The Reorganization Law in Poland

Private Law

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Abstract: The aim of this paper is to present general remarks of the legal structure of the Polish reorganization law. This is a completely new institution in Poland. The Act of 28 February 2003 the Bankruptcy and Reorganization Law (J.L. No 60, item 535 as amended), the articles 492 - 521 b.r.l. is the main source of law in the commented matter. The idea of the Polish regulation derives from the Chapter 11 of the Bankruptcy Code of the United States. The statistics of the usage of the reorganization proceedings in Poland are not very impressive. In this respect some critics maintain that the legislative experiment called "reorganization proceedings" is unsuccessful. Nevertheless the Reorganization Law is a very important figure in the Polish commercial law. Reorganization proceedings seriously differ from bankruptcy proceedings

Keywords: reorganization proceedings; entrepreneur, bankruptcy

1. Introduction

Bankruptcy in Poland shall be declared with respect to a debtor who has become insolvent (art. 10 b.r.l.) (Kowalewski & Kwasnicki, 2007, p. 1136).[2] As a rule if it is determined likely that under an bankruptcy arrangement the creditors will be satisfied to a higher degree than they would have been satisfied as a result of bankruptcy proceedings comprising the liquidation of the debtor's assets, bankruptcy with the possibility to make an bankruptcy arrangement shall be declared by the bankruptcy court (art. 14 b.r.l.). But if there are no grounds for declaring bankruptcy with the possibility to make an arrangement the bankruptcy court shall declare bankruptcy by liquidation of the debtor's assets (art. 15 b.r.l.).

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[2] See also (Kruczalak-Jankowska, 2007, p. 6; Petraniuk, 2003, p. 17; Pannert, 2004, p. 16; Merczyński & Trocki, 2011, p. 99.

Spiritus movens of reorganization proceedings is the entrepreneur. The entrepreneur decides whether to start reorganization proceedings. The position of the bankruptcy court in the proceedings is reduced to minimum. The bankruptcy court has authorization in the matter of the opening of the reorganization proceedings, appointing a court supervisor, approval of the arrangement (settlement), revocation of the arrangement. The entrepreneur prepares by himself the reorganization plan, restructuring proposals for the arrangement with creditors, the list of claims. The reorganization arrangement should be adopted in a very short period of time (three or four months) and if the entrepreneur fails to make the arrangement in the prescribed period of time the proceedings shall be discontinued by virtue of law. The Reorganization Law provides moratorium for the payment of the entrepreneur's debts.

It should be clearly explained that the Act contains both material and procedural (formal) rules. The regulation of the Reorganization Law is not complex. Within the scope not regulated in the provisions of the Reorganization Law proper rules of the Bankruptcy Law shall apply accordingly to the reorganization proceedings. There is a couple of references to the Bankruptcy Law (for example art. 493 b.r.l.). In some matters the Bankruptcy Law contains a reference to the Code of Civil Proceedings.

Council Regulation (EC) No 1346/2000 of 29 May 2000 on insolvency proceedings shall apply to collective insolvency proceedings which entail the partial or total divestment of a debtor and the appointment of a liquidator (art. 1 sec. 1 reg. 1346/2000) (Zedler et al., 2011).[1] For the purposes of the Regulation No 1346/2000 'insolvency proceedings' shall mean the collective proceedings referred to in Article 1 sec.1. These proceedings are listed in Annex A and 'liquidator' shall mean any person or body whose function is to administer or liquidate assets of which the debtor has been divested or to supervise the administrations of his affairs. Those persons and bodies are listed in Annex C. The reorganization proceedings ("postępowanie naprawcze") are not listed in Annex A. (Adamus, 2009, p. 76) Because of a couple of reasons it is a mistake. Similar proceedings, for example company voluntary arrangement, are listed in Annex A.

[1] See also: (Klyta, 2008; Szydlo, 2009; Chilarski, 2009; Armatowska, 2011; Hrycaj, 2011; Jakubecki, 2005; Glicz, 2003; Gurgul, 2009; Grzejszczak & Chilarski, 2004; Adamus, 2004)

2. Reorganization Capacity and Grounds for the Reorganization Proceedings

The provisions of the Reorganization Law apply exclusively to entrepreneurs (Zedler, 2011, p. 947) (Dukiel & Palys, 2004, p. 3). Natural persons or entities not conducted commercial activity are excluded from the scope of regulation of the Reorganization Law. *De lege lata* the Bankruptcy and Reorganization Law does not contain the definition of an entrepreneur. Article 5 section 1 b.r.l. provides that the provisions of the Bankruptcy and Reorganization Law shall apply to entrepreneurs as defined in the act of 23 April 1964 – the Civil Code. The Civil Code (art. 43^1 C.C.) states that entrepreneur is (a) a natural person, (b) legal person, (c) or an organizational entity not possessing legal personality, yet whose legal capacity is recognized by a separate statute, engaging in a commercial or professional activity exclusively in its own name. (Gniewek, 2011, p. 98) [1]

The ability to start and conduct the reorganization proceedings is called in the Polish doctrine of law the "reorganization capacity" (Zedler, 2011, p. 948) (Adamus, 2009, p. 141). The bankruptcy capacity (the ability to start and conduct bankruptcy proceedings) is much wider than reorganization capacity especially after the amendment of the law opening bankruptcy proceedings to the natural persons not conducting commercial activity ("consumer bankruptcy").

There are two separate grounds for the reorganization proceedings (Zedler, 2011, p. 951) (Adamus, 2009, p. 197) (Dukiel & Palys, 2004, p. 13). Each ground for the reorganization proceeding involves different initial proceedings. Firstly the reorganization proceedings apply to entrepreneurs who are threatened with insolvency (art. 492 sec. 1 b.r.l.). What is insolvency? Under art. 11 sec. 1 b.r.l. a debtor (an entrepreneur) shall be deemed insolvent when he fails to perform his due financial obligations ("the lack of disposable assets"). A debtor (an entrepreneur) who is a legal person[2] or an unincorporated organizational unit granted legal capacity by a separate law[3] shall also be deemed insolvent when the sum of his obligations exceeds the value of his assets, even if the debtor duly

[1] See also (Bieniek-Koronkiewicz & Mroz, 2003, p. 40; Frackowiak, 2003, p. 15; Radwanski, 2003, p. 3; Szydło, 2002, p. 72; Lisson, 2002; Jacyszyn, 2004, p. 295; Gurgul, 2010, p. 191)

[2] For example: limited liability company ("spółka z ograniczoną odpowiedzialnością") or joint-stock company („spółka akcyjna"), cooperative („spółdzielnia"), foundation („fundacja").

[3] For example: registered partnership ("spółka jawna"), professional partnership ("spółka partnerska"). limited partnership ("spółka komandytowa"), limited joint-stock partnership ("spółka komandytowo – akcyjna"), residential community ("wspólnota mieszkaniowa").

performs these obligations ("the excessive debts"). An entrepreneur shall be deemed to be threatened with insolvency even if he duly performs obligations, when – based on rational estimate of its economic condition – it is evident that the entrepreneur will become insolvent shortly (art. 492 sec. 1 b.r.l.). It is called a "positive" ground for the reorganization. Secondly the reorganization proceedings apply to a debtor (who is an entrepreneur) who is insolvent but delay in performing the obligations does not exceed three months and the amount of unperformed obligations does not exceed 10 per cent of the balance sheet value of the debtor enterprise (art. 12 sec. 1, 2 b.r.l.). In this case an entrepreneur is "slightly" insolvent. It is also a "positive" ground for the reorganization. As mentioned above both positive grounds for the reorganization are totally separate.

There are also common "negative grounds" for the reorganization (art. 492 sec. 3 b.r.l.) (Zedler, 2011, p. 950) (Dukiel & Palys, 2004, p. 24) (Adamus, 2009, p. 217). They have power to exclude an entrepreneur from the reorganization proceedings in any case. In other words "negative grounds" for the reorganization do not allow to start the proceedings to an entrepreneur threatened with insolvency and to a "slightly" insolvent entrepreneur. Firstly, the reorganization proceedings shall not apply to an entrepreneur who has already conducted reorganization proceedings, if two years have not yet elapsed since the discontinuation of the proceedings. Secondly, the proceedings shall not apply to an entrepreneur who has already been covered by an arrangement approved in the reorganization or bankruptcy proceedings, if five years have not yet elapsed since the performance of the arrangement. Thirdly the proceedings shall not apply to an entrepreneur against whom bankruptcy proceedings were conducted which included the liquidation of the bankrupt's assets or in the course of which liquidation arrangement was adopted, if five years have not yet elapsed since a valid closure of these proceedings. Fourthly the proceedings shall not apply to an entrepreneur in relation to whom the petition to declare bankruptcy was dismissed or the bankruptcy proceedings were discontinued due to a lack of assets sufficient to satisfy the costs of the proceedings, if five years have not yet elapsed since the date these proceedings became valid.

3. The Initiation of the Proceedings

The reorganization proceedings can be initiated in two separate ways which are generally described in the present paragraph. (Zedler, 2011, p. 953) (Dukiel & Palys, 2004, p. 42) (Adamus, 2009, p. 222). The legal differences between them are really very serious. They are closely connected with the kind of the positive grounds for the reorganization. In both cases only the entrepreneur is entitled to initiate the proceedings. Creditors, the bankruptcy court, public authority etc. have no power to submit a petition to start reorganization proceedings. The entrepreneur is not obliged by law to initiate reorganization proceedings while a debtor has a legal duty to submit a petition to declare bankruptcy. There is a very important conclusion: the entrepreneur has *right* not *duty* to initiate reorganization proceedings. The reorganization proceedings are voluntary.

Firstly an entrepreneur threatened with insolvency may submit to the bankruptcy court a statement on opening reorganization proceedings. The statement of the entrepreneur is fully independent. A statement on opening reorganization proceedings shall contain the data listed in the particular provisions of the Bankruptcy and Reorganization Law (art. 494 sec. 1 b.r.l.). Together with a statement on opening reorganization the entrepreneur shall submit a reorganization plan, some additional documents, and a written declaration with a signature certified by a notary public on the truthfulness of the data and the declaration included in the statement on opening reorganization proceedings and in the appended documents (art. 494 sec. 2 b.r.l.). In fact formal requirements of the statement allow making a conclusion that it is one of the most complicated motion in the Polish civil proceedings. Within 14 days (calendar days) of submission of the statement the bankruptcy court may prohibit the opening of the reorganization proceedings if the statement has been made in breach of the law of if the data or declarations included in the statement or in the appended documents are untrue (494 sec. 3 b.r.l.). Under the resolution of the Supreme Court on 23 October 2007, III CZP 89/07 the period of 14 days should be counted since the submission of the motion to the proper court (Adamus, 2008, p. 82). In fact the bankruptcy court has no chance to examine the motion of the entrepreneur diligently within the period of 14 days. In practice there is no possibility for the bankruptcy court to admit expert evidence in order to examine the condition of the entrepreneur enterprise. The bankruptcy court passes no “positive” ruling on declaration reorganization proceedings. The silence of the bankruptcy court in the prescribed period of time allows opening the reorganization proceedings. The bankruptcy court may prohibit

the opening of the reorganization proceedings because of any reasons: if the entrepreneur's statement does not comply with the formal requirements set forth in the Reorganization Law or if the statement does not comply with prescribed grounds for reorganization proceedings or the debtor has no reorganization capacity. The ruling of the court prohibiting the opening of the reorganization proceedings shall be subject to appeal (art. 494 sec. *in fine* b.r.l.). If the court's decision prohibiting the opening of reorganization proceedings becomes valid, the statement shall have no legal effects (art. 494 sec. 4 b.r.l.). The entrepreneur is entitled to submit a new statement. If the reorganization proceedings are opened in the next stage the entrepreneur is obliged to announce that he submitted the statement on opening reorganization proceedings in the Court and Business Gazette[1] and in at least one local and one national daily newspaper. Optionally the announcement may also be made in another manner (art. 495 sec. 1 b.r.l.). Of course the announcement cannot be made before the elapse of the time given to the bankruptcy court to prohibit the opening of reorganization proceedings and if the bankruptcy court issues – within the above time limit – the ruling prohibiting the opening of reorganization proceedings – before the consideration of the appeal against this ruling (art. 495 sec. 2 b.r.l.). What is very important the date of announcement of statement in the Court and Business Gazette shall be the date of opening reorganization proceedings (art. 496 sec. 1 b.r.l.). Upon the day of opening reorganization proceedings the entrepreneur shall file a motion for an entry of information on the opening of the reorganization proceedings in the relevant register (art. 496 sec. 2 b.r.l.). This procedure is dedicated exclusively to the reorganization proceedings.

Secondly a "slightly" insolvent entrepreneur in the petition to declare bankruptcy may submit a petition to allow the debtor to institute reorganization proceedings (art. 12 sec. 3, art. 21 sec. 4 b.r.l.). A petition to allow the debtor to institute reorganization proceedings is not independent and cannot exist without the petition to declare bankruptcy. The bankruptcy court may dismiss the petition to declare bankruptcy when the delay in performing obligations does not exceed three months and the amount of unperformed obligations does not exceed 10 per cent of the balance sheet value of the debtor's enterprise. When dismissing the petition to declare bankruptcy the bankruptcy court, upon above mentioned motion of the debtor, may allow debtor to institute reorganization proceedings (art. 12 b.r.l.). In this case the bankruptcy court issues a "positive" ruling in the matter of initiation

[1] „Monitor Sądowy i Gospodarczy".

of reorganization proceedings. The ruling of the court shall be immediately made public by an announcement in the Court and Business Gazette and by a notice in a local daily paper (art. 53 sec. 1 b.r.l.). The ruling of the bankruptcy court shall be effective from the date of its issuance (art. 51 sec. 2 b.r.l.). In this case the procedure to initiate the reorganization proceedings is only a part of the proceedings on declaring bankruptcy.

4. Legal Effects of the Initiation of the Reorganization Proceedings

There are many various legal effects of the initiation of the reorganization proceedings (Zedler, 2011, p. 962) (Dukiel & Palys, 2004, p. 96) (Adamus, 2009, p. 277). First of all upon the date reorganization proceedings are opened the performance of the entrepreneur's shall be suspended (art. 498 sec. 1 b.r.l.). Creditors cannot be satisfied by the force of law especially in the execution proceedings. The debts of the entrepreneur cannot be paid voluntarily by the entrepreneur as well. On the other hand the entrepreneur is entitled to fulfill his obligations which arose after the date of opening of the reorganization proceedings. It allows the entrepreneur to continue conducting his commercial activity. In other words the entrepreneur is given a moratorium for the payment of his debts. From this point of view the rigorous grounds for reorganization proceedings are justified. The moratorium is not for indefinite period of time because the law limits the duration of the reorganization proceedings. Consequently upon the date reorganization proceedings are open the accrual of interest due from the entrepreneur shall be suspended and no execution proceedings or proceedings to secure claims may be opened against the entrepreneur and the opened proceedings shall be stayed by the virtue of law, except for the proceedings to secure claims and execution proceedings concerning claims not included in the arrangement.

The next important legal effect of the opening of reorganization proceedings is the lack of possibility to alienate or encumber of entrepreneur's assets. Under art. 501 b.r.l. from the date reorganization proceedings are opened until a valid adjudication on the approval of the arrangement or until the discontinuance of the proceedings, the entrepreneur may not alienate or encumber his assets, with the exception of things alienated within the scope of the entrepreneur's economic activity. *Ratio legis* of the quoted provision is clear. If creditors cannot expect satisfaction of their claims during the course of the reorganization proceedings the entrepreneur should not be allowed to reduce his assets. Of course typical commercial activity of the

entrepreneur (who is for example a tradesman) cannot be stopped. Moreover after the opening of reorganization proceedings the assets of the entrepreneurs may not be encumbered with a mortgage, pledge, registered pledge, tax lien or maritime mortgage in order to secure a claim which arose prior to the opening of reorganization proceedings. There is one exception of the mentioned rule: if the motion to record a mortgage has been filed with the court at least six months prior to the opening of reorganization proceedings (art. 81, 501 b.r.l.).

From the date of the institution of reorganization proceedings a set-off of claims is admissible in observance of the following rules. In the course of reorganization proceedings the set-off of reciprocal claims between the entrepreneur and the creditor shall not be admissible, if the creditor (a) has become a debtor to the entrepreneur after the opening of the reorganization proceedings; (b) being a debtor to the entrepreneur, has become a creditor to the entrepreneur after the opening of the reorganization proceedings, by acquiring, through an assignment or endorsement, a claim which arose prior to the opening of the reorganization proceedings (art. 89 sec. 1, art. 498 sec. 1 b.r.l.). However the set-off of reciprocal claims shall be admissible if the acquisition of the claim has been effected as a result of paying the debt, for which the acquirer was liable personally or with certain proprietary items and if the acquirer's liability for the debt had arisen before the day the petition to open reorganization proceedings was filed (art. 89 sec. 2, art. 498 sec. 1 b.r.l.).

In labour law matters, excluding those concerning the protection of employees' claims in the event of an employer's insolvency, the opening of reorganization proceedings shall have the same legal effects as the declaration of bankruptcy (art. 500 b.r.l.). What does it mean? In fact the entrepreneur is not limited by law in discharging his workers. The opening of reorganization proceedings is a legally valid justification for dissolving service contracts.

The opening of reorganization proceedings shall not affect the opening of court proceedings against the entrepreneur, including proceedings to declare bankruptcy upon a petition of the creditor, as well as administrative proceedings. If the creditor files a petition to declare bankruptcy of the entrepreneur conducting reorganization proceedings, the bankruptcy court shall adjourn the consideration of such petition until reorganization proceedings have been closed or the bankruptcy court shall order the consideration of the petition and the proceedings to approve the arrangement. The Reorganization Law does not exclude the possibility of securing

the entrepreneur's assets under the provisions of the Bankruptcy Law concerning proceedings to secure the assets in proceedings on declaring bankruptcy (art. 499 b.r.l.).

After opening reorganization proceedings the court shall appoint, for the duration of the proceedings, a court supervisor[1] for the entrepreneur (art. 497 sec. 1 b.r.l.). The provisions on the court supervisor in the bankruptcy proceedings apply accordingly to the court supervisor appointed in the reorganization proceedings (art. 497 sec. 2 b.r.l.). The court supervisor shall without delay take up supervisory activities. In the course of his supervision the court supervisor may, at any time, inspect the activities of the entrepreneur's enterprise. The court supervisor is entitled to check whether the assets of the entrepreneur, which are not a part of the enterprise, are sufficiently protected against deterioration. It should be underlined that the entrepreneur shall be given the approval of the court supervisor for doing the acts exceeding the scope of regular administration (art. 76 sec. 3 b.r.l.). A judge-commissioner is not appointed in reorganization proceedings.[2] In the course of the proceedings the acts of the proceedings shall be performed by the bankruptcy court.

Opening of the reorganization proceedings does not influence the business name of the entrepreneur (the entrepreneur has no duty to add to his business name an affix: "in the reorganization proceedings"), his legal capacity or capacity to perform acts. From theoretical point of view the opening of the procedure does not stop the entity in reorganization proceedings of legal transformations.

5. Reorganization Plan

The reorganization plan is one of more important aspects of the Reorganization Law (Zedler, 2011, p. 970) (Dukiel & Palys, 2004, p. 156) (Adamus, 2009, p. 429). The reorganization plan should allow for the recovery by the entrepreneur of the ability to compete in the marketplace. The plan should contain a particular justification (art. 502). The justification of the reorganization plan shall contain the following aspects (art. 280). A description of the enterprise with a specific statement of its economic, financial legal and organizational situation. An analysis

[1] „Nadzorca sądowy".

[2] In bankruptcy proceedings the judge-commissioner ("sędzia- komisarz") is entitled to direct the course of the proceedings, supervise the acts of the court supervisor, specify the acts which the court supervisor may not perform without his approval (art. 152 b.r.l.).

of the market sector in which the entrepreneur is active, with description of the market position of his competitors. The method and sources of financing the performance of the arrangement, including any anticipated income and expenses during the performance of the arrangement. An analysis of the level and structure of the risk. The persons responsible for the performance of the arrangement. An evaluation of alternative method of restructuring of obligations. Finally a system of securing rights and interest of creditors during the performance of the arrangement. The entrepreneur may predict no system of securing rights and interest of his creditors.

There are three different levels of restructuring the enterprise. The main level applies to restructuring of obligations of the entrepreneur which may be included in the arrangements in the bankruptcy proceedings (art. 503 sec. 1 b.r.l.). The arrangement shall include claims which have arisen prior to the date of the opening of reorganization proceedings (art. 271 b.r.l.). There are also some kinds of claims excluded from arrangement (art. 273 sec. 1 b.r.l.). The arrangement shall not include for example: alimony, disease – related pensions, worker's compensation, disability or death benefits, payments for converting rights to lifetime annuity into lifetime pension, social security contributions. Finally there are also some kinds of claims which are conditionally included in the arrangement. According to art. 273 sec. 2, 3 b.r.l. the arrangement shall not include (a) claims for employees' earnings, (b) claims secured on the entrepreneur's assets by mortgage, pledge, registered pledge, tax lien, maritime mortgage in the part covered by the value of the collateral (c) claims secured by transfer of the ownership title to a thing, claim or other right to the creditor in the part covered by the value of the collateral. But in the above mentioned situations the creditor is entitled to express his approval for the inclusion of such claims in the arrangement. The method of restructuring obligations is the same as in the bankruptcy proceedings with the possibility to conclude an arrangement (art. 503 sec. 2 b.r.l.). There is no *numerus clausus* of the methods of restructuring obligations. The proposal to restructure the entrepreneur's may include in particular: (a) a deferment for the fulfillment of the obligations, (b) payment of debts in installments, (c) the reduction of the amount of debts, (d) the conversion of claims into shares or stocks, (e), modification, exchange or cancellation of a right securing a specified claim. Of course the arrangements proposal may indicate one or more means of restructuring (art. 270 sec. 1,2 b.r.l.). Generally creditors should be treated equally. According to art. 279 b.r.l. conditions for the restructuring of entrepreneur's obligations should be identical in

relation to the creditors of the same category of interest. There are some exemptions of the above mentioned rule. First of all a creditor may explicitly approve less favorable conditions (*volenti non fit iniuria*). More favorable conditions of restructuring obligations may be granted to creditors who have small claims, as well as to those creditors who, after opening or reorganization proceedings, provided or are to provide credit essential for the performance of the arrangement. The restructure of claims is obligatory in the reorganization proceedings.

The second level of restructuring the enterprise is estate of the entrepreneur and the third the employment in the enterprise. They are not obligatory if they are not really necessary in a concrete case. The proposals for restructuring of the entrepreneur's estate should indicate which parts of the estate are to be transferred, leased or rented out, determine the means of transfer and the purposes for which the proceeds shall be assigned. Of course the proposals may not include contents of the estate not being the property of the entrepreneur, unless the owner expresses his approval in writing (art. 503 sec. 3 b.r.l.). The proposals for restructuring the employment shall indicate the total number of employees, the number of employees laid off, the rules of laying off and the financial consequences of these changes (art. 503 sec. 4 b.r.l.).

6. List of Claims

In bankruptcy proceedings a personal creditor of the bankrupt who wishes to participate in the proceedings shall, if the establishment of his claims is necessary, submit his claim to the judge –commissioner (in reorganization proceedings, as mentioned above, a judge – commissioner is not appointed). Some kinds of claims shall be recorded on the list of claims *ex officio* (art. 236 b.r.l.). There are many formal requirements of the submission of claims (240 b.r.l.). A list of claims in bankruptcy proceedings is prepared by a trustee, court supervisor or administrator. Each creditor recorded in the list may file an objection against acknowledgement of a claim (art. 256 b.r.l.). The final list of claims is approved by the judge – commissioner (art. 260 b.r.l.). In reorganization proceedings the entrepreneur prepares the list of claims by himself (art. 509 sec. 2 b.r.l.) (Zedler, 2011, p. 978) (Dukiel & Palys, 2004, p. 181) (Adamus, 2009, p. 522). The list of claims should be prepared by the entrepreneur according to the particular requirements provided under articles 245 – 251 b.r.l. of bankruptcy proceedings. For example an in – kind

claim shall be recorded on the list of claims per its value as at the day of the opening reorganization proceedings. In the event that an interest-free claim has not become due on the date reorganization proceedings are opened, this claim shall be recorded on the list of claims in its amount decreased by statutory interest but not higher than six per cent, computed from the date the reorganization proceedings are opened until date its due, not exceeding a period of two years. What is important interest on the pecuniary claim shall be recorded on the list of claims in the amount computed the reorganization proceedings are opened. A claim to which the entrepreneur is co-debtor, as well as the claim of the entrepreneur's guarantor, arising under the right of recourse, shall be recorded on the list of claims in the amount in which the co-debtor or the guarantor has satisfied the creditor. A claim denominated in a foreign currency (not in Polish zloty), regardless of when this claim is due, shall be recorded on the list of claims after converting it into Polish zloty according to the average foreign exchange rate of the National Bank of Poland[1] as at the date the reorganization proceedings are opened, and if such rate was not fixed – according to the average market price of that day. The following data shall be entered in separate columns on the list of claims in particular: the amount of the claim up to which the claim is acknowledged, the existence and type of security of the claim and indication of the amount, according to which the creditor's vote shall be calculated (such amount shall be indicated according to this portion of claim which probably shall not be satisfied from the object of security), whether the claim is contingent on a condition, whether the creditor is entitled to a set-off, the status of the court or administrative proceedings with respect to the claim, its security or the right to set-off. Creditors have no power to file any objection to the list of claims prepared by the entrepreneur. The list of claims prepared by the entrepreneur is not to be approved by the bankruptcy court. Article 517 b.r.l. includes legal instruments protecting creditors against unfair list of claims. Under some additional conditions the extract of the list of claims constitutes the enforcement title against the entrepreneur, legally equal with a court sentence (art. 296, art. 516 sec. 2 b.r.l.). The claims recorded on the list of claims should be confirmed by the creditors (art. 517 sec. 1 b.r.l.). In the doctrine of law it is generally accepted that confirmation of the claim can be made in any means.

[1] „Narodowy Bank Polski".

7. Creditors' Meeting and Adoption of the Arrangement

Obligations of the entrepreneur shall be restricted by way of a reorganization arrangement (settlement) adopted at the creditor's meeting (art. 504 b.r.l.) (Zedler, 2011, p. 974) (Dukiel & Palys, 2004, p. 160) (Adamus, 2009, p. 583). The reorganization plan as a whole is not voted at the assembly. The creditors vote only the proposals for the restructuring of the entrepreneur's obligations. The creditors' meeting is the obligatory stage of the reorganization proceedings. The reorganization arrangement between the entrepreneur and the creditors is based on the entrepreneur's proposals. The amendment to the Reorganization law repealed art. 508 b.r.l. which set forth that until the time to vote on the reorganization arrangement the creditors might submit their changes to the proposals for the restructuring of entrepreneur's obligations. *De lege lata* creditors are not legally entitled to submit their proposals. In practice the entrepreneur should recommend such proposals for restructuring of his obligations which are likely to be accepted by the majority of the creditors. There should be underlined that the creditors' meeting is not organized or held by the bankruptcy court. The date of the creditors' meeting shall be set by the entrepreneur in agreement with the court supervisor, but the meeting of creditors may not be held before one moth has elapsed from the date reorganization proceedings are opened. The meeting of creditors could be held in the seat of the entrepreneur. The entrepreneur shall notify creditors on the date and venue of the meeting by registered mail or certified mail – return receipt requested, at least two weeks prior to the meeting. The reorganization plan shall be served on the creditors together with the notification (art. 505 b.r.l.). The chairman of the creditors' meeting shall be the court supervisor (art. 507 b.r.l.). The court supervisor cannot be replaced. The right to participate in the meeting of creditors shall be vested in the creditors which have been duly notified of the date of the meeting or which. Despite the lack of notification, inform the court supervisor of their participation, provided that the entrepreneur does not deny the existence of their claims (art. 506 b.r.l.). The presence of the entrepreneur at the creditors' meeting is essential.

The main goal of the meeting of creditors is to decide in the matter of the reorganization arrangement. The creditors may vote on the arrangements in groups. In the reorganization proceedings the entrepreneur is entitled to divide the creditors into groups (art. 509 sec. 1 b.r.l.). In bankruptcy proceedings it is the competence of the judge- commissioner. The entrepreneur shall prepare separate lists of creditors entitled to vote, comprising separate classes of interests. Such lists may

include in particular the following groups of creditors. Creditors entitled to claims arising under employment relationship who agreed to being included in the arrangement. Creditors whose claims have been secured by a mortgage, pledge, registered pledge, tax lien or maritime mortgage encumbering the entrepreneur's assets, or by transfer of ownership right of a thing, claim or other right to the creditor and who agreed to being included in the arrangement. Creditors who are shareholders or stockholders of the company in reorganization proceedings, have shares or stock of the company giving the right at least 5 per cent of votes at the shareholders' or stockholders' meeting.

At the creditors' meeting the creditors shall vote with the total sum of their claims put on the list of claims prepared by the entrepreneur himself. In case of the creditors whose claims have not been recorded on the list they shall vote with the sum of the reported claims, up to the amount not denied by the entrepreneur (art. 509 sec. 2, 3 b.r.l.). There are some particular rules for voting at the creditors' meeting concerning special situations. For example creditors who hold a joint and several or indivisible claim shall vote by a common proxy (art. 196 sec. 1, 511 sec. 2 b.r.l.) and a creditor, as a general rule, is not entitled to vote on the basis of a claim which he acquired through an assignment or endorsement after the opening of the reorganization proceedings (art. 197 sec. 1, art. 511 sec. 2 b.r.l.). The reorganization arrangement shall be adopted if (a) the majority of creditors entitled to participate in the creditors' meeting, (b) jointly holding two – thirds of the total sum of the claims which entitle them to vote, voice their approval of the arrangement (art. 510 sec. 1 b.r.l.).

There are two majorities required for the adoption of the arrangement: personal (*per capita*) and financial. The rules of adopting the arrangement are much more complicated if the creditors vote on the arrangement in groups, comprising separate classes of interests. In this case the arrangement shall be adopted if in each of the groups the arrangement is approved by (a) the majority of creditors from the group (b) having jointly at least two – thirds of the sum of claims included in the separate list of the creditors entitled to vote. The reorganization arrangement shall be adopted even in case if in some groups of creditors the required majority did not approved the arrangement, if the majority of creditors from other groups jointly holding a total of two – thirds of the total sum of claims which give the voting right accepted the arrangement and the creditors from the group or groups who voted against the arrangement will be satisfied in due level (art. 285 sec. 2, 3, art. 510 sec. 2 b.r.l.).

If the reorganization arrangement is not adopted it is possible to convey a new creditors' meeting. At the renewed creditors' meeting the entrepreneur is entitled to submit new proposals for the restructuring of obligations or other changes in the reorganization plan. The court supervisor shall announce the time appointed for the new creditors' meeting at the assembly at which the reorganization arrangement failed to be adopted (art. 512 b.r.l.).

8. Approval of the Reorganization Arrangement by the Bankruptcy Court

The reorganization arrangement adopted by the majority of the creditors at the creditors' meeting should be accepted by the bankruptcy court after holding a hearing (Zedler, 2011, p. 983) (Dukiel & Palys, 2004, p. 225) (Adamus, 2009, p. 639). Each of the creditors entitled to participate in the creditors' meeting may file objections against the reorganization arrangement. Additionally objections against the reorganization arrangement may file a creditor not entitled to participate in the creditors' meeting, provided he proves that the reorganization arrangement might impede the pursuit of his claims. In both cases the objections shall be filed to the bankruptcy court within one week of adoption of the arrangement (art. 513 b.r.l.). The date of the court hearing shall be announced pursuant to general rules of the Bankruptcy Law and by giving notice in the Court and Business Gazette (art. 514 sec.1 b.r.l.).

The bankruptcy court shall refuse to approve the reorganization arrangement if occurs at least one of the following situations. (1) There were no grounds for conducting reorganization proceedings. (2) The entrepreneur has not submitted all the documents required by law. (3) The data in the submitted documents and declarations of the entrepreneur were untrue. (4) The entrepreneur has not notified all known creditors about the date of the creditors' meeting. (5) The court supervisor has had no possibility to exercise supervision. (6) The legal rules which could affect the results of the vote have been breached in the course of the proceedings. (7) The entrepreneur has alienated or encumbered his assets or has given more preferences to some of the creditors breaching article 501 b.r.l. (8). From the circumstances of the case it results that the reorganization arrangement will not be performed. (9) The arrangement is detrimental to the creditors which have filed objections. (10) Finally, the approved reorganization plan does not guarantee recovery by the ability to compete on the market (art. 515 sec. 1 b.r.l.). If

the circumstances mentioned in points: (3), (9), (10) arise the bankruptcy court may approve the arrangement provided that false data were included in the entrepreneur's documents for reasons not attributable to the entrepreneur, or the data had no significant influence on the course of the proceedings and it is obvious that upon the reorganization arrangement are to be satisfies to a degree not less beneficial than in case of conducting bankruptcy proceedings including the liquidation of the bankrupt's assets (art. 515 sec. 2 b.r.l.). The list of reasons for the refusal to approve the arrangement is really very long. In the case of the entrepreneur threatened with insolvency the long list could be justified because the competences of the bankruptcy court are rather weak. But in the case of the slightly insolvent debtor the bankruptcy court is not determined by time and has all means to examine the case very diligently. The bankruptcy court's refusal to approve the reorganization arrangement shall have the same effect as the revocation of the reorganization arrangement. In some cases if the reorganization arrangement is not approved (situations described in points 1-3 and 7), the interests on the entrepreneurs obligation, due for the duration of the proceedings, shall be payable in double the amount (art. 515 sec. 3 b.r.l.).

9. Legal Effects of the Reorganization Arrangement

The reorganization arrangement shall bind all creditors which have been notified about the creditors' meeting at which the arrangement was adopted and those which announced the court supervisor their participation at the creditors' meeting, provided that the entrepreneur did not deny the existence of their claims (art. 516 sec. 1 b.r.l.). The reorganization arrangements shall include claims recorded on the list of claims, provided they have been confirmed by the creditors (art. 517 sec. 1 b.r.l.). The reorganization arrangement shall also include challenged claims provided that the dispute concerning their existence or their amount has been settled after the approval of the arrangement. In that case, the arrangement shall include claims recorded on the list of claims up to the amount declared by the entrepreneur conducting reorganization proceedings. In the case of claims not recorded on the list of claims, but files by the creditors – up to the amount not challenged by the entrepreneur (art. 517 sec. 2 b.r.l.).

What are the legal effects of the reorganization arrangement? (Zedler, 2011, p. 996) (Dukiel & Palys, 2004, p. 269) (Adamus, 2009, p. 658). The reorganization arrangement shall not infringe upon the rights of the creditor with respect to the

entrepreneur's guarantor and co-debtor, nor the rights resulting from a mortgage, pledge, registered pledge, maritime mortgage or rights resulting from transfer of ownership of a thing, claim or other right to a creditor in order to secure a claim, if such rights were established on the assets of a third party (art. 291, art. 518 b.r.l.). The reorganization arrangement shall not infringe upon the rights resulting from a mortgage, pledge, registered pledge, tax lien and maritime mortgage if they have been established on the entrepreneur's assets, unless the beneficiary has consented to inclusion of such secured claim in the arrangement.

If consent has been granted to include a secured claim in the arrangement the above mentioned rights shall remain in force, but of course they shall secure the claim up to the amount and under the terms of payment stipulated in the reorganization arrangement (art. 291, art. 518 b.r.l.). As mentioned before, the extract from the list of claims, together with the copy of the valid ruling approving the arrangement, shall constitute the enforcement title against the entrepreneur (art. 296, 516 sec. 2 b.r.l.). Finally it should be pointed out that upon approving the reorganization arrangement the bankruptcy court may appoint a court supervisor for the duration of the performance of the arrangement (art. 514 sec. 2 b.r.l.).

Discontinuance of Reorganization Proceedings

If the reorganization proceedings are conducted by a small or medium entrepreneur the proceedings shall be discontinued by virtue of law if the arrangement is not concluded within three months of the date the proceedings are opened. In other cases the proceedings shall be discontinued after four months have elapsed from the date the proceedings are opened (art. 519 b.r.l.) (Zedler, 2011, p. 996) (Dukiel & Palys, 2004, p. 299) (Adamus, 2009, p. 716).

10. Revocation of the Reorganization Arrangement

The bankruptcy court *s h a l l* revoke the reorganization arrangement if the entrepreneur does not perform the arrangement or when the circumstances referred to in article 515 section 1 subsections 1-8 and 10 b.r.l. were discovered in the course of the performance of the arrangement (art. 520 sec. 1 b.r.l.). But the bankruptcy court *m a y* revoke the arrangement when the entrepreneur does not perform the reorganization plan adopted in the course of the reorganization proceedings (art. 520 sec. 2 b.r.l.).

The bankruptcy court shall adjudicate on the revocation of the reorganization arrangement upon a motion submitted by any of the creditors or by person who are entitled to supervise the performance of the arrangement (art. 521 sec. 1 b.r.l.). If a petition failed to declare bankruptcy of an entrepreneur which has made the arrangement in reorganization proceedings, upon declaring bankruptcy the court shall decide on the revocation of the reorganization arrangement (art. 521 sec. 2). The revocation of the reorganization arrangement shall result in closing reorganization proceedings (art. 521 sec. 3 b.r.l.). If the reorganization arrangement is revoked the hitherto existing creditors shall pursue their claims in their primary amount and the interest shall be counted until the date the ruling revoking the arrangement becomes valid. The amounts paid under the reorganization arrangement shall be counted towards the pursued claims (art. 305 sec. 1, art. 521 sec. 3 b.r.l.) (Zedler, 2011, p. 1001) (Dukiel & Palys, 2004, p. 314) (Adamus, 2009, p. 752).

Under bankruptcy proceedings the bankrupt and each of the creditors may request that the arrangement be amended. It is possible only in case of an extraordinary change of the economic situation, if such change significantly affects the continuous increase or decrease of the income of the bankrupt's enterprise (art. 298 b.r.l.). Unfortunately there is no reference to the provisions concerning amendment to the arrangement in bankruptcy.

11. Conclusions

Reorganization proceedings are a modern institution of the commercial law in Poland. In practice, they are addressed to highly professional entrepreneurs. However there is a serious discussion on the requirement of profound changes in the Reorganization Law. The main argument for changes is the following: reorganization proceedings should be available not only for highly professional entrepreneurs but for average entrepreneurs as well. One should expect further changes in the Reorganization Law in Poland.

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