



# *First Conference on Law & Economics of Insolvency - Polish practice faces international standards*



26-27<sup>th</sup> of November 2009 r. Warsaw School of Economics, Warsaw, Al. Niepodległości 128, building C, auditorium I

## **The Program of the Conference:**

### **Opening session and introduction to the Conference**

The Conference is held by The European Centre for Comparative Commercial and Company Law (Centrum C-Law.org), Allerhand Institute and Warsaw School of Economics, under the auspices of the law firm Nörr Stiefenhofer Lutz, the World Bank, the C.H. Beck publishing house and others.

The opening lecture will be dedicated to **Prof. Maurycy Allerhand**, author of the 1930's codification of Polish insolvency law.

### **I. Economic Efficiency of The Enterprise Insolvency Procedures**

Plenary session will address the economic analysis of bankruptcy and reorganization law. Given the economic approach, the debate will include, inter alia, the conflict of interest in the insolvency proceedings and a comparative analysis of the international regulations on insolvency proceedings. There will be an opportunity to discuss the results of the examination of court files and to deal with the case studies on insolvency laws.

- How to create the best possible plan of the insolvency proceedings?
- What are the consequences of applying different models to the insolvency proceeding?

#### **Models of the insolvency proceedings in the modern world - a legal comparative analysis**

Prof. Andrzej Jakubecki (Maria Curie-Skłodowska University, Lublin)\*

#### **Managing conflicts of interest in the bankruptcy proceedings - results**

Dr. Sylwia Morawska (Warsaw School of Economics), Anna Czapracka (District Court Poznan, the National School of Judges and Prosecutors)

#### **Faces of bankruptcy of a polish business - from the research case studies**

Prof. Elżbieta Mączyńska (Warsaw School of Economics)

#### **Case study of cross-border insolvency in Poland - the collision of worlds?**

Dr. Sławomir Jakubowski (Nörr Stiefenhofer Lutz, Warsaw)

#### **Universal principles of bankruptcy and reorganization law – law and economic analysis on a comparative background**

Dr. Adolfo Rouillon (World Bank)

#### **Moderator:**

Dr. Arkadiusz Radwan (University of Economics, Krakow)

## II. Commercial and Bankruptcy and reorganization Law - perspectives

This conference session will cover current changes and challenges for the Polish bankruptcy and reorganization law as well as company law in the light of the foreign reforms to the insolvency law. The speakers will discuss the purpose of the said reforms and will try to form *de lege ferenda* conclusions as for the improvement of the Polish legal and judiciary system. The improvement we need in order to bring effectiveness to economic circulation within the EU.

- What is the purpose of the foreign amendments to the insolvency law?
- Is there any universal model of the reform of the insolvency law?

### **Current legislative developments and projects in the Polish bankruptcy and reorganization law and company law \*\***

Dr. Piotr M. Wiórek (University of Wrocław) \*

### **Bankruptcy and reorganization law and the economy - the objectives of and need for harmonization \*\*** *High Level Representative* (Ministry of Justice)

### **Basic conditions for effective reform of bankruptcy and reorganization law and the judiciary in order to adapt them to the specificities and needs of the economy in Poland**

Jarosław Horobiowski (District Court, Wrocław)

### **The German Insolvency law reform - the first experiences for Poland \*\***

Dr. Martin Prager (Pluta Rechtsanwälts GmbH)

### **The Hungarian Insolvency law reform - lessons for Poland**

Dr. Andrea Csőke (Supreme Court of Hungary)

### **Moderator:**

Prof. Mirosław Wyrzykowski (Constitutional Tribunal)

### III. Corporate Finance and The Insolvency

The session will be dedicated to the issue of financing of the corporations, including holding companies operating in Poland, in light of the insolvency laws. The subject of analysis will be issues relating to economics of a business, as an initiating factor for bankruptcy proceedings as well as fundamental aim of bankruptcy proceedings which is maximal meet of creditors. The debate will address up-to-date problems such as financial options, capital flow (including cross-stream and upstream guaranties). Tax aspects of insolvency proceedings will not be omitted either.

- Where lies the boundary between failing to fulfil an obligations and insolvency?
- What are the risks of including derivatives in financial statement?
- What economic mechanisms an entrepreneur may adopt to prevent its business going insolvent?
- What are the costs of bankruptcy in the light of public law?

**Polish financing structure of companies facing bankruptcy practice.**

Dr. Jacek Bąk (Noerr Stiefenhofer Lutz, Warsaw)

**Improper use of derivatives in Poland**

Prof. Sebastian Buczek (Warsaw School of Economics, Quercus TFI SA)

Prof. Andrzej Fierla (Warsaw School of Economics)

**Bankruptcy proceeding's tax aspects**

Dr. Aleksander Werner (Warsaw School of Economics)

**Law position of actors jointly responsible with the fallen \*\***

Dr. Joanna Dominowska (Warsaw School of Economics, Noerr Stiefenhofer Lutz)

**Moderator:**

Prof. Aleksander Chłopecki (Warsaw University)

#### IV. Legal protection in the bankruptcy proceedings

This conference session will address the protection of the creditor against insolvent debtors, with a particular focus on the role of real securities. All of the controversies connected to the particular securities will be extensively discussed. Accordingly, the participants will discuss the risks connected with the amended institution of collateral transfer of ownership, which is getting increasingly popular. In addition, the session will deal with the influence of Polish business bankruptcy on arbitration in two different scopes.

- How to protect one's interests in case of insolvency of a trading partner?
- Does the amendment to the law regulating collateral transfer of ownership foster abuses, if yes, how to counteract it?

##### **Cross-Border Bankruptcy - Securities**

Dr. Jacek Lachner (Jagiellonian University, Krakow)

##### **Effect of bankruptcy in Poland for arbitration proceeding in another EU Member State (Elektrium's case)**

Dr. Anna Hrycaj (District Court, Poznan),

##### **Effect of bankruptcy in Poland for arbitration proceeding in a country other than EU Member State (on Switzerland example)**

Prof. Andrzej Kubas (Kubas Kos Gaertner Attorneys, Jagiellonian University)

##### **Collateral transfer of ownership in revised bankruptcy and reorganization law**

Dr. Marek Porzycki, (Jagiellonian University, Krakow)

##### **Moderator:**

Marcin Krawczyk (District Court, Warsaw)

## V. Restructuring enterprises in reorganization proceedings

The debate will focus on possible reactions to the risk of insolvency with its legal and economic consequences. The general starting point for discussion is an assumption that reorganization proceedings may result as a reasonable way of managing and improving effectiveness of the enterprise. We will discuss the possibilities given by the amended law on reorganization in the light of the legislator's purposes. The speakers will approach a broad range of issues such as management during the reorganization proceedings, the scope of the reorganization proceedings in the light of the above-mentioned amendments and the legal background of debt restructuring.

- Does inability to pay necessarily leads to insolvency? How to prevent this?
- How does the present attempt to bring reorganization proceedings to life look like from the point of view of law practitioners?
- What is to be restructured during the reorganization proceedings?

### **The French model of reorganization**

Isabelle Didier (Cabinet - Isabelle Didier, France)

### **Reorganization proceedings after the changes**

Dr. Rafał Adamus (University of Silesia, Katowice)

### **Enterprise management in reorganization proceedings - economic view**

Dr. Piotr Masiukiewicz (Warsaw School of Economics)

### **Insolvency against debt restructuring**

Anna Maria Puksztó (Salans, Warsaw)

### **Do tasks of the bankruptcy court may prevent concluding a reorganization? - practical interpretation**

Janusz Płoch (Regional Court, Cracow)

### **Moderator:**

Prof. Elżbieta Mączyńska (Warsaw School of Economics, the Polish Economic Society)

## **VI. Selected issues regarding insolvency of subsidiaries of a holding company**

Applying international financial standards to Polish subsidiaries of the cross-border holding companies may incur various problems, including that of inconsistency of the international regulations and lack of transparency of law. The session will address the present laws on holding insolvency in the light of the legal standards of the European Community as well as the issue concerning protection of the creditors during the proceedings. German insolvency law will serve as an example of implementation of the international financial model.

- What are the practical problems arising from the cross-border bankruptcy and how to cope with them?
- How to conduct an effective holding insolvency proceedings?
- What kind of protection will suit best for creditor of an international entity?
- Do Polish corporate financial standards contradict the law in vigour (particularly insolvency law) or there is a problem of applying legal regulations?

### **The insolvency law of international concern in Poland in European comparison including the European Council regulation**

Dr. Tomasz Chilarski (Domanski, Zakrzewski, Palinka Law firm, Warsaw)

### **Implementation of an international funding model on the example of the German Insolvency Law**

Nils Dobratz (Noerr Stiefenhofer Lutz, Berlin)

### **Guidelines in the coordination of concern's subsidiaries insolvency proceedings by the court for bankruptcy and receivers in bankruptcy**

Jarosław Horobiowski (Regional Court, Wrocław)

### **The Problems of Recognition of Foreign Courts Decision in Insolvency Proceedings**

Prof. Wojciech Klyta (University of Silesia, Katowice)

#### **Moderator:**

Leszek Ciulkin (Regional Court, Białystok)

## **VII. Consequences of the amendment to the bankruptcy and reorganization law for the individual participants in the proceedings**

The session will deal with the recent amendments to the bankruptcy and reorganization law. The speakers will address the creditor's position in the view of the standards accompanied his protection. The amendments will be subject to evaluation by legal practitioners who will try to identify practical controversies. Moreover, the discussion will include the consumer bankruptcy proceedings, in particular, the benefits resulting therefore for the consumer and the costs of the proceeding.

- What are the consequences of the amendments?
- Is there a chance that the consumer insolvency proceedings will work in practice?

### **Standards of protection for creditors after the bankruptcy and reorganization law revision.**

Dr. Rafał Adamus (University of Silesia, Katowice)

### **The revision of bankruptcy and reorganization law from the practice perspective**

Dr. Anna Hrycaj (District Court, Poznan)

### **The consumer bankruptcy – protection of consumer or social cover**

Prof. Włodzimierz Szpringer (Warsaw University)

### **Actionability in the bankruptcy proceedings after revision**

Zbigniew Miczek, (Regional Court, Tarnow)

### **Moderator:**

Prof. Wiesław Czyżowicz (Warsaw School of Economics)

## **VIII. Accountability of managers – the reality of sanction**

This conference session will be dedicated to the role of ban on running a company by the manager responsible for causing insolvency or deteriorating firm's financial condition during the restructuring proceeding. The speakers will address some of its procedural aspects with a particular focus on evidentiary issues. The conclusions of the speeches will be confronted with the case law and empirical studies.

- What are the good points and the bad points of the proceeding regarding ban on running a company?
- Is the ban on running a company a dead institution? - results of the survey

### **Polish practise in scope of international solutions - analysis**

Dr. Sylwia Morawska (Warsaw School of Economics)

### **The issue of procedural aspects in the ban on running a company proceedings**

Dr. Marek Schajko (College of Education and Administration in Poznan, Regional Court, Poznan)

### **Sanctions effectiveness - Empirical analysis of the ban on running a company proceedings**

Piotr Rachwał (Jagiellonian University, Krakow)

### **Poverty of bankruptcy estate in the course of insolvency proceedings - board of the bankrupt's rights and duties (Glimar's case)**

Rafał Kos (Kubas Kos Gaertner Attorneys, Jagiellonian University, Krakow)

### **Moderator:**

Dr. Krzysztof Ślebzak (Supreme Court)

## Panel discussion

The conference will be concluded by the panel discussion with participants of the conference sessions (lawyers, economists, judges, legal counsels, receives) and guest speakers- representatives of the Polish government, politicians, businessmen and an expert from the World Bank. The purpose of the debate is to recapitulate the conclusions resulting from the conference sessions and to give answer to the question concerning the right model of the insolvency law to choose in order to cope with the effects of the global economic crisis.

**Moderator:**

Prof. Andrzej Herman, (Warsaw School of Economics)

**The panel discussion will be attended by (i.a):**

Vice-Minister of Finance Dariusz Daniluk

Prof. Elżbieta Mączyńska (Warsaw School of Economics),

Dr. Jacek Bąk, (Noerr Stiefenhofer Lutz),

Anna Czapracka (District Court Poznan, the National School of Judges and Prosecutors),

Dr. Adolfo Rouillon (World Bank)

Dariusz Baran (Chairman of managing board CLIF)

and others

- \* - before final confirmation ;
- \*\* - issue may have been changed.