

THE PHENOMENON OF BANKRUPTCY OF ENTERPRISES IN THE POLISH ECONOMY IN THE YEARS 2008-2015

ANDRZEJ TOKARSKI¹

Abstract

Bankruptcy and bankruptcy proceedings are an inherent phenomenon in the market economy, whose scope, size, dynamism, and intensity alter with the changes in the closer and further business environment, as well as in the global economy. The aim of this article is to analyze the phenomenon of the bankruptcy of enterprises in Poland in the years 2008-2015. In the paper, the formulated hypothesis suggests that in practice, contrary to the assumptions of insolvency proceedings, the bankruptcy and liquidation aspects dominated the remedial aspects, which were marginalized, and which resulted in the phenomenon of bankruptcy in the Polish economy in 2008-2015 being an unpredictable process and beyond the actual control of those interested the most: i.e. the insolvent entrepreneur and his creditors.

The methods used are descriptive analysis, literature analysis of the subject matter, analysis of legal regulations concerning the functioning of bankruptcy in Poland and analysis of statistics on the bankruptcy of enterprises in Poland in the years 2008-2015.

Keywords

Bankruptcy; the phenomenon of bankruptcy in the Polish economy models; bankruptcy in the Polish economy; dysfunctions of bankruptcy

JEL Classification: C22, G32, G33

1 Doctor of Economics, Associate Professor at the Faculty of Finance and Management, WSB University in Torun (Poland). The Author's research interests focus on issues related to the assessment of the financial and economic standing of the economic entity in danger of bankruptcy or when the continuity of the entity's economic activity is jeopardized in the free market economy. The author published or co-published over 100 publications in the scope of accountancy, financial analysis, and corporate finance. Contact email: andrzej.tokarski@wsb.torun.pl.

1 Introduction

The bankruptcy of enterprises constitutes a permanent phenomenon of the economic system of every country with the free market economy. In the paper, the formulated hypothesis suggests that in practice, contrary to the assumptions of insolvency proceedings, the bankruptcy and liquidation aspects dominated the remedial aspects, which were marginalized, and which resulted in the phenomenon of bankruptcy in the Polish economy in 2008-2015 being an unpredictable process and beyond the actual control of those interested the most: i.e. the insolvent entrepreneur and his creditors.

The bankruptcy is a fairly complex process of economic, psychological and social nature in its foundation and it produces results affecting various components of the economic life. In particular the results manifest as the loss of the financial means invested in a given enterprise by the shareholders and creditors, the possibility of a significant deterioration of the financial standing or the loss of the financial liquidity of other companies associated with the bankrupt entity (so-called “bankruptcy domino effect”), or as the frequent increase in the unemployment rate in the region if the bankrupt entity was the major employer there. The bankruptcy phenomenon also serves a significant role in the economy as it eliminates business entities which do not operate effectively and they are not capable of functioning properly in the competitive free market. It is of vital importance that the process of elimination of such business entities was conducted in a manner that ensures the containment of the “bankruptcy domino effect” and in a way that allows the investors to recover the invested financial means and re-invest them into the more commercially viable way. Thus, in most of the countries in the world, the bankruptcy law is legislated which regulates the bankruptcy processes of the business entities.

The phenomenon of bankruptcy is an indispensable component of any market economy and it may concern any business entity. Despite the fact that the binding political, economic and legal systems of a given country influence the level and the structure of the bankruptcy, it still is a common and ever-present phenomenon in the state economies. The developing globalization processes, as well as the internationalization of the economic activities, resulted in the increase of the dependencies and affiliations among enterprises, which consequently and frequently causes a chain of bankruptcy in countries economically dependent.

The issues of the bankruptcy of enterprises, due to their significance to the flow of economic processes, constitute a subject of numerous analyses indicating various dimensions of such an immensely complex phenomenon. Deliberations of *sensu stricto* legal nature referring to logic, interpretation, and evaluation of the past and present legal acts in force which define the criteria and the procedures of the

bankruptcy of enterprises comprise a clearly outlined stream of such analyses. The other common stream of analyses combines both legal and economic threads and finally there are analyses of a distinct economic approach. The combination of legal and economic threads is fully understandable as the phenomenon of bankruptcy is defined both in terms of law and economy and the consequences, both in their broad and economic sense, of the bankruptcy of the business entities, basically, result from legal resolutions applied in a given legislation. Deliberations concerning the criteria of the bankruptcy of enterprises as well as the benefits and drawbacks arising from the various methods of conducting the bankruptcy proceedings play an important role in that trend.

An interdisciplinary trend of deliberations focusing on the theoretical and empirical dimensions of the bankruptcy of enterprises has appeared in Polish literature relatively recently (Mączyńska, 2006). It has been introduced and intensively developed by a research unit led by Prof. E. Mączyńska from (SGH) Warsaw School of Economics (Babiarz-Mikulska, Czapracka, Morawska, 2012, as well as Mączyńska, 2015). The papers covering the scale, the causes and the socio-economic consequences of the bankruptcy of enterprises, both in their historical and spatial dimensions, also fall into the category of economic analyses. As far as Poland is concerned, the former of the aforementioned dimensions seems to be particularly interesting. However, the spatial aspect of bankruptcy is also of particular interest as it allows to compare the selected issues and problems related to the bankruptcy of enterprises on a regional and international scale, which in fact may also be combined with the former of the aforementioned aspects of bankruptcy.

The purposefulness of constant monitoring of the phenomenon of bankruptcy in a given economy of both enterprises and, currently to even higher extent, of households (so-called consumer bankruptcy), results from the fact that the efficient course of these processes constitutes an indispensable component of the effectively operating market economy. Thus, that is not coincidental that the statement was coined that capitalism without bankruptcy and insolvency is like Christianity without the notion of hell. Nowadays, that statement may frequently be also applied to countries as well (Adamska, Mączyńska, 2013).

The main aim of the paper is to analyze the phenomenon of the bankruptcy of enterprises in Poland in the years 2008-2015. The following methods were used in the paper: the descriptive analysis, the analysis of the source literature, the analysis of the legal regulations concerning the functioning of the bankruptcy in Poland as well as the analysis of the statistics data on the bankruptcy of enterprises in Poland in the years 2008-2015.

2 Overview of Source Literature

The issues of the bankruptcy of enterprises constitute a significant area of empirical studies, as numerous research papers prove. There have been many empirical and theoretical research studies conducted in the field of bankruptcy and insolvency of the business entities throughout decades as well as in different countries and different branches of economy, which leads to various conclusions. The research on bankruptcy was conducted with consideration of several areas and various approaches (Hart, 2000; Wang, 2006).

According to Wang (2006), the scientific research on the phenomenon of bankruptcy focus on four main areas:

- the changes concerning the corporate governance in the menace of bankruptcy (e.g. White, 1989; Gilson, 1990; Franks and Sussman, 1999, Eckbo et al.: 2003);
- the costs of bankruptcy (e.g. Altman, 1984, Bris, Welch, Zhu, 2006);
- the prices of shares and the long-term results (e.g. Gilson, Kose, Lang, 1990; Hotchkiss, 1995; Gilson, 1997; Altman, Eberhart, Aggarwal, 1999);
- the changes in the legal regulations concerning bankruptcy (e.g. Eberhart, More, Roenfeldt, 1990; Aghion, Routledge, Gadenne, 2000).

Many of the research studies focused on the forecast of the bankruptcy of the enterprises (e.g. Beaver, 1966, 1968; Altman, 1968; Ohlson, 1980; Campbell, 1996; Beaver et al.: 2005; Bernhardsen, 2005).

Relatively recently there has been in the Polish literature an interdisciplinary trend of deliberations focused on the analysis of the theoretical and empirical characteristics of the bankruptcy of enterprises. It has been introduced and comprehensively developed by a team of researchers led by E. Mączyńska (Mączyńska, 2005; Mączyńska, Kuciński, 2008; Mączyńska, 2008; Mączyńska, 2009; Mączyńska, 2010; Mączyńska, 2013; Mączyńska, Adamska, 2013; Mączyńska, 2014; Mączyńska, 2015, Mączyńska, Morawska, 2015; Babiarsz-Mikulska, Czapracka, Morawska, 2012; Morawska, 2011; Morawska, 2013) who is the head of the Institute of the Bankruptcy of Enterprises at Warsaw School of Economics (SGH). The papers focusing on the phenomenon, the causes and the socio-economic consequences of the bankruptcy of enterprises, both in their historical and spatial terms, also fall into the category of the economic mainstream of analyses.

3 Basic Models of the Bankruptcy System in the Economy – Theoretical Approach

Every country enjoys the freedom of choice concerning their model of the institution of bankruptcy. Three basic models of proceedings with the insolvent debtor were formed in the course of the development of the bankruptcy law (Druga szansa dla przedsiębiorców. Raport z badań, 2011: 52).

- Model A – the liquidation model which is historically the oldest and which states that the enterprise of the insolvent debtor should be liquidated and its assets should be divided among creditors. Such proceedings are called the general execution and they function mainly as means of sorting out the reciprocal relations among the creditors during the distribution of assets. Within that model, we should single out the bankruptcy of criminal nature (i.e. we should eliminate those entrepreneurs who are guilty of causing the insolvency purposefully and they did not file for bankruptcy on time) from the bankruptcy liquidation proceedings conducted properly by the entrepreneurs who in fact failed in the free market economy.
- Model B – the arrangement proceedings model was formed within the bankruptcy law when it turned out that liquidation of the debtor's assets is not always the most favorable to the creditors. The model involves the provision of proper conditions to form an arrangement between the debtor and the creditors in which the latter constrict their claims so that to enable the debtor to carry on with their enterprise. The law enforcement in the model ensures the effectiveness of the arrangement, which was reached by the majority of votes, also towards those creditors who voted against it. In that case, the economic burden of the entrepreneur's re-birth falls on the creditors. However, the foreseeable advantage of the satisfaction of claims within the arrangement over the conceivable liquidation of the assets constitutes the main criteria considered before the arrangement is allowed.
- Model C – the protective model where the law enforcement is used to temporarily suspend the creditors' rights to arrogate claims in order to enable the debtor to reorganize their enterprise. That mechanism is widely popular in the USA, where it is known as "Chapter 11" (the name derives from the 11th Chapter of the United States Bankruptcy Code), but in Poland, some of its functions are with some difficulty implemented in the reorganization proceedings.

The aforementioned models are merely theoretical in their nature and they put in order the highly differentiated legislative approach in various countries towards the issue of insolvency for the purpose of analysis. In practice, there are procedures

in every jurisdiction that might fall into all three models. The general approach of the law-makers towards the goals which the bankruptcy law shall fulfill makes the difference and it affects the predominance of one of the models over the others in a given legal system so that it is perceived as “more pro-arrangement” or “pre-liquidation” in its nature.

The way we treat the creditors and the debtors as well as how many rights they both enjoy is the main criterion which mostly differentiates the particular models of the bankruptcy proceedings. From that point of view, we may enumerate: (Morawska, 2013: 22)

- the pro-creditor or debt-friendly model;
- the pro-debtor or equity-friendly model;
- the hybrid model.

In the pro-debtor model, the reorganization takes precedence over the liquidation more often. In those systems, the creditors are allegedly treated worse than the debtor and the people who manage the insolvent business unit are left in charge after the bankruptcy have been declared more often than in the pro-creditor systems. That fact results from the assumption that the managers already know the troubled enterprise inside out and they shall be left in charge. The social issues, i.e. keeping the jobs, also play a significant role in that approach (Prusak, 2011: 120).

In the model favorable to creditors the best possible protection for the creditors is the priority. The managers in charge of the insolvent enterprise are given a sack due to the fact that they are blamed for the financial troubles and the liquidation of the enterprise since the reorganization does not bring any tangible results and the troubled enterprise having once undergone the restructuring often re-enters the path of reorganization or liquidation, which in turns generates additional high costs. The other differences comprise settling the possible decision making on accepting or rejecting the reorganization plan, the creditors’ votes over the plan as well as the so-called “automatic stay”, which involves for example lack of penalty interest or the suspension of the execution of the court judgment etc. as a result of bankruptcy being declared. In that system, the mutual agreements are commonly ignored as they favor one of the creditors at the expense of others. On the other hand, the system supports the creation of the so-called groups of privileged claims, which in fact infringes the division of the claims that had been established before the bankruptcy was declared.

Nowadays, the hybrid model is the dominant one in the world, however, there are also countries which systems resemble more one or the other of the above-mentioned models. For instance, according to R.R. Bliss countries such as Great Britain, Germany, Italy, China, Japan as well as countries within the British

Commonwealth apply the pro-creditor models, whereas countries such as Spain, countries of Latin America, the Middle East or African countries apply the pro-debtor models. Countries such as the USA, Canada, and France apply the hybrid models (Bliss, 2003: 4-5). However, G. Recasens perceives that division slightly differently as he claims that countries such as Canada, Great Britain, and Sweden apply the pro-creditor model whereas countries such as the USA and France apply the pro-debtor model. The differences might result from the alterations that occur in the legal systems of the particular countries. For instance, Canada introduced the more pro-debtor model in the recent years. As exemplified by the USA and Great Britain it is noticeable that the thesis that the source of the law influences the treatment of the debtor and the creditors is fallible. Although the bankruptcy law in the USA is derived from the bankruptcy law of Great Britain, nowadays different features characterize both systems, i.e. the American model is more pro-debtor and the British one favors the creditors more.

4 Basic Models of the Bankruptcy System in the Polish Economy in the Years 2003-2015

The Polish model is significantly restricted in regard to both the criteria of the commencement of the proceedings as well as the duration of the proceedings. The legislator's cautious approach who focuses on the protection of the interests of the creditors rather than safeguarding the improvement of the economic effectiveness of the debtor clearly defines the Polish model. Nonetheless, the applied mechanisms show the potential to be modified in such a way that allows for a wider application of the mechanism in the business practice.

The current Polish model of the Bankruptcy Law and Reorganisation Law combines the solutions typical for the Model A (i.e. liquidation one) with the solutions used in the Model B (i.e. the arrangement one). The recovery proceedings might indicate the use of the Model C (the protective one) albeit they contain merely the rudimentary regulations of that model and thus should be treated as a subtype of the Model B – the arrangement one (Druga szansa dla przedsiębiorców. Raport z badań, 2011: 55).

It is worth mentioning that the Polish legislator gave the pursuance to satisfy the claims of the creditors the priority in the bankruptcy regulations. That rule, which is often referred to as the optimization rule, involves both the bankruptcy and the reorganisation proceedings (Morawska, Czarpacka, 2009: 135) In compliance with the grounds of the Act as of 28 February 2003 – The Bankruptcy and Reorganisation Law states that “it is in the public interest as not to allow to arise (...) the chain of bankruptcy. Therefore, any insolvency of any entrepreneur shall as soon as possible

lead to the commencement of the bankruptcy proceedings which would enable the fastest possible satisfaction of the creditors from the assets of the insolvent debtor” (Prawo sprzyjające realizacji Polityki II szansy w Polsce. Rekomendacje zmian, 2011:10-11).

The liquidation bankruptcy is declared by the court when there are no grounds to declare the arrangement bankruptcy. Then, the trustee in bankruptcy becomes in charge of the assets of the bankrupt business and he is responsible for the sale of these assets in order to satisfy the creditors’ claims from the money he gained (Gurgul, 2010: 65-6).

The arrangement bankruptcy is declared by the court when there is a “chance” to save the enterprise or, to put it precisely, when there is greater likelihood that in the course of the arrangement the creditors will be satisfied to a higher extent than they would be satisfied in the course of the bankruptcy proceedings involving the liquidation of the assets of the debtor. The name is derived from the arrangement that is made or the particular legal transaction which concludes the proceedings. Under the arrangement, the creditors restrict their claims but in exchange, they expect that their claims will be satisfied i.e. the satisfaction of their claims will not be put in question. There are two types of the arrangement bankruptcy (Świboda, 2003: 41-42).

- the one combined with the divestment of the management of the whole or part of the assets so that the insolvency administrator is in charge of the enterprise;
- the one not combined with the divestment of the management of the whole or part of the assets so that the judicial supervisor is in charge of the enterprises.

The declaration of the bankruptcy with the possibility to enter into the arrangement requires the following premises to be fulfilled cumulatively: the positive one, when it is assumed that the likelihood of satisfying the creditors in that kind of the proceedings is higher rather than in the proceedings involving the liquidation of the assets if the bankrupt enterprise, and the negative one, which concerns the lack of the unreliable behaviour on the part of the debtor both before filing for the bankruptcy and during the proceedings to secure the claims as well as during the preliminary creditors’ assembly. The general advantage of the arrangement model is that it is possible to maintain some of the debtor’s assets (enterprise) while satisfying the creditors’ claims. Thus, that model is the most favorable to the debtor.

The separate recovery proceeding is another legal solution which in theory enables to avert the danger of insolvency and bankruptcy (Nibieszczęńska, 2013: 332). That kind of proceeding is a non-judicial procedure in its nature. Its main goal is to restructure the bankrupt-to-be and to restore the enterprise’s capabilities to operate on the market once again.

That goal should be implemented by enabling the entrepreneur to present his recovery plan and through concluding the agreement between him and the creditors on restructuring his obligations. Only the entrepreneur who pays his liabilities (with the exception of the situation when does not pay them but the amount past due does not exceed 10% of the balance sheet value of the enterprise) may utilize the recovery proceedings and the cancelation of debt once he foresees the forthcoming insolvency of his enterprise.

So far, the current practice of the application of the regulations of the recovery proceedings, in particular those involving the admissibility of the commencement of the recovery proceedings, shows that the regulation in its current shape is almost “a defunct law” which does not have a wider application (Morawska, Czarpacka, 2013: 228). The binding regulations hinder the implementation of the recovery proceedings in case of an entrepreneur who suffers from financial problems, despite the fact that his general financial standing indicates the high likelihood of preventing his enterprise from declaring the bankruptcy. The implementation of the recovery plan is albeit impossible in case of an insolvent entrepreneur (within the meaning of the law – The Bankruptcy and Reorganisation Law) who “overlooked” the right moment to undertake the restructuring steps and the first symptoms of his insolvency have already appeared. Thus, the recovery proceedings are not much an attractive and effective way to solve problems of the insolvent entrepreneur.

5 Number (Scale) of Bankruptcies of Enterprises in Poland in Years 200-2015

The scale of the bankruptcy phenomena and the fact that the efficiency of the bankruptcy proceedings is taken into consideration while assessing the effectiveness of the national economies prove that the significance of the bankruptcy in the modern economy is on the increase. Even though bankruptcy is not a mass phenomenon, it occurs frequently enough so that it cannot be deemed as irrelevant (Mazurek, 2013: 60). The statistics concerning the bankruptcy gives evidence to the significant scale of that phenomenon. In Polish economic literature on the subject, the scale of the bankruptcy is most commonly illustrated with the number of the declared bankruptcies announced by the Polish Commercial Court of Law in a given year (Mazurek, 2013: 204). In Poland, the intricacies of the statistics are correlated with the gaps in the statistical system. The Central Statistical Office does not publish any comprehensive bankruptcy statistics. In that case, the Ministry of Justice and courts may constitute a good but scattered and hard to reach the source of information (Maćzyńska, Morawska, 2015: 9).

Table 1 Number of Bankruptcies of Enterprises in Poland in years 2000-2015

no.	Type of the bankruptcy	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
1.	Liquidation	960	1180	1449	1150	889	637	480	377	348	572	538	620	711	718	701	649
2.	Negotiated	329	494	414	611	227	156	96	70	63	119	117	103	166	165	122	101
3.	Total (1+2)	1289	1674	1863	1761	1116	793	576	447	411	691	655	723	877	888	807	750

Source: Department of Statistics and Information, Management Department of Strategy and European Funds Ministry of Justice – financial statement Ministry of Justice Bankruptcies Report since 2003.

Table 2 Types of Bankruptcies in Poland in years 2000-2015 Expressed in Percentage Form

no.	Type of the bankruptcy	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014	2015
1.	Liquidation	74	70	78	65	79	80	83	84	85	83	82	86	81	81	87	86
2.	Negotiated	26	30	12	35	11	20	17	16	15	17	18	14	19	19	13	14
3.	Total (1+2)	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100	100

Source: Own elaboration.

In the years 2000-2015 there were 15.358 cases of the bankruptcy of enterprises in total. In the period in question, we may differentiate three particular sub-periods which varied in terms of their direction and the dynamics of the changes in the bankruptcy of enterprise phenomenon. The first sub-period covers the years 2000-2002 when the bankruptcy phenomenon was on the particular increase. In the first three years of the analyzed period, there were 4826 bankruptcies declared in total, which accounts for 31.42% of the bankruptcies for the whole 2000-2013 period. From 2003 until 2008 the number of the bankruptcies was on the steady decrease, reaching the levels of 1761 (in 2003) and 411 (in 2008), and the pace of the decrease during that period was much faster than in the one associated with the dynamic increase of the phenomenon. The third sub-period saw the reversion to the increase of the bankruptcy number. After the year 2008, there were 5391 bankruptcies in the domestic economy declared (years 2009-2015). However, despite the international crisis, the dynamics of the phenomenon was not so strong in relation to the years 2000-2002. Nonetheless, it marked out a distinct and consistent upward trend.

In order to present the full picture of the shaping of the issue of the bankruptcy of enterprises in Poland J. Wojnar conducted an analysis of the intensity of the phenomenon in relation to the total number of businesses operating in the economy in the years 2004-2013 (Wojnar, 2014: 73). The procedure of the calculation of the indicator of the bankruptcy intensity takes into consideration all businesses that have the capability to declare bankruptcy. Natural persons conducting business activities were also taken into account, which may cause doubts to some extent. However, such a situation took place due to the fact that natural persons conducting business activities are in majority of all ownership structure of the enterprises and as a result, that group of businesses is of crucial significance for the value of the indicator. On the other hand, the bankruptcy of these entities occurs occasionally in the jurisprudence due to the fact that they have relatively small assets at their disposal and thus being unable to satisfy the presumptive liabilities towards creditors from the bankruptcy estate. So, it is justified to make calculations of the indicator with particular consideration given to the above-mentioned group of businesses. What is more, it is crucial from the point of view of the generally applicable law in Poland which clearly stipulates that such entities are fully capable of declaring bankruptcy. However, it must not be forgotten that in case of disregarding of the natural persons conducting business activities while calculating the indicator of the bankruptcy intensity, it would have caused a significant increase in the indicator's value. In view of the availability of the empirical data, the indicator of the bankruptcy intensity has only been analyzed since 2004.

Table 3 Intensity of Bankruptcy in Poland per 10000 Registered Businesses in years 2004-2013

Year	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013
Intensity indicator	3.12	2.19	1.58	1.21	1.09	1.85	1.68	1.87	2.21	2.17

Source: *Wojnar, 2014.*

When we analyze the values of the indicators in the table, one may come to the conclusion that in 2004 the intensity of the bankruptcy was at its peak i.e. there were 3 cases of bankruptcy proceedings per 10,000 running businesses. It is worth highlighting that the indicator in question underwent positive changes until the year 2008 when the number of the bankruptcy proceedings was at its lowest point. Over the next few years, the values of the indicator were consistently on the increase while in 2013 we noted a slight dip. That confirms the previously suggested downward trend as well as a favorable phenomenon in the analysis of the bankruptcy of Polish enterprises.

It is worth mentioning that within the conducted bankruptcy proceedings liquidation predominates and it involves the sale of the assets of the insolvent entrepreneur and satisfying the claims of the creditors with the money gained on the sale of the bankruptcy estate. The liquidation type of bankruptcy fluctuated between 70-87% in relation to the total structure of the bankruptcy proceedings for the period in question.

The negotiated type of bankruptcy, which grants the enterprise an opportunity for restructuring, accounted for 11-30% of all the bankruptcy proceedings. This unfavorable proportion might be changed by the new Act on Restructuring Law in the year 2015 which becomes effective as of 1 January 2016 and which regulates both the way the insolvent debtor, or the one in jeopardy of insolvency, enters a settlement with the creditors and the effects of such a settlement. The Act also regulates the recovery procedures.

Pursuant to Art. 2 of the aforementioned Act, the restructuring can be conducted in the following four proceedings i.e. the proceedings on the approval of the arrangement, the accelerated arrangement proceedings, arrangement proceedings and recovery proceedings. Thus, the main goal of the Act is to restrict the number of declared bankruptcies to the benefit of the increase of the recovery and reformatory procedures in the enterprises (Act on Restructuring Law, 2016: 104).

6 Dysfunctions of the Bankruptcy System in Poland in the Years 2000-2015

The model of the bankruptcy proceedings which functions in Poland does not fulfill its major goal i.e. the elimination of the unprofitable entrepreneurs. Thus, the model does not perform its preventive function – it does not preclude further insolvencies, which happen in the aftermath of the unpaid liabilities by the debtor (Babiarz-Mikulska, Czarpacka, Morawska, 2012: 11). The degree to which the creditors are satisfied in the course of the conducted bankruptcy proceeding, including the liquidation of the bankrupt's assets, is minimal. Consequently, the functioning model does not perform its debt recovery function. The cost of the bankruptcy proceedings exceed 40% of the bankruptcy estate and the average time of the proceedings, counted from the moment the petition for bankruptcy is filed to the moment the bankruptcy is declared, is two years (Masiukiewicz, Morawska, 2012: 45). Therefore, from the point of view of the creditors the bankruptcy proceedings prove ineffective. They freeze the funds and the capital for the period of two years and they do not ensure their quick relocation. Furthermore, they do not perform their debt removal function as well.

The restrictive and pro-creditor model of the bankruptcy proceedings does not develop among the entrepreneurs patterns of behaviour, which might be defined as the reliable entrepreneur attitude (the preventive function), because it does not take into consideration the fact that its recipients are economically rational (lat. *homo economicus*) units which calculate both the risk and time of the proceedings as well as their costs (Morawska, 2013: 58). The repressive system of the bankruptcy law that was in force in the years 2003-2015 along with the stigma of failure results in the fact that entrepreneurs conceal their financial problems so long as it is impossible to solve them. Many entrepreneurs are deficient in the necessary means and experience for the effective solution of the crisis situation. Both proper framework conditions and the flexible regulations as well as well-developed institutional structures are crucial for the utilization of the full potential of the entrepreneurs and making the reorganization of their debt easier. Apart from the normative system the efficient and effective judicature also constitutes another condition which makes the prosecution of any pathology more efficient.

On the basis of the conducted research, E. Mączyńska shows that the Bankruptcy Law and the Reorganisation Law in the Polish economy in the years 2003-2015 (Mączyńska, 2011: 335):

- did not guarantee any transparency or efficiency of the bankruptcy proceedings;

- did not perform their purging functions i.e. removing the insolvent entities from the market;
- did not prevent to the proper extent the so-called “staged” bankruptcies i.e. the ones which were oriented on bringing benefits to the narrow groups of stakeholders while purposefully infringing the interests of other creditors,
- did not conduce to the proper identification of the “staged” bankruptcies;
- they brought about the dominance of the bankruptcy aspects over the recovery aspects which in practice were marginalized against the principles of the bankruptcy proceedings (Mączyńska, 2009: 276).

7 Conclusions

Bankruptcy is one of the most significant phenomena of the free market economy. If it is properly constructed in terms of law and properly implemented by the appropriate institutions that guarantee both the effective protection of the creditors and an efficient allocation of the capital goods. Polish legislators determined that the settlement of any disputable conflict of interests between the debtor and his creditors concerning insolvency issues shall be reached during single judicial proceedings (Tokarski, 2015: 246).

The bankruptcy of the enterprises constitutes an indispensable mechanism of the free market economy in the selection process of the ineffective business entities. In that sense the bankruptcy of enterprises may be deemed positive and necessary, however, it does not mean that bankruptcy does not entail numerous drawbacks as well. Therefore, it is not the phenomenon of bankruptcy that constitutes the core of the problem but the methods of the widely understood institutional background upon which depends the character, the effectiveness and the extent of both positive and negative consequences for any party involved (i.e. stakeholders, participants) in the bankruptcy processes (Tokarski, Matuszak, 2016: 204). Due to the fact that the global economy has been undergoing turbulent changes recently, which has also influenced both the national and regional economies, the significance of the issues of bankruptcy and insolvency shall not be underestimated (Mączyńska, Morawska, 2015: 25-26).

In the free market economy bankruptcy is not a phenomenon of only pathological nature. It serves both as a safeguard of the particular interests of the entities involved in the economic relations and as a provision of security of the economic trade by means of the elimination of the weak and inefficient business entities from the market (Hrycaj, 2006: 1).

The Polish law on the bankruptcy of enterprises was highly imperfect in the years 2000-2015. As a result, the liquidation of the enterprises according to the letter of law was basically “the euthanasia of the curable”. In many Western European countries, but not only there, the legal regulations were distinctly aimed at the saving of the enterprises which, for various reasons that were frequently beyond their control, fell into financial difficulties and faced the menace of liquidation.

The bankruptcy in the Polish economy in the years 2008-2015 was often an unpredictable process which was beyond any factual control of those closely involved i.e. the insolvent entrepreneur and his creditors. Creditors who also enjoy the right to file for the bankruptcy frequently do not take action for similar reasons. They may become discouraged by the binding regulations of the Polish Bankruptcy Law such as the little control they may exert as well as few opportunities of influence on the whole process (for instance lack of the opportunity to really influence both the choice, the remuneration and the actions of the trustee in bankruptcy).

References

- Altman, E.I.: Financial Ratios, Discriminant Analysis, and Prediction of Corporate Bankruptcy, *Journal of Finance* no. 3 (1968).
- Altman, E.I.: A further empirical investigation of the bankruptcy cost question, *Journal of Finance* no. 39 (1984).
- Altman, E.I. et al.: The Equity Performance of Firms Emerging from Bankruptcy, *Journal of Finance* no. 54 (1999).
- Aghion, P. et al.: The Economics of Bankruptcy Reform, *Journal of Law, Economics and Organization* no. 8 (1992).
- Aghion, P. et al.: Insolvency Reform in the UK: A Revised Proposal, *Insolvency Law & Practice* no. 11 (1995).
- Babiarz-Mikulska, K. et al.: Ocena efektywności procedur upadłościowych wobec przedsiębiorców. Aspekty prawne, ekonomiczne i organizacyjne (The assessment of the effectiveness of the bankruptcy procedures towards entrepreneurs. Its legal, economic and organisational aspects), Warszawa: Difin, 2012.
- Bernhardsen, E.: A Model of Bankruptcy Prediction, Working Paper, Oslo, Norges Bank (2005).
- Beaver, W.H.: Financial Ratios as Predictors of Failures in Empirical Research in Accounting, Selected Studies, supplement to the *Journal of Accounting Research*, Autumn (1966).
- Beaver, W.H.: Market prices, financial ratios, and the prediction of failure, *Journal of Accounting Research* no. 6 (1968).
- Beaver, W.H. et al.: Have Financial Statements Become Less Informative? Evidence from the Ability of Financial Ratios to Predict Bankruptcy, *Review of Accounting Studies* no. 10 (2005).

- Bliss, R.R.: Bankruptcy Law and Large Complex Financial Organization: A Primer Economic Perspectives, Federal Reserve Bank of Chicago no. 10 (2003).
- Bris, A. et al.: The Cost of Bankruptcy: Chapter 7 Liquidation Versus Chapter 11 Renegotiation, Journal of Finance no. 56 (2006).
- Campbell, S.V.: Predicting the bankruptcy decision. Accounting Horizons no. 10 (1996).
- Dec, P.: Demografia przedsiębiorstw – analiza ilościowa upadłości w Polsce i na świecie (Demography of enterprises – the quantitative analysis of bankruptcies in Poland and across the world), *Ekonomika i Organizacja Przedsiębiorstw (Economics and Organisation of Enterprises)* no. 1 (2016).
- Druga szansa dla przedsiębiorców. Raport z badań (The Second Chance for the Entrepreneurs. The Research Report), Warszawa: PARP, 2011.
- Eberhart, A.C. et al.: Security pricing and deviations from absolute priority rule in bankruptcy proceedings, Journal of Finance no. 45 (1990)
- Eckbo, B.E. et al.: Control benefits and CEO discipline in automatic bankruptcy auctions, Journal of Financial Economics no. 69 (2003).
- Franks, J. et al.: Financial Innovations and Corporate Insolvency, Mimeo: London Business School, 1999.
- Gilson, S.C.: Bankruptcy, Boards, Banks, and Blockholders: Evidence on Changes in Corporate Ownership and Control When Firms Default, Journal of Financial Economics no. 26 (1990).
- Gilson, S.C.: Transactions Costs and Capital Structure Choice: Evidence from Financially Distressed Firms, Journal of Finance no. 52 (1997).
- Gilson, S.C. et al.: Troubled Debt Restructurings: An Empirical Analysis of Private Reorganization of Firms in Default, Journal of Financial Economics no. 26 (1990).
- Gurgul, S.: Prawo upadłościowe i naprawcze – komentarz (The bankruptcy and Recovery Laws – commentaries), Warszawa: C.H. Beck, 2010.
- Hart, O.: Different Approaches to Bankruptcy, Harvard Institute of Economic Research, Discussion Paper no. 1903 (2000).
- Hrycaj, A.: Syndyk masy upadłości (The bankruptcy trustee), Poznań: Wyższa Szkoła Komunikacji i Zarządzania, 2006.
- Masiukiewicz, P. et al.: Koncepcja poprawy efektywności upadłości (The concept of the improvement of the bankruptcy effectiveness), *Kwartalnik Nauk o Przedsiębiorstwie (The Enterprise Sciences Quarterly)* no. 2 (2012).
- Mazurek, S.: Niewypłacalność i jej ustalanie (Insolvency and its assessment), Szczecin, 2013.
- Mazurek, S.: Statystyka upadłości (podmiotów biznesowych) (The statistics of bankruptcy of the business entities), *Zeszyty Naukowe Uniwersytetu Szczecińskiego, Finanse, Rynki Finansowe, Ubezpieczenia (The Scientific Journals of the University of Szczecin – Finances, Markets and Insurance)* no. 5 (2013).

- Mączyńska, E.: Bankructwa przedsiębiorstw a nadzór właścicielski (The bankruptcy of enterprises and the owners' supervision), in: Mączyńska, E.: Cykle życia i bankructwa przedsiębiorstw (The cycle of life and bankruptcy of the enterprises), Warszawa: SGH, 2011.
- Mączyńska, E.: Bankructwa przedsiębiorstw jako niedostosowanie do przyszłości. Analiza w kontekście funkcjonowania sądów gospodarczych (The bankruptcy of the enterprises as the symptom of incompatibility with the future. The analysis in respect to the functioning of the Commercial Courts), in: Finanse 2009 – teoria i praktyka (Finances of 2009 – theory and practice), Szczecin: Uniwersytet Szczeciński, 2009.
- Mączyńska, E.: Bankructwa przedsiębiorstw wybrane aspekty ekonomiczne i prawne (The bankruptcy of enterprises and its selected economic and legal aspects), Warszawa: SGH, 2014.
- Mączyńska, E. et al.: Bankructwa przedsiębiorstw. Wybrane aspekty instytucjonalne (The bankruptcy of enterprises and its institutional aspects), Warszawa: SGH, 2008.
- Mączyńska, E.: Bankructwa, upadłości i procesy naprawcze przedsiębiorstw. Wybrane aspekty regulacyjne (The bankruptcy, insolvency and recovery of enterprises. Selected regulatory aspects), Warszawa: SGH, 2015.
- Mączyńska, E. et al.: Cykle życia i bankructwa przedsiębiorstw (The cycle of life and bankruptcy of enterprises), Warszawa: SGH, 2010.
- Mączyńska, E. et al.: Efektywność procedur upadłościowych. Bankructwa przedsiębiorstw katharsis i nowa szansa (The Effectiveness of the bankruptcy proceedings. The bankruptcy of the enterprises, catharsis and the new chance), Warszawa: SGH, 2015.
- Mączyńska, E. et al.: Ekonomiczne aspekty upadłości przedsiębiorstw w Polsce (The economic aspects of the bankruptcy of the enterprises in Poland), Warszawa: SGH, 2005.
- Mączyńska, E. et al.: Meandry upadłości przedsiębiorstw (The intricacies of the bankruptcy of enterprises), Warszawa: SGH, 2009.
- Mączyńska, E. et al.: Procesy upadłościowe i naprawcze w Polsce na tle doświadczeń Unii Europejskiej (The bankruptcy and recovery processes in Poland in comparison to the European Union), Warszawa: SGH, 2013.
- Mączyńska, E. et al.: Upadłości, bankructwa i naprawa przedsiębiorstw. Wybrane zagadnienia (The insolvency, bankruptcy and recovery of enterprises. Selected issues), Warszawa: SGH, 2013.
- Mączyńska, E.: Upadłość przedsiębiorstw (The bankruptcy of the enterprises), *Kwartalnik Nauk o Przedsiębiorstwie (The Science of Enterprises Quarterly)* no. 1 (2006).
- Mączyńska, E. et al.: Zagrożenie upadłością (The Menace of Bankruptcy), Warszawa: SGH, 2008.
- Morawska, S.: Efektywność oraz skuteczność postępowań upadłościowych na tle praktyki sądowej – perspektywa wierzycieli (The effectiveness and efficiency of the bankruptcy proceedings with regard to the court practices – the creditors viewpoint), *Biuletyn PTE (PTE Bulletin)* no. 1 (2013).
- Morawska, S.: Instytucja upadłości a odpowiedzialność menedżerów – badanie polskiej praktyki sądowej na tle rozwiązań w krajach Unii Europejskiej (The bankruptcy and the managerial accountability – the Polish courts practices in comparison to the EU solutions), in: Mączyńska, E.: Procesy upadłościowe i naprawcze w Polsce na tle doświadczeń Unii Europejskiej (The

- bankruptcy and recovery proceedings in Poland in comparison to the European Union), Warszawa: SGH, 2013.
- Morawska, S. et al.: Praktyka stosowania prawa upadłościowego a cele regulacji (The application of the bankruptcy law and the aims of its regulation), in: Mączyńska, E.: Meandry upadłości przedsiębiorstw (The intricacies of the bankruptcy of enterprises), Warszawa: SGH, 2009.
- Morawska, S.: Przedsiębiorca w obliczu upadłości (An entrepreneur in the face of bankruptcy), Warszawa: SGH, 2013.
- Nibieszkańska, W.: Postępowanie naprawcze oraz upadłościowe w ograniczaniu negatywnych skutków kryzysu przedsiębiorstwa (The recovery and bankruptcy proceedings as means of appeasing the negative consequences of the crisis), in: Adamska, A., Mączyńska, E. (eds.): Upadłości, bankructwa i naprawa przedsiębiorstw (Insolvency, bankruptcy and recovery of the enterprises), Warszawa: SGH, 2013.
- Ohlson, J.A.: Financial ratios and the probabilistic prediction of bankruptcy, *Journal of Accounting Research* no. 1 (1980).
- Prawo sprzyjające realizacji Polityki II szansy w Polsce. Rekomendacje zmian (The law favorable towards the implementation of the Second Chance Policy in Poland. The recommendation of changes), Warszawa: PARP, 2011.
- Prusak, B.: Ekonomiczna analiza upadłości przedsiębiorstw. Ujęcie międzynarodowe (The economic analysis of the bankruptcy of enterprises. The international approach), Warszawa: CeDeWu, 2011.
- Routledge, J. et al.: Financial Distress, Reorganization and Corporate Performance, *Journal of Accounting and Finance* no. 40 (2000).
- Świąboda, Z.: Prawo upadłościowe i naprawcze. Komentarz (The bankruptcy and recovery laws. Commentaries), Warszawa: Lexis Nexis, 2003.
- Tokarski, A.: Kierunki ewolucji systemu upadłościowego w Polsce (The directions of the development of the bankruptcy system in Poland), *Przedsiębiorczość a edukacja (The entrepreneurship and education)* no. 11 (2015).
- Tokarski, A. et al.: Upadłość jako instytucja gospodarki rynkowej (The bankruptcy as a free market economy tool), *Przedsiębiorczość a edukacja (The entrepreneurship and education)* no. 12 (2016).
- Wang, C.: Law and Bankruptcy: An International Comparison of Liquidation and Reorganization, *Asian Financial Association / Financial Management Association, Annual Conference Proceedings*, New Zealand: Auckland, 2006.
- White, M.: The Corporate Bankruptcy Decision, *Journal of Economic Perspectives*, no. 2 (1989).
- Wojnar, J.: Zjawisko upadłości przedsiębiorstw w Polsce – tempo zmian i tendencje (The phenomenon of bankruptcy of enterprises in Poland – the pace of changes and tendencies), *Przedsiębiorstwo i Finanse (The enterprises and Finances)* no. 4 (2014).
- PL: Act of 23 February 2003 on, the Bankruptcy and Restructuring Laws.
- PL: Act of 15 May 2015, on the Restructuring Law.