings.

The arrangement agreement reached through this procedure is binding upon all the creditors whose claims arose prior to the declaration of bankruptcy, regardless of whether they have filed their claims in the bankruptcy proceedings. This does not apply to the creditors to whom the bankrupt entity intentionally failed to disclose and who did not participate in the proceedings.

In the event that no arrangement agreement is reached, the court discontinues the arrangement bankruptcy proceedings and initiates liquidation proceedings and appoints a receiver. Re-opening of the arrangement bankruptcy proceedings is not possible.

Liquidation of Bankruptcy Estate and Distribution of Funds of Bankruptcy Estate

Within one month of the declaration of liquidation bankruptcy, the receiver prepares an inventory of the bankruptcy estate and a plan for its liquidation. The receiver then carries out the liquidation of the bankruptcy estate by way of sale of the entire bankrupt business or an organized part thereof, sale of movable or immovable property, collection of claims from the bankrupt entity's debtors, and exercise or sale of the bankrupt entity's other rights. If possible, the bankrupt entity's business should be sold as a whole and the purchaser of such a business buys it free from any debts, together with all concessions, permits and allowances, unless a specific provision or an administrative decision on granting thereof provides otherwise.

A business, an immovable or a ship recorded in the register of seagoing ships is sold by public auction pursuant to the provisions of the Code of Civil Procedure. Yet, with leave of the board of creditors, they may be sold by unrestricted sale. Movable property is sold by way of unrestricted sale with the permission of the judge-commissioner, or by public auction pursuant to the provisions of the Code of Civil Procedure.

A pledgee of the registered pledge established on an asset of the bankruptcy estate may satisfy its claims through the takeover of such an asset or through sale by public auction, if the pledge agreement so provides. All creditors whose claims are secured by a limited right in property to an asset included in the bankruptcy estate enjoy the right of priority in being satisfied from the amounts obtained from the liquidation of such assets irrespective of the plan of distribution of the funds of the bankruptcy estate. Any surplus that remains after such claims are satisfied is transferred to the funds in order to be distributed among the other creditors.

The funds of the bankruptcy estate are composed of the amounts obtained from the liquidation of the bankruptcy estate or lease of the bankrupt business. Once the judge-commissioner approves the list of claims, the receiver prepares the plan of distribution of such funds. Then the plan is submitted to the judge-commissioner, who can amend or supplement it. The plan can be objected to within two

weeks from the date of its announcement. All objections are examined by the judge-commissioner, whose decision in this respect can be objected to in the court. If no objections are made against the plan or if, upon the examination of the plan, it has been corrected, the plan is then executed.

The Act provides for five types of claims to be satisfied out of the bankruptcy estate, as follows:

- Category I – costs of bankruptcy proceedings, premiums for old age pensions, disability pension and sickness benefits, dues for work, dues generated by acts performed by the receiver or administrator, dues under mutual contracts concluded by the bankrupt entity prior to the declaration of bankruptcy whose performance was demanded by the receiver or administrator, claims generated by the bankrupt entity's acts carried out with the permission of the court supervisor;

- Category II – claims under employment relationships, farmer's receivables under contracts for delivery of products from their own farms, maintenance or alimony due, and pensions due for causing sickness, incapacity to work, disability or death and receivables due to social insurance pensions for the last two years before the bankruptcy declaration, together with interest and execution costs;

- Category III – taxes and other public tributes, and other receivables due to social insurance pensions, together with interest and execution costs;

- Category IV – other receivables if they are not subject to satisfaction in Category V, together with interest for the last year prior to the date of declaration of bankruptcy, including contractual damages, costs of trial and execution;

- Category V – interest which does not belong to higher categories in the order in which the capital is subject to satisfaction, as well as judicial and administrative penalties and receivables in respect of donations and legacies.

Claims in any given category can be satisfied only after claims in the preceding category are fully satisfied. Generally, if it is not possible to satisfy all claims from a given category, they are satisfied proportionally (*pro rata*).

The claims from Category I are satisfied by the receiver with the permission of the judge-commissioner as the necessary amounts come into the bankruptcy estate; the claims from other categories are satisfied by distribution of the bankruptcy estate funds. The amounts which have come into the bankruptcy estate are distributed once or several times depending on the course of liquidation of the bankruptcy estate.

The last distribution takes place once the bankruptcy estate has been finally liquidated. Afterwards, the court makes a decision declaring the bankruptcy proceedings completed. This decision is published in *Monitor Sądowy i Gospodarczy* and in the local press.

Participation of Creditors in the Bankruptcy Proceedings

The creditors are able to control the course of bankruptcy proceedings through the board of creditors. The board of creditors may be appointed before bankruptcy has been declared, at the first meeting of creditors or after bankruptcy has been declared, either at the request of one-fifth of all the creditors or *ex-officio* by the judge-commissioner if he deems it necessary. The board of creditors gives its consent to certain acts to be taken with respect to the bankruptcy estate, particularly within the liquidation bankruptcy proceedings, such as:

- Managing the bankrupt entity's business by the receiver for more than three months from the date of declaration of bankruptcy;

- Approval for the sale of assets separately, not as the entire business as is the rule under the bankruptcy proceedings;

- Sale of rights and claims;

- Contracting loans or credits or charging the bankrupt entity's assets with limited rights in property.

Furthermore, in all the cases provided for in the Act, the creditors may make decisions regarding particular acts taken in bankruptcy proceedings at the creditors' meetings, for instance in the case of approval of an arrangement with the bankrupt entity.

Cross-border Bankruptcy Proceedings

The issues relating to bankruptcy declared within the EU are regulated by Council Regulation No. 1346/2000 of 29 May 2000 on insolvency proceedings. Therefore, bankruptcy declared in an EU country is automatically recognised in Poland.

The Polish Act provides for specific regulations in the scope of bankruptcy proceedings conducted in non-EU countries against a debtor that has its assets within the territory of Poland. In order for such proceedings to be valid under Polish law they must be recognised by a Polish court. Once such foreign bankruptcy proceedings are recognised, all Polish proceedings regarding assets of the bankrupt entity are suspended and the entity loses the right to manage and make dispositions with respect to its assets unless the management of its assets has been assigned to the bankrupt entity as a result of an arrangement bankruptcy having been declared. As a rule, however, the right to manage the bankrupt entity's assets is vested in a foreign administrator.

Declaration of bankruptcy abroad does not prevent bankruptcy from being declared concurrently in Poland. However, once foreign bankruptcy proceedings are recognised, bankruptcy declared in Poland will relate only to the assets located in Poland.

Reorganization Proceedings in the Event of the Threat of Insolvency

In addition to bankruptcy proceedings, the Act provides for a special procedure if the debtor is threatened by insolvency. This procedure applies solely to those business entities which perform their obligations, but it follows from a reasonable assessment of their economic situation that they will become insolvent in the near future. The course of Reorganization proceedings is monitored by a court supervisor.

The Reorganization proceedings are commenced after the business entity files with the court a relevant declaration accompanied by a Reorganization plan. The business entity then announces this in the *Monitor Sądowy i Gospodarczy*. The date on which the announcement is made is deemed to be a date on which the Reorganization proceedings are commenced. As of that date:

- Repayment of the business entity's liabilities is suspended;
- Accrual of interest due from the business entity is suspended;
- The possibility of setting off claims is limited;
- Pending enforcement proceedings and proceedings to secure claims conducted against the business entity are suspended and new proceedings cannot be instituted;
- The business entity may not sell or charge its property, other than the assets sold in the course of regular business activity.

The Reorganization plan proposed by the business entity should ensure restoration of the business entity's ability to be competitive on the market by way of restructuring its liabilities, assets and employment in its business. The Act does not provide a limited list of restructuring methods.

Liabilities are restructured by way of an arrangement concluded at the creditors' meeting.

The arrangement is voted upon by creditors in accordance with rules similar to those applicable to the arrangement bankruptcy. The arrangement is subject to the court's approval and the decision of the court can be appealed. The arrangement is binding for all the creditors who were notified about the holding of the meeting during which the arrangement is concluded and for any creditor who informed the court supervisor that it would participate in the meeting if the business entity did not deny that the

claim exists. The arrangement covers the claims which the business entity included in the list of claims and which were confirmed by the creditors.

In all matters that are not regulated in the Reorganization proceedings, the relevant provisions relating to the bankruptcy proceedings apply.

Personal Bankruptcy

Under the amendment dated 5 December 2008 to the Bankruptcy and Rehabilitation Law of 28 February 2003, which came into force as of 31 March 2009, individuals who are not business entities (consumers) can file a petition for bankruptcy declaration.

Numerous restrictions specify who is able to benefit from the right to personal bankruptcy. A petition for declaration of bankruptcy may be submitted only by the debtor. The debt repayment procedure is long and complicated, and will not save the property of the bankrupt consumer. The court will verify in detail the reasons for the debt and will appoint a receiver to whom the debtor will have to surrender his property. Proceeds from the sale of assets will be used to pay the debtor's liabilities.

The court sets up an individual repayment plan in relation to debtor's liabilities not satisfied from proceeds received from the sale of the debtor's assets. The plan must be performed within a period not exceeding three years (under certain circumstances the period may be extended to four and a half years). However, in an extraordinary situation the court may cancel unsatisfied liabilities without setting up the plan (when it is obvious – in the light of the debtor's personal situation – that the debtor would not be able to make any payments envisaged in the plan).

The court monitors the debt repayment plan on the basis of annual debt repayment reports submitted by the bankrupt. During the debt repayment plan the debtor is prohibited from taking any actions which can worsen his financial situation. The consumer can make use of personal bankruptcy once every ten years.

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