Ius Novum
2025, vol. 19, no. 2, pp. 120–135

A SHARE IN A LIMITED LIABILITY COMPANY AS PART OF THE BANKRUPTCY ESTATE

BARTOSZ SIERAKOWSKI*

DOI 10.2478/in-2025-0017

Abstract
The article is of a scientific and research nature, and its subject is the determination of the legal status of a share in a limited liability company in the event of the declaration of bankruptcy of the person holding such a share (shareholder). The purpose of the research conducted is to determine the rules governing the management and disposal of shares in the context of a shareholder's bankruptcy. This requires determining who becomes the subject of the rights under the shares and the executor of these rights at the moment bankruptcy is declared. Given the special nature of bankruptcy laws, it is crucial to determine whether restrictions on the disposition of shares, as provided by the law or the articles of association, are also binding on the receiver.

The article demonstrates that the legal status of a share in a limited liability company, and the rights arising from such a share, changes upon the declaration of bankruptcy of a shareholder. Since a share becomes part of the bankruptcy estate, its management and rules of disposal are subordinated to the debt collection function of bankruptcy law. This, in turn, means that certain provisions of the articles of association become ineffective once a shareholder's bankruptcy is declared and are not binding within the framework of bankruptcy proceedings. The article also demonstrates that the prohibition of offering and promoting the acquisition of shares to an unspecified circle of addressees, as laid down in Article 182[1] of the Commercial Companies Code, is not applicable in bankruptcy proceedings. The paper mainly uses the dogmatic-legal method and critically analyses the views of the doctrine and the positions taken in judicial decisions.

Key words: bankruptcy proceedings, liquidation of bankruptcy estate, restrictions on the disposability of a share in a limited liability company, official receiver, crowdfunding

* LLD, Institute of Bankruptcy and Restructuring Law and Research into Insolvency, Lazarski University in Warsaw (Poland), e-mail: bartosz.sierakowski@lazarski.pl, ORCID: 0000-0002-1212-1729

INTRODUCTION

If a debtor becomes insolvent, Polish law allows the court to adjudicate them bankrupt, provided that a legitimate entity applies for this.[1] Bankruptcy proceedings are initiated in order to satisfy the claims of creditors to the highest possible extent.[2] In this context, the normative framework of bankruptcy law is subordinated to the debt collection function.[3] Once bankruptcy is declared, the entire property of the debtor becomes subject to the so-called bankruptcy bond and, from that moment, forms the bankruptcy estate, which is intended to serve the interests of creditors. At this point, the principles governing its management change and become subordinated to the fastest and most effective liquidation possible.

The assets forming the bankruptcy estate may include shares in a limited liability company. The aim of this article is to determine the legal status of such shares following the declaration of bankruptcy of a partner (shareholder). This issue is of considerable importance to both jurisprudence and the practice of law application. A proper determination of this status will make it possible to answer questions essential for the management and trading of shares: firstly, who becomes the subject and the executor of these rights upon the declaration of bankruptcy; and secondly, what the rules for disposing of such shares are, particularly whether the limitations on transferability resulting from the articles of association and the restrictions laid down in Article 182[1] of the Commercial Companies Code are binding.[4]

CONCEPT OF BANKRUPTCY ESTATE

The concept of 'bankruptcy estate' is defined in Articles 61 and 62 BL. In the first of these provisions, the legislator indicates that a bankruptcy estate is created the moment bankruptcy is declared, and what constitutes it are the bankrupt's assets, which are ultimately to serve to satisfy the claims of the creditors of the insolvent debtor. In turn, the latter provision clarifies that the bankruptcy estate includes the bankrupt's assets both existing on the date of the declaration of bankruptcy and acquired by the bankrupt during the bankruptcy proceeding, excluding, however, the assets that are not part of the bankruptcy estate based on special provisions.[5] Thus, as a result, from the moment bankruptcy is declared, two estates are created: one serving to satisfy the claims of the creditors in accordance with the provisions of bankruptcy law (bankruptcy estate), and the other not serving this purpose (the bankrupt's assets that are not part of the bankruptcy estate).[6] The bankruptcy

---

1 See Articles 10–11 and 20 of the Act of 28 February 2003 on Bankruptcy Law (consolidated text, Journal of Laws of 2022, item 1520), hereinafter 'the BL'.

2 See Article 2(1) BL.

3 For more on the function of bankruptcy law, see F. Zedler, *Prawo upadłościowe i naprawcze z wprowadzeniem*, Zakamycze, 2003, pp. 31 et seq.

4 Act of 15 September 2000 – Commercial Companies Code (consolidated text, Journal of Laws of 2024, item 18), hereinafter 'the CCC'.

5 Articles 63–67a BL are special provisions.

6 B. Sierakowski, *Zobowiązania masy upadłości*, Warszawa, 2023, p. 112.

estate is temporary in nature (i.e. it lasts only until the date on which the decision of the bankruptcy court to annul, discontinue or terminate the bankruptcy proceedings becomes final) and purposeful (i.e. it is created solely for the purpose of satisfying the claims of creditors against the insolvent debtor).[7]

Despite the creation of the bankruptcy estate, only the bankrupt remains the legal entity (e.g. the owner of property) throughout the entire bankruptcy proceedings.[8] The change resulting from the declaration of bankruptcy consists in the fact that the bankrupt (legal entity) is deprived of the right to use, manage and dispose of the property that constitutes the bankruptcy estate (Article 75(1) BL). However, it is the bankrupt, and not the bankruptcy estate, that retains legal capacity and the capacity to perform legal acts (Article 185 (2) BL). Neither the receiver nor all creditors become subject to the property rights included in the bankruptcy estate.[9] The receiver is solely (in relation to the bankruptcy estate) an administrator of someone else's property,[10] who is referred to in court proceedings concerning the bankruptcy estate as the indirect proxy.[11]

The bankruptcy estate understood in this way, including its purpose, and the principle of maintaining the bankrupt's legal entity throughout the bankruptcy proceedings, are the starting point for further considerations on the nature of participation in a limited liability company in the context of the declaration of bankruptcy of the entity holding these rights (a shareholder).

EXERCISE OF SHARE RIGHTS

A share in a limited liability company is a property right; therefore, as an element of the bankrupt's property, from the moment bankruptcy is declared, it undoubtedly becomes part of the bankruptcy estate. This, in turn, means that the receiver shall take over such an asset, disclose and estimate it in a public register,[12] and finally liquidate it. Until liquidation, the asset remains under the management of the receiver.[13] 'Management' is understood as all activities concerning the property

---

[7] Ibidem, p. 123.

[8] Cf, e.g. M. Koenner, *Likwidacja masy upadłości*, Zakamycze, 2006, p. 114.

[9] The concept of all creditors as the entity holding the rights included in the bankruptcy estate arose on the basis of the Austrian competition ordinance that was in force in Poland until 1 January 1935, and the German competition ordinance; see E. Till, *Zasady materyalnego prawa konkursowego austryackiego*, Lwów, 1907, p. 68; and J. Trammer, *Ustawa konkursowa*, Kraków, 1904, p. 86.

[10] P. Feliga, *Stanowisko prawne syndyka w procesie dotyczącym masy upadłości*, Warszawa, 2013, pp. 134–137.

[11] Thus: P. Feliga, *Stanowisko*…, op. cit., pp. 131–33; A. Hrycaj, *Syndyk masy upadłości*, Poznań, 2006, p. 46; I. Gil, *Sytuacja prawna syndyka masy upadłości*, Warszawa, 2007, p. 274.

[12] Having taken over the bankruptcy estate, the receiver, in accordance with the principles laid down in Article 69 BL, shall determine its composition and disclose all assets on an ongoing basis in the National Register of Indebted Persons (hereinafter 'the NRIP').

[13] In certain cases, management may be entrusted to a deputy receiver. In the event the management of the assets of the bankruptcy estate is entrusted to the deputy receiver, the scope of such management should be precisely defined by the decision of the judge-commissioner (Article 159 BL).

managed; therefore, the scope of management includes not only legal activities, but also factual and procedural activities undertaken in court and administrative proceedings.[14]

And here the first problematic issue arises in relation to the component of the bankruptcy estate in the form of shares in a limited liability company. Shares are indeed property rights, but not only that. They also constitute a bundle of personal rights called corporate or organisational rights.[15] A receiver, in turn, as an executive body in the bankruptcy proceeding, manages only the bankrupt's assets. A receiver does not interfere with the sphere of the bankrupt's personal rights, because such rights are not subject to liquidation for the purpose of encashment and therefore do not perform the debt collection function within the framework of universal enforcement. A bankrupt, regardless of whether they are a natural person or an organisational unit, exercises their personal rights independently. In accordance with this general principle, it should therefore be assumed that a receiver should not have the right to exercise non-property corporate rights based on shares in a limited liability company. Such a right may, for example, be the personal right granted by the articles of association to designate a member of the management board or a member of a supervisory board. However, *de lege lata* it is not so due to the validity of Article 186 BL. In accordance with the current[16] wording of the provision, after bankruptcy is declared, all rights of the bankrupt related to participation in companies, and thus in a limited liability company, are exercised by a receiver. This normative scope of Article 186 BL is consistent with the concept of the 'inseparability of share rights'.[17] As is emphasised in case law, the significance of this provision is demonstrated by the fact that, while the right to shares remains unchanged, it transfers the competence to exercise all rights resulting from those shares to an entity different from the bankrupt shareholder, and therefore the bankrupt is entirely excluded from exercising these rights.[18] As a result, the receiver is authorised to perform all actions to which a shareholder is authorised, regardless of their property or non-property related nature. Such a solution clearly supports the implementation of the debt

---

[14] See F. Zedler, in: A. Jakubecki, F. Zedler, *Prawo upadłościowe i naprawcze. Komentarz*, 3rd edn, commentary to Article 76 BRL, Lex, 2011; also cf. Resolution (7) of the Supreme Court of 10 April 1991, III CZP 76/90, *OSNC*, 1991, No. 10–12, item 117.

[15] These will include, for example, the right to participate in the shareholders' general meetings, the right to vote, the right to control the company, the right to bring an action for the annulment or declaration of invalidity of a shareholders' resolution, the right to bring an action for the dissolution of the company (cited after: R. Pabis, in: Bieniak J., Bieniak M., Nita-Jagielski G., Oplustil K., Pabis R., Rachwał A., Spyra M., Suliński G., Tofel M., Wawer M., Zawłocki R., *Kodeks spółek handlowych. Komentarz*, 9th edn, Warszawa, 2024, commentary to Article 174 CCC, Legalis).

[16] The provision was amended on 2 May 2009. Previously, it stipulated that bankruptcy does not affect the organisational powers that the bankrupt has in companies, except for powers that may affect the bankrupt's assets. In the event of doubts concerning the scope of powers exercised by the receiver, the judge-commissioner used to specify the scope of such powers by means of a decision.

[17] This expression was used in the justification of the Bill of 6 March 2009 amending the Act: Bankruptcy and Restructuring Law, Act on the Bank Guarantee Fund, and Act on the National Court Register (Journal of Laws of 2009, No. 53, item 434), Sejm print No. 654, available on the website of the Sejm of the Polish Republic: https://www.sejm.gov.pl/ [accessed on 20 May 2025].

[18] See judgment of the Appellate Court in Szczecin of 4 March 2011, I ACa 784/10, Lex.

collection function of bankruptcy law, because it allows the receiver not only to sell (liquidate) a share, but also to manage it in all its aspects.

It seems, however, that the current scope of the legal norm decoded from Article 186 BL is too broad and, as a result, may violate the rights of the bankrupt. While it should be agreed that usually the exercise of corporate rights has at least an indirect impact on property rights,[19] it is not possible to exclude personal rights that do not show such a connection at all. Therefore, a more appropriate solution would be to supplement the current provision with a norm that would grant the judge-commissioner the possibility of determining, by way of an appealable decision, personal rights that do not affect the bankruptcy estate, which will be exercised by the bankrupt after bankruptcy is declared.

The exercise of the rights resulting from the company relationship, regardless of whether they are property-related or purely organisational in nature, may be associated with the obligation to provide specific benefits or incur costs (e.g. travel costs to a shareholders' general meeting). If such a situation occurs, the bankrupt will be an obliged party (debtor) in the material sense; however, the receiver, as the indirect proxy of the bankrupt shareholder, will provide the benefits. Therefore, one should agree with R. Adamus that all monetary obligations of the bankrupt resulting from participation in capital companies (e.g. resulting from additional payments) are subject to the general principles of bankruptcy law.[20] Thus, if the partner's obligation to provide financial benefits arises before the declaration of bankruptcy, it is subject to notification by the authorised entity (creditor) on the list of receivables and will be settled by dividing the bankruptcy estate funds. However, if the shareholder's obligation arises after announced, then, depending on its nature, it will be either a cost of the bankruptcy proceeding or another obligation of the bankruptcy estate, and therefore it will be subject to enforcement by the receiver on an ongoing basis, before the satisfaction of the bankrupt's creditors (Article 343(1)–(1a) in conjunction with Article 230 BL).[21]

LIQUIDATION OF A SHARE BY THE RECEIVER VS CONTRACTUAL AND STATUTORY RESTRICTIONS ON THE DISPOSAL OF SHARES

CONTRACTUAL RESTRICTIONS

Another important issue is the right to dispose of shares and the resulting rights. The principle is the freedom of disposal of shares resulting from the general rules of civil law (Article 57 § 1 Civil Code).[22] This does not mean, however, that the rule is

---

[19] I. Weiss, in: Pyzioł W., Szumański A., Weiss I., *Prawo spółek*, Bydgoszcz, 1998, p. 240; A. Witosz, 'Uprawnienia organizacyjne (korporacyjne) upadłego', *Prawo Spółek*, 2007, No. 7–8, pp. 7–16; F. Zedler, in: Jakubecki A., Zedler F., *Prawo…*, op. cit., commentary to Article 186 BRL.

[20] R. Adamus, *Prawo upadłościowe. Komentarz*, 3rd edn, Warszawa, 2021, commentary to Article 186 BL, Legalis.

[21] For more on the differences between bankruptcy proceeding costs and other bankruptcy estate obligations see B. Sierakowski, *Zobowiązania…*, op. cit., pp. 168–179.

[22] R. Pabis, in: *Kodeks spółek…*, op. cit., commentary to Article 182 CCC, Legalis.

absolute. In accordance with Article 182 § 1 CCC, the articles of association may make the transfer of a share dependant on the company's consent or limit it in another way. In the light of this regulation, the question arises whether contractual restrictions on the transferability of shares bind the receiver. It should be noted from the outset that neither in company law nor in bankruptcy law is there an equivalent of Article 185 § 1 CCC, in accordance with which the sale of a share in enforcement proceedings gives the company the right to present a person who will acquire such a share during the enforcement with the consent of the registry court.[23] To answer the above question, first of all it is necessary to refer to the general principles of bankruptcy law and then to the provisions governing the liquidation of the bankruptcy estate and the effects of declaration of bankruptcy on contracts to which the bankrupt is a party.

Liquidation of shares by the receiver consists in their sale,[24] which may take place either by putting them out to tender or by means of unrestricted sale (Article 311(1) BL). Bankruptcy proceedings should be conducted in such a way that the creditors' claims are satisfied to the greatest extent[25] (the debt collection function of bankruptcy law).[26] As already mentioned in the introduction, a number of bankruptcy law institutions are subject to this principle, which aims to make the process of acquiring components of the bankruptcy estate attractive and, consequently, to enable the highest possible price to be obtained. That is why the sale in bankruptcy proceedings is of an enforcement nature (primary acquisition free from debts and encumbrances),[27] which allows for making a wider group of investors interested. In connection with this, the following issue emerges, namely, whether the debt collection function of bankruptcy law ensuring the protection of creditors' rights is strong enough to allow for non-application of contractual norms limiting the disposal of shares. The doctrine gives a positive answer to this question,[28] indicating that the provisions of bankruptcy law are separate and complementary in nature, including in relation to the provisions of the CCC.[29] However, the mere complexity and related specificity[30] of bankruptcy law provisions is not sufficient to state that the provision of Article 182 CCC is not applicable in the event of a shareholder's bankruptcy declaration. A.J. Witosz rightly emphasises

---

[23] The provision has the following wording: 'If a share is to be sold by way of execution, the sale of which is subject to the company's consent or is otherwise restricted by the company's articles of association, the company has the right to present a person who will acquire the share at a price to be determined by the registry court after seeking, if necessary, an expert opinion.'

[24] Shares constitute a property right so the receiver may, until they are sold, exercise this right, including deriving benefits from it (e.g. a dividend).

[25] See Article 2(1) BL.

[26] That is why, in jurisprudence, bankruptcy is sometimes referred to as general or universal enforcement (cf. P. Horosz, *Wierzytelności zabezpieczane prawami zastawniczymi w upadłości likwidacyjnej*, Warszawa, 2013, pp. 67–70).

[27] See Article 313(1) BL.

[28] Thus, A. Szajkowski, M. Tarska, in: Sołtysiński S., Szajkowski A., Szumański A., Szwaja J., *Kodeks spółek handlowych. Komentarz*, Vol. 1–4, 2nd edn, Warszawa, 2005, commentary to Article 182 CCC, Legalis; R. Pabis, in: *Kodeks spółek…*, op. cit., commentary to Article 182 CCC, Legalis; P. Janda, *Prawo upadłościowe. Komentarz*, 3rd edn, Warszawa, 2023, commentary to Article 84, Lex.

[29] A.J. Witosz, 'Wymóg zgody spółki na zbycie udziałów (akcji) w toku postępowania upadłościowego', *Doradca Restrukturyzacyjny*, 2021, Vol. 4, No. 26, p. 33.

[30] I mean the principle: *lex specialis derogat legi generali*.

that contractual restrictions on the disposal of shares (e.g. the requirement to obtain the consent of a third party) are contrary to the essence of the liquidation of the bankruptcy estate (at least they make it more difficult), and therefore constitute clauses ineffective by the binding force of law.[31] This thesis finds normative justification in the content of Article 84(1) BL, which stipulates that: 'A provision of an agreement to which a bankrupt is a party, which prevents or hinders the achievement of the purpose of the bankruptcy proceedings, is ineffective in relation to the bankruptcy estate.' The essence of the cited provision is, *inter alia*, to shape the course of the bankruptcy proceeding in such a way that any obstacles hindering the liquidation of the assets of the bankruptcy estate or limiting the degree of such liquidation do not bind the receiver and, as a result, do not adversely affect the protection of the property interests of all creditors.[32] This way, the legislator limits the level of protection guaranteed to the party to the agreement, acting in confidence in its content, in favour of protecting the interests of the insolvent shareholder. Therefore, the legislator first of all requires respect for the stability of legal relations and the rights of the parties, the source of which is the contract, and only in a conflict situation, when the exercise of rights resulting from such a relationship cannot be reconciled with the protection of bankruptcy creditors, allows for the possibility of interfering with its content. Undoubtedly, contractual restrictions on the transferability of shares make it difficult to achieve the purpose of bankruptcy proceedings, because, firstly, they interfere with the principles of bankruptcy estate liquidation, creating in fact non-statutory conditions for the course of bankruptcy proceedings. Secondly, any restriction on transferability of shares that narrows or excludes the circle of potential purchasers affects lower satisfaction of creditors, and therefore is contrary to the optimisation directive indicated in Article 2(1) BL.

In connection with the current content of Article 84(1) BL, the stance of the Supreme Court expressed in its judgment of 31 May 1994 should be considered outdated.[33] According to that judgment, 'the disposal of a share of the bankrupt partner by the receiver in the event it is limited without obtaining an appropriate permission of the company constitutes the so-called defective act (*negotium claudicans*), the effectiveness of which is suspended.'[34] The view was formulated based on the pre-war Bankruptcy Law,[35] and at that time there was no regulation in the legal system analogous to the norm under Article 84(1) BL. In turn, already based on the currently binding provisions, the Supreme Court indicated that, *inter alia*, contractual restrictions on the disposal of components of the bankrupt's property are ineffective in relation to the bankruptcy estate within the meaning of Article 84 BL.[36] The same

[31] A.J. Witosz, *Wymóg*…, op. cit., pp. 36–37.

[32] W. Danielak, B. Sierakowski, 'Wpływ ogłoszenia upadłości lub otwarcia postępowania restrukturyzacyjnego na byt prawny umowy dowodowej', *Monitor Prawa Bankowego*, 2021, No. 2, p. 63.

[33] For a similar opinion on the Supreme Court's stance, see A.J. Witosz, *Wymóg*…, op. cit., p. 35.

[34] Judgment of the Supreme Court of 31 May 1994, I CRN 56/94, Lex.

[35] Regulation of the President of the Republic of Poland of 24 October 1934: Bankruptcy Law (Journal of Laws of 1934, No. 93, item 834, as amended).

[36] Judgment of the Supreme Court of 9 August 2016, II CSK 733/15, Lex.

conclusions should be drawn in relation to other contractual restrictions concerning the disposal of shares, e.g. the principles of establishing organic property rights. The moment a shareholder's bankruptcy is announced, the encumbrance of his their will be possible only with the consent of the creditors' committee (Article 206(1)(4) BL) or the judge-commissioner (Article 213 BL), and any competences of the company or third parties in this respect (consent to the establishment of an encumbrance) should be treated as non-binding pursuant to Article 84 (1) BL.

STATUTORY RESTRICTIONS

However, restrictions on the transferability of things or rights may also result from statutory provisions. This happens when the legislator, due to the protection of values other than the property rights of creditors, decides to interfere in the turnover of assets, regardless of the fact that the assets may potentially become (like shares) a component of the bankruptcy estate. In such a case, the scope of restrictions on transferability depends on the importance of the values protected by other provisions and on whether their implementation is possible without detriment to the achievement of the purpose of bankruptcy law. Therefore, there will be no systemic and axiological contradiction to the principles of bankruptcy law in the case where a norm in force significantly limits or even excludes the possibility of liquidating the estate if it is supported by other, usually higher values preferred by the legislator. An example would be the restrictions on real estate transactions when the potential buyer is a foreigner. In such a case, the legislator has introduced restrictions on real estate transactions (as a result, shares in companies that are owners or perpetual users of such real estates) for reasons of defence, state security or public order.[37] Since the legislator limits the group of people who can acquire such real estates, the sales process (regardless of its form – whether as part of the liquidation of the bankruptcy estate or based on a market transaction) must comply with these rules. Otherwise, the goal could not be achieved.[38] Thus, we are dealing with a formal conflict of norms, but the applied collision rules give precedence to the norm protecting higher-order values, the protection of which requires certain concessions at the level of lower-order values.

In the light of the above considerations, in the context of the axiology of bankruptcy law provisions, the issue of the effects of a shareholder's bankruptcy declaration arises in the context of restrictions referred to in Articles 182[1]

[37] See the provisions of the Act of 24 March 1920 on the Acquisition of Real Property by Foreign Citizens (consolidated text, Journal of Laws 2017, item 2278).

[38] A similar situation arises with regard to restrictions on the method of liquidating the assets of a bankrupt subject to sanctions in connection with Russia's armed aggression against Ukraine, where neither the receiver nor the judge-commissioner is exempt from the obligation to cooperate with the head of the National Tax Administration in matters concerning the disposal of the frozen assets included in the bankruptcy estate. For more information on the conflict between bankruptcy law provisions and provisions on sanctions, as well as the method of resolving such conflicts, see B. Sierakowski, M. Waberski, 'Ogłoszenie upadłości podmiotu wpisanego na listę sankcyjną', *Doradca Restrukturyzacyjny*, 2022, Vol. 3, No. 29, pp. 39–47.

and 595[1] CCC. The provisions express the norm in accordance with which it is prohibited, under pain of criminal liability, to offer to an unspecified group of recipients the acquisition of shares in a limited liability company, as well as to promote such an offer by directing advertising or other forms of promotion to an unspecified recipient. The entry into force, on 10 November 2023, of the Act on Crowdfunding for Business Undertakings[39] along with the applicable EU provisions on European providers of crowdfunding services for business undertakings, is the basis for the introduction of this prohibition.[40] On a literal basis, the subjective (anybody) and objective (shares in any limited liability company) scopes of the prohibition under Article 182[1] CCC do not raise any doubts. Thus, a view has been formulated in the literature that this prohibition also binds the receiver, *ergo* under pain of criminal liability the sale of shares cannot be promoted in the process of bankruptcy estate liquidation by targeting an unspecified group of addressees.[41]

However, when analysing the above prohibition in the context of a bankruptcy situation, it is necessary to remember that the reconstruction of legal norms from provisions is a more complex process than merely decoding the meaning of words in the language in which the provision was constructed. In accordance with the currently leading derivative conception of legal interpretation,[42] also accepted in case law,[43] the interpreter of a legal text does not focus solely on the wording of the provisions, even if they are sufficiently clear,[44] but is always obliged to subject the text to interpretation by applying all available interpretative directives (including linguistic, teleological and systemic ones), in order to derive from the provision a legal norm that is axiologically justified in the assessments attributed

---

[39] Act of 7 July 2022 on Crowdfunding for Business Undertakings and Support of Credit Recipients (consolidated text, Journal of Laws of 2023, item 414), hereinafter 'the Act on Crowdfunding' or 'the Act on Social Funding'.

[40] Regulation (EU) 2020/1503 of the European Parliament and of the Council of 7 October 2020 on European crowdfunding service providers for business, and amending Regulation (EU) 2017/1129 and Directive (EU) 2019/1937, hereinafter 'Regulation 2020/1503'.

[41] Thus, e.g. J. Ostrowski, 'Wymóg złożenia oferty nabycia udziałów w spółce z ograniczoną odpowiedzialnością oznaczonemu adresatowi', *Doradca Restrukturyzacyjny*, 2023, Vol. 4, No. 34, pp. 78–81.

[42] This concept was developed within the Poznań–Szczecin centre of legal theory and philosophy by Z. Ziembiński and M. Zieliński (see M. Zieliński, 'Derywacyjna koncepcja wykładni jako koncepcja zintegrowana', *Ruch Prawniczy Ekonomiczny i Socjologiczny*, 2006, Issue 3, pp. 93 et seq.; M. Zieliński, *Wykładnia prawa. Zasady, reguły, wskazówki*, 6th edn, Warszawa, 2012). The principle underlying this concept, expressed in the maxim *omnia sunt interpretanda*, has been adopted in the case law of the Constitutional Tribunal (see judgment of the Constitutional Tribunal of 13 January 2005, P 15/02, Journal of Laws of 2005, No. 13, item 111).

[43] Cf. judgments of the Supreme Court: resolution of 27 February 2013, I KZP 26/12, resolution of 16 March 2007, III CZP 4/07, and the Supreme Court decision of 21 December 2022, I CNP 56/22, where the Supreme Court confirmed that the derivative conception of law interpretation is currently the dominant one (all the judgments referred to herein are available in the Lex database).

[44] It is so in the case of the formerly shared so-called 'clarificatory' interpretation of law following the conception of J. Wróblewski, based on the principle *clara non sunt interpretanda* (for more on the characteristic features of the clarificatory interpretation of law see M. Zieliński, *Wykładnia*…, op. cit., pp. 79–82).

to the legislator[45] and consistent with the entire system of norms in force at a given time and place. Law is therefore an interpretative fact; it creates an integrated set of rules and principles relating to justice, equity and fair trial,[46] and thus constitutes a legal system that is axiologically coherent and not merely coherent in terms of logic and semantics.

Accordingly, in order to answer the question of whether the prohibition stipulated in Article 182[1] CCC applies universally and in every situational context, it is necessary to determine the purpose of introducing such a norm and its connections with other elements (norms) of the system. The purpose means the function that the norm is to fulfil in the legal system. That is why, in the process of interpreting Article 182[1] CCC, it is necessary to decode the values that were the basis of the amendment,[47] and then resolve the potential conflicts in the light of other values simultaneously preferred by the legislator, such as the constitutional protection of property (Article 64 of the Constitution),[48] which, in accordance with bankruptcy law from the perspective of the creditor's property rights, is exercised, *inter alia*, by means of the debt collection function.[49] As far as the prohibition under Article 182[1] CCC is concerned, the purpose implemented by the legislator may be reconstructed based on other provisions of the Act on Crowdfunding and the justification of the Bill, as well as the content of Regulation 2020/1503, including its preamble. This Act and Regulation 2020/1503 aim to regulate the activity of social funding for business (crowdfunding), including the creation of mechanisms for supervising this type of activity. The national and EU regulations grant providers of crowdfunding services the freedom to provide services throughout the European Union, while at the same time imposing certain organisational obligations on them. Protective provisions have also been introduced, aimed at strengthening the position of investors (capital providers), primarily natural persons who do not have significant knowledge and experience in the field of investment.[50] In addition, the legislator introduced a system of mechanisms aimed at counteracting behaviours consisting in the organisation of crowdfunding in forms other than those provided for in the Act. Crowdfunding activities conducted in breach of the regulations, e.g. without the required permit, constitute a crime.

---

[45] M. Zieliński, 'Derywacyjna koncepcja…', op. cit., p. 100.

[46] R. Dworkin, *Imperium prawa*, Warszawa, 2022 (transl. Winczorek J.), pp. 201 et seq.

[47] They are looked for, *inter alia*, in preliminary provisions of acts, preambles, as well as, although not always, in official justifications of bills (S. Wronkowska, Z. Ziembiński, *Zarys teorii prawa*, Poznań, 2001, p. 168).

[48] Constitution of the Republic of Poland of 2 April 1997 (Journal of Laws of 1997, No. 78, item 483).

[49] For more on the values protected by BL and their conflict with other values legally protected, see P. Wołowski, *Kolizja zasady ochrony interesów masy upadłości z zasadą zaufania w prawie cywilnym,* Sopot, 2018, pp. 30 et seq.

[50] These solutions include, *inter alia*, a preliminary test of knowledge, an examination of the adequacy of crowdfunding offers for a particular investor, investment limits, or time for consideration before completing the transaction. For more on an inexperienced investor see recitals 42–47 of the Preamble and Articles 21–22 of Regulation 2020/1503, and Article 18 of the Polish Act on Crowdfunding.

Thus, there should be such institutional frameworks for crowdfunding activities that will allow for the development of this type of business activeness, while at the same time providing a sufficient level of protection for entities involved in it (in particular capital providers). In connection with this, the future effectiveness of the law at the stage of its creation is secured not only by a system of incentives, but also by the establishment of a system of sanctions, often criminal in nature, for activities that violate the purpose of this law. The construction of Articles 182[1] and 595[1] CCC is an example of such a legislative measure aimed at strengthening the security of crowdfunding. The legislator clearly explained the purpose of introducing this tool in the justification of the Bill on crowdfunding, indicating that the introduction of Articles 182[1] and 595[1] CCC will exclude:

> '(…) the possibility of selling shares in limited liability companies with the use of services of unsupervised entities that, while acting within the framework of the freedom of economic activity, could publicly promote the acquisition of such shares on Internet platforms performing a similar function to platforms operated by crowdfunding services providers. The concept of "promotion" should be interpreted as targeting advertisements and other forms of advertising at unspecified addressees.'[51]

The analysis of the Bill leads to the conclusion that the legislator limited the principles for organising the process of selling shares in a limited liability company due to a clear legal and institutional context, i.e. the emergence of crowdfunding in the legal system and the need to protect clients (capital providers) against abuse by entities wishing to conduct business activities similar to crowdfunding but outside the applicable format and legal framework. In introducing the prohibition under Article 182[1] CCC, the legislator did not aim to create a new nature of share rights in a capital company or to narrow the circle of entities that, due to the specific social or economic nature of these assets, should hold them (as the legislator does, for example, in relation to agricultural real estate).[52] The legislator's objective was to ensure such institutional frameworks so that crowdfunding activity requiring state permission would not be conducted on the basis of the freedom of economic activity by offering shares in a limited liability company, because in the Polish legal system they are not intended for public trading like shares in public limited companies. Therefore, by not introducing a regulation providing for public trading in shares,[53] which would undoubtedly change their legal nature, the legislator had to create protective mechanisms to ensure that this form of activity would not be used to conduct operations that are essentially similar to crowdfunding.

With such a purpose and function of the Act outlined, the question arises whether the protection of potential creditors is an absolute value and therefore becomes primary in relation to other values that are the axiological justification of

---

[51] See the justification of the Bill on crowdfunding (Sejm print No. 2269, available on the Sejm website: https://www.sejm.gov.pl/ [accessed on 20 May 2025]).

[52] Cf. the Act of 11 April 2003 on Shaping Agricultural System (consolidated text, Journal of Laws of 2022, item 2569), including its preamble.

[53] It was directly explained in the justification of the Bill on Crowdfunding (Sejm print No. 2269, available on the Sejm website: https://www.sejm.gov.pl/ [accessed on 20 May 2025]).

previously applicable legal norms introduced by the same legislator. For example, whether the aim of the highest possible satisfaction of the creditors of an insolvent debtor (Article 2(1) BL) must, in some situational contexts, give way and priority to the protection of property rights of another group of entities (different from the creditors of the insolvent debtor). Analysing both groups of norms through the prism of the values that underlie them, one must conclude that this is not the case. This results from the fact that the normative aim of the maximum satisfaction of creditors can be achieved without detriment to the protection of the property sphere of potential investors in the process of illegal crowdfunding, i.e. in a way that does not violate the property rights of either group. It must be borne in mind that the legal status of a receiver is entirely different from the status of an entrepreneur. A receiver acts as an extrajudicial body of a bankruptcy proceeding and is a public official[54] at the same time. The legality of their actions is subject to control by the judge-commissioner (Article 152(1) BL, Article 491[12a] BL) and the Minister of Justice (Article 20b of the Act on the Licence of a Restructuring Advisor).[55] Thus, a receiver is not an ordinary participant in the market game; in particular, they cannot, on their own behalf, undertake any business activity in the interest of the bankrupt.[56] Apart from the programme norm requiring a receiver to act with due diligence (Article 179 BL),[57] the provisions regulating the status of a receiver contain a whole system of safeguards, including criminal law provisions, which aim to ensure the legality and effectiveness of a receiver's actions. Therefore, there is no doubt that the commencement of crowdfunding activities or activities similar to them by a receiver would be an unlawful act and would therefore trigger, *inter alia*, a criminal sanction for exceeding powers by a public official (Article 231 Criminal Code). In relation to the asset component, which is the shares in a limited liability company, a receiver may only disclose, estimate and liquidate these rights, and until their sale, exercise them (Articles 311 and 186 BL). The liquidation of the bankruptcy estate itself is a strictly formalised process (Articles 306–334 BL) and always subordinated to the rules resulting from Article 2(1) and Article 179 BL. As mentioned above, a receiver is an executive body carrying out the liquidation (Article 173 BL), and a judge-commissioner supervises the legality of this process (Article 152(1) BL). Within the framework of liquidating the bankruptcy estate, there is no room for a receiver's activity that would fit into the scheme of crowdfunding process organisation, and at the same time, there is a system of safeguards (i.e. sanctions) that are activated in the event of a breach of this prohibition. As a result, it should be concluded that the legal status of a receiver and the normative shape of the bankruptcy estate

---

[54] A comprehensive analysis of the status of the receiver as a private entity performing the function of a public-law procedural body in bankruptcy proceedings was conducted by A. Hrycaj (see A. Hrycaj, *Syndyk…*, op. cit.).

[55] Act of 15 June 2007 on the Licence of a Restructuring Advisor (consolidated text, Journal of Laws of 2022, item 1007).

[56] The receiver, as the indirect proxy of the bankrupt in matters concerning the bankruptcy estate, performs activities in their own name, but on behalf of the bankrupt (Article 160(1) BL).

[57] The provision reads: 'The receiver is obliged to undertake actions with due diligence, in a way that makes it possible to optimally use the bankrupt's property in order to satisfy creditors at the highest possible level, in particular by minimising the costs of the proceeding.'

liquidation process allow for the achievement of the aim to protect potential capital providers (investors). Since this aim is achieved (guaranteed by law), there is in fact no conflict between the values justifying the shape of the liquidation process and the values justifying the institutional framework of crowdfunding. If each of these values (protection of investors' assets on the one hand, and protection of the creditors' assets on the other) can be achieved despite the declaration of bankruptcy of the holder of shares in a limited liability company, there is no axiological justification for a situation in which the bankruptcy proceeding bodies would be obliged to take actions that reduce the level of creditors' satisfaction. Such actions (i.e. refraining from promoting the liquidation process of a component of the bankruptcy estate) would in no way strengthen the protection of values that are the basis for introducing the prohibition under Article 182[1] CCC and would only weaken the level of protection of the property rights of the creditors of the insolvent debtor.

The arguments presented above, based on teleological interpretation guidelines, are not the only ones in favour of the thesis that Article 182[1] CCC should not be applied to the liquidation of a share as a component of the bankruptcy estate. This is also supported by systemic arguments based on the assumption that the legislator does not create legal provisions that are a source of mutually contradictory norms[58] (the so-called legislator's rationality).[59] Each asset included in the bankruptcy estate, as it is intended for liquidation, is first subject to recording and disclosure in the public register of the National Register of Indebted Persons. Upon disclosure, an unlimited group of addressees (i.e. everyone with access to the Internet) knows that these shares are part of the bankruptcy estate and will therefore be subject to sale by a receiver. This happens not because a receiver who is the holder of the shares decides to make this fact public, but because such an effect results from the statute (Article 5(1)(23) of the Act on the National Register of Indebted Persons[60] and Article 69(1ca), first sentence BL). The legislator obliged a receiver to disclose all assets included in the bankruptcy estate, because in this way they support the principle of transparency of the proceedings,[61] and through public promotion of the asset (information that it will be subject to sale) expand the circle of potential buyers. This method of organising the sale process is reinforced by legal norms obliging the judge-commissioner and the creditors' council to make public (by announcing in the NRIP) decisions and resolutions determining the

---

[58] S. Wronkowska, Z. Ziembiński, *Zarys*…, op. cit., p. 174.

[59] When interpreting a legal text, it is assumed that a rational legislator's objective is to create a set of formally and praxeologically coherent norms legitimised by an axiologically coherent system of assessment (cf. Z. Ziembiński, *Problemy podstawowe prawoznawstwa*, Warszawa, 1980, pp. 273–274).

[60] Act of 6 December 2018 on the National Register of Indebted Persons (consolidated text, Journal of Laws of 2021, item 1909), hereinafter 'the Act on NRIP'.

[61] For more on the significance of the principle of transparency in bankruptcy proceedings during the drafting of the provisions of the Act on NRIP and subsequent amendments thereto, including the scope of data subject to disclosing, see the justification of the Bill of 28 May 2021 on amending Act on the National Register of Indebted Persons and Certain Other Acts (Journal of Laws of 2021, item 1080).

rules regarding sale of the bankruptcy estate components (e.g. permission for an unrestricted sale or approval of the tender conditions: Article 219(1d) in conjunction with Article 320(1)(1) in conjunction with Article 334(1) BL). All materially significant elements of the future sale transactions, i.e. the object (shares in a limited liability company), the minimum price and the selling entity (receiver), may result from these documents made available to an unspecified circle of addressees.

The above considerations based on the legislator's rationality lead to the conclusion that, since the legislator decided to introduce the principle of publicising the information about the process of bankruptcy estate liquidation and strongly strengthened it from 1 December 2021 by creating the National Register of Indebted Persons, two years later the same legislator could not introduce a norm limiting the principle of transparency and the public nature of the liquidation of the bankruptcy estate without constructing a clear legal basis. If this were to be the case, it would be necessary to introduce a legal norm based on the provisions of bankruptcy law, the nature of which is special in relation to the regulations of the CCC, obliging the bodies conducting bankruptcy proceedings to organise the process of publicising and liquidating shares in a limited liability company in a different way. Such restrictions can be exemplified by the receivables liquidation process, in respect of which the legislator stipulated that the information contained in the list of receivables due to the bankrupt is subject to disclosure only upon the announcement of a resolution passed by the creditors' council or a decision issued by the judge-commissioner giving consent for their sale in the NRIP (Article 69(1ca), second sentence BL). There are no such restrictions in relation to shares in a limited liability company. It is also not possible to rationally interpret such a restriction (i.e. a narrower scope of application of Article 69 BL) from Article 182^1 CCC. However, there is no doubt that the entire regulation under Article 69 BL is not a norm detached from other norms regulating the process of bankruptcy estate liquidation, but is coherent with them, and – figuratively speaking – an introduction to further norms that are its consequences. The disclosure of assets (including shares in a limited liability company) is not made for the sole purpose of disseminating knowledge about the assets of the insolvent debtor, but in order to liquidate these assets by the receiver on terms that are most favourable to the creditors (i.e. as quickly as possible – Article 308(2) BL – and for the highest possible price – Article 2(1) BL).

CONCLUSION

The conducted analysis of the provisions of Bankruptcy Law and the Commercial Companies Code leads to the conclusion that the legal status of a share in a limited liability company, and the rights arising from such a share change in the event of the declaration of the shareholder bankruptcy. At the same time, for the purpose of determining this status, it is irrelevant whether the shareholder is a natural person, a legal person, or another organisational unit; in each case, the share is subject to the so-called bankruptcy bond, and its management and liquidation are subordinated to the debt collection function of bankruptcy law.

As a result, in the event of declaring bankruptcy of a person holding shares in a limited liability company, the following rules shall apply:

1. Once bankruptcy is declared, the shares become part of the bankruptcy estate and are therefore subject to disclosure in the public NRIP, and then valuation for the purpose of their sale (liquidation) by the receiver for the highest possible price.
2. Despite the declaration of bankruptcy, the bankrupt (shareholder) remains the holder of the rights arising from the shares, but is deprived of the right to use, manage and dispose of the shares.
3. Until their liquidation, the shares and the rights arising from them are managed by the receiver, and – due to the special regulation under Article 186 BL – the receiver, as the indirect proxy of the shareholder, is entitled to exercise all rights to which the bankrupt is entitled as a shareholder, both property and non-property related (corporate) ones.
4. Restrictions on the disposal of shares laid down in agreements, including the articles of association, e.g. making the transfer of a share dependant on the consent of the company or a third party, are not binding on the receiver because they are clauses that hinder or prevent the achievement of the objective of the bankruptcy proceeding, and as a result constitute clauses *ipso iure* ineffective in relation to the bankruptcy estate (Article 84(1) BL).
5. The bankruptcy estate receiver, liquidating an asset in the form of a share in a limited liability company, is not bound by the prohibition on offering and promoting the purchase of a share to an unspecified group of addressees in the process of selling such shares, as referred to in Article 182^1 CCC.

The conducted research also allows for drawing the following conclusions, which are proposals *de lege ferenda* in nature:

1. Due to the criminal sanction for violating the prohibition under Article 182^1 CCC, it is worth specifying in a manner not raising any interpretational doubts (i.e. literally) that Article 182^1 CCC is not applicable in the event of the liquidation of a share in a limited liability company in accordance with the provisions of the Act of 28 February 2003: Bankruptcy Law. This would increase the transparency of the law and clarify the scope of the receiver's permitted.
2. Due to the existence of corporate rights resulting from participation in a limited liability company, which do not affect the bankrupt's property rights, it would be advisable – within the framework of Article 186 BL – to introduce a solution, in accordance with which the judge-commissioner, upon the bankrupt's request, determines by way of a decision the personal rights that do not affect the bankruptcy estate and that, following the declaration of bankruptcy, may be exercised by the bankrupt (an appeal against such a decision should be available to the receiver, creditors, and the bankrupt). This change would allow for the limitation of excessive interference by the receiver in the sphere of the bankrupt's non-property (personal) rights, while also ensuring (through judicial supervision by the judge-commissioner) the fulfilment of the debt collection function of bankruptcy law.

BIBLIOGRAPHY

Adamus R., *Prawo upadłościowe. Komentarz*, 3rd edn, Warszawa, 2021.
Bieniak J., Bieniak M., Nita-Jagielski G., Oplustil K., Pabis R., Rachwał A., Spyra M., Suliński G., Tofel M., Wawer M., Zawłocki R., *Kodeks spółek handlowych. Komentarz*, 9th edn, Warszawa, 2024.
Danielak W., Sierakowski B., 'Wpływ ogłoszenia upadłości lub otwarcia postępowania restrukturyzacyjnego na byt prawny umowy dowodowej', *Monitor Prawa Bankowego*, 2021, No. 2.
Dworkin R., *Imperium prawa*, Warszawa, 2022, transl. Winczorek J.
Feliga P., *Stanowisko prawne syndyka w procesie dotyczącym masy upadłości*, Warszawa, 2013.
Gil I., *Sytuacja prawna syndyka masy upadłości*, Warszawa, 2007.
Horosz P., *Wierzytelności zabezpieczane prawami zastawniczymi w upadłości likwidacyjnej*, Warszawa, 2013.
Hrycaj A., *Syndyk masy upadłości*, Poznań, 2006.
Jakubecki A., Zedler F., *Prawo upadłościowe i naprawcze. Komentarz*, 3rd edn, Lex, 2011.
Janda P., *Prawo upadłościowe. Komentarz*, 3rd edn, Warszawa, 2023.
Koenner M., *Likwidacja masy upadłości*, Zakamycze, 2006.
Ostrowski J., 'Wymóg złożenia oferty nabycia udziałów w spółce z ograniczoną odpowiedzialnością oznaczonemu adresatowi', *Doradca Restrukturyzacyjny*, 2023, Vol. 4, No. 34.
Pyzioł W., Szumański A., Weiss I., *Prawo spółek*, Bydgoszcz, 1998.
Sierakowski B., *Zobowiązania masy upadłości*, Warszawa, 2023.
Sierakowski B., Waberski M., 'Ogłoszenie upadłości podmiotu wpisanego na listę sankcyjną', *Doradca Restrukturyzacyjny*, 2022, Vol. 3, No. 29.
Sołtysiński S., Szajkowski A., Szumański A., Szwaja J., *Kodeks spółek handlowych. Komentarz*, Vol. 1–4, 2nd edn, Warszawa, 2005.
Till E., *Zasady materyalnego prawa konkursowego austryackiego*, Lwów, 1907.
Trammer J., *Ustawa konkursowa*, Kraków, 1904.
Witosz A.J., 'Wymóg zgody spółki na zbycie udziałów (akcji) w toku postępowania upadłościowego', *Doradca Restrukturyzacyjny*, 2021, Vol. 4, No. 26.
Witosz A., 'Uprawnienia organizacyjne (korporacyjne) upadłego', *Prawo Spółek*, 2007, No. 7–8.
Wołowski P., *Kolizja zasady ochrony interesów masy upadłości z zasadą zaufania w prawie cywilnym*, Sopot, 2018.
Wronkowska S., Ziembiński Z., *Zarys teorii prawa*, Poznań, 2001.
Zedler F., *Prawo upadłościowe i naprawcze z wprowadzeniem*, Zakamycze, 2003.
Zieliński M., 'Derywacyjna koncepcja wykładni jako koncepcja zintegrowana', *Ruch Prawniczy Ekonomiczny i Socjologiczny*, 2006, Issue 3.
Zieliński M., *Wykładnia prawa. Zasady, reguły, wskazówki*, 6th edn, Warszawa, 2012.
Ziembiński Z., *Problemy podstawowe prawoznawstwa*, Warszawa, 1980.

Cite as:

Sierakowski B. (2025), *A share in a limited liability company as part of the bankruptcy estate*, Ius Novum (Vol. 19) 2, 120–135. DOI 10.2478/in-2025-0017