

Doctoral School  
at the Faculty of Law and Administration  
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### **Summary of the doctoral dissertation:**

#### **Sale of the entrepreneur's assets in prepared liquidation (pre-pack) as a special type of sale in bankruptcy proceedings**

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#### **1. OBJECTIVES OF THE THESIS**

The subject of the doctoral dissertation is the institution of prepared liquidation, which is a special mode of liquidation of the debtor's assets within the framework of bankruptcy proceedings. Prepared liquidation was introduced into the bankruptcy procedure in 2016 by the Restructuring Law. It was the effect of the change of philosophy in relation to proceedings related to insolvent debtors as a result of inefficiency of the previous model of bankruptcy proceedings. On the one hand, prepared liquidation was supposed to improve the efficiency of bankruptcy proceedings by shortening the duration of the procedure and reducing its costs, and at the same time increase returns to creditors. On the other hand, it was aimed at maintaining the debtor's enterprise (in fact prepared liquidation is sometimes referred to as a restructuring tool). When introducing the prepared liquidation, the legislator was inspired by a mechanism functioning in other countries named pre-pack, which enables a quick sale of the debtor's business (in whole or in part) as a going concern in order to prevent the loss of its value as a result of lengthy insolvency proceedings.

The aim of the research conducted within the scope of the doctoral dissertation was to determine the legal nature of prepared liquidation under Polish insolvency law, in particular in the context of its genesis, the principles of pre-pack in other legal systems and the goal of maintaining the debtor's enterprise, which was highlighted by the Polish legislator, while taking into account the circumstances of the positioning of prepared liquidation within the legal framework of bankruptcy proceedings, which determines the

objectives of this procedure and its principles. Prepared liquidation is commonly referred to as pre-pack, however, due to significant differences in relation to its foreign equivalents, the question arises whether the use of such nomenclature is correct. The aim of the thesis was also to determine how prepared liquidation works in practice and to identify blockages and possible ways of improvement. It was necessary to analyse the problem specified in the title of the dissertation due to the fact that the effective liquidation of the bankruptcy estate contributes to higher efficiency of bankruptcy proceedings, which should lead to faster and higher returns to creditors.

The main research hypothesis aimed to demonstrate that the introduction of regulations on prepared liquidation was a desirable solution, as it had a positive impact on the efficiency of bankruptcy proceedings, leading to a shorter duration of proceedings, lower costs, and thus a higher degree of satisfaction of creditors. Additionally, the hypothesis was verified that the legal structure of prepared liquidation in the Polish legal system - in contrast to solutions adopted in other jurisdictions - does not focus on maintaining operating enterprises, but focuses on achieving the main objective of bankruptcy proceedings, namely the highest possible degree of satisfaction of creditors, while the objective of maintaining the debtor's enterprise can be achieved in parallel. Due to the several amendments to the regulations on prepared liquidation, despite the relatively young age of this institution, an attempt was made to establish regulations that negatively affect the efficiency of the procedure and propose ways of improvement.

## **2. CONSIDERATIONS IN THE DISSERTATION**

The doctoral dissertation is divided into five chapters devoted to key issues related to the topic.

The first chapter serves as an introduction to the topic. It discusses the evolution of the regulations on the sale of an enterprise in the Bankruptcy Law, the objectives and principles of bankruptcy proceedings, including the objectives of prepared liquidation. It also presents the principles and objectives of the pre-pack procedure in selected foreign legal systems (the United Kingdom, the Netherlands, the United States and Germany) and the concept of the pre-pack in the draft directive harmonising certain aspects of insolvency law.

The second chapter describes the subject of the prepared liquidation (i.e. an enterprise, an organised part of an enterprise and assets constituting a significant part of an

enterprise), including assets that cannot be covered by the prepared liquidation or may be covered by it under certain conditions.

The third chapter is divided into three subchapters. The first subchapter discusses the application for approval of the terms of sale (including entities authorized to submit the application, the time of its submission, and the formal requirements of the application, especially in the context of attachments). The second subchapter is devoted to the conditions for approval of the terms of sale by the court (in case of both mandatory and optional approval of the terms), including in particular the method of establishing the minimum sale price. The third subchapter discusses the procedure for approval of the terms of sale, both before and after the application is filed with the court.

Chapter four is devoted to the sales agreement concluded as part of the prepared liquidation (including the formal requirements and the deadline for its conclusion, as well as the consequences of the parties' failure to conclude it), as well as the issue of the effects of the sales agreement, including in particular the effect of the sale within bankruptcy proceedings on the debtor's obligations and the impact of the sales agreement on employees and debtor's contracts.

Chapter five contains a summary of the empirical research in the form of an analysis of court case files covering the prepared liquidation conducted in two bankruptcy courts and interviews with stakeholders of the bankruptcy proceedings.

The Conclusion presents the results of the research and proposes ways of improvement.

### **3. MAIN CONCLUSIONS**

The dogmatic and empirical research conducted as part of this doctoral thesis provides a basis for drawing the following conclusions and proposing the following ways of improvement:

1. Considering the similarities and differences between Polish prepared liquidation and foreign pre-pack procedures, it can be concluded that prepared liquidation only to a certain extent corresponds with the model pre-pack procedure. Prepared liquidation is in fact a simplified procedure for liquidating the bankruptcy estate, which may only sometimes allow for maintaining an operating enterprise. Thus, prepared liquidation is not aimed at maintaining enterprises, but focuses on achieving the main objective of bankruptcy proceedings, i.e. the highest possible returns to creditors, while the objective of maintaining the debtor's enterprise can be achieved

in parallel. In addition, prepared liquidation has an autonomous objective of enabling bankruptcy proceedings in a situation where the alternative would be to dismiss the bankruptcy petition due to the so-called 'poverty of the bankruptcy estate' (i.e. when costs of the proceedings are higher than the value of the debtor's assets).

2. In many cases, the application of the prepared liquidation mechanism does not significantly shorten the duration of bankruptcy proceedings. The proceedings on the declaration of bankruptcy, including an application for approval of the terms of sale, are usually longer than without using this mechanism. The extended duration of the proceedings may be compensated by a shortened procedure after the declaration of bankruptcy, but it is often the case that the bankruptcy estate afterwards includes assets which are difficult to sell and there are some parallel activities (e.g. drawing up a list of creditors), which make it impossible to achieve such an effect.
3. The application of the prepared liquidation mechanism does not result in a significant increase in the degree of satisfaction of creditors, because in most cases it depends on the composition of the bankruptcy estate and not on the procedure applied. The level of satisfaction of creditors both in case of prepared liquidation and regular liquidation is low.
4. The introduction of prepared liquidation into the Polish insolvency framework was a desirable solution, because this mechanism works in practice, it sometimes allows for opening of bankruptcy proceedings in cases in which the bankruptcy petition was previously dismissed.
5. It is possible to increase the effectiveness of the prepared liquidation by introducing specific solutions:
  - extending the scope of application of prepared liquidation - the possibility of selling an enterprise, an organized part of an enterprise and assets of significant value in this procedure;
  - extending the entities authorized to submit an application for approval of the terms of sale - such an authorization should at least be correlated with the authorization to submit a bankruptcy petition; granting such authorization to the temporary court supervisor (compulsory administrator); it is also worth considering the possibility of granting authorization to persons other than the above, after meeting formal requirements;

- extending the entities authorized to submit an offer within prepared liquidation in order to increase the competitiveness of the procedure, which would be in line with the principle of optimization;
- in order to increase confidence and trust in the valuation appended to the application for approval of the terms of sale, introducing a requirement for this document to be prepared by two persons entered on the list of court experts, who would control each other;
- specifying what value should be determined by an expert - it is worth considering specifying that this refers to the market value (excluding the discount for forced sale), because at the outset of bankruptcy there is an entity interested in purchasing the debtor's assets and because this value is often the axis of the dispute between the applicant and the temporary court supervisor, which leads to extending the procedure and sometimes ultimately to skipping prepared liquidation procedure;
- introducing more flexible solutions, e.g. the possibility of admitting the evidence from a court expert by the court, optional auction, optional appointment of a temporary court supervisor;
- unifying the principles of acquisition of the assets by an entity related to the debtor and other entities;
- unifying the deadline for appealing the decision on declaring bankruptcy and the decision on approval of the terms of sale due to the close connection between these decisions;
- the need to regulate the impact of the sale of an enterprise in prepared liquidation on the debtor's contracts relating to this enterprise;
- extension of the possibility of repealing or changing the decision on approval of the terms of sale to include situations in which, after the decision was issued, material circumstances have changed or have been discovered, which were the basis for issuing the decision (not necessarily related to the value of the subject of the sale).