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Summary of Doctoral Dissertation
titled: "The Legal Status of a Restructuring Advisor
in Restructuring and Bankruptcy Law"

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1. PURPOSE OF THE STUDY AND STATE OF RESEARCH

The primary research objective of the doctoral dissertation was to determine the legal status of the institution of the restructuring advisor in restructuring and bankruptcy law.

The institution of the restructuring advisor has functioned in the Polish legal system for a relatively short time. To date, this institution has not been thoroughly examined or described by representatives of legal doctrine and has not been the subject of in-depth analysis in case law. However, some works in national literature are noteworthy, as they address selected issues concerning the rights and obligations of the arrangement supervisor, court supervisor, administrator, and bankruptcy trustee, or relate to the institution of the restructuring advisor, but without comprehensively exploring the legal status of this institution. Therefore, this doctoral dissertation constitutes the first comprehensive study aimed at determining the legal status of the restructuring advisor. The scope of the research includes an analysis and evaluation of regulations concerning this issue in Polish restructuring and bankruptcy law.

The institution of the restructuring advisor is characterized by complexity. The complexity of the legal position of the restructuring advisor is manifested, among other things, by the fact that this institution combines issues related to the advisor's roles in restructuring and bankruptcy proceedings (arrangement supervisor, court supervisor, administrator, bankruptcy trustee) and the provision of restructuring advisory services. In the context of the titular considerations, the most attention has been devoted to issues concerning the first area of the advisor's activity. **The essence of the research problem is defined by the thesis that the restructuring advisor is a private entity endowed with public-law prerogatives during restructuring and bankruptcy proceedings.** A thorough analysis and verification of this thesis required answers to 14 specific auxiliary questions leading to the confirmation of 6 research hypotheses. A key element of the analysis was the application of a comparative test of research criteria (appointment to the role, scope of duties and how they are performed, remuneration, liability, participation in court, administrative, administrative-court, and arbitration proceedings) from a theoretical legal perspective (*law in books*) and an empirical perspective (*law in action*). The comparison of the accepted criteria in *law in books* with *law in action* within the comparative test allowed for a comprehensive assessment of the legal status of the restructuring advisor. The theoretical legal research contributed to the presentation of the legal framework and formal understanding of the legal status of the restructuring advisor, while the empirical research illustrated how this status is interpreted in practice by the advisors themselves. The analysis of the titular problem led to the formulation of *de lege lata* conclusions and *de lege ferenda* proposals.

2. DISCUSSION PRESENTED IN THE DISSERTATION

The doctoral dissertation consists of an introduction, eight chapters dedicated to key issues related to the topic of the thesis, and conclusions.

The first chapter serves as an introduction to the issue of the institution of the restructuring advisor. It presents, from a legal-historical perspective, the essence of the analyzed institution. The temporal changes in regulations concerning the qualifications and conditions required from candidates for restructuring advisors are discussed, particularly focusing on the period before the institution's introduction, including examination changes. The criteria for appointing restructuring advisors to the roles of court supervisor, administrator, and bankruptcy trustee are also outlined, along with the introduction of the title of qualified restructuring advisor. Additionally, the supervision of the Minister of Justice over restructuring advisors is described. This chapter also considers the legal foundations for establishing a professional corporation for restructuring advisors and analyzes whether the profession of restructuring advisor can be classified as a profession of public trust under Article 17(1) of the Constitution of the Republic of Poland, as well as the future directions of this institution's development in the Polish legal system through the implementation of EU regulations.

The second chapter discusses key theories and concepts that serve as a reference point for further considerations aimed at determining the legal status of the restructuring advisor. A normative analysis of the concepts of “body” and “participant in proceedings,” “public official,” and “officer” was conducted to establish whether a restructuring advisor should be treated as a public official, officer, body, or participant in proceedings. This analysis also helped determine whether the restructuring advisor can be classified as a public or private law entity. The considerations undertaken in this chapter are complementary to the comparative test of research criteria applied in the subsequent chapters (III-VIII).

In the third chapter, the forms of appointment of restructuring advisors to the roles of arrangement supervisor, court supervisor, administrator, and bankruptcy trustee are discussed. The appointment of a restructuring advisor to these roles is one of the criteria used in the comparative test within the dogmatic legal method (*law in books*). In the context of this criterion, a comparative analysis of the functions of the restructuring advisor as arrangement supervisor, court supervisor, administrator, and bankruptcy trustee was conducted. The goal of this section of the dissertation was to determine how the appointment of the restructuring advisor to these roles in restructuring and bankruptcy proceedings shapes their legal status, including how the autonomy of the debtor’s decision in selecting the arrangement supervisor affects the restructuring advisor’s legal status.

The fourth chapter provides an analysis of the tasks and duties of the restructuring advisor, considering the differences arising from their roles in restructuring and bankruptcy proceedings, as well as the advisory activities performed by the restructuring advisor under Article 2(2) and (3) of the Restructuring Advisors Licensing Act. This area of analysis is another element of the comparative test employed through the dogmatic legal method (*law in books*). This chapter aims to answer questions, particularly to what extent the scope of duties defines the restructuring advisor’s status and how the performance of advisory tasks influences the determination of their legal status.

The fifth chapter analyzes the dogmatic legal aspects of the restructuring advisor’s remuneration, highlighting the differentiation in remuneration depending on the role performed in restructuring or bankruptcy proceedings, representing the next stage of the comparative test within the *law in books* analysis. The considerations in this chapter aim to determine how the principles and procedures for awarding remuneration to restructuring advisors influence the shaping of their legal status.

In the sixth chapter, using the dogmatic legal method (*law in books*), another criterion of the comparative test is analyzed, which pertains to the liability of the restructuring advisor depending on the role performed – arrangement supervisor, court supervisor, administrator, or

bankruptcy trustee. To this end, the types of liability of the restructuring advisor are discussed: civil, disciplinary, and criminal liability, as well as liability for damages caused by third parties, and the scope of liability for restructuring advisors who are legal entities. The requirement for restructuring advisors, regardless of their role in restructuring or bankruptcy proceedings, to have professional liability insurance is also described.

The seventh chapter examines the role of the restructuring advisor in court, administrative, administrative court, and arbitration proceedings. The procedural participation of the advisor in these proceedings constitutes another criterion subject to the comparative test using the dogmatic legal method (*law in books*).

In the eighth chapter, the results of the study concerning the legal status of the restructuring advisor are presented, reflecting the opinions expressed by individuals embodying the analyzed institution. In this chapter, empirical research (*law in action*) was conducted among restructuring advisors to achieve the goal of determining the legal status of the restructuring advisor in practice. The data collected in this way enabled a comparison of the conclusions obtained from the theoretical legal analysis conducted within the *law in books* test in Chapters III-VII with the conclusions from empirical research (*law in action*). As a result, final conclusions were formulated, and the research hypothesis was verified.

3. CONCLUSIONS

The conducted research provides the basis for drawing, among others, the following conclusions from the considerations presented in the dissertation:

1. **De lege lata conclusions:**

- The institution of the restructuring advisor, although it has been present in legal terminology only since January 1, 2016, is, in essence, an institution that has evolved over many years—primarily as the bankruptcy trustee.
- The normative analysis of the terms "body" and "participant in proceedings" has led to the conclusion that a restructuring advisor (performing a function in a particular restructuring or bankruptcy proceeding) can be referred to as an extrajudicial body of the proceedings.
- Considerations regarding whether a restructuring advisor should be treated as a public official or an officer lead to the conclusion that the advisor (while performing a function in a particular restructuring or bankruptcy proceeding) carries out public functions, which, as a rule, involve performing tasks on behalf of the state. However, it should be emphasized that the restructuring advisor, regardless of the role performed, does not possess authoritative powers in the strict sense of the word. The research has shown that entities conducting bankruptcy and restructuring proceedings exhibit certain characteristics typical of public officials. Despite the attributes typical of public functions, these entities also possess characteristics common to entities (service providers) operating within private-law legal relationships.
- The manner of appointing the restructuring advisor to a given function in restructuring and bankruptcy proceedings determines their legal status and highlights significant differences in the method of appointment. The court supervisor, administrator, and bankruptcy trustee, being appointed by the court, exhibit public-law characteristics through the lens of this criterion. The arrangement supervisor, on the other hand, is chosen entirely outside of the court’s cognizance, based on a civil-law contract, which gives them an autonomous and private-law nature and emphasizes their distinction from the other roles of the advisor appointed in restructuring and bankruptcy proceedings.

- The restructuring advisor, due to the scope and manner of performing activities in the roles of bankruptcy trustee, administrator, and supervisor (both court supervisor and arrangement supervisor) during restructuring and bankruptcy proceedings, operates within the public-law sphere. However, when performing advisory activities as a "restructuring specialist," they act as a private-law entity.
- The legal status of the restructuring advisor, determined by the legal nature of their remuneration, can be classified as that of a private-law entity. However, in relation to the court supervisor, administrator, and bankruptcy trustee, it also possesses public-law characteristics. The remuneration of the bankruptcy trustee, administrator, and court supervisor is strictly regulated by statutory provisions and is granted by court order, which emphasizes its procedural nature. This remuneration constitutes a cost of the respective restructuring or bankruptcy proceedings, covered by the participants of the proceedings or from the bankruptcy estate. In contrast, the remuneration of the arrangement supervisor is established based on the principle of freedom of contract between them and the debtor, providing greater flexibility, except in situations where the debtor is a micro-entrepreneur—in such cases, the provisions of the Restructuring Law apply.
- The rules of liability define the restructuring advisor as an entity with a complex legal status. They are seen as a participant in legal transactions, combining characteristics of both private and public law. Their financial liability is distinguished, having both a public-law character in relation to the restructuring court (except in cases where the restructuring advisor performs the role of arrangement supervisor) and a private-law character in relation to creditors and the debtor (the insolvent). This structure of liability differentiates the advisor from state officials, whose financial liability arises only in exceptional cases of gross violation of the law. Additionally, the legal status of the advisor varies depending on the role they perform, especially when comparing the arrangement supervisor to other roles in insolvency proceedings. The restructuring advisor's liability, which combines public-law elements towards the restructuring court and private-law elements towards harmed entities, contributes to the advisor's unique position as a private-law entity with public-law characteristics. Another distinction from officials is the requirement for the advisor to have mandatory civil liability insurance.
- The procedural legal status of the restructuring advisor in judicial, administrative, administrative-court, and arbitration proceedings is not uniform and is closely correlated with the role the advisor performs in a given restructuring or bankruptcy proceeding, as well as the specifics of those proceedings. When acting as an arrangement supervisor or court supervisor (appointed to perform duties in accelerated arrangement proceedings), the advisor resembles a procedural assistant to the debtor, with a statutorily defined scope of authority. On the other hand, the complexity of the court supervisor's role in arrangement proceedings indicates that the court supervisor functions more as an intermediary substitute rather than as the debtor’s procedural assistant.
- The legal status of the restructuring advisor is exceptionally complex. Within the framework of the advisor's institution, the advisor's roles in restructuring and bankruptcy proceedings (arrangement supervisor, court supervisor, administrator, bankruptcy trustee) are intertwined with the provision of restructuring advisory services. These legal issues are interdependent, causing some degree of overlap. Regardless of the dual nature of this institution, the restructuring advisor, when considered as a whole, is a private entity equipped with public-law prerogatives during restructuring and bankruptcy proceedings.

2) De lege ferenda conclusions:

- A return to selected regulations from 1998 regarding the qualifications of restructuring advisors. It would be advisable to reintroduce the requirement that a candidate for restructuring advisor should not appear in the register of persons banned from conducting business activities or from holding the position of a representative or proxy of an entrepreneur, a member of the supervisory board, or an audit committee in capital companies or cooperatives. Additionally, the requirement should be reintroduced that a candidate must not have been previously removed by a court due to improper performance of duties as a restructuring advisor. A return to these regulations under the current legal framework could help raise professional standards and provide greater protection for the interests of parties in restructuring and bankruptcy proceedings.
- Narrowing the range of higher education fields whose completion would entitle a person to apply for a restructuring advisor license to law, economics, and related fields such as finance and accounting or management.
- The creation of a professional association for restructuring advisors, which could serve as a valuable addition to the control system, bringing Polish regulations closer to EU requirements and ensuring fuller implementation of Article 27(1) of Directive 2019/1023. The task of such an organization would also include establishing and maintaining a system of disciplinary courts. The introduction of professional disciplinary courts could contribute to increasing trust in the profession and improving professional standards. The bodies of such a corporation could play a significant role, for example, in providing opinions on legal changes and other solutions related to insolvency.
- The introduction of a unified code of ethics for the profession of restructuring advisor – currently, existing associations of restructuring advisors are undertaking initiatives related to codifying the Code of Ethics for Restructuring Advisors. However, it should be noted that these entities do not meet the criteria of professional associations within the meaning of Article 17(1) of the Constitution of the Republic of Poland, as they were not established by the legislature, and membership in them is voluntary.
- The legislator should consider introducing a requirement for mandatory "restructuring advisor training" as a prerequisite for obtaining a restructuring advisor license. The organization of a training system for restructuring advisor candidates could follow a similar model to that used in the training of legal professionals such as attorneys, legal advisors, bailiffs, or notaries. However, regarding the training process, I would propose that the proportion of theory to practice should be reversed so that the future advisor is truly prepared to practice the profession independently, rather than just having theoretical knowledge of its functioning.

The presented de lege ferenda proposals may serve as a basis for further research and academic discourse on the advisability of introducing the discussed solutions and the scope of possible legal modifications.