

Pre-pack liquidation in bankruptcy proceedings

The dissertation analyses pre-pack liquidation in bankruptcy proceedings, regulated by Articles from 56a to 56h of the Bankruptcy Law Act. Pre-pack liquidation is a relatively new institution that was introduced into the Polish legal system on 1 January 2016, although since then it has been amended two times already. Pre-pack liquidation enables a sale of a debtor's enterprise or an organised part thereof, or a sale of assets that comprise a substantial part of the enterprise under liquidation proceedings, although in pre-pack liquidation the terms and conditions of the sale are agreed with the buyer before the filing of a bankruptcy petition. The filing of the petition is preceded by an informal stage of the liquidation, during which the details of the planned sale are determined. Therefore, the petitioner has an actual say in who acquires the disposed assets and what are the terms of the acquisition. The pre-pack liquidation is modelled on Anglo-Saxon solutions.

The dissertation is composed of four chapters. The first elaborates in detail on what is the permissible subject matter of sale in a pre-pack liquidation and on the assumptions and individual steps that comprise the entire procedure. This chapter discusses the findings made by researching court case files. Appropriate references are given in the main text or in the footnotes.

The second chapter discusses the effects of a sale under pre-pack liquidation. Since, in principle, these effects are not different than those of a sale performed under liquidation proceedings carried out in accordance with general principles that include the liquidation of a bankruptcy estate, the author has decided not to focus on presenting the current body of knowledge insofar as concerns the effects of a liquidation sale in general, but instead on an in-depth analysis of those of these effects which in pre-pack liquidation raise serious doubts and give room for varying interpretations. Therefore, the impact of the sale on executory contracts and on possible purchaser's liability for the liquidated entity's debts under those contracts is thoroughly analysed. In addition, the chapter attempts to determine the influence the sale has on employment relationships and on possible purchaser's liability for any claims that may arise out of those relationships.

The third chapter discusses pre-pack sale as it functions in other legal systems. American, British, French, and Dutch models are analysed. The models that exist in the first two of those countries are discussed most extensively, as pre-pack sale have existed in those countries for the longest, and because those solutions have served as a legislative template for other jurisdictions. Also, proceedings in which pre-pack sale is prepared or executed have also been discussed with regard to each of the analysed legal systems. In the final part of the chapter an outline of the Proposal for a directive of the European Parliament and of the Council harmonising certain aspects of insolvency law published on 7 December 2022 is presented.

The fourth chapter is composed of two parts. The first is a comparative analysis – it compares a number of aspects of pre-pack sale that have been identified as the most important, especially in terms of its effectiveness and transactional safety, according to American, British, French, Dutch, and Polish regulations, and according to the proposed directive provisions as well. Not only the regulations that apply currently are considered, but also the practical aspects of the analysed institutions. The effectiveness of individual solutions is assessed based on available statistical data. This part also attempts to identify the reasons why the Polish pre-pack liquidation sometimes proves to be less effective than its counterparts that function in other

jurisdictions. The last part of the dissertation is the result of all of the considerations contained in the previous parts, and it gives some recommendations as to the possible amendments to the current legislation, i.e., the *de lege ferenda* conclusions.