

FINANCIAL STATEMENT AS A BASIS FOR ESTABLISHING THE “REASONABLE TIME” FOR SUBMITTING A BANKRUPTCY PETITION OF LIMITED LIABILITY COMPANIES IN POLAND

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Abstract

Background and Objective: The Bankruptcy Law defines the debtor’s insolvency and sets the deadline for submitting a bankruptcy petition. Determining the reasonable time to submit the petition is crucial for the debtor’s management board. Exceeding this deadline has negative consequences in the form of personal liability for the company’s debts to its creditors. For a creditor, it is a cut-off point from which, under certain conditions, it may pursue its claims directly against members of the management board. This article addresses the issue of using data from the financial statements as a source for determining the right moment for limited liability companies (pol. *spółka z ograniczoną odpowiedzialnością; spółka z o.o.*) to make a decision to file for bankruptcy. The article aims to check whether the financial statement is a sufficient source of data to determine whether the premises of bankruptcy defined in the Bankruptcy Law have occurred, by applying two criteria: delay in the performance of obligations (liquidity criterion) and the value of monetary liabilities exceeding the value of assets (balance sheet criterion).

Study Design/Materials and Methods: The article is a research study, it shows the results of the analysis of the age of overdue liabilities and the occurrence of a surplus of liabilities over the value of assets, based on the financial statements of companies in respect of whom bankruptcy was announced shortly after the date on which the financial report used in the study was prepared.

Results: In the analysed financial statements, both criteria for filing a petition for bankruptcy were shown to be simultaneously fulfilled for only 11% of cases (number of companies: 8), while, conversely, the failure to meet any of these criteria was shown for as much as 44% of cases (number of companies: 31). At the same time, there were other selected criteria, not specified in the Bankruptcy Law, that were met to a greater extent, such as e.g. negative

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equity for the year preceding the declaration of bankruptcy, which was shown for 71% of companies that did not meet any of the insolvency criteria under the Bankruptcy Law (number of companies: 22).

Practical implications: The wide scope of information contained in the financial statements provides much wider possibilities for assessing insolvency in the case of using a larger set of values and indicators than just the two defined based on the premises for bankruptcy under the Bankruptcy Law.

Conclusion and summary: The conducted research of the limited liability companies’ financial statements prepared in the period immediately preceding the publication of information about the declaration of their bankruptcy in the Court and Commercial Gazette, proves that applying only the premises of Bankruptcy Law is insufficient to determine the appropriate moment for submitting a bankruptcy petition with the court.

Keywords: bankruptcy proceedings, insolvency, financial statement, premises for bankruptcy

JEL Classification: H5, J1

Paper type: Research review

1. Introduction

Pursuant to the Polish Commercial Companies Code, in the event of ineffective enforcement procedure against a limited liability company, members of the management board are jointly and severally responsible for its liabilities. One of the premises exempting from this liability is the submission of a bankruptcy petition in a reasonable time.

Determining this “reasonable time” is crucial in determining the personal liability of the members of the management board of a limited liability company for its obligations. The debtor may lodge a bankruptcy petition within thirty days from the date on which the grounds for bankruptcy have arisen.

It is insolvency that is the basis for declaring bankruptcy. The term insolvency is defined under Bankruptcy Law. On the basis of the relevant regulations, two criteria of insolvency can be distinguished – the liquidity criterion, when the delay in satisfying monetary obligations exceeds three months, and the balance sheet (debt) criterion, when monetary obligations exceed the value of assets and this state of affairs persists for a period exceeding twenty-four months.

“The obligation set out in Article 21 sec. 2 (concerning the filing of a bankruptcy petition) applies to each member of the management board separately, regardless of the internal distribution of competences in the company’s management board, as well as regardless of the rules under which a particular member of the management board may represent the company” (Siemiątkowski, Szczurowski, 2015). While the debtor is, by definition, in possession of all information about the company, the cred-

itor has only the financial statements at its disposal. In a situation of ineffective debt enforcement, this is often the only publicly available information about the debtor company which, in addition to the facts known to the creditor regarding its own debt, can be used by the creditor to assess the legitimacy of bringing a claim for payment against the members of the management board of the limited liability company.

During the period of an epidemic emergency or a state of an epidemic caused by the COVID-19, pursuant to Article 15zzra of the Act of 2 March 2020 on Special Arrangements Relating to Preventing, Counteracting and Combating COVID-19, Other Communicable Diseases and Emergencies Caused by Them, if the insolvency occurred due to the COVID-19, the period for filing a bankruptcy petition shall not commence and any period that has already commenced shall be discontinued. If a state of insolvency arises during an epidemic emergency or a state of epidemic declared because of COVID-19, it shall be deemed to have arisen because of COVID-19. This regulation is important for members of the management boards of limited liability companies and their creditors because it results in setting a later time as the reasonable time for a bankruptcy petition (thirty days after the end of the state of epidemic emergency or the state of an epidemic caused by COVID-19).

The article presents the results of empirical research aimed at verifying whether the financial statement is a source of data sufficient to determine the premises of bankruptcy defined in the Bankruptcy Law. The study considered financial statements for 2017 with comparative figures for 2016 announced prior to the COVID-19 pandemic outbreak.

2. Literature background

The literature has developed many theories on corporate bankruptcy and systematised its causes. Appropriate bankruptcy prediction models have been developed. However, none of these models has been used in Bankruptcy Law. Financial analysis, which is one of the techniques for auditing financial statements, has been used in the Bankruptcy Law to a very limited extent. As noted by I. Górowski (2016) “Indeed, it should be noted that although there is a plenitude of definitions of liquidity in the economic literature, they certainly do not coincide with the previously discussed concept of insolvency contained in the Bankruptcy and Reorganisation Law“. In conclusion, he continues: “The Bankruptcy Law uses vague concepts (for example, the value of a company’s assets), does not explicitly indicate the methods of financial analysis as relevant for determining whether a company has lost its ability to pay its obligations, which can be easily used by parties to proceedings to refute procedural presumptions and, as a result, to delay the moment of declaring bankruptcy“. In turn, in the summary of an article by S. Bajon (2018), which addressed the issue of financial reporting as a source of knowledge about the risk of corporate insolvency, the author concludes: “it is noteworthy that the use of exclusively ratio analysis

and discriminatory methods may provide an incomplete picture of the condition of an economic entity. It is, therefore, crucial to combine these methods with other methods based on the analysis of qualitative factors within the company, as well as on quantitative and qualitative data from both the micro- and macro-economic environment.

Two measures are of central importance in Bankruptcy Law: solvency, defined only in terms of overdue payments, and debt, measured by the period of time when liabilities outweigh assets and last for more than two years. The study used the indicators developed by the author based on financial statement data; in the author’s opinion, these indicators accurately reflect the criteria provided by the Bankruptcy Law.

It appears, considering the wealth of literature on insolvency as well as the diversity of causes of insolvency, that the premises set out in Bankruptcy Law are insufficient to determine the critical point at which a debtor has become insolvent.

3. Empirical study

3.1. Research sample

On the basis of announcements required by the Bankruptcy Law regarding bankruptcy orders published in the online Court and Commercial Gazette for the period January 2018 – August 2018, a list was created containing entities registered in the National Court Register with respect to which a bankruptcy announcement was published in the aforementioned period (Table 1).

Table 1. Number of entities registered in the National Court Register in respect of which a bankruptcy announcement was published in the Court and Commercial Gazette between January 2018 and August 2018

Month	01.2018	02.2018	03.2018	04.2018	05.2018	06.2018	07.2018	08.2018
Number of bankruptcies announced	43	40	41	44	32	44	40	37

Source: Online Court and Commercial Gazette.

The premises for announcing bankruptcy should be sought in the period immediately preceding the announcement of bankruptcy. Therefore, the author analysed the selected financial statements for 2017 submitted to the National Court Register by the companies with respect to which a bankruptcy announcement was published in January 2018 – August 2018.

The research sample consists of 72 limited liability companies entered in the National Court Register, for which the court declared bankruptcy during the analysed period and which submitted their financial statements for 2017 to the National Court Register. An analysis of the core business of the entities in the sample reveals considerable diversity. Thirteen types of business activity occurred more than once. Table 2 provides a summary of the types of core business activity that were found in more than one entrepreneur in the sample. Among other things, single cases were found of such diverse activities as: activities of advertising agencies (73.11.Z), manufacture of machinery for mining, quarrying and construction (28.92.Z), distribution of electricity (35.14.Z), wholesale of clothing and footwear (46.42.Z), collection of non-hazardous waste (38.11.Z), hotels and similar accommodation (55.10.Z), business and other management consultancy activities (70.22.Z), manufacture of machinery for mining, quarrying and construction (28.92.Z), other printing (18.12.Z).

Table 2. Core business activity that occurred more than once in entities registered in the National Court Register in respect of which a bankruptcy announcement was published in the Court and Commercial Gazette between January 2018 and August 2018

Core business activity	Number of entities
Building works related to erection of residential and non-residential buildings (41.20.Z)	4
46.90.Z Non-specialised wholesale trade (46.90.Z)	4
Plumbing, heat and air-conditioning installation (43.22.Z)	3
Web search portal activities (63.12.Z)	2
Engineering activities and related technical consultancy (71.12.Z)	2
Computer programming activities (62.01.Z)	2
Maintenance and repair of motor vehicles, excluding motorcycles (45.20.Z)	2
Other specialized construction works, not classified elsewhere (43.99.Z)	2
Works related to construction of bridges and tunnels (42.13.Z)	2
Retail sale in non-specialised stores with food, beverages or tobacco predominating (47.11.Z)	2
Wholesale of wood, construction materials and sanitary equipment (46.73.Z)	2

continued tab. 2

Wholesale of fuels and related products (46.71.Z)	2
Rental and operating of own or leased real estate (68.20.Z)	2

Source: Electronic National Court Register (eKRS), National Court Register search engine.

The 2017 financial statements are the first electronic financial statements filed with the National Court Register. Until 30 September 2018, it was possible to submit a scan of the hard copy report for 2017, bearing either a qualified electronic signature or a signature confirmed by the ePUAP trusted profile. Subsequent years' reports submitted by entities entered in the Register of Entrepreneurs of the National Court Register which prepare their financial statements in accordance with the Accounting Act, can only be prepared and submitted in the Standard Audit File (SAF) format.

The digitisation of financial statements has made it much easier for creditors to obtain information on the financial performance of companies registered with the National Court Register. It also enabled the carrying out of this study by drawing on data obtainable online through the search engine for financial documents in the electronic National Court Register.

An analysis of the structure of the key financial information about the entities analysed on the basis of data for 2017 is presented in Table 3.

Table 3. Selected financial data of the sample companies for 2017

Financial data	Minimum value	Maximum value	Mean	Median	Standard deviation
Revenues from sales	0	152,225,798	8,389,648	2,034,177	24,067,963
Assets	33,706	73,485,410	5,822,210	1,559,070	12,136,377
Equity	-54,305,769	21,710,852	-2,181,884	-464,983	7,729,029

Source: Own compilation based on data from eKRS, a browser of financial documents.

The financial data presented, as well as the core business activity, are highly varied. They do not allow the identification of consistent subgroups in the sample.

At this point, it is also worth noting that a relatively large proportion of the entities in the study did not submit their financial statements for publication. On average, in the period analysed, 9 out of 40 entities declared bankrupt did not submit their reports for publication, which represents 22% of cases (Table 4).

Table 4. Number of entities registered with the National Court Register which were found to be missing electronic financial documents in the National Court Register

Month	01.2018	02.2018	03.2018	04.2018	05.2018	06.2018	07.2018	08.2018
Cases of missing documents in the National Court Register	8	12	7	11	12	5	8	7

Source: Online National Court Register eKRS, a browser of financial documents.

In this situation, there is relatively low compliance with the obligation to publish financial statements required by the Accounting Act. The absence of information from up-to-date financial statements renders it impossible to obtain full knowledge about a company's financial capability, even when its income is known. This assertion (IIISA/Wa 569/16), especially in the aspect of knowledge of payment capability, is of fundamental importance in assessing the occurrence of premises for bankruptcy.

3.2. Results

3.2.1. The liquidity criterion in financial statements

The Bankruptcy Law defines the liquidity criterion of the loss of the capability to meet outstanding monetary obligations as a delay in the performance of monetary obligations exceeding three months.

A creditor of a limited liability company has full knowledge of the overdue status of its receivables. It knows the due date of its receivables and when there has been a delay in payment of more than three months. However, this knowledge is not sufficient to consider the debtor insolvent. Based on an analysis of the case law, A. Kappes (2009) concludes that "the court is committed to a functional interpretation of the concept of "reasonable time" from Art. 299 (2) of the Code of Commercial Companies, rather than mechanically applying the 14-day deadline stipulated in Art. 21 sec. 1 of the Bankruptcy and Reorganisation Law (Art. 5 sec. 2 of the Bankruptcy Law) (the 30-day deadline has been in force since 2016). A. Kappes continues: "(...) a bankruptcy petition may be filed only when the assets of the bankrupt company are insufficient to satisfy its debts or when the liabilities are not satisfied. Practice even shows that, as a rule, bankruptcy – regardless of the basis for its declaration – is reported when the company's assets are insufficient to cover its debts. Thus, it would simply be premature to report it earlier. In addition, if the creditors were fully satisfied in the bankruptcy proceedings, the claim against the company would expire

and could not be asserted under Art. 299. Thus, in principle, only future incomplete satisfaction of debts justifies the assessment that the bankruptcy petition was filed in a reasonable time. Similarly, A. Borysewicz (2017) cites: “In the decisions of the Supreme Court, the view is expressed that the reasonable time to file a bankruptcy petition of a limited liability company, within the meaning of Art. 299 (2) of the Code of Commercial Companies, is the time when, although it is still paying some debts, it is already known that, due to insufficient funds, it will not be able to satisfy all its creditors”. K. Oplustil (2016) concludes that “it should be assumed that the presumption of insolvency of the debtor provided for therein (in Bankruptcy Law) will apply when the 3-month delay relates to at least two monetary obligations of the debtor towards two different creditors”.

“Insolvency due to lack of financial liquidity does not arise if the debtor is not capable of meeting its outstanding monetary obligations in a timely manner (and is therefore in arrears with their fulfilment) but has retained the capacity to meet them in an untimely manner (and therefore the capacity to meet them with delay, regardless of its qualification as default or as standard delay)” (Nowacki, 2020).

K. Osajda (2016), in turn, notes that “(...) during the first 3 months after the debtor has ceased to pay its debts, it is the creditor that has to prove that the debtor has lost the ability to meet its obligations, and it is this – and not some temporary obstacle – that is the reason for the debtor’s refraining from meeting its obligations. Except that the introduction of a rigid 3-month time limit does not solve the issue of short-term delays, as in some cases it may be far too long and in others far too short – rather, a more flexible regulation allowing an *ad casum* assessment would be useful”.

This vague definition of the liquidity premise may undoubtedly cause difficulties for the creditor in determining the grounds for bringing an action for payment against a member of the management board. Data from the debtor’s financial statements that have been properly analysed can be helpful.

This study estimates the value of trade payables overdue for more than three months. It has been assumed that the average payment term for trade payables is 30 days. The time limit was determined based on the Act on Prevention of Excessive Delays in Commercial Transactions which provides for such a time limit as a general rule in situations where the parties have not provided in the contract for a payment deadline after the expiry of which the creditor is entitled, without notice, to the statutory interest for delays in commercial transactions.

The basic disclosures in the financial statements of entities other than banks, insurance companies and reinsurance companies set out in Appendix 1 of the Accounting Act for the profit and loss account on a comparative (by far prevailing) basis include, among others, the following items:

- B. Operating expenses
 - I. Amortisation and depreciation
 - V. Wages and salaries
 - VI. Social security and other benefits

In the balance sheet, in turn, companies are required to show the following item in liabilities:

3. Liabilities to other entities [...]
 - d) – trade liabilities, maturing:
 - within 12 months

Operating activities according to the Accounting Act are understood to be the core business activity of the entity and other activities not classified as investment or financing activities. Among the operating expenses in the profit and loss account, amortisation and depreciation, wages and salaries and social security costs were identified. The incurrance of these types of costs does not result in a trade payable, therefore, in order to estimate the time lag of trade payables, these cost items were eliminated from the analysis, i.e. amortisation and depreciation, wages and salaries and social security costs were reduced accordingly. The resulting amount of costs was first divided by 12, resulting in an estimate of trade payables for one month then multiplied by 4 which corresponds to the estimated trade payables for four months, which further corresponds to the estimated value of trade payables overdue by three months with an assumed payment term of 30 days (one month). This figure was compared with the value of trade payables shown on the balance sheet in financial statements. It has been assumed that the liquidity criterion is met if the estimated value of liabilities past due for more than three months is higher than the trade liabilities shown on the balance sheet. Overdue liabilities of more than three months calculated in this way provide the creditor with the assurance that its receivables are not the only ones that are not paid within the deadline required.

Table 5 shows the results of meeting the examined liquidity criterion for the analysed reports of 72 companies as to which, in the period January 2018 – August 2018 a bankruptcy announcement was published. In 2017, one of the analysed companies reported zero operating costs in the profit and loss account (“TOYS4BOYS. PL” spółka z o.o. KRS (National Court Register number) 0000276286) and was therefore not included in the analysis for that year. In contrast, for 2016, nine entities were not included due to lack of cost information.

Table 5. Division of companies with regard to the fulfilment of the liquidity premise based on the 2017 financial statements with comparative figures for 2016.

Year	Number of companies meeting the liquidity premise	Number of companies not meeting the liquidity premise
2016	20	43
2017	33	38

Source: Own compilation based on data from eKRS, a browser of financial documents

Based on the data from the 2017 financial statements, it can be seen that the majority of the analysed companies for which a bankruptcy announcement was published in January 2018 – August 2018 did not meet the liquidity premise both at the end of 2017 (54%) and at the end of 2016 (68%). On the other hand, as many as 20 companies met this premise already at the end of 2016, which may lead to the conclusion that in their case, their management boards submitted bankruptcy petitions too late.

3.2.2. The balance sheet (debt) criterion in financial statements

The Bankruptcy Law defines the balance sheet criterion of the loss of the capability to meet outstanding monetary obligations (insolvency) as a situation in which monetary liabilities exceed the value of the assets of a debtor which is a legal person or an organisational unit without legal personality which is granted legal capacity under separate provisions when this condition persists for a period exceeding twenty-four months.

This criterion, unlike the liquidity criterion, seems to be more clearly defined. The Accounting Act defines assets as resources of a reliably estimated value controlled by the entity, which stem from past events and will in the future cause an inflow of economic benefits to the entity. The Bankruptcy Law excludes components that are not part of the bankruptcy estate from the assets. These are very specific categories such as property earmarked for personnel purposes and its administration (company social benefit scheme funds), property that is exempt from enforcement according to the provisions of the Code of Civil Procedure (e.g. inalienable rights). Liabilities, on the other hand, are obligations arising from past events to perform services of a reliably determinable value that will result in the use of an entity's existing or future assets. In determining the balance sheet criterion, as opposed to the liquidity criterion, only cash liabilities need to be considered. Under Bankruptcy Law, monetary liabilities do not include future liabilities, including liabilities under a condition precedent and liabilities to a shareholder under a loan or other legal transaction with similar effects.

For the purposes of this analysis, due to the absence of separate identification of the assets referred to in the Bankruptcy Law in the financial statements in the balance sheet, as well as their very specific nature, the value of total assets from the balance sheet was used. In accordance with the Accounting Act, if the going concern assumption is not valid, an entity's assets are valued at net achievable sales prices, not higher than their acquisition or production cost, less accumulated depreciation or amortisation and impairment write-offs to date. This raises the issue of the market valuation of assets that cannot be determined from the financial statements if it is higher than the balance sheet value. Monetary liabilities were calculated by subtracting the provisions for liabilities and liabilities to related parties from the items liabilities and provisions for liabilities, respectively. A situation where the monetary

liabilities so calculated exceed the value of the company's assets was deemed as meeting the debt criterion of insolvency. Due to the need to take into account two consecutive years for the determination of the balance sheet (debt) criterion, no calculation was made for 2016. The results are presented in Table 6.

Table 6. Division of companies with regard to the fulfilment of the balance sheet premise based on the 2017 financial statements with comparative figures for 2016.

Year	Number of companies meeting the balance sheet premise	Number of companies not meeting the balance sheet premise
2017	15	56

Source: Own compilation based on data from eKRS, a browser of financial documents

As can clearly be seen, the vast majority of companies (79%) for which a bankruptcy announcement was published between January 2018 and August 2018 did not meet, at the end of 2017, the second insolvency criterion set out in the Bankruptcy Law.

3.2.3. Other possible insolvency criteria in the financial statements

The results of the analyses carried out using each of the criteria defined under Bankruptcy Law are summarised in Table 7. Simultaneous fulfilment of both criteria was shown for only 11% of cases (number of companies: 8), while, conversely, the failure to meet any of these criteria was shown for as much as 44% of cases (number of companies: 31). The remaining 32% are companies for which compliance with one of the two criteria has been demonstrated, where the liquidity criterion as individually met is dominant (36% of the 25 companies)

Table 7. Division of companies with regard to the fulfilment of the liquidity and balance sheet premise based on the 2017 financial statements

Fulfilment of the criterion		Number of companies
Liquidity criterion	Balance sheet criterion	
YES	YES	8
YES	NO	25
NO	YES	7
NO	NO	31

Source: Own compilation based on data from eKRS, a browser of financial documents

Further analysis was carried out in respect of the financial statements of 31 companies for which the court declared bankruptcy between January and August 2018. The statutory period for filing a bankruptcy petition with the court is thirty days from the date on which the grounds for bankruptcy arise. Taking into account that the declaration of bankruptcy itself is made within a period of several months (the time limit under the Bankruptcy Law is 2 months) from the filing of the petition. Consequently, it would be expected that an analysis of virtually all the analysed financial statements should result in a conclusion that the premises for bankruptcy have been found. However, in as many as 31 of the 71 cases analysed, none of the tested premises was found, under the assumptions described above, in the financial statements drawn up at the end of 2017.

An analysis of the financial statements led to the conclusion that 14 of these 31 companies reported a significant loss in their 2017 financial statements. A significant loss was assumed to be a loss on sales as reported in the income statement in excess of 20 per cent of net revenue from sales of products, goods and materials. Another indicator that was taken into account was the change in revenue for 2017 compared to 2016. In 10 of the financial statements analysed, the reported decrease in revenue from sales of products, goods and materials in 2017 compared to 2016 was more than 50%. The third indicator examined is negative equity, presented as in the balance sheet, i.e. total assets minus liabilities and provisions for liabilities. Negative equity was reported by 22 of the 31 companies analysed. A summary is presented in Table 8.

Table 8. Division of companies that do not meet the criteria under the Bankruptcy Law according to other selected criteria

Fulfilment of the criterion			Number of companies
Loss on sales above 20%	Decrease in net sales revenue above 50%	Negative equity	
YES	YES	YES	1
YES	NO	YES	8
YES	NO	NO	2
YES	YES	NO	3
NO	YES	YES	6
NO	NO	YES	7
NO	NO	NO	4

Source: Own compilation based on data from eKRS, a browser of financial documents.

At least one of the additional selected criteria was met by 27 of the 31 companies. The largest number of results among the criteria analysed individually was shown for negative equity – for 22 out of 31 companies (71%). A loss of more than 20% of sales revenue was incurred by 14 companies (45%) and a decrease in sales revenue of more than 50% was reported by 10 companies (32%)

Of the 31 companies analysed, 4 did not meet any of the selected criteria at the end of 2017 (Table 8), yet the court declared them bankrupt in the period ending in August 2018. In relation to three of them (MM DADAK spółka z o.o. spółka k. in bankruptcy KRS 0000331994, “WISHOT” POLSKA spółka z o.o. KRS 0000077320, AA-PHARMA spółka z o.o. KRS 0000525498) bankruptcy orders were issued between July and August 2018. Given the timeframes relevant to the calculation of the insolvency premise criteria, it seems very likely that the premises only emerged in the next reporting year. For one company (SYSTEM EKOLOG spółka z o.o. KRS 0000225214), the court declared bankruptcy on 19 March 2018. In its published report for 2017, the explanatory notes read that “On 6 December 2017, System Ekolog Sp. z o.o. in Szczecin submitted a bankruptcy petition. In its grounds for the petition, the company cited, among other things, delays in the execution of construction contracts that arose in 2017, the need to remove defects and staff shortages, as well as the termination of its cooperation with the bank, all of which made it impossible to continue operating and further increased its obligations to third parties. The company has indicated that it has become insolvent”. Here it should be recalled that the liquidity criterion is a vague criterion, for the purposes of the analysis defined as the existence of liabilities past due for more than three months, estimated on the basis of appropriately adjusted operating costs. Such calculations tend to relate to average values. It is possible that individual smaller liabilities in the company were overdue by more than three months, which was unaccountable for the estimated indicator. Additionally, the indicators in the report that lead to bankruptcy are generally unknown to the creditor. It can only trust that the company’s management board will be well aware of its responsibility and will make proper assessments of the possible future situation and thus file for bankruptcy in a reasonable time.

4. Summary

The purpose of the article was to determine whether the financial statements are a sufficient source of data to determine the presence of premises for bankruptcy as defined in the Bankruptcy Law.

According to the findings of the study, it must be concluded that the data from the financial statements, analysed in the context of the two premises of insolvency set out in the Bankruptcy Law, are insufficient to correctly assess the solvency status of the debtor. A detailed analysis was conducted for the 2017 financial statements of 72 companies out of the 319 in respect of which a bankruptcy announcement was

published in January 2018 – August 2018. For both the liquidity and debt premise, more than half of the companies included in the study did not meet these premises based on the information that could be obtained from the financial statements. Not until additional measures selected by the author were analysed, such as incurring significant losses, a drastic year-on-year decrease in revenue and negative equity, that the entire study sample (apart from the 4 cases detailed in Chapter 6) was covered. Financial statements are normally prepared for one-year periods which, with indicators based on monthly terms, such as 3 months’ overdue payment of monetary liabilities, may mean that the premise may not have been met as at the date of the financial statements. Meeting it exactly in the first or second month of the next year will be impossible to discern from the financial statements because the next reporting period is not until the succeeding year.

In addition, the failure to publish the financial statements for 2017 and thus the inability to examine them for 70 out of a total of 319 companies proved to be a significant factor.

It is crucial for both creditors in the context of protecting their interests and management board members in the context of being protected from potential personal liability for the company’s debts that more flexible standards are developed. In certain cases, an adverse event (e.g. loss of or discontinued payments by a major customer, termination of a contract by a bank, delays in the performance of contracts resulting in substantial penalties) is itself an economic indication of insolvency even before payment delays occur. A strict 3-month deadline can lead to a debtor waiting too long to lodge a bankruptcy petition. During the waiting period, it is up to the creditor to prove that the debtor has permanently lost the capability to meet its obligations. However, the creditor’s ability to prove that there has been a permanent loss of solvency already in that period of up to 3 months of late payment is definitely limited due to the lack of publicly available information that can provide the basis for proving it. At the same time, if the creditor was able to prove this, a member of the management board in that particular situation would incur personal liability for the company’s obligations that from his or her point of view would be unjustified (e.g. if the focus is placed only on the strict 3-month deadline, he or she would consider that the premise had not occurred).

The Bankruptcy Law does not set out rules for the preparation of additional analyses for the purpose of determining the reasonable time to declare bankruptcy. This remains the domain of economic science, and it would be fair to assume that a reasonable and reliable analysis of the data from the debtor’s financial statements could assist in determining the reasonable time to lodge a bankruptcy petition.

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Streszczenie

Cel: Prawo upadłościowe definiuje niewypłacalność dłużnika i określa termin na zgłoszenie wniosku o ogłoszenie upadłości. Ustalenie właściwego czasu na zgłoszenie wniosku jest kluczowe dla zarządu dłużnika. Przekroczenie tego terminu rodzi negatywne konsekwencje w postaci osobistej odpowiedzialności za długi spółki wobec jej wierzycieli. Dla wierzyciela jest zaś momentem granicznym, od którego przy spełnieniu określonych warunków, może dochodzić on swoich roszczeń bezpośrednio od członków zarządu. Niniejszy artykuł porusza zagadnienie wykorzystania danych ze sprawozdania finansowego jako źródła dla ustalenia właściwego momentu na podjęcie decyzji o zgłoszeniu wniosku o ogłoszenie upadłości spółek z o.o. Celem artykułu jest sprawdzenie czy sprawozdanie finansowe jest wystarczającym źródłem danych do zweryfikowania wystąpienia przesłanek upadłości zdefiniowanych w prawie upadłościowym poprzez dwa kryteria: opóźnienie w wykonaniu zobowiązań (kryterium płynnościowe) oraz wielkość zobowiązań pieniężnych przekraczająca wartości majątku (kryterium bilansowe).

Materiały i metody badawcze: Artykuł ma charakter opracowania badawczego, ukazano w nim wyniki analizy wieku przeterminowanych zobowiązań i wystąpienia nadwyżki zobowiązań nad wielkością majątku na podstawie sprawozdań finansowych spółek, wobec których ogłoszono upadłość w krótkim czasie po dacie na którą sporządzono użyte w badaniu sprawozdania finansowe.

Wyniki: W badanych sprawozdaniach finansowych spełnienie obu kryteriów złożenia wniosku o ogłoszenie upadłości jednocześnie wykazano tylko dla 11% przypadków (liczba spółek 8), a odwrotnie - niespełnienie żadnego z nich dla aż 44% przypadków (liczba spółek 31). Jednocześnie wybrane inne kryteria, nieokreślone w prawie upadłościowym, były spełnione w większym stopniu, jak np. ujemny kapitał własny za rok poprzedzający ogłoszenie upadłości wykazano dla 71% przypadków spółek, które nie spełniły żadnego z kryteriów niewypłacalności z prawa upadłościowego (liczba spółek 22).

Wnioski praktyczne: Szeroki zakres informacji zawartych w sprawozdaniu finansowym daje znacznie szersze możliwości oceny niewypłacalności w przypadku zastosowania większego zbioru wielkości i wskaźników niż tylko dwóch zdefiniowanych na podstawie przesłanek upadłości z prawa upadłościowego.

Wnioski i podsumowanie: Przeprowadzone badanie sprawozdań finansowych spółek z o.o., sporządzonych w okresie bezpośrednio poprzedzającym upublicznienie informacji o ogłoszeniu upadłości w Monitorze Sądowym i Gospodarczym (MSiG) dowodzi, że stosowanie tylko i wyłącznie przesłanek z prawa upadłościowego jest niewystarczające dla określenia właściwego momentu na zgłoszenie w sądzie wniosku o ogłoszenie upadłości.

Słowa kluczowe: postępowanie upadłościowe, niewypłacalność, sprawozdanie finansowe, przesłanki upadłości.