

The Act
of
28 February 2003

Bankruptcy and Rehabilitation Law
(extract)

(the act was signed off by the President of the Republic of Poland on 18 March 2003)

Title VIII

Distribution of the funds of the bankrupt estate and proceeds from the sale of assets and rights
encumbered with property rights

Part I

General Provisions

Art. 335

The funds of the bankrupt estate include sums from the liquidation of the bankruptcy estate and proceeds from the operation or lease of the business of a bankrupt as well as interest from these sums maintained in a bank, unless otherwise stated herein.

Art. 336

The proceeds from the sale of assets and rights encumbered with mortgage, pledge, register pledge, treasury pledge and maritime mortgage are earmarked for the satisfaction of creditors whose claims were secured on the sold assets or rights notwithstanding the provisions stated herein. Sums remaining after the satisfaction of these claims constitute the funds of the bankrupt estate.

Art. 337.

1. The distribution of the funds of the bankrupt estate is performed once or several times in the process of the liquidation of the bankruptcy estate after the list of claims has been approved by the judge-commissioner.

2. In the event the distribution of the funds of the bankrupt estate is performed several times, the final distribution takes place after the liquidation of the bankruptcy estate has been completed.

Art. 338.

If the bankruptcy proceedings aim at the satisfaction of claims secured with mortgage, pledge, register pledge, treasury pledge and maritime mortgage, the final distribution of the funds of the bankrupt estate takes place after the proceeds from the sale of the encumbered assets has been distributed.

Art. 339.

The provisions concerning the distribution of the funds of the bankrupt estate shall apply respectively to the distribution of the proceeds from the sale of the assets referred to in Art. 336; a draft distribution plan is communicated to the bankrupt and only those creditors who can be satisfied from the proceeds from the sale of these assets. Complaints and appeals concerning decisions of the judge-commissioner taken after the complaints have been lodged may be filed by the bankrupt and creditors who can be satisfied from the assets referred to in Art. 336.

Art. 340.

1. Personal claims secured with mortgage, pledge, register pledge, treasury pledge and maritime mortgage are entered into the distribution plan for the funds of the bankrupt estate only in the amount unsatisfied from the collateral they have been secured on.

2. Paragraph 1 above shall apply respectively to claims which have been satisfied by the insurance firm under the insurance agreement signed with the bankrupt.

Art. 341.

A claim of a creditor of an inheritance taken over after the bankruptcy has been declared, for which the bankruptcy estate is responsible, is entered in the distribution plan for the funds of bankrupt estate up to the value of the inherited assets. If claims of two or more creditors of the inheritance are sought under the bankruptcy proceedings and their total value exceeds the value of the inherited assets, each of the claims is entered into the distribution plan on a pro rate basis.

Part II
Order of satisfaction

Section 1
General Provisions

Art. 342.

1. Claims and receivables subject to the satisfaction from the funds of the bankrupt estate are divided into the following categories:

- 1) category one – costs of the bankruptcy proceedings; employees' social security contributions; employee wages; amounts due to agreements for the delivery of products from own farm for the last two years; pensions for causing a disease, inability to work, disability or death; alimony obligations of the bankrupt; amounts resulting from activities of the receiver or administrator; amounts resulting from mutual agreements signed by the bankrupt prior to the declaration of bankruptcy the performance of which has been requested by the receiver or administrator; amounts due to unjust enrichment of the bankruptcy estate; and amounts resulting from activities undertaken by the bankrupt with the permission of the court supervisor;
- 2) category two – taxes and other public levies, as well as non-satisfied under category one social security contributions for the last year prior to the date of the bankruptcy, along with due interest and enforcement costs;
- 3) category three – other receivables, if not satisfied under category four, along with interest for the last year prior to the date of the bankruptcy, contractual damages, legal costs and costs of enforcement;
- 4) category four - interest, not included in any of the other three categories, in the order in which the capital is satisfied, legal and administrative fines as well as receivables due to donations and legacies.

2. A claim acquired by transfer or endorsement after the bankruptcy has been declared is satisfied under category three, if not satisfied under category four. It does not apply to a claim resulting from activities of the receiver or administrator or activities undertaken by the bankrupt with the permission of the court supervisor.

3. Provisions concerning the satisfaction of employee wages apply respectively to claims of the Guaranteed Staff Benefits Fund for the return of benefits paid out by the Fund to employees of the bankrupt from the bankruptcy estate.

4. Art. 343 paragraph 1 shall apply respectively to claims confirmed by the court's decision or covered by the final administrative decision which have been taken against the bankrupt after the bankruptcy has been declared, provided these claims are satisfied from the funds of the bankrupt estate.

Art. 343.

1. The receiver satisfies claims from category one with the permission of the judge-commissioner as relevant sums are entered into the bankruptcy estate; if these claims have not been satisfied in the manner outlined herein, they will be satisfied by way of the distribution of the funds of the bankrupt estate. Alimony obligations of the bankrupt are satisfied by the receiver at their payment dates for each entitled person up to the level of the minimum wage.

2. Paragraph 1 shall not apply to the costs of bankruptcy proceedings which are covered immediately upon the availability of funds.

Art. 344.

If the sum to be distributed is not sufficient for the satisfaction of all claims in full, claims in lower categories are only satisfied after claims from higher categories have been paid in full. If the estate is not sufficient for the satisfaction of all claims in full under one category, each of these claims is paid on a pro rata basis.

Section 2

Hierarchy of payment of claims secured with mortgage, pledge, register pledge, treasury pledge and maritime mortgage

Art. 345.

1. Unless specific provisions state otherwise, claims secured with mortgage, pledge, register pledge, treasury pledge and maritime mortgage and expiring, in accordance with the law, rights as well as personal rights and claims to the property are satisfied from the proceeds from the sale of an encumbered asset less costs of sale.

2. The claims referred to in paragraph 1 are paid in the order of their priority.

3. Along with the claims are satisfied interest secured in the manner, referred to in paragraph 1 and costs of proceedings in the value not exceeding one tenth of the capital.

Art. 346.

In case of the sale of the property, perpetual usufruct right, co-operative right to premises or ship entered in the register of ships, encumbered respectively with mortgage, maritime mortgage or rights, expiring in accordance with the law, and personal rights and claims, such secured claims are satisfied after the satisfaction of alimony and wage claims of employees of the bankrupt working on the sold property or ship for the last three months prior to the date of their sale, but only up to the level of three times the minimum wage, as well as pensions for causing a disease, inability to work, disability or death.

Part II

Bankruptcy proceedings for mortgage banks

Art. 442.

In case of the bankruptcy of a mortgage bank claims, rights and measures referred to in Art. 18 paragraphs 3 and 4 of the Act of 29 August 1997 on covered bonds and mortgage banks (Journal of Laws No. 140 item 940; of 1998 No 107 item 669; of 2000 No. 6 item 70 and No. 60 item 702; of 2001 No. 15 item 148; No. 39 item 459; and of 2002 No. 126 item 1070 and No. 153 item 1271) entered into the covered bond cover register, make up a separate bankruptcy estate which is primarily used for satisfying claims of covered bond holders; after the satisfaction of claims of covered bond holders, the funds from the separate bankruptcy estate are included in the bankruptcy estate.

Art. 443.

1. In the decision declaring the bankruptcy, the court appoints a curator who represents the rights of covered bond holders in the bankruptcy proceedings. Before the appointment of the curator, the court seeks an opinion on the proposed curator of the Banking Supervisory Commission.

2. The curator, referred to in paragraph 1, is subject to Art. 187 paragraphs 3 and 4 and the provisions concerning the reporting obligation of the receiver.

Art. 444.

The curator notifies the following for the bankruptcy estate:

1) total nominal value of non-redeemed by the bankruptcy date covered bonds with the redemption date before this date as well as total sum of unpaid interest;

2) total nominal value of covered bonds and interest paid after the bankruptcy date, and premiums provided for in the plan.

Art. 445.

1. The receiver, the court supervisor and administrator shall provide the curator with all necessary information. The curator has the right to look into the books and documentation of the bankrupt bank.

2. At the assembly of creditors, the curator has the right to vote only in matters which may have an influence on rights of covered bond holders.

Art. 446.

The declaration of bankruptcy of a mortgage bank does not infringe maturity dates of its obligations towards covered bond holders.

Art. 447.

1. The liquidation of the separate bankruptcy estate is performed by the receiver with participation of the curator.

2. In the event the council of creditors or the judge-commissioner agree to an unrestricted sale of assets included in the separate bankruptcy estate, such sale requires the consent of the curator.

3. Assets entered into the mortgage covered bond cover register are sold to another mortgage bank unless it is impossible or the price offered by other mortgage banks is much lower than sums that can be obtained from secured claims and other assets. The sale of these assets results in the transfer, to the buyer, of obligations of the bankrupt bank towards mortgage covered bond holders. The transfer does not require the consent of mortgage covered bond holders. The sale of the assets requires the consent of the curator. The sale should be announced.

4. Paragraph 3 shall apply respectively to the sale of the assets entered into the register of public covered bonds cover.

5. The sale agreement for the mortgage-secured claim, referred to in paragraph 2, is the basis for an entry into the land and mortgage register.

Art. 448.

The following are satisfied from the separate bankruptcy estate in a given order:

- 1) liquidation costs of the estate, including the curator's fee;
- 2) claims of covered bond holders and covered bonds at nominal value;
- 3) interest (coupons).

Art. 449.

If the separate estate is not sufficient for full satisfaction of covered bond holders, the remaining sum is satisfied from the distribution of the funds of the bankrupt estate; with this sum the curator votes in the signing of the arrangement; he has one vote for each sum resulting from dividing the sum of all other claims of those entitled to vote by the number of creditors representing these claims. The sum earmarked for the satisfaction of covered bond holders is moved from the funds of the bankrupt estate fund to the funds of the separate bankrupt estate.

Art. 450.

It is forbidden to enter into trade covered bonds which have been issued by the bankrupt and are his property. These covered bonds should be redeemed.