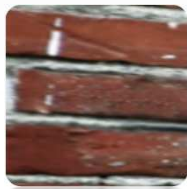


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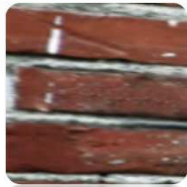


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RESTRUCTURING LAW BANKRUPTCY PROCEEDINGS

advocate Bartosz Groele

Lisbon, 25-26 October 2018

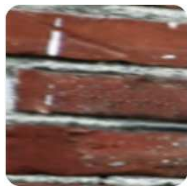


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OVERVIEW OF CHANGES IN POLAND

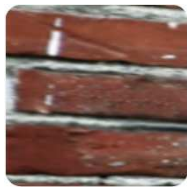
Major changes prior to 2012:

- ✓ Regulation issued by the President of the Republic of Poland of 24 October 1934
Bankruptcy Law
- ✓ Regulation issued by the President of the Republic of Poland of 24 October 1934
Arrangement Proceedings Law
- ✓ **Bankruptcy and Reorganisation Law** of 28 February 2003
- ✓ Amendment of 5 December 2008 of the Act – Bankruptcy and Reorganisation Law and the Act on court costs in civil matters – **consumer bankruptcy**
- ✓ The Act of 6 March 2009 on the amendment of the Act - Bankruptcy and Reorganisation Law, the Act on Bank Guarantee Fund and the Act on the National Court Registry – **remedia proceedings and other amendments**



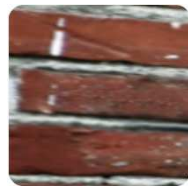
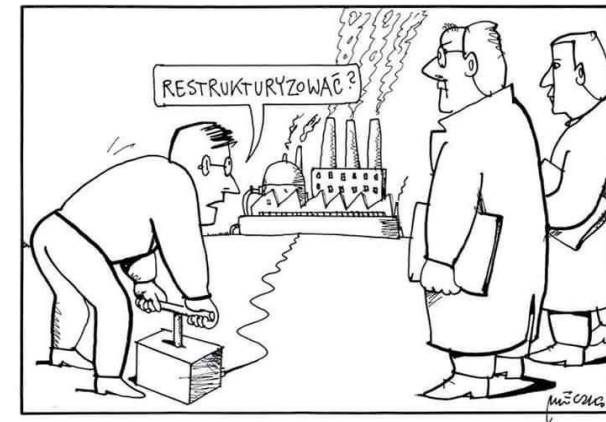
REASONS FOR CRITICISM OF BANKRUPTCY AND REORGANISATION LAW

- ✓ Despite several amendments, the Act of 2003 hardly improved the mechanism of restructuring an insolvent entity (bankruptcy by arrangement and remedial proceedings)
- ✓ Definition of insolvency – hardly compatible with economic aspects of operating a business – delayed petitions for the declaration of bankruptcy
- ✓ Liquidation proceedings: time-consuming, costly and hardly satisfactory for the creditors
- ✓ Excessive and extremely rigorous conditions for consumer bankruptcy



REASONS FOR INEFFECTIVE RESTRUCTURING

- ✓ Insolvency, or even insolvency by arrangement, is regarded by businesses as leading to the termination of business activity
- ✓ Time consuming court proceedings
- ✓ Lack of predictable outcomes when the case is decided before the court
- ✓ Creditors' passive attitude



**THE ACT
OF 15 MAY 2015
RESTRUCTURING LAW
(CAME INTO FORCE ON 1 JANUARY 2016)**



THE AIM OF RESTRUCTURING PROCEEDINGS

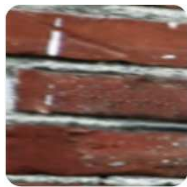
Art. 3. The purpose of the restructuring proceedings shall be to avoid declaration of bankruptcy of a debtor through enabling him to undergo restructuring by making an arrangement with creditors and, in the case of remedial proceedings, also through conducting remedial actions, while securing legitimate rights of creditors.



TYPES OF PROCEEDINGS

Art. 2. Restructuring shall be effected in the following restructuring proceedings:

- 1) proceedings for the approval of an arrangement;
- 2) accelerated arrangement proceedings;
- 3) arrangement proceedings;
- 4) remedial proceedings.



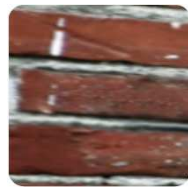
TYPES OF PROCEEDINGS

ACCELERATED ARRANGEMENT PROCEEDINGS

enable the debtor to make an arrangement after the preparation and approval of the list of receivable debts in a simplified procedure

ARRANGEMENT PROCEEDINGS

enable the debtor to make an arrangement after the preparation and approval of the inventory of receivable debts;



TYPES OF PROCEEDINGS

PROCEEDINGS FOR THE APPROVAL OF THE ARRANGEMENT

The debtor selects at its own discretion an arrangement supervisor holding a license of restructuring advisor

The debtor collects on its own the creditors' votes for the arrangement. Only the creditors involved will know about the undertaken steps.

The debtor will submit a petition to the court with the creditors' votes cast in writing only when the required majority is obtained.

The court will have two weeks to verify if all the creditors have been contacted by the debtor, if the procedure has been complied with and it will approve the arrangement.

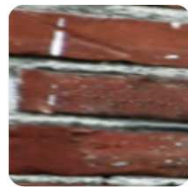


TYPES OF PROCEEDINGS

REMEDIAL PROCEEDINGS

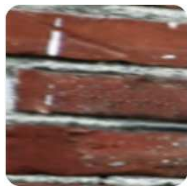
Remedial proceedings enable the debtor to effect remedial actions and to make an arrangement after the preparation and approval of the inventory of receivable debts.

Remedial actions are acts in law and factual acts which lead to improvement of the economic situation of the debtor and are aimed at restoring the debtor's capability to discharge obligations, while ensuring protection against execution.



THE CENTRAL REGISTER OF RESTRUCTURING AND BANKRUPTCY – INFORMATION REVOLUTION

- ✓ The provisions on the Central Register of Restructuring and Bankruptcy (the Register) were expected to come into force on 1 February 2018
- ✓ The Register is to contain all the proceedings subject to this law. The data contained in it will be available to the participants of the proceedings.
- ✓ The Register's functions:
 - 1) to publish data,
 - 2) to inform – templates, standard forms, information about competent courts, etc.,
 - 3) to communicate – procedural activities of the participants,
 - 4) to facilitate procedural matters for the court – drafts of court decisions, etc.



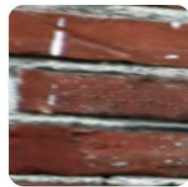
CREDITORS' COMMITTEE: IN RESTRUCTURING PROCEEDINGS

- ✓ Increasing creditors' influence to appoint a selected member of the Creditors' Committee,
- ✓ Increasing the scope of powers of the Creditors' Committee (for example, they can effectively change the out-of-court bodies)
- ✓ Streamlining the work of the Creditors' Committee – more liberal provisions under the regulations

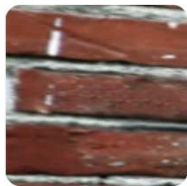
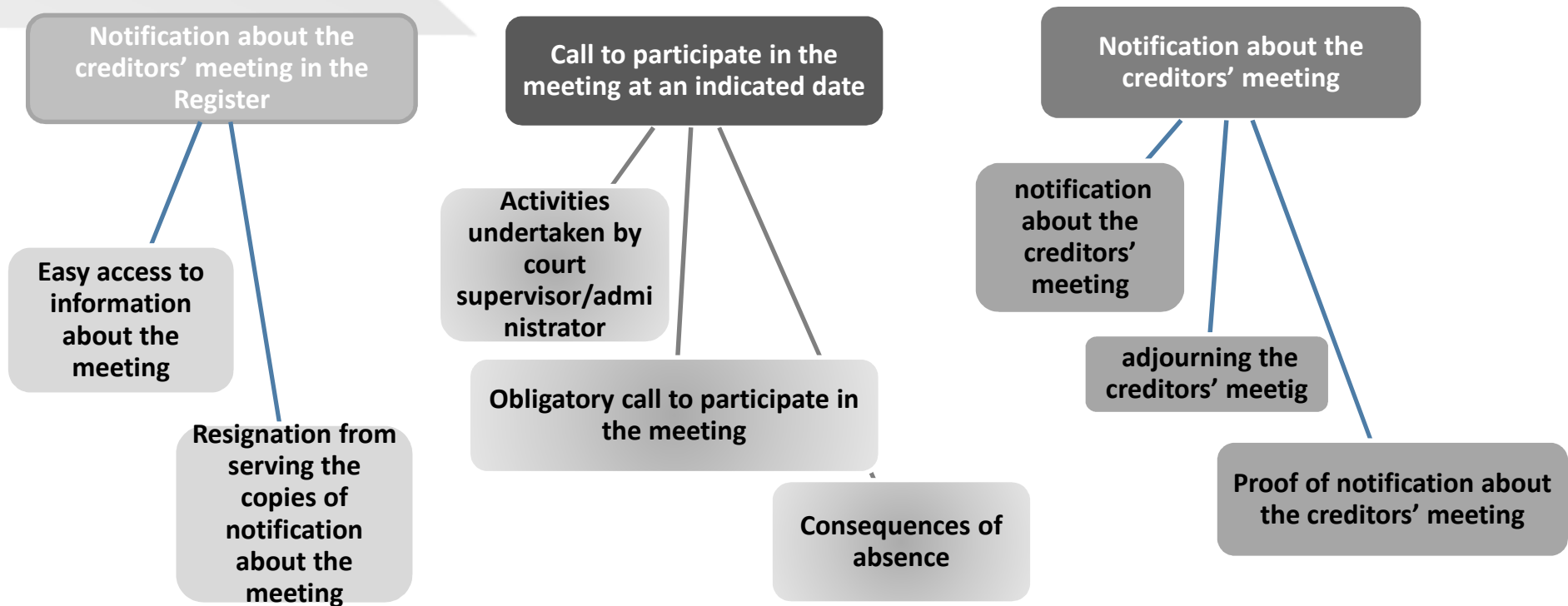


THE PURPOSE OF NEW REGULATIONS CONCERNING CREDITORS' MEETING

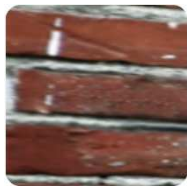
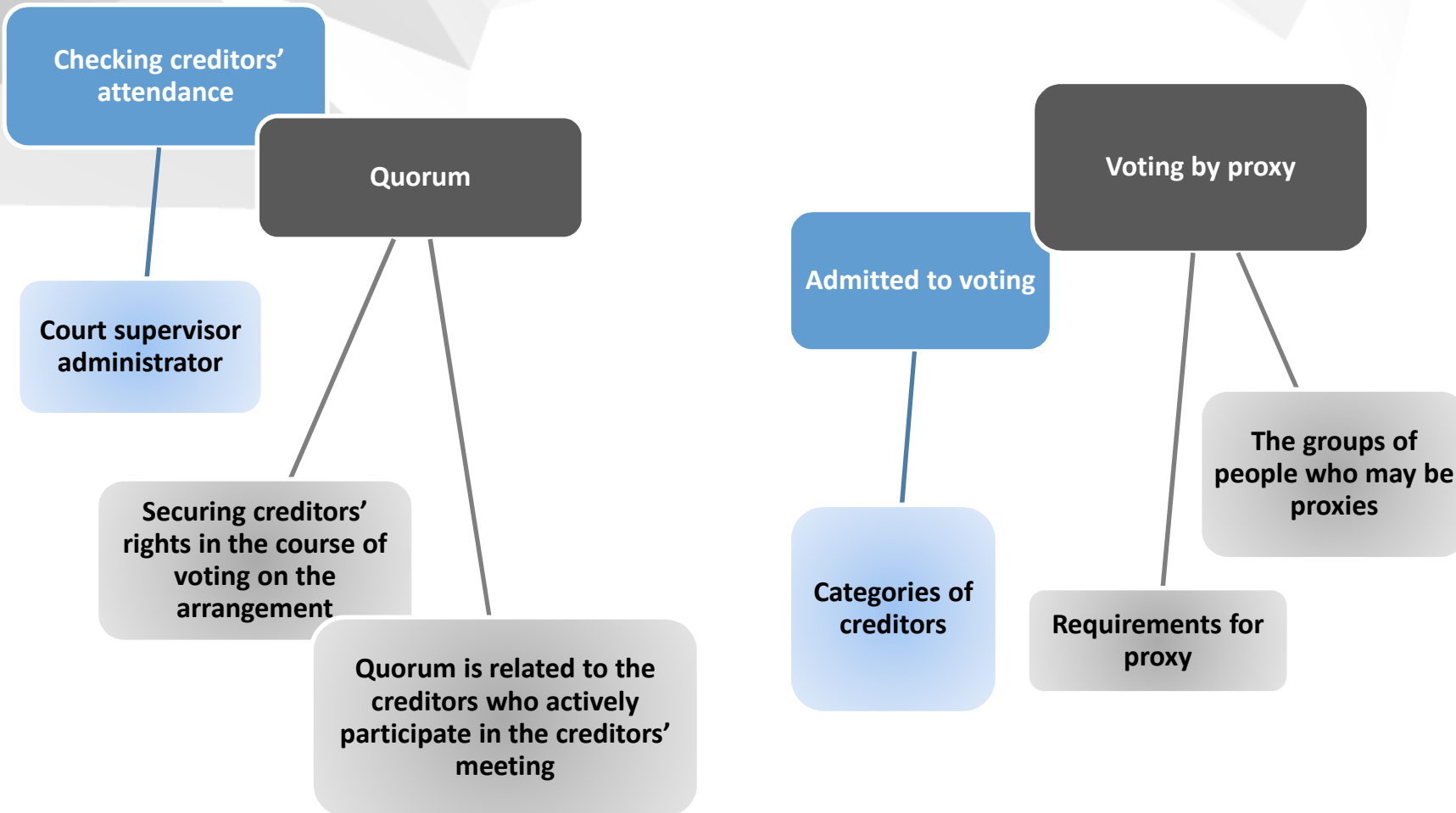
- ✓ Better organisation of the holding of the creditors' meeting
- ✓ Easier voting procedures at the creditors' meeting
- ✓ Creditors become more actively involved
- ✓ Passive creditors have less influence on the adopted resolutions at the creditors' meetings



STREAMLINING THE HOLDING OF THE CREDITORS' MEETINGS

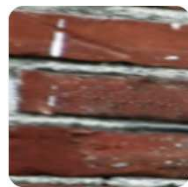


Improving The Course Of The Creditors' Meeting



NEW SOLUTIONS REGARDING FACILITATING THE VOTING AND PARTICIPATION IN THE CREDITORS' MEETING USING NEW TECHNOLOGIES

- ✓ Voting by way of electronic means of communication as an additional way of participating in the creditors' meeting
- ✓ Real time transmission of creditors' meeting
- ✓ Other manner of holding creditors' meetings and voting (a significant number of creditors, economic factors, easier for creditors to exercise their rights)



USING ELECTRONIC MEANS OF COMMUNICATION TO VOTE AS AN ADDITIONAL MANNER OF PARTICIPATING IN THE MEETING

Means of electronic communication – technical solutions, including teleinformation devices and software compatible with it, which make it possible to communicate with each other over distance by using transmission of data between such teleinformation systems

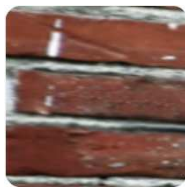
EMAIL

INTERNET
WEBSITES

EXTRANET

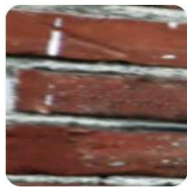
E-VOTING

THE
REGISTER



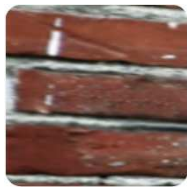
REAL TIME TRANSMISSION AT THE CREDITORS' MEETING

- ✓ Transmission by way of internet, satellite, video-conference
- ✓ Possibility to communicate during the creditors' meeting
- ✓ Two-way communication



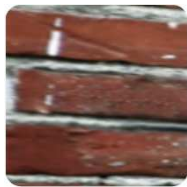
VOTING ON THE ARRANGEMENT - RIGHTS

- ✓ **Quorum:** - at least 1/5 creditors entitled to vote on the arrangement
Aim – to eliminate the risk that the arrangement will be adopted with the votes of single creditors
- ✓ **Elimination of the passive creditors from voting**



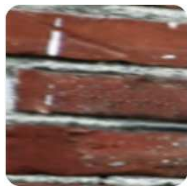
PARTIAL ARRANGEMENT

- ✓ New institution
- ✓ **Aim – to make possible effective restructuring where it is not necessary to agree with all the creditors (big enterprises)**
e.g. agreement with financial creditors+ satisfaction of the rest 100%
- ✓ Legal grounds – Article 180 section 1
- ✓ The debtor may submit arrangement proposals concerning only some of the obligations **whose restructuring will have a significant impact on the continued functioning of the debtor's enterprise.**
- ✓ **Admissible only in the proceedings to approve an arrangement or accelerated arrangement proceedings (Article 182 section 1) – in the remaining proceedings (arrangement and remedial) debtor's protection is increased which could be to the creditors' detriment**



ASPECTS REQUIRING CORRECTION

- ✓ Decision regarding fulfillment of reporting duties – Judge Commissioner? Creditors? Other entity?
- ✓ *Coherence between provisions of different branches of the law – especially accounting and reporting duties for business entities*
- ✓ *Simplified restructuring path and bankruptcy path for smaller entities (SME)*
- ✓ *Provisions concerning insolvency proceedings for capital groups*
- ✓ *Streamlining pre-pack procedure and developing out-of-court procedures*



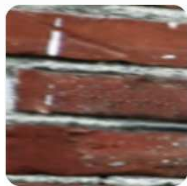
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THANK YOU FOR YOU ATTENTION.

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