

## FINANCING RESOLUTION OF BANKS – A GENERAL APPROACH

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**Abstract.** Since the initiation of the first compulsory restructuring, resolution comes to the fore as the BGF's primary responsibility. This intricate and long-term operation necessitates significant financial investment. Therefore, we emphasise that the goal of the research conducted for this study aims primarily to systematize legal measures that apply to financing resolution, with a particular focus on contributions paid to the BGF by obliged entities. Moreover, the aim of this research is to present the separate nature of this financial structure and its specific characteristics at the stage of building relevant funds. Due to the complexity of the presented subject matter, special focus is given to selected aspects of the adopted financing model. The discussion presented here refers only to resolution of banks. The primary research method applied in this study is an analysis of the currently applicable legislation. This study covers the legislation in force and relevant literature. The final section of the article presents a case study which showcases the BGF's practical approach to addressing resolution processes (including those that have been concluded).

**Keywords:** compulsory restructuring; contributions; funds; resolution

### INTRODUCTION

The actions taken by the BGF are largely to ensure the operation of an obligatory deposit guarantee scheme and to carry out resolution of entities identified in the statute (i.a. banks). Detailed rules on conducting resolution are regulated in Chapter III of the Act on the Bank Guarantee Fund, Deposit Guarantee Scheme and Resolution.<sup>1</sup> It needs to be highlighted that resolution is a process of long-term, multi-faceted and continuous changes. There are statements in the literature that it is a comprehensive legal and operational mechanism based on preserving critical functions of the entity under restructuring and at the same time ensures protection of depositors of this entity [Iwańczuk-Kaliska 2016, 9]. These were the assumptions of Directive 2014/59/EU of the European Parliament

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<sup>1</sup> Act of 10 June 2016 on the Bank Guarantee Fund, the Deposit Guarantee Scheme and Resolution, Journal of Laws of 2022, item 2253 as amended [hereinafter: BGF Act].

and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms.<sup>2</sup> Resolution is supposed to be a way to modify the results of banks and their creditors at the lowest cost possible and with minimal impact on the financial system [Kowalewska 2021, 210].

It needs to be highlighted that next to regulations that refer to the aim, principles, procedure and effects of carrying out resolution, the BGF act also accommodates provisions on financing the resolution process. Without an appropriately constructed system of financing, conducting such a complicated procedure, that is at the same time so essential from the point of view security and stability on the banking market, would be impossible. The BGF's performance of responsibilities referred to in the BGF Act should be secured with appropriate financial resources. Legal scholars and commentators noted that legal measures which specify sources of financing of the Fund determined the scope and conditions of implementation of goals that it realises [Góral 2011, 171]. The Fund is a unit of the public finances sector and protection of guaranteed funds and conducting resolutions are public responsibilities. By putting its tasks into effect the BGF fulfils the public interest. We must also note that the BGF is currently carrying out the following functions: guarantee, restructuring, information and inspection and stabilization [Kowalewska 2021, 63].

When it comes to the adopted model of financing resolution and the method used in it Commission Delegated Regulation (EU) 2015/63 of 21 October 2014 supplementing Directive 2014/59/EU of the European Parliament and of the Council with regard to *ex ante* contributions to resolution financing arrangements<sup>3</sup> is also crucial. This regulation made a choice in the context of the constructed system of financing resolution by recognizing that it is to be based on *ex ante* contributions. A model of "advance funding" was thus established contrary to the model based on *ex post* contributions paid after a specific event occurs. The choice of such a model of financing is entirely justified, especially given the objective of the BGF's activity and systemic significance of resolution mechanisms. It must be highlighted that on the ground of the BGF Act the legislator stipulates various types of contributions, which triggers specific consequences.

The system of financing BGF activity is based on the following elements [Pawlikowski 2004, 13]: a) the time in which deposits are gathered, b) entities responsible for the guarantee system in the financial aspect, c)

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<sup>2</sup> Directive 2014/59/EU of the European Parliament and of the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms, OJ L 173, 12.6.2014 [hereinafter: BRRD Directive].

<sup>3</sup> OJ L 11, 17.1.2015 [hereinafter: Regulation (EU) 2015/63].

construction of contributions, d) regulations pertaining to principles of investing the funds acquired by the system, e) procedures of payment of guaranteed sums.

Bearing in mind the content of the BGF Act we must point out unequivocally that the most important source of the BGF's incomes are contributions paid by obliged entities. Thanks to the contributions, the Fund is able to carry out the tasks vested in it. There are two types of contributions in the system of contributions paid by obliged entities: *ex ante* and *ex post*, which has been mentioned before. At the same time, it is worth emphasizing that the legislator has stipulated the order and requirements for launching individual financial responses [Kowalewska 2021, 208]. *Ex ante* contributions play the dominant and most important role. They are referred to as “regular contributions” to differentiate them from “extraordinary contributions”, which are of the *ex post* kind. Extraordinary contributions are a special construct, paid in extraordinary and strictly defined situations. Alongside them, “contributions paid in the form of a payment commitment”, stipulated in Article 303 of the BGF Act, are also a kind of an *ex post* contribution.

The regulations in force mean that there is a specific model of financing the BGF which is based on the following funds: 1) Statutory fund; 2) Guarantee fund of banks; 3) Guarantee fund of credit unions; 4) Resolution fund of banks; 5) Resolution fund of credit unions; 6) Restructuring fund of cooperative banks; 7) Revaluation Fund.

These are funds that have certain differences, a different personal scope, a different contribution calculation system and a different allocation of funds. Such a structure complies with the requirements of the BRRD Directive and the Directive 2014/49/EU of the European Parliament and of the Council of 16 April 2014 on deposit guarantee schemes<sup>4</sup> [Banaszczak-Soroka 2017, 462].

We must also point out that the BRRD Directive, which regulates the issues of ensuring the obligation to gather funds for financing resolution, identifies many sources for of such funds. Still, not all of them have been transplanted onto the ground of the BGF Act.

## 1. RESOLUTION – GENERAL COMMENTS

Resolution is regulated as out-of-court proceedings that may be initiated by the BGF [Szcześniak 2018, 18].

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<sup>4</sup> OJ L 173, 12.6.2014, p. 149.

The starting point in the resolution procedure is an assumption that the legal instruments applied cannot cause systemic disturbances [Frydl and Quintyn 2006, 36]. According to the provisions of the BGF Act, the objectives of resolution are as follows: 1) maintaining financial stability, in particular through the protection of confidence in the financial sector and ensure market discipline; 2) limitation of the involvement of public funds or the likelihood of their exposure to the financial sector or its individual entities to achieve the objectives referred to in point 1 and 3-5; 3) ensuring the ongoing performance of the critical functions carried out by an entity; 4) protecting depositors and investors covered by the compensation system; 5) protecting funds entrusted to the company by its customers.

The Fund shall pursue these objectives by way of: developing plans for resolutions or group resolutions, including the determination of the minimum level of entities' own funds and liabilities subject to write down or conversion, writing down or conversion of capital instruments and carrying out resolution. By carrying out resolution, the BGF strives to reduce costs and to minimise the loss of the value of the company of the entity under restructuring [Ofiarski 2017, 564].

The relevant literature emphasizes that the BGF has a wide discretion in using mechanisms of resolution but its choices should aim to allow the application of the optimal solution in specific circumstances [Mikliński 2022, 119]. When launching resolution, the Fund has the following instruments at its disposal: 1) acquisition of undertaking; 2) bridge institution; 3) writing down or conversion of liabilities; 4) separation of property rights.

The initiation of resolution occurs on the date of service upon the entity of the Fund's decision. On that moment all consequences related to a selected instrument enter into force.

In any case, where carrying out of resolution involves the use of BGF measures, shares of the entity are written down in full or in part to cover losses, or debt instruments issued by this entity are converted into capital (if recapitalization is necessary). For this reason, the costs of resolution first put a burden on the entity's owners and creditors.<sup>5</sup>

Initiation of resolution is possible upon meeting the following conditions: a) an entity is at risk of bankruptcy, b) feasible supervisory measures or the measures of an entity will not be able to remove the threat of bankruptcy in due time, c) taking measures is required in view of the public interest.

These premises are assessed every time with regard to the entity towards which initiation of resolution is being considered. The third premise is worth

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<sup>5</sup> Website: <https://www.bfg.pl/przymusowa-restrukturyzacja/> [accessed: 13.09.2023].

looking at, where a vague phrase “in view of the public interest” is used, whereby there are no measurable factors that would allow an objective assessment. This means that the BGF is free in making its own assessment here.

## 2. SOURCES OF FINANCING THE ACTIVITY OF THE BANK GUARANTEE FUND IN TERMS OF RESOLUTION

The BGF Act stipulates the following sources of financing the Fund:

- 1) contributions referred to in Article 286(1) BGF Act, paid by the entities covered by the guarantee scheme and contributions referred to in Article 295(1) and (3) BGF Act, paid by domestic entities and branches of foreign banks – so called “regular contributions”;
- 2) extraordinary contributions;
- 3) revenues from financial assets of the Fund, including loans and guarantees granted by the Fund;
- 4) funds received within non-returnable foreign assistance;
- 5) funds of subsidies granted at the request of the Fund, from the state budget on terms defined in the Act on Public Finance;<sup>6</sup>
- 6) funds from short-term credit granted by the National Bank of Poland;
- 7) funds from loans granted from the State Budget;
- 8) funds obtained from borrowings, credit and bond issues;
- 9) funds obtained from loans granted by officially recognised deposit guarantee schemes and entities that manage resolution funds from the Member States other than the Republic of Poland pursuant to relevant agreements;
- 10) funds referred to in Articles 236-238 BGF Act;
- 11) funds received as a result of settlement of claims of the Fund for the payment of guaranteed funds and support granted to an acquiring entity;
- 12) other revenues obtained by the Fund.

Contributions play the most important role among the sources of financing identified above. Both for financing deposit guarantees and resolution. By default, the legislator identifies two basic kinds of contributions, that is regular contributions and extraordinary contributions. We must also add that contributions paid to the BGF are gathered in the following funds: 1) deposit guarantee fund: a) deposit guarantee fund of banks, b) deposit guarantee fund of cooperative savings and credit unions; 2) resolution fund: a) resolution fund of banks, b) resolution fund of credit unions.

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<sup>6</sup> Act of 27 August 2009 on the Public Finances, Journal of Laws No. 157, item 1240 as amended.

Considering the discussed fund of resolution of banks, we must emphasize that regular contributions paid to this fund are one-off, that is they are paid once a year. Pursuant to Article 299(1) of the BGF Act, where the funds for financing resolution of banks and investment firms are insufficient to finance resolution, the Fund Council, at the request of the Management Board of the Fund, may, by way of a resolution, commit banks, investment firms and branches of foreign banks to pay extraordinary contributions for the resolution fund of banks. The amount of such a contribution may not be greater than three times total contributions set for a given calendar year. Where the total amount of contributions is not set, the amount of the contributions must not exceed three times the total amount of contributions paid for the previous calendar year. The legislator also stipulates the possibility of paying contributions in the form of payment commitments. This applies to the *de facto* part of the so-called regular contribution. The BGF Act specifies special rules for paying such contributions, but such a model departs from the adopted rule based on *ex ante* contributions. The analysis of the content of the BGF Act lends itself to a conclusion that contributions in the form of payment commitments and also extraordinary contributions are *ex post* measures.

Entities obliged to pay contributions for the resolution fund of banks include: a) banks (joint-stock or cooperative), b) branches of foreign banks, c) investment firms.

At the same time, it is worth pointing out that the contributions referred to are not the only element of the resolution fund of banks. Pursuant to the BGF Act, this Fund is composed of the following elements: 1) funds from the liquidated stabilisation fund and reserve fund; 2) due contributions from banks, investment firms and branches of foreign banks; 3) due extraordinary contributions from banks, investment firms and branches of foreign banks; 4) net profit or profit for previous years in the part allocated by the decision of the BGF Council to increase this fund; 5) from amounts from the release of write-downs on assets financed from this fund; 6) from amounts which are deducted costs of resolution of banks, investment firms and branches of foreign banks; 7) from amounts obtained from bankruptcy estates of investment firms; 8) from funds allocated from the BGF's other own funds by the decision of the BGF Council.

Funds gathered in resolution funds of banks are used for tasks taken as part of resolution. They may also be used to cover net losses from previous years in the part specified by the decision of the BGF Council and the writing down on assets and they may be allocated for the BGF's other own funds.

### 3. SUMS ALLOCATED TO FINANCE RESOLUTION OF BANKS

When carrying out resolution, the BGF was obliged to do it in such a way as to reduce the associated costs. Moreover, if possible due to the objectives of resolution, the Fund should strive to limit the loss of company's value of the entity against which the resolution is being carried out.

Pursuant to Article 296 of the BGF Act, there are two types of the levels of measures to finance resolution of banks (and of investment firms): a) the minimum level – 1% of the amount of the guaranteed funds in banks, investment firms and branches of foreign banks, b) the target level – 1.2% of the amount of the guaranteed funds in these entities.

The discussed regulation shows that the legislator conditions the amount of funds for financing resolution on the amount of funds guaranteed in the identified entities. It needs to be noticed that guaranteed funds have been defined by statute and mean funds of the depositor gathered on his bank accounts maintained in a given bank, covered with guarantee protection up to the Polish zloty equivalent to EUR 100,000. A special condition follows from the content of Article 296 of the BGF Act. The amount of funds that make up the minimum and target level of financing resolution was conditioned on the amount of depositors' funds in bank accounts. By doing so, the two systems, that is the deposit guarantee scheme and the resolution system have been linked. On the other hand, taking into account the personal scope, doubts may arise here in the context of investment firms which are not covered by the deposit guarantee scheme. Pursuant to definitions adopted in the legislation, an investment firm means a brokerage house. This most probably follows from the fact that brokerage houses are maintained by banks, though without a doubt such an interrelation is a great simplification. We must note, for example, that brokerage houses do not maintain bank accounts, therefore brokerage houses do not keep depositors' funds in the understanding of the BGF Act.

One more problem comes to the fore in the context of the dependency identified above. There are deposits in banks that belong to entities that are not covered by the guarantee scheme or by the definition of depositor. They are deposits of local government units. The problem that arises here boils down to a question of whether the value of funds deposited by local government units is taken into account when specifying the amount of guaranteed deposits which determine the amount of funds affected by the resolution mechanism [Kowalewska 2021, 218-19].

We must also add that the national legislator prescribed 31 December 2024 and 31 December 2030 as dates on which the minimum level and the target level are to be achieved, respectively. At the same time,

Article 296(4-8) of the BGF Act allows for both those periods to be extended. It follows from the implementation of the BRRD Directive.

The competence for setting the total amount of contributions that should be paid to the resolution fund of banks is established by the BGF Council by way of a resolution for a given year. It takes into account the current state of the fund and the projected path to achieving the target level. For example, the total amount of contributions for the resolution fund of banks in individual years in the period 2020-2023 and relevant resolutions of the BGF Council are presented in the table below.

Table 1. Compilation of total contributions for the resolution fund of banks

Total contributions for the resolution fund of banks	Date of payment of contributions	Resolution of the BGF Council
PLN 1,600,000,000 (one billion, six hundred million zlotys)	by 23 July 2020	Resolution no. 17/2020 of the BGF Council of 26 February 2020
PLN 1,230,000,000 (one billion, two hundred and thirty million zlotys)	by 22 July 2021	Resolution no. 11/2021 of the BGF Council of 17 February 2021
PLN 1,693,000,000 (one billion, six hundred and ninety-three million zlotys)	by 21 July 2022	Resolution no. 6/2022 of the BGF Council of 22 February 2022

Source: author's own compilation on the basis of Resolutions of the BGF Council listed in the table, available at: [https://www.bfg.pl/strefa\\_dokumentow/uchwaly-rady-bfg/](https://www.bfg.pl/strefa_dokumentow/uchwaly-rady-bfg/) [accessed: 19.09.2023].

The presented tables show that the total contributions in the 2020-2022 period varied with a noticeable low of total contributions in 2020. This was the result of the COVID-19 pandemic and the related legal and economic measures that affected the entire economy. Therefore, the decisions of the BGF Council took into consideration legal measures and economic determinants. Moreover, 2020 saw a lower financial results of banks compared to 2019, that is a drop by 45.3%.<sup>7</sup> We need to point here to elements that the BGF Council takes into consideration when determining the total contributions. These are: business cycle phases and the impact of contributions on the financial standing of banks, branches of foreign banks and investment firms, which means that the financial standing of these entities is taken into account.

<sup>7</sup> Source: <https://stat.gov.pl/obszary-tematyczne/podmioty-gospodarcze-wyniki-finansowe/przedsiębiorstwa-finansowe/wyniki-finansowe-bankow-w-2020-roku,5,25.html> [accessed: 12.09.2023].

#### 4. CONTRIBUTIONS TO THE RESOLUTION FUND OF BANKS

The legislator has standardised the system for gathering finances in the resolution fund and distinguished the following categories: 1) Resolution fund of banks (also branches of foreign banks and investment firms); 2) Resolution fund of credit unions.

This division corresponds with the personal scope covered with resolution protection. These are mainly banks and credit unions. At the same time, the entities identified here are obliged to pay contributions to the BGF.

Contributions paid to the resolution fund of banks may be divided: 1) in terms of their nature – into regular and extraordinary contributions; 2) in terms of the entity obliged – into contributions paid by banks, investment firms and branches of foreign banks.

The legal basis for establishing the amounts of contributions paid and terms for their payment have been largely regulated in the BGF Act and in the Regulation of the Minister for Development and Finance on 25 January 2017 on detailed risks-based rules for setting contributions to finance resolution of branches of foreign banks.<sup>8</sup>

The literature emphasizes that ensuring sources of financing in the context of resolution is necessary to fulfil two fundamental tasks [Kerlin 2016, 181-212]: a) operational activity of the resolution body, b) possibility to use support instruments of the resolution procedure.

The former covers e.g. the process of planning resolution or carrying out feasibility assessment. The latter concerns granting subsidies or guarantees to cover losses or to ensure the initial capital of a bridge institution.

Pursuant to the BGF Act, funds gathered on the restructuring fund may be allocated to: a) grant loans or guarantees to an entity under restructuring, its subsidiaries, bridge institution, asset management vehicle and the acquiring entity and to acquire property rights of an entity under restructuring; b) establish a bridge institution and asset management vehicle and equip those entities with own funds needed due to the scale and results of activities; c) satisfy supplementary claims referred to in Article 242 of the BGF Act; d) exempt liabilities from write down or conversion of these liabilities; e) cover resolution costs and to cover potential losses of the Fund arising from resolution.

Pursuant to Article 298 of the BGF Act, the method for determining contributions to finance resolution is specified in Regulation (EU) 2015/63.

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<sup>8</sup> Regulation of the Minister of Development and Finance of 25 January 2017 on detailed risks-based rules for setting contributions to finance resolution of branches of foreign banks, Journal of Laws item 184.

Section 2 of this Regulation specifies, i.a., determination of annual contributions, risk adjustment to the basic annual contributions, risk pillars and risk indicators, annual contributions paid by the so-called small institutions and supervised institutions or the change of status and process for raising annual contributions. Therefore, the discussed method (referred to as methodology in the Regulation) is applied directly when determining contributions to finance resolution to be paid by banks and investment firms. On the other hand, contributions to finance resolution of branches of foreign banks are determined on the basis of a Regulation on detailed rules for determining contributions for resolution of branches of foreign banks. It is worth noting here that branches of foreign banks pay contributions to the same fund as banks do. The provisions are consistent here because the Regulation on detailed rules for determining contributions for resolution of branches of foreign banks refers to the methodology set out in Regulation (EU) 2015/63.

Contributions are determined with consideration to [Kowalewska 2021, 214-15]: a) the basis, that is total liabilities, by default reduced by own funds and guaranteed funds, thus the share of an entity's non-guaranteed liabilities in the total of its liabilities has a significant impact on the amount of contributions from each entity; b) investment risk profile that takes into account risk assessment in the areas of risk exposure, stability and diversity of sources of financing, the significance of the institution to the stability of the financial system or economy and additional indicators specified at the national level.

## 5. RESOLUTION IN PRACTICE – A CASE STUDY

The first resolution of the Podkarpacki Bank Spółdzielczy in Sanok was initiated under the decision of the BGF Management Board<sup>9</sup> on 17 January 2020. As a result of this, PLN 182,875,609 of the bank's capital was written down. Out of the resolution instruments referred to in the BGF Act, a bridge institution was the chosen method. Bank Nowy BFG S.A was established with the capital of PLN 100 million. The BGF initiated resolution because three conditions that oblige the Fund (pursuant to Article 101(7) BGF Act) to take such actions were met. Members' shares and bonds issued by the bank were written down to cover the bank losses, defined in the Preparatory assessment pursuant to the statutory requirement, which caused the drop of its own capital to (-) PLN 182.8 million.<sup>10</sup>

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<sup>9</sup> Resolution of the Management Board of the Bank Guarantee Fund no. 25/DPR/2020 of 15 January 2020. The resolution commenced upon serving the decision.

<sup>10</sup> Website: <https://www.bfg.pl/wp-content/uploads/informacja-o-przyczynach-i-skutkach-przymusowej-restrukturyzacji-pbs-final.pdf> [accessed: 13.09.2023].

At the time of initiation of the resolution, Podkarpacki Bank Spółdzielczy in Sanok was the second largest cooperative bank in Poland. It had approximately 2.5 billion deposits. The BGF's decision to restructure the bank cost PLN 182 million in total, of which the cost of PLN 100 million was borne by holders of subordinated bonds (they were written down completely). The remaining cost, that is PLN 80 million, was borne by local governments (they lost 43% of the funds kept in the bank) and larger entrepreneurs (they also lost 43%, but of the funds that were an excess over EUR 100,000). When there is talk about resolution, we primarily focus on the situation of local government units. We must emphasize at the same time that if resolution was not carried out and the bank went bankrupt, then the funds gathered in it would be irretrievably lost.

The resolution of Podkarpacki Bank Spółdzielczy in Sanok raised various controversies, mainly because not only members' shares and subordinated bonds were written down, but also part of deposits of large companies and local governments. The bank's clients lost the total of approx. PLN 80 million. The losses of the Sanok bank were thus covered.

Resolution of Podkarpacki Bank Spółdzielczy in Sanok was finalised on 27 October 2021. The BGF sold 100% of shares of Bank Nowy BFG S.A. and thus reclaimed the entire amount allocated to create a bridge institution. The shares of Bank Nowy BFG S.A. were purchased by Wielkopolski Bank Spółdzielczy.

The second resolution involved Bank Spółdzielczy in Przemków. It was launched pursuant to the decision of 28 April 2020. The bank's assets were valued at PLN 111 million. The BGF decided to apply an instrument defined as acquisition of an undertaking and the bank that took it over was SGB-Bank S.A. with a registered seat in Poznań. On 2 May 2020 the company of Bank Spółdzielczy in Przemków and its liabilities were taken over by SGB-Bank S.A., to which clients' funds were transferred in full. In the opinion of the BGF and the Financial Supervision Authority, the resolution of Bank Spółdzielczy in Przemków allowed its customers to avoid insolvency and related potential negative effects. At the same time, according to the opinion of the Financial Supervision Authority, the taking over of Bank Spółdzielczy in Przemków by SGB-Bank S.A. did not affect the stability of its operation and thus the security of deposits placed in the bank.<sup>11</sup> All of the actions taken in this process are supported financially by the SGB Protection Scheme (Spółdzielczy System Ochrony SGB) alongside the BGF. In the process of resolution of Bank Spółdzielczy in Przemków deposits were not written down. The bank's equity was PLN 111.7 million.

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<sup>11</sup> Website: <https://www.bfg.pl/przymusowa-restrukturyzacja-banku-spoldzielczego-w-przemkowie-informacja-o-przyczynach-i-skutkach/> [accessed: 14.09.2023].

The shareholders and the European Fund of Development of the Polish Countryside lost their money. The former suffered a loss of about a dozen million zlotys, while the latter had previously given the bank a PLN 3 million subordinated loan.<sup>12</sup> SGB-Bank received a subsidy from the BGF to take over the organized part of the company. It needs to be mentioned that the resolution was initiated at the time of the outbreak of the COVID-19 pandemic. The premise to initiate it, defined as “public interest”, was to maintain financial stability. The cost of the resolution was PLN 81.66 billion. The resolution was finalized on 29 January 2021 when the court announced the bankruptcy of BS in Przemków.

Another resolution was carried out against Idea Bank S.A. The BGF issued a decision on 30 December 2020. The equity of Idea Bank S.A. was PLN 482.8 million. Bonds and shares were written down. Acquisition of the undertaking was chosen as an instrument of the resolution and Bank Pekao S.A. was the acquiring entity. The acquisition took place on 1 January 2021. This resolution procedure stipulated an exclusion that covered claims related to the distribution of bonds of GetBeck and investment certificates issued by Trigon. The resolution of Idea Bank S.A. protected creditors’ funds in the amount of PLN 0.8 billion, including funds belonging to depositors whose deposits exceeded the threshold of the BGF’s guarantee. This also protected funds in the guarantee fund in the amount of PLN 1.5 billion. Should Idea Bank S.A. have gone bankrupt, which was an alternative to resolution, creditors would have lost their funds. Due to the applied exclusion this resolution inspires major discussions and controversies. We may even talk to a certain degree about a trend of decreasing trust in the banking sector.

The last resolution was carried out against Getin Noble Bank S.A. Writing down of shares and bonds allowed protection of clients’ deposits in the amount of PLN 39.5, together with deposits worth PLN 3.5 billion. It needs to be emphasized here that some of these amounts would not have been paid out if the bank had announced bankruptcy, because they were funds of local government units. The resolution mechanism against Getin Noble Bank S.A. was initiated on 30 September 2022 and the instrument of a bridge institution was used. Velo Bank was created, owned by the BGF and 8 banks which co-financed this resolution, creating earlier the Commercial Banks’ Protection System (System Ochrony Banków Komercyjnych (SOBK)). The cost of this resolution process was PLN 10.34 billion, of which PLN 6.87 billion came from the BGF and PLN 3.74 billion from the SOBK system. This resolution also involved exclusions and they covered

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<sup>12</sup> Website: <https://finanse.gazetaprawna.pl/artykuly/1474150,bankowy-fundusz-gwarancyjny-re-strukturyzacja.html> [accessed: 14.09.2023].

mortgages denominated and indexed in foreign currencies (CHF, EUR, USD, JPY). The “public interest” protected in this resolution was the stability of the banking sector.

## CONCLUSIONS

Resolution of banks has recently gained significance as the BGF’s responsibility. We need to bear in mind that banks subject to resolution, despite the threat of insolvency, still hold funds of their clients who placed them in a bank as a public trust institution. For this reason, the resolution process must be looked at from multiple perspectives through the prism of protection of depositors, ensuring security and stability of the entire banking market, or even financial market. We may conclude that activities taken by the Funds as part of resolution lead to a particular permeation of public law with private law and the resulting interference of public law norms with private law norms. Application of law at the level of resolution is without a doubt an element of the process of economisation of law.<sup>13</sup> For more on the law of the financial market and economisation of law see relevant literature [Nieborak 2016, 31-95].

Financing resolution of banks, constructed as a model of *ex ante* financing, was based on contributions paid by banks (branches of foreign banks and investment firms) to the BGF for the resolution fund of banks. This model is in line with the EU standards and the choice of such a model must be unequivocally given credit. It is difficult to give a clear answer to the question of whether this model is sufficient and rational. Even though it is defined as an *ex ante* model, we must note certain departures from this standard, such as for example extraordinary contributions or contributions paid in the form of payment commitments. Such a construction would not raise doubts if the fund did indeed reach for these contributions should the situation require so. As seen in the last resolution, the BGF relied on funds that came from the market. The amount that the BGF received from SOBK was 36,17% of all costs of the resolution of Getin Noble Bank S.A. We may suspect then that contributions which were at the Fund’s disposal were insufficient. At the same time, it needs to be noted that the resolution process is complicated and without a doubt requires that extensive financial outlays be ensured.

Another issue that must be discussed is making the calculation of contributions for the resolution dependent on the sums of guaranteed funds in relation to investment firms, which are not covered with guarantee protection. Conditioning the amount of contributions paid by investment firms on how

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<sup>13</sup> For more on the financial market law and economisation of law see: Nieborak 2016.

far deposits are guaranteed does not deserve approval. Therefore, we should specify what “the level of guaranteed funds” means and whether it includes funds of local government units. The answer to this question is important in the fact that these funds do not enjoy protection in the event of declaration of bankruptcy of a bank. It is also important in the context of keeping the possibility to use funds held in the restructuring fund in line with the realization of the obligation to guarantee deposits. Given the above, it should be considered whether the amounts held by local government units in a bank should be excluded when making such calculations.

This study focuses on selected aspects of implementing resolution, with the prime objective to systematise the area of its financing.

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