

Declaration of Bankruptcy of a Cooperative in Poland in Selected Court Judgments

1. Introductory issues

It should be noted at the outset that the Polish legal system is a system of statutory law. Court rulings do not constitute formal sources of law in Poland. Nevertheless, judicial decisions exert a significant influence on the interpretation and application of statutory law.

The research question in this study concerns the declaration of bankruptcy of a cooperative (including a "housing cooperative" – Pol. *spółdzielnia mieszkaniowa*) in Polish case law.¹ Bankruptcy proceedings fall within the scope of civil procedure. Therefore, rulings of the Civil Chamber of the Supreme Court, as well as the rulings issued by commercial courts (part of the common court system), will be relevant for the discussion. However, administrative courts exercise jurisdiction over matters concerning the tax liability of cooperative management-board members (liquidators). Therefore, administrative case law also addresses the issue of cooperative bankruptcy.

In Poland, a cooperative is a legal entity.² It is therefore a separate legal entity distinct from its members (cooperative members). A cooperative,

¹ R. Adamus, Ogłoszenie upadłości spółdzielni w świetle orzecznictwa sądowego. *Prawo i Wiąż*, 2022, No 43, pp. 88–99.

² Sz. Styś, Z problematyki upadłości spółdzielni, *NP* 1986, no 4–5, p. 91; S. Gurgul, Upadłość spółdzielni mieszkaniowej, dewelopera i towarzystwa budownictwa społecznego. Komentarz, Warszawa 2012, p. 15; J. Gójski, L. Marszałek, *Spółdzielczość. Zarys rozwoju historycznego*, Warszawa 1968, p. 38; S. Breyer, W sprawie reformy postępowania upadłościowego

including a housing cooperative,³ has the capacity to become insolvent (be declared bankrupt). A cooperative can have different characteristics: it can be, for example, agricultural or energy-related.⁴

Members of a cooperative are not liable for the obligations of a cooperative that has become insolvent, although the cooperative is based on a special bond between the entity and its members.⁵ *De lege lata*, the declaration of bankruptcy of a cooperative by a bankruptcy court does not impose an obligation for cooperative members to make additional payments to cover the cooperative's deficit. The bankruptcy of cooperatives and housing cooperatives is not a common occurrence in practice, and the legal framework governing this phenomenon is currently fragmented. The current legal framework is so unclear that it fosters divergent views and hinders the effective conduct of bankruptcy proceedings. This issue is both significant and concerning because the case law in this area is unfortunately unstable.

2. Social consequences of bankruptcy of a cooperative as the *ratio legis* of the special procedure for declaring bankruptcy

The bankruptcy of a cooperative, especially a housing cooperative, has far-reaching social consequences. This circumstance constitutes the *ratio legis*

spółdzielni, Państwo i Prawo 1964, no. 12, p. 887; M. Bieńko, Upadłość spółdzielni obejmująca likwidację jej majątku, Roczniki Nauk Prawnych 2008, vol. XVIII, no 1, p. 111; P. Bielski, Podstawy ogłoszenia upadłości spółdzielni w prawie polskim, Przegląd Prawa Handlowego, 2001, no 2, p. 33; P. Pogonowski, Upadłość spółdzielni – podstawowe problemy prawne [in:] *Iustitia civitatis fundamentum. Księga pamiątkowa ku czci Profesora Wiesława Chrzanowskiego*, H. Cioch, A. Dębiński, J. Chaciński [editors], Lublin 2003, pp. 99–101; D. Bierecki, Cooperative Principles in the Concepts of Social Economy and Social Enterprise in Polish Law, Prawo i Więź, 2024, no 4.

³ K. Królikowska, Postępowanie upadłościowe spółdzielni mieszkaniowych, Instytut Wymiaru Sprawiedliwości, Warszawa 202, pp. 1–20; S. Gurgul, Upadłość spółdzielni mieszkaniowej, Monitor Prawniczy 2004, no 5, p. 20;

⁴ D. Bierecki, Energy Cooperatives in the System of Polish Cooperative Law. Review of Institute of the Grand Duchy of Lithuania, 2021, No 1, pp. 7–16; D. Bierecki, Ustalenie liczby udziałów w spółdzielni rolników (spółdzielni energetycznej). Pieniądże i Więź, 2020, No 3, pp. 69–76.

⁵ D. Bierecki, Zasada równości praw i obowiązków członków spółdzielni: Uwagi na tle orzecznictwa Sądu Najwyższego. Prawo i Więź, 2022, No 1; D. Bierecki, Cooperative Principles in the Concepts of Social Economy and Social Enterprise in Polish Law. Prawo i Więź, 2024 No 4; D. Bierecki, The Legal Nature of the Cooperative's Activity in the Interests of its Members—Remarks Under Polish Law. Boletín De La Asociación Internacional De Derecho Cooperativo, 2020, No 61, pp. 185–198.

for maintaining a special, exceptional procedure governing the decision to file a bankruptcy petition against a cooperative.

The bankruptcy of a housing cooperative directly affects the cooperative rights of its members. If, during bankruptcy proceedings, the buyer of a building and landed property is not a housing cooperative, the cooperative tenancy right to the apartment is converted into a lease right subject to the Act on the Protection of Tenants' Rights, Municipal Housing Resources, and Amendments to the Civil Code. If, during the proceedings, the property is acquired by an entity other than the cooperative, the cooperative ownership right to the apartment is transformed *ex lege* into full ownership of the apartment. Such a transformation, arising from Article 17(18) of the Act on Housing Cooperatives, cannot, however, be classified as a division of real estate within the meaning of Article 76 of the Act on Land and Mortgage Registers. This means that the holder of a cooperative ownership right to a unit acquires separate ownership of that unit, free from mortgage encumbrances previously attached to the cooperative's property.⁶ If another housing cooperative acquires the right to land along with the ownership right to the building located on it or a share in the co-ownership of that building, the persons holding cooperative tenancy rights to residential units in that building, or claims to establish such a right, become members of that cooperative. The cooperative tenancy right to the residential unit, or claims to establish such a right, are transferred to the cooperative that acquired the land along with the ownership of the building, or a share in its co-ownership. At the same time, membership in the cooperative that previously held the right to the land and the building (or a share in its co-ownership), terminates by operation of law. After bankruptcy is declared, members of any cooperative (regardless of its type), upon the bankruptcy trustee's request, must immediately pay any outstanding portion of their share (Article 135 of Cooperative Law, "CL").⁷ This obligation is explicitly provided for by law. It does not raise the same doubts as the controversial demand made by the trustees of the bankruptcy estate of a *sui generis* cooperative, namely a cooperative savings and credit union (Pol. *spółdzielcza kasa oszczędnościowo-kredytowa*, "SKOK"), addressed to SKOK members and compelling them to pay a so-called double share to cover

⁶ Resolution (*postanowienie*) of the Supreme Court of 16 February 2022, Case No. I NSNc 601/21

⁷ Resolution (*uchwała*) of the Supreme Court of 16 February 2022, Case No. I NSNc 601/21

balance-sheet losses.⁸ If bankruptcy proceedings are initiated within one year of the date on which a member ceased to belong to the cooperative, that former member is obligated to contribute to covering the cooperative's losses as if their membership has not expired (Article 28 CL). In the event of cooperative bankruptcy, however, complex legal issues, such as the admissibility of a claim by SKOK trustees seeking repayment of stabilization-fund contributions, do not arise.⁹

3. Autonomous regulation of the cooperative bankruptcy proceedings

In the Polish legal tradition, CL directly regulates certain aspects of cooperative bankruptcy. However, it does not constitute a comprehensive regulation. This can be attributed to two factors: (a) cooperatives have the capacity to become insolvent, and (b) cooperatives have been regulated by law since the early Second Polish Republic, while bankruptcy law ("BL") itself was not consolidated until 1934. In contrast, during the communist period in Poland, cooperatives expanded, and bankruptcy remained a marginal phenomenon due to the state's monopoly on economic activity and the principle of "uniform state ownership."

Therefore, currently applicable CL introduces autonomous rules governing both the procedure for declaring a cooperative bankrupt and, to some extent, the conduct of bankruptcy proceedings themselves.¹⁰

⁸ R. Adamus, Czy syndyk spółdzielczej kasy oszczędnościowo – kredytowej może dochodzić od członków kasy uzupełnienia straty bilansowej? Doradca Restrukturyzacyjny 2018, no 3, p. 26–35, R. Adamus, Zagadnienie odpowiedzialności za straty bilansowe członków spółdzielczej kasy oszczędnościowo – kredytowej w upadłości [in]: Prawo prywatne w służbie społeczeństwu. Księga pamiątkowa poświęcona pamięci Profesora Adama Jedlińskiego, P. Zakrzewski, D. Bierecki [editors], Sopot 2019, s. 23–44, R. Adamus, O zagadnieniu odpowiedzialności członków SKOK w upadłości za stratę bilansową raz jeszcze, Doradca Restrukturyzacyjny 2019, no 3, pp. 30–39.

⁹ R. Adamus, Istota funduszu stabilizacyjnego w kontekście problemu dopuszczalności zwrotu wpłat na rzecz syndyka upadłej spółdzielczej kasy oszczędnościowo-kredytowej, *Studia Prawnicze. Rozprawy i Materiały* 2021, no 2, *Studies in Law: Research Papers* 2021, No. 2, R. Adamus, Niedopuszczalność zwrotu wpłat na fundusz stabilizacyjny na rzecz syndyka upadłej spółdzielczej kasy oszczędnościowo-kredytowej, *Studia Prawnicze. Rozprawy i Materiały* 2021, no 1, *Studies in Law: Research Papers* 2021, No. 2.

¹⁰ J. Kruczałak-Jankowska, Autonomiczność i specyfika regulacji niewypłacalności spółdzielni – wybrane problemy, *Prawo i Wiąż* 2024, No 5, pp. 9–23.

The autonomy of the procedure for declaring a cooperative bankrupt is reflected primarily in specifically defined grounds for insolvency. Furthermore, it is determined in the specific internal decision-making procedure that the cooperative's governing bodies must follow when deciding whether to file a bankruptcy petition. Finally, the autonomy of the rules governing cooperative bankruptcy proceedings is expressed in the statutorily defined time limits imposed on the cooperative's management board for filing a bankruptcy petition.

4. Legal basis for declaring cooperative bankruptcy

A bankruptcy court declares a cooperative bankrupt when it becomes insolvent (Article 130(1) CL). This provision essentially mirrors the regulation of Article 10 BL. A linguistic, systematic, and teleological interpretation of these provisions suggests the existence of a statutory prohibition on declaring bankruptcy where only a single creditor is involved. This raises the question of what constitutes insolvency for a cooperative. Pursuant to the provisions of CL (Article 130(2) CL), a cooperative is insolvent when “the total value of its assets does not cover all liabilities.”¹¹

The cooperative's insolvency status should be evident from its financial statements. Article 130(2) CL provides for cooperative insolvency.¹² It differs

¹¹ M. Winter, *Fałszowanie sprawozdań finansowych a odpowiedzialność zarządu za zobowiązania upadłej spółdzielni*. *Studia i Prace Kolegium Zarządzania i Finansów/Szkoła Główna Handlowa*, 2017, No 154, pp. 113–136.

¹² The judgment of the Provincial Administrative Court in Gliwice of 11 March 2020, I SA/Gl 1046/19, indicates that “Article 130 § 2 of Cooperative Law, as well as the case law of administrative courts, clearly indicates that the state of insolvency should follow from the the financial statements, and not from other circumstances that may reveal that the total value of assets is insufficient to satisfy all liabilities.” This interpretation is incorrect. Is objective knowledge of insolvency or the formal source of this knowledge more important? Furthermore, financial statements may be prepared unreliably or in violation of applicable accounting principles. The District Court in Łódź pointed this out in its judgment of October 18, 2018, case file VIII U 581/14: “It should be noted that due to the fact that the Cooperative's assets were not updated on an ongoing basis in accordance with the Accounting Act, it is impossible to verify whether the assets were valued at the correct amount. The Cooperative's financial statements for 2006 and 2007 contained entries that goods did not show any movement in the warehouse, i.e. that they were overdue. The balance sheet for 2007 and earlier years also showed the value of overdue materials at their purchase value. However, the financial statements do not provide information on whether the goods were discounted or whether they were revalued, especially when the information was included that the goods were difficult to sell. If the Cooperative made any revaluation write-offs regarding warehouse

significantly from Article 10 BL, which stipulates common grounds for bankruptcy applicable to most debtors.

5. Analysis of the insolvency prerequisite under Article 130(2) CL

The construction of this premise is notably imprecise. A question arises as to whether it applies only to monetary assets or also to the cooperative's non-monetary assets. It appears that all categories of assets are included. This conclusion follows from the principle of non-distinguishability. However, this cannot include inalienable rights, such as a right to usufruct established in favor of the cooperative. Such rights cannot be converted into cash to satisfy liabilities.

Furthermore, there is also uncertainty as to whether insolvency should be determined based on an inability to perform all obligations or only material ones. It appears that the interpretation of this provision should take into account the principle of proportionality. If the shortfall is small and temporary, it does not constitute grounds for filing a bankruptcy petition. In other words, the shortfall must be both permanent and financially significant. It should be noted that declaring a cooperative bankrupt has far-reaching social consequences. Furthermore, funds paid by cooperative members as operating fees are excluded from the bankruptcy estate. The law also places particular emphasis selling the assets of a bankrupt cooperative, where possible, to another cooperative. It would make no economic sense to declare a cooperative bankrupt in the event of a minor or temporary asset shortfall. This ground for insolvency does not appear to extend to disputed liabilities.

stocks, it should have been included in the financial statements or additional information, but it did not include such entries. If there are no such entries in the financial statements, it means that 'No write-downs were made. The Accounting Act requires, in such a case (if there is any overdue balance), the market value of warehouse inventory to be updated. This omission therefore means that the 2007 financial statements were prepared in violation of the Accounting Act. The cooperative also does not have accounting records.'

6. The relationship between the grounds for insolvency under Article 130(2) CL and Article 11 BL

This raises the question of the relationship between the provisions of CL and BL regarding the grounds for insolvency. Differing views have been expressed on this matter. If BL were to regulate separate proceedings involving cooperatives and housing cooperatives, current interpretative uncertainties could be resolved legislatively.

According to one view, the ground for insolvency of a cooperative set out in CL constitutes a *lex specialis* with respect to the provisions of BL. Consequently, only the provisions of CL may serve as a valid legal basis for declaring a cooperative bankrupt.¹³ The literature has expressed the view that excessive indebtedness, as referred to in Article 11(1)-(2) BL does not serve as a grounds for declaring bankruptcy for a cooperative or housing cooperative, as it is preceded by the broader concept of excessive indebtedness contained in Article 130(2) CL.¹⁴

According to another view, a cooperative may be declared bankrupt based on the insolvency grounds set out in both CL and BL.¹⁵ What arguments are advanced to support this position? The special provisions apply only to declaration of bankruptcy based on excessive indebtedness (when liabilities exceed assets). Because these provisions do not regulate the creditors' position on cooperative bankruptcy, they do not preclude creditors from filing for bankruptcy on the ground of the cooperative's cessation of payments. Some authors have expressed the view that a dual, cumulative regime of insolvency grounds applies.

One could also argue that the applicable insolvency grounds depend on who files the petition – with CL governing petitions filed by the debtor cooperative and BL governing petitions filed by creditors. However, this approach leads to very inconsistent outcomes and should therefore be rejected. From the perspective of cooperative bankruptcy in general, the identity of the petitioner is of no legal significance.

¹³ Judgment of the Supreme Administrative Court of 22 September 2017, II FSK 1423/15, judgment of the Provincial Administrative Court with its seat in Gdańsk of 30 October 2019, I SA/Gd 1292/19, judgment of the Provincial Administrative Court with its seat in Poznań of 11 December 2020, I SA/Po 479/20.

¹⁴ P. Zakrzewski, *Upadłość spółdzielni* [in:] *System Prawa Prywatnego*, t. 21, *Prawo spółdzielcze*, K. Pietrzykowski [editor], Warszawa 2020, p. 416.

¹⁵ Judgment of the Court of Appeal in Poznań of 5 October 1936, II CZ 922/36, Resolution (postanowienie) of the Supreme Court of 4 December 1998, III CKN 398/98.

It may also be argued that the grounds for insolvency under BL and CL substantially overlap, thereby forming a common basis for declaring bankruptcy. However, this approach fails to address cases that fall outside the area of overlap, leaving unresolved which legal standard should apply.

A bankruptcy petition filed by a cooperative is subject to the bankruptcy court's review of the cooperative's estate and its evaluation.¹⁶ The following sequence of events, described in the judgment of the Provincial Administrative Court in Poznań of April 4, 2024, I SA/Po 81/24 is illustrative: "The Management Board decided to convene a General Meeting, which adopted a resolution not to take steps toward liquidation and instead authorized the sale of the Cooperative's property. At the Management Board meeting in March 2015, due to the disclosed financial loss and loss of liquidity, the body decided to cover the loss with share capital and reserve fund, although these proved insufficient to cover the entire loss. Therefore, a General Meeting was convened for March 30, 2015. The General Meeting adopted a resolution to place the Cooperative into bankruptcy, but the District Court dismissed the petition due to the lack of assets necessary to conduct bankruptcy proceedings."

Finally, it should be noted that a cooperative's insolvency status must be established on the basis of its financial statements. There are no grounds for conducting additional evidentiary proceedings, such as witness testimony or valuation reports) to determine the actual market value of the cooperative's assets (including real estate).¹⁷

7. Procedure for filing a bankruptcy petition by a cooperative

A bankruptcy petition for a cooperative may be filed by the cooperative's management board, or in principle, by any of its members. Article 132 CL clearly provides that a personal creditor may also file a bankruptcy petition against a cooperative.

¹⁶ Supreme Court Decision (*postanowienie*) of May 10, 1999, II CKN 167/99. In turn, pursuant to Article 133 CL, if the financial statements prepared by the management board or liquidator indicate that the assets of a cooperative that has ceased operations are insufficient to cover the costs of bankruptcy proceedings, and the creditors do not consent to their coverage, then bankruptcy proceedings shall not be conducted. In such a case, the court, at the request of the creditors or the National Cooperative Council, shall order the deletion of the cooperative from the National Court Register, notifying the creditors and the National Cooperative Council thereof. In such a case, bankruptcy proceedings shall not be conducted.

¹⁷ Judgment of the Supreme Administrative Court of 10 January 2017, I FSK 827/15

If grounds for the cooperative's insolvency are disclosed, the management board must immediately convene a general meeting to consider whether the cooperative should continue to operate. Several procedural options are possible.¹⁸

First, the general meeting may adopt a resolution to continue the cooperative's operation, simultaneously indicating specific measures to cover the deficit. However, upon the request of a creditor who has filed a bankruptcy petition, the court may declare the cooperative bankrupt despite the resolution of the general meeting regarding its continued operation. Second, the general meeting may adopt a resolution on the declaration of bankruptcy of the cooperative. In such a case, the management board is required to file a bankruptcy petition with the court.

The primary decision-making authority for filing a bankruptcy petition is the general meeting, which serves as the direct representative body of the cooperative's members. The general meeting must be convened, and its resolution is binding on the cooperative's management board.¹⁹ Pursuant to Article 130(4) CL, "if the general meeting adopts a resolution

¹⁸ The Supreme Administrative Court's judgment of October 19, 2022, Case No. III FSK 1005/21, states that the adoption by the general meeting of a resolution to declare a cooperative bankrupt falls within the exclusive jurisdiction of the general meeting. The provisions of Article 130 of the Act of September 16, 1982, Cooperative Law, regulating the intra-cooperative procedure for declaring bankruptcy of a cooperative, also define the exclusive competences of its individual bodies in this regard. If grounds for declaring bankruptcy exist, the management board is obligated to convene a general meeting, which adopts a resolution regarding the cooperative's continued existence, including a resolution to declare the cooperative bankrupt. Therefore, the decision in this matter does not rest with the cooperative's management board, as it is reserved by law to another body (Article 48(2) CL). Since the legislature clearly defined the liquidator's authority to file a bankruptcy petition without attending the general meeting, the absence of such a provision with respect to the management board leads to the converse conclusion that this body lacks the authority to independently decide whether to file a bankruptcy petition with the court despite the existence of a cooperative's insolvency. Nor can it do so despite a resolution of the general meeting regarding the cooperative's continued existence. This understanding of this issue is indirectly indicated by Article 132 CL, which stipulates that the court may declare a cooperative bankrupt even despite a resolution of the general meeting regarding its continued existence, limiting this to situations where it occurs at the request of a creditor. The management board's obligations in this proceeding are to convene a general meeting at the appropriate time, after determining through financial statements prepared in accordance with the principles of proper accounting (Article 87 CL) that the total value of the cooperative's assets is insufficient to satisfy all its obligations, and to promptly file a bankruptcy petition with the court after the general meeting adopts a resolution declaring the cooperative bankrupt.

¹⁹ Judgment of the District Court in Szczecin of 15 January 2013, IV Ka 1413/12, Judgment of the Provincial Administrative Court with its seat in Gdańsk of 30 October 2019, I SA/Gd 1292/19.

to declare the cooperative bankrupt, the management board is obligated to file a bankruptcy petition with the court without delay.” However, the resolution of the general meeting does not bind the bankruptcy court. These intra-cooperative proceedings are mandatory.²⁰ Their absence is a procedural impediment to declaring bankruptcy. If the general meeting fails to adopt a resolution, or adopts a negative one, the management board cannot independently file a bankruptcy petition. This structure reflects the social consequences of cooperative’s bankruptcy.²¹ Cooperative members may prevent the cooperative from being placed into bankruptcy at the initiative of the management board, despite the cooperative’s obvious insolvency.

The time required to conduct intra-cooperative proceedings means that general statutory time limits for filing a bankruptcy petition do not apply. If the cooperative’s management board fails to convene a general meeting in the event of the cooperative’s insolvency, its members incur statutory liability for failing to file a bankruptcy petition. Article 58 CL provides that members of the management board, the council, and liquidators are liable to the cooperative for damage caused by acts or omissions contrary to the law or the cooperative’s articles of association, unless they are not at fault. The following view has been expressed in the literature: “Not only are the members of the management board liable for damages under Article 58 CL for the worsening of a cooperative’s insolvency; members of the supervisory board are likewise liable. If, despite insolvency, the management board fails to convene a general meeting, the supervisory board members is obligated to fulfill this duty on behalf of the management board.”²²

The Supreme Administrative Court’s judgment of October 19, 2022, Case No. III FSK 1005/21, states that the specific nature of bankruptcy proceedings under CL requires that the validity of filing a petition to declare a cooperative bankrupt may and should be reviewed after the end of each fiscal year, provided that no resolution declaring the cooperative bankrupt was adopted in previous years. In other words, if the general meeting, within the scope and limits of its statutory authority, adopted a resolution not to

²⁰ Judgment of the Supreme Court of 19 May 2010, I CSK 480/09.

²¹ Judgment of the Provincial Administrative Court in Bydgoszcz of January 30, 2019, I SA/Bd 857/18: “If a resolution is adopted on the continued existence of a cooperative, simultaneously indicating measures enabling it to emerge from insolvency, the cooperative’s management board will be released from the obligation to file a bankruptcy petition with the court... a general meeting should be convened immediately if the cooperative’s financial statements indicate that the total value of assets is insufficient to satisfy all liabilities.”

²² K. Królikowska, *Postępowanie upadłościowe...*, p. 24.

declare the cooperative bankrupt, despite the existence of the necessary grounds for doing so, this does not mean that if the next fiscal year ends with a loss, the cooperative's management board's obligation to convene a general meeting, with the cooperative's continued operation included on the agenda, ceases to apply.

8. Conclusions

It should be emphasized that the legislator did not introduce separate proceedings in BL for cooperatives, including housing cooperatives. Separate bankruptcy proceedings apply, among others, to developers. The legal framework related to cooperative bankruptcy remains fragmented. BL regulates certain effects of cooperative bankruptcy in its provisions on the consequences of bankruptcy for liabilities. CL, by contrast, provides very limited guidance on the course of bankruptcy proceedings. It regulates the effects of declaring bankruptcy of housing cooperatives on cooperative rights. A better legislative solution would be to regulate all the distinctions concerning (a) cooperatives and (b) housing cooperatives in BL. The issue of bankruptcy should be regulated directly by legislation dedicated to insolvency, rather than by fragmentary statutes governing the creation of particular legal entities. The Commercial Companies Code, the Foundations Act, the Associations Act, the European Economic Interest Grouping Act, and the European Company Act appropriately do not contain any detailed regulations on bankruptcy. *De lege ferenda*, bankruptcy legislation could introduce a dedicated bankruptcy procedure for cooperatives. Such a measure could resolve many controversial issues surrounding the declaration of cooperative bankruptcy. Apparently, the objective should be to standardize the grounds for insolvency for all legal entities, while allowing for limited deviations tied to general principles. The internal cooperative procedure for filing a bankruptcy petition should, however, be preserved.

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