

RESTRUE

Report 2023

Restructuring proceedings
and bankruptcies
in Poland



2023



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and bankruptcies
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on

Introduction



Marta Romańska
 editor-in-chief of RESTRUE report and attorney-at-law
 at FILIPIAK BABICZ LEGAL

Dear Reader,

On behalf of the FILIPIAK BABICZ LEGAL team, I present you with RESTRUE report 2023: Restructuring proceedings and bankruptcies in Poland.

On the one hand, the report is a response to market demand for obtaining information about restructuring proceedings and bankruptcy in terms of statistical data and the phenomena behind the data. On the other hand, it is intended to provide a platform for the exchange of thoughts, positions or considerations not only of practitioners of law, but also economists and other experts or the scientific community. It constitutes a natural complement to the RESTRUEtalks podcast we run and the website ostrukturowaniu.pl.

We want every report we prepare to have a central theme, so in RESTRUE report 2023, in the section on statistics and practical problems, we focused on the most popular restructuring proceeding, i.e., arrangement approval proceeding (PZU).

Our intention was to present how many arrangement approval proceedings have been carried out, their effectiveness, the practice of determining the day of arrangement. In the practical part, in turn, we focused, among other things, on the problem of voting on the arrangement by proxy in the National Register of Debtors (NRD), which seems to be something obvious and uncomplicated, as well as on the problem of declaring bankruptcy of the debtor after setting the day of arrangement or changing the arrangement proposals, which should be possible despite the short duration of the arrangement approval proceedings.

Next we will present the overview of what happened in the restructurings and bankruptcies market in 2023, i.e. what was happening in various industries and for what reason, as well as whether companies in crisis can be attractive for investment. The topic may not yet be as popular in Poland as it is in the United States or Western Europe, but its yet undiscovered potential is worth attention.

The next part of the report is a discussion of four important 2023 Supreme Court resolutions which deal with the creditor's legitimacy to bring a bankruptcy complaint, the electronic signature of a judgment in the National Register of Debtors (NRD) and its effect on the existence of the judgment, the effects of debt cancellation, as well as issues of evidence preclusion in connection with the list of claims.

Finally, we present academics specializing in insolvency law including their thoughts on the current state of the law. The report also includes reviews and discussions of the literature we selected on insolvency-related topics published in 2022 and 2023.

And, of course, we will try to predict the future by presenting experts' forecasts for 2024, i.e. experts' forecasts for 2024.

Enjoy the report!



Patryk Filipiak Ph.D.
 Qualified restructuring advisor, attorney-at-law, partner at FILIPIAK BABICZ LEGAL



Cautious and somewhat officious optimism

As a rule, I am driven by optimism, but the current one does not come from observing the past 2023, and I'm not a big fan of it. Positive thinking about the future of the insolvent entities stems rather from the fact that we learned a lot during the Covid crisis and inflationary crisis. The former primarily affected consulting firms with an established market position. The number of bankruptcies of entrepreneurs dropped, while restructurings - with a huge increase in their number - have almost exclusively taken the form of out-of-court simplified proceedings. The market has become very democratized. Competition has emerged in the form of new licensed restructuring advisors operating within law firms, which have had to re-brand themselves for the duration of the drought in their traditional legal services markets. After years of growth initiated by the entry into force of the Restructuring Law, we experienced our first slowdown.

There has been a noticeable tuning of some advisors to the new situation and expectations, diversification and entry into areas previously unserved such as restructuring of micro-entrepreneurs or consumer bankruptcies. It was necessary to identify and establish relationships with new partners, such as teams at banks that serve a different customer segment and follow more of a matrix paradigm and standardization, rather than an individual approach. By force of nature, these experiences, the passage of time and the reworking of successive projects have made us stronger. This gives reason for optimism, despite the negative phenomena outlined below which we are still experiencing.

Unfortunately, the NRD was still in the spotlight

From the perspective of a restructuring and bankruptcy market participant, restructuring advisor and legal advisor, the key discussions and practical challenges continued to focus on the faulty IT system of the National Register of Debtors (NRD). The first year of (in)operation of the system caused that the pent-up negative emotions of National Register of Debtors users do not currently allow to release the energy necessary for effective work. The subsequent modules submitted by the contractor and approved by the ministry are not well evaluated. The level of complexity, non-intuitiveness or poor "usability" are incomprehensible, arousing frustration and discouragement. It is being discussed more often that a way out of the situation could be updates (outlays) for the system produced in the commercial sector, which, however, require a currently unavailable API interface. Either way, such thinking, assuming that the only hope lies in bypassing the system (the tragicomic symbol of which was and is the submission of the letter of another with another letter of 7008 reference) proves the failure of this stage of the implementation of the National Register of Debtors. The harm also lies in the fact, that the users of the system, including qualified judges and advisors, have not devoted their time to streamlining proceedings, perfecting interpretation of regulations in order to help people and companies, but instead this time was wasted on solving technical complexities and bypassing glitches and errors.

Abuse of arrangement approval proceedings

Another worrying development has been the abuse of the institution of the arrangement approval proceedings (PZU). The ease of triggering the debtor's

protection against enforcement has caused that a short-term benefit in the form of a temporary suspension of enforcement became a popular service in the market, as opposed to comprehensive advisory aimed at a permanent repair of the enterprise. The market is filled with debt collectors and anti-collectors who, unfortunately, are licensed restructuring advisors and abuse restructuring instruments. Banks as institutional creditors are alarmed that arrangement supervisors often do not prepare restructuring plans or lists of creditors at all, while debtors file applications for approval of an arrangement that has never been concluded (sic!), thereby extending protection for months.

It is also unfortunate that such dishonest advice leads to the deprivation of the chance of a reliable out-of-court restructuring for 10 years. For such an entity, after failed arrangement approval proceedings (PZU), the likelihood of the court opening proceedings also decreases.

Need for professional self-government and more effective supervision of advisors

There is an urgent need for professional self-government the aim of which is a preparation of individuals to work reliably and honestly. There is also a distinct lack of real supervision of advisors by retrofitted full-time services whether local or governmental. Whereas, it is not about the regulatory sphere, as provisions are sufficient. It is about the actions. The effect of these shortcomings is not only the growing problem of abuse of the arrangement approval proceedings (PZU), which will sooner or later turn against us advisors and will cause convulsions such as we have seen in the case of the bailiff profession, but also the irregularities concerning the high cost of bankruptcy proceedings resulting in unrest in the media coverage.

Legislation - good projects are created yet they are not passed

Legislatively, there is nothing to boast about either. In the past legislative term, a bill was prepared to implement EU Directive No. 2019/1023 on the preventive restructuring framework. A number of provisions (e.g., on the satisfaction test and the time limitation of the execution ban) would positively affect creditors. Although the implementation deadline passed on July 17, 2023, our law still has not been amended. This has certainly been influenced by the unwarranted desire to make last-minute changes to the way receivers, supervisors and administrators are appointed, which was supposed to be a high-profile media response of the Ministry of Justice to the aforementioned press reports.



Anna Michalska

Restructuring advisor, deputy head of the Restructuring and Bankruptcy Department at FILIPIAK BABICZ LEGAL

Cooperation with financial institutions

- a key element not only for rescue but also for business development

The much needed regulation on separate restructuring proceedings for public hospitals, prepared in the Health Ministry, also failed to be enacted.

The debt of this sector is estimated at 25 billion zlotys, in the coming months will lead to overstretching and the need for sudden and costly measures. As a reminder, hospitals run in the form of SPZOZ have a restructuring capacity, but they do not have bankruptcy capacity. Creditors therefore have no clear point of reference in the context of negotiating an arrangement, although bailiff enforcement must be considered as such de lege lata.

Has anything positive happened?

Despite the problems indicated, a great success is the popularization of restructuring proceedings, i.e. enabling thousands of entrepreneurs each year to restructure their debts out of court, inexpensively and quickly. More than 4,000 proceedings is a result that puts us in the European vanguard. At the same time, I am convinced that most of these proceedings involve honest entrepreneurs who need help due to the increase in business costs (interest rates, increase in minimum labor, increase in the cost of utilities and raw materials, which are related to the war) and reduced consumer demand. Undoubtedly, we can already speak of a rapidly developing market, with increasingly professional participants. The market is served by more than 2,000 restructuring advisors (only some are active) and 30 courts.

Consumer bankruptcies are also being handled quite efficiently. There have been more than 20,000 of them, most of which are proceedings conducted under a simplified procedure. Good legislation has shifted most of the duties from the court to the trustee and reduced the number of steps to be taken in the proceedings, especially in cases where the initial bankruptcy estate is an empty collection. The state is thus working in the field of debt relief by giving over-indebted people a second chance at life.

Thus, despite the difficulties of "operating" the Polish National Register of Debtors (NRD) restructuring and insolvency platform, it is beginning to bring more and more benefits to its clients, and the most vulnerable ones: micro-entrepreneurs and consumers.

I also consider the bankruptcy declaration of Getin Noble Bank and the mass filing of claims (more than 30,000) through the National Register of Debtors (NRD) system to be a success. In general, I now see that large restructuring cases are being handled with more discernment with the gradual use of some of the National Register of Debtors (NRD) benefits.

What lies ahead and what should we do?

While remaining in restructuring advisor position, I think that in 2024 it will be crucial to find one's way in the world of services aimed basically at two

audiences. On the one hand, it will be medium to large projects, where an experienced team with a good reputation that is trusted by creditors and the courts will be key. Business principals we know well will therefore be important. Leaders who will make a difference at a meeting, a creditors' council meeting or in mediation when negotiating a deal between debtor and creditors.

On the other hand, however, we are for further and deeper market exploration by financial advisory firms, which will offer anti-credit tools in the form of arrangement approval proceedings. Some of the failed projects will go to traditional companies, but most of the market will be induced by methods that are traditionally alien to us. The prices offered in this market will be low. Therefore, if we want to compete in it, it will be necessary to manage costs very robustly, to shift some of the responsibilities to people or IT tools (including those using AI), who will have very specialized but narrow skills and do not necessarily benefit from legal or higher education at all. This also applies to the consumer bankruptcy market. The winners will be those who optimize costs and learn to make money on multi-month projects, generating revenues in the range of PLN 4-5 thousand + VAT.

The industry approach will also be of key importance. Of course, restructuring and bankruptcy provide one-size-fits-all tools, but a competitive advantage will be gained by advisors who understand the sector better than others. A lot has been written in this Report about industries that offer potential for growth in the advisory business.

As far as the courts are concerned, I don't necessarily dream now of moving business cases to district courts. However, it would be great if the current restructuring and insolvency divisions followed the lead of, for example, the Warsaw division, with an operating consumer section. Separating the entrepreneur and consumer sections is the first step. The next step - the division into restructuring and bankruptcy does not seem to me necessary at all. Let's also keep our fingers crossed that each department will have judges - mentors who will support the work of younger judges.

And at last, in the area of legislation, I trust that a law implementing the Directive will finally be enacted this year, which, taking into account the probably long vacatio legis of this regulation, will modify the dynamics of restructuring proceedings. The challenges of concluding and approving an arrangement while implementing the principle of relative priority will be the subject of many, many more discussions, trainings and debates.

The introduction of legal changes to the arrangement approval proceedings (PZU) at the end of 2021 has brought an unprecedented increase in the number of restructuring proceedings over the past several months. Restructuring in its out-of-court form has become a mass product - while colliding with another mass reality, i.e. retail banking and micro-entrepreneurs. Were the communities of bankers as creditors and restructuring advisors as those conducting these processes prepared for the consequences of this phenomenon?

However, in the world of restructuring prior to the arrangement approval proceedings 2.0 era, forensic restructuring processes were a niche phenomenon providing some time comfort and more often involving larger entities, tailored to more complex business and relationship processes where we were dealing with a "tailor-made" process. Even then, of course, there were phenomena and problems, which will be discussed in a moment but the scale of these challenges was quite different. The change in this scale highlighted the existence of specific difficulties in both of the environments indicated above. Every significant change or every crisis has the potential to become an opportunity. The restructuring advisor community, under the aegis of the National Chamber of Restructuring Advisors (KIDR), invited representatives of Poland's largest commercial banks to debate this past year as part of the autumn edition of a regular conference. The discussion, which was very inspiring, provided a unique opportunity to learn about the mutual optics of such processes. It also showed the potential for further active cooperation between the two communities in the future.

The cooperation of the entrepreneur with financial institutions during restructuring projects is one of the critical variables for the success of such a project. Although the process of negotiating arrangement proposals is a key element of this cooperation, we must not forget that it is not the only one. The entire process is closely linked to the mutual relationship between the entrepreneur and the financial institution, so it is important that it is based on transparency and open communication. While the impact of this relationship on the process grows as the size of the entrepreneur and the level of the bank's involvement increases, we cannot afford to overlook its importance to any restructuring - even microsize and macropace.

Maintaining existing relationships with banks or other financiers can significantly support the restructuring process. Well-built relationships can make banks more open to cooperation and more flexible in negotiations. In doing so, the banking community emphasizes precisely the importance of the relationship with the entrepreneur, with whom it will remain in this relationship even after the formal completion of the restructuring. Therefore, even in a situation where the relationship has become difficult, backing away from it be viewed negatively. The restructuring advisor can and should support this relationship, but will not replace the entrepreneur in it. Withdrawing from the contact is unequivocally negatively perceived by the bank, it is perceived as an escape from responsibility.

What to pay attention to when creating arrangement proposals? The first step is to realize that restructuring is all about business process. This means that every decision should be made in such a way that it positively affects the financial health of the company. Therefore, a key question to ask yourself at the outset is whether the purpose of the arrangement with creditors, and more broadly of the entire restructuring process, is to put the entrepreneur into debt, or something more? Of course, for many companies, the purpose of the arrangement is precisely debt relief, i.e. reducing the debts that burden their business. From the point of view of saving a company from bankruptcy, debt relief may be paramount. However, it is necessary to take a broader perspective - the arrangement itself is only a derivative of the effects of implementing a recovery plan in the company: increasing operational efficiency, introducing new strategies or even changing the business model. Arrangement proposals presented to creditors, and therefore also to banks, must be a logical consequence of this implementation and follow directly from its financial effects. Financial institutions, as professionals, make the decision to support a given restructuring process as a business decision. They therefore need transparent and clear information about the state of the company, the planned viable corrective actions and their assumed economic effects. Lack of reliable data in this regard can deprive the entrepreneur of the chance to positively engage the financial institution in the restructuring process.

In doing so, bank representatives draw attention to an important question - what is full repayment of the creditor? Full repayment of the obligation to the creditor means not only payment of the principal, but also interest - their reduction under the arrangement proposals means that we are no longer dealing with full repayment. It should not be forgotten that in the case of any entity financing an entrepreneur, its entire margin on the product offered is contained precisely in interest. Failure to pay interest, unlike with an operating counterparty, means the absence of any margin. Payment of 100% of the principal to a financing entity is not the same as payment of 100% of the principal to an operating creditor, such as a supplier. Of course, this does not mean a priori exclusion of the possibility of reducing the entire interest and even the principal, but it must find a rational and comprehensive justification.

It is also worth understanding that making an arrangement with creditors is not an end in itself. It is just a tool to safeguard the interests of the entrepreneur in crisis and its creditors. What is crucial is the effectiveness of the corrective measures taken in the course of restructuring and their impact on the long-term stability of the company. Restructuring completed positively, i.e. not only the conclusion of an arrangement, but above all the recovery of operational efficiency, should also be the door to new financing. Companies that have successfully carried out the restructuring process gain new confidence from financial institutions and investors - elements that are long-term essential for the continuation of any business. Therefore, it is worth bearing in mind that the restructuring process is not only a solution to short-term problems but also an investment in the company's future. A well-conducted restructuring is a chance to create a company that is more competitive and better prepared for future market challenges.



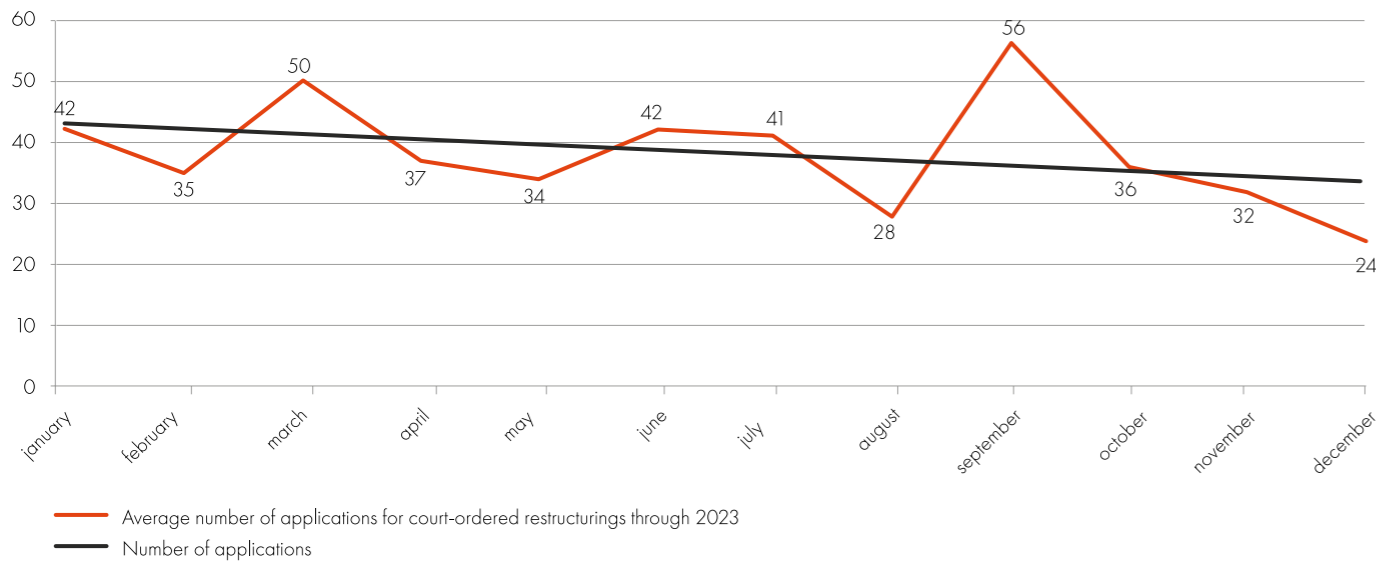
**Statistics,
surveys and
analysis**

Restructuring proceedings in 2023¹

In 2023, 457 applications for judicial (in-court) restructuring proceedings were announced to be received², of which 127 in I quarter, 113 in II quarter, 125 in III quarter and 92 in IV quarter. This represents respectively 28%, 25%, 27% and 20% of all applications filed and leads one to conclude that interest in litigation has remained at a similar level with the caveat that there

was some deviation from this norm in the IV quarter. The average number of applications submitted was at the level of 38/month and month-by-month data actually oscillated around this number. Only March and September saw an increase in the number of applications submitted above the average, by 32% and 47%, respectively.

Chart 1: Number of applications for judicial restructuring proceedings in 2023.



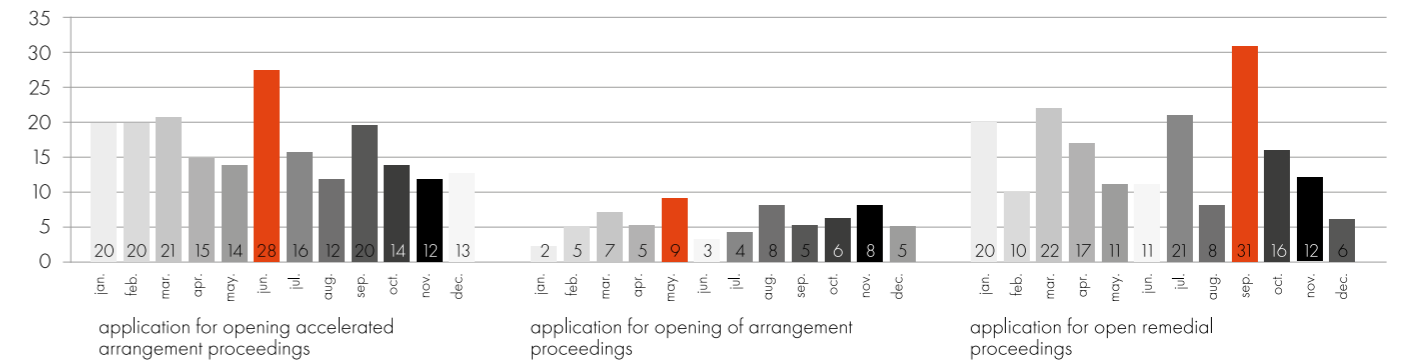
Source: Own compilation based on data collected from the NRD (National Register of Debtors).

¹ The analyses presented were based on the notices required by the Restructuring Law and the Bankruptcy Law, which are published in the National Debtors Register (NRD). The number of bankruptcy applications, or the number of applications to open restructuring proceedings, reflects the number of debtors, not the number of registrations of a given application with the court. The courts receive more applications, which is mainly due to the return of applications due to formal deficiencies and their resubmission by the debtor. The data presented has been processed and cleared of re-notices, which may be the result of the need to correct errors made in the original notice or to correct deficiencies. On the basis of the collected cases, qualitative studies are being carried out: efficiency of proceedings, financial situation of debtors and arrangement proposals.

² This is understood as: accelerated arrangement proceedings (PPU), arrangement proceedings (PU) and remedial proceedings (PS). The out-of-court restructuring procedure is the procedure for arrangement approval proceedings (PZU).

Delving into the details showing the popularity of the various types of restructuring, the dominance of accelerated arrangement proceedings (45%) and remedial proceedings (40%) over arrangement proceedings (15%) was clearly evident.

Chart 2. Number of applications for judicial restructuring proceedings filed in 2023 by available types of restructuring.

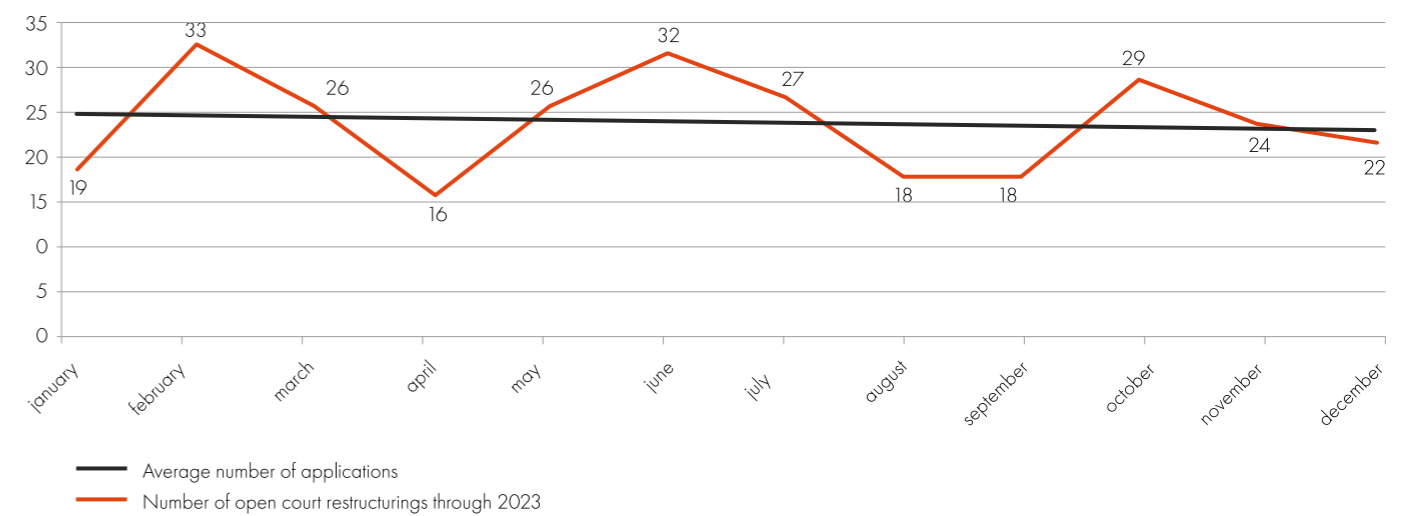


Source: Own compilation based on data collected from the NRD (National Register of Debtors).

Over the past twelve months of last year, 290 judicial restructuring proceedings were opened, of which 78 in I quarter, 74 in II quarter, 63 in III quarter and 75 in IV quarter. This represents 27%, 26%, 22% and 26%, respectively, of all judicial restructurings initiated, so last year the courts issued a comparable number of orders to open restructuring proceedings on a quarterly basis.

The average number of the aforementioned openings was at 24, but, as can be seen in the chart below, there was a sinuous oscillation around this number, which was interspersed with deviations from it both upward (in February and June) and downward (in January, April, August and September).

Chart 3: Number of open judicial restructuring proceedings in 2023

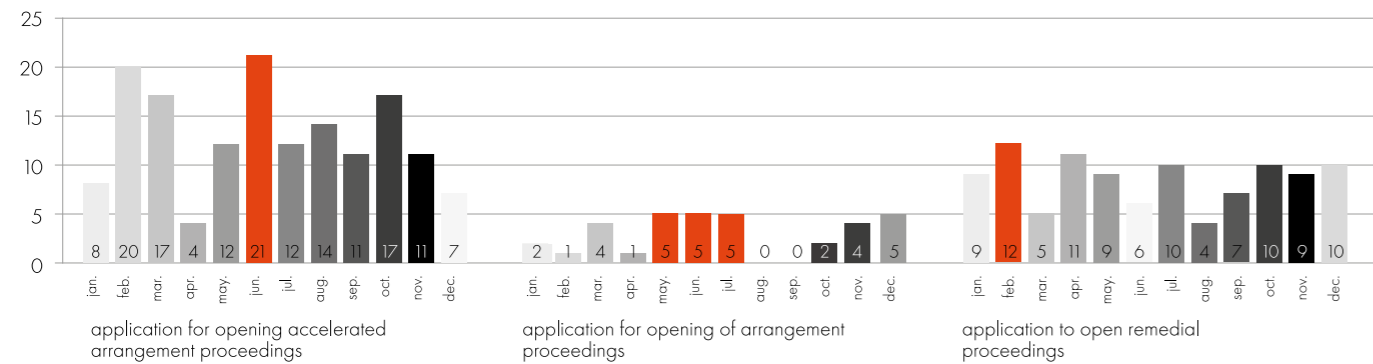


Source: Own compilation based on data collected from the NRD (National Register of Debtors).



As can be seen, the dominance of accelerated arrangement proceedings (53%) is undeniable. This was followed by the initiation of remedial proceedings (35%), and arrangement proceedings accounted for the smallest percentage of openings (12%).

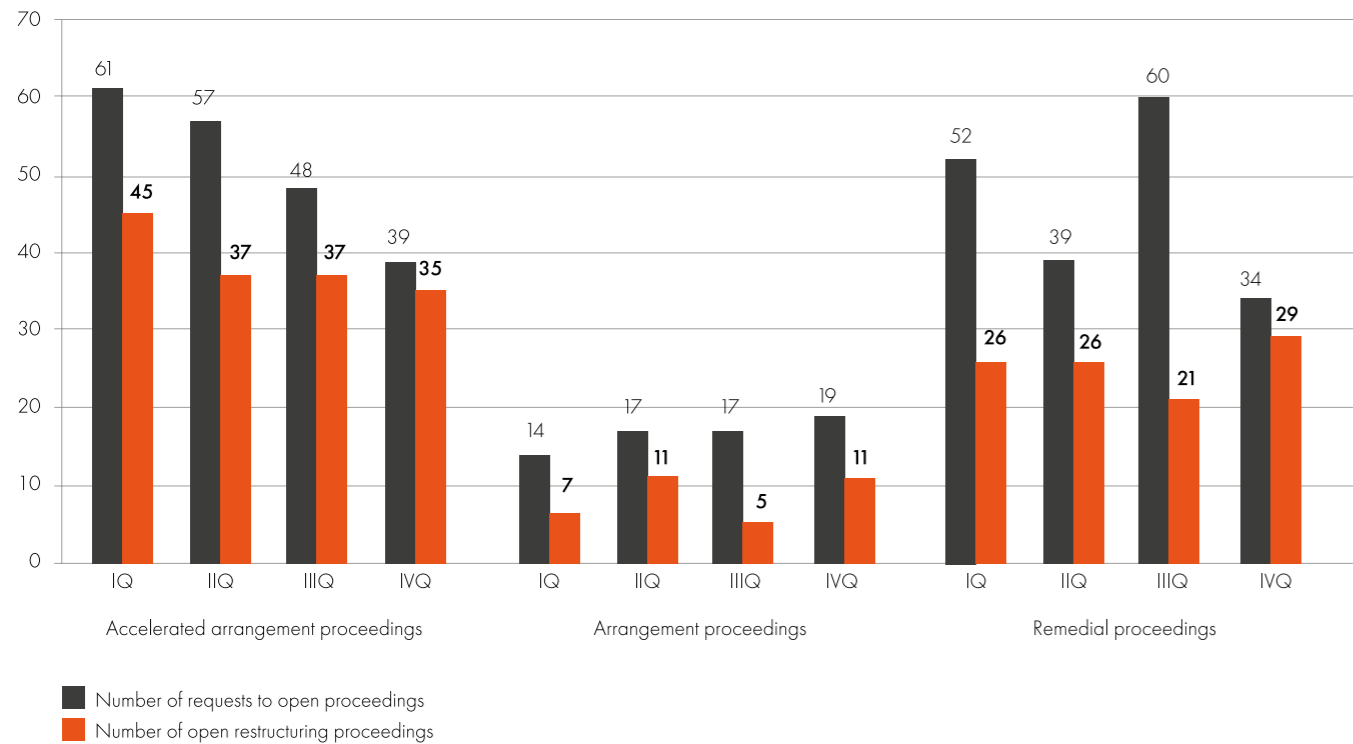
Chart 4: Number of open judicial restructuring proceedings in 2023 by available types of restructuring.



Source: Own compilation based on data collected from the NRD (National Register of Debtors).

The number of applications to open court proceedings was more than half (63%) higher than the number of open proceedings. The largest difference between the number of applications and the court's decision to open restructuring proceedings was in the case of arrangement proceedings and remedial proceedings.

Chart 5: Number of applications for judicial restructuring proceedings and number of open restructuring proceedings filed in 2023

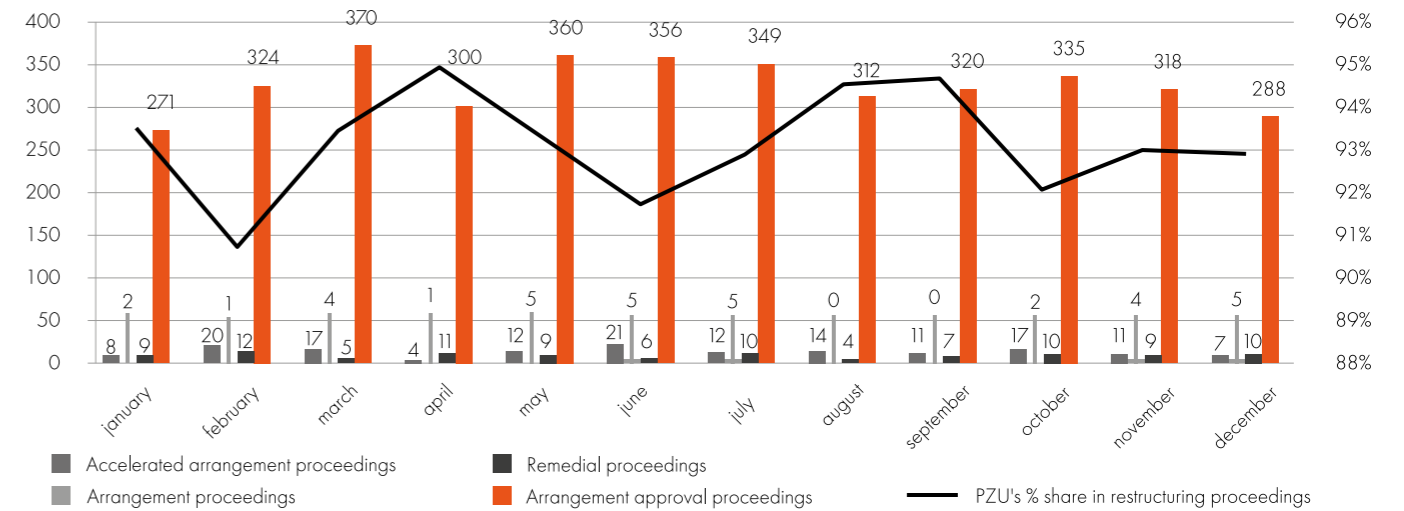


Source: Own compilation based on data collected from the NRD (National Register of Debtors).

During 2023, 3903 arrangement days were announced in arrangement approval proceedings (PZU), including 965 in I quarter, 1016 in II quarter, 981 in III quarter and 941 in IV quarter. This represents 25%, 26%, 25% and 24%, respectively, and entitles one to argue that the popularity of arrangement approval proceedings remained high and relatively stable. The average number of announcements was 325. The data presented in Figure 6 for arrangement approval proceedings rela-

tes to restructurings in which the debtor opted for a notice of arrangement day in order to obtain asset protection from enforcement. The number of arrangement approval proceedings conducted in the traditional manner (without protection) is negligible. In 2023, only 60 applications for approval of the arrangement were submitted to the courts in Poland in arrangement approval proceedings without announcement of the arrangement day, of which one order for registration of the application was revoked (mistaken entry).

Chart 6: Number and type of restructuring proceedings open in 2023

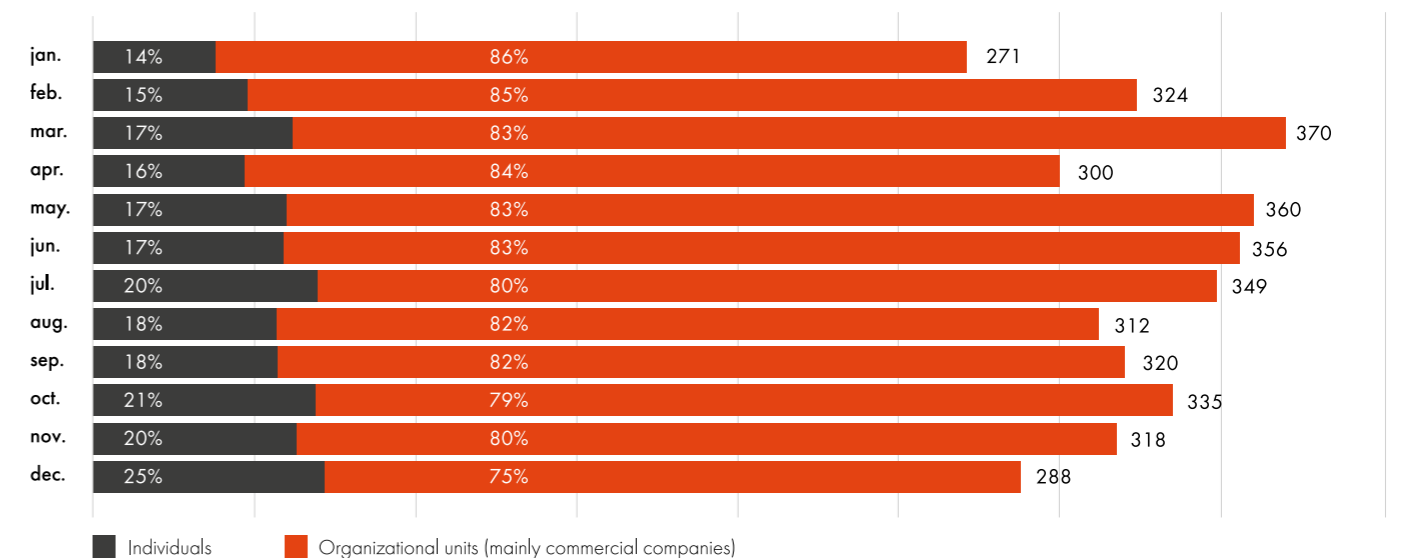


Source: Own compilation based on data collected from the NRD (National Register of Debtors).

The vast majority of announcements were made by sole proprietors (82% on a monthly average). The share of announcements made by business units was, depending on the month, between 14% and 25% of the total ar-

range approval proceedings. It was also noted that more than a third of arrangement approval proceedings were initiated in the mazowieckie (15%), śląskie (12%) and wielkopolskie (11%) provinces.

Chart 7: Number of open arrangement approval proceedings (PZU) in 2023 by individuals and organizational units (mainly commercial companies)

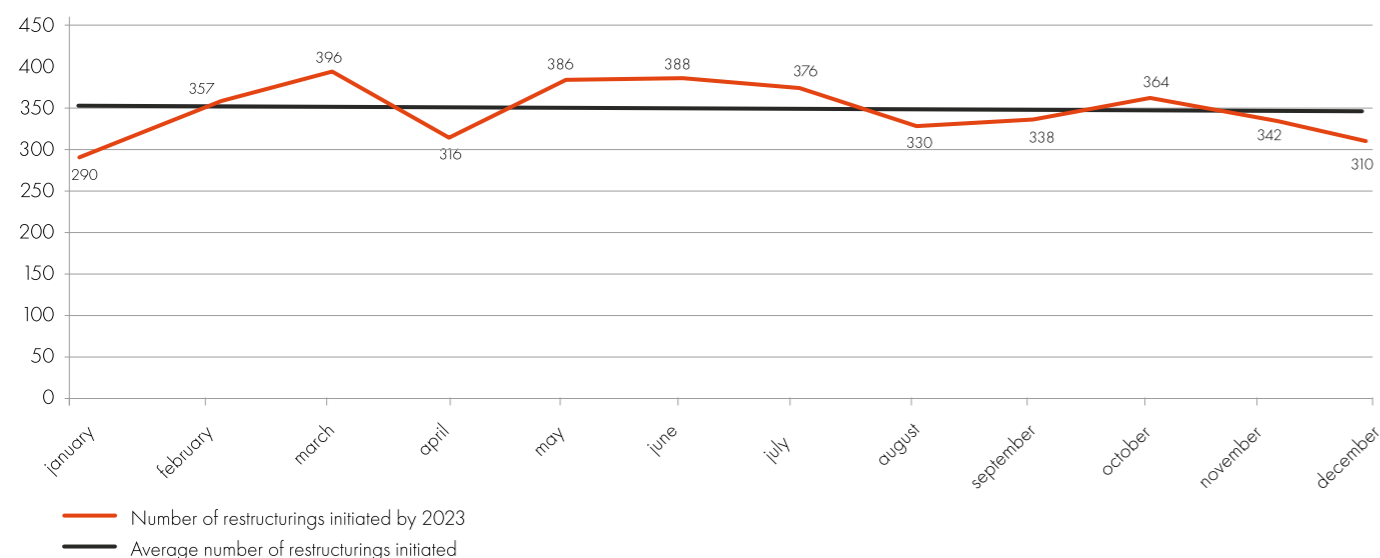


Source: Own compilation based on data collected from the NRD (National Register of Debtors).

A total of 4193 restructuring proceedings were initiated in 2023. Of these, 1043 in I quarter, 1090 in II quarter, 1044 in III quarter and 1016 in IV quarter. This represents 25%, 26%, 25% and 24% of all restructurings initiated,

respectively. This convinces one to conclude that the number of restructurings initiated is evenly distributed, and highlights that the average number of all open restructuring proceedings ranks at 349 per month.

Chart 8: Number of restructuring proceedings initiated in 2023

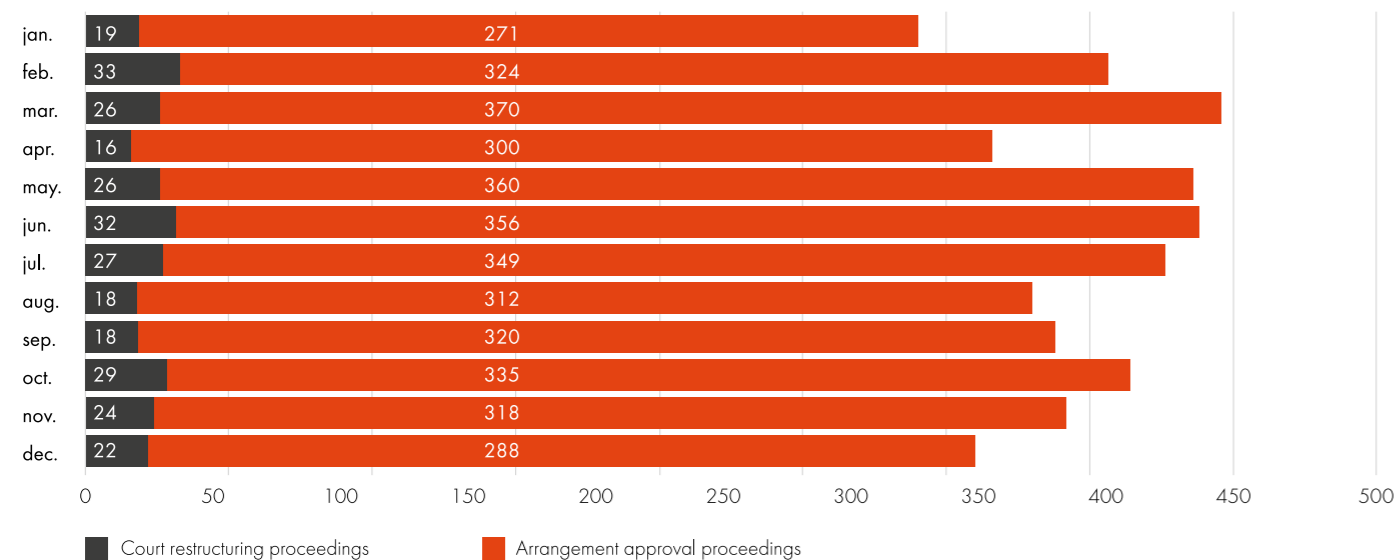


Source: Own compilation based on data collected from the NRD (National Register of Debtors).

In 2023, of all restructuring proceedings, 290 were opened by the court, and 3903 were arrangement approval proceedings initiated by the deb-

tor in cooperation with the arrangement supervisor. This represents 7% and 93%, respectively.

Chart 9: Number of open restructuring proceedings in 2023 by available types of restructuring.



Source: Own compilation based on data collected from the NRD (National Register of Debtors).

Lawyer's comment:

According to the data presented, **the arrangement approval proceedings (PZU) continues to be the most popular. This is influenced by the relatively low cost and short duration of the proceedings. It is a good solution for micro and small businesses looking for a debt restructuring tool.** The increase in the popularity of this procedure is related to the introduction, on December 1, 2021, of the possibility to take advantage of an enforcement moratorium (protection against enforcement) and protection against termination of key business contracts.

As a rule, **if a debtor needs more than 3 months to reach an agreement with its creditors, it uses accelerated arrangement proceedings (PPU), and when deep operational recovery and restoration of profitability is necessary, it uses remedial proceedings.**

The number of accelerated arrangement proceedings opened may also be affected by the number of unapproved or unapproved arrangements under the arrangement approval proceedings.

Debtors who still see a chance to reach an agreement with their creditors but need time to work out new arrangement proposals or revise them in accordance with the court's comments, after an arrangement approval proceedings fiasco, can use a court-ordered accelerated arrangement proceedings.



Marta Romańska
attorney-at-law in FILIPIAK BABICZ LEGAL

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Analysis of the financial situation of companies under restructuring proceedings

The analysis presented in the following section of the report focuses on companies that have initiated restructuring proceedings in 2023. In order to

analyze the characteristic trends accompanying the opening of restructuring proceedings, the selected companies were divided into two groups:

Group 1	Group 2
Total of 52 enterprises under court proceedings, which include accelerated arrangement proceedings and arrangement proceedings (enterprises that went into bankruptcy were excluded from the analysis)	Total of 79 enterprises included in the arrangement approval proceedings.

The financial data of the analyzed companies was taken from publicly available databases and covers the period 2020-2022. The period of three years prior to the opening of the proceedings makes it possible to

assess to what extent the financial situation of the companies changed in the long term before the liquidity threat itself.

Profitability analysis

Profitability is the main criterion for assessing the effectiveness of creating a financial result from business activities. The profitability achieved by enterprises affects both the entity itself and its environment, among others, counterparties, lenders or creditors. It is assumed that the higher the profitability indicators reach, the more favorable the financial situation of the entity.

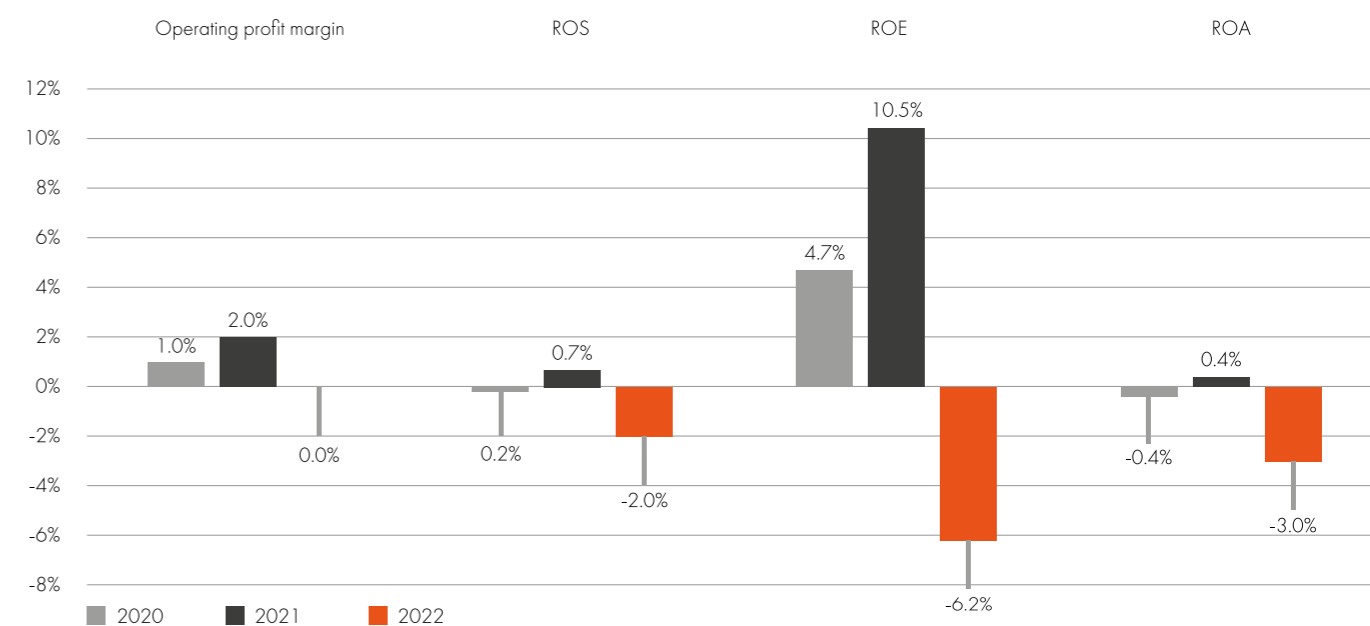
The profitability analysis for the report calculated the most common profitability indicators, which include:

- operating profit margin,
- return on sales ratio (ROS),

- return on equity ratio (ROE),
- return on assets ratio (ROA).

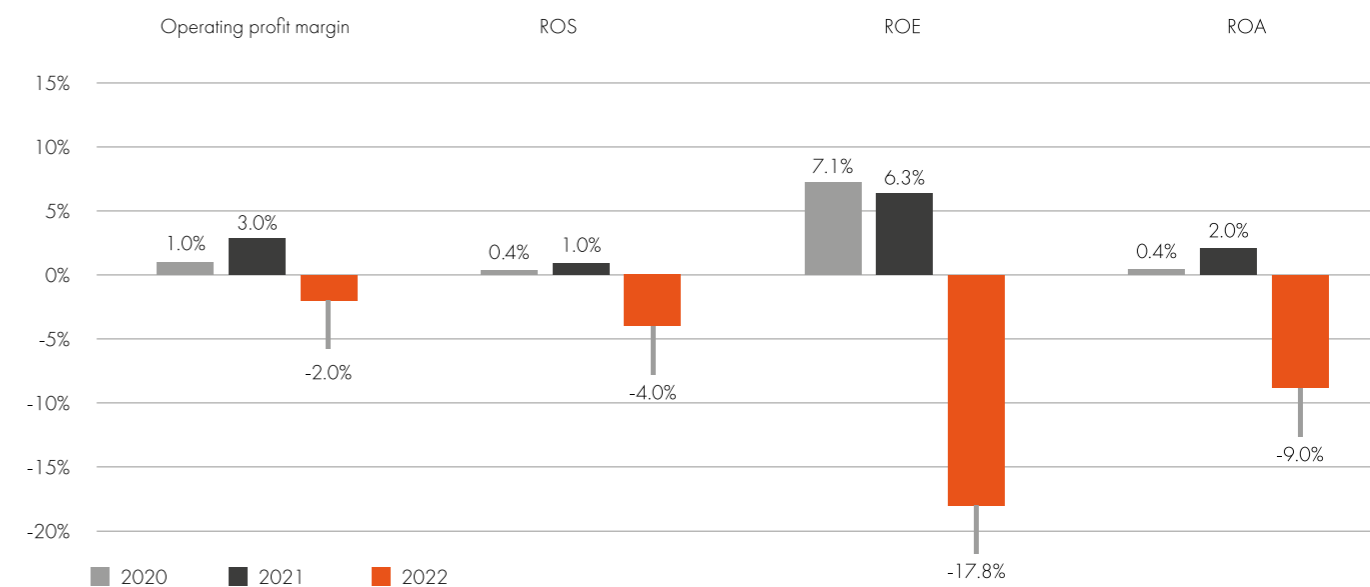
It is noteworthy that for both groups, the companies recorded a significant decline in profitability in various areas of operations in the year before the application for restructuring proceedings. This confirms the deteriorating financial situation of the companies surveyed and forecasts possible financial problems in the future.

Chart 1: Median values of profitability ratios for Group 1



Source: Own compilation

Chart 2: Median values of profitability ratios for Group 2



Source: Own compilation

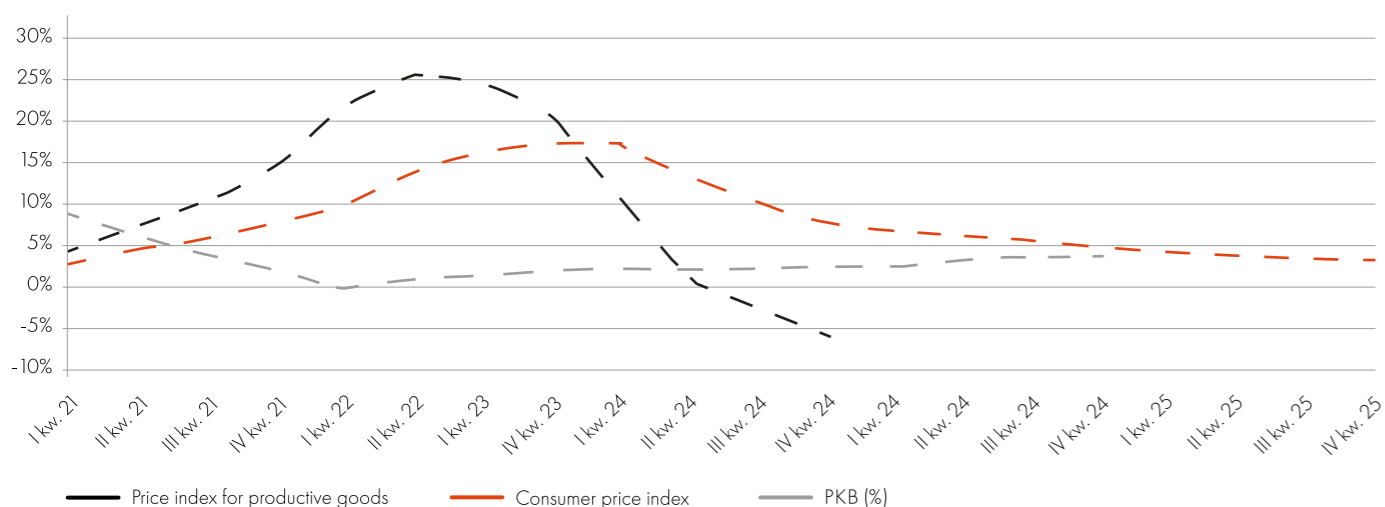
The significant reduction in profitability ratios, taking place in 2022, suggests that the reasons for the start of the restructuring should not be found only in the sudden shakiness of the liquidity position in the analyzed companies, but was a consequence of a reduction in the efficiency of the analyzed companies' operations.

In particular, a reduction in profitability at the operating level is evident - depending on the industry, under standard operating conditions, profitability is expected to be maintained within the range of 8%-10%, although there is no shortage of industries where profitability of a dozen or more percent has been recorded for years. This suggests that cost pressures, which have been present in most sectors of the economy during this period, have become ap-

parent in the scale of proceedings being opened. Manufacturing commodity price inflation shows intense growth in IV quarter 2021 – III quarter 2022, with a 25% increase in manufacturing prices during this period. In contrast, the most intensive increase in consumer prices was recorded in the period II quarter 2022 – II quarter 2023, which amounted to more than 17%.

Broken supply chains (both through the Covid-19 pandemic and the war in Ukraine), rising commodity prices and wage pressures from workers are assumed to be the main causes of cost increases. For 2024 and 2025, inflation is forecast to fall, which could mean less cost pressure for companies in the future. Figure 3 shows the main macroeconomic indicators for Poland, along with a prediction of CPI and PKB.

Chart 3: Historical and forecast macroeconomic data for Poland

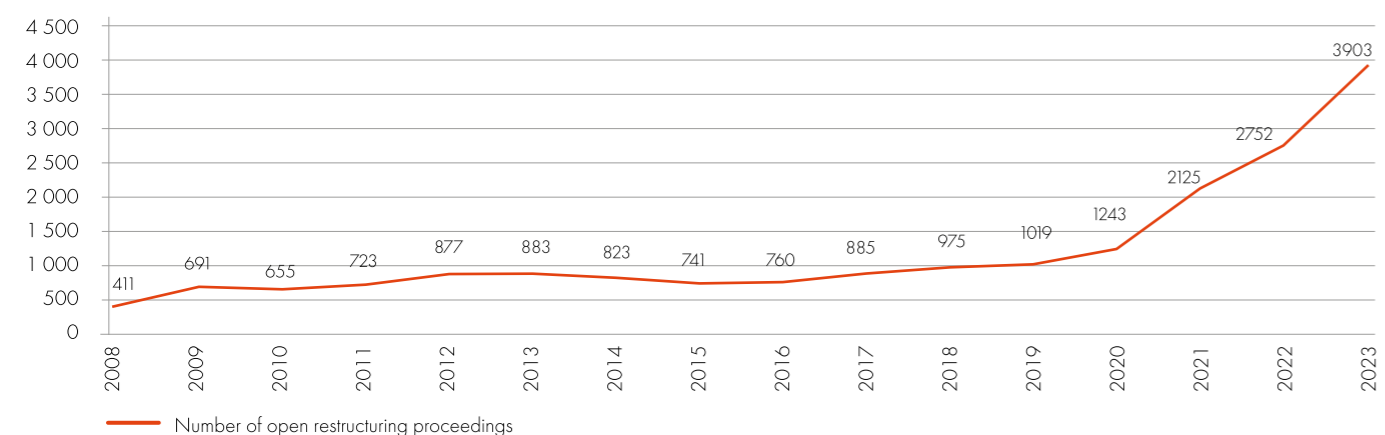


Source: Own compilation based on NBP data (National Bank of Poland)

The above factors, the greatest impact of which is in 2021-2022, are reflected in the number of open restructuring proceedings. The intensive growth in the number of open restructuring proceedings is very evident in the period

2021-2023, but it is 2023 that is the record year in this regard, as there were as many as 3.903 open proceedings. Figure 4 shows detailed data on the number of restructuring proceedings in Poland in the period 2008-2023.

Chart 4: Data on insolvencies in the period 2008 - 2022



Source: Own compilation

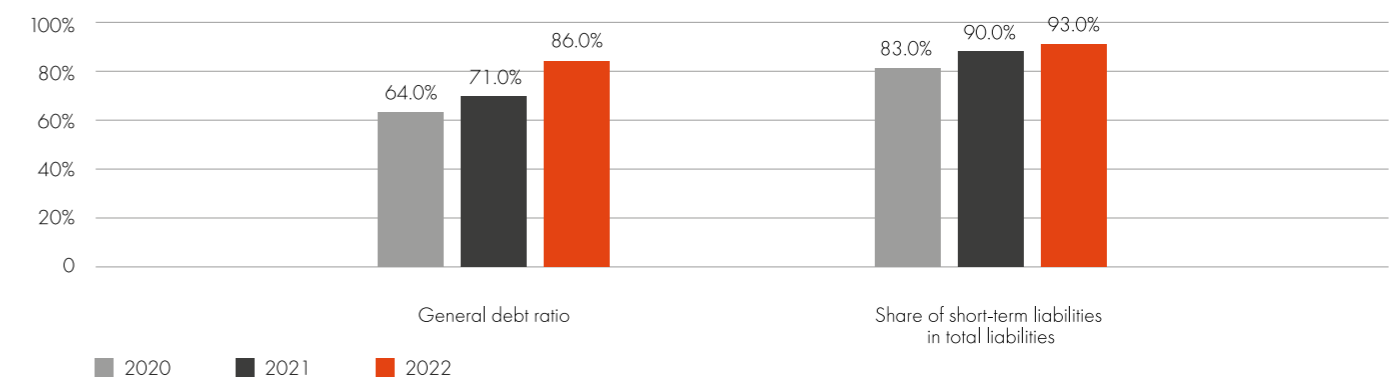
An interesting observation is provided by an analysis of the return on equity (ROE) ratio - this measure, which usually does not maintain double-digit readings over the long term, visibly increased in 2022. Against the backdrop of the not-so-spectacular performance of return on sales (ROS), this suggests that the denominator of the formula that creates this ratio, i.e. shareholders' equity, decreased during this period. This reading may suggest that, to a large extent, owners of companies that opened restructuring proceedings in 2023 not only did not willingly recapitalize their companies, but in fact rather made transfers in the opposite direction.

Debt analysis

Debt analysis illustrates the extent to which an enterprise uses external sources of financing. Debt analysis focuses on assessing the structure of the company's liabilities, with a very important analysis of short-term debt, whose maturity is the shortest and contributes significantly to the company's solvency.

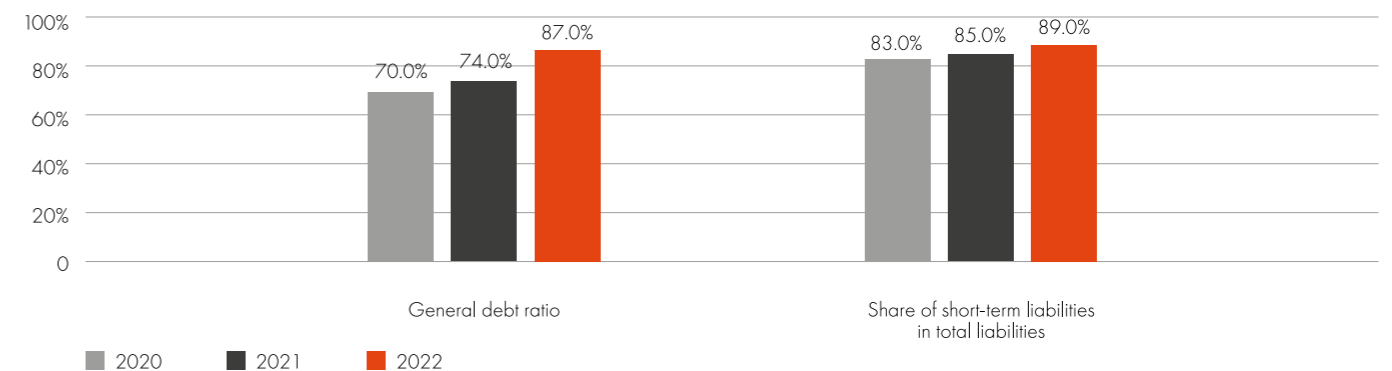
The analysis shows that companies in both groups increased the level of use of external financing each year, to levels (in 2022) that threatened the safe operation of the companies and could lead to a loss of liquidity.

Chart 5: Median values of selected debt ratios for Group 1



Source: Own compilation

Chart 6: Median values of selected debt ratios for Group 2



Source: Own compilation

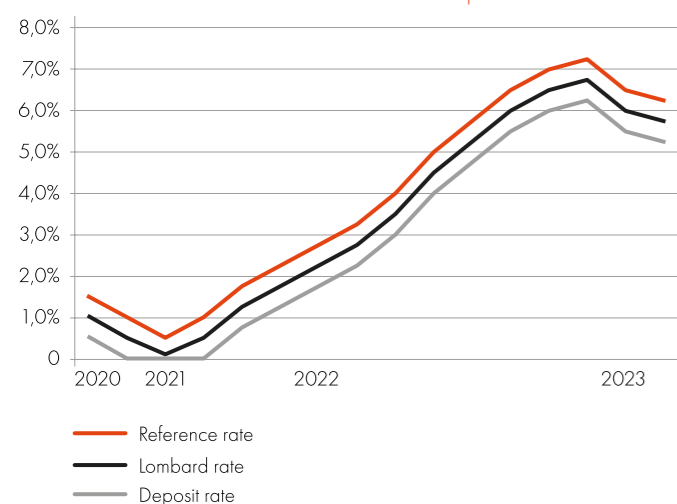
Analysis of the above values provides similar conclusions to the assessment of the profitability of companies opening restructurings - i.e., the deterioration of the financial situation was in most cases not a consequence of sudden, unforeseen events, but was associated with a long-term accumulation of debt. Debt levels reached by companies before entering insolvency were unsustainable in the face of declining profitability ratios. The primary

measure analyzed, the total debt ratio (which compares liabilities including reserves with total assets) was already touching levels that are considered alarming in financial theory for most of the industry (in the range of 0.57-0.67) in 2020. Another alarming symptom, which will be further discussed in the next section in terms of liquidity, was the extremely high share of short-term liabilities in total liabilities - the fact that debt maturing in more than 1

year accounted for less than a dozen percent of total debt on average suggests that there had long been problems with building a solid long-term financial strategy among the companies analyzed.

Meanwhile, the cost of debt service for businesses was already rising as of October 2021. During this period, the Monetary Policy Council (RPP) began a cycle of interest rate hikes in order to combat inflation, which was then rising at a dangerous rate. In October 2021, the benchmark rate was raised from 0.1% to 0.5%. The RPP then raised interest rates regularly until September 2022, including the reference rate to 6.75%. This level of the reference rate was maintained until September 2023, at which time the RPP cut it to 6.0%. Figure 5 shows the detailed values of interest rates for the period 2020-2023. Based on the data presented, one can see a clear increase in interest costs from the end of 2021, which could directly translate into financial problems for companies in 2023. Since the end of 2023, the RPP has made two reductions in interest rates and further reductions are expected in 2024, which will imply lower debt costs, which will consequently translate favorably into corporate finances.

Chart 7: The level of interest rates in Poland in the period 2020-2023



Source: Own compilation

Financial liquidity analysis

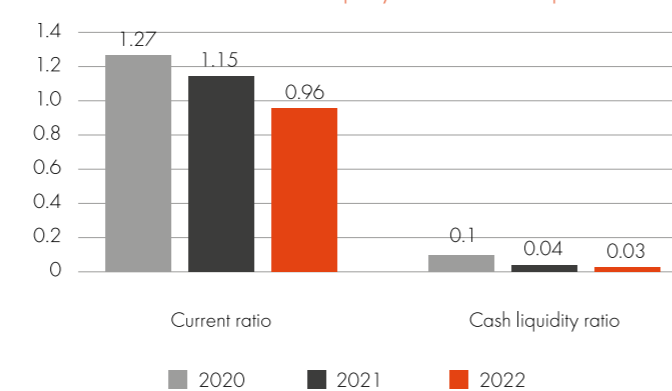
Liquidity analysis is designed to provide information about the solvency of an entity. Solvency is the ability of a company to pay its maturing obligations. The liquidity of a company is determined by having a sufficient level of cash.

For the analyzed companies in both groups, a marked decline in liquidity can be seen in 2022, indicating emerging problems in settling liabilities on time. Liquidity fluctuated quite a bit in earlier years, suggesting that companies that entered insolvency in 2023 may not have developed contingency plans in case of temporary liquidity difficulties. The high overhang of short-

term liabilities, as discussed in the section on debt, must have made it even more difficult to take steps to respond to emerging payment bottlenecks on an ongoing basis.

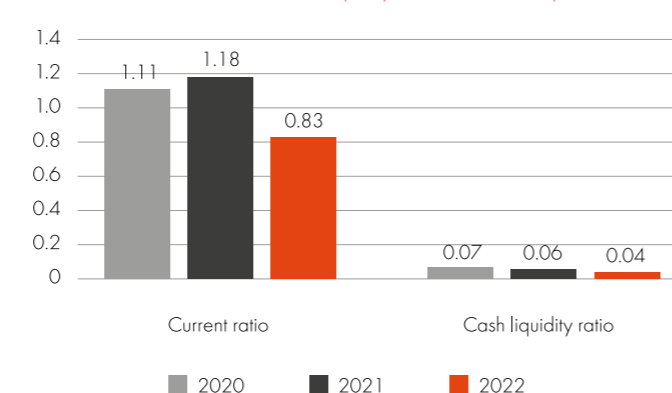
The charts show the readings of the current liquidity (current assets/current liabilities) and cash liquidity (current investments/current liabilities) ratios. In the context of the former, it is assumed that it is optimal to keep the relationship within the limits of 1,2-2,0 while the latter is recommended to stabilize around 0,1-0,2. Although the very levels of the analyzed measures showed alarming readings, it is also interesting to note the dynamics of their changes - the relatively low rate of deterioration of current liquidity suggests that the systematic indebtedness was accompanied by a reconstruction of the asset structure towards faster-moving assets. Thus, the analyzed companies already had a tendency two to three years ago to get rid of real estate, machinery or investments, but, as the cash liquidity ratio indicates, the proceeds of this were by no means creating a financial cushion - they entered 2023 mostly with empty coffers.

Chart 8: Median values of selected liquidity indicators for Group 1



Source: Own compilation

Chart 9: Median values of selected liquidity indicators for Group 2



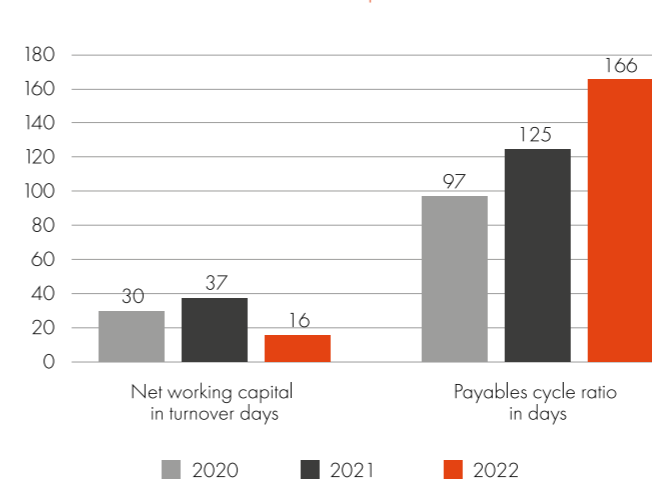
Source: Own compilation

Analysis of economic activities

As part of the efficiency analysis, an assessment is made of the productivity (accounts receivable turnover ratio) of the assets and capital resources used by the enterprise. Analysis of the indicated area makes it possible to assess the efficiency of the company's asset management, which is important for both liquidity management and long-term profitability of operations.

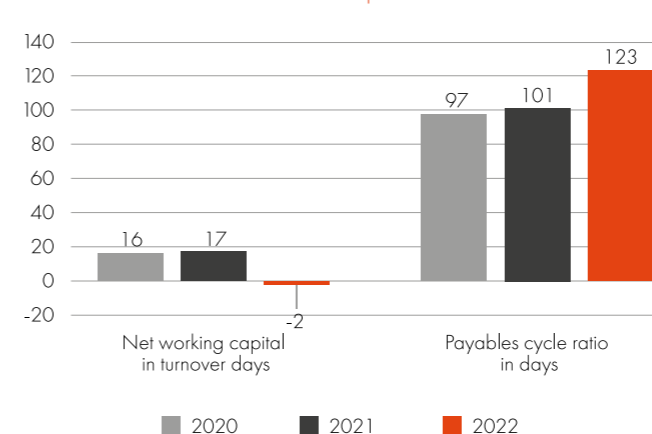
In 2022, for Group 1 and Group 2, the excess of current assets over liabilities due in the short term was declining, but in the case of Group 2, it had declined to the point where some companies would have to sell some of their assets to settle their debts. As the data discussed above suggest, in practice this process may have already been initiated earlier. In addition, the period for settling current liabilities was extended incomparably more than the standard and under normal conditions - payments well over 90 days can hardly be considered to have been made within contractual deadlines. This may indicate a situation in which payment congestion had already accompanied the earlier activities of the analyzed companies.

Chart 10: Median values of selected performance indicators for Group 1



Source: Own compilation

Chart 11: Median values of selected performance indicators for Group 2



Source: Own compilation

In order to conduct a synthetic financial analysis of the company, the value of the bankruptcy prediction model (discriminant model) was also estimated for Group 1 and Group 2. Discriminant models allow predicting the risk of bankruptcy and an overall assessment of the company's financial condition.

For the model used, the critical value is -0.13, which means that companies for which the calculated value is less than -0.13 are considered at risk of bankruptcy. For both Group 1 and Group 2 companies, the model values are below the critical value. It is worth noting that the results achieved in 2022 are worse than those achieved in 2021, indicating a trend of deterioration in the financial situation of enterprises. Based on the 2022 financial data, the liquidity troubles of the analyzed companies could be predicted. The above confirms that the financial problems of the companies that initiated proceedings in 2023 had already experienced signs of financial distress in earlier periods of their operations and were largely not the result of sudden, unforeseen events.

Table 1. Discriminant model values for Group 1 and Group 2 based on 2022 financial data

Group	2021	2022
Group 1		
Discriminatory model B. Prusak	-0.05	-1.07
Group 2		
Discriminatory model B. Prusak	-0.12	-1.19

Source: Own compilation

Summarizing the analysis of companies undergoing restructuring in 2023, one could very clearly see deteriorating financial performance, especially in 2022. Certainly, financial problems could have been largely predicted earlier. Moreover, the deteriorating performance of companies is also a derivative of emerging problems in the economy (the effects of the pandemic and the war in Ukraine), which may have indirectly contributed to the companies' loss of liquidity. In addition, the analysis paints a pessimistic picture of the restructuring potential of a significant part of the companies facing the threat of insolvency in 2023 - for years they have been disposing of liquidity-generating assets, systematically increasing debt, not being recapitalized by owners when a financing gap appears, or using to the limit the available sources of working capital financing. This means that the chance of successfully regaining the ability to self-finance without deep sanitation may be limited.

Lawyer's comment:

The past few years have been particularly tough for businesses. The pandemic, the war in Ukraine and high inflation have had a huge impact on the entire economic environment. Add to this all sorts of internal problems that entrepreneurs face on a daily basis. The accumulation of all these factors puts them in front of a difficult question - what next?

An analysis of the financial situation of companies that have decided to restructure in 2023 indicates that these decisions could have been made earlier. This, unfortunately, is not the case, and the reason for this is a mixture of ignorance (about available diagnostic tools and ways to restructure), ignorance (about the scale of the organization's problems) and excessive optimism (about the future). **Unfortunately, most entities that embark on the path of restructuring are already**

insolvent. As a result, the chance of successful restructuring is significantly reduced. Time is of the essence - an appropriate response when insolvency threatens is crucial, requiring many difficult decisions, but increasing the likelihood of success.

The question arises - how many entrepreneurs are there who are still struggling with various difficulties, and still have not decided to take appropriate action? Certainly a lot, we will probably know the data in this regard in 1-3 years. On the other hand, we can already spread awareness of restructuring among entrepreneurs to maximize the chances of entrepreneurs to recover from the crisis.



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Practice of determining the day of arrangement in arrangement approval proceedings

The survey included 3,900 business entities, which in 2023 announced the determination of the day of arrangement, of which the vast majority were

sole proprietors - 3,195, commercial companies - 696, foundations, associations and cooperatives - 9.

Fixed arrangement day	Number	Share %
More than 3 days before the date of the announcement	146	3.7
Up to 3 days before the date of announcement	215	5.5
On the day of the announcement	2310	59.2
Up to 3 days after the date of the announcement	126	3.2
More than 3 days after the date of the announcement	1103	28.3
of which: more than 15 days	743	19.1

In the case of more than half of the announcements (59%), the date of the announcement in the National Register of Debtors (NRD) is at the same time the arrangement day. In part of the announcements, the arrangement day is set up to 3 days before or after the date of the announcement in the National Register of Debtors (NRD) (9%), which may be due to temporary interruptions in the operation of the ICT system. However, there are interesting cases where the date of the announcement in the National Register of Debtors (NRD) significantly differs from the date of the established arrangement day.

Pursuant to article 211 of the restructuring law, the day of arrangement is established immediately after the signing of the agreement with the restructuring advisor, who begins to act as the arrangement supervisor. The arrangement supervisor shall announce the effect of the arrangement day after drawing up the inventory of claims, the inventory of disputed claims and the preliminary restructuring plan (article 226a of the restructuring law). Situations in which the day of arrangement falls on the same day as the announcement in the National Register of Debtors (NRD) of its effects, as well as when the announcement occurs up to two weeks after the day of arrangement, are the most common (60% of all cases). Announcement occurring more than two weeks after the arrangement day is not common (less than 1%).

The record was recorded for 3 companies for which the announcement was made only two months after the date of arrangement (60-66 days). Such a situation may be due, among other things, to the difficulty of quickly preparing an inventory of claims based on the debtor's documents. However, it should be borne in mind that the debtor obtains protection from enforcement only after the announcement of the arrangement National Register of

Debtors (NRD), while the three-month period for filing an application for approval of the arrangement runs from the arrangement date.

What is surprising, however, is the scale of the phenomenon in which the effects of the day of arrangement are announced in advance (32% of cases). In as many as one-fifth of the announcements, the day of arrangement fell more than two weeks after the day of announcement. In 24 companies, the announcement preceded the day of arrangement by more than two months, and in the case of five entities it was more than three months (the record was 113 days).

After the notice, the debtor obtains protection from enforcement for a minimum period. 4 months. If an application for approval of the arrangement is filed within this period (with, of course, a three-month deadline from the date of the arrangement), this protection is extended for the time the application is processed.

To sum up, setting the arrangement day to fall one month after the announcement in the National Register of Debtors (NRD) extends the time to submit an application for approval of the arrangement to 4 months, compared to the situation where the arrangement day falls on the date of the announcement. In contrast, a situation where the arrangement day falls 2 or 3 months after the announcement date is a risky strategy, as the time to work quietly on the approval of the arrangement is shortened, and the expiration of protection before the vote on the arrangement can significantly affect the outcome of the proceedings.

Lawyer's comment:

In arrangement approval proceedings, the arrangement day is no earlier than three months and no later than the day before the day on which the application for approval of the arrangement is filed (article 211 of the restructuring law). On the other hand, in the case of making a notice to establish the day of arrangement, the protection of the debtor's assets and obligations (article 226e of the restructuring law) lasts for four months from the date of making the notice, unless the debtor submits an application to the court for approval of the arrangement (Article 226g of the restructuring law). As a result of this discrepancy, the practice has emerged of making the notice of setting the date of arrangement with an indication of the date of arrangement in the future (usually up to one month), which allows the debtor to obtain immediate protection, in the absence of specifying the claims covered by the arrangement. This practice is met with divergent assessments in the doctrine and, most importantly, in the case law.

The main concern is that in order **to make the announcement, it is necessary to prepare an inventory of claims, which should present the state of outstanding liabilities as of the date of arrangement.** If

the date of arrangement falls later than the date of announcement, the inventory of claims becomes a "provisional" and "forecast" document, which may not contain information on all the debtor's claims. In view of the vagueness of the regulations, **the problem needs to be resolved at the level of the legislature.**

An attempt to eliminate problems of interpretation was initially made in the government's bill implementing the Directive on the Preventive Restructuring Framework (No. 2019/1023) into Polish law, which includes a provision according to which **"in the case of an announcement pursuant to Article 226a, the arrangement date shall also fall no later than the date of the announcement" (proposed article 211 (2a)** of the restructuring law). However, this regulation has not yet been adopted by the legislator.



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Effectiveness of the arrangement approval proceedings after the announcement of the determination of the arrangement day

Three main stages can be mentioned in the procedure for approval of the arrangement (PZU): (1) the announcement of the setting of the arrangement day, (2) the acceptance of the arrangement and the filing of an application for its approval, and (3) the issuance of an order to that effect by the court. In order to check the effectiveness and efficiency of PZU, 1977 business units that announced the determination of the day of arrangement at the National Register of Debtors (NRD) in H1 2023 were analyzed, accounting for 50.7% of the total proceedings initiated throughout the year. The choice of the first half of the year was dictated by the desire to obtain the most reliable survey results. From the determination of the day of arrangement, the debtor has 3 months to file an application for approval of the arrangement and in the situation of the announcement of the day determined "for the future" the time is even longer. Covering the entire year with the analysis would have resulted in too much PZU in progress (after the announcement of the day of arrangement and before the end of the proceedings due to the lack of submission of an application for approval of the arrangement).

The assumption is that the proceeding is effective if it has succeeded within this short period in both (1) accepting the arrangement with the creditors and applying to the court for its approval, as well as, (2) if the arrangement has been approved by the court.

The notice of arrangement day provides the debtor with protection from enforcement for a period of 4 months. Submitting an application to the court for approval of the arrangement within the statutory period extends the protection for the period of its consideration. As a reminder, the time for accepting an arrangement with creditors and filing an application with the court is limited to 3 months from the date of the arrangement day fixed.

In the whole of 2023, the court issued 41 orders overruling the effects of the notice to set the day of arrangement, which corresponds to only 1% of the notices. The scale of this phenomenon is not large, although its occurrence should encourage creditors to verify the debtor's situation and react early enough. Interestingly, **in all the proceedings in which the effects of the notice fixing the day of arrangement were rescinded, the petitions submitted for approval of the arrangement were either dismissed by the court or legally returned.**

In H1 2023, the courts in Poland received applications for approval of an arrangement from 1,113 debtors, **accounting for 56% of the total number of PZUs initiated**, in which the effect of the arrangement day was announced. However, an analysis of the notices showed that this number may

be an underestimate. In the case of the remaining 864 proceedings for approval of an arrangement, where there was no receipt of the proposal, only 29% have a status of "completed." On the one hand, it can be presumed that the statutory deadlines for filing an application for approval of an arrangement have passed, but the courts have not yet had time to update the statuses of the cases. On the other hand, **the phenomenon of not registering proceedings** after the receipt of an application for approval of an arrangement in the NRD system until the application is processed was observed. **In 32 cases, a notice of approval of the arrangement appeared, but there is no notice of receipt of the application to the court.** In summary, some of the proceedings for approval of the arrangement that are still pending may be at the stage of consideration of the application by the court despite the absence of such information in the ICT system.

As of the beginning of January 2024, the courts have considered 63% of the applications submitted for approval of the arrangement. The debtor's arrangement with its creditors was approved by the court in 542 cases, accounting for 77% in the total number of pending applications. In the remaining cases, the applications for approval of the arrangement were validly returned, dismissed or the proceedings to consider the application for approval of the arrangement were discontinued. The share of pending applications for approval of arrangement in initiated restructurings remains at a similar level regardless of the month in which the proceedings were initiated. On the other hand, the share of pending applications in the number of applications filed is characterized by a downward trend, which means that the efficiency of proceedings for a given period may still increase. As a reminder, the number of proceedings pending after the receipt of an application for approval of an arrangement is 411, which accounts for as much as 37% of the total applications filed.

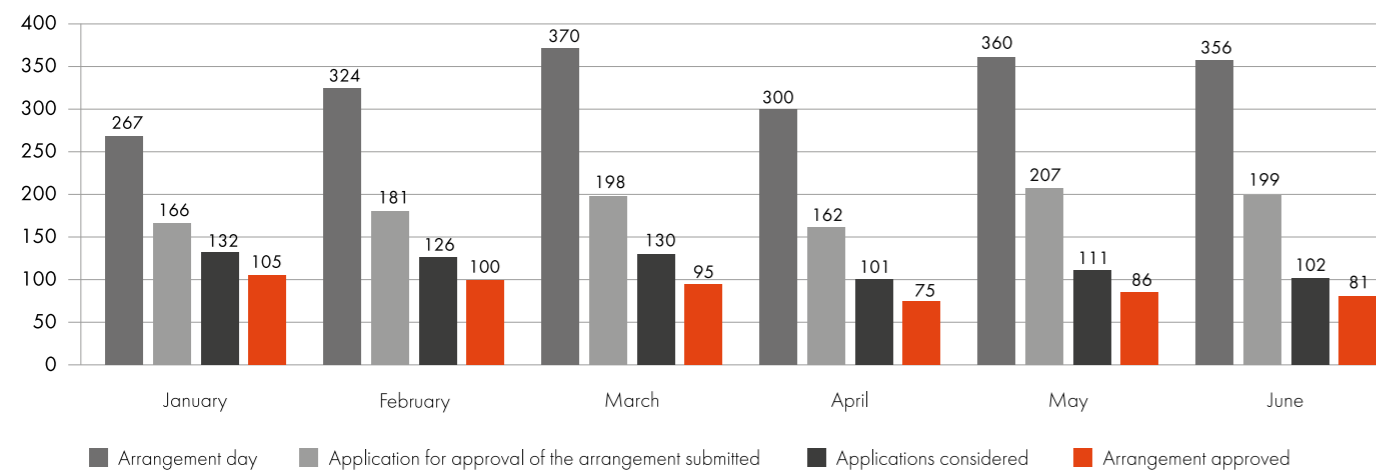
From the receipt of the application for approval of the arrangement to the court to the issuance of the order approving the arrangement takes, on average, 3 months (average 86 days, median 76 days). In contrast, the time from the date of the arrangement to the court's approval of the arrangement is about half a year (average 177 days, median 168 days). The longest time the court approved the arrangement was 277 days and the shortest was 3 days (time calculated from the date the application was received in court to the date of the order approving the arrangement). The time for processing cases varies from court to court. The longest wait for approval of the arrangement is in District Courts in: Łódź, Wrocław, Częstochowa, Warsaw, Cracow and Poznań (on average more than 100 days). The shortest - in Kalisz, Bielsko-Biała and Walbrzych (on average less than 50 days).

1977 announced the day of arrangement

1113 (56.3%) has applied for approval of the arrangement		864 (43.7%) no application submitted	
702 (63.1%) finished	411 (36.9%) pending	611 (70.7%) pending	253 (29.3%) finished
542 (77.2%) arrangement approved	160 (22.8%) return, refusal, remission		

	Notice of the effects of the day of arrangement (A)		Application for approval of arrangement (B)		Substantive review of the application by the court: dismissal or approval (C)			Decision to approve the arrangement (D)		
	number	% total	number	% in A	number	% in B	% in A	number	% in C	% in A
January	267	13.5%	166	62.2%	132	79.5%	49.4%	105	79.5%	39.3%
February	324	16.4%	181	55.9%	126	69.6%	38.9%	100	79.4%	30.9%
March	370	18.7%	198	53.5%	130	65.7%	35.1%	95	73.1%	25.7%
April	300	15.2%	162	54.0%	101	62.3%	33.7%	75	74.3%	25.0%
May	360	18.2%	207	57.5%	111	53.6%	30.8%	86	77.5%	23.9%
June	356	18.0%	199	55.9%	102	51.3%	28.7%	81	79.4%	22.8%
Total	1977	100%	1113	56.3%	702	63.1%	35.5%	542	77.2%	27.3%

Chart 1: Status of proceedings for approval of the arrangement as of January 2024



Source: Own study based on data collected from NRD

Lawyer's comment:

The above data indicate that **the procedure for approval of an arrangement (PZU) is a good tool for reaching an agreement with creditors on repayment of debts** - in about half of the cases an application for approval of an arrangement is submitted to the court. This should mean that an arrangement has been approved in these cases. **However, alarming cases are known in which the debtor submits an application to the court despite the absence of an agreement. Such cases could potentially constitute an abuse of the law.** However, in order to determine this, it is necessary to verify each case individually. There may be situations where the debtor disagrees with the position of the arrangement supervisor on the lack of an arrangement and wants the court to verify this.

On the other hand, the ratio of the number of arrangement day notices to the filed applications for approval of the arrangement may indicate that 3 months was not enough time to reach an agreement with the creditors, the proceedings were not selected to

meet the debtor's needs (e.g., PZU was used instead of remedial proceedings), or it was treated as a last chance before bankruptcy.

Noteworthy is the three-month period in which the court's consideration of the application for approval of the arrangement takes place. In my opinion, the application for approval of the arrangement should be considered within 1 month of its submission. Excessively long examination by the court of the grounds for approval of the arrangement, in the current economic conditions, may translate into the inability to implement the arrangement, or the need for the debtor to file a motion to amend the arrangement or revoke it.



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**Practical problems
in arrangement
approval
proceedings**

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Voting by proxy

In the current state of the law, the rule is that creditors may cast their vote in the procedure for voting on the arrangement through the ICT system handling the court proceedings (Article 212(2), first sentence, Restructuring Law). Exceptions apply only to entities strictly defined in Article 196b of the restructuring law, who may file pleadings and documents bypassing the ICT system due to the nature of their claims.

The system does not provide for any other way of casting a vote than by uploading, using the "writ of other" form (form No. 70008), a scan of a hand-filled (or electronically signed) ballot. In this situation, voting "via the ICT system" consists precisely of two actions: filling out and signing the ballot (which meets all the requirements provided for in Article 213 Restructuring Law), and then posting in the system a letter with an attachment to the file of the relevant proceedings.

Creditors may also cast their vote through an attorney-at-law. There is no doubt that procedural actions in restructuring proceedings can be performed by an attorney-at-law. Thus, a creditor may grant a power of attorney to a legal advisor, attorney-at-law or restructuring consultant to perform an action on his behalf in the restructuring proceedings for approval of the arrangement, and which consists in entering into the teleinformatic system of the National Register of Debtors the vote cast by the creditor on the basis of the ballot provided by the supervisor of the arrangement. There can be no circumvention of the voting provisions. In doing so, it should be remembered that the creditor did not submit the vote in writing and then ask, for example, the arrangement supervisor to enter such a vote into the system. Such a method of voting could be considered a violation of the NRD voting procedure.

Both the power of attorney and the act of entering the creditors' vote into the ICT system supporting the court proceedings, bearing a trusted signature, are permissible under Article 212(2) restructuring law, Art. 196a para. 2 Restructuring Law and Art. 209 para. 1 Restructuring Law in conjunction with Art. 88 § 1 of the Code of Civil Procedure and Art. 87 § 1 of the Code of Civil Procedure (see decision of the District Court in Poznań of 04.01.24, ref. PO/Gz-NRD/50/2023).

Declaring bankruptcy after the announcement of the

Determination of the day of arrangement

The mere announcement of the determination of the day of arrangement does not exempt a member of the board of directors from liability for the company's debts (cf. Article 299 of the Commercial Companies Code, Article 21(3) of the Bankruptcy Law). Therefore, in the opinion of many practitioners, the form of protection against these debts in this case is the parallel filing of a bankruptcy petition. Given the December 1, 2021 amendment to Article 9a the Bankruptcy Law, does such a practice make sense?

According to Article 9a of the Insolvency Proceedings, bankruptcy cannot be declared during the period between the opening of restructuring proceedings and their termination or final discontinuance. In such a case, the application shall be rejected. The rejection of the application referred to in the aforementioned provision should apply only if the application has already been filed during the restructuring proceedings, or, more precisely, after the opening of the proceedings. However, if the bankruptcy application was filed before the restructuring application was positively recognized and by that time it had not yet been resolved, the priority rule of the bankruptcy application (Article 11 of the Bankruptcy Code and Article 9b of the the Bankruptcy Law) will apply.

In the Restructuring Law, we do not find provisions - a model for simplified restructuring - according to which the day of the announcement of the determination of the arrangement day corresponds to the day of the opening of restructuring proceedings. In these proceedings, the effects of the opening of the restructuring proceedings arise from the day of arrangement (Article 189(2) restructuring law). There are different views on whether the day of opening of restructuring proceedings referred to in Article 9a of the Restructuring Law means the day of arrangement, and consequently whether bankruptcy is excluded in the pre-court phase of the PZU. Such a result would be indicated by the prohibition of enforcement against the debtor's assets in the period after the announcement of the determination of the arrangement day (Article 312 in connection with Article 226e Restructuring Law) and definitely - the necessity of direct application of Directive 2019/1023 on preventive restructuring, which has not been implemented in time (July 17, 2023), and according to which bankruptcy of the debtor cannot be declared during precautionary restructuring. Systemic interpretation, however, allows at least

the assumption that the bankruptcy court, in the event that the debtor submits an application for approval of an arrangement adopted under the procedure for approval of an arrangement (Article 210 in conjunction with Article 226a of the Restructuring Law), should, on the basis of Article 9b (2) of the Restructuring Law, withhold consideration of the bankruptcy application until a final ruling on the restructuring application is issued. Similarly, although in the absence of an explicit provision only under the application of systemic interpretation, the bankruptcy court should behave at a time after the announcement of the determination of the day of arrangement and before the filing of the application for approval of the arrangement.

Obligation to attach accounting documents

The Restructuring Law and the Bankruptcy Law in certain situations stipulate the obligation to file either a balance sheet or a financial statement of the debtor, such as when filing a restructuring application, including an application for approval of an arrangement in proceedings for approval of an arrangement, or an application for bankruptcy, as well as any preliminary restructuring plan.

The problem in complying with the statutory requirements arises in the case of debtors who keep a tax revenue and expense ledger (PKPiR) or revenue records. In this case, it will be sufficient to submit a simplified balance sheet (determining profit/loss from the PKPiR itself, assets based on the fixed assets list, supplemented by assets that are not fixed assets, as well as information on cash held and receivables owed). There are more doubts about the liabilities side - while it is easy to determine the balance of liabilities, it is not clear what to do with equity? The only thing left, I think, is to enter such a value that assets and liabilities balance. For revenue records, a similar scheme can be used.

In theory, as with the simplified balance sheet, one may be tempted to prepare a simplified income statement. In practice, however, the attached documents are not important, since other documents containing the same (or very similar) data can be attached in their place. Their attachment is only important for meeting the formal conditions of the regulations.

Signing the justification

Users of the teleinformatic system National Register of Debtors are limited by the technical capabilities of the system. Each form, which includes a space for the preparation of a justification, provides a strictly defined number of characters to be used. Thus, in practice, the further part of the justification is included in a separate file (.pdf), which is attached to the form.

In the jurisprudence of some courts, it is considered that the failure to affix a separate electronic signature to the file attached to the application constitutes a formal deficiency in the application. Meanwhile, the electronic signa-

ture covers the entirety of the letter, in the sense of the entire set of electronic data that make up its letter created and attached as an attachment called "justification." Due to the nature of the submitted letter and electronic signature, it is not possible for the content of the attached file to come from another entity or to be modifiable (see Order of the District Court for the Capital City of Warsaw in Warsaw dated 15.09.2023, ref: WA1M/GReu/34/2023).

Modification of composition proposals

In most proceedings for the approval of an arrangement (PZU), voting on the arrangement takes place exclusively via an ICT system, bypassing the creditors' meeting, understood as a gathering of creditors at one time and one place (although online participation in the meeting is also allowed - see Article 110(6) of the restructuring law). The principle of the Restructuring Law is that at the creditors' meeting, the debtor, the administrator or the court supervisor may submit amendments to the arrangement proposals. Since the procedure for approval of the arrangement can end with the acceptance and approval of the arrangement without convening a creditors' meeting, doubts arise as to the possibility of amending the arrangement proposals in a situation where the voting takes place only via an ICT system.

Amendment of the arrangement proposals is allowed in the proceedings for approval of the arrangement regardless of the mode of collecting votes. However, if the arrangement proposals provide for the division of creditors into groups covering particular categories of interests (Article 161 restructuring law), a change in the scope of even one group makes it necessary to include the new arrangement proposals in the file of proceedings and notify all creditors. The mere fact that a creditor has voted in favor of the arrangement does not relieve the arrangement supervisor of the obligation to notify the change in the proposals. Only ostensibly, the absence of a change in the content of the arrangement proposals for one group does not affect the position of creditors assigned to another group.

For example, if the arrangement is of a liquidation nature, and thus the source of creditor satisfaction is closed, an increase in satisfaction in one group necessarily leads to a decrease in satisfaction in another group. However, it must be remembered that an obligatory attachment to the application for approval of the arrangement is proof of the mailing of the voting information at least three weeks before the date of the application.

For this reason, restructuring courts allow amendments to the arrangement proposals in the course of the proceedings for approval of the arrangement, but they examine whether the formal conditions of the procedure for voting bypassing the creditors' meeting have been met (see the decision of the District Court Gdańsk-Północ in Gdańsk of 26.09.2023, ref. GD1G/GRz/53/2023).

Possibility of rescinding seizures

made in enforcement or collateral proceedings in the course of proceedings for approval of the arrangement (PZU)

The announcement of the arrangement day results, by operation of law, in the suspension of enforcement proceedings directed against the debtor's assets, which, however, does not affect enforcement seizures already made, including seizures of bank accounts. Noteworthy is the issue of jurisprudential discrepancies related to the possibility of revoking seizures made in enforcement or collateral proceedings during the proceedings for approval of the arrangement.

The basis for the possibility of revoking seizures made in enforcement or collateral proceedings is Article 312 of the Restructuring Law (properly applied under Article 226e of the Restructuring Law), according to which the judge-commissioner, at the request of the debtor or administrator, may revoke a seizure made prior to the date of opening of the remedial proceedings in enforcement or collateral proceedings directed at the debtor's assets included in the sanitation estate, if this is necessary for the continued operation of the enterprise.

The possibility of appropriate application of the above regulation in the course of proceedings for approval of the arrangement began to raise doubts in some courts. The courts refusing to issue a ruling on the revocation of the seizure pointed out that this was impermissible due to the fact that a judge-commissioner is not appointed in the proceedings for approval of the arrangement. In the opinion of these courts, in the absence of a general norm delegating the powers of a receiver judge to a restructuring court or an appointed judge, this provision cannot be applied at all.

It is difficult to agree with the argument that the legislator, by providing for the appropriate application of Article 312 of the restructuring law in its entirety in the course of the proceedings for approval of the arrangement, intended to exclude the possibility of its application to seizures made in enforcement or security proceedings. Given the short duration of these proceedings, and thus the necessity to carry out the process of restructuring of liabilities quickly (even instantly), granting the debtor full protection for this period is absolutely necessary and justified.

The possibility of appropriate application of Article 312 Restructuring Law in the course of proceedings for approval of an arrangement is intended to ensure full anti-enforcement protection for the debtor during this special restructuring procedure. The inability to use the funds in bank accounts most often paralyzes the operational activities of the debtor. The annulment of seizures that have been carried out (particularly seizures of bank accounts) is often the only way to restore the debtor's ability to carry out day-to-day operations, and thus a key issue for the success of the entire debt restructuring process.

The problem of discrepancies in the interpretation of the cited provisions has been recognized by the legislator. In the draft law on amendments to the Restructuring Law and certain other laws of December 7, 2023 (the law has now already been referred to the parliamentary work), it was specified that in the case of a debtor's filing of a restructuring motion (and in the case of PZU from the date of arrangement), the court, at the request of the debtor, may repeal the seizure made before the date of the notice and order of entry in the repertory of the restructuring motion filed by the debtor in enfor-

cement or security proceedings directed against the debtor's assets, if this is necessary for the continued operation of the enterprise. Thus, the above solution unambiguously confers the authority to revoke seizures made before the date of the notice to the restructuring court and leaves no room for doubt in interpretation.

Determining the scope of collateral for a claim in restructuring proceedings

A key element of restructuring proceedings is the meticulous determination of the scope of collateral for a given claim, as this may affect the possibility of an arrangement between the debtor and creditors. Polish restructuring law precisely defines what claims can be covered by an arrangement, as well as what terms and conditions accompany the process.

According to Article 151(2) of the Restructuring Law, not all claims are subject to an arrangement. In particular, claims from the employment relationship and those secured by mortgage, pledge, registered pledge, fiscal pledge or maritime mortgage are excluded, unless the debtor obtains the creditor's consent to their inclusion in the arrangement. It is worth noting the provisions on arrangement proposals presented to a secured creditor, especially when it comes to mortgages (Article 151(2a) Restructuring Law). If the debtor presents a composition proposal to the mortgagor that provides for full satisfaction of the claim, the creditor's consent to be included in the arrangement is not necessary.

It is also important to distinguish between claims that are covered by the value of the collateral object and those that do not have this coverage. Claims that are not covered in full by the value of the collateral object can be restructured, in that part, in accordance with the debtor's composition proposal.

In the context of the creditors' vote on the arrangement, it is also important to determine the amount of claims that will be taken into account. The regulations indicate the need to take into account the portion of the claim that is unlikely to be satisfied from the subject of the collateral (Article 86(3) Restructuring Law). This is an important parameter determining the impact of a given creditor on the restructuring process.

In light of these regulations, the restructuring process becomes a complex undertaking requiring a detailed analysis of each claim. Therefore, the interaction of the debtor and creditors in the course of the restructuring process is crucial for the effective resolution of financial problems and restoration of the debtor's economic balance. Safeguarding the interests of each party and the flexibility of the regulations allow the restructuring process to adapt to the specific situation, which promotes satisfactory results for all parties involved.

Valuation of debtor's assets, and securing creditor's interests in the restructuring process

The restructuring law introduces a number of key principles for securing the interests of creditors. One of the important elements of this process is the determination of the scope of the security of claims and issues related to the creditors' vote on the arrangement. Another important aspect is working on

the arrangement proposals and determining which claims will be included and which will be excluded from the arrangement.

In turn, the question of syngular or universal execution becomes important in the context of the degree of creditor satisfaction. The process of syngular execution depends on the price obtained by the bailiff at the auction. This value, being the liquidation value, is a key element in determining the degree of creditor satisfaction.

In the context of the restructuring process, it is also worth referring to the Directive of the European Parliament and of the Council (EU) 2019/1023, which introduces a preventive restructuring framework. The document stipulates that the restructuring framework should provide creditors with the maximum return on the funds involved. The directive aims to guarantee more favorable conditions for creditors compared to a situation in which the company's assets would be liquidated. In contrast, Polish legislation, such as the Real Estate Management Act or the Regulation on Real Estate Valuation, lacks precise guidelines or definitions regarding liquidation value, especially in the context of a forced sale. Therefore, important issues related to determining the value of property in a forced sale situation remain unregulated. The only reference on this issue is the European Valuation Standards (EVS) developed by the Tegova organization of valuers. Tegova defines value for forced sales as an important element of the valuation process, especially in unusual real estate situations such as forced sales.

One of the main challenges in determining the value of forced sales is the lack of adequate databases. Appraisers do not have enough cases for a given location and type of property, making it impossible to create authoritative databases. Determining the value for a forced sale, on the other hand, requires special attention to the conditions of the sale, such as the allowed exposure time and restrictions imposed on the seller. These assumptions must be precisely defined when the appraisal is ordered and included in the appraisal report itself.

In practice, the appraiser, given the lack of general rules, must individually consider the relevant factors affecting the value of a forced sale. He first determines the market value of the property, and then analyzes the specifics of the local market, the type of property, its size, the liquidity of the market and the possibility of alternative uses. Therefore, in order to determine the value assessment for the forced sale of the debtor's property, the Wilcox method is quite often used. It is based on applying a fixed level of discount to individual groups of business assets. However, this is a complicated approach and often requires adjustment to the specific conditions of a particular case.





**Overview of events
in the restructuring
and bankruptcy
market in 2023**

Condition of individual sectors of the economy in 2023

The effects of the coronavirus pandemic compounded by the Russian invasion of Ukraine were faced by both the Polish and global economies in 2022. This had an impact on forecasts for 2023. It was predicted to prove difficult and challenging for many sectors of the economy¹. And indeed, the problems of the previous year, which resulted in high levels of inflation and a sharp increase in the cost of doing business, took their toll on the operation

of many companies. These included the high cost of labor, the increase in fuel prices, the rise in electricity and electricity prices, as well as difficulties in obtaining raw materials as a result of the disruption of the supply chain. Of additional importance were changes in tax laws and tax increases. As a result, an increase in the prices of goods and services provided was observed.

Tabela 1. Changes in consumer prices over 2023.

January	February	March	April	May	June	July	August	September	October	November
increase by 17.2%	increase by 18.4%	increase by 16.1%	increase by 14.7%	increase by 13%	increase by 11.5%	increase by 10.8%	increase by 10.1%	increase by 8.2%	increase by 6.6%	increase by 6.6%
↑	↑	↑	↑	↑	↑	↑	↑	↑	↑	↑

Source: Own compilation based on Central Statistical Office (GUS) data².

This did not go unnoticed by market participants. Rising prices resulted in a revision of previous consumer habits and behavior. This was reflected in the dynamics of retail sales.

Table 2. Change in retail sales growth over 2023.

January	February	March	April	May	June	July	August	September	October	November
decrease by 0.3%	decrease by 0.3%	decrease by 0.3%	decrease by 0.3%	decrease by 0.3%	decrease by 0.3%	decrease by 0.3%	decrease by 0.3%	decrease by 0.3%	decrease by 0.3%	decrease by 0.3%
↓	↓	↓	↓	↓	↓	↓	↓	↓	↓	↓
compared to the corresponding months of 2022										
decrease by 0.3%	decrease by 0.3%	decrease by 0.3%	decrease by 0.3%	decrease by 0.3%	increase by 11.5%	increase by 10.8%	increase by 10.1%	decrease by 0.3%	increase by 6.6%	decrease by 0.3%
↓	↓	↓	↓	↓	↑	↑	↑	↓	↑	↓
compared to the previous months of 2023										

Source: Own compilation based on GUS data³.

¹ PKO Bank, Sector Barometer. Summary of 2022 in the industries of the Polish economy and predictions for 2023, February 2023 https://www.pekao.com.pl/dam/jcr:950c1154-42a3-4ae4-833b-f817e68314ea/Barometr%20Sektorowy%202023_Bank%20Pekao.pdf, accessed 19/12/2023.

² Data taken from GUS reports, Consumer Price Indices, prepared for each month of 2023.

³ Data taken from GUS reports, Retail Sales Dynamics, prepared for each month of 2023.

This, in turn, translated into the operation of companies within the framework of various industries, which had to make changes in their development strategies and plans and adapt them to the dynamically changing reality. Not surprisingly, the decisions made were characterized by uncertainty and caution. A gradually declining number of start-ups was observed. In this aspect, compared with the data for 2022, there was a 4% decrease⁴. The number of suspended and closed businesses also increased dynamically. In the seven months of 2023, this affected nearly 202,000 companies and 116,000 companies respectively⁵. Entrepreneurs decided en masse to initiate restructuring proceedings. In this respect, last year made history. Indeed, as many as 4193 restructurings were opened, 43% more than in 2022⁶. As a last resort, they declared bankruptcy. And in this aspect there was a 12% increase compared to 2022⁷.

Industries hardest hit by the economic situation

Among the sectors of the economy that have been continuously and cumulatively affected by the deepening effects of the difficult economic situation in 2023 are **the dairy and furniture industries**.

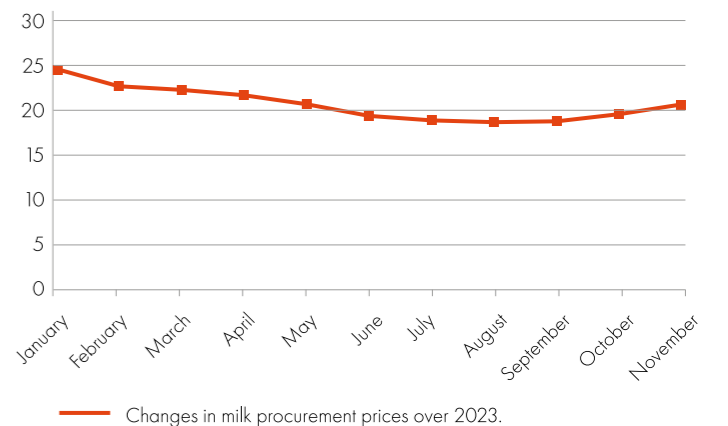
The Polish **dairy industry** is one of the leading sectors of the food industry, generating about 6% of Gross Domestic Product (PKB). It also stands out among other European Union member states, as it ranks in the top three in terms of the amount of milk produced, and is ranked 12th in the world. It is also worth mentioning that Poland is one of the leading exporters of dairy products to both neighboring countries and those much further away⁸. So it seemed that the situation of the sector was well-established and stable. Reality has verified these beliefs. The industry has not been able to protect itself from the impact of negative economic phenomena. Moreover, it felt them in an intensified way.

It seems that the first symptoms of problems began to appear several years ago with the decreasing number of dairy farms. At the time, it was forecast that this trend would continue and even worsen as a result of a lack of interest in running this type of farm. It seems that this scenario is now coming true. And although during the coronavirus pandemic there was a definite increase in demand for dairy products, which naturally translated into an increase in the supply and price of dairy products, with the end of the pan-

demetic demand declined. Persistently high dairy prices set by retail chains and rising inflation were responsible for this. These, in turn, contributed to a decrease in customers' purchasing power, which forced them to pay more attention to their purchasing decisions. Consumers began to strictly verify their needs and gave up or reduced their consumption of certain products, and in the case of necessities, they took a close look at prices, which increasingly became a criterion of choice. This was also the case with food purchases. Data released by the Central Statistical Office (GUS) makes it clear that last year saw a continuous increase in prices (reaching nearly 20%) and a decrease in sales (by up to 8%) in the "food"⁹ category relative to 2022.

The persistently high prices of dairy products in stores did not correspond to the level of prices at milk purchasers. The data presented in the chart below shows that for eight months of last year there was a systematic decline in farmgate prices. Only in September was a slight break in this trend recorded. However, the positive mood is cooled by experts. They point out that the beginning of 2024 will again bring a decline in milk prices at purchases. Moreover, this decline will continue until the end of this year¹⁰.

Wykres 1. Change in milk procurement prices over 2023.



Source: Own compilation based on Central Statistical Office (CSO) data¹¹.



⁴ In the third quarters of 2022, 281,412 companies were registered, and in the same period of 2023 - 271,002 companies. Data taken from CSO quarterly reports "Business registrations and bankruptcies in Q1 2023," "Business registrations and bankruptcies in Q2 2023" and "Business registrations and bankruptcies in Q3 2023."

⁵ Data taken from press reports: https://www.money.pl/gospodarka/fatalne-nastroje-w-gospodarce-nie-wierza-w-szybkie-odbicie-6946093716507392a.html?fbclid=IwAR1fq-dlOR7pNxc2gHUXRIkGnFUVFvGnOtlAayQseKx8U4uCiU-_vLnAmHE, accessed 01/01/2024.

⁶ In 2022, 2379 restructuring proceedings were initiated, https://www.coig.com.pl/2022-restrukturyzacje-firm_grudzien.php, accessed 01/01/2024.

⁷ According to the Central Economic Information Center, 408 commercial companies declared bankruptcy in 2023. A year earlier, 360 companies went bankrupt.

⁸ Pekao Bank, Dairy industry. Businesses facing short- and long-term challenges, October 2023.

⁹ Data taken from the CSO's monthly reports, Consumer Price Index and Retail Sales Dynamics, January-November 2023.

¹⁰ Analyses by Credit Agricole and PKO Bank experts are not consistent in this regard. Well, Credit Agricole's experts indicate that milk procurement prices for the entire 2024 will be lower than in 2023, while PKO Bank specialists forecast that there could be a rebound in this regard at the end of 2024. It is worth adding that the consistency between the specialists of these two banks also disagree on changes in milk demand, Credit Agricole, Agro Map. Agribusiness Quarterly, Winter 2023, PKO Bank of Poland, Agro Navigator, 4/2023.

¹¹ GUS, Prices of agricultural products in January-November 2023.

In 2023, the situation of the dairy sector was not helped by the increase in raw material prices and production costs. This resulted in a drastic decline in profits and profitability. According to data for the first quarter of 2023, there was a 93% and 97% drop in gross and net profit, respectively¹². All these aspects were not conducive to the operation of smaller dairies in particular, which are more strongly and intensively affected by any changes taking place in the market. In the current situation, they are faced with a choice between consolidation or business closure. And most often they decide to pursue the first scenario.

Three major ownership changes took place during the first half of 2023. In March, the Łódź-based Jogo cooperative was acquired by one of Poland's largest dairy cooperatives, Mlekpól. The two entities had already held consolidation talks more than three years earlier, but no agreement was reached at the time. Shortly thereafter, the economic situation of the Łódź cooperative began to deteriorate. Restructuring measures were then initiated, namely: to downsizing, abandoning unprofitable products and to move production to the parent unit in Łódź. However, this did not bring the expected results. The situation was further complicated by unfavorable economic circumstances. This prompted Jogo representatives to enter into talks with the Grajew cooperative. Their result was the incorporation of the Łódź cooperative into Mlekpól's structures. Also in March, it was reported that the difficult financial situation of the District Dairy Cooperative (OSM) in Końskie prompted its representatives to start talks on consolidation with the Polmlek Group. They resulted in an agreement under which Polmlek Group first leased and then, in September, purchased OSM Końskie. Thus, Polmlek Group is consistently pursuing a large-scale development strategy. Well, in 2022 it acquired two domestic companies: Ceko (which makes cheese) and Jagr (which makes butter), and, as part of its international expansion, a Moroccan dairy company, Safilait. At the end of Q1 2023, representatives of OSM in Czarnków signaled that they were facing serious financial problems due to the rising costs of doing business. They made no secret of the fact that without support their continued operation was in jeopardy. In May, meanwhile, they reported that they had reached an agreement with representatives of the Mlekovita cooperative on consolidation, which was finalized in September.

It is worth adding that the new owners of the acquired cooperatives, i.e. Mlekpól, Polmlek Group and Mlekovita, are the leaders of the Polish dairy industry with a long history, rich experience and plans for further development.

The Polish **furniture industry** was seen as a similarly strong sector of the economy. This was due to the buoyant growth we have seen over the past decade. Thanks to a steady increase in furniture production, it was credited with being responsible for generating 2.5% of GDP and ranking among the top furniture suppliers in global markets. According to data for 2022, Poland ranked third in the world and second in Europe¹³, allocating nearly 90% of domestic furniture production for export. In this way, Poland con-

solidated its position and became a significant player on the international arena. This position was not disturbed by the coronavirus pandemic. On the contrary. After the initial imbalance in 2020, the industry began to record revenue growth. This was the aftermath of the increase in demand for furniture observed at the time, and resulted from the restrictions obliging people to stay in their homes and apartments. They then began to invest in furnishing their living spaces, which became home offices.

The situation changed in the second quarter of 2022, due to the outbreak of war across our eastern border. From that point on, problems began to grow exponentially. Thus, the effects of rising inflation and the cost of doing business were noted. Doing business was also hampered by rising prices of raw materials and difficulties in obtaining them. Representatives of the industry pointed out that the rules for the sale of timber by the State Forests changed, resulting in an increase in the price of this raw material by up to 40%. Acquisition of other raw materials (plywood and board) was also hampered. This was due to European sanctions imposed on Russia and Belarus, from which these materials were imported. In addition, the State Forests' abandonment of the internationally recognized FSC¹⁴ standard wood certification affected the competitiveness of Polish companies.

All this resulted in a systematic reduction in production. During the individual quarters of last year, it oscillated between 5% and 25%. Experts predicted that eventually the decline in production for the whole of last year would be 5%¹⁵. At the same time, there was a continuous decline in demand. Monthly data presented by the Central Statistical Office (CSO) showed that declines in sales were constantly observed¹⁶. The largest were recorded in May and June - 14.8%. Resignation or restrictions on furniture purchases followed the saturation of the market that occurred during the coronavirus pandemic. The effect of these accumulating problems was a systematic increase in debt for furniture manufacturers. According to data taken from the National Debt Register, in October 2023, it was estimated that the furniture industry's debt reached PLN 111 million¹⁷. The growing financial problems resulted in difficulties in maintaining liquidity. This in turn threatened the continued existence of manufacturers in the market¹⁸. The reality of these problems was evidenced by information about the need to restructure employment at the Ikea showroom located in Goleniów and the corrective steps taken by the Forte Furniture Factory.

It didn't just stop there. Klose, a furniture manufacturer that existed on the market for 30 years, declared bankruptcy in October. The Polish furniture sector was not isolated. Its counterparts in other countries faced similar difficulties. In the middle of the year, Germany's Who's Perfect and Austria's Kika/Leiner declared bankruptcy. Both companies had operated in domestic and foreign markets for 30 and 50 years, respectively.



¹² A. Ptak-Iglewska, Crisis quietly hits dairy plants. It has deprived them of profits, Rzeczpospolita 04.08.2023.

¹³ PKO Bank Polski, Furniture industry. International position of Polish manufacturers and market development forecasts until 2027, September 2023, p. 16.

¹⁴ Certification to the FSC standard was a guarantee that the wood was harvested in accordance with responsible forest management. The possession of this certificate attention of foreign importers, who may not buy wood products lacking this certification. The withdrawal of Regional Directorates State Forests from FSC certification occurred gradually starting in the first quarter of 2023.

¹⁵ Biznes meble.pl, Szczyt kryzysu w branży meblarskiej, <https://biznes.meble.pl/edukacja/szczyt-kryzysu-w-branz-y-meblarskiej/>, accessed 10/01/2024, PKO Bank Poland, Furniture industry..., p. 4.

¹⁶ The CSO's monthly report, Retail Sales Dynamics, shows that from February to November 2023 there were steady declines in retail sales in the "furniture, rtv, household appliances" category.

¹⁷ National Debt Register, Press Release - The furniture industry is putting debts on the table - today it is 111 million zlotys, <https://krd.pl/centrum-prasowe/informacje-prasowe/2023/branza-meblowa-wyklada-dlugi-na-stol-dzis-to-juz-111-mln-zl>, accessed 10/01/2024.

¹⁸ Representatives of the All-Poland Chamber of Commerce of Furniture Manufacturers have repeatedly warned and appealed to the prime minister to react and apply systemic solutions. Their petitions went unanswered.

When discussing the difficult situation of the furniture sector, one cannot ignore the state of industries whose functioning is inextricably linked to it. These are the construction and real estate industries. Both sectors also experienced a marked downturn¹⁹. This occurred as a result of the decline in creditworthiness resulting from the deteriorating financial situation of consumers and the increase in credit prices. The law on preferential home loans, passed in March, proved to be a sure remedy. With the beginning of July, it was possible to apply for the so-called 2% Safe Credit²⁰. Interest in it was very high. It was expected that this would translate into an improvement in the condition of the mentioned industries by increasing demand for the services they provide. And indeed, demand for housing skyrocketed, resulting in a drastic increase in housing prices.

Situation in other industries

Naturally, the question arises whether other sectors of the economy reacted similarly to the existing accumulation of problems? How did enterprises representing, among others, **the clothing, beer and sports industries function**²¹?

The situation of the Polish **clothing industry** seemed relatively stable, although this sector of the economy also failed to remain indifferent to the effects caused by the commonly prevailing economic situation. Data presented by the Central Statistical Office (GUS) showed that during the twelve months (November 2022 to November 2023) there was a 4.7% increase in the prices of clothing and footwear, while sales of these articles fell by 4.4%. These were not as large increases in prices and decreases in demand as were observed, for example, when juxtaposed with food data²².

This means that in the past year consumers were reluctant to give up purchases of clothing and footwear. Confirmation of these conclusions is provided by information recorded by Poland's largest clothing companies.

The LPP²³ Group ended 2022 with one of its best-ever financial results. Thus, it positively reviewed its previous activity and was inclined to continue its ongoing activities. Encouraged by the positive response from Mediterranean customers, its representatives took steps to expand into Western and Southern European markets and established two foreign logistics branches, in Romania and Slovakia. According to the latest information, the LPP Group ended the past year with a profit. The VRG²⁴ Group also opened last year with a similarly positive outlook, announcing that it would take steps to expand into Central and Eastern markets. And indeed it did so with the W.Kruk brand, whose stores appeared in Hungary.



¹⁹ Big InfoMonitor, Construction industry has 6.2 billion in arrears, <https://media.big.pl/informacje-prasowe/817865/budownictwo-ma-6-2-mld-zl-zaleglosci>, accessed 15/01/2024.

²⁰ The "2% Safe Loan" program was intended to assist in obtaining and repaying a mortgage. It stipulated that for 10 years the interest rate on the loan would be 2% and for this period the state will subsidize the loan installments. The program was met with great interest, and the stipulated amounts for its financing were quickly exhausted. Along with the beginning of 2024 it was extinguished.

²¹ Focusing on the analysis of the situation of the selected industries was inspired by the observation of the market in 2023. It showed that these industries were discussed the most and most often. Therefore, the situations of these very sectors of the economy were the subject of the greatest number of "news" published in the Service about restructuring orestrukturyzacja.pl last year.

²² Data taken from monthly CSO reports (Consumer Price Index and Retail Sales Dynamics) showed that each month of 2023 saw a continuous, but not constant, increase in food prices and a decrease in retail sales relative to the corresponding months of 2022.

²³ The LPP Group includes the following brands: Reserved, Mohito, Sinsay, Cropp and House.

²⁴ The VRG Group includes the following brands: Vistula, Bytom, Wólczanka, W.Kruk and Deni Cler.

²⁵ The CCC Group includes the following brands: CCC, eobuwie, HalfPrice and Modivo.

²⁶ PARP, Industry Human Capital Balance. Fashion and innovative textiles industry, September 2023.

However, according to recent information, the financial profit achieved during the past twelve months did not satisfy Group representatives. It was lower than expected. On the other hand, the CCC Group²⁵ began 2023 with the need to reduce its sizable credit debt as a consequence of misguided business decisions, a plan to improve the profitability of the Modivo brand and with optimistic financial plans. In November, its representatives reported that the steps taken to realize these intentions had been successful, and declared that despite the sinuous financial results, everything indicated that they would end the year with the projected profit.

It should not be forgotten that the Polish fashion sector is highly fragmented. The brands cited above are the largest Polish apparel companies, which coexist in the market along with more than 36,000 entities. Most of them - 90% - are micro companies²⁶. Their situation, due to the smaller scope of their business activities and the assortment offered, may look quite different. Nevertheless, until the turn of the second and third quarters of 2023, they did not complain about problems resulting from the decline in demand. Only then did representatives of smaller clothing stores affiliated with the Association of the Polish Apparel Industry signal that the effect of long-lasting high temperatures is a drastic drop in demand for the autumn-winter collection, which will force them to take decisive steps. The company Kastor, which specializes in production of men's shirts and women's confections, whose representatives decided to carry out mass layoffs. The announced sales declines were confirmed by data presented by the GUS. September actually saw an 8.3% drop in sales relative to August, but October already saw a 14.5% increase relative to September.

All of this leads to the conclusion that the apparel industry is currently struggling largely with the effects of rising business costs. Thus, it seems that the "revolution" caused by the coronavirus pandemic and the struggle with its aftermath has come to an end, and last year was a kind of summation of the pandemic and post-pandemic period and a verification of the fate of some brands. This is confirmed by the examples of two Polish companies, Marie Zélie and Ferax (owner of the Gatta brand), which last year made a final summation of the effects caused by the pandemic. The first, Marie Zélie, founded in 2015, offered "modest dresses for wealthy Catholic women." It had been in restructuring since 2022, and in March 2023 reported that the court had not approved the arrangement and had to file for bankruptcy. Its representatives, however, declared that they saw the sense of continuing operations in a buyout of the brand by a new American investor. In contrast, the other company, Ferax, was founded in the early 1990s and has hosiery products in its product line. The remedial proceedings, which opened in 2021, were successful and allowed the brand to continue operating. Its sister company, Wola, which produces socks, did not share its fate and had to close down.

Such problems were no stranger to international apparel chains. The first half of last year was full of news about their problems. German chains Peek&Cloppenburg and Gerry Weber and Dutch Scotch&Soda filed for bankruptcy. At the same time, representatives of the first two companies announced that they had implemented corrective measures in the form of closing stores located in their home countries and assured that stores in other countries would continue to operate. In turn, Scotch&Soda undertook successful efforts to attract a foreign investor. The Massimo Dutti brand, owned by the Spanish holding company Inditex, and the Swedish company H&M were also not free from financial problems. Representatives of all these brands unanimously claimed that the beginning of their problems was the coronavirus pandemic, which forced a remodeling of their existing operations.

First, due to the proliferation of remote work, it became unnecessary to stock up on formal, elegant clothing, which was the core assortment of some clothing stores (the case of Massimo Dutti). Secondly, the popularity of stationary shopping, which dominated at the time, had to give way to e-commerce for natural reasons. Clothing chains therefore began to invest or reinvest in the development of the online shopping sector. Some of them even overinvested (the case of Peek&Cloppenburg). At the same time, they reviewed the profitability of their existing operations (the case of H&M). Cost optimization prompted some of them to withdraw from the Polish market, among others. This was done already in 2022 by popular brands: Promod, Camaieu and Orsay.

The sports industry also competed unevenly at times last year to offset the lingering effects caused by the restrictions in place during the coronavirus pandemic, which were compounded by further problems resulting from the economic downturn. Two issues therefore overlapped. The first focused on attempts to gradually rebuild the position lost following the widespread closure of sports facilities during the pandemic. The second concerned the rising cost of sports clothing and footwear and participation in organised sports activities. Data from the CSO confirms that the prices of leisure and sports-related services increased last year²⁷. This was certainly not conducive to a reversal of the trend becoming apparent at the end of 2022. At that time, it was perceived that 30% of Poles were reducing spending on sports equipment and 27% on leisure activities in the broad sense²⁸.

These reductions were due to the deterioration of the situation of households and the abandonment of goods not falling into the category of "basic needs". Moreover, for the last three years there has been a decrease in the percentage of people who are physically active²⁹, and sport enthusiasts often choose those activities which are not excessively costly, namely: running, walking and cycling. This translates into the condition of shops offering sports clothing, footwear and equipment. An excellent example of this is the Intersport Polska chain of shops. The deteriorating financial situation prompted representatives of this chain to seek financial support. The owners of the Ukrainian building materials trading company EpicentrK, who, under

an agreement approved by the Office of Competition and Consumer Protection, took over a majority stake in Intersport and pledged to invest EUR 10 million in the development of the chain, were ready to give it. It is worth mentioning that the said chain is not a large one, as it has 37 shops and is second only to companies such as Martes Sport and 4F, which have over 380 and 360 (shops and stands) outlets respectively.

In the past year, representatives of the former did not complain about financial problems. On the contrary, they increased the number of shops they owned, recorded a profit and announced that they would be undertaking international expansion activities. On the other hand, due to the drop in profitability, the representatives of 4F revised their previous development plans and held off on further international expansion. On the other hand, fitness clubs have started to recover losses, thanks to Benefit System and Medicover Sport. Both rival companies are offering employers to expand their employee benefits catalogue with sports packages. In the course of 2023, they have thrived thanks to acquisitions of fitness clubs struggling to maintain profitability. Currently, 218 clubs belong to Benefit System and 132 gyms to Medicover Sport. They co-exist on the market with around 2,500 small non-network entities.

The **beer industry** has definitely fared less well due to the distorted relationship between demand and supply. Firstly, there was a drop in demand as a result of the deterioration in the financial condition of households, which prompted them to review their needs and give up certain products. Secondly, there was a systematic increase in the price of alcoholic beverages. Moreover, on several occasions, increases of up to double-digit figures were observed with respect to 2022, reaching 12.5%³⁰. The situation was slightly better in 2023. In this aspect, the largest price increase took place in November and amounted to 9.2% relative to October³¹. This had a real impact on the operation of individual breweries. Already in the middle of the first quarter of last year, the Żywiec Group decided to close Browar Leżajsk. Despite the opposition expressed by the local community and efforts to continue the operations of the designated brewery under different management, the brewery finally ceased operations in August. According to the latest information, talks are reportedly still underway to sell the brewery and resume production there.

Kujawski Browar Osowa Góra, on the other hand, has definitively ceased its eight-year activity. Its owner explicitly indicated that the ever-increasing costs of doing business were behind this decision. In turn, ownership changes took place at the longest and continuously operating brewery in Poland, namely Browar Zamkowy Cieszyn. As of April 2023, KDW Fundusz Inwestycyjny Zamknięty (KDW FIZ) became the new shareholder of the brewery and henceforth shares the management of the brewery with the existing owner MJG Investment Fundusz Inwestycyjny Zamknięty Aktywów Niepublicznych (MJG FIZAN). The change in ownership entailed a change in the name of the Brewery. From now on, it bears the name - Arcyksiążęcy Browar Zamkowy Cieszyn. On the other hand, in recent months there has been a lot of discussion about financial problems amounting to

millions of zlotys faced by Manufaktura Piwa, Wódki i Wina and Browar Tenczynek. These have resulted in the initiation of accelerated arrangement proceedings. According to the latest information, it seems that it will end successfully in the case of Manufaktura Piwa, Wódki i Wina. This success is unlikely to be shared by Browar Tenczynek.

And the other sectors of the market...

Of course, the above considerations do not exhaust the subject of the problems with which the indicated sectors of the economy, to a large extent, have so far been confronted. It should be emphasised that they are not the only ones. Representatives of other sectors have also made attempts to overcome the effects of the economic situation. It is therefore worth at least signalling who has coped and how?

Staying at the interface between the **food and sports industries**, it is impossible not to mention so-called **organic food**. Only a few years ago, Poles openly declared that they consciously gave up buying organic food because of its price. And although this attitude has changed over the past year, it should be remembered that the Polish market for organic food is niche and represents only 0.5% of the entire food market. Last year it was depleted by the closure of the 'Pora dla pora' food market. On the other hand, Organic Farma Zdrowia Delicatessen, which has been in restructuring since 2021, announced the completion of its corrective measures in 2023. Their problems were not shared by the leader in this market, namely Bio Planet. On the contrary. Its representatives boasted an increase in sales.

In contrast, **technology companies** were among the few whose position was strengthened by the coronavirus pandemic. The growing popularity of remote working at the time translated into increased demand for the services they provided and the products they offered. They therefore dynamically expanded their teams, which now proved to be too large in an era of falling demand and market saturation. This was followed by cyclical decisions by technology giants such as Microsoft, Meta, Philips, Ericsson, Amazon, e-bay and Yahoo to downsize. Two Polish companies, namely STX Next and Netguru, have also decided to implement the same measures.

Similar problems were shared by large electronics retailers. We are talking about the popular shop chains Media Mark and Neonet. The profits achieved in the era of the coronavirus pandemic resulting from the increased demand for their product ranges fell dramatically. In this situation, Media Mark was recapitalised by Holding Media-Saturn Polska, which manages the brand's Polish shop chain. Neonet, on the other hand, decided to initiate remedial proceedings and, as part of these, is now taking corrective action to rebuild the company's profitability.

In fact, throughout last year, companies in **the transport, forwarding**

and logistics (TSL) sector drew attention to financial problems. This branch of the economy is regarded as one of the outstanding ones. It was estimated that in 2021 it was responsible for generating nearly 6% of GDP. It is worth mentioning that this took place during a pandemic period. This was an extremely difficult time for the industry, due to the widespread restrictions on movement. So it seemed that 2022 would allow the position to recover. And indeed it did, at least for the majority of the sector. At the same time, there was a further challenge in the form of increases in operating costs. This translated into liquidity problems. As a result, the debt of the TSL industry at the end of 2023 amounted to PLN 1.3 billion³² and was unevenly distributed in the following order: road transport, passenger transport and companies involved in warehousing and transport support services.

The Polish **automotive industry's** assessment of last year was decidedly different. Some disruptions to their proper functioning emerged in mid-2022. These resulted from the disruption of the supply chain, which occurred as a result of the Russian aggression against Ukraine. However, once these difficulties were overcome, the industry began to pick up. This was evidenced by the record number of motor vehicles produced and sold, which exceeded the 200 billion threshold at the time³³. This positive trend continued in 2023. This is because it was noticed that, despite the increase in the price of vehicles, people were more willing to purchase them³⁴. It should be added, however, that with the gradual slowing down of the price increase, the dynamics of car sales systematically increased.

Summary

As predicted, 2023 proved to be an extremely difficult and challenging year for most sectors of the economy. Industries signalled a worsening of the situation and the need to take decisions to restructure the company or file for bankruptcy. Hence, the accumulation of problems left its mark on all market participants differing from each other in many aspects: type of business, size of the company, years of presence on the market, scope of operations, financial resources held.

The above considerations made it clear that the situation of the various industries, or rather the companies representing them, depended primarily on the current condition they were in at the time of the emergence of a series of unfavourable circumstances. This is why, when problems arose, it was so important to analyse and assess the state of the enterprise. This made it possible to identify which aspects of the business needed to change. This, in turn, provided the basis for taking action to mitigate or significantly reduce the negative consequences of a rapidly changing reality.

Industries felt and reacted to the changing economic situation with varying intensity. The real impact has been on the relationship between demand and supply. In fact, we were constantly seeing widespread increases in the prices of goods and services in relation to 2022. Thus, demand for

²⁷ Data taken from CSO monthly reports, Consumer Price Index, January-November 2023.

²⁸ PKO Bank Polski, Industry monitoring. Sports apparel and footwear retailing, October 4, 2022.

²⁹ <https://pulsmedycyny.pl/polacy-uprawiaja-coraz-mniej-sportu-od-trzech-lat-obsuwamy-regres-badanie-1181439>, accessed 15/01/2024.

³⁰ GUS, Consumer price index, January-November 2023.

³¹ Ibidem.

³² National Debt Register, Press Release - The furniture industry is putting debts on the table - today it is 111 million zlotys, <https://krd.pl/centrum-prasowe/informacje-prasowe/2023/branza-meblowa-wyklada-dlugi-na-stol-dzis-to-juz-111-mln-zl>, accessed 10/01/2024.

real estate, home furnishings, electronic equipment and alcoholic beverages was clearly declining. This could be explained by consumers' limited financial capabilities and the need to review existing needs. Particularly noteworthy is the fact that demand for food was also declining. At the same time, the demand for clothing and footwear as well as motor vehicles either fell by only a few percentage points or increased. As a result, the situation of Polish clothing companies was relatively stable, while that of automotive companies was good or even very good. Such consumer behaviour was influenced by the dynamics of price increases for individual goods and services, which in the case of food remained high.

Smaller enterprises had a much harder time coping with the economic downturn. Due to their limited scope of operations, they had less financial resources at their disposal and were more quickly affected by the negative consequences of the dynamically changing economic environment. Moreover, on many occasions it turned out that consolidation was the only solution (cases of small dairy cooperatives and fitness clubs). Nevertheless, the example of the world's clothing and technology giants proves that these types of companies are not entirely immune from the effects of piled-up problems either.

Economist's comment:

For many companies, last year was both a year of struggle for survival and a period of recovery from the pandemic. Although the latest data from the Central Statistical Office (GUS) confirms that it was a year of stagnation and did not bring the expected economic growth of the Polish economy (GDP growth of only 0.2%), the Warsaw Stock Exchange (GPW) was in a bull market and the main indices: WIG, mWIG40 and sWIG80 achieved returns in excess of 30% and set historic peaks. Such a good performance was mainly due to the banks, which benefited from the situation of a significant increase in interest rates while maintaining high margins. The leader of growth in 2023 was Alior Bank, which replaced CCC S.A. in March 2023 and joined the group of the 20 largest and most liquid companies on the GPW.

sumerism. Economic activity will also be driven by investments financed by the National Reconstruction Plan (Krajowy Plan Odbudowy, KPO), where spending could reach as much as PLN 30-40 billion. There is less optimism for the second half of the year. In June, the freeze on electricity prices for households will end and citizens will face significant increases, reaching up to 80% in some cases. The planned increase in the minimum wage twice during the year will mean that some micro and small enterprises may not be able to cope with even stronger wage pressure. In the face of so many risks and much uncertainty, forecasting financial performance, planning sales and creating a pricing strategy is a huge challenge for managers. It should also not be forgotten that although the prospect of an end to the war in Ukraine is still distant, 2024 could prove to be a watershed year.

In 2024, consumption is forecast to increase and the economy to improve as a result of real wage growth. Such estimates can be applied mainly to the first half of the year, when continued disinflation and an expected slight reduction in interest rates will act as a driving force for the Polish economy in an era of con-



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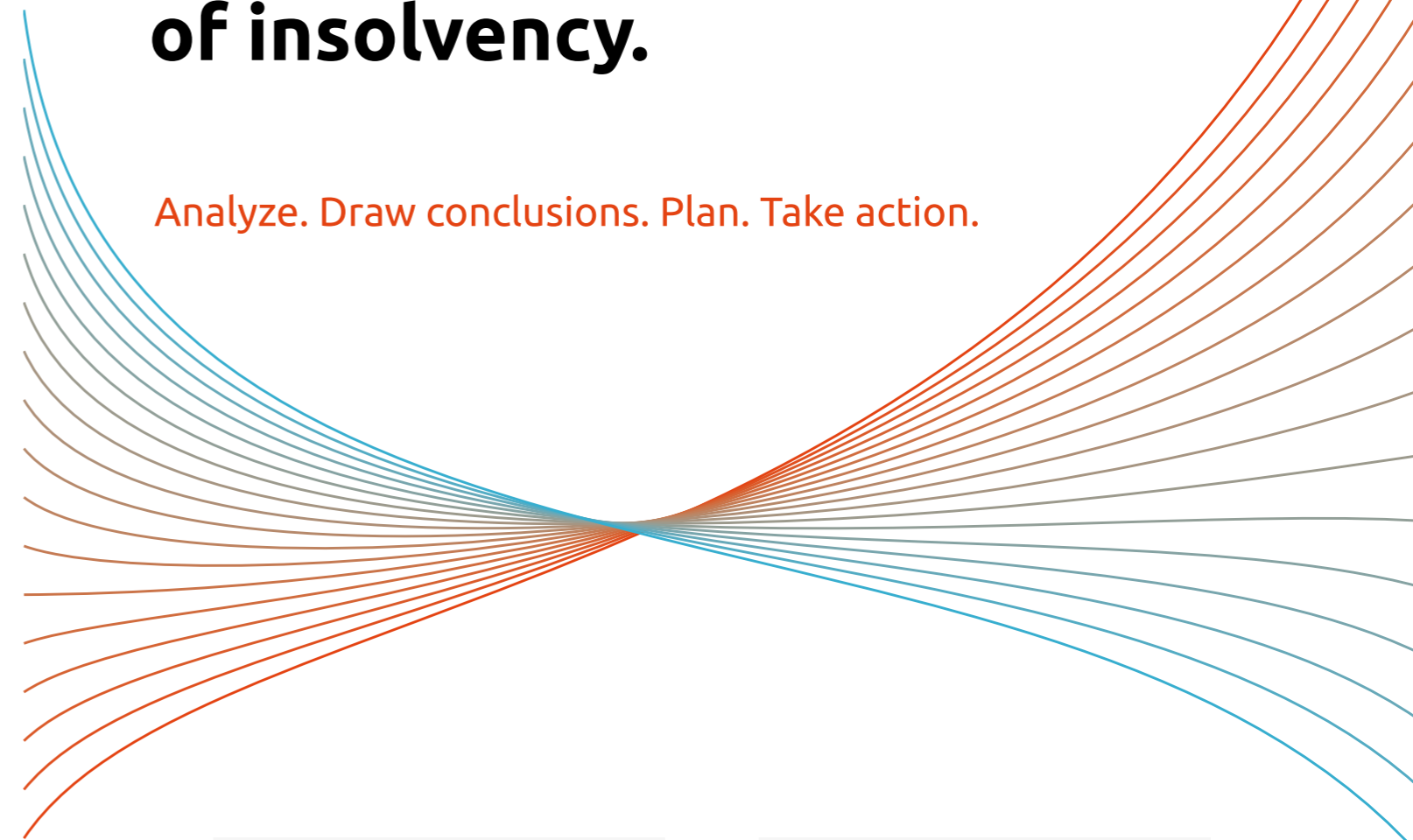


³³ AutomotiveSuppliers.co.uk, Automotive industry from Poland, 18.05.2022.

³⁴ GUS, Consumer Price Index, January-November 2023 and Retail Sales Dynamics, January-November 2023.

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**Company's
investment potential
in crisis (distressed
investments)**

Investment potential in companies in distress

Access to capital is often a critical element in the proceedings to restore the self-financing capacity of a company in distress. Often, before it is possible to administer an effective 'treatment' to the 'patient' in the form of comprehensive restructuring measures, it is necessary to administer a rescue 'drip' of capital. Sometimes this financing should be of a bridging nature, sometimes to finance the liquidity needs of the company, in other cases the need for an additional cash injection arises from the need to complete an initiated investment.

Meanwhile, raising capital for a company already in distress, although becoming a critically important and prioritised task, is a very complex process. Financially troubled companies face a number of problems in raising external capital. The very process of restructuring a company can be a costly undertaking, requiring securing an appropriate source of funding. These factors mean that companies in restructuring have a limited choice of funding sources. Key sources of business finance in these circumstances include:

- **Liquidation of own assets:** during restructuring, companies often decide to sell some of their assets (not required for full-scale operations) in order to raise funds for the continued operation of the company.
- **Leasing-back:** leasing-back can be a form of asset liquefaction that allows the company to maintain operational capacity on a similar scale to that realised before restructuring. The sale of a property or machine, while guaranteeing its use, can be a source of quick and operationally efficient capital. Unfortunately, a company's weakened operating position may discourage lessors' interest in this form of financing, especially if unique, specific assets were to be the subject of the transaction.
- **Public assistance grants and loans:** depending on the industry and location, companies may qualify for various forms of government grants or subsidies. These measures can help finance restructuring, especially if it is for job protection, technology development or other public purposes. For example, companies can apply for loans from the Industrial Development Agency.
- **Factoring:** the essence of this form of working capital financing, is the separation of the object of financing from the situation of the entity applying for financing. As a result, it is often the only source of financing available to companies undergoing restructuring. Unfortunately, the limited availability of alternatives to this form of financing is followed by a relatively high cost relative to the forms available to companies not affected by financial problems.
- **Alternative sources, e.g.: crowdfunding:** recently, websites that allow companies to raise funds from internet users, among other things,

in order to carry out a successful restructuring, have gained popularity. The presence of a community that supports a project and would be interested in avoiding the closure of the business is a strong support for the success of this type of project.

- **Co-operation with specialised investors:** due to the interesting and forward-looking nature of the business, private individuals, strategic investors, specialised investment funds or private equity funds looking for sources of growth for existing investments are increasingly choosing to invest in a company undergoing restructuring.

Associated with the latter source of funding is the term Distressed Assets or Distressed M&A. The former refers to assets whose holder is subject to bankruptcy, insolvency, liquidation or other similar action (for example, restructuring proceedings), while Distressed M&A is the term for the segment of the M&A market focused on investments in Distressed Assets. In practice, the following Distressed M&A structures can be distinguished:

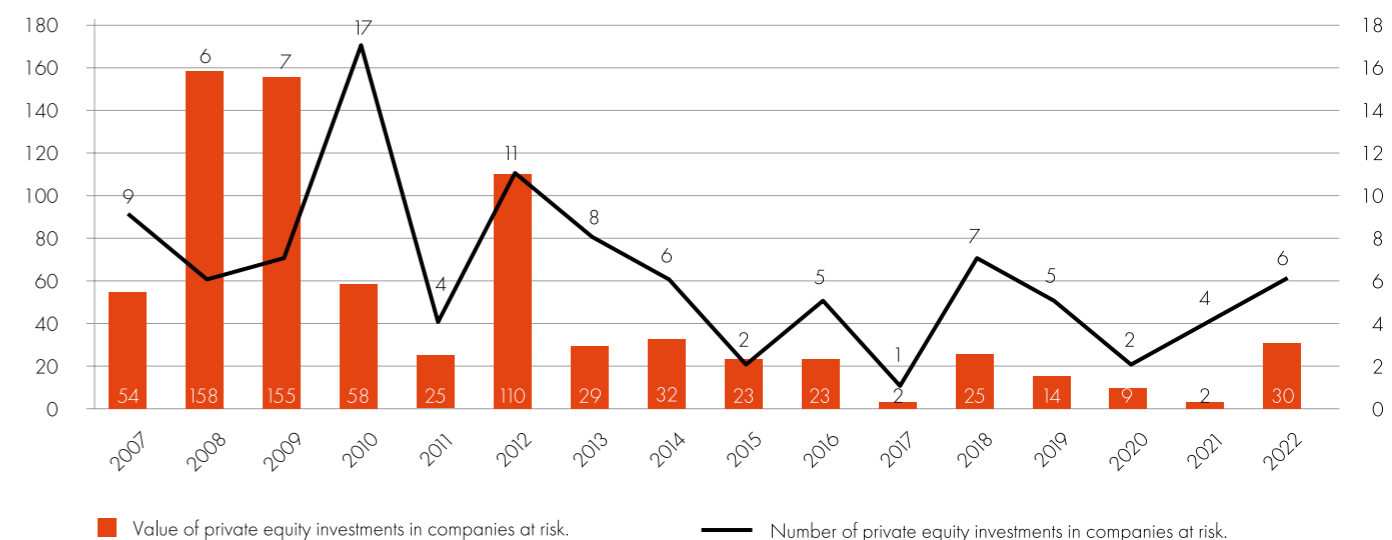
- **Roll-up:** is a process in which a minimum of two entities, operating in the same market, are acquired and merged into one;
- **Pre-pack:** this is a pre-prepared liquidation, consisting of an offer to purchase the debtor's assets together with the bankruptcy petition, which allows an investor to take over the debtor's assets at an attractive price;
- **Liquidation bankruptcy:** a process in which one or more entities acquire the divested parts of a company in liquidation;
- **Restructuring capital:** is a process in which part (or all) of the shares of a company in restructuring are acquired by an investor in exchange for providing funds to implement an arrangement with creditors;
- **Reverse Distressed M&A:** a situation where a company in financial distress, undergoing restructuring or going through the insolvency process, becomes an active buyer in the M&A market in order to optimise its own operations.

The most developed Distressed M&A market is found in the United States (US) once Western Europe. In the USA, it is estimated that Distressed transactions will account for up to 30% of all M&A transactions in the coming years. For Western European countries, the trends are mixed in terms of both the number of transactions and their value. In terms of the number of Distressed M&A in the selected group of countries, Germany dominates, with an average of more than 100 such transactions per year. In terms of average deal value, on the other hand, the highest amounts in Europe are recorded in the UK, where average deals of this kind are concluded in the range of USD 40 million - USD 150 million, depending on the year.

The Central & Eastern Europe (CEE) region is still underdeveloped in terms of Distressed M&A and, given the size of the region, it compares unfavourably with the rest of Europe. In the period 2007-2022, the highest value of Private Equity (PE) fund investments in distressed companies took place in: 2008 - EUR 158 million and 2009 - EUR 155 million. From 2010 onwards,

the downward trend in terms of the number of such transactions continued, but from 2020 onwards there are signs of increased investor interest. Detailed values on the number of investments and their value of PE funds in distressed companies in the CEE region are presented in the chart below.

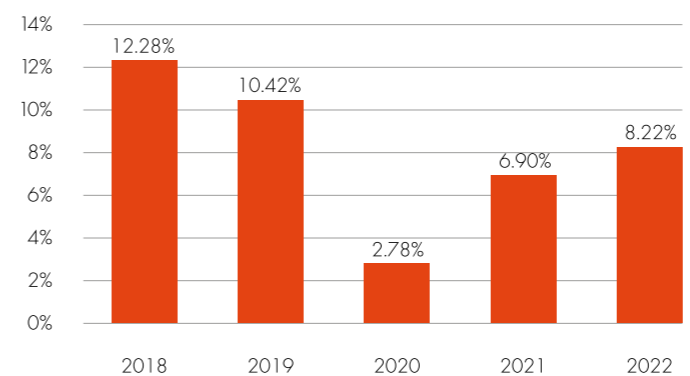
Chart 1. Value (in EUR million - bars) and number (line) of PE investments in the distressed sector in the CEE region from 2007 to 2022.



Source: own compilation on the basis of Invest Europe report "2022 Central & Eastern Europe Private Equity statistics" dated 21.06.2023 - data for "Rescue/Turnaround" transactions.

Significantly, investments in distressed companies from the CEE region are becoming more and more prominent on the radar of PE funds. The share of such deals from our region is now around 10% of the total European market.

Chart 2. Share of number of investments in companies at risk by CEE PE players compared to Europe 2018-2022.



Source: own compilation on the basis of Invest Europe report "2022 Central & Eastern Europe Private Equity statistics" dated 21.06.2023 - data for "Rescue/Turnaround" transactions.

Against the background of Europe and the CEE region itself, Poland paints a picture of an underdeveloped market in terms of Distressed M&A. In 2021-2022, it is difficult to find transactions carried out by private equity funds that would bear the hallmarks of this type of operation. In 2023, two transactions of this type were reported in the media. Mutares, a German fund specialising in restructuring, bought the bus transport arm of Arriva (part of the Deutsche Bahn group). The second transaction concerns the company Transssystem. The company, which designs and builds automatic transport systems for factories and warehouses, was acquired by the Hungarian company Oriensem. In this case, however, the 'distressed' feature of this transaction may be understood somewhat differently: Transssystem had significant financial problems in 2014 and was taken over by the Tar Heel Capital (THC) fund from the receiver that year. For nine years, the THC fund restructured Transssystem and contributed to the company's rapid growth. The 2023 transaction, gave the THC fund a very clear return on its investment, exemplifying the profitability of Distressed M&A transactions. This case may contribute to the popularisation of Distressed M&A transactions in Poland.

Among the factors that, in our view, may determine the increased interest in the M&A market segment in question in the run-up to the coming year are

- a) **Macroeconomic situation** – projected economic growth rates and inflationary conditions suggest that unfavourable growth conditions may persist in many industries in 2024, leading to further increases in the number of companies facing liquidity problems. At the same time, long-term forecasts suggest that, in the longer term, the situation should return to a path allowing for a return to expansive growth, which creates the potential for profitable investments over the time horizon taken by investment funds as standard.
- b) **Lack of prospects for increasing the availability of alternative forms of financing for companies experiencing liquidity problems** – other forms of raising capital, which could be a substitute for raising an investor for a distressed company, are not expected to become cheaper or more widely available in our market in the near future.
- c) **The distressed assets segment is disproportionately small in our country relative to other segments of the capital market compared to foreign markets** – both Western European and CEE countries.
- d) **Professionalizing restructuring proceedings in Poland** – the fact that professional financial and transaction advisors and qualified restructuring advisors with relationships in domestic and global financial institutions are increasingly involved in restructuring proceedings may direct more investor attention to the market in question.
- e) **Record dry powder in the global PE/VC market** – investment funds around the world currently hold record amounts of unallocated cash in projects, which means that in the near future, in their search for efficient allocation opportunities, they will be forced to start looking more actively and boldly for new investment directions. Markets that are currently niche in terms of geography or form of investment may be an interesting direction for global funds looking for unexploited growth potential.
- f) **Competitiveness of the buy-out segment** – PE funds have been actively seeking traditional projects in the Polish market targeting industry leaders with a successful track record and strong foundations for further growth. Competition among funds for the most attractive targets, leads to valuation levels that may not be favorable in light of expected returns. The intensification of investor interest in this segment may cause funds to start more actively looking for projects that are difficult, but with the potential to generate above-average returns.



Review of rulings issued by the court for 2023

Revival of the creditor's legitimacy to initiate actio pauliana

- Supreme Court resolution of June 14, 2023, III CZP 84/22

Introduction

After the declaration of bankruptcy of the debtor - the author of the fraudulent act - the right to initiate a actio pauliana is vested exclusively in the trustee. However, individual actions by creditors are excluded, who - due to the bankruptcy of the debtor - lose their legitimacy in court cases. This traditional approach, based on Article 132(1) of the Bankruptcy Law, was indeed challenged by a Supreme Court resolution of June 14, 2023.

Rules for initiating a actio pauliana after the declaration of bankruptcy

According to the cited provision, after the declaration of bankruptcy of the debtor, an action to declare a legal act ineffective may be brought by the trustee. He has two years from the declaration of bankruptcy to bring the action, while - like any creditor - he must also respect the five-year time limit from the date of the act. When, on the other hand, a creditor has initiated a actio pauliana before the bankruptcy, the trustee can enter into it, releasing the existing plaintiff. The key effect of the trustee's actions is, according to Article 134 of the Bankruptcy Law - to recover to the bankruptcy estate what should have been in it had it not been for the unlawful actions.

Until now, it has been widely recognized that the legitimacy of the trustee precludes individual actions by creditors. This is because bankruptcy is intended to allow the recovery of the proceeds to the mass and the equal satisfaction of creditors - including from those funds that will be recovered on the basis of ineffective actions. This is consistent with the principle that all legal proceedings that involve the bankruptcy estate are conducted by or against the trustee.

The facts of the case and the Supreme Court's decision

After the expiration of the two-year time limit for the trustee to bring an action, one of the creditors - taking advantage of the lack of clarity in the regulations - brought an action to declare the action ineffective. The action was dismissed for lack of standing on the part of the plaintiff, and as part

of the appeal proceedings, a legal issue was presented to the Supreme Court with the following content: whether in the course of bankruptcy proceedings, but after the expiration of the time limit specified in Article 132(3) of the Bankruptcy Law, the legitimacy of the bankrupt's creditors to bring an action to declare the debtor's legal action ineffective (Article 527 of the Civil Code) is revived.

A seven-member panel of the Supreme Court, in a resolution dated June 14, 2023, stated that the declaration of bankruptcy does not exclude the right of a creditor to initiate a actio pauliana under "ordinary" rules. The rationale is a clear voice in the discussion with the numerous views of the literature on the subject, and presents a new foundation for the interface between the actio pauliana and bankruptcy proceedings.

The Supreme Court has held that the benefit taken out of the debtor's assets is not - contrary to some views - an element of the bankruptcy estate, and therefore, a judgment declaring the act ineffective is necessary to determine its subsequent fate. Such thinking makes it possible, at the outset, to free the asset from the trustee's monopoly - so that both he (on behalf of the bankruptcy estate) and any of the aggrieved creditors can seek their satisfaction in it.

The justices also stressed that, compared to the pre-war text of the law, the word "only", preceding the trustee as authorized to bring an action, has disappeared from the key provision (which was previously considered a stylistic change). According to the Supreme Court, the bankruptcy law does not change the situation so much as to depart from the usual code rules - hence, since the Civil Code allows a creditor to bring an action, the bankruptcy law - being silent on the subject - cannot exclude it. And this approach, according to the court, is beneficial to creditors, because the success of one person in collecting, reduces the sum of debts encumbering the bankrupt's assets.

The resolution issued indeed undermines the thinking of bankruptcy as a collective and equal way of satisfying all creditors. However, it proves that many of the beliefs about the nature of this procedure, are easy to overturn, and the lack of precision in the regulations strongly facilitates this. The effect of the ruling is, no doubt, to make it easier for active creditors in a situation where the trustee has abandoned efforts to recover assets brought out through potentially ineffective legal actions.

Electronic signature under the decision in the KRZ and the existence of the decision

- resolution of the Supreme Court of October 12, 2023, ref: III CZP 25/23

Introduction

As of December 1, 2021, the teleinformatic system National Register of Debtors (KRZ), operated by the Minister of Justice, became operational. The system was intended to streamline the flow of information on the progress of restructuring, bankruptcy and business interdiction proceedings. Currently, all procedural activities are carried out exclusively through the system. With the commissioning of the KRZ, there were not only technical problems, but also doubts about transferring the realities of civil proceedings to the functionality of the ICT system. One such case has arrived on the Supreme Court's docket.

Legal issue

The legal issue was presented for consideration by the District Court in Katowice. The questioning court's doubt concerned whether an order recorded in the system and electronically signed in such a way that the chairman's signature was affixed only once, only under the entire document, including the operative part of the order and its grounds - should be treated as an existing or non-existing judgment.

Potential doubts

The correctness of the signature under the ruling translates into its existence in a legal sense. The District Court, comparing the order drawn up in "paper" form with the one issued electronically, noted that according to the view of the judiciary, putting a signature only under the written recitals of the decision, without signing the operative part of the order, dictates that such a ruling should be treated as non-existent. This is because a separate character is attributed to the procedural act of issuing an order and the act of preparing its justification. Each of them requires a separate signature for its validity. In the case of electronic documents, on the other hand, it is impossible to determine that they were signed in a specific place, thus there is no way to verify the correctness of the signatures.

The Supreme Court was faced with the dilemma of whether a judgment signed in an ICT system in the way the system's functionality allows is in compliance with the applicable regulations, and, moreover, whether it is an existing judgment. In addition, there was a comparative problem - a handwritten signature versus an electronic signature. The consequences of the resolution adopted by the Supreme Court are far-reaching. Adopting

the position that the judgment issued is not properly signed, and therefore "non-existent," would also apply to other judgments prepared and issued through the National Register of Debtors, thus undermining, as it were, the sense of the KRZ's ICT system.

Resolution and reasons of the Supreme Court

The Supreme Court in the Civil Chamber, in a resolution dated October 12, 2023, file III CZP 25/23, ruled that an order of the presiding judge, issued in closed session and justified ex officio and bearing an electronic signature, is an existing order.

As the legal issue concerned a doubt arising in the course of bankruptcy proceedings, the Supreme Court noted the peculiarities of orders issued in such proceedings. Appellable rulings made ex officio in bankruptcy proceedings are issued immediately with a statement of reasons. The decision is fixed as soon as it is issued with a statement of reasons and is affixed with a qualified electronic signature. The exclusive method of fixation remains the KRZ system.

The Supreme Court thus held that the typical model for issuing and justifying judgments in court proceedings cannot be compared with the model adopted in bankruptcy proceedings. The court also referred to the fact that electronic signatures are, by definition, equal to handwritten signatures, and with regard to judgments issued in bankruptcy proceedings, they are currently the only acceptable form of signature, but they differ in their function and nature. Despite this, the court ruled that the dissimilarity does not affect the purpose of the two signature techniques, and consequently, the inclusion of the contents comprising the order and its grounds in a single file, which was then signed as a whole with a qualified electronic signature, makes both the order and its grounds to be considered signed.



Summary

The resolution of the Supreme Court and its reasons are fully accurate. Within the scope of the resolution in question, the Court's position on the juridical distinctiveness of the actions taken in bankruptcy proceedings, in the form of the preparation and issuance of the decision and its justification, is clearly outlined. Thus, the objections signaled by the District Court are irrelevant, since it was held, based on Article 219(1) and (1a) of the Bankruptcy Law, that the peculiarities of bankruptcy proceedings and the rulings issued therein do not allow it to be assumed that the decisions or orders drawn up in this mode remain unsigned simply because they bear a single qualified electronic signature along with the justification. Such rulings are existing rulings.

The KRZ's ICT system is largely an information system, but it also serves as an infrastructure for conducting court proceedings. Judgments in bankruptcy proceedings at the time of issuance are recorded, together with the reasons, exclusively in the ICT system handling court proceedings using templates provided in this system and bearing a qualified electronic signature. It is difficult to imagine what effect a Supreme Court resolution declaring each of the judgments recorded in the KRZ as "non-existent" would have, thereby questioning the functionality of the ICT system in place.

Filip Remlein

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Consequences of claims redemption under Article 369(2) of the Bankruptcy Law

- **Supreme Court resolution of April 4, 2023, ref: III CZP 11/22**

Introduction

The Supreme Court, recognizing a legal issue presented by a common court in a case for reconciliation of the contents of the land and mortgage register, took up doubts about the interpretation of Article 369(2) of the Civil Code in terms of its impact on the legal position of a third party, and referred the case to the enlarged composition of the Supreme Court for consideration.

On April 4, 2023, the enlarged composition of the Supreme Court adopted a resolution in which it accepted that the cancellation of a claim under Article 369(2) of the Bankruptcy Law, as in effect prior to January 1, 2016, results in the termination of a mortgage on real property owned by a third party, established as collateral for that claim.

The adopted view has a significant impact and generates problems for guarantors and co-debtors. Bankruptcy law regulations are unclear in this regard, however, the Supreme Court's resolution has not dispelled all doubts among practitioners of bankruptcy and civil law.

Facts and legal doubts

Before the questioning court, the plaintiff demanded the cancellation of contractual mortgages in favor of the bank established to secure the defendant's claims against the debtor, against whom bankruptcy proceedings were pending. The bank's mortgage-secured claim, in the part that was not satisfied in the course of the bankruptcy proceedings, was cancelled.

The real estate on which the mortgages were established was sold to the plaintiff, who demanded that the mortgages be deleted in connection with the bank's satisfaction in the course of the bankruptcy proceedings. There are doubts among doctrine representatives that in connection with the cancellation of the debtor's obligations, the mortgage securing them is also extinguished, violating the essence of the right in rem, which is a mortgage.

Considering the following issue, the Supreme Court could take two positions:

- **first** - the remission of the obligation does not affect the mortgage, due to the fact that the essence of the mortgage is the possibility of satisfying the creditor from the secured property,
- **second** – the termination of bankruptcy proceedings pursuant to Article 369(2) of the Bankruptcy Law results in the extinguishment of the mortgage due to the discontinuance of the claim it secures.

The Supreme Court found that the second solution is appropriate. The remission of a claim results in the termination of a mortgage on real estate owned by a third party, established to secure the claim. The panel acknowledged the primacy of the mortgage's subordination to the claim regardless of the creditor's satisfaction. This position is surprising given the previous decisions

of the Supreme Court (see: Supreme Court ruling of September 10, 2015, ref: II CSK 745/14; Supreme Court ruling of May 10, 2012, ref: IV CSK 369/11).

Summary

The resolution adopted has not resolved all doubts related to the problem of accessoriness of a mortgage with a claim redeemed in the course of bankruptcy proceedings. At the time of this article, the Supreme Court has not prepared a justification of the resolution in question, however, there are critical voices in the legal community pointing to the deprivation of the creditor of the possibility of satisfaction, and thus the actual deprivation of the real essence of the security that is a mortgage.

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Maciej Woźniak

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List of claims

- **issues of evidence preclusion based on the resolution of the Supreme Court of January 26, 2023, ref. III CZP 141/22**

Introduction

Determining the content of the list of claims referred to in Article 244 of the Bankruptcy Law is fundamental to the conduct of bankruptcy proceedings. It is particularly important for creditors, as it determines their right to participate in the distribution of the bankruptcy estate. For the proceedings, on the other hand, it is beneficial when the determination of the final list of claims is done efficiently, as this allows the proceedings to be completed in a timely manner. Reconciling these two values, i.e. accuracy and speed in determining the content of the list, is not an easy task. The Supreme Court ruled on this issue in its resolution of January 26, 2023, ref. III CZP 141/22.

Nature of the list of claims

The list of claims determines the rights of creditors to participate in bankruptcy proceedings and obtain a share from the funds of the bankruptcy

estate. In addition, an extract from the list of claims may also serve as a writ of execution against the debtor after the completion or discontinuance of bankruptcy proceedings.

The trustee proceeds to prepare the list of claims after the expiration of the deadline for filing claims, which is 30 days from the date of the order declaring the Debtor bankrupt. Verification of claims applications is carried out within an instructional period of two months. If the filing is denied, the creditor has the right to object to the bankruptcy judge. In order to make the objection procedure sufficiently efficient, Article 258 of the Bankruptcy Law limits the possibility of raising in the objection new claims and allegations in relation to the content of the filing.



Legal problem presented to the Supreme Court

The District Court in Opole, asked the Supreme Court to resolve a legal issue concerning "whether the disposition of the first sentence of Article 258(1) of the Bankruptcy Law, stipulating that the objection may be based only on the assertions and allegations indicated only in the filing of the claim, is also covered by the evidence indicated in the filing of the claim (ie. is it permissible for a creditor to cite new evidence only in an objection to a refusal to recognize a claim on the list of claims - to prove facts already referred to by the creditor in the declaration of claims)?".

In the factual state of the case, the creditor filed an objection to the trustee's refusal to recognize his claim on the list. The judge-commissioner at the district court allowed the creditor's objection, to which - to confirm that the statute of limitations had been interrupted - the party submitted new evidence. This decision was disagreed with by the trustee, who filed a complaint in this case, taking the view that Article 258(1) of the Bankruptcy Law does not allow the citation of new evidence. The problem proved so complicated for the court hearing the complaint that it referred a legal issue to the Supreme Court.

The choice between possible solutions was in fact a choice between placing additional - not indicated in the law - requirements on creditors, or a lenient approach to the issue of claims submissions. Recognizing that preclusion also applies to evidence in objection proceedings would mean that a claim filing must be a letter that answers in advance all possible doubts of the trustee.

The Supreme Court has opted for a favorable treatment of preclusion for creditors. The filing of claims gives creditors a chance to present their claims in a simplified manner, without having to gather and submit evidence to explain future - unknown in advance - objections of the trustee. However, preclusion still applies to claims and allegations - not all claims and allegations, however, must be demonstrated, already in the filing, by evidence. The Supreme Court thus, denied that the will of the legislator was to introduce evidentiary preclusion, already at the stage of filing claims.

The Supreme Court has shown an attitude in favor of creditors, recognizing that the filing of claims should not be overly complicated and formalized. The puzzle, however, is how the resolution will translate into the actions of receivers. For on the one hand, some filings will be recognized on the basis of mere assertions - in situations where the trustee has evidence to support them. On the other hand, in cases where the trustee will have doubts - arising, for example, from the incompleteness of the documentation seized - a party may be referred to the objection procedure, which is, according to the ruling, the stage of proving the validity of its claims. However, in such a case, one should not forget the procedure for summoning the creditor to submit evidence in support of the claim, which can save the creditor the resources and trouble of proving rights in bankruptcy proceedings.



Making case management more flexible

Statistics show, a significant surge in consumer insolvency cases. Previous reforms have sought to relieve the burden on judges. This has occurred by increasing the duties of bankruptcy trustees. There are a lot of simple, repetitive cases in the courts, but there are difficult cases involving multimillion sums. For this reason, the routine, repetitive activities of judges should be reduced. Adding full-time judges does not seem to be a sufficient solution. Other systemic solutions and a change in procedural philosophy are needed.

- (1) Procedures should be "automated" (even taken over by AI). Subsequent stages of the proceedings should follow one after another automatically, and in many cases court interference should occur only when a participant signals his objection to the proceedings.
- (2) Out-of-court restructuring, in which the court just approves an arrangement between the debtor and the majority of creditors, has worked well in practice. The model of proceedings with limited court intervention should be popularized.
- (3) Often, an individual is stripped of his assets through foreclosure and then files for insolvency and debt relief. This is procedurally uneconomical. There should be a simplified debt relief procedure, without the appointment of a bankruptcy trustee for the purpose of liquidating assets that are no longer there. It could be opened on the basis of a certificate from the enforcement authority that enforcement proceedings have been conducted against all known assets of the debtor.



Prof.
**Rafat
Adamus**

University of Opole



The impact

of the declaration of bankruptcy on the admissibility of determining the invalidity of "CHF" loan agreements

It seems that some of the most important, and very interesting, legal issues that will arise in 2024 will be those concerning the impact of the bankruptcy of Getin Noble Bank on the permissibility of determining the invalidity of "CHF" loan agreements in and/or out of insolvency proceedings. Last year we participated in a very interesting and successful conference organized by Lazarski University on the subject of "CHF" loan agreements in bankruptcy and bank or borrower restructuring, and we are currently awaiting a post-conference book publication. Attention was drawn during it to a two-pronged discussion presented in the pages of the law journal Restructuring Advisor (number 33 and 34), which appeared with regard to the impact of bankruptcy of a bank on the adjudication of security claims in lawsuits concerning CHF credit agreements, and related to answering the question of whether consumers in insolvency proceedings against Getin Noble Bank are obliged to pay installments on CHF credits, in a situation where they are massively declared invalid as a result of the "pro-consumer" jurisprudence of the Court of Justice. This means that it must be resolved whether the domestic provisions of the insolvency law should be interpreted in a "pro-consumer" manner and take into account the interpretation of the Court of Justice, or whether the specifics of bankruptcy proceedings preclude such a possibility. Which interpretation will prevail we will probably find out only after further Court of Justice rulings.



**Joanna
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Ph.D.Hab.

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Non-consensual arrangement and self-administration in bankruptcy

For the foreseeable future, two issues will be of interest and discussed in the scientific world issues. The first stems from Directive 2019/1023 on the precautionary restructuring framework and concerns the conditions for court approval of an arrangement that has not won the required majority of votes. The legislative adoption of one of two concepts: the principle of absolute or relative priority will intensify the discussion of consistency between the system of restructuring law and bankruptcy. Showing that it is essentially about solving a unified problem of insolvency will underscore the validity of the voices opting for a separate independent branch of law called insolvency law, and by some insolvency law.

The second issue will deal with the bankruptcy of sole proprietors conducting small-scale business activities. On the background of the draft Directive Harmonization Directive there will be a discussion of the bankrupt's own management in the absence of the appointment of a trustee in the case. I believe that with Poland's current rather low social trust capital we are not yet ready for this solution.



**Patryk
Filipiak**

Ph.D.

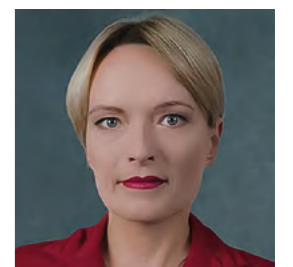
Adam Mickiewicz
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The direction of scientific development

in the area of law bankruptcy and restructuring

The development of science in the area of bankruptcy and restructuring law should focus on learning the factors determining the effectiveness of certain normative solutions in the context of the legal culture of the society in which these solutions operate. In this regard tools of economic analysis of law, including game theory, should be used more often. games. At the same time, one should not neglect sociological studies relating to relations debtor-creditor, debtor-society. A new challenge is to study the scope of application of artificial intelligence tools to support bankruptcy and restructuring processes. In this regard, in 2024, the Institute of Bankruptcy and Restructuring Law at Lazarski University in Warsaw intends to start research work, focusing initially on the possibilities of applying artificial intelligence to support judicial processes in bankruptcy and restructuring cases. The development of modern technologies is changing also the traditional understanding of concepts fundamental to bankruptcy and restructuring. This applies such as the bankruptcy estate, which increasingly includes digitized assets. The management and liquidation of such assets is becoming an increasing challenge for receivers. Here, too, science should come to the practice's aid by constructing models for the effective liquidation of intangible, digitized assets.



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Insolvency and Restructuring Laws A.D. 2024

In 2016, the Restructuring Law came into force, and at the same time the Bankruptcy Law was significantly restructured. The experience of practice formed during the eight-year period of the above-mentioned regulations and the achievements of science should become the basis for a thorough review of the institutions of restructuring law and insolvency law. It is time to assess their theoretical correctness and operability. On the one hand, it is a matter of removing numerous - minor and major - defects and terminological inconsistencies in the regulations, while on the other hand, it should be postulated to verify which of the regulations of insolvency law and restructuring law (as well as other related laws) have proven themselves, and which are just a "dead end of legislation" and should be repealed as soon as possible. Among the many questions that come to mind, I will limit myself here to pointing out only two:

- (1) Shouldn't one be tempted to modify the rules on international insolvency proceedings (especially on jurisdiction) in such a way that they coincide with EU regulations as much as possible?
- (2) Is it necessary to maintain as many as four restructuring proceedings; couldn't the number be reduced to two?

The legal regulation of the proceedings in question should definitely be simplified. This is because the current regulations are too casuistic and not very precise.

A good stimulus to work on legislative changes is the expected European directives on restructuring and insolvency. In my opinion, it would be useful to organize a nationwide discussion forum with the participation of theoreticians and practitioners of bankruptcy and restructuring law (e.g., a 2-3 day conference), which would indicate the desired directions of further legislative work.

Sale of a enterprise in remedial proceedings

Modern insolvency law cannot do without a mechanism to ensure a quick and simple sale of an operating enterprise (in the functional sense). The current regulation of prepared liquidation is far from perfect, but this gap can be successfully filled by Article 323 of the Restructuring Law. The first such sales are being implemented, although views on the matter remain divided. However, it seems that after the amendment that came into effect on 1st December 2022, this path has finally



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been opened. Currently the regulations allow for the sale of property (the term "components" has disappeared), and therefore also organized sets of assets such as a business. The sale is carried out with a limited role for creditors, and the focus is on the receiver and the judge-commissioner. The simplified formula is conducive to preserving the value of the enterprise. Restructuring law does not require the business to remain in the hands of the debtor, and the debtor can start the business anew (after the enterprise is sold and outstanding debts are written off). Foreign experience shows that this specific method of restructuring can be successfully applied in practice. It also remains in line with the Restructuring Directive, which implies a desire for the debtor to continue the business, but explicitly allows the sale of part of the enterprise and allows national law to permit the sale of the entire enterprise.

Digital assets

- A challenge for restructuring and bankruptcy law and bankruptcy law?

In recent days (13.03.2024), the European Parliament approved an act on artificial intelligence. This is an expression of the regulator's attempt to chase the changing environment, an attempt that will always fail every now and then, as the world today - especially the digital one - is changing disproportionately faster than just a few years ago. The same is true of so-called digital assets, which are increasingly an important, and sometimes even exclusive, component of our wealth. These can include currencies like bitcoins, tokens, gaming currencies, as well as other non-material goods resulting from our asset activity in the online space. A number of questions arise regarding the legal status of such digital assets, especially in the context of their intangible and usually transnational nature. Should we apply regulations on property rights to such assets, can they be subject to collateral, or, finally, how should a trustee act in the event of bankruptcy of a person holding a digital portfolio or an entity managing such a portfolio?

On European soil, the discussion centered around the above questions has been going on for several years - and it is in the context of insolvency and enforcement law regulations. For example, CERIL in 2023 issued a report entitled Crypto-assets in Restructuring and Insolvency. Cases with a thread of enforcement of rights arising from digital assets are also finding their way into courts around the world, as exemplified by, for example, the high-profile ruling of the Supreme Court in New Zealand on April 8, 2020 in *Ruscoe & Moore v Cryptopia Limited* (in liquidation), which held that digital assets can be the subject of ownership property.

In my opinion, AI and digital assets in bankruptcy and restructuring are the regulatory challenge of the of the coming years. Given the cross-state nature of this phenomenon, it seems reasonable to adopt regulations similar in different legal orders. However, it is necessary to discuss and jointly develop positions. It is therefore a pleasure to announce that Lazarski University University in Warsaw, together with Vilnius University (Lithuania), in spring 2025 will organize an international conference entitled *The Digital Assets in Bankruptcy and Enforcement Proceedings*.



**Bartosz
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Ph.D.

Lazarski University
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Prof.
Bob Wessels
Leiden University,
Netherlands



Evaluation of WHOA regulations

In 2023, the evaluation of the WHOA legislation was most anticipated in the Netherlands. The WHOA came into effect on January 1, 2023. The aim of the WHOA is, in short, to prevent that companies that are viable in their own right, either through over-indebtedness or over-indebtedness structural debts would go bankrupt. This is done through homologation (the 'H' in WHOA), so the approval or ratification by the court of a private agreement (the 'OA') between a debtor and (part of) his creditors and/or shareholders in the change of their rights and that can also bind creditors and shareholders do not agree with that. The legislation (the 'W') would be evaluated after three years. The time had come on December 18, 2023.

The evaluation report on the Dutch WHOA restructuring tool shows that it generally works as intended by its legislators. Overseen by a team of eight academics at Leiden University and the University of Groningen, the survey finds that the WHOA (sometimes called the "Dutch scheme") generally achieves its core objective of strengthening viable businesses' ability to restructure. To a lesser extent it also finds that the WHOA helps companies settle with creditors voluntarily by providing clear frameworks for negotiations and a legal trajectory if they fail. A mark was also given to the statutory instruments, including the option to request and extend a cooling off period and the option to ask the court to rule early on so-called "aspect requests" or issues that might affect confirmation ('homologation') of the WHOA-plan. They operate adequately. The lack of an appeal process for WHOA proceedings does not create 'insurmountable obstacles'.

For practitioners it is noteworthy that "aspect requests" can only be made either at the court's initiative or by the debtor ('debtor-in-possession') or a court-appointed restructuring expert. Since 2021, this is a new character introduced by the WHOA. He/she has to arrange for the concluding of a restructuring plan, which may include mediating the negotiations for, and helping to draw up, the restructuring plan. The evaluation report recommends that the right to make aspect requests should also be given to court-appointed observers. Also, this is a new character. He/she is appointed at the request of creditors or shareholders, instead of a restructuring expert, to make sure the proceedings are carried out in their interests. Extending these requests to observers would help prevent creditors and shareholders from raising objections for the first time during the confirmation hearing, which can unintentionally lead to rejection of a plan.

The report is also critical. The WHOA is not functioning as intended in its use by small and medium sized enterprises (SMEs). Smaller businesses in particular lack awareness of the WHOA process or consider it inaccessible to them due to the high cost of hiring consultants, lawyers and court fees. One measure to make the WHOA more cost effective for SMEs is (i) by reducing the size of the company valuation, and (ii) the quantity of other information that needs to be submitted. It is also necessary to increase awareness of the WHOA with the general public. Overall, however, the WHOA is substantially less expensive than equivalent proceedings in other jurisdictions, especially the US Chapter 11 and the English restructuring plan.

Naturally, the report results in recommendations for improving the WHOA legislation. Now that the Dutch cabinet has been out of office for about six months and there is little prospect of a new composition of the government, this improvement may take some time.

DD Reviews and discussions – selected book items published in 2022-2023

Patryk Filipiak, Ph.D.

Qualified restructuring advisor, attorney-at-law, partner at FILIPIAK BABICZ LEGAL

Tomasz Szczurowski, Ph.D.,

Skutki otwarcia postępowania restrukturyzacyjnego

(Implications of opening restructuring proceeding)

Warsaw 2022, Wolters Kluwer

In May 2022, Wolters Kluwer Polska published a sizable book by Tomasz Szczurowski, Ph.D., which is part of the habilitation procedure currently underway. The author is an assistant professor at Cardinal Stefan Wyszyński University in Warsaw and a judge of the Court of Appeals in Warsaw.

In the publication, the author discusses the impact of the initiation of proceedings on the person of the debtor, his assets, liabilities, collateral and active contracts, and also addresses the issue of ineffectiveness of legal actions in sanction proceedings. The work is comprehensive, much needed also in practice - until now we have had access only to more or less practical commentary considerations and to the Restructuring Law System, which, however, should be deepened in many places. The author also does not close himself in our domestic space, but considers the law applicable to assessing the effects of opening restructuring proceedings and devotes a separate, comprehensive chapter to this. The sections on the effects of opening as to the person of the debtor and his representatives are interesting. Again, the comprehensiveness of the considerations draws attention. In the work we find a description of the effects as to participation in public procurement proceedings, as to the ability to obtain new financing, as to the company and the personal obligations of the debtor.

The publication is mainly tinged with substantive law, but the section on the opening ruling and the impact of opening on judicial, administrative and judicial-administrative proceedings is also noteworthy. Also important are de lege ferenda remarks (e.g., close connection of the KRZ system with the KRS system, clarification of regulations on the prohibition of termination of contracts, withdrawal from the mutual contract in sanctioning, prohibition of set-offs), while I do not agree with all comments (e.g., in my opinion, it is not necessary to specify in the debtor's company what specific proceedings have been opened against him). The cross-sectionality and completeness of the work is its greatest strength - reading this book allows you to grasp the complex phenomenon of changes that occur with the opening of restructuring. This book should definitely be on our library shelves.

Bartosz Sierakowski, Ph.D.

Zobowiązania masy upadłości

(Obligations of the bankruptcy estate)

Warsaw 2023, Wolters Kluwer

Another interesting publication, which appeared in 2023, is the doctoral dissertation of Dr. Bartosz Sierakowski - "Liabilities of the bankruptcy estate" (legal status as of 15th April 2023). This comprehensive and excellently written book is the first such momentous and comprehensive discussion of the problem of the bankrupt's liabilities arising after bankruptcy, traditionally known as debts of the bankruptcy estate. It was crucial for the author to determine what is the scope and legal nature of the liabilities of the bankruptcy estate, and whether the regulation of this institution determines the level of accessibility and efficiency of insolvency proceedings.

Obligations of the bankruptcy estate are broadly included as all obligations arising in connection with the declaration of bankruptcy, for the benefit of

a certain category of creditors at the expense of the property of the debtor included in the bankruptcy estate. The work proves that the time caesura in the form of the date of bankruptcy, as distinguishing bankruptcy claims and claims against the bankruptcy estate, is useful and permissible, but the law provides for exceptions to it (e.g., liabilities for damages incurred in connection with the trustee's withdrawal from a reciprocal contract). A distinction is properly made between the costs of the bankruptcy estate (Article 230 paragraph 1 of the Bankruptcy Law) and other obligations of the estate (Article 230 paragraph 2 of the Bankruptcy Law) using the criterion of the function of the duty in question within the proceedings and the rules for their satisfaction, including the rules of preference (neither of these categories being determined by filing a claim on the list, nor satisfied by judicial enforcement). The notion of a direct connection between the source of the liability and the inclusion and management of the debtor's assets as a bankruptcy estate is therefore key. It is also important to distinguish between obligations of the mass in the strict sense (Article 230 paragraph 1 and 2 of the Bankruptcy Law and those statutorily equated with them) and in the largo sense, covering all obligations fulfilled by the trustee at the expense of the mass under Article 343 paragraph 1 and 2 of the Bankruptcy Law, including those of a non-monetary nature.

The liabilities of the bankruptcy estate are undoubtedly the knotty issue of any bankruptcy case. The work is enriched with the results of empirical research, economic analysis of the law and just demands de lege ferenda. I believe that this work goes beyond the requirements of a doctoral dissertation in level, which should prompt the Author to further scientific efforts.

Patryk Filipiak, Ph.D. (ed.), Natalia Frygier, Rafał Kowalczyk, Łukasz Pilarczyk, Piotr Turski (ed.merit.), Maciej Woźniak

Metodyka pracy pełnomocnika procesowego w postępowaniach ze skargi pauliańskiej ze wzorami pism

(Methodology of work of the trial attorney in proceedings on the actio pauliana with model letters)

Warsaw 2023, Wolters Kluwer

In April 2023, a book published by Wolters Kluwer Polska on the work of a trial attorney in action pauliana proceedings (legal status as of 1st April 2023) appeared on the market. The publication is the only practical and comprehensive discussion of this issue.

The investigation of action pauliana claims is included systematically with a division into exploratory civil proceedings, collateral proceedings, enforcement proceedings and restructuring and insolvency proceedings. Remarkable are the sections on recommended actions to be taken prior to the commencement of civil proceedings. Complementing the considerations are extensive criminal law comments, indicating what actions can be taken by creditors harmed by a fraudulent act with the participation of law enforcement authorities and the criminal court.

The book is full of template letters, practical tips, and most importantly includes a full review of the case law of the Supreme Court and common courts, including recent very important rulings for practice, such as discussing the implications of the Supreme Court's resolution (7) of 16th June 2021 in the case of III CZP 60/19 concerning the participation of action pauliana creditor in the execution of a third party's property.

Piotr Kempieński

attorney-at-law in FILIPIAK BABICZ LEGAL

Kinga Flaga-Gieruszyńska, Agnieszka Góra-Błaszczkowska, Anna Hrycaj (ed.)

Zadłużenie i niewypłacalność dłużnika. Retrospekcja, stan obecny, przyszłość

(Debt and debtor insolvency. Retrospect, current state, future)

Sopot 2023

The monograph, which was published in 2023, is devoted to various issues related to insolvency in legal terms. Among the topics covered are axiological issues related to the purposes and functions of insolvency proceedings or the protection of creditors in restructuring proceedings, specific problems related to the course of these proceedings, as well as issues of consumer bankruptcy, Directive 2019/1023 on the framework for preventive restructuring, and the interface between insolvency law and civil procedure law. The problems raised are relevant not only from the point of view of theory, but especially from the point of view of the practice of restructuring and insolvency proceedings.

E. Ghio, J.M. Wood, Jennifer .L.L. Gant (eds)

Re-examining Insolvency Law and Theory

Cheltenham 2023

The monograph of 2023 presents an alternative view of the theoretical underpinnings of insolvency law, developed and advanced mainly by American scholars in the 1980s. Current political, economic and social transformations call for updating these theories so that they provide a solid foundation for the practice of insolvency proceedings in the 21st century. The publication discusses the influence of philosophy on the perception of insolvency law, presents the contemporary theories developed within the science of insolvency law (internal perspective), and provides a perspective from the point of view of other fields of law (external perspective).

C. Kochalski (ed.)

Analiza ekonomiczna przedsiębiorstw w warunkach niepewności

(Economic analysis of enterprises under conditions of uncertainty)

Poznan 2023

The monograph, published in 2023, presents selected issues of economic analysis from the point of view of uncertainty, which forces the adaptation and continuous improvement of the approaches of research methods developed in science. The publication discusses the problems of economic analysis. Attention is drawn, in particular, to the chapter dealing with the holistic conception of the corporate insolvency process, which assumes that insolvency is a process whose shape depends on symptoms of a short-term and long-term nature, as well as possible monetary measures, raised to combat them. The monograph highlights the economic nature of insolvency issues in legal terms.

Other remarkable items released in 2023

R. Bork

Corporate Insolvency Law: A Comparative Textbook

Cambridge 2023

The textbook discusses fundamental issues of insolvency law, such as parties to the proceedings, arrangement, restructuring, and cancellation of liabilities, from a comparative perspective. The author compares solutions adopted in American, English, French and German law.

N. Roubini

Megagrożenia

(Mega-threats)

Warsaw 2023

The book deals with "mega-threats" of an economic and financial nature, among others, that humanity will face in the near future. One of them is the debt crisis - not only public, but also private. This issue is particularly close to those dealing with insolvency law.

P. Horosz

Prawo upadłościowe i prawo restrukturyzacyjne - zarys wykładu

(Insolvency and restructuring law - lecture overview)

Warsaw 2023

The Polish publishing market lacked a comprehensive study of the subject of restructuring and insolvency law. The handbook provides a very good introduction to it, and may also be useful for repetition of the exam for the license of restructuring advisor.

A. Ludwińczyńska, A. Machowska, P. Skibiński

Upadłość przedsiębiorców z uwzględnieniem praktyki notarialnej. Wzory dokumentów

(Bankruptcy of entrepreneurs with regard to notary practice. Model documents)

Warsaw 2023

The textbook presents an extensive lecture on insolvency law relating to entrepreneurs. A strength of the publication is the inclusion of bankruptcy issues from the point of view of notary practice and the presentation of model notarial acts, pleadings and judgments.



**Expert
forecasts
for 2024**

Jerzy Stawek

Qualified restructuring advisor,
Dean of the National Chamber of
Restructuring Advisors



I may be an optimist, but I think the economic situation for both entrepreneurs and non-business people will improve in 2024. The pandemic, war, inflation and the precarious domestic situation in the previous years offer a chance for a rebound, and if hostilities in the East do not escalate, **we may not see a boom, but I predict that entrepreneurs will protect their businesses and we will not see further increases in business bankruptcies. Problematic, on the other hand, may prove to be issues of the execution of agreements, made in economic conditions different from the current one.**

In this area, I expect to see many proceedings to change the arrangement or even revoke the arrangements. The upward trend in consumer bankruptcies is also likely to intensify, despite nominally rising consumer incomes, as restrictions on lending activities, will intensify collection activities in the area of loans already granted but not serviced. In addition, the positive experiences of bankrupt consumers to date, especially those of reliable debtors, indicate that in many situations it is worthwhile to take advantage of this statutory privilege, not only for economic debt relief, but also for the restoration of inner peace of life.

Paweł Magdziarz

Managing Partner of FORMEDIS
Medical Management & Consulting



In the coming period, I predict that legal restructuring will be **a key remedy for public hospitals' problems with liquidity and rising debt.**

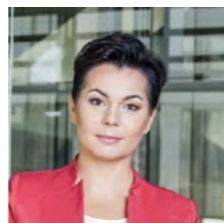
The value of total liabilities of independent public health care institutions at the end of Q3 2023 amounted to more than PLN 21.3 billion, a year-on-year increase of almost 12%. At the same time, there was also an increase in the state of liabilities due in the same period by PLN 253.8 million to PLN 2.4 billion.

Legal restructuring through a kind of protective umbrella allows for the immediate recovery of liquidity and ultimately the reduction of the debt of hospitals. The overriding benefit is the prevention of organic liquidation of hospitals, which has recently been observed through the gradual closure of hospital departments. This is most often the result of limited availability of medical staff due to the inability to pay their salaries in a timely manner and rising salary expectations.

Consequently, hospitals are able, through the aforementioned stay of foreclosure and debt relief, to gain breathing room and time to implement thoughtful operational restructuring. This, in turn, is an inherent formal condition for legal restructuring, but also a necessary action for the success of the entire recovery process of the public hospital care sector.

Marzena Dobrzańska-Główczyk

Partner in PIA Group



Weronika Kubowicz

Partner in PIA Group



For more than two years, Polish entrepreneurs have been operating under conditions that make doing business significantly more difficult. Factors particularly weighing on business include increases in the cost of doing business, including primarily fuel and energy costs, increases in the price of raw materials and labor costs. Not insignificant are changes in the local and global economic climate, which also make it difficult for companies to continue and expand their operations. Inflation, which was at double-digit levels for most of last year, did not help. On the other hand, the increase in the prices of services and products has already reached a critical point and cannot grow indefinitely. We can see opportunities for businesses to improve in 2024, but this is a long-term process and it will take time to develop better results.

Many companies, feeling the effects of previous turmoil and a renewed significant increase in operating costs, particularly due to increases in the minimum wage and wage pressures, as well as the limited ability to index the prices of their goods and services, may face the need to reach for restructuring tools.

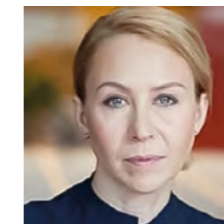
Forecasting the exact outlook of the restructuring proceedings market in 2024 is not easy due to the many factors that may affect it. Nevertheless, a few more factors can be identified that may be important in the formation of this market:

- an increase in awareness of the importance of restructuring for preserving the liquidity of companies, which may translate into an increase in the number of companies using restructuring processes and consulting services in this regard,
- development of regulations on restructuring proceedings,
- growing public awareness of the importance of protecting jobs and business continuity,
- changes in the approach to restructuring - the processes can become more flexible and solution-oriented to enable companies to preserve business and stakeholder value.

r. pr.

Katarzyna Urbańska

Director of the Legal and
Legislative Team of the Polish Bank
Association (ZBP)



The quality of the corporate loan portfolio remains stable. At end of last year, the quality of receivables from large entrepreneurs deteriorated slightly - in December, 3.5% of loans were in phase 3, which, however, does not deviate from the long-term trend. The loan portfolio for SMEs is traditionally characterized by worse quality - at the end of the year phase 3 here was nominally 8.2% of the portfolio, but this is an improvement of 1.4 percentage points year-on-year, so this part of the portfolio also of the portfolio is not of concern to the sector. The expected improvement in the economic situation, and especially an improvement in business sentiment, which are at their highest since June 2021, foster optimism about the further development of the quality of the business loan portfolio. Of course, some concern may be generated on the part of the banking sector delays in the implementation of the NPL Directive, or the so-called "Restructuring Directive", for which banks are pinning high hopes for improving and increasing the efficiency of restructuring proceedings, as well as on improving the legal position of creditors in these proceedings, which has been systematically worsened by the legislature in recent times.

Sławomir Bąk

Board Member Allianz Trade
in Poland of risk assessment,
loss adjustment and recovery
(formerly Euler Hermes)



Mainly smallest companies become insolvent in Poland, so far. The primary cause is mainly among the smallest companies, and the primary cause is not late receivables (they are usually a secondary effect), but low profitability. Small and medium-sized enterprises (SMEs) are the worst at adjusting the prices of their services or products to cost increases, while being able to take advantage of a unique tool in the form of simplified restructuring.

The prevalence of insolvency in Poland (up +70% y/y in 2023, the fourth year in a row - a total of +357% as of 2019) translates into the threat of a domino effect - the cumulative scale of problems for small companies may also mean a challenge for those larger companies that are their suppliers. Particularly as the trend of concentration and permanent reduction of the number of Polish companies may be real: there are no longer conditions conducive to self-employment, on the contrary - the high demand for labor (record low unemployment, even compared to the EU) favors raising salaries for salaried employees and at the same time increasing the contribution burden for SMEs. Hence the record number of companies closing and suspending - as many as 590 000 in 2023.

Due to the high base of reference (to a much lesser extent thanks to a possible improvement in yields), we expect the trend to slow down this year, and even a 15% y/y decline in defaults.

Beata Bartkowiak

Deputy director in the Corporate
Client Restructuring Department
at mBank S.A.



The year 2023 showed a record number of petitions for restructuring and corporate bankruptcy (by 31st October 2023, 3,576 restructuring proceedings were opened and compared to 2022, this is an increase of more than 50%). At the same time, it should be noted that the efficiency of restructuring proceedings is very low (the average level of proceedings in which an agreement is reached is 28%, while the average level of cases in which an agreement is executed is only 5%).

In 2024, given the economic environment, as well as the popularity of arrangement approval proceedings among companies (arrangement approval proceedings accounts for about 93% of all proceedings opened), we should expect a further increase in restructuring petitions, especially from the SME and micro-enterprise sector. I expect that the efficiency of restructuring proceedings will not continue to improve significantly.

The reason for opening proceedings that are doomed and should not be pursued is the lack of an initial assessment of the company's restructuring capacity. The question that should be asked at the outset is whether restructuring is ultimately intended to heal the company or just to reduce debts and block creditors? If the answer to the second question is yes, then restructuring makes no sense. It is often seen in practice that the opening of arrangement approval proceedings was only to protect the company from foreclosure. What's more, often after the arrangement approval proceedings is opened, debtors do not pay their current obligations, and yet supervisors give a positive opinion of the restructuring plan and arrangement proposals.



adw.

Bartosz Groele

Attorney-at-law, partner in Groele and Partners



Statistics show that in 2023 alone there were as many restructuring proceedings as in the previous two years combined (2022 and 2021). 90% of the restructurings currently underway are proceedings for approval of an arrangement - which is not particularly surprising in the context of the debtors' affordable and formalized procedure for initiating such proceedings, which at the same time provide debtors with most of the key perks of restructuring (protection from enforcement, prohibition of termination of key contracts, possibility to redefine the company's obligations). There are similar trends in other jurisdictions. However, it is worth remembering - which is not always reflected in the consciousness of members of the boards of directors of limited companies - that the mere announcement of an arrangement approval proceedings is not yet a prerequisite for exempting members of the board of directors from liability for the companies' unpaid debts within the meaning of Article 299 of the Commercial Companies Code or Article 21 of the Bankruptcy Law. In the case of this type of restructuring, it is only the timing and effect of the approval of the arrangement that is relevant, not the initiation of the restructuring procedure itself. A progressive increase in the number of so-called out-of-court restructuring proceedings can be projected for 2024 - with the perspective of the boards of directors of capital companies that it is worth looking at the long-term effects of the type of restructuring proceedings chosen - and not just the short-term benefits associated with the almost immediate gain of anti-enforcement protection resulting from the initiation of arrangement approval proceedings, the effects of which will be assessed later. One may also be tempted to theorize that changes in the authorities of state-owned companies or the effects of certain reforms - especially in the energy sector - will make it necessary to restructure significant legal entities.

r. pr.

Kazimierz Jeleński

Attorney-at-law, Managing Partner at Dubiński Jeleński Masiarz i Wspólnicy



In the second half of 2023, we noticed an increase in the number of cases restructuring cases. This is a consequence of an already prolonged period of high interest rates and the tightening credit policies of financial institutions. Over the past few years, the number of restructurings involving financial creditors financial creditors was small. This was, among other things, a consequence of government support packages for entrepreneurs. The support programs are coming to an end. The period of accounting for the results of the assistance provided has begun. Entrepreneurs who maintain high levels of debt that do not correspond with the high efficiency of their business have growing problems. Debt refinancing is not an option for them. The offer credit is narrowing due to the disappearance of banks from Leszek Czarnecki

and the financial problems of a number of banks, which are a derivative of their CHF loan portfolios. The debt securities market is also not a good option for refinancing due to the high cost of financing, as well as the small scale of issuance and the cautious approach of institutions acquiring debt securities. In light of the above, it seems that the trend of increasing the number of restructuring processes will continue in 2024. If there is a significant increase in the number of entities requiring restructuring, there will be challenges regarding the ability of the current staff of financial institutions to provide handling all the cases, and there may be a problem of increased congestion in restructuring courts.

Katarzyna Gierczak-Grupińska

Founder and President of the Family Business Foundation



Eleni Tzoka Stecka

Certified Trainer and Business Coach, responsible for project implementation „Early Warning Europe”, Family Business Foundation Team Member



For an entrepreneur in crisis, it doesn't really matter if other companies are also having difficulties, because what matters is getting out of his or her own, very specific, individual problems. And crises have occurred in the past and will occur in the future. Unfortunately, you have to be aware of it. And be ready.

Care should be taken to keep the company organized and allow it to spot early signs of difficulties and react as quickly as possible. We then say that the company is resilient - that is, able to recover quickly from a crisis. This is what the RescEWE project, awarded the European Enterprise Promotion Award 2023, was all about, and in which we had a significant contribution. In the European group, we developed tools that, on the one hand, help to put a company in order, but on the other hand - allow us to determine whether it is time to restructure.

It's worth taking advantage of them, and you do not have to do it alone, as a mentor or mentee from the Early Warning Europe Network, who discreetly support entrepreneurs in trouble, can help. Currently this is a group of more than 100 experts in Poland. In general, an entrepreneur in crisis is alone, so a person who can help come to the right conclusions and make a decision is invaluable in such circumstances. Sometimes it is a decision to restructure, and sometimes to close the company, which should be carried out in such a way as not to do harm to the entrepreneur himself, because - it must be remembered - the person is always more important than the company.

r. pr.

Piotr Zimmerman

Attorney-at-law, Qualified advisor restructuring, Partner in Zimmerman Sierakowski Frosztega



The dominant topic of conversation in 2024 in the circles of broader restructuring and bankruptcy will be the lame and still half-witted system of the half-whistle National Debt Register. And immediately after the complaints about its inadequacies, we will smoothly move on to complaints about the increasing decline in the efficiency of restructuring and bankruptcy courts. Meanwhile, the childhood stage of the system and its operation should be long behind us. Whether our economy will pass through the current period, full of tensions and anticipation of a deep crisis, depends precisely on the smooth implementation of these procedures. The implementation of the directive on preventive restructuring will lead to a sharp crisis on the line between a debtor's legitimate need to receive protection from creditors during the period of waiting for approval of the arrangement and the 4-month limit on the duration of this protection. The worst possible outcome of this discrepancy between market expectations and the capacity of the courts would be a return to a 30% share of share of remedial proceedings (postępowanie sanacyjne) in all restructurings (because only in these proceedings the de facto limit is not to apply). Thorough reform of restructuring and insolvency courts for entrepreneurs return to remedial proceedings lasting their concentration in larger centers and separation from consumer bankruptcies, are the tasks to be carried out most urgently, if we do not want to see in 2024 the beginning of a return to lasting for years and ending inevitably in bankruptcy with minimum satisfaction of creditors.

Prof.

Aleksander Jerzy Witosz

Insolvency Law Forum
<https://forumeu.eu/>



We are still waiting in Poland for the formal implementation of the Restructuring Directive, but the immediate future of insolvency issues will be determined by the new Insolvency Directive, which will soon go to first reading in the European Parliament. The draft's explanatory memorandum cites a number of opinions (including those of the ECB and IMF) that consider the lack of a unified insolvency law as one of the key obstacles to the integration of capital markets in Europe. A deep revision of the Bankruptcy Law will be required in some areas. This is especially true of the new iteration of prepared liquidation, where the preparatory stage of a planned transaction, in which a restructuring advisor will play a huge role, will gain importance. One can only rejoice at the upcoming changes, because the current model of Polish pre-pack does not pass the test. A revolution will be the "transfer" to the purchaser of contracts related to the debtor's business - one can hope that on this occasion the Polish legislator will dare to regulate this issue in general, and not just limited to prepared liquidation. Equally far-reaching

changes for the practice will bring a separate path of bankruptcy for micro-entrepreneurs and self-implemented liquidation of the mass.

Patrycja Hanasiuk

Expert of the Financial Market and Corporate Law Department at the Confederation of Lewiatan



Data on the willingness of Polish entrepreneurs to use restructuring proceedings varies and depends on various factors, such as the size of the company, the industry, the market situation, among others. It can be forecast that in the coming years this process will develop under the influence of the changing economic environment, legal regulations and the increasing awareness of entrepreneurs to adapt to change. Further development of various restructuring tools, such as debt forgiveness or mergers, as a remedy for financial difficulties is also forecasted.

In recent years, there has been an effort to simplify restructuring procedures and facilitate access to support instruments for entrepreneurs in financial distress through regulatory changes. These efforts are expected to continue in the coming years, which may increase the number of restructurings.

On the other hand, it should be taken into account that there are still challenges associated with restructuring, such as resistance from employees, for example. Therefore, despite the potential benefits, not all companies may be willing or able to undertake restructuring at any given time.

Aleksander Wlezień

Operating Partner/Investment Director in CVI Dom Maklerski (brokerage house)



In 2024, we expect the economic climate to improve, accompanied by stabilization of inflation and interest rates. In addition to geopolitical risks, there are currently no other significant risks on the horizon related to increased volatility in commodity prices. Thus, macro circumstances should have a positive impact on the decline in the dynamics of insolvency and restructuring proceedings being opened.

The significant increase in restructuring proceedings initiated in 2021-2023 should translate into a higher degree of orders for approval and execution of arrangements in 2024. In this regard, we see a key role for non-bank financing as the main source of funding for the implementation of arrangements accepted by creditors and approved by the court.



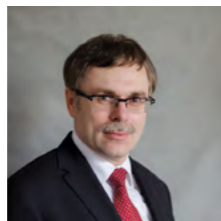
Private debt financing plays a key role in corporate restructuring. It enables companies to raise alternative financing to bank financing and support the recovery of their business model. Advantages of private debt financing on relatively fast, flexible and tailor-made provision of additional capital.

Private debt financing plays a key role in enterprise restructuring. It enables companies to raise alternative financing to bank financing and support the recovery of their business model. Advantages of private debt financing on relatively fast, flexible and tailor-made provision of additional capital.

A Second Chance Directive is scheduled to be implemented in 2024, which will support the restructuring of viable companies at an early stage. The EU directive will introduce a satisfaction test, according to which the administrator will have to demonstrate, the advantage of the restructuring option over the bankruptcy option.

Jacek Goliński

Director of the Corporate Credit Restructuring Department at Santander Bank S.A.



I forecast that in 2024, companies will continue to be strongly pressured by the impact of macroeconomic and geopolitical factors. In particular, this may affect clients in the small and medium-sized business sector with limited opportunities to restructure operations and pass on costs to the ultimate beneficiaries.

With regard to large companies, I assume that problems may be spotty. This means that there may still be a significant group of companies in the market that need to restructure their liabilities, including under the provisions of judicial restructuring.

In addition, from the perspective of a financial creditor, the final shape of the proposed legislative changes implementing the Second Chance Directive will be very important. However, looking at the economic outlook and the projected GDP growth of about 3% this year, the number of insolvent entities against 2023 should not change significantly.

RD Authors



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He specializes in bankruptcy and restructuring law, including, in particular, crisis management, restructuring of distressed business entities, management of the assets of insolvent companies and individuals, and the protection of creditors' rights in connection with the insolvency of their debtors. Licensed advisor restructuring (License No. 624). He has been granted the title of qualified restructuring advisor. Active Administrator, court supervisor and receiver.

Doctor of Law, assistant professor and lecturer at the Faculty of Law and Administration of Adam Mickiewicz University in Poznań. Co-author and editor of a commentary on restructuring law, a commentary on consumer bankruptcy and a commentary on Regulation 2015/848 on insolvency proceedings. Co-author of the System of Bankruptcy and Restructuring Law and dozens of other publications in the field of law economic.

He participated in legislative work on the Law - Restructuring Law, for which he was awarded the medal of the Minister of Justice for his merits for the judiciary. Member of legislative teams at the Ministry of Health, at the Ministry of Economy and at the Ombudsman for Small and Medium-sized Enterprises. Member of INSOL-EUROPE, CERIL, KIDR. Expert of the World Bank and the European Bank for Reconstruction and Development. Permanent arbitrator in the Court of Arbitration at the General Prosecutor's Office of the Republic of Poland.



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partner in CMT Advisory

He has been involved in the financial consulting industry for more than a dozen years. He was educated at the Poznań University of Economics and Business (with specializations in Investment and Real Estate Management and Capital Investment and Corporate Financial Strategies) and the Athens University of Economics and Business. He has a PhD in Finance since 2018 and holds the prestigious international professional title of Chartered Financial Analyst (CFA).

In his daily work, he is responsible for the area of corporate finance, cooperation with financial institutions and merger and acquisition transactions. He supports entrepreneurs in financial planning, establishing market values of key assets and implementing supervisory systems and recovery plans. His areas of activity also include the preparation of expert opinions for litigation and arbitration, as well as financial advice in restructuring proceedings.

He has extensive experience related to the areas of corporate finance, M&A consulting and projects carried out for leading financial institutions, including banks, loan companies, debt collection, factoring and leasing companies. He has also worked for family businesses, multinational corporations and startups operating in the areas of e-commerce and fintech.

Author of numerous scientific publications and expert commentaries on succession processes in family businesses, acquisition strategies and valuation of debt portfolios. Assistant professor at the Poznań University of Economics and Business, lecturer at the Poznań-Atlanta Executive MBA Program and coordinator and lecturer of the Stock Exchange School. Head of the research project "Use of machine learning algorithms in the process of modeling tactical asset allocation in the capital market".



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Specialist in bankruptcy and restructuring law with experience in analyzing the financial situation of an entrepreneur and selecting insolvency proceedings to suit his needs. As part of her her professional practice she has gained several years of experience in managing and supervising complex bankruptcy and restructuring processes of entrepreneurs operating in all sectors of the economy, including with regard to large listed companies.

She supports both the debtor and creditors during debt repayment negotiations. He makes estimates regarding the creditor's probable satisfaction in the course of restructuring or bankruptcy proceedings, and represents creditors as members of the creditors' council.

For more than 7 years, she worked as an assistant judge in the commercial division for bankruptcy and restructuring, in one of the largest courts in Poland.

As part of her practice, she served companies in the financial, service, industrial and agricultural sectors.



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He carries out projects in the field of valuation of companies and their assets, M&A advisory and advisory restructuring. He supports transactions of sale and purchase of companies, implementation of valuations and preparation of specialized economic opinions. Member of the team responsible for servicing clients from the lending and debt management industry.



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Specializes in civil and commercial litigation, as well as insolvency and restructuring projects. He has extensive experience in developing collateral for receivables, gained through cooperation with financiers and bond issuers. His practice has dealt with, among other things, the impact of insolvency and restructuring on the position of secured creditors. He provides legal services on the side of debtors, procedural authorities (trustee, supervisor, receiver) and creditors. He is the author of publications on civil law and proceedings, and has also appeared as a speaker at conferences addressed to lawyers and entrepreneurs.



Ulyana Zarembo Ph.D.
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In 2021, at the Faculty of Management of the University of Gdansk, she defended with distinction her doctoral thesis entitled. "Evaluation of the course of restructuring proceedings of enterprises in Poland". Lecturer at postgraduate MBA programs, lecturer at the Stock Exchange School and Certified Trainer of Revas Industry Business Simulations. Author and co-author of numerous scientific publications and reports. Provides training in liquidity management, operational and financial restructuring. Board member and co-owner at Nexdiag sp. z o.o.



Hubert Zieliński
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He has several years of experience in providing day-to-day legal services to court supervisors, administrators and receivers, including insolvency and restructuring proceedings of public companies, capital groups and proceedings concerning ineffectiveness of legal actions. Author of numerous publications in the field of insolvency and restructuring law published in, among others, the Judicial Review, the Palestra and the Monitor of Banking Law.



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