



POLISH MARITIME LAW ASSOCIATION

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Szczecin (Poland), 17th March, 2016

Mr Stuart Hetherington
President
Comite Maritime International

by e-mail (swb@cbp.com.au) only

Dear Mr Hetherington,

re.: Cross-Border Insolvency.

We refer, with thanks, to Mr Hetherington's e-mails of 22nd January, 2013, attaching a questionnaire, and 06th February, 2014.

Please find below responses of the Polish MLA to the questionnaire.

INTRODUCTION

This questionnaire is based on legislation in force as from the 1st January 2016 which is date of the entry into force of the "Restructuring Law" – an act amending the main Polish act governing insolvency proceedings – the "Bankruptcy and Rehabilitation Law" and introducing substantial changes in the area of insolvency law. The newly introduced legislation will be referred to as, either the "Bankruptcy Law" or the "Restructuring Law".

SECTION I CROSS-BORDER MARITIME INSOLVENCY ISSUES

Part 1 General Insolvency Principles Applicable to Foreign Creditors

1. **Has your country adopted any specific rules on cross-border insolvency (such as the UNCITRAL Model Law or any specific domestic, bilateral or multilateral instrument)? If so, please provide a general description based on the topics discussed in this questionnaire.**

International bankruptcy proceedings mean the proceedings where the bankrupt's property is in at least two countries. This kind of international bankruptcy proceedings is frequently referred to as trans-border (transnational) bankruptcy to such proceedings the regulations of the Bankruptcy Law are applied, unless the international contract or law of an international organization that Republic of Poland is a member of provide otherwise. Currently, the Republic of Poland is not bound by any international agreement directly concerning international proceedings. The Republic of Poland, however, is a signatory of many conventions concerning civil proceedings, especially those related to recognition and execution of foreign court judgments, as well as legal assistance or services. Due to the nature of bankruptcy proceedings these conventions become useful in the international bankruptcy proceedings, but it has to be remembered that they are applied only auxiliary.



In the European Union law transnational bankruptcy is regulated by the Regulation of European Union Council of the 29 May no. 1346/2000 on insolvency proceedings [Regulation (EC) 1346/2000]. These regulations are applied to these bankruptcy proceedings where bankruptcy was announced in one of member states except Denmark. In matters not comprised by the aforesaid Regulation domestic bankruptcy law are applied. The matter of transnational bankruptcy is also comprised by the following directives: Directive 98/26/EC of the European Parliament and of the Council of 19 May 1998 on settlement finality in payment and securities settlement systems, European Parliament and Council Directive 2001/24/EC on the reorganization and winding-up of credit institutions, Directive 2001/17/EC on reorganization and winding up of insurance undertakings.

In the Polish bankruptcy law, like in other legal systems the Principle of Territoriality is in force. It involves the following: announcing bankruptcy has legal effects only on the territory of the country whose appropriate authority will announce that bankruptcy. In practice announcing bankruptcy in another country did not bring any legal effects in Poland. Applying that principle does not correspond to the contemporary needs of economic turnover and that is why the solutions contained in the second section of the Bankruptcy Law are based on the United Nation Commission on International Trade Law (UNCITRAL) solutions. Declaring bankruptcy in other countries, however, will not, by virtue of law, have legal effects in Poland, these effects will arise only after a Polish court recognizes given bankruptcy proceedings. The solutions also lead to the fact that declaration of bankruptcy in Poland will have legal effects abroad.

2. **Do your laws recognize the standing of a foreign creditor or other person (such as a foreign flag authority of a locally domiciled shipowner or a foreign administrator of insolvency proceedings) to start or oppose an insolvency proceeding in respect of a local ship operator or in respect of assets located locally? If so, describe in detail those rights or restrictions upon such rights of such foreign entities which differ from those of local creditors, insolvency administrators or public authorities.**

Yes. The Polish law recognizes the rights of foreign creditors. As a rule, the rights of foreign entities are equal to those of local entities.

Legitimacy for submitting a motion for declaring bankruptcy is based on the principle expressed in Art. 3 of Bankruptcy Law, which provides that "Proceedings regulated by law can be initiated only at the motion submitted by subjects defined in the law". The main principle is that the motion for declaring bankruptcy can be submitted by a debtor and any of their personal creditors in accordance with Art. 20 (1) of Bankruptcy Law.

Art. 20 (2) of Bankruptcy Law extends the circle of subjects that can submit the motion for:

- 1) with reference to a registered partnership, partnership, limited partnership and joint stock limited partnership – each of the partners responding without limitations for the company's liabilities;
- 2) with reference to legal entities and organizations without legal personality to whom a separate law grants legal status – anyone who, on the basis of any law, statute or



agreement, is entitled to managing the debtors' affairs and representing them on their own or with other persons;

- 3) with reference to a state-owned enterprise-also the founding authority;
- 4) with reference to a sole shareholder State Treasury company – also the minister competent for the matters of the Treasury of the State;
- 5) with reference to a legal entity, partnership or limited partnership and limited joint stock partnership being in the state of liquidation each of the liquidators;
- 6) with reference to a legal person entered into the National Court Register – trustee appointed on the basis of Art. 26 (1) of the law of the 20 August 1997 on the National Court Register;
- 7) with reference to the debtor who was given public aid of the value exceeding EUR 100 000 – the assisting authority;
- 8) with reference the debtor, in respect which is execution is carried out of a receivership or sale of undertaking, in accordance with Code of Civil Procedure – an administrator appointed in this proceedings.

The bankruptcy order may be appealed by entities mentioned above.

3. Do your laws have a procedure for supervising the activities in your country of a foreign insolvency administrator?

In case of EU-insolvency, under Art 18 (3) of Regulation (EC) No 1346/2000, in exercising his powers, the liquidator shall comply with the law of the Member State within the territory of which he intends to take action, in particular with regard to procedures for the realisation of assets. Those powers may not include coercive measures or the right to rule on legal proceedings or disputes.

In addition, the Bankruptcy Law in art. 384 states as follows : “Appointing a foreign administrator by a foreign court to undertake actions in the Republic of Poland does not exclude the domestic jurisdiction of Polish courts.

Therefore, foreign administrator has the same responsibilities as domiciled one.

In this case, supervising of insolvency administrator activities looks as follows:

- 1) under Art. 152 (1) of Bankruptcy Law, The judge in charge of bankruptcy proceedings manages the proceedings, monitors the actions taken by the receiver, court supervisor and administrator, specifies the actions that the receiver, court supervisor or administrator may not take without his approval or without the consent of the council of creditors, as well as points out any defaults made by them;
- 2) under Art. 205 of Bankruptcy Law:
 - (i) the council of creditors controls a receiver;
 - (ii) each individual member of the council of creditors as well as the council as a whole may communicate to the judge in charge of bankruptcy proceedings their observations concerning the work of a receiver;
 - (iii) the council of creditors may request a receiver to provide explanations, and it may review books and documents relevant to bankruptcy (in so far as this does not conflict with the business secrets).



4. **If an administrator is unwilling to pursue a claim by the insolvent ship operator, can foreign creditors apply to an insolvency tribunal for a transfer of the subject matter of the claim from the estate of the insolvent ship operator to a creditor or group of creditors?**

There is no specific procedure of this kind in the Polish legal system.

5. **Do your laws permit foreign creditors to apply to a court for supervisory orders if they consider the administrator is acting inefficiently or wrongly? If so, describe the procedure generally.**

Polish legal system does not provide such legal institution as applying to a court for supervisory orders with respect to the administrator.

As it was mentioned above, each individual member of the council of creditors as well as the council as a whole may communicate their observations concerning the work of a receiver only to the judge in charge of bankruptcy proceedings.

6. **Do your laws permit foreign creditors to commence legal proceedings against administrators if they consider the administrator has acted negligently or wrongly ?**

Art. 160 of the Bankruptcy Law provides, that receiver is liable for damage caused as a result of improper performance of their duties. However, he is not liable for debts incurred in cases involving the bankruptcy estate.

7. **If a foreign creditor or claimant against a ship operator foresees it will suffer a loss or commercial disadvantage because of the appointment of a private receiver or the way the private receiver is acting, does such a foreign claimant have any legal remedies against the receiver, such as applying to a court for supervisory orders or to put the ship operator into bankruptcy ?**

The Polish legal system does not provide for such legal institution as private receiver.

Part 2 Subject Matter or Territorial Jurisdiction

8. **Do your laws permit assertion of insolvency jurisdiction generally over any asset of an insolvent ship operator domiciled in your country, regardless of the location of the asset within or outside your country ? Please comment whether this scope of jurisdiction differs between a ship of your country's registry owned by persons domiciled in your country, or a ship of another flag owned by persons domiciled in your country.**

Territorial jurisdiction under the EU-insolvency was regulated in Art. 3 of Regulation (EC) No 1346/2000 as follows:

- 1) the courts of the Member State within the territory of which the center of a debtor's main interests is situated shall have jurisdiction to open insolvency proceedings. In the case of a company or legal person, the place of the registered office shall be



- presumed to be the center of its main interests in the absence of proof to the contrary;
- 2) where the center of a debtor's main interests is situated within the territory of a Member State, the courts of another Member State shall have jurisdiction to open insolvency proceedings against that debtor only if he possesses an establishment within the territory of that other Member State. The effects of those proceedings shall be restricted to the assets of the debtor situated in the territory of the latter Member State;
 - 3) where insolvency proceedings have been opened under paragraph 1, any proceedings opened subsequently under paragraph 2 shall be secondary proceedings. These latter proceedings must be winding-up proceedings;
 - 4) territorial insolvency proceedings referred to in paragraph 2 may be opened prior to the opening of main insolvency proceedings in accordance with paragraph 1 only:
 - (i) where insolvency proceedings under paragraph 1 cannot be opened because of the conditions laid down by the law of the Member State within the territory of which the center of the debtor's main interests is situated; or
 - (ii) where the opening of territorial insolvency proceedings is requested by a creditor who has his domicile, habitual residence or registered office in the Member State within the territory of which the establishment is situated, or whose claim arises from the operation of that establishment.

In case of non EU-insolvency, this subject matter is regulated as follows:

For recognizing bankruptcy declaration cases, court of bankruptcy is cognizant, when it is competent for the main center of debtor's principal activity. [Art. 19 (1) of Bankruptcy Law]

However, Art. 19 (3) of Bankruptcy Law states, that if the debtor has no main center of debtor's principal activity in the Republic of Poland, the competent court is that of the place of habitual residence or the debtor's registered office, and if the debtor has no place of habitual residence or registered office in the Republic of Poland, the competent court is the one in the area of which the debtor's property is situated".

Part 3 Notice to Foreign Creditors

9. **Do any legal or procedural requirements have to be followed to ensure the insolvent ship operator or the insolvency administrator identifies all known foreign creditors ?**

This subject matter is regulated in Art. 40 of Regulation (EC) 1346/2000:

As soon as insolvency proceedings are opened in Member State, the court of that State having jurisdiction or the liquidator appointed by it shall immediately inform known creditors who have their habitual residences, domiciles or registered offices in the other Member States.

That information, provided by an individual notice, shall in particular include time limits, the penalties laid down in regard to those time limits, the body or authority empowered to accept the lodgement of claims and the other measures laid down. Such notice shall also



indicate whether creditors whose claims are preferential or secured in rem need lodge their claims.

Art. 176 (1) of Bankruptcy Law states, that receiver communicated bankruptcy to those creditors whose addresses are recorded in the bankrupt's books as well as a competent enforcement officer. The term "Bankruptcy's books" shall be interpreted broadly; this means any documents concerning his business activities, assets and settlements, in particular, his accounting books, other records maintained for tax purposes and mail.

In addition, after expiration of the time limit to lodge claims and having verified the lodged claims, the receiver make a list of claims but not later than 2 months after expiration of the time limit to lodge claims. [Art. 244 of Bankruptcy Law]. Art. 255 of Bankruptcy Law states, that final list of claims is published in Centralny Rejestr Restrukturyzacji i Upadłości.

10. Do your laws require administrators of insolvency proceedings to give notice of the proceedings to foreign creditors? As a general practice, how is such notice given to foreign creditors ?

In connection with EU-insolvency, this issue is regulated in Art. 40 and 42 of Regulation (EC) 1346/2000.

As soon as insolvency proceedings are opened in a Member State, the court of that State having jurisdiction or the liquidator appointed by it shall immediately inform known creditors who have their habitual residences, domiciles or registered offices in the other Member States.

Above mentioned information, provided by an individual notice, shall in particular include time limits, the penalties laid down in regard to those time limits, the body or authority empowered to accept the lodgement of claims and the other measures laid down. Such notice shall also indicate whether creditors whose claims are preferential or secured in rem need lodge their claims.

The information shall be provided in the official language or one of the official languages of the State of the opening of proceedings. For that purpose a form shall be used bearing the heading "Invitation to lodge a claim. Time limits to be observed" in all the official languages of the institutions of the European Union.

Any creditor who has his habitual residence, domicile or registered office in a Member State other than the State of the opening of proceedings may lodge his claim in the official language or one of the official languages of that other State. In that event, however, the lodgement of his claim shall bear the heading "Lodgement of claim" in the official language or one of the official languages of the State of the opening of proceedings. In addition, he may be required to provide a translation into the official language or one of the official languages of the State of the opening of proceedings.

In case of non EU-bankruptcy, this subject matter is regulated as follows:



The receiver takes actions required to report a bankruptcy order in land and mortgage registers and other registers in which the bankrupt's assets are recorded. [Art. 175 of Bankruptcy Law] In addition, Art. 176 (1) of Bankruptcy Law provides, that the receiver notifies about bankruptcy those creditors whose addresses are recorded in the bankrupt's books as well as a competent enforcement officer. This notice shall in particular include time limits concerning lodgement of claims.

As a rule, above mentioned written notice is delivered by post.

11. **Do your laws require administrators of insolvency proceedings to give notice of time bars for filing of claims to foreign creditors? As a general practice, how is such notice given to foreign creditors ?**

See response to previous question.

12. **If the insolvent business is a shipowner, do your laws require notice of insolvency proceedings to be given to the ship registrar for domestically registered vessels ?**

As it was already mentioned, Art. 175 of the Bankruptcy Law states that receiver takes actions required to report a bankruptcy order in land and mortgage registers and other registers in which the bankrupt's assets are recorded [also ship registrar].

13. **Do your laws require notice of insolvency proceedings to be given to diplomatic or consular officials of the flag states of foreign registered vessels which are assets of a local insolvent ship operator ?**

No, the Bankruptcy Law does not impose such duty.

14. **If a foreign creditor later learns of the existence of insolvency proceedings, is the foreign creditor permitted to file late claims or have a right to claim against any of the assets of the insolvent ship operator which have not yet been distributed to creditors ?**

The creditor is also entitled to submit a claim if his claim is secured by mortgage, lien, pledge by registration, revenue lien, maritime mortgage or through another entry in a land and mortgage register or in a register of ships. If the creditor does not notify about these claims, they will be put on the list of ex officio claims.

In case of another claims, this subject matter is regulated by Art. 252 of the Bankruptcy Law as follows:

- 1) if a claim is lodged by a creditor after expiry of the time limit to lodge claims, irrespective of the actual reasons of the delay, any actions already taken in bankruptcy proceedings are effective with respect to that creditor, the lodging has no effect on bankruptcy estate distribution plans submitted by then and his claim is taken into account only in the bankruptcy estate distribution plans made after that claim has been confirmed;
- 2) if the decision to claim lodged after expiry of the time limit to lodge claims was not issued or not become until date of termination or discontinuance of the insolvency



proceedings, within this scope, proceedings are subject to termination. However, a claim lodged after approval of the final bankruptcy estate distribution plan is not reviewed.

Part 4 Recognition of Foreign Claims

15. **Please describe the conflict of laws rules for recognition of foreign maritime claims in insolvency proceedings. For example, if the claim is a maritime lien under the law of the place where the claim arose but not in the country where the insolvency proceeding is being conducted, will the insolvency administrator or tribunal recognize the foreign maritime lien?**

Subjects occurring in trade relationships in maritime or shipyard sector often have problems with recovery of amounts due to them from the debtors. The correct designation of competent court before which the above claims can be vindicated needs attention. If we want to pursue the satisfaction of a claim through a person obligated to it, e.g. the debtor's payment for the purchased goods, establishing the existing work relationship, etc., a suit should be referred to an appropriate court, competent to decide the case.

The conflict of laws rules for recognition of foreign claims in insolvency proceedings looks as follows:

In case of EU insolvency, Art. 4 of Regulation (EC) No 1346/2000 states that the law applicable to insolvency proceedings and their effects shall be that of the Member State within the territory of which such proceedings are opened. However, this Regulation contains specific provisions of reservation of title clause. They provide that the opening of insolvency proceedings against the purchaser of an asset shall not affect the seller's rights based on a reservation of title where, at the time of the opening of proceedings, the asset is situated within the territory of a Member State other than the State of opening of proceedings. In addition, the aforementioned Regulation provides under Art. 5 that the opening of insolvency proceedings shall not affect the rights in rem of creditors or third parties. Such rights cover the restitution of such assets.

The maritime lien is considered as right in rem, so it shall be recognized in insolvency proceedings before Polish court.

For non-EU insolvency, the rights of the creditor will be determined according to the rules of conflict of laws established by the Act of 4.02.2011 r. Private International Law. In accordance with Art. 41. thereof, ownership and other rights in rem shall be governed by the law of the country in which the object of such rights is located.

With respect of the contractual obligations - Private International Law refers in Art. 28 to Rome I-Regulation [Regulation (EC) No 593/2008], in case of non-contractual obligations - reference is made in Art. 33 to the Rome II Regulation [Regulation (EC) 864/2007].

16. **Apart from the characterization and priority of claims, are there any other procedural differences in the handling of claims between those by foreign creditors**



and those by local creditors? With reference to the types of claims listed in the table, please describe any differences in detail.

Provisions related to cross-border insolvency in the European Union are subject of Regulation (EC) No 1346/2000. This legal act does not create procedural differences in the handling of claims between foreign creditors and local creditors.

Within the context of insolvency proceedings not covered by European legislation, where the Polish law is applicable, legal position of foreign creditor is governed by Art. 380 of Bankruptcy Law.

As a principle creditors who have their domicile or registered office in a foreign State have the same rights in insolvency proceedings as domestic creditors.

Aforementioned provision provides for two derogations from such general rule:

- 1) if a creditor who has not his domicile, normal place of residence or registered office in Republic of Poland or in another European Union country does not have an attorney in the Republic of Poland, he shall appoint a representative for service in the Republic of Poland. If such creditor did not appoint a representative for service in the Republic of Poland, a writs addressed to that creditor shall be left in the case files and considered duly served;
- 2) foreign public institutional claims, in particular tax liabilities and social insurance claims, may be lodged in insolvency proceedings conducted in the Republic of Poland, only if enforcement of aforementioned claims is permitted in Polish Legal System. In that case, aforementioned claims shall be satisfied in the second category, except financial penalties governed by a civil-law relationship, awarded by foreign courts or administrative authorities, that shall be satisfied in the third category.

Besides, there are no significant procedural differences in the handling of claims between foreign and local creditors apart from those of formal nature such as the obligation to translate documents (the language of the proceedings is Polish).

17. **Does your law recognize rights of claims to property rights, sale or enforcement given by foreign law to particular types of creditors, such as, for example, to financial institutions or spouses for their entitlement to business property interests of the other spouse on separation or divorce?**

See response to question no. 15.

18. **Is the recognition of foreign arbitral awards for purposes of proof of claim in insolvency proceedings different from the recognition of foreign arbitral awards for general legal purposes? Please explain any differences.**

There are no differences between recognition of foreign arbitral awards for purposes of proof of claim in insolvency proceeding and the recognition of foreign arbitral awards for general legal purposes.



19. **If the insolvent ship operator is a state-owned enterprise, are there any differences in the rights or procedures available to a foreign creditor under your country's insolvency law?**

In the described case, there will be no differences in the rights or procedures available to a foreign creditor under the Polish law.

Part 5 Recognition of Foreign Insolvency Proceedings

20. **Do your laws permit the administrator of a foreign insolvency proceeding to publish notices of such proceedings in local news media or to communicate directly with local creditors concerning proofs of claim and payment of any recoveries in the insolvency proceedings? If there are any legal restrictions on direct handling of claims by foreign administrators, please provide details.**

In case of administrators of foreign insolvency proceedings before the courts of another EU Member State, reference should be made to the Regulation (EC) 1346/2000. Art. 21 thereof allow the liquidator to request that notice of judgments opening insolvency proceedings and the decision appointing him be published in any other Member State in accordance with the publication procedure provided for in that State.

Under Art. 53 of Bankruptcy Law in conjunction with Art. 5 of the Restructuring Law, a bankruptcy order is immediately published in the official register – “Centralny Rejestr Restrukturyzacji i Upadłości”. This requirement is mandatory.

In case of insolvency proceedings from non-EU countries, Art. 393(3) of Bankruptcy Law in conjunction with Art. 5 of the Restructuring Law states that decision to open foreign bankruptcy proceedings bankruptcy is also immediately published in the official register – “Centralny Rejestr Restrukturyzacji i Upadłości”. Similar to the foreign insolvency proceedings before the courts of another EU Member State, this requirement is also mandatory.

21. **Will your country's courts recognize a request for the recognition of foreign insolvency proceedings?**

Under Art. 16 of Regulation (CE) 1346/2000, any judgment opening insolvency proceedings handed down by a court of a Member State shall be recognised in all the other Member States from the time that it becomes effective in the State of the opening of proceedings. This shall not refer to matters exempted from the applicability of the Regulation (CE) 1346/2000 as listed in Art. 1 (2) thereof [insolvency proceedings concerning insurance undertakings, credit institutions, investment undertakings which provide services involving the holding of funds or securities for third parties, or to collective investment undertakings].

Art. 392 of the Bankruptcy Law provides for [as a general rule] decision to open foreign bankruptcy proceedings is recognized if: (i) it concerns a case that does not fall under exclusive jurisdiction of Polish courts; (ii) its recognition is not contrary to the basic



principles of the legal order of the Republic of Poland. There are exemptions therefrom which refer, among others, to credit institutions or insurance undertakings.

22. **Will such a request be recognized if it comes directly from a foreign trustee in bankruptcy, liquidator or administrator, or does the request have to be in the form of a letter of request issued by the foreign bankruptcy tribunal ?**

Request for the recognition of foreign insolvency proceedings shall be required only in cases not covered by the Regulation (CE) 1346/2000.

Under Art. 386 of Bankruptcy Law, proceedings involving recognition of decision to open foreign bankruptcy proceedings are initiated following an application satisfying several formal requirements filed by a foreign representative (foreign administrator) or debtor, that is entrusted the administration of his assets.

Definition of foreign representative is contained in Art. 379(4) of Bankruptcy Law. Under the aforementioned provision "foreign representative" means a person or body appointed in foreign bankruptcy proceedings to administer, reorganize or liquidate the debtor's assets and to supervise administration, reorganization of the debtor's assets ".

23. **What legal standards do your country's courts apply for the purpose of recognition of foreign insolvency proceedings? Please provide details.**

Insolvency proceeding ordered in another European country are automatically recognized and enforceable in Republic of Poland by virtue of Art. 16 of Regulation (EC) 1346/2000. Any request for recognition of foreign insolvency proceedings isn't necessary. However, under Art. 26 thereof any Member State (thus, also Republic of Poland) may refuse to recognize insolvency proceedings opened in another Member State or to enforce a judgment handed down in the context of such proceedings where "the effects of such recognition or enforcement would be manifestly contrary to that State's public policy, in particular its fundamental principles or the constitutional rights and liberties of the individual".

As it was already described, in case of a request for the recognition of decision to open foreign insolvency proceedings not covered by the Regulation (EC) 1346/2000, Art. 386 of the Bankruptcy Law states that proceedings involving recognition of decision to open foreign bankruptcy proceedings are initiated following an application from an administrator of insolvency proceedings. Such request shall be examined by Polish insolvency court. Decision to open foreign insolvency proceedings is recognized if respective request concerns a case that does not fall under exclusive jurisdiction of Polish courts and its recognition is not contrary to the basic principles of the legal order of the Republic of Poland [Art. 392 of the Bankruptcy Law].

24. **Do your laws have a procedure for a request for the recognition by a foreign insolvency administrator or insolvency court of a local insolvency proceeding? Are such requests generally made by the administrator or the insolvency court? Generally describe the procedure.**



There is no specific procedure of this kind in the Polish legal system

25. **Can an administrator of insolvency proceedings request the courts of your country for assistance in obtaining recognition of insolvency proceedings of foreign insolvency administrators or foreign courts? Generally describe the procedure.**

There is no specific procedure of this kind in the Polish legal system.

26. **Will your courts enforce any compulsory transfer of a contractual obligation involving a vessel formerly owned by an insolvent ship operator, if this contractual obligation affects parties located in your country?**

We have difficulties in understanding this question (the wording seems to be very broadly formulated). Request for clarification.

27. **Does your legal system have a procedure for the coordination of concurrent insolvency proceedings involving maritime assets, insolvent ship operators or creditors in your country and abroad? Is this procedure set out in laws or regulations or has it been developed through practice of insolvency tribunals? Please provide details including any generally used precedent forms of procedural orders.**

With respect to the concurrent insolvency proceedings within the European Union, such procedure is established by virtue of the provisions Regulation (EC) No 1346/2000. Rules on cooperation for the coordination of parallel insolvency proceedings may be found in Art. 31 thereof. As a principle, the administrator in the main proceedings and the administrator in the secondary proceedings shall be duty bound to communicate information to each other. They are obliged, for example, to immediately communicate any information which may be relevant to the other proceedings, in particular the progress made in lodging and verifying claims and all measures aimed at terminating the proceedings.

In case of insolvency proceedings not covered by Regulation (EC) No 1346/2000, procedure of coordination of concurrent insolvency proceedings is currently regulated in Art. 413-417 of Bankruptcy Law.

The court and judge in charge of bankruptcy proceedings may communicate directly with a foreign court and foreign representative in particular by telephone, fax or electronic mail. The receiver, court supervisor and administrator appointed in insolvency proceedings could communicate directly with a foreign court and foreign administrator or via the judge in charge of insolvency proceedings.

As a rule, the court and judge in charge of insolvency proceedings cooperate with a foreign court and foreign representative. Such cooperation with a foreign court and foreign representative may involve actions taken by the court and judge in charge of insolvency proceedings in order to streamline bankruptcy proceedings, such as in particular requests for and provision of the relevant information connected with this bankruptcy proceedings.



In addition, in case when bankruptcy proceedings are already instituted in Poland and two or more decisions to open foreign insolvency proceedings with respect to the same bankrupt are recognized in the Republic of Poland then the judge in charge of bankruptcy proceedings decides which of the bankrupt's assets will be covered by the respective proceedings. If no bankruptcy proceedings are instituted in the Republic of Poland with respect to the assets of an entity involved in foreign bankruptcy proceedings, then above mentioned decision is issued by the court that recognized a decision to open foreign bankruptcy proceedings.

28. **Is your country a party to any bilateral or multilateral agreements for the coordination of multi-country insolvency proceedings or the recognition of foreign insolvency proceedings? Please list such agreements.**

Republic of Poland is an EU Member State, therefore, as mentioned above, Regulation (EC) No 1346/2000 is directly applicable in Poland and part of the Polish Law System. Apart from that, Republic of Poland is a State party to various bilateral and multilateral conventions which relate to the international civil law. However, none of them address directly issues of cross-border insolvency proceedings.

Part 6 Need for Reform

29. **Have any provisions of your insolvency law created legal uncertainty or difficulties in the administration of cross-border maritime insolvencies? Please refer to any legal commentary or case law.**

Polish insolvency law regulations created uncertainties / difficulties in regards to administration of cross border insolvencies. Such a state of affairs was caused, among others, by non-adjustment of the domestic regulations to the EU - legislation or deficiencies in the domestic regulations concerning international insolvency proceedings. As a solution to such situation, the Polish Parliament enacted the Restructuring Law on 15th May 2015. This act divides current legal regime based on one act (called the "Bankruptcy and Rehabilitation Law") into two bills: the above mentioned "Restructuring Law" (governing rehabilitation proceedings) and the "Bankruptcy Law" (governing insolvency proceedings). The new law enters into force on the 01st January 2016.

Provisions concerning cross-border insolvency will be changed significantly, thus below list should be considered as purely of illustrative nature :

- 1) as a result of the case law of the Court of Justice of the European Union (Adler vs Orłowska) obligation to appoint representative for service will be more precisely defined by indicating that it refers only to creditors who do not have their domicile or registered office neither in the Republic of Poland nor in the other country of European Union - the said provision binding to date was considered to be in non-conformity with Regulation (EC) No 1393/2007;
- 2) clear reference will be made that in all cases not regulated in the provisions concerning international insolvency proceedings remaining provisions of the amended Insolvency Law (First Part) and the provisions of Civil Procedure Code regarding international proceedings shall be applicable - lack of such reference caused



- problems of missing legal provisions required to determine course of particular actions within the insolvency proceedings;
- 3) the term the “centre of the debtor's main business” will be replaced by the term the “centre of main interests” which reflects definition used in the Regulation (EC) No 1346/2000 – such amendments is intended to adjust terminology of domestic and EU- legislation and, further, provide for the Polish court basis of reference to the case law of the Court of Justice of the European Union.

The purpose of the new legislation is to enable Polish courts to apply more efficiently Regulation (EC) No 1346/2000 and to remedy various shortcomings in the current legislative framework.

SECTION II GENERAL MARITIME INSOLVENCY ISSUES

Part 7 General Insolvency Issues Applicable to Ship Operators and Maritime Property

- 30. Are ships registered in your country or ship operators incorporated in your country subject to insolvency laws of general application or do your laws provide for specific rules relating to the administration of the businesses of insolvent ship operators?**

Ships registered in Poland or ship operators incorporated in Poland are subject to the Bankruptcy Law. The act is of general application. It is to be noted however there are specific rules of sale relating to sea vessels registered in the maritime registry being the component of the bankruptcy estate. In general, the rules of sale of the above sea vessels are similar to sale of a real property.

The provisions referring to maritime mortgage, maritime liens, etc. are regulated by the Polish Maritime Code. However, Bankruptcy Law also refers in some provisions to maritime mortgage.

- 31. If your laws provide for specific rules relating to the administration of the businesses of insolvent ship operators or ships under your registry as distinct from assets of commercial enterprises generally, please provide details of how these rules applying to ships or ship operators differ from general insolvency administration.**

There are no specific rules relating to the administration of the businesses of insolvent ship operators or ships under Polish registry.

- 32. Is there a monetary or asset value threshold for the application of various forms of insolvency procedure? For example, is there a form of simplified insolvency administration for ship operators with assets of limited value?**

There are no monetary or asset value thresholds foreseen in the Polish law for the application of various forms of insolvency procedure. However, there is a general rule established by Art. 13 (1) of the Bankruptcy Law according to which “court shall dismiss the petition to declare bankruptcy when the assets of the insolvent debtor are not sufficient



to cover the cost of the proceedings or is sufficient only to cover the costs in question". And further, according to Art. 13:

Under Art.13 (2) of Bankruptcy Law, the court may dismiss the petition to declare bankruptcy if it ascertains that the debtor's assets are encumbered with a mortgage, pledge, registered pledge, tax lien or maritime mortgage to such a degree that the debtor's remaining assets are not sufficient to satisfy the cost of the proceedings.

Under Art.13 (3) of Bankruptcy Law, if it is determined likely that the encumbrances of the debtor's assets are ineffective under this Law or if such encumbrances have been established in order to cause detriment to the creditors, as well as if it is determined likely that the debtor has performed other legal acts, ineffective under this Law, by way of which he disposed of the assets otherwise sufficient to satisfy the cost of the proceedings, and circumstances of the case show that use of the provisions regarding ineffectiveness and appealing against actions of the bankrupt will lead to receiving of the assets exceeding amount of the costs, sections 1 and 2 shall not apply.

33. **Do rights to commence insolvency proceedings or insolvency procedures differ if the debtor ship operator is a natural person as distinct from a legal entity? Describe any differences generally.**

There are no differences when it comes to commencement of the insolvency proceedings or insolvency procedures.

34. **If creditors are asserting claims against all or substantially all the assets of an insolvent ship operator, does this result in distinct or additional procedural or legal requirements?**

If we understand the question correctly, i.e. whether there is a difference in procedural or legal requirements regarding insolvency proceedings if the creditors are asserting their claims against all of the assets of the insolvent ship operator or not against all of the assets of the insolvent ship operator, the answer to such question would be: no, there are no additional requirements in principle.

35. **Are insolvency procedures administered by courts of general jurisdiction, or by specialized courts or tribunals exercising commercial or insolvency jurisdiction?**

Insolvency proceedings in Poland are conducted by common courts, however courts dealing with insolvency proceedings are specialized courts. Insolvency proceedings are conducted in Poland by insolvency departments of district courts. According to Art. 18 of the Bankruptcy Law: "The district court - commercial court shall be the bankruptcy court".

36. **Describe generally the threshold tests set out in your law for the status of insolvency.**

Pursuant to the regulations of the Bankruptcy Law, the status of insolvency can be declared when the debtor has become insolvent. According to the Bankruptcy Law the debtor is deemed insolvent when he lost the capacity to perform his due financial obligations. A



debtor who is a legal person (or an unincorporated organizational unit granted legal capacity by a separate law) shall also be deemed insolvent when the sum of his obligations exceeds the value of his assets and this state lasts for a period exceeding 24 months. The Bankruptcy Law regulates in detail how the obligations and assets of the debtor are to be calculated. If the above described requirements are met, the court generally declares the insolvency of the debtor. The court can however dismiss the motion to declare insolvency if there is no risk that the debtor will within a short time lose the ability to perform his due financial obligations.

Furthermore, the court shall dismiss the motion to declare insolvency when the assets of the insolvent debtor are not sufficient to cover the cost of the insolvency proceedings.

- 37. If the threshold tests for insolvency proceedings in your country differ for a foreign ship operator with assets in your country which wishes to begin insolvency proceedings in your country, describe these differences in detail.**

The threshold tests for insolvency proceedings do not differ for a foreign ship operator with assets in Poland.

- 38. Do your laws permit a private creditor to obtain a court order to begin insolvency proceedings against a ship operator? If so, describe generally what facts or legal grounds the creditor must show to obtain such an order.**

As a general rule, the petition to declare bankruptcy may be filed by the debtor or by any of his personal creditors.

Referring to the question what facts or legal grounds the creditor must show to obtain order beginning insolvency proceedings, such a motion shall contain the following:

- 1) the first name and surname of the debtor or his name and national identification number (PESEL) or a number in the National Court Register (KRS), and in lack of the above, other data allowing its unambiguous identification, place of residence or registered office, address and if the debtor is a commercial partnership, a legal person or an unincorporated organizational unit granted legal capacity by a separate law - first names and surnames of the persons authorized to represent the entity, including liquidators, if appointed; additionally, in the case of a commercial partnership - first names, surnames and places of residence of the partners with unlimited liability for the obligations of the partnership with their whole property;
- 2) indication of the location of the main center of the debtor's basic activity;
- 3) the circumstances justifying the petition, to be shown to be probable;
- 4) information on whether the debtor is a participant in a payment system or a securities settlement system (not applicable if the petition is lodged by the creditor);
- 5) information on whether the debtor is a public company.

Additionally, according to Art. 24 of the Bankruptcy Law, if the petition to declare bankruptcy is filed by a creditor, such creditor shall give evidence to make his claim probable.



39. **Do your laws permit a public authority to obtain a court order or to exercise its own jurisdiction to begin insolvency proceedings against a ship operator other than procedures available to private creditors? If so, describe generally what are the factual or legal grounds for such public authority to begin such insolvency process?**

In general there are no differences when it comes to rules of initiating the insolvency proceedings when comparing public authority and private creditors.

40. **Does a ship operator have rights to defend or oppose an insolvency proceeding begun by private creditors or public authorities? If so, describe generally what defences are available.**

A ship operator may use regular methods of defence foreseen by the Bankruptcy Law.

The court may hear the debtor (if necessary). If the hearing is impossible or excessively burdensome, the court may demand that the debtor submits written explanations, with the signature certified by a notary public, under penalty of criminal liability for giving false testimony. These explanations shall be evidence in the case.

Additionally, a debtor may appeal against a court decision declaring bankruptcy proving the premises to declare bankruptcy did not occur in the case.

41. **Do your laws permit a ship operator to voluntarily begin an insolvency proceeding? If so, describe generally what facts or legal grounds a ship operator must demonstrate to begin voluntary insolvency proceedings.**

As mentioned above (see: answer to question No. 38), according to Polish law the petition to declare bankruptcy may be filed by the debtor or by any of his personal creditors (Art. 20 Bankruptcy Law). Therefore, also a ship operator is entitled to voluntarily begin insolvency proceedings, i.e. to lodge a petition to declare bankruptcy.

What is to be noted is the fact, that the debtor is obliged to lodge a petition to declare bankruptcy no later than within 30 days from the date on which the basis for declaring bankruptcy occurred. This obligation results with the liability for damages caused by the failure to file the petition within the time limit.

If a ship operator lodges a petition to declare bankruptcy as a debtor, apart from the issues indicated in the answer to question No. 38, according to Art. 23 of the Bankruptcy Law, the motion should also contain:

- 1) a current list of the debtor's assets, including their estimated value;
- 2) a balance sheet drawn up by the debtor for the purpose of the proceedings, valid as at the day within 30 days prior to the day of filing the petition;
- 3) a list of all creditors, including addresses and the amount of their respective claims and dates of payment, as well as a list of securities established by the creditors on the assets of the debtor including the dates of their establishment;
- 4) a declaration on the payment of the claims or other debts, effected within the six-month period prior to filing the petition;



- 5) a list of entities who have proprietary liabilities towards the debtor, together with their addresses, description of liabilities, dates of their creation and dates of payment;
- 6) a list of enforcement titles and writs of execution issued against the debtor;
- 7) information on proceedings regarding the establishment of the following on the assets of the debtor: mortgages, pledges, registered pledges and tax liens and maritime mortgages and other encumbrances, recordable in the land and mortgage register or other registers, as well as on any other pending court-, administrative-, court-administrative proceedings and proceedings before conciliation courts concerning the debtor's assets;
- 8) information on the places of residence of the persons authorized to represent the partnership or legal person and liquidators, if appointed.

If the debtor is unable to append the petition with the documents indicated above, he shall specify the reasons for not appending such documents and show such reasons to be probable.

Additionally, if a petition to declare bankruptcy is filed by the debtor, according to Art. 25 of the Bankruptcy Law the debtor's petition shall also contain a written statement as to the truthfulness of the data included in the petition. If the statement in question is not true the debtor shall be liable for damages caused as a result of giving false data in the petition to declare bankruptcy. Additionally, if the statement is not submitted the petition shall be returned without summoning the debtor to supplement it.

42. **Do creditors or any other persons with legal standing (such as public authorities, shareholders or employees of a ship operator) have right to oppose a ship operators' voluntary insolvency proceeding? If so, describe generally what classes of persons other than creditors have such legal standing and what grounds of opposition are available.**

Creditors and other persons with legal standing have generally no right to oppose ship operators' voluntary insolvency proceedings. However, according to the new regulations of Bankruptcy Law a creditor can lodge a complaint against the decision declaring bankruptcy solely on the grounds concerning the jurisdiction of the Polish courts.

43. **Do your laws provide for a time bar for filing of claims in insolvency proceedings which is different from limitation periods or prescription for commencement of maritime claims generally? If insolvency proceedings have different time bars for filing of claims, are these time bars set out in the legislation or are they decided by the insolvency administrators or tribunals on a case-by-case basis?**

A personal creditor of the insolvent debtor who wishes to participate in the insolvency proceedings, if the establishment of his claim is necessary, shall file his claim with the judge-commissioner within the timeframe defined in the decision declaring bankruptcy.

The time bar for filing of claims in insolvency proceedings is set out in the decision of the bankruptcy court declaring the bankruptcy. The time bar for filing of claims is from one up to three months. The costs of the insolvency proceedings resulting from the filing of a claim by the creditor after the time bar for filing the claims has elapsed, even if the delay



was not due to the fault of the creditor, is to be borne by the creditor who filed his claim after the prescribed deadline.

44. **Do your laws permit the insolvency administrator to carry out the ship operator's business for a temporary period in order, for example, to complete voyage or charter party commitments?**

Generally after the declaration of bankruptcy the insolvency administrator is permitted to continue to carry out the business of the insolvent ship's operator if there is a possibility to conclude settlement with the creditors or if the sale of the insolvent enterprise as a whole or an organized thereof is possible. In such cases the insolvency administrator is obligated to carry out the business of the insolvent debtor in the manner that assures that the state of the enterprise will be at least preserved in an undeteriorated condition.

The insolvency administrator cannot continue to carry out business of the insolvent debtor in the insolvent debtor is obligated to return state aid. The council of creditors can however authorize the insolvency administrator to carry out the business of the insolvent debtor under specific regulations set out in Bankruptcy Law.

45. **Do your laws permit an insolvency administrator to disclaim or otherwise set aside future contractual obligations such as charter parties or contracts of affreightment?**

Yes, under Art. 98 (1) of the Bankruptcy Law, the administrator can set aside any mutual contract which requires execution of an obligation by a debtor. In relation to a lease, by virtue of Art. 110 (3) of the Bankruptcy Law, if a debtor as on the moment of declaration of insolvency has already taken possession of the subject-matter of the lease, the administrator may terminate the lease. There are no provisions dealing specifically with charter parties or contracts of affreightment.

46. **Do your laws permit or require an insolvency administrator to compulsorily transfer contractual obligations such as contracts of affreightment or employment agreements with crew from the insolvent ship operator to the purchaser of the vessel from the estate of the insolvent owner?**

No, the administrator does not have such powers. By virtue of Art. 313 (1) of the Bankruptcy Law, a sale within insolvency proceedings has the effects of an executive sale by a bailiff, meaning that the ownership is transferred free from any encumbrances or liabilities, save for specific exceptions. Such exceptions in relation to a sale of a vessel entered into a register of ships do not exist in relation to contractual obligations such as contracts of affreightment or employment agreements. However, it must be noted that such transfer could be effected contractually if all parties involved agree.

In theory, it is possible for the employment agreements with crew to be transferred to the purchaser of the vessel by operation of law under Art. 23¹ of the Polish Labour Code, however for such transfer to take place Polish labour law needs to apply to the employment agreements, which is very rarely the case.

Part 8 Acceleration of Remedies



47. **Do your laws permit a creditor to contract for immediate repayment of an entire debt, such as future obligations under a ship mortgage, if a ship owner becomes insolvent?**

By virtue of Art. 83 of the Bankruptcy Law, any clauses modifying or amending the legal relationship with a debtor in case of a debtor being formally declared insolvent or filing for a debtor's insolvency are null and void. It is possible for a creditor to agree clauses which modify or amend a its legal relationship with a debtor if the termination or amendment of the legal relationship is contingent upon a debtor becoming in fact insolvent or being threatened with insolvency.

A clause referred to in question 47 may not be necessary under Polish insolvency proceedings because under Art. 91 of the Bankruptcy Law, creditors' claims in relation to the debtor that have not become due shall become due on the date of opening the bankruptcy case.

48. **If there are differences in the application of these laws to acceleration remedies by foreign creditors as distinct from local creditors, describe these differences in detail.**

There are no differences in application of the laws referred to under question 47 in relation to foreign creditors.

Part 9 Classes of Claims and Creditors

49. **Do your insolvency laws apply differently to differing types of claims or creditors? Please respond to this question using the attached table. For example, is a bank or financial institution permitted to enforce a ship mortgage by procedures outside of an insolvency which would not be available to a ship mortgagee other than a bank or financial institution?**

General remark: The provided table will not be used to answer the questions as it does not fit the types of claims and priority rules regulated in the the Bankruptcy Law.

Through the insolvency proceedings the debtor's assets are liquidated, and distributed among the creditors. The distribution takes place depending on the priority of the creditors' claims. Polish insolvency law does not distinguish between different types of creditors but only different types of claims.

In accordance with Art. 327 of the Bankruptcy Law, there is only one type of a secured claim, which may be enforced outside of insolvency proceedings, which is of essence to the list of claims provided for in the table, that is to say a contractual, registered pledge with foreclosure option under Art. 24 of the Act on Registered Pledges and the Pledges' Register. The foreclosure option in a contract of a registered pledge survives a declaration of bankruptcy and can be exercised thereafter outside of insolvency proceedings. The rest of the claims listed in the table, even claims secured by a mortgage on a debtor's ship, do not enjoy such status.



The proceeds from a sale of assets encumbered by hypothecation, mortgage, a registered pledge, a statutory or contractual lien are distributed separately from the rest of the funds of the bankruptcy estate. After deduction of the costs of the sale other costs of insolvency proceedings up to 10% of the amount of the sale proceeds, such sale proceeds are distributed to the secured creditors in accordance to their priority laid down by the law (see Art. 336 and 345 of the Bankruptcy Law). Any excess sale proceeds that remain undistributed after a full satisfaction of claims of secured creditors contribute to general funds of the bankrupt estate, which are later distributed between four categories of claims.

By virtue of Art. 346 of the Bankruptcy Law, certain claims enjoy priority over the secured creditors' claims (e.g. mortgagee's claims) in distribution of the sale proceeds from the sale of a sea-going ship entered into a register of ships. These claims are:

- 1) post-petition alimony claims;
- 2) post – petition pensions due as compensation for causing a disease, injury or death;
- 3) claims of the debtor's employees who worked on the relevant ship for the last three months preceding the sale (at maximum of three times the minimum salary).

If any of the types of claims provided for in the table are secured by a maritime lien, they will be satisfied directly from the sale proceeds in accordance with the above rules. If this is not the case, each claim will be satisfied from the funds of the bankruptcy estate depending on which of the four categories of claims from Art. 342 of the Bankruptcy Law it belongs to, provided costs of the insolvency proceedings, expenditures of the bankruptcy estate and post-petition alimony claims were covered in full. Funds are distributed to a lower category only if all claims in the higher category were satisfied. In the funds are insufficient to cover in full all claims in a given category, the claims are satisfied in proportion to their value.

There are no exempt claims, as defined in the table.

- 50. Does the existence of an insolvency proceeding under your country's law alter the priority of creditors' claims against a ship owned or operated by an insolvent person? Please respond to this question with references to the types of claims listed in the attached table.**

The insolvency proceedings do not alter the priority of creditors' claims against a ship operated by an insolvent debtor.

- 51. If a shipowner commences proceedings to establish a limitation fund under LLMC Convention or to establish a limitation fund under domestic law, describe the relationship between such a fund and any insolvency proceedings involving that shipowner. For example, can creditors begin insolvency proceedings if a limitation fund has been established? Can an insolvent shipowner establish a limitation fund?**

Polish law does not contain any specific provisions dealing with the relationship between a limitation fund and any insolvency proceedings. These issues were never decided upon by the Polish Supreme Court or the Constitutional Court. As the result any questions regarding the relationship may be resolved only by reliance on the rules of interpretation of legal acts and the hierarchy of the sources of law in Poland.



Under Art. of 91 (2) of the Constitution of the Republic of Poland international conventions ratified with prior approval contained in an act of Parliament have priority over domestic acts, such as the Bankruptcy and Law, an insolvent shipowner should be allowed to establish a limitation fund and the operation of the fund should not be prejudiced by the insolvency proceedings, as the LLMC does not contain any provisions to that effect. Technically, the LLMC Convention has not been ratified by prior approval contained in an act of Parliament or in any other manner, but merely acceded to by Poland in 1986 which makes it impossible for it to have priority over domestic law. However, the Protocol of 1996 to the Convention has been ratified with prior approval by the Parliament contained in the ratification act of 13 May 2011 r. (published in the Official Gazette Nr 140, poz. 815), which, in addition, in Art. 9 (1) of the Protocol, provides that the Convention and the Protocol shall be read and interpreted together as one single instrument. Consequently, the LLMC Convention, as amended by the 1996 Protocol, may be interpreted as having priority over the Bankruptcy Law.

As the result, the operation of a limitation fund under LLMC should not be prejudiced by the opening of insolvency proceedings, in particular the limitation fund should not be treated as a part of the bankruptcy estate. There is, at the same time, nothing in the law to prevent creditors from attempting to initiate insolvency proceedings against a debtor who already established a limitation fund. Priority of the LLMC Convention over the Bankruptcy Law leads also to a conclusion that a shipowner who was declared insolvent should be in principle allowed to establish a limitation fund under LLMC Convention. However, this is unlikely for him to accomplish if he is declared insolvent before the limitation fund is established, because by virtue of the declaration of insolvency the insolvent shipowner is deprived of control of his assets and is substituted by the insolvency administrator in court proceedings.

Part 10 Proposals for Reorganization or Compromise

- 52. Do your laws permit insolvent ship operator to make proposal for the reorganization of its business or compromise of claims in which the ship operator would continue to operate into the future if the proposal is approved?**

Yes, an insolvent ship operator – just like any other debtor – may file a petition for reorganization of its business and/or compromise with creditors, allowing his business to continue to operate in the future, provided the proposal is approved by the creditors and the court. See answer to question 55 for details.

- 53. Do your laws permit such proposals to be conducted through private contractual arrangements between an insolvent ship operator and some of its creditors, or do such proposals need to be conducted under supervision of a court or with approval of all identifiable creditors?**

Under the Restructuring Law, it will be possible to conduct arrangements with only some of the creditors (e.g. lenders, key suppliers, secured creditors, or biggest creditors). the selection of creditors must comply with a statutory test, that is it must be based on objective, unequivocal and economically justified criteria pertaining to the legal relationships between a debtor and creditors from which the claims subject to the



arrangement follow. The selection must not aim to eliminate the creditors opposing the partial arrangement. However, the partial arrangement is subject to approval of the court. The partial arrangement cannot be therefore categorized as „a private contractual arrangement”.

54. **If it is lawful to conduct a proposal through private contractual arrangements, are such private contractual arrangements affecting a ship legally binding on other claimants against that ship who have not participated in such private contractual arrangements?**

It is unlawful to conduct a proposal through private contractual arrangements. See answer to question 53.

55. **If a proposal is required to be conducted under supervision of a court or approval of all known creditors, please provide a general description of the reorganization procedure.**

Provisions related to cross-border insolvency in the European Union are subject of Regulation (EC) No 1346/2000. The Regulation contains provisions regulating situations when the proceedings are closed without liquidation by a rescue plan, a composition or a comparable measure within the so called “secondary insolvency proceedings”, that is to say the proceedings referred to in Art. 3 (2) of the Regulation opened in the territory of a Member State where a debtor possesses an establishment, after the insolvency proceedings in the territory of the Member State where the center of a debtor's main interest is situated ('main proceedings').

In accordance with Art. 3 (3) of the Regulation such secondary proceedings must be winding-up proceedings. However, by virtue of Art. 34 (1) and (2) of the Regulation:

- 1) where the law applicable to secondary proceedings allows for such proceedings to be closed without liquidation by a rescue plan, a composition or a comparable measure, the liquidator in the main proceedings shall be empowered to propose such a measure himself. Closure of the secondary proceedings by a measure referred to in the first subparagraph shall not become final without the consent of the liquidator in the main proceedings; failing his agreement, however, it may become final if the financial interests of the creditors in the main proceedings are not affected by the measure proposed;
- 2) any restriction of creditors' rights arising from a measure referred to in paragraph 1 which is proposed in secondary proceedings, such as a stay of payment or discharge of debt, may not have effect in respect of the debtor's assets not covered by those proceedings without the consent of all the creditors having an interest.

The Regulation (EC) No 1346/2000 also contains provisions allowing conversion of reorganization or compromise proceedings opened prior to the main proceedings in another Member State into winding-up proceedings, if this is in the interest of the creditors in the main proceedings (see Art. 37¹ of the Regulation).

The Restructuring Law introduces four new types of restructuring proceedings:

- 1) proceedings regarding approval of the arrangement;



- 2) fast-track restructuring proceedings;
- 3) (ordinary) restructuring proceedings;
- 4) remedial proceedings.

The Restructuring Law provides that any of the above proceedings is available to both an insolvent debtor or a debtor only threatened by insolvency. Each of the proceedings is intended to lead to an arrangement with creditors upon obtaining consent from the relevant majority of them representing at least two thirds of the total amount of claims.

The restructuring proposal may be put forward by a debtor, court supervisor, creditors committee, a creditor or a group of creditors representing at least 30% of total claims. A list of claims is drawn up and, except for the fast-track restructuring proceedings, the inventory of restructuring or remedial estate and its assessment are produced as well.

The proposed arrangement is voted at a creditors' meeting, except for the arrangement approval proceedings, where a debtor himself collects votes in writing.

Once accepted by the required majority of creditors, the arrangement is subject to approval by the court. The court shall refuse to approve the arrangement if it violates the law or if it is obvious that the arrangement will not be performed. The court may also refuse to approve the arrangement if it is flagrantly unfair to creditors who voted against it and raised objections.

56. Are secured creditors of an insolvent shipowner subject to court orders approving a reorganization or compromise?

As a general rule secured creditors claims are not covered by an arrangement under Art. 151 (2) of the Restructuring Law and their rights following from the security may not be prejudiced by the arrangement Art. 168 (1) of the Restructuring Law, in both cases subject to the secured creditor's unconditional and irrevocable consent for its claim to be covered by the arrangement. However, the arrangement covers secured claims to the extent these claims are not covered by the value of the collateral Art. 151(2) of the Restructuring Law.

There is an exception to the above rule in the case of partial arrangements contained in Art. 181(1) of the Restructuring Law. When the partial arrangement offers the secured creditor full satisfaction on a date fixed in the arrangement or partial satisfaction but to the extent not lower than that expected in enforcement of the security, the consent of the secured creditor for its claim to be covered by the partial arrangement is not required.

57. Do your laws permit an insolvent ship operator to transfer an insolvency proceedings into a proceeding for reorganization or compromise?

Under Art. 11 of the Restructuring Law and Art. 9b of the Bankruptcy Law, a restructuring petition has priority over a concurrent insolvency petition.

58. Does your law permit a private creditor such as a ship mortgagee to take over the business of a ship operator or to sell part or all of its fleet or generally act to recover



a debt without needing to commence insolvency proceedings for the benefit of all creditors.

No, as a matter of Polish insolvency law a private creditor is neither entitled to take over the business of an insolvent ship operator nor to sell all or part of the fleet without needing to commence insolvency proceedings for the benefit of all creditors. Such entitlement maybe agreed upon within the freedom of contract between a creditor and debtor, save for cases when it is forbidden by the insolvency law, or constitute a sale or taking over of the possession of the mortgaged ship within the powers of a mortgagee under Art. 84 (1) of the Polish Maritime Code or, theoretically, a sale of a ship encumbered by a registered pledge under Art. 24 of the Act of 6.12.1996 on Registered Pledges and the Pledges' Register, provided Polish law is applicable to the mortgage or the registered lien.

59. **Does your law set out minimum requirements which a private receiver of an insolvent shipowner must follow such as giving notice to other registered ship mortgagees, the procedure for sale, etc.**

Not applicable – see answer to question no 58.

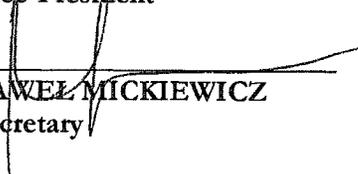
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In case of any doubts or questions, please feel free to ask anytime.

With Best Regards,



MAREK CZERNIS
Vice-President



PAWEŁ MICKIEWICZ
Secretary