

RULES OF RESTRUCTURING AND BANKRUPTCY IN POLAND AND THEIR IMPACT ON THE SITUATION OF CREDITORS AND DEBTORS

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Purpose: The aim of the publication is to analyse the solutions that are available to entrepreneurs in the event of a difficult financial situation and to assess the scope of their application in practice.

Design/methodology/approach: The conducted research used an analysis of domestic and foreign literature, given insolvency and restructuring proceedings, as well as changes in law. As part of the conducted works, the following research hypotheses were raised: implementation of legal changes increased the possibilities of functioning and the development of insolvent entities on the market; interest in restructuring proceedings is increasing, which increases the possibility of recovery for creditors.

Findings: Research would show that with changes in the law and changing conditions in the environment, the interest of entrepreneurs in restructuring procedures is increasing, while the number of bankruptcies is decreasing. An analysis of the literature and legal regulations allows us to draw the conclusion that due to the lower formalities and advantages for debtors, they most often choose the procedure for approval of the arrangement.

Originality/value: The content of the study confirms the impact of risk and changes in law on increasing the ability to protect organisations from bankruptcy. The paper is dedicated to people dealing with organisation management and the insolvent entrepreneurs and organisations.

Keywords: bankruptcy, restructuring proceedings, entrepreneur, risk.

Category of the paper: Research paper.

1. Introduction

Recent years have brought many changes in the economic life of entrepreneurs in Poland. The outbreak of the COVID pandemic, the war in Ukraine, inflation, shortage of raw materials, disruption of supply chains have led entrepreneurs to financial problems. Many entities doing business in Poland have been forced to make decisions on how to continue operating. Those who had reserves for this remained on the market, some suspended or closed their

business activities, while others took advantage of the provisions of the bankruptcy or restructuring law. In addition, at the time of the greatest threats to businesses in Poland, the legislator introduced special solutions enabling facilitated restructuring, which was actively used by entrepreneurs to protect their operations. The article discusses an important issue concerning restructuring proceedings and bankruptcy of enterprises. This is an important issue for the economy, as the effectiveness of these proceedings has not only an economic but also a social dimension. It can lead to saving the entrepreneur's situation, paying off creditors or maintaining employment.

The aim of the article is to deepen the knowledge in the field of the above-mentioned proceedings in terms of their use by Polish entrepreneurs. The analysis of changes in the field of bankruptcy and restructuring law, as well as the study of the use of their standards by entrepreneurs show a steady increase in interest in restructuring and a decrease in the number of bankruptcies. Recent years have shown that interest in restructuring proceedings is growing (435 restructurings in 2018, 2290 in 2022, 3209 by the end of September 2023) and entrepreneurs are less likely to choose bankruptcy (for example, in 2018 620 bankruptcies were announced, in 2022 – 357, by the end of September 2023 – 295). A significant increase in the number of restructurings in relation to the number of bankruptcies is caused by changes in the law, which give debtors a better chance of surviving thanks to the possibility of concluding an arrangement with creditors. This is due to the new and attractive changes in proceedings, especially for debtors, which protect the debtor's situation to a greater extent than before, giving him a chance to heal.

2. Doing business in Poland

Economic activity is understood by the Polish legislator as an organized gainful activity, carried out in one's own name and on a continuous basis (Entrepreneurs' Law, Art. 3). On the other hand, an entrepreneur is considered to be a natural person, a legal person or an organizational unit that is not a legal person, to which a separate act grants legal capacity, and which conducts business activity (the Business Law Act, Art. 4). However, the legislator does not treat as entrepreneurs natural persons who, although in subsequent months constantly generate current revenues from their individual activities, but their income does not exceed 75% of the minimum wage (Entrepreneurs' Law, Art. 5). Such persons are therefore excluded from the above definition and are not subject to official registration. These people are also not included in the official statistics on entrepreneurs kept by the Central Statistical Office in Poland. Figure 1 presents the development of entrepreneurship in Poland.

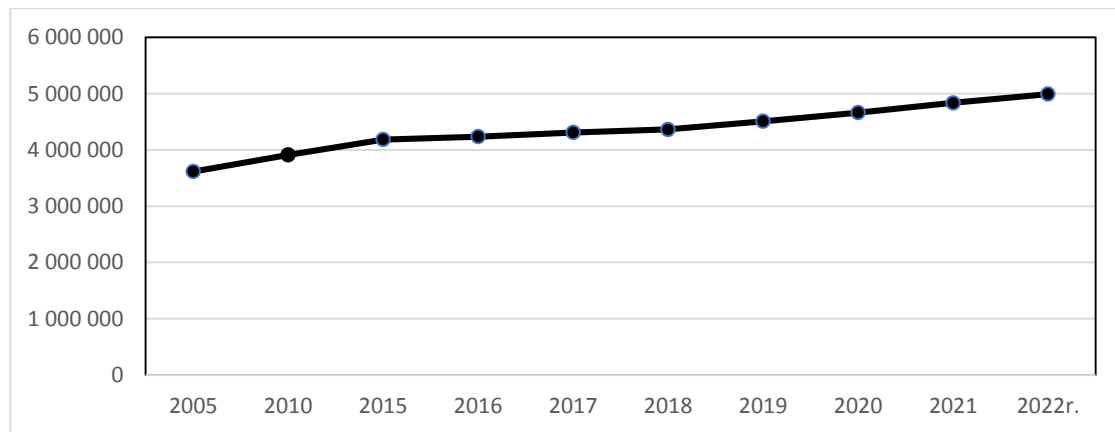


Figure 1. Number of entrepreneurs registered in REGON.

Source: Own elaboration based on the Statistical Yearbook of the Republic of Poland 2022, 2020, Small Statistical Yearbook of Polish 2023.

Figure 1 clearly shows that the number of entrepreneurs in Poland is constantly increasing from over 3.6 million registered in 2005 to over 4.9 million at the end of 2022 (Small Statistical Yearbook of Polish 2023). It should be noted that the present statistical data do not provide information on the number of entities actually conducting business activity, but only on the number of registered companies. Figure 2 presents data on entrepreneurs who have ceased their business activity as a result of liquidation or transformation, and those who have decided to suspend their activities.

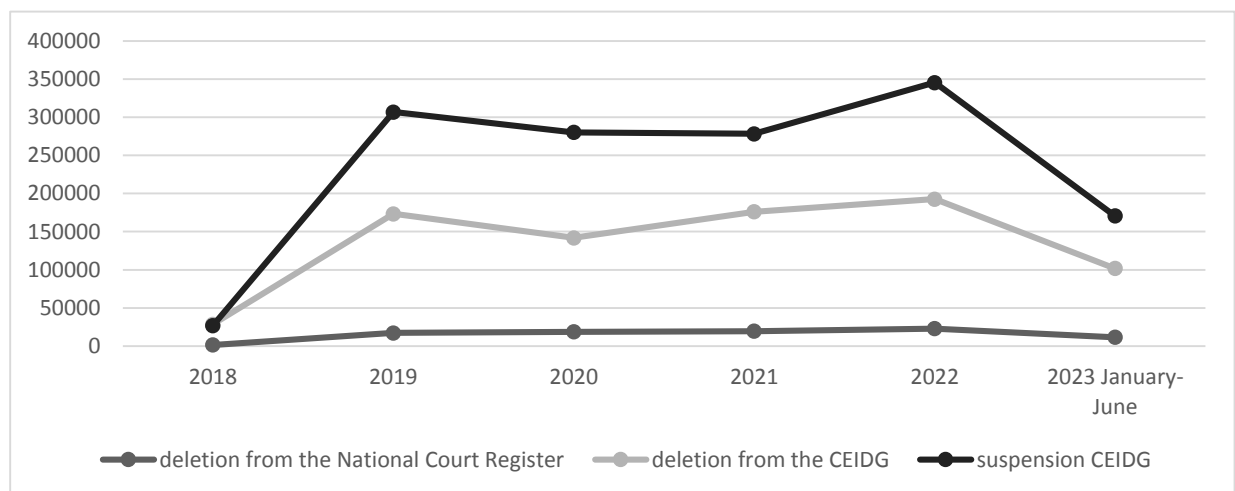


Figure 2. Number of deleted and suspended business activities in the National Court Register and CEIDG

Source: own analysis based on data from the Central Economic Data Index, Deletions of companies statistics 2023, 2022, 2021, 2020, 2019, 2018 (coig.com.pl), accessed on 12.12.2023.

Figure 2 shows that the number of entrepreneurs who are closing down is increasing. Particular changes in this regard took place in 2022. Entrepreneurs are also constantly taking advantage of the possibility of suspending business activity. This form of interruption in business activity is mainly used by natural persons, because one of the basic conditions for the suspension of activity is the lack of employment. More often, such a condition is met by natural persons.

3. Forms of business activity

The law in Poland gives many possibilities to choose the legal form of your business. However, Polish entrepreneurs most often choose:

1. individual business activity carried out by natural persons on the basis of an entry in CEiDG and the Act of 6 March 2018. Entrepreneurs' law,
2. civil partnerships operating on the basis of Articles 860-875 of the Act of 23 April 1964. Civil code,
3. commercial companies regulated in the Commercial Companies Code, where entrepreneurs can choose between a general partnership, a partnership, a limited partnership, a limited joint-stock partnership, a limited liability company, a simple joint-stock company or a joint-stock company.

In addition, it can still be carried out as a European company, a European economic interest grouping, a cooperative or as a state-owned enterprise.

The analysis of data on entities operating in Poland shows that the most common types of business activity are those run by individuals and commercial companies.

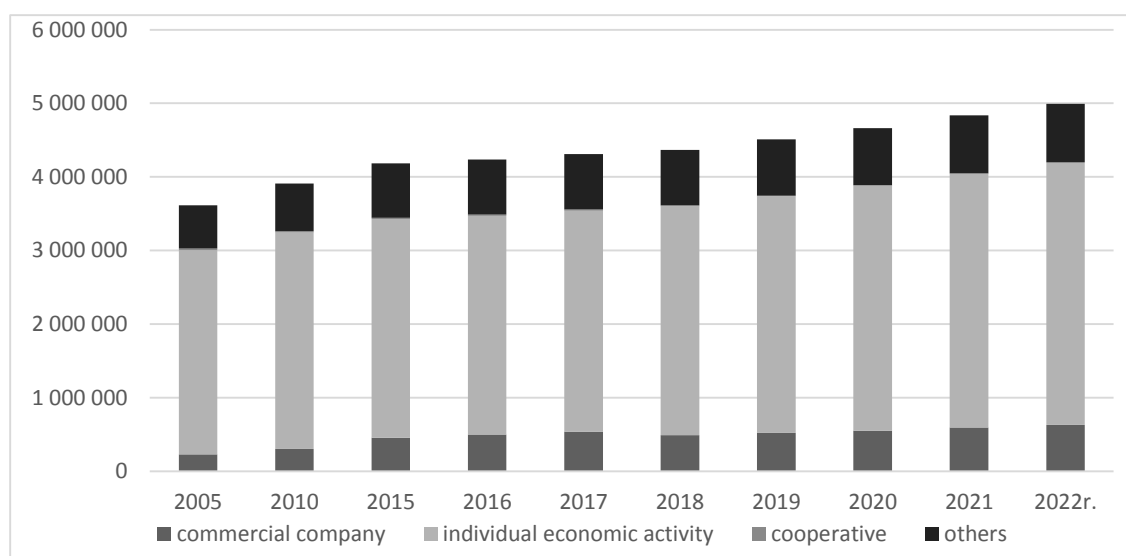


Figure 3. Number of entrepreneurs registered in Poland by legal form in the years 2005-2022.

Source: Own elaboration based on the Statistical Yearbook of the Republic of Poland 2022, 2021, Small Statistical Yearbook of Polish 2023.

Figure 3 shows that the number of registered entrepreneurs in Poland is constantly increasing. This applies to almost all legal forms in which such activities can be carried out. However, the most popular is individual self-employment. This is certainly due to the ease of creating and running a business in this way.

4. Risk in entrepreneurs' activities

Polish entrepreneurs have a wide choice in terms of forms of business activity. It is worth noting that in Poland, entrepreneurs run their business on the basis of solutions used all over the world. The above-mentioned forms (in particular individual economic activity, commercial companies) are also carried out in European and non-European countries (Nancu, Mihai, 2021; Schölna, Ohlssonb, Brooméd, 2017). It should be noted, however, that none of the available forms guarantees success in business. This means that every entrepreneur is exposed to undesirable events which, as a result of the incurred loss or increase in operating costs, will have a negative impact on its functioning.

It seems that the most important objectives of commercial companies are profitability (i.e. maximising profit or market share) and risk (i.e. 'security' or 'survival'). It will be the task of those who make decisions about the future of the company to choose an opportunity that minimizes risk for a given profit or maximizes profits for a given risk. In both cases, the goal is the same – maximizing the value of the company (Fig. 4).

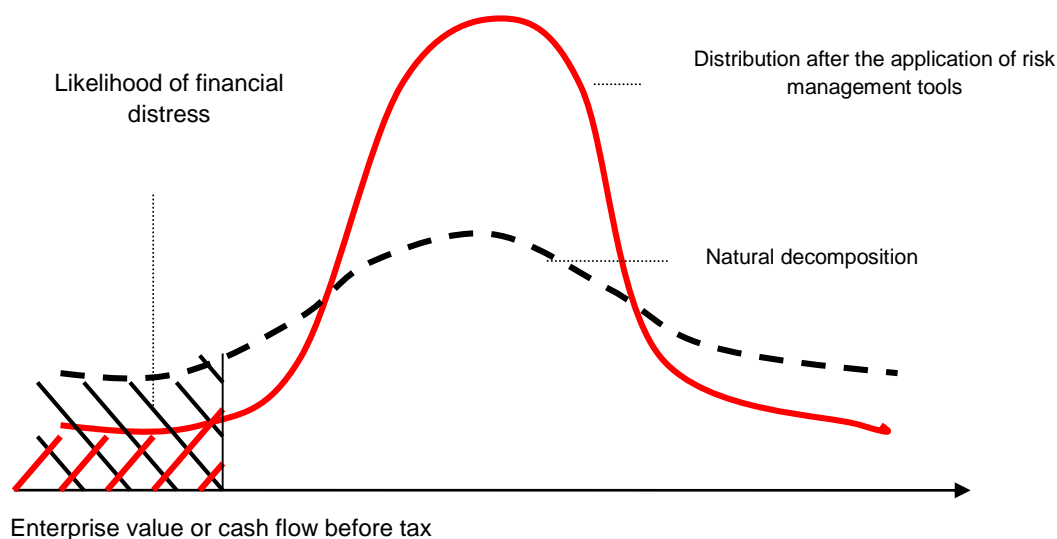


Figure 4. Relationship between risk and enterprise value.

Source: Smithson, Smith, Sykes, Wilford, 2000, p. 134.

Figure 4 allows us to draw the conclusion that an entrepreneur who is aware of the risk and knows the instruments for reducing it will have a chance to operate more safely and increase the value of his company.

Risk is an inherent part of every decision made by entrepreneurs, but it has not yet been clearly defined. Differences in the interpretation of this term are manifested in such issues as the relationship between risk and uncertainty, the types of deviations that arise – unidirectional, multidirectional, the subject of reference, the possibility of measuring by applying the theory of probability. The first definitions of the concepts of risk and uncertainty were found in the work of F.H. Knight (Gup, 1992). According to this author, risk means the possibility of

deviation from the expected or planned state, which can be calculated using the theory of probability, while uncertainty occurs when such an eventuality cannot be assessed more precisely, because it is not possible to use the theory of probability. Representatives of the **defensive trend** treat risk as a negative phenomenon – a source of losses that should be taken into account in the company's operations (Brühwiler, 1980), the danger of a negative deviation from the goal (Sahl, 1996), and the threat of a decrease in profit.

The theory of decision-making under conditions of uncertainty and risk is based on the assumption of quantification. R.D. Luce and H. Raiffy distinguish three types of decisions that can be made (Jędralska, 1992):

1. under conditions of certainty - if it is known that a particular action leads to a certain result,
2. under risk conditions – when an action leads to some outcome from a certain set of possible outcomes, each of which has a probability of occurrence known to the decision-maker,
3. Under conditions of uncertainty, we do not know the probability distribution of the goal being achieved.

A similar concept of risk and uncertainty is presented by R.L. Ackoff, who distinguishes areas of certainty, risk and uncertainty in the decision-making space.

The presented concepts show that risk is on the one hand the result of the uncertainty experienced by the decision-making entity and, on the other hand, depends on the amount of capital involved in the implementation of the decision. Risk is a function of uncertainty, and this function is a simple relationship: the greater the range of uncertainty, the greater the risk, and vice versa – as unspecified and uncertain factors decrease, so does the risk. It follows that there is no risk where there is no uncertainty and where some capital has not been committed. It is obvious that **the risk increases with the amount of capital employed**. It should also be noted that since the main attribute of risk is uncertainty, the value of risk will also be fundamentally influenced by time. This means that **as the time horizon of predictions is extended, their uncertainty will increase**. Over time, the expected rate of return decreases, while the probability that the achieved rate of return will deviate significantly from the expected value increases. As a result, the risk increases over time.

In the literature, there is a broader and narrower understanding of risk. The authors emphasize, for example, the high impact of personnel risk on the company's operations and results. However, from the point of view of the commercial activity of companies, the following interpretation of financial risk seems to be the most appropriate.

Financial risk in trading is the possibility of unforeseen events beyond the control of the entity related to:

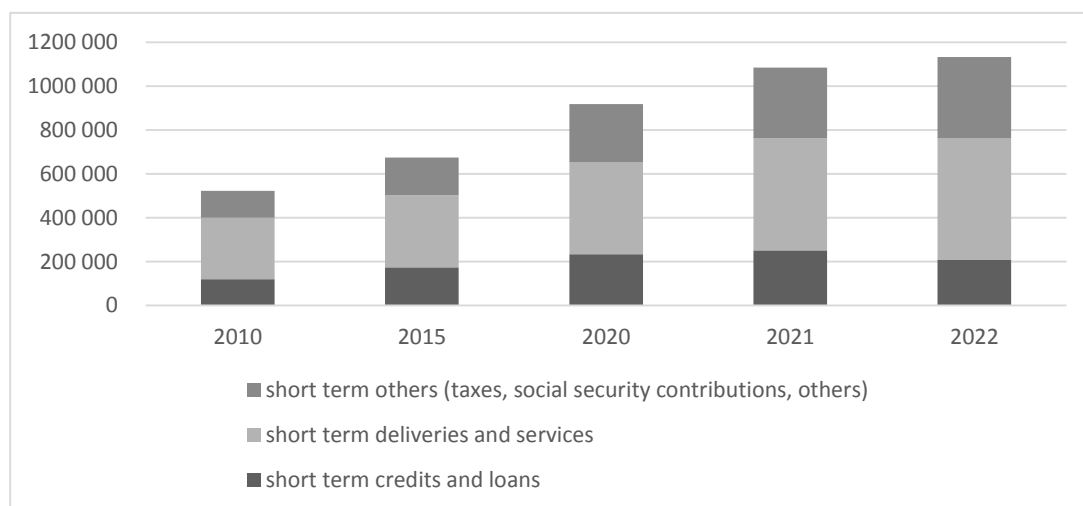
- concluded commercial transaction (*transaction risk*),
- changes in the company's market environment (*market risk*),

- products or goods that the entity sells (*commodity risk*),
- economic and political activities of the countries in which the company operates (*country risk*)

which cannot be fully prevented, and which, by increasing operating costs or causing a loss, have a negative impact on the financial situation of the company (Olkiewicz, 2005).

One of the most important risks in business activity is transaction risk. It means that the contractor may not fulfill the contract for various reasons. Therefore, the contractor may commit in particular: delay in payment, fail to pay for the goods at all, fail to undertake the transaction or fail. Each of these situations has negative consequences for the entrepreneur. In Polish and foreign legislation, there are many legal instruments aimed at reducing transaction risk and protecting entrepreneurs. An example of such tools are the regulations on the insolvency of entrepreneurs and consumers, which on the one hand are designed to secure the interests of creditors in the best possible way and, on the other hand, if possible, to enable the debtor to continue to function in economic life.

One of the counterparty risks is the risk of non-payment. Statistical data on enterprises in Poland show a steady increase in the debt of companies in the private sector (Polish Statistical Yearbook, 2022). This creates a risk for their counterparties. On the one hand, they have to credit the activities of their partners and usually incur debt themselves, and on the other hand, they may not pay at all. Figure 1 presents the current liabilities of Polish entrepreneurs, including trade and service liabilities.



Rysunek 5. Short term liabilities of enterprises in private sector in Poland in mln PLN.

Source: own study based on the Small Statistical Yearbook of Polish 2023.

The data presented in the figure shows that the short-term debt of entrepreneurs in Poland is constantly growing. The increase is recorded mainly in the group of payables resulting from supplies and services. In this category, liabilities have increased by more than 70% since 2010. This means that Polish entrepreneurs are constantly using loans from their business partners. This, in turn, gives rise to a risk related to the counterparty's situation. Particularly large

increases in this area were observed in 2020-2021, which was undoubtedly influenced by the situation caused by the COVID-19 epidemic and the outbreak of the war in Ukraine.

Data on the increase in liabilities in the private sector indicate that procedures that enable either the improvement of the financial condition through debt relief and restructuring or those that ensure that creditors recover at least part of the receivables through the debtor's bankruptcy are becoming of great importance for entrepreneurs.

5. Rules of bankruptcy and restructuring of entrepreneurs in Poland

The statistical data presented in parts 2 and 3 of the article show that the number of entities registered in official registers of entrepreneurs in Poland is constantly increasing. The value of companies' debts is also increasing, as is the number of those who suspend their activities and remove themselves from the registers. Recent years, and in particular economic, political and global events have led to a significant interest in restructuring and insolvency procedures. This is mainly due to the growing indebtedness of entities. Indebtedness, on the other hand, often leads to enforcement and compulsory exercise of rights by creditors through enforcement proceedings. This, in turn, makes it virtually impossible to conduct business activity as a result of, for example, the seizure of bank accounts or the forced sale of assets needed to verify this activity

Such threats cause entrepreneurs to look for solutions to save their business and get out of a difficult situation, or to end it without the risk of criminal or civil liability. A good solution is to rely on the provisions of the Bankruptcy Law or the Restructuring Law. Both laws currently cover insolvent entrepreneurs. On the other hand, the Restructuring Law may also be applied to entrepreneurs threatened with insolvency (Restructuring Law, Art. 1). It should be noted that solutions similar to those in Poland are regulated by the legislator of European countries and the law in force in the United States of America (Renssen, 2017, p. 20).

Act of 15 May 2015 The Restructuring Law came into force on 1 January 2016 and replaced the previously applicable Bankruptcy and Reorganization Law in terms of bankruptcy protection. Although the act has been in force since 2016, it has been amended many times. An analysis of the amendments to the Restructuring Law allows us to conclude that these changes were made in accordance with changes in the socio-economic environment. At the same time, the legislator reacted to extraordinary phenomena such as the COVID epidemic or the war in Ukraine. Some of the changes were related to the need to implement Directive (EU) 2019/1023 of the European Parliament and of the Council of 20 June 2019 on a framework for preventive restructuring, discharge of debts and prohibitions on conducting activities and on measures to increase the efficiency of restructuring, insolvency and discharge proceedings, as well as amending Directive (EU) 2017/1132 (Resolution and Insolvency Directive). Since its entry into force, the Act has been amended in more than thirty ways.

The Bankruptcy Law, on the other hand, regulates the bankruptcy of an entrepreneur and its liquidation by a receiver under the control of the court. It has been in force since October 1, 2023 and has also undergone many legislative changes since then.

Gradually, the changes introduced by the legislator have led to the establishment of rules of conduct in the case of insolvent entrepreneurs or those who are at risk of such insolvency. Currently, every insolvent entrepreneur has a choice, i.e. They can file for bankruptcy or try to save their business by restructuring. In addition, it should be pointed out that any of the entrepreneur's creditors may initiate bankruptcy. On the other hand, entrepreneurs threatened with insolvency may take advantage of one of the restructuring proceedings.

Table 1 presents the basic concepts common to bankruptcy and restructuring regulations.

Table 1.

Basic definitions of the Bankruptcy and Restructuring Law

Concept	Definition
Entrepreneur insolvent	<ul style="list-style-type: none"> – A debtor who has lost the ability to pay his monetary obligations. – A debtor is presumed to have lost the ability to meet its monetary obligations due if the delay in payment exceeds three months. – A debtor who is a legal person or an organizational unit without legal personality, which is granted legal capacity by a separate statute, is also insolvent if its financial liabilities exceed the value of its assets, and this state of affairs persists for a period exceeding twenty-four months
Entrepreneur threatened with insolvency	A debtor whose economic situation indicates that he may soon become insolvent.

Source: In-house analysis pursuant to Article 11 of the Bankruptcy Law and Article 6 of the Restructuring Law; Janda, 2023, p. 11.

The primary purpose of insolvency proceedings is to satisfy the claims of creditors as much as possible, and if reasonable considerations allow it, the debtor's existing business has been preserved. On the other hand, in restructuring proceedings, the primary objective of the Act is to avoid the debtor's bankruptcy by enabling the debtor to restructure by concluding an arrangement with creditors, and in the case of sanation proceedings – also by carrying out remedial actions, while securing legitimate rights Creditors. The legislator indicated that this objective is to be achieved in the course of the proceedings by enabling the debtor to restructure, which takes place by concluding an arrangement with creditors. In sanation proceedings, the purpose of the proceeding may additionally be achieved by carrying out remedial actions while securing the legitimate rights of creditors (Filipiak, Hrycaj, 2023; Janda, 2023; Witosz 2021).

Table 2 presents legal possibilities that can be used by entrepreneurs in the event of losing the ability to settle due liabilities or when there is a threat of such difficulties.

Table 2.*Types and objectives of proceedings concerning insolvent entrepreneurs*

Bankruptcy proceedings	
May be carried out by insolvent entrepreneurs	Objectives of the procedure
	The proceedings should be conducted in such a way that the claims of creditors can be satisfied to the greatest extent possible and, if reasonable considerations allow, the debtor's existing business is preserved.
Restructuring proceedings	
May be carried out by entrepreneurs: – Insolvent, – threatened with insolvency.	General Purpose
	Avoiding the debtor's bankruptcy by: 1. allowing it to restructure by concluding an arrangement with creditors, 2. and, in the case of sanation proceedings, also by carrying out remedial actions, securing the legitimate rights of creditors.
Types of restructuring proceedings	
Procedure for approval of the arrangement	1) enables the conclusion of an arrangement as a result of the debtor's own collection of creditors' votes without the participation of the court; 2) may be conducted if the sum of disputed claims entitling to vote on the arrangement does not exceed 15% of the sum of claims entitling to vote on the arrangement.
Accelerated arrangement proceedings	1) enables the debtor to conclude an arrangement after the list of claims has been drawn up and approved in a simplified manner; 2) may be conducted if the sum of disputed claims entitling to vote on the arrangement does not exceed 15% of the sum of claims entitling to vote on the arrangement.
Arrangement proceedings	1) enables the debtor to conclude an arrangement after the list of claims has been drawn up and approved; 2) may be conducted if the sum of disputed claims entitling to vote on the arrangement exceeds 15% of the total amount of claims entitling to vote on the arrangement.
Remedial proceedings	It enables the debtor to carry out remedial actions and conclude an arrangement after the list of receivables has been prepared and approved. Remedial actions are legal and factual actions, which aim to improve the economic situation of the debtor and are aimed at restoring the debtor's ability to perform its obligations, while protecting it from enforcement.

Source: In-house analysis based on the Bankruptcy Law and the Restructuring Law.

Table 2 shows that currently entrepreneurs threatened with insolvency or insolvent have a wide range of choices as to whether or not to continue to operate or liquidate their business. Theoretically, each of the proceedings is intended to protect the legal and financial situation of creditors. However, the consequences of opening these proceedings may also be unfavourable for creditors. The purpose of bankruptcy proceedings is to liquidate an entrepreneur. The Act provides for the possibility of changing these proceedings to restructuring proceedings if they would lead to better protection of the interests of creditors and provided that an arrangement was concluded with the creditors on the repayment of the receivables. On the other hand, the primary purpose of restructuring proceedings is to avoid the debtor's bankruptcy. However, if this proves impossible during the proceedings, it may be converted into bankruptcy proceedings. Therefore, it seems that the procedures provided for in the Restructuring Law and the Bankruptcy Law now provide for better instruments for debtors than was the case under the previous regulations. At the same time, the primacy of restructuring proceedings has been adopted in the acts. This means that even if, for example, two applications concerning the same entrepreneur are filed at the same time – one for bankruptcy and the other for restructuring, the court is obliged to consider the restructuring application in the first place and give the entrepreneur a chance to repair its business by using restructuring instruments.

It is worth noting that the opening of both restructuring and bankruptcy proceedings has far-reaching consequences for creditors. These effects are presented in Table 3.

Table 3.

Consequences of opening bankruptcy and restructuring proceedings

Effects of the opening of proceedings Insolvency	Consequences of opening restructuring proceedings
<ol style="list-style-type: none"> 1. The bankrupt's assets become the bankruptcy estate. 2. The bankruptcy estate is taken over by a receiver who, under the supervision of the bankruptcy judge, will liquidate it. 3. Enforcement proceedings concerning claims from the bankruptcy estate are suspended by operation of law. 4. The trustee makes an inventory and designs a list of receivables, which will be the basis for possible repayments. 5. Creditors are repaid in the order defined by the following categories: <ol style="list-style-type: none"> a) The first one includes, for example: receivables from the employment relationship for the time before the declaration of bankruptcy, maintenance receivables, receivables arising in restructuring proceedings, b) the second - other receivables, if they are not subject to satisfaction in other categories, c) the third, interest on receivables included in the higher categories in the order in which the principal is to be satisfied, as well as judicial and administrative fines and receivables in respect of donations and bequests, d) the fourth - receivables of partners or shareholders under a loan made to a bankrupt company in the period of five years prior to the declaration of bankruptcy, together with interest. 	<ol style="list-style-type: none"> 1. By operation of law, enforcement proceedings are suspended with respect to receivables covered by the arrangement by operation of law, i.e. personal receivables arising before the date of opening the proceedings, with the exception of receivables: *maintenance, *pensions for damages, *social security contributions, *from an employment relationship, *secured on the debtor's property by mortgage, pledge and other property rights. 2. The entrepreneur's assets are left in his management, under the supervision of a supervisor, or the management of the property is taken away and given to the administrator. 3. The debtor prepares arrangement proposals, which usually include: *reduction of liabilities, *distribution of liabilities into installments, *reduction of interest, *restructuring of the debtor's assets. 4. Arrangement proposals may provide for the division of creditors into groups comprising particular categories of interests. 5. The terms of the restructuring of the debtor's liabilities are the same for all creditors and, if the voting on the arrangement is carried out in groups of creditors, the same for creditors included in the same group, unless the creditor expressly agrees to less favourable terms. 6. The arrangement is binding on creditors whose claims are covered by the arrangement according to the Act, even if they are not included in the list of claims. 7. A resolution of the creditors' meeting on the acceptance of the arrangement is adopted if it is supported by a majority of the voting creditors who cast a valid vote and who have a total of at least two-thirds of the total claims of the voting creditors.

Source: own analysis based on the Bankruptcy Law and Restructuring Law.

Table 3 shows that by initiating bankruptcy or restructuring proceedings, the debtor obtains a stay of enforcement with respect to his assets. Creditors, on the other hand, even those who have already successfully carried out such enforcement, unfortunately have to take into account other creditors and the decisions of the receiver, supervisor or administrator. In these proceedings, creditors are treated according to the same rules. Only creditors who have tangible collateral on the debtor's assets have a good position in both proceedings. They can recover the sum specified in the collateral from the subject of that collateral.

The analysis of statistical data on ongoing and initiated bankruptcy and restructuring proceedings in Poland shows the growing interest of entrepreneurs in these procedures. The number of bankruptcy and restructuring proceedings initiated and conducted in recent years allows us to assume that they are particularly appreciated by debtors.

Table 4.

Number of bankruptcies in Poland 2018-2023

	2018	2019	2020	2021	2022	I-IX 2023
Number of bankruptcies in Poland, in which:	620	614	549	400	357	295
– natural persons conducting business activity	141	149	120	82	37	40
% of total bankruptcies	23%	24%	22%	21%	10%	14%
– limited liability companies	335	332	308	229	245	197
% of total bankruptcies	54%	54%	56%	57%	69%	67%

Source: own analysis based on data: KRZ, MSIG, www.coig.pl, 12.12.2023.

Table 4 shows that the interest in bankruptcies among Polish entrepreneurs is gradually decreasing. On the other hand, if it is chosen for this procedure, it is most often by limited liability companies and natural persons conducting business activity. Presumably, this is due to the fact that under Polish commercial law, members of the management board of limited liability companies are liable for their liabilities if they fail to file for bankruptcy within the required time limit (Article 299 of the Commercial Companies Code). Filing such a request within the statutory time limit relieves them of this responsibility. The bankruptcy of individual entrepreneurs is also of great interest. They are responsible for their liabilities with all their assets. In the case of this group of entities, bankruptcy may lead to their debt relief and the beginning of business life anew without the burden of liabilities incurred.

In contrast to bankruptcy proceedings, restructuring proceedings are becoming more and more popular. Recent years have shown a steady increase in the number of proceedings initiated. This trend is presented in Table 5.

Table 5.

Number of restructuring procedures opened in Poland 2018-2023

	2018	2019	2020	2021	2022	I-IX 2023
Number of restructuring procedures opened	435	436	755	1848	2290	3210

Source: In-house analysis based on data from KRZ, MSIG, MGBI Report Warsaw 2023, www.coig.com.pl, 12.12.2023.

Table 5 and Figure 6 clearly show that, in contrast to the decrease in the number of insolvency proceedings, the number of restructurings is increasing from 245 in 2018 to over three thousand in the first three quarters of 2023, i.e. more than sevenfold.

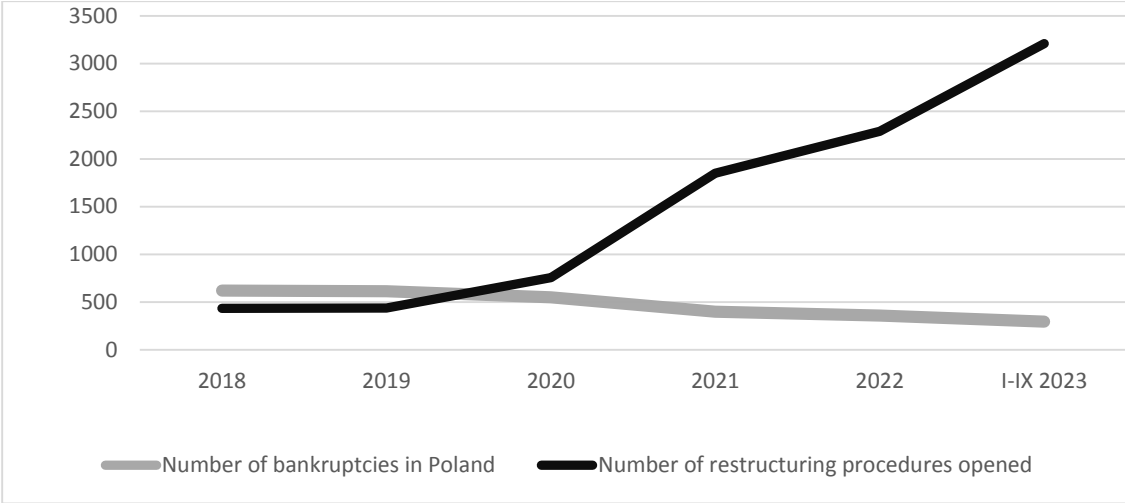


Figure 6. Number of insolvency and restructuring proceedings initiated in Poland in 2018-2023.

Source: In-house analysis based on data from KRZ, MSiG, MGBI Report Warsaw 2023, www.coig.com.pl, 12.12.2023.

Among the restructuring proceedings in recent years, the most popular have been the arrangement approval procedure and the special arrangement approval procedure introduced temporarily in connection with the COVID-19 outbreak, as shown in Figure 7.

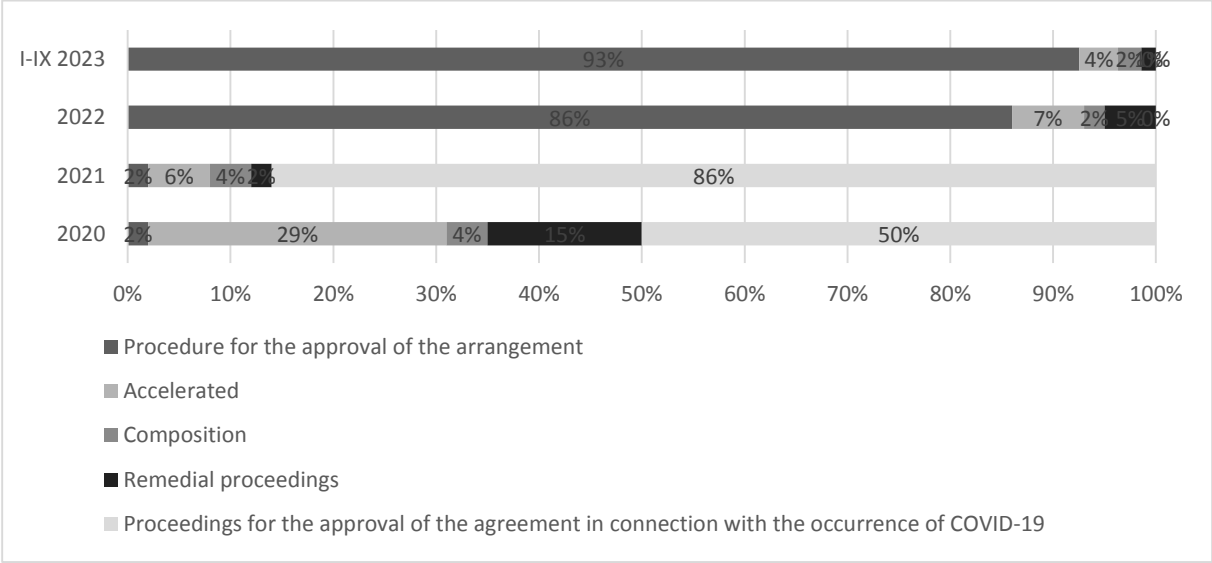


Figure 7 The use of types of restructuring proceedings by Polish entrepreneurs in 2020-2023.

Source: own analysis based on data from MSiG, MGBI Warsaw 2023 Report, www.coig.com.pl, 12.12.2023.

The data presented in the figure clearly shows that the most popular were the arrangement approval proceedings provided for in the regulations introduced to protect entrepreneurs against the effects of the COVID epidemic, and now the arrangement approval procedure (over 92% of all proceedings initiated). On the other hand, arrangement proceedings (1.4% in 2023) and remedial proceedings (2.4% in 2023) are the lowest initiated.

An unquestionable advantage of the arrangement approval procedure is the fact that it is initiated at the initiative of the debtor by concluding an agreement with a restructuring advisor

selected by the debtor. Then, the advisor makes an announcement on the arrangement date in the Court and Economic Monitor. From that moment on, the debtor and the supervisor have three months to convince the creditors to conclude an arrangement with the debtor, which usually includes partial discharge of liabilities, cancellation of incidental receivables (interest, compensation), and payment of liabilities in instalments. The attractiveness of this procedure and its frequent use is due to the benefits it gives the debtor in terms of protection against enforcement. The determination of the arrangement date means that, by operation of law, enforcement proceedings addressed to the arrangement estate are suspended, and new proceedings cannot be initiated. This procedure is usually chosen by those entities against whom enforcement is already being carried out, or by those who have knowledge that enforcement will soon be commenced. The debtor continues to run his business under the supervision of the arrangement supervisor and the court. After the lapse of three months from the date of the arrangement date, the effects of the announcement cease to exist. A debtor who has not been able to conclude an arrangement with creditors continues to run a business, and has the option of taking advantage of other restructuring proceedings or filing for bankruptcy.

Other restructuring proceedings are less frequently chosen by debtors, as they are associated with a greater limitation of the debtor's activities in relation to his assets. In sanation proceedings, the debtor loses the management of his assets, while in arrangement proceedings or accelerated arrangement proceedings, the management may be taken away from the debtor. For debtors, there is a risk that they will be deprived of the ability to decide about their assets. In this case, a court-appointed administrator will take care of it.

6. Summary

From the considerations presented in the article and the statistical data, it is clear that the proceedings related to restructuring are silent about the growing interest of entrepreneurs. In recent years, there has been a marked increase in the number of restructuring proceedings initiated. This trend is facilitated by the amended law on restructuring procedures. The Polish legislator recognizes the need to protect existing entities, while maintaining the protection of the legitimate interests of creditors. The procedures assume that existing business activities are rescued in the first place, while bankruptcy seems to be the last resort, which is not a procedure desired by the entrepreneurs themselves and their creditors. This is because it means the liquidation of the entity. On the other hand, restructuring proceedings are aimed at the continued functioning of the entrepreneur, which in turn gives a chance to meet at least some of the debts incurred in the course of operations. Such an approach to the recovery of entrepreneurs can have many positive effects, in particular the preservation of jobs, the maintenance of existing relations between entities, and the fulfilment of public law obligations by entrepreneurs.

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