ANNEX 1 – OVERVIEW OF THE RELEVANT INSOLVENCY PROCEEDINGS, LAWS AND TERMINOLOGY

1.1 General issues related to judicial proceedings in Poland applicable to insolvent debtors

1.1.1 In Poland, issues relating to a debtor's bankruptcy are regulated by the Bankruptcy Law (former name: the Law on Bankruptcy and Reorganisation), which entered into force on 1 October 2003, and by the Restructuring Law, which entered into force on 1 January 2016. Since 1 January 2016, the bankruptcy proceedings and the restructuring proceedings have been separate proceedings. Before that date, under the Law on Bankruptcy and Reorganisation of 1 October 2003, only liquidation insolvency proceedings and insolvency proceedings with an option of an arrangement were available for debtors.

1.1.2 Insolvency proceedings are aimed at liquidation of the debtor's assets and repayment of its debts. Insolvency proceedings are regulated by the Bankruptcy Law and available only for insolvent debtors.

1.1.3 Restructuring proceedings are conducted in order to avoid declaration of bankruptcy of a debtor, by enabling it to be restructured by making an arrangement with creditors and, in the case of rehabilitation proceedings, also through conducting rehabilitation activities, while securing legitimate rights of creditors. Restructuring proceedings are regulated by the Restructuring Law and applicable to insolvent debtors and to debtors threatened by insolvency. There are four types of restructuring proceedings (discussed in more detail in section 1.5 below).

1.2 Jurisdiction of Polish courts in insolvency and restructuring matters

1.2.1 Subject to exceptions related to credit institutions, insurance companies and investment undertakings, as regards the jurisdiction of Polish courts in insolvency matters under the Bankruptcy Law, Polish courts have exclusive jurisdiction in cases where the debtor's centre of main interests is located in Poland. In addition, Polish courts have non-exclusive jurisdiction if a debtor conducts business activity in Poland or has their place of residence and/or registered office or property in Poland. In other situations, Polish courts do not have jurisdiction for insolvency matters with respect to a debtor. The above rules on jurisdiction are modified by EU Regulation 2015/848, in accordance with the principle of the primacy of EU laws. This is described in points 1.2.7 – 1.2.13.

1.2.2 The Bankruptcy Law provides rules on the legal effects in Poland of bankruptcy proceedings conducted abroad. In order for foreign proceedings to have legal effects in Poland, they must be recognised by a Polish court. Proceedings concerning the recognition of rulings to initiate foreign bankruptcy proceedings are initiated upon an application submitted by a foreign administrator or a debtor who retains administration over its assets. Immediately after a ruling to initiate foreign bankruptcy proceedings is recognised, the court secures the debtor's assets located in Poland by appointing an interim court supervisor.

1.2.3 As of the day of the recognition of a ruling to initiate foreign bankruptcy proceedings, the consequences resulting from the initiation of foreign bankruptcy proceedings for court, enforcement, administrative, administrative court or arbitration court proceedings conducted in Poland are governed by Polish law, taking into account whether the foreign bankruptcy proceedings involve liquidation or debt restructuring, the extent to which the debtor has been deprived of the right to administer their assets, and the extent to which claims have been covered by an arrangement. The assessment of the possibility of initiating proceedings after the recognition of a ruling to initiate foreign bankruptcy proceedings is also governed by Polish law.

1.2.4 The right to manage the bankruptcy estate in Poland is generally vested in a foreign administrator. Foreign decisions on declaration of bankruptcy do not normally prevent Polish courts from opening secondary insolvency proceedings and declaring bankruptcy – either the creditors or foreign administrator may request initiation of bankruptcy proceedings in Poland and participate in bankruptcy proceedings conducted by Polish courts. However, once foreign bankruptcy proceedings are recognised, bankruptcy declared in Poland will relate only to assets located in Poland and only to obligations that have arisen or are to be performed in Poland.

1.2.5 On the grounds of the Restructuring Law, Polish courts have exclusive jurisdiction in restructuring matters if the main centre of the debtor's interests is located in Poland. Polish courts also have non-exclusive jurisdiction if the debtor conducts its business activity in Poland or has a place of residence and/or registered office or property in Poland. In other situations, Polish courts do not have jurisdiction in relation to restructuring matters with respect to a debtor. The above rules on jurisdiction are modified by EU Regulation 2015/848, in accordance with the principle of the primacy of EU laws. This is described in points 1.2.7 – 1.2.13.

1.2.6 Poland is a member State of the European Union, and therefore Regulation (EU) **2015/848** of the European Parliament and of the Council of **20** May **2015** on insolvency proceedings **(EU lnsolvency Regulation)** applies directly in Poland. Annex A to the EU lnsolvency Regulation contains a list of types of insolvency proceedings to which the EU lnsolvency Regulation is applicable, including Polish insolvency proceedings and all four types of restructuring proceedings.

1.2.7 The EU lnsolvency Regulation applies only to debtors whose centre of main interests is located in an EU member State. Additionally, EU lnsolvency Regulation do not apply to proceedings concerning:

(a) insurance undertakings,

(b) credit institutions,

(c) investment firms,

(d) other firms, institutions and undertakings to the extent that they are covered by Directive 2001/24/EC, and

(e) collective investment undertakings.

1.2.8 The EU lnsolvency Regulation envisages two types of insolvency proceedings: (i) the main insolvency proceedings, which may affect all creditors and property of the debtor, and (ii) secondary insolvency proceedings, the effects of which are restricted only to the assets of the debtor situated within the Member State in which those proceedings have been opened. The EU lnsolvency Regulation also provides uniform rules to determine the governing law for issues arising in insolvency proceedings of this kind.

1.2.9 The main insolvency proceedings could be opened in the UE member State where the centre of main interests of the debtor is located, while the secondary insolvency proceedings could be opened only if the debtor has an establishment within that other Member State[1]. Except where the EU lnsolvency Regulation provides otherwise, the law of the UE member State where the proceedings are initiated is applicable to insolvency proceedings and effects of the proceedings. Thus, the laws of that state determine all matters of procedure and matters of substantive law.

1.2.10 Under the EU lnsolvency Regulation, a court decision initiating the main insolvency proceedings is automatically recognised in all other member States. Automatic recognition means that, except in a an EU member State where secondary insolvency proceedings are initiated, initiating the main insolvency proceedings has the same effect in all EU member States as it has in the member State where the main proceedings are initiated.

1.2.11 Once the main insolvency proceedings have been initiated, secondary insolvency proceedings may be initiated by:

(a) the administrator acting in the main insolvency proceedings, or

(b) any other person or authority empowered to request the opening of insolvency proceedings under the law of the Member State within which the opening of secondary insolvency proceedings is requested.

1.2.12 Furthermore, where the main insolvency proceedings require that the debtor be insolvent, the debtor's insolvency cannot be re-examined in the Member State in which secondary insolvency proceedings may be opened.

[1] This regulation supersedes Article 382 of the Bankruptcy Law and the Article 342 of the Restructuring Law.

1.3 General issues related to bankruptcy proceedings

1.3.1 The Bankruptcy Law envisages two tests allowing a debtor to be found insolvent and declared bankrupt. The tests relate both to cash-flow and balance-sheet insolvency.

Cash-flow insolvency

1.3.2 A debtor is insolvent if it has lost the ability to pay its due and payable pecuniary liabilities.

1.3.3 There is no strict limit on cash-flow insolvency.[2] A debtor should from time to time review whether current funds and foreseeable incoming cash flow will enable it to meet its pecuniary liabilities as they fall due. If this is not the case and the situation persists, this means that the debtor has lost the ability to meet its pecuniary liabilities.

1.3.4 According to the Bankruptcy Law, it is presumed that a debtor has lost the ability to meet its due and payable pecuniary liabilities if the delay in paying them exceeds three months.

1.3.5 This presumption was introduced for the benefit of creditors (who do not have sufficient knowledge or evidence of debtors' financial standing), and not for the benefit of the debtor. It enables a creditor to file for a debtor to be declared bankrupt without having to learn of the debtor's financial standing in detail. This presumption can also be applied in (civil, tax or criminal) cases against directors in which the date of insolvency has to be estimated.

1.3.6 The above presumption does not mean that a debtor continues to be solvent if the delay in payments lasts for less than three months. Even if the delay is less than three months but it is already obvious that the company will not be able to pay its pecuniary liabilities (for whatever reason), the company is insolvent.

Balance-sheet insolvency

1.3.7 Balance-sheet insolvency occurs when a company's pecuniary liabilities exceed the value of its assets and this situation persists for more than 24 months.[3] This method is usually used to assess the liability of the company's directors rather than as actual grounds for bankruptcy court decisions on declaration of the debtor's insolvency.

1.3.8 Future and contingent liabilities (e.g. guarantees, suretyships), and shareholder loans are excluded from a balance-sheet insolvency test.

1.3.9 Also, not all types of debtors can be subject to bankruptcy proceedings under the Bankruptcy Law. Only the following categories of debtors can be declared bankrupt:

[2] Contrary to the previous version of the Bankruptcy Law (prior to 1 January 2016) under which cash-flow insolvency could be declared if a debtor was in default with at least two due and payable pecuniary liabilities (e.g. two due invoices, regardless of the amounts).

[3] The 24-month period was introduced on 1 January 2016.

(a) entrepreneurs, i.e. individuals, legal entities or organizational units without legal personality, but with legal capacity, who conduct business activity or who conduct professional activity on their own behalf;

(b) limited liability companies and joint-stock companies who do not conduct business activity;

(c) partners in commercial partnerships who are liable for the obligations of the partnership without limitation with the entirety of their assets;

(d) partners in a professional partnership;

(e) individuals who do not conduct business activity and who have become insolvent.

1.3.10 Pursuant to article 6 of the Bankruptcy Law, the following entities cannot be declared bankrupt, even if they conduct business activity:

(a) the State Treasury of Poland (i.e. the Polish State);

(b) local government authorities;

(c) public health care entities;

(d) institutions and legal persons formed by virtue of general legislative acts unless stipulated otherwise and/or formed in performance of the duty imposed by such acts;

(e) individuals operating an agricultural farm who do not conduct any other business or professional activity;

(f) institutions of higher education; and

(g) investment funds.

1.3.11 **A debtor can be declared bankrupt by a commercial court with jurisdiction over the debtor's centre of main interests**. Bankruptcy proceedings can be commenced only at the initiative of an entity entitled to do so, generally the debtor or any of its personal creditors. The debtor is required to file a petition in bankruptcy with the relevant court within 30 days from the date on which the relevant basis for declaring the debtor bankrupt (described in sections 1.3.1- 1.3.9 above) arose. The same time limit applies to any person authorised to represent a legal entity or an organisational unit without legal personality but with legal capacity.

1.3.12 The Bankruptcy Law also provides for the legal bases on which the petition in bankruptcy shall be dismissed. Firstly, the court dismisses a bankruptcy petition filed by a creditor if the debtor proves that the claim is disputed in all respects and that the dispute arose before the bankruptcy petition was filed. Secondly, the court has an obligation to dismiss the bankruptcy petition if an insolvent debtor's assets are insufficient to cover the costs of the proceedings or are only sufficient to cover such costs. The court may (but is not obligated to) dismiss the bankruptcy petition if it finds that the debtor's assets are encumbered with a mortgage, pledge, registered pledge, treasury pledge or maritime mortgage to such an extent that the remainder of its assets is insufficient to cover the costs of proceedings.

1.3.13 The option of pre-pack insolvency is also available under Polish Bankruptcy Law. The court must be involved in this process. This is because sale of a debtor's assets to a purchaser in this process is possible only if the court approves the purchaser and the price in the decision declaring the debtor insolvent. The petition to approve pre-pack sale of the debtor's assets can be attached to the petition in insolvency filed by a debtor or a creditor. The proposed terms of sale must include at least the price and name of the purchaser. An applicant must also provide a valuation of the assets drafted by an expert listed in the list of court experts. If approved, the transaction is executed by an insolvency trustee appointed by the bankruptcy court. The effects of pre-pack sale are equal to the sale in the bankruptcy proceedings. This means that the buyer is not liable for the debtor's obligations. Any encumbrances over these assets cease to exist.

1.4 Selected legal effects of declaration of bankruptcy

1.4.1 A declaration of bankruptcy results in certain legal effects both in relation to the bankrupt debtor and its creditors, as well as to any proceedings pending that involve the bankrupt debtor. As a rule, such legal consequences take effect from the date of bankruptcy in accordance with the zero-hour rule, i.e. from the beginning of the day of issue of the court's decision (the **"Date of Bankruptcy"**).

Assets

1.4.2 Upon the declaration of bankruptcy, the debtor's property becomes the bankruptcy estate. From the Date of Bankruptcy, the debtor is deprived of its right to manage, use and dispose of those items of assets that have been included in the bankruptcy estate. The official trustee, appointed by the court, administers the bankruptcy estate. Assets not belonging to the debtor can be excluded from the bankruptcy estate based on a petition submitted by an applicant having legal title to those assets.

1.4.3 Assets included in the bankruptcy estate cannot be encumbered with any mortgage, pledge, registry pledge, fiscal pledge or maritime mortgage in order to secure pre-insolvency debts. A compulsory mortgage and fiscal pledge cannot be established over assets of the bankruptcy estate in order to secure post-insolvency debts. A mortgage can be established if a motion for its registration was filed at least six months before the date on which the bankruptcy petition was filed.

Other proceedings

1.4.4 From the Date of Bankruptcy, the debtor cannot be a party to judicial or administrative (including tax) proceedings involving the assets included in the bankruptcy estate.

As of that moment, such proceedings can only be instigated, or continued, by or against the trustee.

1.4.5 The enforcement proceedings initiated against the debtor prior to the Date of Bankruptcy are automatically suspended from the Date of Bankruptcy. These enforcement proceedings are discontinued as soon as the bankruptcy declaration becomes final and non-appealable. From the Date of Bankruptcy, no new enforcement proceedings may be commenced with respect to the bankruptcy estate. Moreover, from the Date of Bankruptcy, interim injunctions affecting the debtor's assets cannot be executed.

Obligations

1.4.6 On the Date of Bankruptcy, all non-monetary debts are converted into monetary debts, and all (monetary and non-monetary) debts of the debtor become due and payable. However, they can be repaid by the trustee (or the debtor) only on the basis of a distribution plan approved by the court.

1.4.7 A creditor can claim in the bankruptcy proceedings only interest accrued until the day preceding the Date of Bankruptcy, save for interest secured by limited rights *in rem.*

Set-off

1.4.8 Rules governing setting off mutual claims are mandatorily modified. Pre-insolvency claims of a creditor cannot be set-off against post-insolvency claims of a debtor. Set-off is inadmissible if a creditor acquired its claim after the Date of Bankruptcy, or during a period of a year preceding that date, and was aware of the basis for the debtor to be declared bankrupt. A creditor who is personally liable for debts of a bankrupt debtor, or who established a right *in rem* to secure such debts, may set off its claims if, at the moment the liability arises, the creditor was not aware of the basis for declaring the debtor bankrupt, or if the liability arose a year or more before the Bankruptcy Date. A creditor who wishes to exercise its right of set-off must do this together at the moment it files its claims. The above rules do not apply to netting clauses, which are discussed separately in the main part of the opinion.

Avoidance actions

1.4.9 Some actions performed by the debtor within a specified timeframe before the date on which the bankruptcy filing is made may be ineffective towards the bankruptcy estate (towards the collective body of creditors). Ineffectiveness may affect, *inter alia*: (i) transactions executed by the debtor for up to one year before the date of the filing, if they result in disposal of the debtor's assets and if they were performed gratuitously or if the value of the debtor's performance grossly exceeds the value of the benefit received by the debtor; (ii) establishing a security or payment of an unmatured debt during the six months before the date of the filing; (iii) transactions with affiliates of the debtor performed during the six months before the date of the filing, unless the affiliate can demonstrate that the transaction did not have a detrimental on the creditors; (iv) assignment of future receivables of the debtor, to the extent to which they arise after the Date of Bankruptcy, unless the assignment was made six months, or more, before the date of the filing, in writing with a date certified by a notary public; (v) establishing security for a third party's debts over the debtor's assets, during the period of one year preceding the date of the filing, if the debtor has obtained no consideration for establishing the security, or if this consideration is grossly inadequate in relation to the value of the security; (vi) establishing security for a debtor's affiliates' debts over the debtor's assets during the period of one year preceding the date of the filing; (vii) contractual penalties stipulated in the event of improper performance of the debtor's obligations, if the debtor has performed a major part of its obligations, or if a penalty is grossly excessive.

<u>Ipso facto clauses</u>

1.4.10 Pursuant to article 83 of the Bankruptcy Law, any provisions in agreements that modify or terminate a legal relationship to which the debtor is a party in the event that a bankruptcy petition is filed, or bankruptcy is declared, are legally invalid. Additionally, pursuant to article 84 section 1 of the Bankruptcy Law, any provisions in agreements to which the debtor is a party that prevent or impede achievement of the objective of the bankruptcy proceedings are ineffective towards the bankruptcy estate. The condition that provisions in an agreement "cannot prevent or impede the attaining of the objective of the bankruptcy proceedings" is vague and needs to be assessed on a case-by-case basis.

1.5 General issues related to restructuring proceedings

1.5.1 As mentioned above, since 1 January 2016, debtors can benefit from protection introduced by the Restructuring Law.

1.5.2 There are four types of restructuring proceedings:

- proceedings for approval of an arrangement (*postępowanie o zatwierdzenie układu*);
- accelerated arrangement proceedings (*przyspieszone postępowanie układowe*);
- arrangement proceedings (*postępowanie układowe*); and
- rehabilitation proceedings (*postępowanie sanacyjne*).

1.5.3 All restructuring proceedings can be opened for debtors who are insolvent (in the meaning provided for in the Bankruptcy Law) or threatened by insolvency.

1.5.4 The chart below summarizes substantial information on all four types of Polish restructuring procedures.

Issue	Proceedings for approval of an arrangement	Accelerated arrangement proceedings	Arrangement proceedings	Rehabilitation proceedings
Essence of the proceedings	The debtor concludes the arrangement out of court and it is then approved by the court	The debtor concludes the arrangement involving the court, but this is a short and simplified procedure	The debtor concludes the arrangement involving the court	The administrator appointed by the court restructures a company (including withdrawal from contracts) for the purpose of preparation to conclude the arrangement
Duration *according to lawmakers*	3-4 months	2-4 months	6-10 months	up to 14 months
Threshold of the contentious debts	≤ 15%	≤ 15%	> 15%	irrelevant
Self-administration of the debtor	✔	✔	✔	✘
The court supervisor / administrator	Supervisor of the arrangement employed by the debtor, the supervisor does not limit the management powers of the debtor	The court supervisor appointed by the court approves transactions outside of the ordinary course of business	The court supervisor appointed by the court approves transactions outside of g the ordinary course of business	The administrator appointed by the court manages the debtor's company; The administrator may sell the debtor's property with the effect of an enforced sale
Appeal against the list of claims	✘	✘	✔	✔
Partial arrangement with only some of the creditors	✔	✔	✘	✘
Stay of enforcement	At the final stage (after the approval of the arrangement, before its validation)	Once the proceedings are opened; it is possible to temporarily suspend the enforcement on the collaterals	Once the proceedings are opened but possible even before opening of the proceedings; it is possible to temporarily suspend the enforcement on the collaterals	Once the proceedings are opened, but possible even before opening of the proceedings; affects **all enforcement proceedings** (including those not included in the arrangement)!

1.5.5 It is up to the debtor to choose the proceedings (creditors can only file for rehabilitation proceedings). The choice of the type of proceedings generally depends on: (i) the amount of creditors' contentious claims (15% threshold for arrangement approval proceedings and accelerated arrangement proceedings), (ii) whether the debtor wants to make an arrangement with all or only some of its creditors (partial arrangement is allowed in arrangement approval proceedings and accelerated arrangement proceedings), and (iii) whether the debtor has to restructure not only its debts, but also its business (employment, unfavourable contracts, etc.), which is done mainly in rehabilitation proceedings.

1.6 Selected legal effects of opening restructuring proceedings

General

1.6.1 Opening of restructuring proceedings results in certain legal effects both in relation to the bankrupt debtor and its creditors, as well as to any proceedings pending that involve the debtor. Such legal consequences, with regard to accelerated arrangement proceedings, arrangement proceedings and/or rehabilitation proceedings, take effect from the date of the opening of restructuring proceedings in accordance with the zero-hour rule, i.e. from the beginning of the day on which the court's decision is issued. Since in arrangement approval proceedings there is no decision on opening of the proceedings, the date which separates claims that are included in the arrangement from those which are not included is chosen by the debtor and communicated to the creditors and the restructuring court the "**Arrangement Date**").. Other legal effects of arrangement approval proceedings arise as of the date of approval of the arrangement.

1.6.2 The list of claims must include personal claims against the debtor that arise prior to the Arrangement Date/date of opening of the proceedings. A non-monetary obligation is entered in the list of claims at its value as of the day preceding the date of the opening of the restructuring proceedings. In practice however, non-monetary obligations are seldom subject to any restructuring. Debtors nearly always perform these obligations in kind, which can generate cash that can be used to repay monetary debts.

1.6.3 The interest on monetary claims is entered in the list of claims as the amount accrued up until and including the day prior to the day of the opening of the restructuring proceedings.

1.6.4 From the time of opening of restructuring proceedings onwards, other restructuring proceedings and insolvency proceedings may not be opened until the existing proceedings are finished or discontinued. An exemption to this rule is the possibility to open proceedings involving partial arrangement with only some of the creditors who are not affected by the existing proceedings. This usually relates to secured creditors.

1.6.5 Where a restructuring petition and a bankruptcy petition are filed, the restructuring petition is examined first.

Proceedings for approval of an arrangement

1.6.6 In proceedings for approval of an arrangement, the debtor concludes the arrangement out of court and then applies for the arrangement to be approved by the court. There are no official proceedings prior to approval of the arrangement. Once the court has issued a non-final decision approving the arrangement, the debtor is protected against enforcement until this decision becomes final. The process of conclusion of the arrangement is supervised by a holder of an insolvency practitioner licence, who is employed by the debtor, and not appointed by the court.

1.6.7 In the case of arrangement approval proceedings, only claims arising before the Arrangement Date are included in the arrangement. The powers of creditors to vote on the arrangement and the consequences of the arrangement adopted are determined as at the Arrangement Date.

1.6.8 In the case of arrangement approval proceedings, pursuant to article 225 of the Restructuring Law, any provisions in agreements that modify or terminate a legal relationship to which the debtor is a party in the event of filing application for the approval of the arrangement and/or the approval of the arrangement is filed are legally invalid.

<u>Accelerated arrangement proceedings</u>

1.6.9 Accelerated arrangement proceedings are started by way of a court decision, which also protects the debtor against enforcement, while the arrangement is concluded later. This rule and other rules applicable to accelerated arrangement proceedings discussed below are applicable *mutatis mutandis* to arrangement proceedings and rehabilitation proceedings.

1.6.10 As of the date of opening of accelerated arrangement proceedings, assets used to operate the undertaking and the property which belongs to the debtor become the arrangement estate.

1.6.11 Pursuant to article 248 of the Restructuring Law, any provisions in agreements to which the debtor is a party that prevent or impede attainment of the objective of accelerated arrangement proceedings are ineffective towards the arrangement estate. The condition that provisions in an agreement "cannot prevent or impede the attaining of the objective of the bankruptcy proceedings" is vague and needs to be assessed on a case-by-case basis.

1.6.12 <u>Standstill:</u> As of the date of opening of the accelerated arrangement proceedings until completion or discontinuation, fulfilment by the debtor or the administrator of the obligations arising from the claims which by virtue of law are subject to the arrangement, is inadmissible under article 252 of the Restructuring Law.

1.6.13 <u>Set-off:</u> From the opening of accelerated arrangement proceedings until completion or discontinuation, a set-off between the debtor and the creditor is not permitted if the creditor:

(a) has become indebted to the debtor after the opening of the accelerated arrangement proceedings;

(b) when being indebted to the debtor, has become, after the opening of the accelerated arrangement proceedings, a creditor by acquisition by bank transfer and/or endorsement of a claim that arises prior to the opening of the accelerated arrangement proceedings.

1.6.14 Moreover, pursuant to article 256 of the Restructuring Law, from the opening of the accelerated arrangement proceedings until completion or discontinuation, the termination by the landlord and/or lessor of a tenancy and/or lease agreement of a unit and/or real property in which the debtor's undertaking is operated, without the consent of the creditors' committee, is inadmissible. This provision applies accordingly to loan agreements on funds put at the disposal of the borrower prior to the opening of the proceedings, leasing agreements, property insurance agreements, bank account agreements, guarantee agreements and contracts covering licenses granted to the debtor, as well as guarantees and/or letters of credit issued prior to the opening of the accelerated arrangement proceedings.

1.6.15 <u>Litigation:</u> In accordance with article 257 of the Restructuring Law, the opening of accelerated arrangement proceedings does not preclude the initiation by the creditor of court proceedings, administrative proceedings, court-and-administrative proceedings, and proceedings before arbitration courts for pursuing claims subject to entry in the list of claims. This does not mean, however, that enforcement of claims adjudicated in such proceedings will be possible.

1.6.16 <u>Stay of enforcement:</u> The enforcement proceedings initiated against the debtor prior to the opening of the restructuring proceedings are automatically suspended from the date on which the proceedings are opened. The enforcement proceedings are discontinued as soon as the decision on approval of the arrangement becomes final and non-appealable. From the date of opening of restructuring proceedings, no new enforcement proceedings may be commenced with respect to the arrangement estate. Additionally, The judge-commissioner, upon the request of the debtor and/or the court supervisor, may revoke seizure performed prior to the opening of the accelerated arrangement proceedings in the enforcement proceedings, and/or in execution of an injunctive relief, which involve claims subject to the arrangement by virtue of law, if it is necessary to operate the undertaking.

<u>Arrangement proceedings</u>

1.6.17 The legal consequences regarding the accelerated arrangement proceedings, laid down in points 1.6.8 – 1.6.15, are applicable to the arrangement proceedings. The main practical difference between those two types of proceedings is that in arrangement proceedings creditors having a contentious claim can bring an appeal against the list of creditors, while they cannot do this in arrangement approval proceedings.

Rehabilitation proceedings

1.6.18 As a rule, in connection with opening of rehabilitation proceedings, a debtor loses its management powers, which pass to a court-appointed administrator.

1.6.19 In addition, the opening of rehabilitation proceedings invalidates commercial proxy and other powers of attorney granted by the debtor.

1.6.20 Avoidance actions: Some actions performed by the debtor during a specified timeframe before the date of application for the opening of rehabilitation proceedings may be ineffective towards the rehabilitation estate. Ineffectiveness may affect, inter alia: (i) transactions executed by the debtor during a period of one year before the date of filing, if they result in disposal of the debtor's assets, if they were performed gratuitously or if the value of the debtor's performance substantially exceeds the value of the benefit received by the debtor; (ii) security established by the debtor during a period of one year before the date of filing of the application for the opening of rehabilitation proceedings which has not been established directly in connection with the receipt of the performance by the debtor shall be ineffective in relation to the rehabilitation estate; (iii) a part of security which on the day of the establishment of the security exceeds more than half the value of the secured performance received by the debtor together with claims for incidental performance determined in the document forming the grounds to provide security, established during a period of one year prior to the date of the filing of the application for the opening of rehabilitation proceedings; (iv) *mutatis mutandis* to the above - sureties, guarantees and other similar acts performed in order to secure consideration.

1.6.21 Litigation: The opening of rehabilitation proceedings does not preclude the initiation by the creditor of court proceedings, administrative proceedings, court-and-administrative proceedings and proceedings before arbitration courts to pursue claims listed in the table of claims. Such proceedings can however be conducted only against the administrator and not against the debtor. In addition, this does not mean that enforcement of claims adjudicated in such proceedings will be possible.

1.6.22 Stay of enforcement: The enforcement proceedings initiated against the debtor prior to the opening of the rehabilitation proceedings are automatically suspended from the date on which the proceedings are opened.. From that date, no new enforcement proceedings may be commenced with respect to the rehabilitation estate. The enforcement ban affects claims that are included in the proceedings and those which are not (including secured claims). Moreover, a judge-commissioner, upon the request of the debtor and/or the administrator, may revoke seizure performed before the opening of rehabilitation proceedings in enforcement proceedings and/or proceedings to secure claims concerning the debtor's estate that is included in the rehabilitation estate, if this is necessary for operating the undertaking.

1.7 Brief discussion of Polish insolvency laws applicable to mutual agreements

Bankruptcy

1.7.1 For the purposes of bankruptcy proceedings, transactions on the sale of electricity are usually classified as mutual agreements *(umowy wzajemne).* This classification applies to swaps, "spot" contracts and "forward" contracts. It is not clear whether an option can be categorised as a mutual agreement under the Bankruptcy Law, however, there are strong arguments to suggest it is.

1.7.2 Pursuant to article 98 section 1 of the Bankruptcy Law, if, on the Date of Bankruptcy, the obligations under a mutual agreement have not yet been fully or have been partially performed **(Unperformed Contracts),** the trustee, upon the judge-commissioner's consent, can perform the obligations and demand that the other party perform its obligations under these Unperformed Contracts, or the trustee can withdraw from the agreement. Additionally, the trustee cannot perform and demand performance of obligations under contracts, which expire by law on the day of declaration of bankruptcy, or can be terminated or rescinded under special provisions of the Bankruptcy Law. As regards agreements that are not mutual, the trustee will be entitled to withdraw from the agreement unless the law provides otherwise. If an agreement does not fall under the rule arising from article 98 of the Bankruptcy Law, non-monetary obligations of the debtor under the agreement are transformed into monetary obligations as of the day of declaration of bankruptcy, in line with article 91 of the Bankruptcy Law.

1.7.3 Pursuant to article 98 section 2 of the Bankruptcy Law, the solvent party to an Unperformed Contract has only the right to request, by sending a notice with a date certified by a notary public, that the trustee either performs or withdraws from the Unperformed Contract within three months from receiving the solvent party's request. If, in that 3-month period, the trustee does not communicate his decision to the solvent party, the Unperformed Contract the trustee is deemed to have withdrawn from the Unperformed Contract.

1.7.4 In accordance with article 98 section 3, if the solvent party's performance has priority, the solvent party has a right to withhold its performance until the debtor's obligation is performed or secured. However, the solvent party has no such right if it was aware or should have been aware of the existence of grounds for declaration of bankruptcy at the time of conclusion of the agreement.

1.7.5 Further, pursuant to article 99 of the Bankruptcy Law, if the trustee withdraws from the agreement, the solvent party can only file its claims as if they were pre-bankruptcy claims. The solvent party's claims are limited to remuneration for performance of its obligations and losses incurred.

1.7.6 Following the Date of Bankruptcy, a solvent party to an Unperformed Contract is allowed to withdraw *(odstąpienie)* from that contract in accordance with provisions of the Civil Code on mutual agreements (articles 487 - 497 of the Civil Code) or in accordance with the contract. This right of withdrawal may be executed based on: (i) the debtor's failure to perform the Unperformed Contract, (ii) the trustee's, failure to perform the debtor's obligations under the Unperformed Contract, if the trustee declared execution of the contract, or (iii) occurrence of an event enabling the solvent party to terminate the Unperformed Contract. The legal effect of the withdrawal made pursuant to relevant provisions of the Civil Code is that the parties must return to each other everything they have received at that point under the mutual agreement.

1.7.7 Referring to the wording of article 84 section 1 of the Bankruptcy Law, we cannot exclude the possibility that certain rights to terminate or modify the legal relationship with the bankrupt debtor ascribed to a solvent party under an agreement will be unenforceable after the Date of Bankruptcy.

Restructuring Proceedings

1.7.8 Apart from provisions related to mutual agreements laid down in the Bankruptcy Law, the Restructuring Law contains corresponding provisions this respect only with regard to rehabilitation proceedings. There are no similar provisions in the regulation of other restructuring proceedings.

1.7.9 Under Article 298 section 1 of the Restructuring Law, the administrator may withdraw from a mutual agreement which has not been fully or has been partially performed prior to instigation of rehabilitation proceeding, provided that this is approved by the judge-commissioner and if the consideration of the other party is indivisible. In the case of a divisible performance, the administrator could do so to the extent to which the other party's performance is to be realised after the opening of rehabilitation proceedings.

1.7.10 Importantly, the Restructuring Law contains a few substantial differences to the Bankruptcy Law, which are described below in points 1.6.11 – 1.6.14.

1.7.11 The first is that Article 298 of the Restructuring Law does not apply to non-mutual agreements. The second is that only the administrator's decision on withdrawal from the Unperformed Contact requires the consent of the judge-commissioner (under the Bankruptcy Law, the trustee needs consent in the event of either withdrawal or performance of the Unperformed Contracts).

1.7.12 Furthermore, pursuant to Article 298 section 5, the solvent party to an Unperformed Contract has only the right to request, by sending a notice with a date certified by a notary public, that the administrator, within two weeks of receipt of the request, submit to the judge-commissioner a request for consent to withdraw from the agreement. The administrator has an obligation to notify the solvent party about this request, or inform the solvent party that it does not intend to submit such a request. If the administrator does not provide any information, or does not serve notification of the intention to submit the request, the right to submit the request for the consent of the judge-commissioner to withdraw the agreement will be forfeited[4].

1.7.13 If the administrator has informed the other party of the request submitted to the judge-commissioner, the other party may withhold performance of its obligation until validation of the decision of the judge-commissioner on dismissal of the administrator's request or until the administrator submits the statement of withdrawal from the agreement.

1.7.14 Article 298 section 7 of the Restructuring Law provides that if the administrator has withdrawn from the Unperformed Contract, the solvent party may request a return of the performance made after the opening of rehabilitation proceedings and before the solvent party became familiar with the statement of withdrawal from the Unperformed Contract, if the performance is part of the debtor's property. When this is not possible, the solvent party may pursue only claims arising out of fulfilment of its obligations and the loss incurred. The solvent party's claims are excluded from the arrangement.

[4] In this regard it differs from bankruptcy proceedings, where the Unperformed Contract is deemed to be withdrawn if the trustee does not take any action.