

# The influence of the declaration of bankruptcy on court proceedings | BY RAFAL KOS

In the event of a declaration of liquidation bankruptcy or arrangement bankruptcy, which removes the bankrupt's rights to manage the assets comprising the bankruptcy estate, the court, pursuant to Article 174.1.4 of the CCP, is obligated ex officio, to suspend the pending proceedings as well as inform the receiver in bankruptcy or the court administrator on the pending proceedings, setting a relevant time period for him to accede to the said proceedings. Pursuant to Article 180 of the CCP, the court ex officio undertakes the suspended proceedings at the moment in which the receiver in bankruptcy or the court administrator submits a relevant declaration in the subject of acceding to the proceedings. In the event of acceding, the proceedings continue with the participation of the receiver in bankruptcy or the court administrator and may only be conducted by them. In the event of a refusal to accede – which also occurs if a declaration is not submitted in the designated time period – the proceedings continue with the participation of the bankrupt and it is responsible for making further procedural decisions.

The issue presents itself differently in the case of an arrangement bankruptcy, whereby the bankrupt maintains the right to manage the property comprising the bankruptcy estate. The bankrupt has the right to be a party in the hearing regarding the bankruptcy estate, and the pending proceedings are not subject to suspension. However, pursuant to the disposition of Article 138 of the BRL, the court administrator accedes, by virtue of the law, to the pending proceedings regarding the bankruptcy estate on behalf of the bankrupt, and in civil cases is entitled to be a side intervener, to which the provisions on uniform joint participation apply. Additionally, Article 138.3 of the BRL states that the recognition by the bankrupt of a claim, his waiver of the claim, the making of a settlement or admission of circumstances relevant to the case, if effected without the consent of the court supervisor, shall not give rise to legal effects.

It should also be emphasised that the accession of the receiver in bankruptcy, court administrator or court supervisor refers only to proceedings regarding the bankruptcy estate. The doctrine accepts the rule that proceedings on non-asset claims – specifically hearings on the rights status or the protection of personal property – are not related to the bankruptcy estate. Cases on claims, which due to their nature are not subject to satisfaction from the estate, are also not related to the bankruptcy estate. This refers specifically to claims on desistance resulting from the protection of unconditional subjective rights, possession or unfair competition (however, in this case the specific factual status should be analysed in detail, as the doctrine admits certain exceptions). In these cases, the bankrupt maintains full freedom in conducting procedural actions. The situation was normalised in Article 65.1 of the BRL, in accordance with which, when the receiver in bankruptcy, court administrator or court supervisor has refused to join the proceedings concerning the bankrupt's property or has withdrawn from such proceedings, the property involved in the proceedings shall be presumed excluded from the bankruptcy estate.

## The consequence of the defendant's declaration of bankruptcy for court proceedings

The consequence of the defendant's declaration of liquidation bankruptcy in the course of the court proceedings regarding the bankruptcy estate is possible by the court ex officio of the pending proceedings, pursuant to Article 182.1 of the CCP in conjunction with Article 145.1 of the BRL, the legislator foresees that in the case in which the debts are subject to submission to the bankruptcy estate are not included in the list of receivable debts, and before the date of the declaration of bankruptcy, the court proceedings in the matter were pending, the creditor, upon the exhaustion of the manner indicated in the act, may

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demand the discontinuation of the proceedings against the receiver in bankruptcy.

The legal solutions regarding court proceedings, in which the bankrupt party acts on the side of the defendant at the declaration of bankruptcy with the possibility of an arrangement, are analogical to those indicated in the first part of this article. Namely, in a situation in which the bankrupt retains the right to manage its property comprising the bankruptcy estate, the court supervisor accedes by virtue of the law to the court proceedings regarding the bankruptcy estate conducted against the bankrupt, obtaining the entitlement of autonomous side intervener (Article 138 of the BRL). Additionally, the recognition by the bankrupt of a claim, his waiver of the claim, the making of a settlement or admission of circumstances relevant to the case, if effected without the consent of the court supervisor, shall not give rise to legal effects.

However, when an administrator has been established, the court proceedings may be instigated and conducted solely by him, on behalf of the bankrupt, however in his own name (Article 139.1 of the BRL).

The provisions, cited above, normalising both the discontinuation of the court proceedings as well as the accession by the receiver in bankruptcy or the court supervisor to them apply only in matters regarding the bankruptcy estate.

## The declaration of bankruptcy versus the arbitration covenant

The issue of the arbitration covenant at the moment of the declaration of liquidation bankruptcy is normalised by Article 147 of the BRL (an analogical regulation is found in Article 142 of the BRL for the declaration of arrangement bankruptcy). The consequence foreseen by the legislator is the loss of the force of law of the arbitration covenant with the date of the declaration of bankruptcy, however, in the case of pending proceedings before an arbitration court, the proceedings are subject to discontinuance. If despite the declaration of bankruptcy of one of the parties, the arbitration court were to deliver a judgment, then the judgment would be subject to repeal on the basis of Article 1206.1.1 of the CCP. Such a regulation bears the effect in the form of the ineffectiveness of the possible raising, by the defendant, of the charge of the existence of the arbitration covenant at the moment of the submission of the statement of claims to the common court of law.

Opinions for the abatement of the above indicated effect of the declaration of bankruptcy appear in the doctrine. Proposals are being made that in such a case, the arbitration covenant be ineffective only towards the bankruptcy estate and only if the matter concerns the bankruptcy estate. However, the draft change to the act regarding the present issue is not currently being examined. ■