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Abstract of the doctoral dissertation entitled
"The arrangement in restructuring proceedings
in the context of an economic analysis of the law"

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1. OBJECTIVES OF THE WORK AND STATUS OF THE RESEARCH

The primary research objective of the dissertation was to determine whether the regulations introduced by the Act of 15 May 2015. Restructuring Law (Journal of Laws of 2015, item 978, hereinafter: 'Restructuring Law' or 'p.r.'), the regulations on arrangement are more effective than the regulations contained in the Bankruptcy and Reorganisation Law (hereinafter: 'pun' or 'Bankruptcy and Reorganisation Law'), and the Presidential Ordinances of 1934 Bankruptcy Law (hereinafter: 'r.p.u.') and the Law on Arrangement Proceedings (hereinafter: 'r.p.o.p.u.').

The subject of the paper has been limited to the legal institution of the arrangement only. The structural elements of the arrangement have been analysed, in particular the effectiveness of the adoption of the arrangement at the creditors' meeting. Other institutions of restructuring and insolvency law, such as the restructuring plan, the bodies of restructuring or insolvency proceedings and the legal situation of the participants in the proceedings, insofar as they did not directly concern the issue of the arrangement, were outside the scope of the study. In addition, the scope of the study did not include regulations on state aid, regulations on international restructuring proceedings or separate restructuring proceedings or criminal provisions.

The main objective of the paper is to answer the following questions:
1. do the legal rules contained in the insolvency law provisions realise the legislator's preference for an arrangement as the central institution of insolvency law, treating bankruptcy only as the so-called ultima ratio?
2. Is the effectiveness of the adopted regulations in the Insolvency Law on the subject of entering into an arrangement uniform?
3. which of the methods of accepting an arrangement by the creditors' meeting is the most effective?

The effectiveness of restructuring and insolvency law, despite its importance both theoretically and practically, has not yet been the subject of in-depth analysis in the Polish legal literature. Economic models of insolvency law institutions are mainly the subject of research interests in American legal literature. This dissertation is the first study on the subject of the efficiency of the legal institution of arrangement, using the tools of economic analysis of law and cooperative game theory.

2. CONSIDERATIONS CONTAINED IN THE DISSERTATION

The dissertation consists of an introduction, six chapters on key issues related to the dissertation topic and conclusions.

The first chapter is devoted to general issues of economic analysis of law in general and economic analysis of insolvency and restructuring law, in particular phenomena such as insolvency, bankruptcy and restructuring. The chapter also discusses the theory of corporate insolvency.

In the second chapter, the necessary issues of game theory were discussed, which then served to analyse the legal arrangement. In particular, general issues of non-cooperative and cooperative game theory were examined, including so-called voting games and weighted voting games. In addition, measures of individual voting power within voting games, measures of the decisiveness of collegial bodies, the so-called Coleman indices, and a discussion of the so-called fair distribution analysis of the sum obtained in the arrangement as well as the so-called point solutions of voting games (weighted voting) were discussed.

The third chapter examines the specific regulations of an arrangement against the background of economic analysis of law and game theory. In particular, the objectives and types of the arrangement, its legal nature, the prerequisites for the admissibility of the arrangement, the scope of being bound by the arrangement, and the arrangement proposals are examined. The regulations on the acceptance of the arrangement by the creditors' meeting have been analysed in depth from the perspective of game theory. In addition, the provisions concerning the approval of the arrangement, its legal effects and the institutions of modification, revocation and expiry of the arrangement, as well as the regulations concerning the partial arrangement were analysed. Regulations concerning the enforcement of the arrangement were also examined. The analysis has been carried out against the background of the historical legal regulations of composition agreements appearing in the Bankruptcy and Reorganisation Law and the Presidential Decrees Bankruptcy Law and the Law on Arrangement Proceedings.

The fourth chapter conducts a case study using cooperative game theory models.

The fifth chapter analyses the institution of an arrangement using cooperative game theory tools on the basis of simulations of a significant number of creditors' meetings, assuming different probabilities of accepting an arrangement.

The sixth chapter compares the simulations carried out with available statistical data of bankruptcy and restructuring cases for the years 2005 - 2022. The statistical research confirmed the accuracy of the analyses carried out within the framework of the simulations on randomly generated creditors' meetings.

3. CONCLUSIONS

The research carried out gives rise to the following conclusions from the considerations in the study, among others:

- The provisions of the Restructuring Law increased the effectiveness of accepting an arrangement. The change in the regulation that significantly affected the possibility of concluding an arrangement concerned the reference of the personal and capital majority, necessary for accepting an arrangement, to the voting creditors only.

- The regulations on the adoption of an arrangement can be divided, in terms of their effectiveness, into three groups: a) the first group, characterised by the greatest effectiveness, comprises regulations based exclusively on the system of voting creditors (Article 119(1), (2) and (3) p.r.), b) the second group comprises regulations of systems based on the concept of voting creditors (Article 217(1), (2) and (3) p.r, Article 285 p.r.) and mixed systems with the exception of Article 57 § 2 r.p.o.p.u., c) the third group includes the provision of Article 57 § 2 r.p.o.p.u. based on a mixed system providing for the need to obtain a qualified majority of 4/5 of the capital of the entitled creditors.
- The provisions of the Restructuring Law have strengthened the individual voting power of creditors, as shown by the increase in the Shapley-Shubik ratio compared to the Bankruptcy and Reorganisation Law and the Regulation of Arrangement Procedure Law, as well as the power of the creditors' meeting as a collegial body. On the other hand, the Restructuring Law resulted in the largest increase in the blocking power of critical creditors, without whom a coalition could not be concluded.
- In the creditors' meetings provided for by the Restructuring Law (Articles 119(1), 119(2) and 119(3) p.r.), a small number of creditors had exclusive influence on the conclusion of an arrangement of a certain content, and at the same time, within the framework of the above provisions, there was the largest number of so-called "dummy players" - non-critical players who had no influence on the initiation of a certain action by the collegial body, as well as no power to block a resolution unfavourable to them. The empowerment of the voting creditors led to an unintended effect, i.e. the emergence of a dictator player who alone decided whether or not to conclude an arrangement. The provisions of the second and third groups did not lead to the emergence of a dictator player.
- The legislator has shaped the institution of arrangement proposals in isolation from the interests of the creditors who had the greatest influence on the conclusion of the arrangement.
- The solution adopted within the framework of arrangement proposals is not always Pareto optimal. The legal regulations adopted under the Restructuring Law do not sufficiently secure that the arrangement to be concluded meets the requirements of individual rationality and collective rationality.
- The adopted arrangement under the procedure of the Restructuring Law (Article 119(1), (2) and (3) p.r.) is not characterised by external stability if the arrangement proposals are not based on the Shapley value.
- The provisions of the Restructuring Law do not take into account the criteria of fairness in the arrangement to be concluded, moreover they do not provide incentives for an internally and externally stable arrangement.

In summary, the legal rules contained in the provisions of the Restructuring Law implement the legislator's preference for an arrangement as the central institution of insolvency law, significantly increasing the efficiency of the legal institution.