Figyelem: az oldal eredeti nyelvű változata pl nemrég módosult. Az Ön által kiválasztott nyelvi változatot most készítik fordítóink.

lengyel

Swipe to change

Insolvency/bankruptcy

Lengyelország

Ezen a nyelven nem áll rendelkezésre hivatalos fordítás.

Az oldal tartalmának a gépi fordítása megtekinthető itt. Figyelem: a gépi fordítás csakis általános tájékoztatási célt szolgál. A weboldal tulajdonosa nem vállal semminemű felelősséget a gépi fordítás minőségéért.

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1 Who may insolvency proceedings be brought against?

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

the Act of 28 February 2003 - the Bankruptcy Law (*Prawo upadłościowe*, Journal of Laws (*Dziennik Ustaw*) 2016, No 2171) – hereinafter referred to as the ' Bankruptcy Act'.

the Act of 15 May 2015 - the Restructuring Law (*Prawo restrukturyzacyjne*, Journal of Laws 2016, No 1574) – hereinafter referred to as the 'Restructuring Act'.

The provisions of the Bankruptcy Act govern liquidation proceedings related to insolvency, i.e. 'bankruptcy' (*upadłość*). The Restructuring Act governs restructuring proceedings related to the risk of insolvency, i.e. 'composition approval proceedings' (*postępowanie o zatwierdzenie układu*, Articles 210-226), ' accelerated composition proceedings' (*przyspieszone postępowanie układowe*, Articles 227-264), 'composition proceedings' (*postępowanie układowe*, Articles 267-282) and 'remedial proceedings' (*postępowanie sanacyjne*, Articles 283-323).

The goal of **bankruptcy proceedings** is to satisfy creditors' claims in the greatest possible degree and, if reasonably possible, to keep the debtor's enterprise in existence. They are opened exclusively on request and consist of two stages: proceedings for the declaration of bankruptcy and proceedings after the declaration of bankruptcy.

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

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

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

Bankruptcy proceedings may be brought against an entrepreneur. Pursuant to Article 431 of the Polish Civil Code (*kodeks cywilny*) an entrepreneur is a natural person, a legal person or an organisational unit without legal personality in which legal capacity is vested by statute, conducting business or professional activity on its own behalf.

A bankruptcy application may be filed by the debtor and by each of his personal creditors.

Bankruptcy proceedings may also be brought against:

limited-liability companies and joint-stock companies not conducting business activity;

partners in business partnerships who bear unlimited liability, in respect of their entire assets, for meeting their partnership's obligations;

partners in a professional partnership.

Bankruptcy proceedings may also be brought against natural persons not conducting business activity (Article 4911 et seq. of the Bankruptcy Act). Such proceedings are conducted only at the debtor's request, unless the debtor is a former entrepreneur, in which case a bankruptcy application may also be filed by a creditor up to one year after the entrepreneur's removal from the relevant register.

Restructuring proceedings may be opened in relation to:

entrepreneurs within the meaning of Article 431 of the Civil Code;

limited-liability companies (*spółka z ograniczoną odpowiedzialnością*) and joint-stock companies (*spółka akcyjna*) not conducting business activity;

partners in business partnerships (*osobowa spółka handlowa*) who bear unlimited liability, in respect of their entire assets, for meeting their partnership's obligations;

partners in a partnership (*spółka partnerska*).

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

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

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Bankruptcy proceedings may be brought against an entrepreneur. Pursuant to Article 431 of the Civil Code an entrepreneur is a natural person, a legal person or an organisational unit without legal personality in which legal capacity is vested by statute, conducting business or professional activity on its own behalf.

Additionally, bankruptcy proceedings may also be brought against:

limited-liability companies and joint-stock companies not conducting business activity;

partners in business partnerships who bear unlimited liability, in respect of their entire assets, for meeting their partnership's obligations;

partners in a partnership.

Proceedings for the declaration of bankruptcy may also be brought against natural persons not conducting business activity (Articles 4911 et seq. of the Bankruptcy Act.).

Restructuring proceedings may be opened in relation to:

entrepreneurs within the meaning of the Act of 23 April 1964 - the Civil Code (*kodeks cywilny*, Journal of Laws 2016, item 380 and 585), hereinafter referred to as the 'Civil Code';

limited-liability companies (*spółka z ograniczoną odpowiedzialnością*) and joint-stock companies (*spółka akcyjna*) not conducting business activity;

partners in business partnerships (*osobowa spółka handlowa*) who bear unlimited liability, in respect of their entire assets, for meeting their partnership's obligations;

partners in a partnership (*spółka partnerska*).

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

2 What are the conditions for opening insolvency proceedings?

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

A debtor is insolvent if he is unable to meet his financial obligations when they fall due. A debtor is deemed to be unable to meet his financial obligations if they are more than three months overdue. A debtor that is a legal person or an organisational unit without legal personality in which legal capacity is vested under a separate legislative act is also insolvent when its financial obligations exceed the value of its assets and this state of affairs continues for more than 24 months. A court may reject a bankruptcy application if there is no short-term risk that the debtor will be unable to meet his financial obligations as they fall due.

Restructuring proceedings may be opened in respect of an insolvent debtor or a debtor at risk of insolvency. An insolvent debtor is a debtor that is insolvent within the meaning of Articles 10 and 11 of the Bankruptcy Act. A debtor at risk of insolvency is a debtor whose economic situation suggests that he may become insolvent in the short term.

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

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

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

Composition proceedings and remedial proceedings may be conducted if disputed claims entitling creditors to vote on a composition account for more than 15% of all claims entitling creditors to vote on the composition. Moreover, the court refuses to open such proceedings if there is no *prima facie* evidence that the debtor will be able to cover the costs of proceedings and the liabilities arising after their opening on an ongoing basis.

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

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

The bankruptcy estate does not include assets excluded from enforcement pursuant to the Act of 17 November 1964 - Code of Civil Proceedings (Journal of Laws 2016, item 1822, 1823, 1860 and 1948), remuneration for the bankrupt party's work in the part not subject to attachment, the amount obtained through the enforcement of a pledge or a mortgage if the bankrupt was a pledge or mortgage administrator, in the part falling, under the administration agreement, to other creditors.

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

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

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

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

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

The debtor remains a participant in the bankruptcy proceedings and can challenge some decisions issued by the court in the course of those proceedings, i. e. decisions concerning the exclusion of assets from the bankruptcy estate and the receiver's remuneration.

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

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

In accelerated composition proceedings and composition proceedings the debtor may perform routine management actions; but actions other than routine management require the consent of the court supervisor, unless they require the consent of the creditors' committee.
In remedial proceedings the debtor is deprived of the right to manage and actions are performed by the insolvency practitioner, unless they require the consent of the creditors' committee.

5 Under which conditions may set-offs be invoked?

In bankruptcy proceedings the claims of the bankrupt party may be *set off* against the creditor's claims if both claims existed on the day of declaration of bankruptcy, even if one of them was not yet due (Article 93 of the Bankruptcy Act).
A set-off is not acceptable if the bankrupt party's creditor acquired the claim by assignment or endorsement after the declaration of bankruptcy or acquired it in the 12 months before the declaration of bankruptcy, knowing that there were grounds to declare bankruptcy, unless the acquisition was linked to the repayment of a debt for which the acquiring party was liable (regardless of whether that was personal liability or liability secured by a specific property). (Article 94 of the Bankruptcy Act)
A *set-off* is not acceptable if the creditor became the bankrupt party's debtor after the day on which bankruptcy was declared (Article 95 of the Bankruptcy Act).
The creditor who wishes to use the right of *set-off* submits a statement to that end no later than on the day when the claim is lodged (Article 96 of the Bankruptcy Act).
In restructuring proceedings the general rules for setting off mutual claims are subject to the following limitations:
a creditor became the debtor's debtor after the day on which the restructuring proceedings were opened;
after the opening of the restructuring proceedings the debtor of the debtor subject to restructuring proceedings became his creditor through the acquisition, by assignment or endorsement, of a claim that arose before the day on which restructuring proceedings were opened.
Mutual claims may be set off if the claim was acquired as a result of the repayment of a debt for which the acquiring party was liable (personal liability or liability secured on specific property) and if the acquiring party became liable for the debt before the day on which the application for accelerated composition proceedings was submitted.
A creditor who wishes to take advantage of a *set-off* in restructuring proceedings submits a statement to that end to the debtor or, if the debtor is deprived of the right of management, to the insolvency practitioner no more than 30 days after the opening of restructuring proceedings or, if the grounds for the *set-off* arose later, no more than 30 days after the grounds for the *set-off* arose. A statement is also valid if submitted to a court supervisor (Articles 253, 273 and 297 of the Restructuring Act).

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

Specific provisions regarding the effects of the declaration of bankruptcy on the bankrupt party's obligations are to be found in Articles 83-118 of the Bankruptcy Act, on inheritances acquired by the bankrupt party in Articles 119-123 and on the bankrupt party's matrimonial property regime in Articles 124-126.
Articles 81-82 of the Bankruptcy Act prohibit encumbering assets included in the bankruptcy estate with a pledge, registered pledge or mortgage.
The provisions of a contract to which the bankrupt individual is a party that prevent or hinder the achievement of the goal of bankruptcy proceedings are invalid in relation to the bankruptcy estate. A contract transferring the ownership of property, a claim or another right concluded in order to secure a claim is valid in relation to the bankruptcy estate if it was concluded in writing at a certified date, unless it is a contract establishing a financial security (Article 84 of the Bankruptcy Act).
Articles 85 and Article 85a lay down detailed rules on framework contracts concerning forward/future financial operations or the sale of securities under repurchase agreements.
The bankrupt party's financial obligations that are not yet due fall due on the day on which bankruptcy is declared. On the day on which bankruptcy is declared non-financial obligations become financial obligations and become payable on that day, even if the time limit for their performance has not yet lapsed (Article 91 of the Bankruptcy Act).
A claim arising from a contract concluded upon the acceptance of an offer submitted by the bankrupt party may be asserted by the creditor in bankruptcy proceedings only if the statement accepting the offer was submitted to the bankrupt party before declaration of bankruptcy.
If on the day of the declaration of bankruptcy obligations under a mutual performance contract have not been performed in full or in part, the receiver may, with the consent of the bankruptcy judge (*sędzia komisarz*), perform the bankrupt party's obligations and request the other party to perform the mutual obligation or withdraw from the contract with effect from the day of the declaration of bankruptcy. If on the day of the declaration of bankruptcy the bankrupt party is a party to any contract other than a mutual performance contract, the receiver may withdraw from that contract, unless otherwise provided for by statute.
At a request submitted by the other party at a certified date, the receiver declares within three months whether he withdraws from the contract or demands its performance. The receiver's failure to submit such a declaration in that time is deemed withdrawal from the contract.
The other party that is required to perform its obligation earlier may suspend the performance of its obligation until the mutual obligation has been performed or secured. The other party is not entitled to do that if at the time of concluding the agreement it knew or should have known of the grounds for declaring bankruptcy (Article 98 of the Bankruptcy Act).
If the receiver withdraws from the contract, the other party is entitled to the return of the performed obligation, even if it forms part of the bankruptcy estate. In bankruptcy proceedings a party may seek redress for the performed obligation and losses incurred by submitting those claims to the bankruptcy judge (Article 99 of the Bankruptcy Act).
A seller may demand the return of a movable asset - including securities - sent to the bankrupt party without receiving the price, if that asset was not acquired before the declaration of bankruptcy by the bankrupt party or by a person authorised by the bankrupt party to dispose of that asset. Also the consignee who sent the asset to the bankrupt party is entitled to its return. The seller or consignee to whom the asset has been returned refunds the costs that have been or are to be incurred and advance payments. However, the receiver may return the asset if he pays or secures the price payable by the bankrupt party and the costs. The receiver is entitled to do so within a month of requesting the return (Article 100 of the Bankruptcy Act).
Commission or consignment agreements concluded by the bankrupt party in which the bankrupt party was the commissioning party or consignor as well as securities management agreements concluded by the bankrupt party expire upon the declaration of bankruptcy. The other party may withdraw from commission or consignment agreements concluded by the bankrupt party in which the bankrupt party was the commissioned party or the consignee on the day when bankruptcy is declared (Article 102 of the Bankruptcy Act).
An agency contract expires as of the day when either party declares bankruptcy. In the event of the commissioning party's bankruptcy the agent may, in the bankruptcy proceedings, claim the loss it incurred because of the contract's expiry (Article 103 of the Bankruptcy Act).
If the lender or the borrower declares bankruptcy, the loan for use agreement, if its subject has already been lent, is terminated at either party's request. If the subject has not yet been lent, the agreement expires (Article 104 of the Bankruptcy Act).

If either party to a loan agreement declares bankruptcy, the loan agreement expires if the loan subject has not yet been lent (Article 105 of the Bankruptcy Act).
A real property rental or lease agreement binds the parties if the subject of the agreement has been made available to the tenant or lessee (Articles 106-108 of the Bankruptcy Act). Pursuant to a decision issued by the bankruptcy judge the receiver terminates the real property rental or lease agreement concluded by the bankrupt party at three months' notice, even if the termination of that agreement by the bankrupt party would not have been allowed (Articles 109-110 of the Bankruptcy Act).
A credit agreement expires upon the declaration of bankruptcy if the lender has not made the funds available to the bankrupt party before that date (Article 111 of the Bankruptcy Act).
The declaration of bankruptcy does not affect the bankrupt party's bank account agreement, securities account agreement or collective account agreement (Article 112 of the Bankruptcy Act).
In restructuring proceedings, from the day on which they are opened to the day of their closure or the day on which the decision to discontinue proceedings becomes final, the debtor or insolvency practitioner is not allowed to perform obligations arising from claims that are, by law, covered by a composition. Contractual provisions stipulating the modification or termination of a legal relationship to which the debtor is a party if a request to open restructuring proceedings is filed or if such proceedings are opened are void.
The provisions of a contract to which the debtor is a party that prevent or hinder the achievement of the goal of restructuring proceedings are invalid in relation to the composition estate.
Article 250 of the Restructuring Act lays down detailed rules on framework contracts concerning forward/future financial operations or the sale of securities under repurchase agreements.
From the day of opening restructuring proceedings to the day of their closure or the day when the decision to discontinue proceedings becomes final the lessor is not allowed to terminate, without the consent of the creditors' committee, the rental or lease agreement for the premises or real property where the debtor's enterprise operates.
The rules described above for a rental or lease agreement apply *mutatis mutandis* to credit agreements in respect of funds made available to the borrower before the day of opening the proceedings, to lease, property insurance, bank account agreements, guarantee agreements, agreements covering licences granted to the debtor and guarantees or letters of credit issued before the day of opening the restructuring proceedings (Articles 256, 273 and 297 of the Restructuring Act).
Moreover, **in remedial proceedings** the insolvency practitioner may withdraw from a mutual performance contract that has not been performed in full or in part before the day when the remedial proceedings are opened, with the consent of the bankruptcy judge, if the other party's performance of that contract is indivisible. If the other party's performance of the contract is divisible, that provision applies *mutatis mutandis* to the extent to which the contract was to be performed by the other party after the opening of the remedial proceedings. If the insolvency practitioner withdraws from the contract the other party may claim the return of the performance rendered after the opening of the remedial proceedings and before that party received the withdrawal notice, if that performance forms part of the debtor's assets. If that is impossible, the other party may only seek redress for the performance and for the losses it incurred. Those claims are not subject to composition (Article 298 of the Restructuring Act).

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

After a **bankruptcy** application is filed, the court may, at the request of the debtor, temporary supervisor or the creditor who filed the bankruptcy application, suspend enforcement proceedings and repeal the attachment of the bank account if that is necessary to achieve the objectives of bankruptcy proceedings (Article 39 of the Bankruptcy Act).
After the declaration of bankruptcy *enforcement* proceedings in respect of the assets included in the bankruptcy estate, opened before the declaration of bankruptcy, are suspended by law as of the day on which bankruptcy is declared. The proceedings are terminated by law when the decision on the declaration of bankruptcy becomes final (Article 146 of the Bankruptcy Act).
After the declaration of bankruptcy, court, administrative and administrative court proceedings concerning the bankruptcy estate may be opened and conducted only by the receiver or against the receiver. A creditor may not open proceedings regarding a claim subject to lodging (Article 144 of the Bankruptcy Act).
In restructuring proceedings *enforcement* proceedings regarding a claim subject to composition by law, commenced before the opening of restructuring proceedings, are suspended by law as of the day of opening those proceedings. (Articles 259 and 278 of the Restructuring Act). In remedial proceedings the suspension applies to all enforcement proceedings in respect of the debtor's assets included in the remedial estate (Article 312 of the Restructuring Act).
On the day when the decision approving the composition becomes final, security and *enforcement* proceedings conducted against the debtor in order to meet the claims subject to composition are terminated by law. Suspended security and *enforcement* proceedings conducted against the debtor in order to meet claims not subject to composition may be resumed at the creditor's request (Article 170 of the Restructuring Act)
The opening of composition proceedings, accelerated composition proceedings or remedial proceedings does not prevent the creditor from opening court, administrative and administrative court proceedings or proceedings before courts of arbitration in order to assert claims subject to inclusion in the list of claims (Articles 257, 276 and 310 of the Restructuring Act).

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

After the declaration of bankruptcy the court suspends proceedings *ex officio* if they concern the bankruptcy estate, i.e. if their outcome may affect the bankruptcy estate (they concern an object included in the bankruptcy estate) and bankruptcy has been declared and if a compulsory administrator has been appointed in proceedings to declare bankruptcy (Article 174(1)(4) and (5) of the Code of Civil Procedure (*kodeks postępowania cywilnego*)). The court calls upon the receiver or compulsory administrator to take part in the proceedings (Article 174(3) of the Code of Civil Procedure). If the bankrupt party (debtor) is the claimant the court resumes *ex officio* the suspended proceedings as soon as the receiver (compulsory administrator) has been designated (Article 180(1)(5) of the Code of Civil Procedure).
Proceedings may be brought against the receiver only if, in bankruptcy proceedings, a claim is not included in the list of claims after the possibilities prescribed in the Code have been exhausted. (Article 145 of the Bankruptcy Act).
In restructuring proceedings ongoing court proceedings (pending at the moment of opening the proceedings) are suspended if the proceedings concern the composition estate (or remedial estate) and an insolvency practitioner has been appointed in restructuring proceedings or if a temporary administrator has been appointed in proceedings to open remedial proceedings and the proceedings concern assets covered by security (Article 174(1)(4) and (5) of the Code of Civil Procedure). The court calls upon the temporary administrator or insolvency practitioner to take part in the proceedings (Article 174(3) of the Code of Civil Procedure).
The admission of a claim, the waiver of a claim, composition or the admission of relevant facts of the case by the debtor in such cases without the consent of the court supervisor has no legal effect (Article 258 of the Restructuring Act).

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

The participation of the creditors in the bankruptcy proceedings is governed by Articles 189-213 of the Bankruptcy Act). Creditors whose claims have been admitted are entitled to take part in the creditors' meeting and vote.
The bankruptcy judge, acting *ex officio* or on request, establishes the creditors' committee and appoints and dismisses its members. The committee assists the receiver, controls his actions, examines the state of the funds forming the bankruptcy estate, grants permission for actions that may be performed only with the permission from the creditors' committee and expresses its opinion on other matters if requested by the bankruptcy judge or receiver. The creditors' committee may request the bankrupt party or the receiver to provide clarification and it may examine books and documents concerning the bankruptcy in so far as that does not infringe business confidentiality.
The permission of the creditors' committee is necessary if the following actions by the receiver are to be valid:
the continued management of the enterprise by the receiver if it is to last more than three months after the declaration of bankruptcy;
waiving the sale of the enterprise as a whole;
the direct sale of the assets included in the bankruptcy estate;
contracting loans or credits and encumbering the bankrupt party's assets with limited proprietary rights;
the admission, waiver of entering into a composition regarding disputed claims and bringing a dispute before a court of arbitration.
An exception may be invoked when one of the above actions has to be performed immediately and concerns a value of no more than PLN 10 000 – then the receiver, court supervisor or insolvency practitioner may perform it without permission from the committee.
Moreover, no permission from the creditors' committee is required for the sale of movable assets if the estimated value of all movable assets included in the bankruptcy estate, as indicated in the inventory, is no higher than PLN 50 000 and for the sale of claims and other rights, if the nominal value of all claims and other rights included in the bankruptcy estate, as indicated in the inventory, is no higher than PLN 50 000.
In bankruptcy proceedings the creditor may submit a composition proposal.
Creditors may also challenge the decision of a bankruptcy court or a bankruptcy judge concerning the approval of the receiver's accounting reports, decisions concerning the list of claims, also in respect of other creditors' claims, the distribution plan, the receiver's remuneration and the decision to discontinue or terminate bankruptcy proceedings.
The participation of creditors **in restructuring proceedings** is governed by Articles 104-139 of the Restructuring Act. The creditors whose claims have been included in an approved list of claims as well as the creditors who appear at the creditors' meeting and submit to the bankruptcy judge a writ of execution confirming their claim are entitled to participate in the creditors' meeting and vote.
At the creditors' meeting a composition may be reached if at least a fifth of the creditors entitled to vote on a composition participate in the meeting.
The bankruptcy judge establishes the creditors' committee and appoints and dismisses its members *ex officio* or on request. The creditors' committee assists the court supervisor or insolvency practitioner, controls their actions, examines the state of the funds forming the composition or remedial estate, grants permissions for actions that may be performed only with the permission from the creditors' committee and expresses its opinion on other matters if requested by the bankruptcy judge, court supervisor, insolvency practitioner or debtor. The creditors' meeting and its members may submit their comments on the activity of the debtor, court supervisor or insolvency practitioner to the bankruptcy judge. The committee may request the debtor, court supervisor or insolvency practitioner to provide clarification and it may examine the debtor's books and documents in cases when that does not infringe business confidentiality. In other cases and in the event of doubts the bankruptcy judge specifies the scope of the prerogatives of the members of the creditors' committee as regards examining the books and documents of the debtor's enterprise.
To be valid, the following actions by the debtor or insolvency practitioner require the consent of the creditors' committee:
encumbering elements of the composition or remedial estate with a mortgage, pledge, registered pledge or maritime mortgage in order to secure a claim not subject to composition;
the transfer of the ownership of an object or a right in order to secure a claim not subject to composition;
encumbering elements of the composition or remedial estate with other rights;
contracting credits or loans;
concluding an agreement on the leasing of the debtor's enterprise or an organised part thereof or another similar agreement (performed with the consent of the creditors' committee, the above actions cannot be considered unenforceable in respect of the bankruptcy estate)
the sale, by the debtor, of real property or other assets worth over PLN 500 000.
Creditors may also challenge the decision of a restructuring court or a bankruptcy judge concerning the approval of accounting reports by the insolvency practitioner, decisions concerning the list of claims (composition and remedial proceedings) and other creditors' claims, the remuneration of the court supervisor or insolvency practitioner and the decision to discontinue or terminate bankruptcy proceedings.

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

In bankruptcy proceedings, after the declaration of bankruptcy the receiver draws up an inventory, estimates the bankruptcy estate and drafts a liquidation plan. The liquidation plan defines the proposed manner of selling the bankrupt party's assets, in particular the enterprise, the time of the sale, an estimate of expenditure and the economic rationale for the continuation of the business activity (Article 306 of the Bankruptcy Act). After drawing up the inventory and financial report or after submitting a general written report the receiver liquidates the bankruptcy estate (Article 308 of the Bankruptcy Act)
After the liquidation the receiver may continue to manage the bankrupt party's enterprise if a composition with the creditors is possible or if it is possible to sell the whole of the bankrupt party's enterprise or organised parts thereof (Article 312 of the Bankruptcy Act).
In restructuring proceedings, i.e. accelerated composition proceedings and composition proceedings the debtor normally continues to manage his enterprise. Pursuant to Articles 239(1) and 295 of the Restructuring Act the debtor may be deprived of the right to manage if:
the debtor, intentionally or otherwise, infringes the law through management resulting in a detriment to the creditors or the possibility of such a detriment in the future;
it is obvious that the manner of management does not guarantee the implementation of the composition or a trustee (*kurator*) has been appointed for the debtor pursuant to Article 68(1);
the debtor does not comply with the instructions issued by the bankruptcy judge or court supervisor, in particular by failing to submit lawful composition proposals within the time limit set by the bankruptcy judge.
In remedial proceedings, if the effective conduct of such proceedings requires the personal participation of the debtor or of his representatives and at the same time they guarantee proper management, the court may permit the debtor to manage all or part of his enterprise within the scope of routine management (Article 288(3) of the Restructuring Act).
In **composition approval proceedings** the debtor manages his enterprise throughout the duration of the proceedings.

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

In bankruptcy proceedings all claims of personal creditors are lodged. A claim may also be lodged by a creditor whose claim was secured with a mortgage, pledge, registered pledge, fiscal pledge, maritime mortgage or another entry in the land and mortgage register or shipping register (if it is not lodged by the

creditor it will be included in the list *ex officio*). Claims under an employment relationship are included in the list *ex officio* (Articles 236(1) and (2) and 237 of the Bankruptcy Act).
The costs of bankruptcy proceedings are covered first, before the bankruptcy estate liabilities arising after the declaration of bankruptcy – (Articles 230(2) and 343(1) and (11) of the Bankruptcy Act), without drawing up a distribution plan.
In restructuring proceedings the list of claims covers the personal claims in respect of the debtor that arose before the opening of the restructuring proceedings (Article 76 of the Restructuring Act). The list of claims separately indicates claims subject to composition by law and claims subject to composition with the creditor's consent (Article 86 of the Restructuring Act).
In restructuring proceedings claims are not lodged. The list of claims is drawn up by the supervisor or insolvency practitioner based on the debtor's accounting books, his other documents, entries in the land and mortgage register and other registers.
The composition is binding for creditors whose claims are, pursuant to the Act, subject to composition, even if they are not included in the list of claims.
The composition is not binding for creditors who have not been disclosed by the debtor and have not participated in the proceedings (Article 166 of the Restructuring Act).
The composition cannot cover maintenance claims, benefits paid as compensation for causing illness, inability to work, disability or death and annuity granted in exchange for rights under an annuity agreement; claims for the transfer of property and for the cessation of the infringement of rights; claims for which the debtor is liable in connection with acquiring an inheritance after the opening of restructuring proceedings, after the inheritance's inclusion in the composition or remedial estate; claims in respect of the part of social insurance contributions financed by the insured where the debtor is the payer.
The composition also excludes claims under an employment relationship and claims secured on the debtor's property by means of a mortgage, pledge, registered pledge, fiscal pledge or maritime mortgage, in the part whose value is covered by the security, unless the creditor consents to including them in the composition (Article 151 of the Restructuring Act).

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

The rules governing the lodging, verification and admission of claims in bankruptcy proceedings are laid down in Article 239-266 of the Bankruptcy Act.
In bankruptcy proceedings the creditors are responsible for lodging claims. Claims must be lodged no more than 30 days after the decision on the declaration of bankruptcy is published in the Court and Commercial Gazette (*Monitor Sądowy i Gospodarczy*, then in the Central Register of Restructuring and Bankruptcy (*Centralny Rejestr Restrukturyzacji i Upadłości*), Article 51 of the Bankruptcy Act and Article 455 of the Restructuring Act).
Claims under an employment relationship do not have to be lodged. Claims of this type are included in the list of claims *ex officio* (Article 237 of the Bankruptcy Act).
The creditor lodges his claim in writing, in two copies. The lodgement should include the creditor's name and address, PESEL (personal identification) or KRS (National Court Register) number and in their absence details making it possible to identify the creditor clearly, define the claim together with the incidental dues and the value of the non-monetary claim, evidence confirming the existence of that claim (if the claim has been included in the list of claims drawn up in restructuring proceedings it is enough to invoke that fact), the category in which it may be included, securities linked to it and the status of the case if the claim is the subject of ongoing court, administrative, administrative court or arbitrary court proceedings. If a claim is lodged in respect of which the bankrupt party is not a personal debtor, the subject of the security has to be indicated that is to be used to meet the claim. If the creditor is a partner or shareholder in a bankrupt company, he indicates the number and type of shares he holds.
An appropriately submitted lodgement is transferred by the bankruptcy judge to the receiver, who verifies whether the lodged claims are confirmed by the bankrupt party's accounting books or other documents or by entries in the land and mortgage register or other registers and calls upon the bankrupt party to declare within a specified time limit whether it admits the claim. If the lodged claim is not confirmed by the bankrupt party's accounting books or other documents or by entries in the land and mortgage register or other registers, the receiver calls upon the creditor to submit, within a week, the documents named in the lodgement of the claim under pain of refusal to admit the claim. However, the receiver may take into account documents submitted after that deadline if that does not delay the submission of the list to the bankruptcy judge.
Within two weeks of the announcement that the list of claims has been added to the proceedings' file the creditor may raise an objection with the bankruptcy judge. Also the bankrupt party may object, if the draft list of claims is not in line with its requests or statements. If the bankrupt party has made no statements even though it was called upon to do so, it may only object if it proves that it has made no statement for reasons beyond its control.
The bankruptcy judge modifies the list of claims after the decision concerning the objection becomes final — and if that decision is challenged, after the court' s decision becomes final — and approves the list of claims. If no objection is made, he approves the list of claims after the deadline for objections has lapsed. The bankruptcy judge may modify the list of claims *ex officio*. If it is found that claims that are non-existent in full or in part have been included in the list of claims or that claims required to be included in the list *ex officio* have not been included in it, the bankruptcy judge may modify the list of claims *ex officio*.
A claim that is not required to be lodged which is lodged or disclosed after the deadline is included in the supplement to the list of claims. The list of claims is corrected in accordance with final judgments. A change in the amount of a claim that occurs after the list of claims is drawn up is taken into account when drafting the distribution plan or when voting at the creditors' meeting.
After the closure or discontinuation of bankruptcy proceedings an extract from the list of claims approved by the bankruptcy judge, indicating the claim and the amount received towards it by the creditor, serves as a writ of execution against the bankrupt party (this does not apply to creditors for whom the bankrupt party was not a personal debtor). The bankrupt party may request that a claim included in the list of claims be established not to exist or to exist in a smaller degree, if the bankrupt party has not admitted a claim lodged in bankruptcy proceedings and the court has not yet passed a final judgment regarding it. After the extract from the list is declared enforceable, the bankrupt party may raise the objection that the claim included in the list of claims does not exist or exists in a smaller degree, by bringing an action to declare the writ of execution unenforceable.
The issue of drafting the list of claims **in restructuring proceedings** is governed in Articles 84 – 102 of the Restructuring Act.
The list of claims is drawn up by the supervisor or insolvency practitioner based on the debtor's accounting books, his other documents, entries in land and mortgage register and other registers. In remedial proceedings opened on the basis of a simplified request the list of claims is drawn up in so far as possible on the basis of the list of claims drawn up in the preceding restructuring proceedings. If a composition proposal involves dividing the creditors into groups, the list of claims is drawn up taking account of the proposed division.
The list of claims separately indicates claims subject to composition by law and claims subject to composition with the creditor's consent.
In accelerated composition proceedings the debtor may object to the inclusion of a claim in the list of claims. Such a claim is considered to be a disputed claim. In this case the bankruptcy judge modifies the list of claims and the list of disputed claims accordingly.
In composition proceedings and in remedial proceedings, within two weeks of announcement of the date of submitting the list of claims and the list of disputed claims, the participants in the proceedings may raise an objection to the inclusion of a claim in the list of claims with the bankruptcy judge. The

debtor may object if the list of claims is not in line with his statement on admitting or refusing to admit a claim. If the debtor has made no statement he may only object if he proves that he has made no statement for reasons beyond his control. Within the same time limit a debtor or creditor who has not been included in the list of claims may object to being omitted from the list.
An objection made after that time limit or inadmissible for other reasons or an objection that contains deficiencies not remedied by the objecting party or in respect of which the party has not paid the payable fee within the specified time limit is rejected by the bankruptcy judge.
The bankruptcy judge ignores statements and evidence not included in the objection unless the objecting party prove *prima facie* that it did not include them in the objection through no fault of its own or that including late statements and evidence will not delay the examination of the case.
Facts justifying the objection may only be proven by documentary evidence or an expert opinion. If the claim is ascertained by a final court judgment, the objection against the inclusion of the claim in the list of claims may only be based on events occurring after the closure of the litigation in which the judgment was passed.
The objection is examined at a non-public session within two months of being made, by the bankruptcy judge, his deputy or an appointed judge. If the judge examining the objection decides that a hearing is needed, he notifies the court supervisor or insolvency practitioner, debtor and creditor who raised the objection and the creditor whose claim has been objected to. Their failure to appear, even if justified, does not prevent the issuing of a decision. The bankruptcy judge, his deputy or an appointed judge may waive the taking of evidence based on an expert opinion if the expert has issued an opinion in other proceedings before a court, court of arbitration or administration body. In this case the documents containing the expert opinion are evidence.
A decision concerning the subject of an objection is open to appeal by the debtor, court supervisor or insolvency practitioners and creditors.
The list of claims is modified in so far as specified in the decision after the decision upholding the objection becomes final. In accelerated composition proceedings the list of claims is approved by the bankruptcy judge at the creditors' meeting.
In composition and remedial proceedings the bankruptcy judge approves the list of claims upon the lapse of the time limit for objections or, if an objection is raised, after the decision concerning the objection becomes final.
The bankruptcy judge approves the list of claims not affected by objections that have yet to be the subject of a final ruling if the sum of the claims concerned by those objections accounts for no more than 15 % of all claims entitling creditors to vote on a composition. Proceedings concerning those objections are discontinued by the court or bankruptcy judge if they have not been the subject of a final ruling by the time of voting on the composition.
If the list of claims is found to include a claim that is non-existent in full or in part or falls to a person other than the one named as a creditor in the list, the bankruptcy judge may remove the claim from the list *ex officio.* The decision to remove the claim from the list is served upon the creditor it concerns, the debtor and supervisor of insolvency practitioner. Those persons cannot appeal against the decision.
The supervisor or insolvency practitioner drafts a supplement to the list of claims if after submitting the list a claim is disclosed that has not been included in the list.
After the final refusal to approve a composition or the final discontinuation of restructuring proceedings an extract from the approved list of claims indicating the name of the creditor
and his claim serves as a writ of execution against the debtor.
After the final approval of a composition an extract from the approved list of claims along with an excerpt from a final decision approving the composition serves as a writ of execution against the debtor and the party that provided the security guaranteeing the implementation of the composition, if a document confirming the security has been submitted to the court, and against the party required to make an additional payment, if the composition provides for additional payments between creditors.
The debtor may request that a claim included in the list of claims be established not to exist or to exist in a smaller degree, if the debtor has made an objection in restructuring proceedings and the court has yet to deliver a final ruling on the claim.
After the extract from the approved list of claims is declared enforceable the debtor may raise the objection that a claim included in the list of claims does not exist or exists in a smaller degree by bringing an action to have the writ of execution declared unenforceable.

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

In **bankruptcy proceedings** the rules governing the distribution of proceeds are laid down in Articles 335-351 of the Bankruptcy Act.
First the costs of proceedings are covered and then, if the proceeds –allow, other bankruptcy estate liabilities as the relevant sums are added to the bankruptcy estate.
Maintenance claims for the period after the declaration of bankruptcy are satisfied by the receiver when they fall due, until the final distribution plan is drafted, each time for every entitled party in an amount not higher than the minimum wage. The remainder of those claims is not satisfied from the bankruptcy estate.
The claims to be paid out of the bankruptcy estate (after covering in full the costs of proceedings, bankruptcy estate liabilities and maintenance claims) fall into the following categories:
the first category - claims under an employment relationship for the period before the declaration of bankruptcy (applies *mutatis mutandis* to the claims of the Fund for Guaranteed Employee Benefits for the repayment, out of the bankruptcy estate, of benefits paid out to the bankrupt party's employees), except claims regarding the remuneration of the bankrupt party's representatives or of a person performing actions related to the management of or supervision over the bankrupt party's enterprise, farmers claims' under contracts for the supply of produce from their own farms, maintenance claims and benefits paid as compensation for causing illness, inability to work, disability or death and annuity granted in exchange for rights under an annuity agreement for the last three years before the declaration of bankruptcy, claims in respect of social insurance contributions and claims that arose in restructuring proceedings attributable to the insolvency practitioner's actions or claims attributable to the debtor's actions performed after the opening of restructuring proceedings, not requiring the consent of the creditors' committee or the consent of the court supervisor or performed with the consent of the creditors' committee or consent of the court supervisor, if bankruptcy was declared as a result of the examination of a simplified bankruptcy application, as well as claims concerning credits, loans, bonds, guarantees or letters of credit or other financing provided for in the composition adopted in restructuring proceedings and granted in connection with the implementation of that composition, if bankruptcy was declared as a result of the examination of a bankruptcy application submitted no later than three months after the final cancellation of the composition;
the second category - other claims, if not met in other categories, in particular taxes and public levies as well as other claims in respect of social insurance contributions;
the third category - interest on claims included in the categories above, in the order in which the principal amounts are paid as well as court and administrative fines and claims regarding donations and legacies;
the fourth category - partners' or shareholders' claims regarding a loan or another legal act with similar effects, especially the supply of goods on deferred terms to the bankrupt party that was a capital company in the five years preceding the declaration of bankruptcy, with interest.
If the sum to be distributed is not enough to meet all the claims, the claims of the next category are satisfied only after meeting in full the claims of the preceding category and if the sum to be distributed is not enough to meet all the claims of a given category, those claims are met in proportion to the amount of each of them.

Claims secured with a mortgage, pledge, registered pledge, fiscal pledge and maritime mortgage as well as rights expiring according to the provisions of the Act and the effects of disclosing personal rights and claims encumbering real property, a right to perpetual usufruct, a cooperative member's ownership right to residential premises or a sea-going vessel entered in the shipping register, are met out of the sum obtained through the liquidation of the encumbered party minus the costs of liquidating that party and other costs of bankruptcy proceedings in an amount no higher than a tenth of the sum obtained through the liquidation; however, the deducted part of the costs of bankruptcy proceedings cannot be higher than the part corresponding to the proportion of the value of the encumbered object to the value of the total bankruptcy estate. Those claims and rights are met in the order of their priority. If the sum obtained through the liquidation of the encumbered party is used to meet both claims secured by a mortgage and expiring rights as well as personal rights and claims, the priority depends on the moment as which the entry of a mortgage, right or claim in the land and mortgage register begins to have effect.
Collateral claims covered by the security pursuant to separate provisions are met in an equal measure with the above claims. The sum falling to the creditor is counted first of all towards the main claim, then to interest and other collateral claims, with the costs of proceedings being covered at the end.
If real property, a right to perpetual usufruct, a cooperative member's ownership right to residential premises or a sea-going vessel entered in the shipping register is sold before meeting the claims secured with a mortgage or a maritime mortgage and other rights, including personal rights and claims that encumbered the object sold and that expired as a result of the sale, maintenance claims are met as well as benefits paid as compensation for causing illness, inability to work, disability or death and annuity granted in exchange for rights under an annuity agreement for the period after the declaration of bankruptcy and the remuneration for employees' work performed on the real property, vessel or premises for the three months preceding the sale but only up to three times the amount of the minimum wages.
In restructuring proceedings claims are met according to the composition approved by the court. The rules governing the meeting of claims are laid down in Articles 155-163 of the Restructuring Act.
The composition may provide for the division of creditors into groups encompassing different categories of interests, in particular:
creditors with claims under an employment relationship who have agreed to being covered by the composition;
farmers with claims concerning the supply of produce from their own farm;
creditors whose claims are secured on the debtor's assets by means of a mortgage, pledge, registered pledge, fiscal pledge or maritime mortgage as well as by the transfer of the ownership of an object, claim or another right to the creditor and who have agreed to being covered by such composition;
creditors who are partners or shareholders of a debtor being a capital company, holding the company's shares providing them with at least 5% votes at the partners' meeting or at the general shareholders' meeting,
The terms of restructuring the debtor's liabilities are the same for all creditors and if voting on the composition is conducted in groups of creditors, the same for creditors included in the same group, unless a creditor expressly agrees to less favourable terms.
Applying more favourable terms of restructuring a debtor's liabilities is acceptable for a creditor who, after the opening of restructuring proceedings, granted or is to grant financing in the form of a credit, bonds, bank guarantees, letters of credit or based on another financial instrument, necessary for the implementation of the composition.
The terms of restructuring claims under an employment relationship cannot deprive the employees of the minimum wage.
Restructuring applies equally to financial and non-financial obligations. If within a week of receiving a notification of the date of the creditors' meeting with a copy of the composition proposal the creditor objected to the restructuring of his claim as a non-monetary claim, submitting a statement to the supervisor or insolvency practitioner, or owing to the nature of the non-monetary claim restructuring is not possible, that claim is transformed into a monetary claim. That effect arises upon the opening of proceedings.
The terms of restructuring the claims referred to in Article 161(1)(3) may be differentiated according to their priority.

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

Bankruptcy proceedings are closed by the court after implementing the final distribution plan or when in the course of the proceedings all the creditors have been satisfied.
On the day on which the decision closing the bankruptcy proceedings becomes final the bankrupt party regains the right to manage and dispose of its assets. After the closure of the bankruptcy proceedings any pending proceedings opened by the receiver to declare invalid an action performed by the bankrupt party to the detriment of the creditors are terminated and mutual claims for the recovery of procedural costs lapse. In other civil proceedings the bankrupt party replaces the receiver.
In the 30 days following the announcement of the decision closing bankruptcy proceedings a bankrupt party that is a natural person may submit a request for drafting a creditor payment plan and for the discharge of the remaining debt that has not been met in the bankruptcy proceedings. The court rejects the request if the bankrupt party has caused his insolvency or materially increased its scale either intentionally or through gross negligence and if:
the evidence in the case points to facts offering grounds for disqualifying the bankrupt party from conducting business as a self-employed person or as part of a civil law partnership and from acting as a member of a supervisory board, a member of an audit committee, a representative of a natural person conducting business activity in the same branch of business, of a commercial company, state-owned enterprise, cooperative, foundation or association or the bankrupt party did not perform properly the obligations imposed upon him in the bankruptcy proceedings or
in the period of ten years preceding the submission of the bankruptcy application the bankrupt party was subject to bankruptcy proceedings in which all or part of his debts were discharged, unless the bankrupt party's insolvency occurred or its scale increased despite due diligence on the part of the bankrupt party or
in the period of ten years preceding the submission of the bankruptcy application the creditor payment plan drafted for the bankrupt party was cancelled pursuant to Article 370e(1) or (2) or Article 49120 or
in the period of ten years preceding the submission of the bankruptcy application a legal action performed by the bankrupt party was found, in final proceedings, to be detrimental to creditors
- unless the discharge of the remainder of the bankrupt party's debt is justified on the grounds of equity or humanitarian need.
In its decision on drafting the creditor payment plan the court specifies to what degree and in what time (no longer than 36 months) the debtor must pay the debts admitted in the list of claims and not paid in the course of bankruptcy proceedings based on distribution plans and what part of the bankrupt party's liabilities arising before the declaration of bankruptcy will be discharged after implementing the creditor payment plan. While the creditor payment plan is being implemented, enforcement proceedings cannot be opened in respect of claims that arose before the declaration of bankruptcy (except claims arising out of the obligations referred to in Article 370f(2) and claims not disclosed by the bankrupt party if the creditor did not participate in the proceedings), nor may the bankrupt party perform legal actions that might undermine its ability to implement the creditor payment plan (in exceptional cases the court may, at the bankrupt party's request, consent to or approve such a legal action).
By the end of April each year the bankrupt party must submit to the court a report on the implementation of the creditor payment plan for the preceding calendar year, disclosing the revenue generated, amounts repaid and assets acquired with a value higher than the average monthly remuneration in the enterprise sector excluding the payment of a dividend on profits in the third quarter of the preceding year.

The court may amend the creditor payment plan if the bankrupt party is unable to meet the obligations laid down in that plan, at that party's request and after hearing the creditors. It may also extend the period for repaying debts no by up to 18 months.
If the bankrupt party's economic situation improves materially while the creditor payment plan is being implemented and that improvement is attributable to causes other than an increase in wages or revenue generated by the commercial activity performed personally by the bankrupt party, the creditor and the bankrupt party may submit a request for the creditor payment plan to be amended. The court issues a decision on in the amendment of the creditor payment plan after hearing the bankrupt party and the creditors covered by the payment plan.
The court, acting *ex officio* or at the creditor's request, cancels the creditor payment plan if the bankrupt party fails to perform the obligations specified in the creditor payment plan after hearing the bankrupt party and the creditors covered by the payment plan, unless the failure to perform obligations is insignificant or the discharge of the remainder of the bankrupt party's debt is justified on the grounds of equity or humanitarian need; this applies mutatis mutandis if the bankrupt party:
has not submitted a report on the implementation of the creditor payment plan on time;
failed to disclose revenue generated or assets acquired in the report on the implementation of the creditor payment plan;
has performed a legal action that might undermine its ability to implement the creditor payment plant without the consent of the court or that action has not been approved by the court;
concealed assets or is found, by a final ruling, to have performed a legal action to the detriment of creditors.
If the payment plan is cancelled, the bankrupt party's liabilities are not discharged.
The court issues a decision confirming the implementation of the payment plan and discharging the bankrupt party's liabilities that arose before the declaration of bankruptcy and were not satisfied through the implementation of the creditor payment plan after the bankrupt party has performed the obligations specified in the creditor payment plan. Maintenance claims, liabilities related to benefits paid as compensation for causing illness, inability to work, disability or death, payable fines imposed by the court as well as obligations to compensate for the damage and suffering inflicted, obligations to pay supplementary damages or cash benefits adjudicated by the court as a penal or probationary measure as well as obligations to compensate for damages resulting from a crime or offence found to have taken place in a final judgment and claims that the bankrupt party intentionally failed to disclose, if the creditor did not take part in the proceedings, are not discharged.
Changes in legal relationships made pursuant to the provisions of the Act are binding for the bankrupt party and for the other party also after the closure of bankruptcy proceedings, unless the provisions of a separate legislative act stipulate otherwise.
Restructuring proceedings are closed when the court's decision approving or refusing to approve the composition becomes final. Then the debtor regains the right to manage his assets if he was deprived of it or if it was limited, unless the composition stipulates otherwise (Article 171 of the Restructuring Act).
After the implementation of the composition or after the enforcement of the claims covered by the composition the court, at the request of the debtor, composition supervisor or another person entitled under the composition to implement or supervise the implementation of the composition, issues a decision confirming the implementation of the composition (Article 172 of the Restructuring Act).

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

If after the closure of **bankruptcy proceedings** against natural persons conducting economic or professional activity a payment plan is drafted, the creditor may request the court to cancel the creditor payment plan if the bankrupt party fails to perform obligations specified in the plan or fails to submit a report on the plan's implementation on time, fails to disclose revenue generated or assets acquired in the report on the implementation of the creditor payment plan, performs without the consent of the court a legal action that might undermine its ability to implement the creditor payment plan or that action has not been approved by the court, fails to disclose his assets or is found, by a final ruling, to have performed a legal action to the detriment of creditors (Article 370e of the Bankruptcy Act).
In **restructuring proceedings** the creditor may request the court to cancel the composition if the debtor does not comply with its provisions or it is obvious that the composition will not be implemented (it is presumed that the composition will not be implemented if the debtor fails to meet liabilities approved after the composition approval). The requesting party may appeal against a decision rejecting the request (Article 176 of the Restructuring Act).
If the composition is cancelled or expires, the existing creditors may assert their claims in the original amounts and the sums paid out based on the composition are counted towards them. A mortgage, pledge, registered pledge, fiscal pledge or maritime mortgage secures a claim up to the amount that has yet to be satisfied (Article 177 of the Restructuring Act).

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

Bankruptcy proceedings basically involve two stages, i.e. proceedings for the declaration of bankruptcy and proceedings after the declaration of bankruptcy.
The costs of proceedings for the declaration of bankruptcy are covered first out of the advance payment made by the applicant in an amount equivalent to the average monthly remuneration in the enterprise sector excluding the payment of a dividend on profits in the third quarter of the preceding year as announced by the President of the Central Statistical Office. If proceedings are opened at the creditor's request, their costs are borne by the bankrupt party if bankruptcy is declared or if the request is rejected owing to the scantiness of the estate.
The costs of proceedings after the declaration of bankruptcy are covered out of the bankruptcy estate. If the insolvent debtor's assets are insufficient to cover the costs of proceedings or suffice only to cover those costs, the court rejects the bankruptcy application.
The costs of **restructuring proceedings** are borne by the debtor. The costs payable by a debtor deprived of the right to manage are paid by the insolvency practitioner at the request of the court or of the bankruptcy judge.
Participants in proceedings bear the costs related to their participation.
The costs of proceedings opened following an objection to the inclusion of another creditor's claim are payable by the debtor to the objecting creditor if the objection resulted in a refusal to include the contested claim, unless the debtor challenged the inclusion of the claim in the list of claims in a statement submitted pursuant to Article 86(2)(9) or raised an objection.

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

In bankruptcy proceedings the legal actions performed by the bankrupt party in respect of the bankruptcy estate are void. The disposal by the bankrupt party of all or part of an inheritance or of an inheritance share is also void, as is that party's disposal of a share in an object included in the inheritance and that party's consent for another heir to dispose of a share in an object included in the inheritance.
Under pain of nullity, the consent of the creditors' committee is required for the following actions (Article 206 of the Bankruptcy Act):
the continued management of the enterprise by the receiver if it is to last more than three months after the declaration of bankruptcy;
waiving the sale of the enterprise as a whole;
the direct sale of the assets included in the bankruptcy estate;
contracting loans or credits and encumbering the bankrupt party's assets with limited proprietary rights;
the admission, waiver of entering into a composition regarding disputed claims and bringing a dispute before a court of arbitration.

An exception may be invoked when one of the above actions has to be performed immediately and concerns a value of no more than PLN 10 000, in which case the receiver, court supervisor or insolvency practitioner may perform it without the consent of the committee.
Moreover, the consent of the creditors' committee is not required for the sale of movable assets if the estimated value of all movable assets included in the bankruptcy estate, as indicated in the inventory, is no higher than PLN 50 000 and for the sale of claims and other rights, if the nominal value of all claims and other rights included in the bankruptcy estate, as indicated in the inventory, is no higher than PLN 50 000. This also applies to consent for the sale of claims and other rights if the nominal value of all claims and other rights included in the bankruptcy estate, as indicated in the list of claims, is no higher than the equivalent of PLN 50 000.
An entry in the land and mortgage register or another register encumbering the bankrupt party's assets with a limited property right made without the consent required pursuant to Article 1 is subject to removal *ex officio*. The basis for the removal is a final decision by bankruptcy judge finding the entry to be inadmissible (Article 206(5) of the Bankruptcy Act).
The bankruptcy judge specifies the actions that must not be performed by the receiver without his consent or without the consent of the creditors' committee. This means that the bankruptcy judge may extend the catalogue of actions mentioned in Article 206 that require the consent of the creditors' committee under pain of nullity.
Legal actions by which the bankrupt party disposed of its assets in the 12 months before submitting the bankruptcy application are null if they were performed free of charge or against payment but the value of the bankrupt party's performance manifestly exceeded the consideration obtained by that party or reserved for that party or for a third party. This rule also applies *mutatis mutandis* to a court settlement, claim admission and claim waiver.
Also the security for and repayment of debt not due for payment have no effect if performed by the bankrupt party in the six months before the bankruptcy application was submitted. However, the party who obtained the payment or security may, by way of a claim or objection, seek the admission of those actions as effective if it was not aware of the existence of grounds for bankruptcy at the time when those actions were performed.
The above rules do not apply to securities established before the declaration of bankruptcy in connection with forward/future financial operations, loans of financial instruments or the sale of securities under repurchase agreements referred to in Article 85(1).
At the request of a third party the bankruptcy judge may order that person's mutual performance to be returned out of the bankruptcy estate, if that performance was rendered in connection with a legal action by that third party and the bankrupt party concerning property included in the bankruptcy estate. The provisions on undue performance apply *mutatis mutandis* to this type of performance. The return of that performance may be ordered if the legal action occurred after the declaration of bankruptcy and before the publication of the bankruptcy decision in the Register, while the third party exercising due diligence could not know of the declaration of bankruptcy (Article 77 of the Restructuring Act).
The assignment of a future claim has no effect in relation to the bankruptcy estate if that claim arises after the declaration of bankruptcy, unless the agreement assigning the claim was concluded no later than six months before the submission, at a certified date, of a written bankruptcy application.
A legal action performed against payment is declared invalid in relation to the bankruptcy estate by the bankruptcy judge *ex officio* or at the receiver's request if it was performed by the bankrupt party in the six months before submitting the bankruptcy application with his spouse, a relative, including by marriage, in the direct line, a relative, including by marriage, in the collateral line to the second degree inclusive, with a person in an actual relationship with the bankrupt individual, running a household with him or being his adoptive parent or child, unless the other party to the action proves that the creditors' interest was not damaged. The decision by the bankruptcy judge may be appealed against.
The above rule also applies to actions performed by the bankrupt party with a company in which he is a board member or the sole partner or shareholder and with companies in which persons named in the first paragraph are board members or sole partners or shareholders. It also applies *mutatis mutandis* to actions performed by a bankrupt party that is a company or legal person, if performed with its partners, their representatives or spouses and with affiliated companies, their partners and the representatives and spouses of those persons and to actions performed by a bankrupt party that is a company with another company, if one was the parent company or if that company is the parent company of both the bankrupt party and the other party to the action.
Acting *ex officio* or at the receiver's request the bankruptcy judge declares a specific part of remuneration, falling to a period before the declaration of bankruptcy but no more than six months before the submission of the bankruptcy application, invalid in relation to the bankruptcy estate if the remuneration for work performed by a person representing the bankrupt party or an employee performing enterprise management tasks or the remuneration of a person providing services related to the management of or supervision over the bankrupt party's enterprise specified in an employment contract, a service contract or a resolution of the bankrupt party's management body concluded or passed before the declaration of bankruptcy is manifestly higher than the average remuneration for this type of work or services and is not justified by the amount of work, even if that remuneration has already been paid.
The bankruptcy judge may declare the remuneration of the above-mentioned persons for the period after the declaration of bankruptcy wholly or partly invalid in relation to the bankruptcy estate, if it is not justified by the amount of work as the management has been taken over by the receiver.
At the receiver's request the bankruptcy judge also declares the following actions invalid in relation to the bankruptcy estate:
encumbering the bankrupt party's assets with a mortgage, pledge, registered pledge or maritime mortgage, if the bankrupt party was not a personal debtor to the secured creditor and the encumbrance was established in the 12 months before the submission of the bankruptcy application and no performance was rendered to the bankrupt party in connection with its establishment;
encumbering the bankrupt party's assets with a mortgage, pledge, registered pledge or maritime mortgage, if the property encumbrance was established in return for a performance of a value disproportionately low compared to the value of the established security;
the above encumbrances regardless of the value of the performance, if they secure the debts of persons referred to in Article 128 of the Bankruptcy Act) (persons close or related to the bankrupt party), unless the other party proves that the creditors' interest was not damaged;
contractual penalties stipulated for the non-performance or improper performance of an obligation, if the obligation was largely performed by the bankrupt party or if the contractual penalty is manifestly exorbitant.
Legal actions performed by the bankrupt party to the creditors' detriment in matters not covered by the Bankruptcy Act are governed mutatis mutandis by the provisions of the Civil Code on the protection of the creditor against the debtor's insolvency.
In restructuring proceedings, in accordance with Article 129 of the Restructuring Act, under pain of nullity the following actions by the debtor or the insolvency practitioner require the consent of the creditors' committee:
encumbering elements of the composition or remedial estate with a mortgage, pledge, registered pledge or maritime mortgage in order to secure a claim not subject to composition;
the transfer of the ownership of an object or a right in order to secure a claim not subject to composition;
encumbering elements of the composition or remedial estate with other rights;
contracting credits or loans;
concluding an agreement on the leasing of the debtor's enterprise or of its organised part or another similar agreement;
(The above actions performed with the consent of the creditors' committee cannot be considered invalid in respect of the bankruptcy estate.)
the sale, by the debtor, of real property or other assets worth over PLN 500 000.

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

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

Securities in respect of the remedial estate are also invalid if they have been established in direct connection with performance being rendered to the debtor, established by the debtor in the 12 months before the submission of the request to open remedial proceedings and securities in the part which, on the day of establishing the security, is more than half higher than the value of the secured performance rendered to the debtor along with collateral claims specified in the document forming the basis for the establishment of the security, established in the 12 months before the submission of the request to open remedial proceedings (Article 304 of the Restructuring Act).

In remedial proceedings the bankruptcy judge, acting *ex officio* or at the insolvency practitioner's request, declares a specific part of remuneration, falling to a period before the declaration of bankruptcy but not longer than three months before the submission of the request to open remedial proceedings, invalid in relation to the remedial estate if the remuneration for work performed by the debtor's representative or employee performing enterprise management tasks or the remuneration of a person providing services related to the management of or supervision over the debtor's enterprise specified in an employment contract, a service contract or a resolution of the debtor's management body concluded or passed before the opening of remedial proceedings is manifestly higher than the average remuneration for this type of work or services and is not justified by the amount of work, even if that remuneration has already been paid.

The bankruptcy judge may declare the remuneration of the above-mentioned persons, falling to the period after the opening of remedial proceedings, wholly or partly invalid in relation to the remedial estate, if it is not justified by the amount of work as the management has been taken over by the insolvency practitioner (Article 305 of the Restructuring Act).

The insolvency practitioner may institute proceedings to declare actions invalid and other proceedings in which a claim is based on the invalidity of an action. An action cannot be declared invalid after one year has elapsed since the opening of remedial proceedings, unless that power expired earlier pursuant to the Civil Code. That time limit does not apply if the request to declare an action ineffective was made by way of an objection.

Legal actions performed by the bankrupt party to the creditors' detriment in matters not covered by the provisions discussed above may be challenged accordingly pursuant to the provisions of the Civil Code on the protection of the creditor against the debtor's insolvency (Articles 306 – 308 of the Restructuring Act).

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