

Mirostaw Bączyk

Nicolaus Copernicus University, Toruń

mirbac@umk.pl

ORCID: <https://orcid.org/0000-0001-5419-6916>

Development of safety deposit box rental contracts outside the banking sector in Polish business practice

<http://dx.doi.org/10.12775/SIT.2023.020>

1. Introductory remarks

For the past few years, a steady development of contracts which are offered by entrepreneurs without the legal status of a bank, enabling interested parties to access so-called safety deposit boxes (lockboxes), could be observed in Poland. Such economic expansion of 'depository entrepreneurs' (also referred to in practice as 'vault and deposit operators') results, *inter alia*, from the gradual withdrawal of banks from traditional and typical for them 'safety deposit agreements,' (Article 5(2)(6) of the Banking Law Act¹) e.g., on account of the high costs of maintenance of so-called bank vaults (dedicated premises for the location of safe deposit boxes), bank reorganization, withdrawal from large branches,²

¹ Act of 29 August 1997 Banking Law (consolidated text: Journal of Laws of 2022, item 2324, as amended).

² See, e.g., L. Wilkowicz, *Mniej oddziałów i marmurów to również mniej skrytek*, "Dziennik Gazeta Prawna" 15 February 2021, No. 30, p. A11 (there is there an explanation that during the decade since 2011, national banks have

and development of branchless (electronic) bank structures. The largest network of safety deposit boxes is currently in operation at PKO SA BP, Pekao SA, and Santander Bank Polska, among others. Interestingly, we see no decline in the service activity of cooperative banks in this area, affiliated within various groups.³ Meanwhile, it is possible to observe a steady increase in demand from individual and institutional clients for a high level of professional security for deposited items of various categories.⁴ Currently, there are several more widely known non-banking operators offering 'deposit box rental' in Poland. 'Deposit box rental agreements' are subject to broader regulation in the standard contracts issued by 'depository entrepreneurs' (rules and regulations; Article 384 of the Civil Code⁵). The structure of the legal matter of these rules and the content of the aforementioned agreements bear a strong resemblance to the rules on bank safety deposit agreements.⁶ In most cases, the emphasis is placed on the obligation of the depository company to 'provide the highest level security' (in the technological and legal sense – the formula: 'safe as a bank') for the deposits in the lockboxes, which is probably intended to compensate (at least in marketing terms) for the lack

closed half a thousand branches; safe banking services are seldom offered nowadays, and banks that offer them are becoming – according to the author – monopolists or members of an oligopoly); M. Sajewicz, *Domowe precjoza dobrze schowane*, "Rzeczpospolita" 2 October 2014; P. Rosik, *Skrytka bankowa to coraz większy luksus. Banki masowo likwidują sejfy i wycofują się z usług przechowywania kosztowności*, <https://strefainwestorow.pl/artykuly/produkty-uslugi/20191104/skrytki-bankowe-brak-miejsc> (access: 7.03.2023).

³ See, e.g., M. Bączyk, in: *System prawa prywatnego, Vol. 9. Prawo zobowiązań. Umowy nienazwane*, W. Katner (ed.), Warszawa 2023, 4th ed., in print; *Co to jest skrytka bankowa i jak działa?*, <https://businessinsider.com.pl/>.

⁴ L. Wilkiewicz, op.cit., p. A11.

⁵ Act of 23 April 1964 Civil Code (consolidated text: Journal of Laws of 2022, item 1360, as amended), hereinafter: the Civil Code.

⁶ A synthetic study does not allow for a general, jurisprudential assessment of these regulations (including the issue of their amendment, their relation to the so-called remuneration and fee schedules, and a number of other matters). Nevertheless, they currently form the main legal regime of the contracts under analysis (Article 353¹ of the Civil Code). In the trading in question, one does not seem to hear about attempts to create so-called deontological rules (no structures associating 'depository' entrepreneurs), while a dynamic process of their transformations and acquisitions is underway.

of legal status of a bank on the part of the lessor. Moreover, the regulations of depositary entrepreneurs not infrequently provide for similar legal solutions, which enable their combined legal assessment within this study, or at least an attempt to capture the more general regulatory trends. It is also not uncommon for the so-called vaults of these operators, installed in the vault rooms of former banks, to adopt the architectural, functional, and technological concepts of the arrangement of such non-bank vaults. In European countries, a substantial development of the 'safety deposit box market' (lockboxes) of non-bank institutions has been reported for a long time, including in connection with the analysis of measures to prevent narco-business activities, money laundering, and terrorism.⁷

From the point of view of the category of items placed in safe-deposit boxes (lockboxes) and the function of such storage facilities, it is possible to distinguish several forms of contracts that are similar from a juridical standpoint. The first group of contracts allows for the safekeeping of valuables in the broadest sense, items of significant value (market or personal), and documents of substantial value and importance to the client. Such items are generally not intended for regular trading and are not part of broader and permanent economic transactions. The 'safety deposit box contracts' of non-bank entities cover the same categories of objects as are reserved under bank safety deposit boxes,⁸ thus competing with banks for these classic (basic) categories of safety deposit box contracts (*bank safe deposit, le coffre-fort*). In this study, our primary interest is in contracts involving so-called manual

⁷ *Rapport sur les coffres-forts et leur risque d'abus a des fins de blanchiment d'argent et de financement du terrorisme (14 décembre 2015)*, Confederation Suisse, <https://www.newsd.admin.ch/newsd/message/attachments/42430.pdf>, pp. 7–12 (*les coffres-fort non bancaires hautement sécurisés*; *ibid.* a summary of similarities and differences of classic 'bank safe deposit contracts' and similar agreements with non-bank institutions in Switzerland and other European countries).

⁸ See, for example, § 3(2) of the "Rules and Regulations for the Rental of Safe Deposit Boxes by Pekao SA for Individuals from 2021," www.pekao.com.pl; § 14 of the "Rules and Regulations for the Rental of Safe Deposit Boxes at the Cooperative Bank in Skierniewice from 2019;" www.bsskierniewice.pl.

rather than automatic (electronic) safe deposit boxes,⁹ although in a juridical sense there are no fundamental differences between the two (differences only occur in terms of the technical system of access to the safe deposit box and the manner of verification of the authorized parties). In the last decade, contracts for the lease of smaller or larger premises (from 1 m³ upwards) have emerged in Poland, for the storage of such items as everyday articles, seasonal equipment of natural persons, archives, and business inventories. This is a reference to the American idea of developing so-called self-storage facilities (storage boxes; self-storage; a 24-hour autonomous access by the tenant, with organized security and monitoring by the lessor).¹⁰ On the other hand, 'Post-office box contracts'¹¹ 'address (correspondence) box rental contracts' serve the purpose of storing correspondence (postal items),¹² and are sent to the addressees. Other locker rental agreements may be closely linked with other underlying contracts and serve specific commercial purposes (e.g., the storage of cyclically transported and delivered goods).¹³

⁹ See, e.g., chapter 5 of the "Pekao Safe Deposit Box Rental for Individuals Regulations for the year 2021" (hereinafter: Pekao SA Regulations); 'manual safe deposit box' – an element of a so-called safe deposit cabinet in a vault, opened by means of keys; 'automatic safe deposit box' – an element of an automatic safe deposit box system, operated automatically and using a different verification system.

¹⁰ See, e.g., A. Gawrońska, *Samoobsługowe hale powoli podbijają rynek*, „Rzeczpospolita” 24 April 2018, p. 3 (ibid.: prospects for the development of the self-storage market in Poland, including small deposit boxes, 0.5-15 m²); *Schowanko – Lider self-storage w Polsce*, <https://schowanko.pl> (ibid. an indication of the demand factors for such contracts and their terms and conditions).

¹¹ See "Regulations for the provision and use of deposit boxes of Poczta Polska SA of 2020," www.poczta-polska.pl (hereinafter: "Regulations of Poczta Polska SA").

¹² See, e.g., the "MBE Service and Trading Company Safe Deposit Box Regulations 2014" (ibid. the possibility for a lockbox lessor to authorize the lessor to collect parcels on behalf of the lessee).

¹³ See, e.g., "Regulations for the Provision of Carriage Services and Rental of Refrigerated Boxes Provided by Integer.pl.S.A of 2020," <https://inpost.pl> (commodity-type boxes).

2. Parties to the deposit box contract

The standard contracts of depositary entrepreneurs explicitly refer to a rental agreement. Parties to a safe deposit box contract are identified as the 'lessor' of the box and its 'lessee' and the essential function of such a contract is the storage of tangible objects in a specific, enclosed space (safe deposit box). An attempt to define the legal nature of this contract will follow (in section 5). At present, we are interested only in the mere, standard-formed, subjective configuration of the legal relationship in legal transactions.

In contract practice, the designation of the contractual parties is not uniform. Alongside the predominant term 'lessor,' other designations appear, e.g., 'safe deposit box provider,' 'depositary,' 'operator.' These entities typically have the legal status of a commercial company (joint-stock or limited liability) and do not necessarily own the safe deposit facilities (the infrastructure of these facilities) including the safe deposit boxes themselves. No restrictions exist with regard to the legal status of safe deposit box lessees (natural persons, legal entities, entities referred to in Article 33¹ § 1 of the Civil Code).

The contracts in question are personal in nature, and their conclusion always involves the identification of the entrepreneur's counterparty (e.g., by means of an identity document for the natural person, a current printout specifying the status of the legal entity, and the rules of its representation). The contract commonly requires a written form under pain of invalidity (Article 76 of the C.C.). Identity verification also extends to the lessee's authorized representatives.

Agreements with several lessees (as a rule two) are not excluded. The formula of a multi-entity bonding relationship is still rare today. The predominant model is the contractual right of each individual lessee to access the lockbox, dispose of its contents, and exercise all rights under the contract. Also, each lessee may terminate the lease contract, including with effect for other les-

sees.¹⁴ The same may also apply to the establishment and revocation of a power of attorney. The contract allows for the possibility of adopting a different model of co-tenancy, i.e., the joint appearance of the co-tenants vis-à-vis the lessor. This is reminiscent of the joint bank account formula (combined and disjoint).¹⁵ A similar terminology could, as it seems, also be applied to deposit box rental agreements ('joint' and 'disjoint' leases). As a rule, the possibility of concluding multi-tenancy agreements results in shaping the contractual liability of co-tenants according to the rules of passive solidarity (Articles 366, 369 of the Civil Code), regardless of the adopted model of agreement ('disjoint' or 'joint'). Such liability may include, *inter alia*, remuneration and additional charges, and compensation due to the lessor.

3. Proxies and other entities authorized by the leaseholder

A considerable number of sections of the standard contracts are devoted to the power of attorney conferred by the lessee. They resemble the arrangement used in banking regulations covering safe deposit box contracts and bank account agreements (Article 725 of the C.C.). In line with the standard formulas, such a power of attorney includes authorizations to 'access the rented safe deposit box' and authorizations to 'dispose of the deposit.' This implies that it is permissible for the proxy to also perform factual acts related to such authorizations, which is sometimes explicitly stated in the standard wording. In any event, the 'safe deposit power of attorney' in question certainly falls within the construction of the general power of attorney provided for in Article 95 of the C.C.

¹⁴ Cf., e.g., § 3(3) of the Regulations for safe deposit boxes operated by Śląskie Sejfy spółka z o.o. of 2022, slaskiesejfy.pl (hereinafter: Regulations-Sląskie Sejfy).

¹⁵ More broadly on such accounts see, e.g., M. Bącznyk, in: *System prawa handlowego, Vol. 5C, Prawo umów handlowych*, M. Stec (ed.), Warszawa 2020, p. 515 et seq. (with cited literature and rulings).

A certain general standard for the way in which a 'safe power of attorney' is established is thus becoming apparent. The declaration of the principal should be made in writing in the presence of the lessor and following the written consent of the attorney to the processing of his or her personal data (including, for example, biometric data). A direct granting of the power of attorney to the lessor is not necessary if it is made in a form with a notarized signature. The power of attorney may be revoked at any time (even, for example, as a result of email correspondence delivered during the lessor's business hours).

In principle, the number of attorneys is limited (to two or one), and as a standard, the possibility of substitution is excluded (Article 106 of the C.C.). The attorney should be a person subject to appropriate identification, including, e.g., biometric identification. Each of the several proxies appointed will, in principle, exercise the said powers independently.

As regards the possible types (forms) of power of attorney, liberal and more restrictive solutions are encountered. On occasion, different forms of power of attorney are envisaged (e.g., a periodic power of attorney, a power of attorney limited in some other way, a power of attorney that is also effective after the death of the principal, or a power of attorney established exclusively in *mortis causa*). At other times, only a permanent, unlimited power of attorney is mentioned, and the limitations of such a power of attorney are removed.¹⁶ This eliminates potential complications in the sphere of defining the scope of possible authorization. Sometimes, the standard expressly specifies the activities that are not covered by the power of attorney (e.g., termination of the agreement, amendments to the content of the agreement, making dispositions in the event of the death of the principal lessee, etc.).

The proxy is naturally not a party to the contract, despite the disclaimer in the standard wording that the provisions concern-

¹⁶ See, e.g., Article 4.2 of the Rules and Regulations for the Rental of Safe Deposit Boxes at NPS SA in Wrocław, 2017, <https://24sejf.pl> (hereinafter: Rules and Regulations-NPS SA); preference for a permanent and unlimited power of attorney, with no restrictions in terms of time or otherwise.

ing the principal “apply *mutatis mutandis* to the proxy.” The point here is to additionally indicate the scope of authority of this entity (only within the limits of the provisions of the rules and regulations and the necessity for it to comply with the content of the contract in the same capacity as the principal). It should be emphasized that power of attorney to conclude the safe deposit box lease agreement itself also appears in the standard contracts, generally requiring a specific form (e.g., with a notarized signature of the prospective lessee; safe deposit box contract *per procura*).

Some standard contracts include a further category of persons authorized to access the safe deposit box in addition to the tenant himself, his proxy(s), or representatives of legal persons. This refers to persons holding a *de facto* safe deposit box key and the relevant documents (e.g., PIN identification card, access card). The contracts stipulate that such persons will not be subject to inspection or identification by the lessor, and allowing them access to the safe-deposit box constitutes proper performance of the lessor’s obligation (Article 452 of the C.C.). It must be assumed that the lessor is unaware of the circumstances (unfavorable to the lessee) under which these access instruments may come into the possession of another person. Third-party access to the deposit box would not be possible in the event of a so-called blockade of the deposit box at the lessee’s request (e.g., if the key or other access instruments are lost by the lessee and the counterparty is informed of this). In some cases, it is stipulated that the possession of the key and the relevant documents by the party in question is regarded jointly as a bearer identification mark (Article 921(15) § 3 of the C.C.).¹⁷ This, however, is not a common solution. Some depository operators provide for the possibility of authorizing third parties only in the form of a power of attorney (Article 95 of the C.C.) and thus limit their obligations on a subjective level. Sharing keys, access cards, and identification cards with PIN with third parties will then constitute improper performance of the contract by the lessee and may lead to termination

¹⁷ Cf., e.g., Article 4.1.3 of the “NPS SA Regulations.”

of the contract¹⁸ or other legal consequences (e.g., exclusion of liability of the counterparty). The proxy holder invariably has his or her own identification card with PIN and access card, and is subject to verification. The contractual standards of depository companies generally do not provide for the construction of a so-called co-user of a (postal) box designated by the primary counterparty (“user”) with the consent of the co-user.¹⁹

Allowing third parties access to a safe deposit box on the basis of the aforementioned bearer IDs does not render the safe deposit box agreement anonymous under such circumstances. As has already been mentioned, the tenant is always identified in the conclusion of the contract, and, in the event of the appointment of a proxy or the action of a representative of a legal person, the authorized person is identified as well.

4. A synthetic overview of the obligations and powers of the parties to a ‘deposit box contract’

A more thorough analysis of the contractual standards of several major ‘depository entrepreneurs’ on the Polish market makes it possible to identify the typical obligations and rights arising from ‘deposit box contracts’. If one disregards the clear lack of systematization and of a sufficiently clear and consistent presentation of the obligations of both parties in the standard contracts (the exemplification method without segregation into primary and secondary obligations is predominant in this respect), a more general synthetic approach may allow for the specification of the following obligations of the counterparties and the determination of the legal relationship between them.

¹⁸ Cf., e.g., § 22.2 of the “Regulations for the rental of safe deposit boxes by Skrytka.eu sp. z o.o.,” 2021, <http://skrytka.eu/documents> (access by third parties other than proxy takes place “at the expense and risk of the customer,” further: the “Rules and Regulations of Skrytka.eu”).

¹⁹ However, it is provided for, e.g., in § 6 of the “Rules and Regulations of Poczta Polska SA” (ibid. more on the legal status of such a person in a post office box rental contract; the status of co-tenant is most definitely absent here).

The entrepreneur ('depository,' 'lessor') undertakes primarily the following:

- a) to enable the counterparty to use a suitably individualized deposit box located in a so-called vault; as a rule, separate contracts are concluded for each lockbox);
- b) to provide the counterparty with access to the deposit box at all reasonable times (either around the clock or during so-called 'business days and hours') and to enable the counterparty to dispose of the items deposited in the box (their placement, retrieval, and other disposal; in regulatory terminology, reference is generally made to the 'right to dispose of the deposit'); it may be assumed that the 'obligation to access and dispose of the items in the box' already derives from the lessee's more general entitlement in the form of the 'use of the box,' which the lessor is required to enable the counterparty to have;
- c) to issue to the lessee the relevant documents and devices to allow physical access to the vault (one or two vault keys, an electronic card with a PIN number set by the customer and known only by the customer, allowing the lessee access to the vault); the lessor does not normally have a duplicate key and is not in a position to procure its copy;
- d) to provide the counterparty with an appropriate means of access to the deposit box on the vault premises, i.e., exclusive, secure, and discreet access;
- e) to protect items deposited in a safety deposit box by setting up an appropriate system of permanent monitoring and control of those using access to the safety deposit boxes in the vault and ancillary rooms;
- f) the obligation of professional secrecy, covering in principle all information relating to the deposit box contract (including, but not limited to, the fact of its conclusion, content, execution, information on proxies, personal data, and others).

It is evident that the obligations set out in points b and c stem from the general obligation to enable use of the deposit box indicated in point a. A frequently used formula in standard contracts,

i.e., “access to the deposit box and disposal of the deposit” (items in the box), is also used to define the scope of the mandate for the lessee’s representative. The manner of access by the lessee, on the other hand, is determined by the lessor’s general obligation set out in points e and f. Essentially, under a deposit box contract, the lessor must ensure that the lessee can “use the box,” “protect the items in the box,” and observe “professional secrecy” to protect the personal and material safety of the client using the box (the three essential legal functions of the contract). As a rule, separate contracts are concluded for each individual deposit box (lockbox).

The basic obligations of the contractual partner (lessee, client) are the obligation to pay the remuneration (and in some cases other additional fees indicated in the contract) and the obligation to utilize the deposit box in the manner specified in the contract. This involves placing in the box only the items designated therein, adherence to a general system (procedure) for controlling the lessee’s access to the box, primarily through the use of appropriate devices (e.g., keys) and documents (e.g., smart cards, access cards) issued by the lessor at the time of the conclusion of the agreement, while at the same time adhering to the principles of biometric control.

5. The problem of the legal qualification of a ‘deposit box contract’

The previous section attempted to synthesize only the basic obligations of the parties to the contract in question. This is a crucial point of departure when attempting its legal qualification prior to litigation. Therefore, it can be concluded that a ‘deposit box contract’ could be legally qualified in a number of ways, with the indicated prevailing statutory terminology not being of fundamental importance in this respect. A safekeeping agreement (Article 835 of the C.C.) would thus be excluded here, even though it is quite common for an entrepreneur to be referred to as a ‘depository.’ The reference to the category of nominated contract (naming the

client as 'lessee' and naming the contract itself: 'deposit box rental', determining the common name of this agreement in practice) speaks precisely for a rental agreement (Article 659 of the C.C.) and, in any case, for a specific rental agreement. Its characteristic features may be demonstrated by the elaborate element in the contract of the obligation to provide the lessee with an adequate state of security, including the protection of the items in the deposit box (obligation d as above), and personal security for the lessee (obligations d, e and f). The term 'deposit box' is perhaps an important indication of the primary function of the said agreement (lease for storage). These two elements, deposit and security, are not found in the scope of the classic, general lease agreement (Article 659 of the C.C.). In strict terms, the object of the 'deposit box rental' is not – contrary to the statutory terms – the deposit box itself (a fragment of the vault facility), but the space (volume) defined by its physical dimensions. The lessee is granted access to this space and is under an obligation to maintain the functional efficiency of the individual box (not to damage or destroy it in the course of accessing the interior). The element of the possibility to 'adapt' the subject of the lease (the lockbox) to the lessee's needs (personal, commercial) in the form of, e.g., expenditures, which is characteristic of a classic lease agreement, is naturally excluded in this case (Article 676 of the C.C.).

Standard contracts refer only generally, to the extent not regulated therein, to, *inter alia*, the provisions of the Civil Code without expressly indicating a specific set of provisions (e.g., on lease). The acceptance of the qualification of a deposit box agreement as a specific lease agreement would, of course, not eliminate the possibility of applying the provisions on safekeeping, lease, or other agreements directly or by analogy. Thus, the search for the appropriate legal regime would be the task of a court deciding a specific legal dispute against the background of the contract under consideration (e.g., the question of the application of Article 677 of the C.C. or Article 118 of the C.C. to the compensation claims of the depository company; Article 670 § 1 of the C.C.).

The contract under consideration is consensual, mutually binding, payable, reciprocal, causative, and may fall into the group of consumer contracts (Article 22¹ of the C.C.). Thus, a corresponding protective legal regime of the lessee-consumer is hereby created. By the nature of the lessor's form of service, an obligation of a continuous nature is created, which justifies the application of, *inter alia*, Article 384¹ of the C.C. It has the character of a professional and, preferably, adhesion contract. In fact, the standard contracts do not indicate the possibility of more extensive negotiations with the lessor on the terms and conditions of the contract.

6. Lessor's right to use the deposit box. Access to and disposal of the contents of the deposit

The aforementioned exclusive access for the tenant to the safe deposit box is guaranteed primarily by the concept of two keys with different options for their disposal, i.e., a variant of a key for the lessee and the lessor (e.g., a so-called central key) and a variant of both keys (a set of them) for the lessee.²⁰ The deposit box is then opened as a result of the interaction of the parties (i.e., only the combination of two keys allows the box to be opened). The lessor does not have a duplicate key, nor does he have the right to make a duplicate key and may only open the locker himself in contractually stipulated instances of emergency (commission) opening. Under the second option, the lessee is provided with two identical keys and the corresponding identification documents (e.g., a magnetic access card), whereby access to the box is sometimes possible only in the presence of an employee of the lessor subject to the

²⁰ Cf., e.g., § 4(2) of the "Rules and Regulations for the Rental of Deposit Boxes in the Centre for Bank Deposits in Poznań" of 2020, <http://centrumdepozytowe.pl/regulations> (hereinafter: "Rules and Regulations of the Centre for Bank Deposits"); § 8 of the "Rules and Regulations of Pekao SA" (key 'A' for the customer and key 'B' for the bank).

specific terms and conditions governing such access.²¹ Under this variant, the lessee is the only person permitted to open the deposit box, and the lessor may only do so in the contractually indicated cases of the aforementioned emergency opening of the deposit box. At other times, the alternative of releasing the keys to the lessee may be to use the authorized person's biometric identification system to access the vault and the deposit box itself (this may be referred to as variant three). The processing of personal data for the purpose of biometric identification requires the written consent of the lessee (and any authorized representatives).²² Alternatively, two locker keys may be issued to the lessee for opening the locker and at the same time – at the lessee's choice – a biometric identification system may be employed instead of an electronic identification system (mixed variant).²³ The first, second, and fourth options foresee the use of mechanical locks (with keys), the third variant only biometric locks.

Standard contracts do not provide (as the regulations of the safety deposit boxes of some banks themselves do) for the possibility of concluding an additional agreement between the parties for the safekeeping of the lessee's key and identification documents (Article 835 of the C.C.).²⁴ However, such an agreement

²¹ See, e.g., § 4(4) of the "Silesian Safes Regulations;" paragraph 4.3 of the "Regulations for the Lease of Commercial Safety Deposit Boxes by MS Metale sp. z o.o." of 2020 (hereinafter: the "MS Metale Regulations"), Article 4.1.2 of the "NPS SA Regulations" of 2017.

²² See, e.g., Article 4.1.3 of the "Rules and Regulations for the rental of safety deposit boxes at Idealbox Ltd.," www.safebox24pl/dokumenty (hereinafter: the "Idealbox – Safebox24 Regulations"); § 6(4) of the "Rules and Regulations for the Lease of Safety Deposit Boxes in Polski Skarbiec" of 2022 (hereinafter: the "Rules and Regulations-Polski Skarbiec").

²³ Cf., e.g., § 10(2) of the "Rules and Regulations-Skrytka.eu"). In practice, so-called palm and facial biometric profiles are preferred for this purpose, but other forms of biometrics (e.g., finger vein patterns) may also appear; see, e.g., M. Duszczuk, *Po co portfel? Teraz wystarczy palec*, "Rzeczpospolita" 7 March 2023, p. L.14.

²⁴ See M. Bączyk, in: *System prawa prywatnego, Vol. 9 – Prawo zobowiązań. Umowy nienazwane*, W. Katner (ed.), Warszawa 2018, p. 791. The possibility for the contracting bank (Article 835 of the C.C.) to keep 'secured duplicates of the key' issued to the customer is stipulated, e.g., in § 11.1 of the "Rules and Regulations for the Rental of Safety Deposit Boxes at BS Milicz of 2020," www.idealbox24.pl.

would probably be permissible in connection with the conclusion of a safety deposit box contract under any key disposition variant (separate keys for the parties, keys for the lessee only). The lessee's legal position is then supported by a clause under which the lessor does not have access to the contents of the deposit box. This is not an issue if the locker is only used (accessed) via biometric identification.

A differentiation should be made between the frequency of access to the safety deposit box (round-the-clock – unlimited and during business hours) and the permissible duration of the authorized person's (party's, proxy's) stay in the vault itself. In this case, a contractually stipulated time limit (the so-called access time) applies and, if exceeded, the locker may be closed automatically.²⁵ Such a limitation may be linked to the limitation of the number of persons present in the vault at the same time.

The principle of access to the safety deposit box at all times may be limited in the contract. Such restrictions are based either on general legal formulas or on restrictions *in concreto* (e.g., security reasons for the contents of other deposit lockers, and/or non-payment of remuneration or other fees by the lessee). The lessee of the safety deposit box should be promptly informed of such a restriction, while at the same time, the applicable contractual clauses exclude any possible claims by the lessee arising from such restrictions. Another form of limiting the use of the locker is the lessor's power to "withhold the contents of the locker" from the lessee (proxy) in the event of a relevant order from a court, public prosecutor, the Inspector General of Revenue Control, or other authorized bodies, issue a search warrant, and/or issue a relevant order in enforcement proceedings against the lessee.²⁶ Such withholding is also effected in the event of the lessee's bankruptcy or the initiation of its liquidation until its receiver or liquidator appears. In some cases, the lessor reserves the right to refuse access

bsmilicz.pl; see also § 10 of the "Rules and Regulations for the Rental of Safety Deposit Boxes at BS Skierniewice of 2019," www.bsskierniewice.pl.

²⁵ See, e.g., § 11.7 of the "Rules and Regulations –Skrytka.eu."

²⁶ Cf., e.g., Article 4.1.11-12 of the "NPS SA Rules and Regulations."

to the safety deposit box or to release the deposit in the case of a “reasonable suspicion that the items stored are not in conformity with the agreement.”²⁷

The lessee is free to dispose (actually and legally) of the items placed in the locker (usually referred to *en bloc* as a ‘deposit’). It is, therefore, not clear as to what legal significance the disclaimers in some contracts may hold that “the deposit is the sole property of the customer” or the like.²⁸ The lessor is not authorized to determine the legal status of the items, and the lessee does not have to be the owner of the items or entitled by virtue of a right *in rem* or by virtue of an obligation (e.g., the owner of the items may be a representative, a third party). Only the items provided for in the contract should be deposited in the safety deposit box. As a rule, the standard contract templates generally specify the types and characteristics of such objects (e.g., documents, jewellery, precious metals, works of art, securities, money, collections). Other movable items of appropriate size and overall weight of the ‘deposit’ are also indicated (usually up to 25 kg). Furthermore, a catalogue of items that may not be placed in the locker (e.g., weapons, ammunition, criminal items, drugs, psychotropics, radioactive, explosive, suffocating, perishable, odour-emitting materials, live or dead animals, items excluded *de lege lata* from legal circulation) is also listed by way of example. A breach of this prohibition may result in the lessor’s immediate termination of the agreement. The implementation of this prohibition is achieved, *inter alia*, by the impossibility of bringing any luggage into the vault, except for so-called hand luggage in common use (e.g., briefcases, document holders, handbags). Some operators obtain an additional statement from the lessee to the effect that the deposit is in accordance with the regulations (contract), at other times, they

²⁷ See, e.g., paragraph VI.6 of the “MS Matala Rules and Regulations.”

²⁸ Cf., e.g., Article 1.2.3 of the “Rules and Regulations of Idealbox-Safebox24” (presumably, the intention behind such formulations is to confirm the free legal trading of the items in the locker).

obtain a statement on the origin and type of items deposited in the safety deposit box or equivalent.²⁹

According to a common rule, “the customer may not transfer the rights under the contract to other persons.”³⁰ This means that rights arising from the deposit box rental contract cannot be the subject of legal transactions. Claims of a compensation nature against the lessor (Article 509 § 1 of the C.C.) are presumably not excluded in this regard. Subleasing of a safety deposit box (as for the classic lease, cf. Article 668 of the C.C.) or lending of a safety deposit box (its contents) is also excluded. Such contracts – by virtue of the wording of the regulatory provisions – could not be interpreted as granting a “safety deposit box” mandate to a third party (Article 65 of the C.C.). The provisions of the regulations concerning agreements for the lease of safety deposit boxes also do not envisage the possibility of the so-called “co-use” of a safety deposit box (lockbox), which is otherwise known – as mentioned – with regard to post-office boxes (see point 3).

7. The obligation to protect the contents of a safety deposit box and to verify persons authorized to access the box

In standard contracts, the “obligation to protect (secure) the safety deposit box” is mentioned first³¹ before specifying the actual use of the safety deposit box and, in addition, the lessor undertakes to “exercise utmost care” (cf. Article 355 § 2 of the C.C.) in performing this duty. This is undoubtedly a more far-reaching obligation to maintain custody of the items than the obligation under, e.g., Article 835 of the C.C., as it encompasses the entire deposit,

²⁹ See, e.g., Article 4.1.5 of the “Idealbox-Safebox24 Rules and Regulations;” § 17(3) of the “Rules and Regulations-Skrytka.eu” (declaration of “compliance of the deposit with the rules and regulations”).

³⁰ See, e.g., Article 3.7 of the “NPS SA Rules and Regulations.”

³¹ Cf., e.g., Section IV.1 of the MS Metals Rules and Regulations; Section 2.2 of the Silesian Safes Rules and Regulations).

i.e., all items irrespective of their possible permanent variability in the deposit box and knowledge of their types and characteristics. This obligation manifests itself on several levels. It would appear that one can speak of direct and indirect security. The former manifests itself in the technical and functional condition of the operator's vault facilities with its safety deposit boxes (certified lockboxes). The latter involves the actual organization of access to the safety deposit box by authorized persons (control and verification system) and the taking of other legal measures in the interests of the client (e.g., a guarantee system in the form of concluding an appropriate insurance contract for the client's property or third-party liability insurance).

The lessee is advised on the general procedure and the organization of access to the vault at the conclusion of the contract, but the operator – in order to protect the interests of other clients – does not provide detailed information on the security arrangements of the vault. The client is obliged to follow this procedure by properly using the key and the identification documents issued to him and consents to the monitoring of the vault and ancillary rooms (including image recording) during each visit.³² The lessor is authorized to verify the identity of the person opening the locker with a key or biometrically.³³ In the event of loss of the client's key or access documents,³⁴ or if a biometric identification error is detected,³⁵ appropriate locker access procedures (so-called emergency locker opening at the client's expense) are provided for.

³² See, e.g., § 8.6 of the Rules and Regulations of Polski Skarbiec SA.

³³ See, e.g., Article 3.4 of the Rules and Regulations of Idealbox – Safebox24; § 6.5 of the Rules and Regulations of Polski Skarbiec SA.

³⁴ See, e.g., Rule 4.3.2 of the Rules and Regulations of NSP SA.

³⁵ See, e.g., § 11 of the Rules and Regulations of Polski Skarbiec SA.

8. Remuneration, additional charges for the lessor and the unilateral modifiability of the remuneration

The deposit box rental contract is a fee-based contract. In addition to the basic remuneration (basic fee), the lessee is required to pay the additional fees indicated in the agreement (“Tariff of Fees,” “Price List”). The base fee is paid in advance for the entire rental period in the case of a limited duration contract and in advance for the periods indicated in the contract for an unlimited duration contract. Additional fees are generally provided for in connection with the appointment of a proxy by the lessee. Fees may also be used to cover damage caused by the lessee (e.g., as a result of damage to the electromagnetic lock, replacement of the lock, cost of replacing the deposit box). The so-called security deposit, as in some forms of classic lease (Article 659 of the Civil Code), is not applicable in this respect. Additional charges are determined by the development and contents of the individual obligation of the parties.

In the standard agreements of some entrepreneurs, clauses appear stipulating the possibility of unilaterally modifying (changing) the amount of remuneration and additional fees “for important reasons” during the term of the lease. In some cases, such a clause applies only to agreements concluded for an indefinite term, at other times to contracts for a definite term. The charges in question are those not yet paid in advance.³⁶ The legal assessment of such clauses may vary. If the “Tariff of Fees” (“Price List”) of a given entrepreneur is considered to be an “integral part of the contract” (as generally provided for in standard contracts) and not, for instance, a separate contractual template (Article 384 of the C.C.), then the existence of a specific contractual valorization of the remuneration and fees payable to the lessor, coming into effect as a result of the entrepreneur’s formative statement, may be considered. This would imply the possibility of judicial con-

³⁶ See, e.g., Article 6.3 of the Idealbox-Safebox Rules and Regulations; § 33.5 of the Idealbox.eu Rules and Regulations.

trol of the actual occurrence and classification of “important reasons” for the modification of fees. In some instances, price lists are treated as appendices to the standard agreement³⁷ in which case the question arises as to whether the aforementioned manner of modifying the remuneration and additional fees is proper since the regime set out in Article 384¹ of the C.C. should nonetheless be observed.

The lessor’s claims against the client arising from the safety deposit box contract (claims for remuneration, additional fees, damages) may also be secured by a contractual lien “encumbering the deposit” (contents of the safety deposit box, Article 306 § 1 of the C.C.³⁸). The depositary company, as pledgee, may enforce its claims through a public tender (auction) or through enforcement proceedings.³⁹ Occasionally, clauses occur whereby, with the conclusion of the contract, the lessee agrees “to encumber the deposit with the statutory right referred to in Article 670 § 1 of the C.C. in conjunction with Article 306 of the C.C.” As appears to be the case, this merely involves the assertion of a contractual pledge as a right *in rem* for the pledgee (and its possible extent, Article 65 of the C.C.). Irrespective of this, the aforementioned legal nature of

³⁷ See, e.g., § 1.14 of the “Rules and Regulations-Skrytka.EU.” Interestingly, § 42 of the same “Regulations” also states that the regulations, price list, the so-called AML procedure “constitute an integral part of the agreement,” and further repeats the rule of priority of the contract over the regulations from Article 385 § 1 of the C.C. (this is presumably a matter of inaccurate indication of the general legal regime for the formed deposit box rental relationship, Article 65 of the C.C.). In fact, in some cases, the regulations, contract, and price list are treated as “the entire agreement between the parties” (so, for example, Article 9.1 of the “NPS Rules and Regulations”). As it seems, price lists should be treated as separate contractual standards (like bank fee schedules, Article 384 of the C.C.), as it is not uncommon in deposit box rental agreements to refer to the ‘rules’ stemming from them, e.g. with regard to fees for non-contractual use of the deposit box. Thus, they do not constitute, for example, mere “information on fees” (however, contrary to e.g. § 1.2.f of the “Regulations of the Silesian Safe Deposit Boxes”). In principle, price lists are created without indicating their grounds in Article 384 of the C.C. and made available to customers prior to the conclusion of the contract (with the “obligation to acquaint themselves with them”).

³⁸ See, e.g., Rule 9.2 of the “NPS SA Rules and Regulations.”

³⁹ See, e.g., Article 10 of the “Idealbox – Safebox24 Rules and Regulations.”

the deposit box contract seems to exclude the applicability of Article 670 § 1 of the C.C. directly to this contract.

9. Duration of the obligation relationship, its termination and legal effects

It is possible to conclude a safety deposit box rental contract for a fixed or indefinite period. Generally, appropriate rules are provided for the extension of the contract which is to expire at the end of the period specified therein.⁴⁰ This option is very often exercised by operators. Sometimes, this involves drawing up an appropriate annex to the original agreement, usually in writing under pain of nullity, and sometimes a simplified procedure is used (e.g., an expression of intent by the parties by e-mail), whereby the absence of a response from the lessee is sometimes regarded as a refusal to extend the agreement. Longer contract durations (e.g., more than 5 years) may be associated with appropriate discounts.

It is, of course, impossible to regulate a complete catalogue of the ways, causes (grounds) and effects of termination of the lease relationship within the standard contracts. Such a general regulation should be complemented by appropriate contractual practice. The provisions of the template contracts provide only basic and framework regulations of fundamental importance for the parties. Termination by the lessee usually constitutes a contractual sanction by the lessor due to the lessee's breach of contractual obligations.

Crucial to the parties may be the actual grounds (reasons) for termination by the lessor. In some instances, the need for a serious (grave) breach of contract by the lessee is indicated.⁴¹ In particular, this may include a breach of the prohibition on placing items in the locker that are not permitted in the agreement, fail-

⁴⁰ See, e.g., § 5 of the "Rules and Regulations of Polski Skarbiec SA."

⁴¹ See, e.g., section 14.2 of the "Rules and Regulations of Polski Skarbiec SA."

ure to meet the payment, sharing the key, access card and identification card with third parties, and other acts.

The consequences of the termination of the lease are also important. The former lessee is first and foremost obliged to collect the items contained in the deposit box (vacate the deposit box). As a rule, prior to the expiry of the lease term, the lessor will notify the lessee in an appropriate manner of the need to effect the collection. Failure to remove the items means that the tenant must pay an applicable “remuneration for non-contractual use of the safety deposit box” (as a rule, for each month of non-contractual use started). Standard contracts provide for an appropriate method of calculating such remuneration (e.g., 200% or even 500% of the base fee), possibly taking into account other fees (e.g., insurance premiums, fees for the appointment of a proxy, etc.). Such contractual clauses could, it seems, be subject to review in court, as there appears (e.g., in the case of high fees) an element of contractual repression rather than compensation for non-contractual use of the deposit box. It could be argued that this is a form of contractual penalty in connection with the untimely emptying of a safety deposit box (Article 483 of the C.C.). Occasionally, additional rights are reserved for the operator in the event of delayed removal of the deposit box contents (e.g., placement of items from the deposit box into a court depository, Article 470 of the C.C., sale of the items by way of enforcement proceedings, or even the right to destroy items of no or negligible commercial value).⁴² It is also possible to release items from a safety deposit box to third parties (e.g., to the competent authorities in respect of items deposited in contravention of the contract).

The release of items from the safety deposit box at the end of the lease (but also before its expiry) is conditional on the lessee

⁴² See, e.g., in: § 14(4) of the “Rules and Regulations of Polski Skarbiec SA;” it is also possible to encounter solutions that are at least debatable, e.g. the recognition of movables left in a safety deposit box for a certain period of time “as abandoned items within the meaning of Article 180 of the C.C.,” presumably with the option for the operator to acquire ownership of them (Article 181 of the C.C.); see, e.g., § 39 of the “Rules and Regulations – Skrytka.eu.”

paying in full the rent and all additional charges.⁴³ This construction is similar to the right of retention (*ius retentionis*, Article 461 § 2 of the C.C.). However, it applies to other categories of claims, and, moreover, the 'orientation' of such claims (towards the lessor entitled to collect) is different. In the contracts analyzed, this constitutes a highly effective instrument for securing the lessor's claims, as the structure and amount of the secured claims are generally not specified.

As it appears, sometimes the tenancy relationship concerning a safety deposit box may be transformed after its termination, depending on the circumstances (once the objects have been removed from the box), into an ordinary safekeeping relationship (Article 835 of the C.C.), excluding, however, irregular deposits (Article 845 of the C.C.) with regard to money and things identified *in genere*. This is because the rule of the legal identity of the items collected at the end of the lease relationship should be adopted here. A safekeeping relationship may arise where the standard contracts envisage that the lessor has the right to deposit the items from the safety deposit box, if not picked up by the lessee, in a so-called collective safe outside the safety deposit box.⁴⁴ What remains an open question in this regard is the entitlement to remuneration of the former lessor (now safekeeper) and the need for this entity to comply with at least some of the obligations arising from the previous rental relationship (e.g., professional secrecy). Other solutions are also discerned, which seem to be aimed at excluding the construction of any obligatory relationship in this area. If items unclaimed by the lessee (or other right holder) from the lockbox are transferred to the aforementioned general deposit with the operator, this is sometimes taken to mean "non-contractual storage" on the relevant premises of the company.⁴⁵

⁴³ See, e.g., § 14.4a of the "Rules and Regulations of Polski Skarbiec SA."

⁴⁴ *Ibidem*.

⁴⁵ See, e.g., the "Price List for Rental and Additional Fees Rules and Regulations of Skrytka.EU" <https://skrytka.eu/dokumenty> ("non-contractual safekeeping of the deposit in the Depository's Storage Facility" for a remuneration of 500% of the value of the monthly fee). However, contrary to such regulation, it is necessary to assume the existence of the relationship of safe-

After the tenancy has ended, it is the lessee's responsibility to return the identification documents issued to them (key cards, vault keys, and other documents, e.g., parking cards). Failure to return them on time implies the payment of an additional fee. Arguably, this is a form of contractual penalty (Article 483 of the C.C.). As a rule, the authority of any third party is terminated.

10. Legal implications of the death of a safety deposit box lessee

A considerable amount of space in the standard contracts is devoted to the legal situation of the heirs of the deposit box lessee, although some templates wrongly omit this matter altogether. The framework of this article permits only a synthetic discussion of this issue. From the existing regulations, the general conclusion seems to be that upon the death of the lessee, the legal relationship is not automatically terminated but continues with the legal successors of the deceased. This is evidenced by some of the standard provisions in the regulations (e.g., "the heirs are entitled to the rights of the lessee," "the contract and the regulations are binding on the heirs to the same extent as on the lessee").⁴⁶ However, the successors may exercise their contractual rights only upon presentation of the relevant documents (court decisions, etc.) as indicated below. The lessor will provide information about the lease of the safety deposit box and its contents in cases specified in the regulations (e.g., at the request of a court in connection with pending succession proceedings, at the request of an heir named in a legally binding ruling on the acquisition of an inheritance, or in a notarized deed of succession), upon presenta-

keeping in this case (Article 835 of the C.C.), arising from the fact of the termination of the previous primary relationship even with certain original obligations of the safekeeper (e.g., maintaining discretion as to the existence of the deposit, its contents).

⁴⁶ See, e.g., § 10 of the "Rules and Regulations of Polski Skarbiec SA"; article 4.2.11 of the "Rules and Regulations of Idealbox-Safebox24."

tion to the lessor of these documents in the original or as a notarized copy. The heirs will be allowed access to the safety deposit box upon presentation of the aforementioned documents, including a legally binding decision of succession or an agreement on the distribution of the estate, including the contents of the safety deposit box (sometimes the death certificate of the lessee is also required). Access to the safety deposit box is effected upon the so-called emergency opening of the box at the expense of the heirs and upon payment of all amounts due to the lessor.

Unless the representative has also been authorized to act *post mortem*, the death of the lessee generally results in the termination of the power of attorney, in which case the agreement excludes the lessor's liability to the heirs in respect of the disposal of the goods from the deposit box by the representative. Following the death of the lessee and the failure to appoint a power of attorney (or the failure of the attorney to act *post mortem* within a certain period of time), the lessor reserves the right to place the deposit (the contents of the safety deposit box) in a court deposit following the so-called emergency opening of the safety deposit box (Articles 467–470 of the C.C). In such cases, the legal relationship expires upon receipt of the items by the entitled heirs on the effective date of their deposit with the court. The lessor is not precluded from submitting a notice of termination of the agreement concluded with the lessee to the heirs, unless such termination has already been stipulated in the event of a breach of contract by the client. Regulations allowing for multiple lessees generally do not regulate the question of the consequences of the death of one of them (as is done, e.g., with regard to bank joint accounts). It is, therefore, necessary to apply the general rules in this respect, perhaps with reference to the solutions adopted in the agreements mentioned above (e.g., that the death of a joint tenant results in the continuation of the deposit box lease with the surviving tenant or in the termination of the lease relationship in general).

11. Contractual liability of the parties

The legal regulation of the contractual liability of the parties to the contract under discussion in the standard agreements is usually casuistic in nature, not systematized, arguably random, and directly covers only selected issues. In the most general terms, it can be concluded that it relates to the professional liability of the escrow agent and its partner pursuant to general principles (Article 471 of the C.C.). Both parties are liable on the basis of fault (Article 355 of the C.C.),⁴⁷ with the depositary operator's liability being based on professional fault (Article 355 § 2 of the C.C.). As a rule, the contracts require the lessor to exercise "due care," but sometimes the formula "utmost care in securing the safety deposit boxes" is also utilized⁴⁸). Interestingly, the requirement of increased diligence usually refers solely to the contractual duty to ensure the protection of the vault (cf. point 4 obligation e), but not to other duties (e.g., when identifying persons using a forged identity document or the use thereof by an unauthorized person).⁴⁹ Thus, in practice, the question of an appropriate gradation of the criteria for the "professional diligence" of the lessor in the performance of the respective contractual duties may arise, which makes it all the more necessary to distinguish them juridically and dogmatically accordingly, contrary to the apparent lack of precision in the standard contracts. The principle of fault also applies to the lessor's duty of professional secrecy. It would appear that the lessor could sometimes also be liable on a strict liability basis, e.g., if the lessee makes an effective request to the lessor to block a box,⁵⁰ should the lessor fail to honour this obligation. As a general rule, compensation liability of the lessor for both types of damage (*damnum emergens* and *lucrum cessans*, Article 361 § 2

⁴⁷ See, e.g., Article 4.10 of the "NPS SA Rules and Regulations."

⁴⁸ Cf. § 2 of the "Silesian Safes Regulations;" Article. 5.1 of the "Model deposit box rental agreement at Idealbox-Safebox24," www.safebox24/dokumenty.

⁴⁹ Cf., e.g., Article 3.2.2 and 3.4 of the "Idealbox -Safebox24 Rules and Regulations."

⁵⁰ Cf. Article 4.4.8 of the "NPS SA Rules and Regulations."

of the C.C.) resulting from the loss of or damage to the items in the safe deposit box is stipulated. The lessee is required to prove the existence and extent of the damage (Article 6 of the C.C.)

The concurrence of contractual and tort liability of the lessor is possible as well (Article 443 of the C.C., Article 430 of the C.C.). An example of liability recognized as a tort will be, e.g., the liability of the lessor in connection with the disclosure of professional secrets by a former employee of the entrepreneur (Article 430 of the C.C.).⁵¹ The consent of the lessee (and his/her attorney) to monitoring in the vault, including recording their image, excludes the lessor's liability under Articles 23 and 24 of the C.C.

One should note the rather numerous exclusions of the lessor's contractual liability. More general formulations are used here, subject to interpretation *in concreto*, as well as casuistic wordings indicating circumstances attributable to the client (e.g., failure by the counterparty to observe vault procedures, security rules, actions, and omissions of the client's attorney, damage caused by entrusting other persons with the safe deposit box keys, access card, PIN). The conduct of the lessee may also be qualified as a contribution to the damage (Article 362 of the C.C.). It is common practice to exclude liability for damage incurred as a result of events bearing the characteristics of force majeure (*vis maior*), with some lessors' contract templates giving a general definition with specific examples. Generally, force majeure is defined in standard terms and conditions as events that have the following characteristics: external, accidental or natural, unforeseeable, unavoidable or unpreventable.⁵² Sometimes an appropriate level of diligence is added with regard to the foreseeability of such events (e.g., "the event could not have been foreseen with the exercise of a high degree of diligence").⁵³ Consequently, force majeure will certainly not include, e.g., flooding of the company's vault if it

⁵¹ It seems that the reasoning in the Supreme Court judgment of 19 February 2010, IV CSK 428/09, "Judicial Review" 2012, No. 11–12, pp. 11 et seq. could be used in this respect.

⁵² See, e.g., § 2 point 8 of the "Rules and Regulations of Polski Skarbiec SA."

⁵³ See, e.g., article 4.4.11 of the "NPS SA Regulations."

was operating in a pre-established flood risk zone. At times, provisions appear in this context that are decidedly unclear whether they extend the lessor's exclusion of liability for damage caused by events also approximating force majeure.⁵⁴

Third-party liability insurance for depository entrepreneurs is a standard condition precedent for taking up the business of providing safe deposit boxes (Article 822 of the C.C.). The fact of such insurance is emphasized in the marketing materials of such operators. In connection with the conclusion of safety deposit box agreements, insurance of property located in individual deposit boxes following the conclusion thereof is stipulated as well (so-called safety deposit box insurance Article 805, Article 808 of the C.C.). The obligation to arrange such insurance arises from the deposit box agreement. Typically, the lessor contracts insurance at its own expense within the so-called minimum insurance limit, which is specified in its fee schedule (price list). The said limit determines the extent of the lessor's liability to the lessee for loss or damage to the contents of the safe deposit box.⁵⁵ Thus, the extent of the lessor's liability is determined with a predetermined amount of insurance for the deposit box. However, additional insurance contracts, taken out independently by the client and at the client's expense, are permitted. In the event that a certain sum insured (e.g., PLN 250,000) is exceeded, an obligation is stipulated for the lessee to disclose the contents of the safety deposit box to the insurer. Interestingly, such a stipulation is included in the contract templates for safety deposit boxes. The insurer's indemnity to the lessee is conditional on proving the contents of the safety deposit box.⁵⁶ This indirectly alludes to systems of limitation of the scope of liability of banks entering into safety de-

⁵⁴ Cf., e.g., § 8(9) of the "Rules and Regulations of Polski Skarbiec SA" ("The lessor shall not be liable for loss, damage or destruction of the deposit if they result from a hazard which could not have been foreseen or prevented even with a high degree of diligence. This applies in particular (?) to the occurrence of force majeure"). Did the authors of such a regulation also have chance in mind?

⁵⁵ See, e.g., § 34 of the "Rules and Regulations of Skrytki.EU."

⁵⁶ See, e.g., § 12 of the "Rules and Regulations of Polski Skarbiec SA."

posit box agreements (Article 5(2)(6) PrBank). As a rule, two systems of limiting the scope of a bank's liability appear in banking transactions: limitation of the amount, independent of the contents of the safety deposit box, and limitations linked to such contents. Namely, the bank may stipulate that the items deposited in a safety deposit box may not exceed a certain value.⁵⁷ In any case, the renter of the safe deposit box – as mentioned – and the counterparty to the safety deposit box agreement are required to prove the amount of the damage suffered (Article 6 of the C.C.). Indirect evidence (e.g., proof of purchase of the item in question, the relevant insurance policy, the relevant tax return, agreements of the depositor with third parties who own the item, e.g., a spouse or partner) may also serve this purpose.

The deposit box contract occasionally stipulates that the lessor's liability is subsidiary to that of the insurer.⁵⁸ This pertains to the liability of these two entities formed *in solidum*, with the lessor's liability only appearing further down the line. Interestingly, when regulating such subsidiary liability, its prerequisites, i.e., events activating such liability as secondary liability (e.g., delay in payment of compensation, refusal of such payment or other events) were not specified. Meanwhile, under Polish law *de lege lata*, no general model of subsidiary liability exists, and *in concreto* a problem may arise with the actualization of the said subsidiary liability.

On the basis of the regulatory provisions, the conclusion seems to be that the lessor undertakes to personally perform the obligations under the contract. The provision of Article 840 of the C.C. would not apply here (even by analogy). On the other hand, one could consider the application *per analogiam* of Article 841 of the C.C. in the event of a change of the location of the deposit

⁵⁷ M. Bączyk, op. cit., p. 798 (with literature cited there); P. Bryłowski, in: *Pozakodeksowe umowy handlowe*, A. Kidyba (ed.), Warszawa 2013, p. 641; On methods of contractually limiting the scope of banks' liability in French law see, e.g., M. Budzinowska, *Umowa o udostępnienie skrytki bankowej w prawie francuskim*, "Ruch Prawniczy, Ekonomiczny i Socjologiczny" 2014, No. 1, p. 142 et seq.

⁵⁸ See, e.g., § 8.8 of the "Rules and Regulations of Polski Skarbiec SA."

against the contractual provisions. Some model agreements expressly allow for the possibility of changing the location of the safety deposit box to a new vault in “the event of permanent closure and transfer of the vault.” It is then mandatory to inform the counterparty without undue delay of the new location or the possibility of collecting the deposit.⁵⁹

12. The problem of professional secrecy of the depository operator *de lege lata*

As already mentioned (point 4), the depository entrepreneur is under an obligation of professional secrecy towards the counterparty. This results from very general and fragmentary regulatory provisions. Sometimes such regulation is even illusory in nature.⁶⁰ Most provisions in this matter are incorporated in the parts of the regulations entitled ‘privacy policy,’ which govern the entrustment of the client’s personal data to the lessor. It is not possible to present this issue in more detail *de lege lata* in this study, as we should limit ourselves to a few fundamental issues, assuming that an original form of ‘professional secrecy’ of depository businesses, little known and not at all elaborated in the literature, appears in legal transactions.

The obligation to observe professional secrecy as a contractual obligation is absolute for the operator and unconditional. However, some standard contracts state that such secrecy will be maintained “subject(?) to the client complying with all the rules set out in the regulations.”⁶¹ The authors of such a wording of the provision most likely meant that the lessor is released from the obligation of secrecy as to facts disclosed by the lessee itself to other parties (e.g., his or her personal data, the contents of the box,

⁵⁹ See, e.g., Article 10.4 of the “Rules and Regulations of Idealbox-Safebox24.”

⁶⁰ According to § 7 of the Regulations, Silesian Safes is obliged “to maintain secrecy in accordance with the applicable law.”

⁶¹ See, e.g., § 8.6 “Bank Deposit Centre Regulations of 2020;” Article 8.7 of the “Rules and Regulations of Idealbox-Safebox24).”

granting of a power of attorney covering access to the box), but not in the event of any breach of contract (e.g., non-payment of remuneration). Otherwise, this would constitute a legal degeneration of the legal construction of professional secrecy, and the statutory provision in this respect would certainly be an abuse (Article 385¹ of the C.C.).

Like any other professional secrecy, the secrecy in question spans across three levels: objective (the scope of the information covered); subjective (towards which entities the obligation exists and towards which it is excluded); temporal (the question of when the obligation arises and expires). As a rule, the fragmentary references in the regulations refer to the first two planes (e.g., secrecy covers “all information concerning the conditions of storage and security of deposits in the vault,”⁶² information “on the letting of a safety deposit box to the lessee’s heirs,”⁶³ the secrecy of client data, and the contents of the deposit box.⁶⁴ Already at this stage, a question may arise, *inter alia*, as to the scope of information that can be obtained by the lessee’s heir reporting to the lessor with a final decision on the acquisition of the inheritance (e.g., whether also data on the representatives, information covering the so-called history of their access to the box). It seems only a matter of time before these dilemmas are updated in practice in this respect.

The problem of the need (and possibility) of the application, sometimes *per analogiam*, of the relevant statutory provisions concerning access by state authorities to facts covered by the secrecy in question (e.g., Articles 19(1) and 19(3) of the Police Act⁶⁵) may arise in practice. These provisions do not explicitly mention the discussed ‘professional secrecy.’⁶⁶

⁶² See, e.g., Article 9.9 of the “NPS SA Rules and Regulations;” § 42 of the “Rules and Regulations for Skrytki UE;” paragraph XI of the “MS Metale Rules and Regulations.”

⁶³ See, e.g., § 10 of the “Rules and Regulations of Polski Skarbiec.”

⁶⁴ Cf., e.g., § 8 of the “Bank Deposit Centre Regulations.”

⁶⁵ Act of 6 April 1990 on the Police (consolidated text: Journal of Laws of 2023, item 171 as amended).

⁶⁶ See, e.g., S. Hoc, *Dostęp do tajemnicy bankowej podczas czynności rozpoznawczych. Komentarz praktyczny*, Lex 2017; see also Article 48(1)(3) of the

The deposit box rental contract, moreover, imposes a standard obligation on the lessee and most often includes “all information concerning the conditions of storage and security of deposits.”⁶⁷

SUMMARY

Development of safety deposit box rental contracts outside the banking sector in Polish business practice

The author starts from presenting the rapid development of the so-called safe-deposit box agreements outside the scope of banking transactions and points to the contract terms which regulate that sphere of the market. In the author's opinion, these agreements are similar to those offered by banks as far as their structure is concerned. The scope of banks' agreements is still limited, since only banks can and do offer them. In the course of further consideration, the author presents the parties to non-banking safe-box agreements, the power of attorney granted by the tenant, and analyzes the rights and obligations of the parties to the agreement. It qualifies the agreement as a special lease agreement (Article 659 of the Civil Code). However, he does not exclude the possibility of other qualifications (e.g., as a new, original *contractus innominatus*). He also discusses the duration of the agreement, remuneration for the landlord, the legal consequences of the tenant's death, the contractual liability of a non-banking entity, and its obligation to keep professional secrecy. This is the first broader elaboration concerning safe-deposit box agreements outside the scope of banking transactions in Polish literature.

Keywords: safe deposit boxes offered by non-banking entities; manual safe deposit boxes; electronic safe deposit boxes; safe deposit box agreement; death of the tenant; contractual liability; professional secrecy

Act of 16 November 2016 on National Fiscal Administration, consolidated text Journal of Laws of 2022, item 813.

⁶⁷ See, e.g., Article 9.9 of the “NPS SA deposit box rules and regulations.”

STRESZCZENIE

Rozwój umów najmu skrytki depozytowej poza sektorem bankowym w polskiej praktyce gospodarczej

Autor wskazuje na dynamiczny rozwój „umów skrytki sejfowej” poza obrotem bankowym w Polsce i ich regulację we wzorach umownych. Umowy te podobne są konstrukcyjnie do bankowych umów sejfowych, których zasięg jest wyraźnie ograniczony w działalności banków. Autor przedstawia strony tej umowy, pełnomocnictwo udzielane przez najemcę, dokonuje próby syntetycznego ujęcia uprawnień i obowiązków stron umowy. Kwalifikuje omawianą umowę jako szczególną umowę najmu (art. 659 k.c.), ale nie wyklucza także możliwości innych kwalifikacji prawnych (np. jako nowej, oryginalnej umowy nienazwanej). Omawia również czas trwania umowy, wynagrodzenia dla wynajmującego, skutki prawne śmierci najemcy, odpowiedzialność kontraktową przedsiębiorstwa depozytowego i jego obowiązek zachowania tajemnicy zawodowej. Jest to pierwszy w literaturze polskiej szerszy artykuł na wskazany temat.

Słowa kluczowe: skrytki depozytowe podmiotów niebankowych; skrytki manualne; skrytki elektroniczne; umowa skrytki sejfowej; śmierć najemcy; odpowiedzialność kontraktowa; tajemnica zawodowa

BIBLIOGRAPHY

- Bączyk M., in: *System prawa prywatnego, Vol. 9, Prawo zobowiązań. Umowy nienazwane*, ed. W. Katner, Warszawa 2023, in print.
- Bączyk M., in: *System prawa prywatnego, Vol. 9, Prawo zobowiązań. Umowy nienazwane*, ed. W. Katner, Warszawa 2018.
- Bączyk M., in: *System prawa handlowego, Vol. 5C, Prawo umów handlowych*, ed. M. Stec, Warszawa 2020.
- Bryłowski P., in: *Pozakodeksowe umowy handlowe*, ed. A. Kidyba, Warszawa 2013
- Budzinowska M., *Umowa o udostępnienie skrytki bankowej w prawie francuskim*, „Ruch Prawniczy, Ekonomiczny i Socjologiczny” 2014, No. 1.
- Duszczyk M., *Po co portfel? Teraz wystarczy palec*, „Rzeczpospolita” 7 March 2023.
- Gawrońska A., *Samoobsługowe hale powoli podbijają rynek*, „Rzeczpospolita” 24 April 2018.

Rapport sur les coffres-forts et leur risque d'abus a des fins de blanchiment d'argent et de financement du terrorisme (14 décembre 2015), Confederation Suisse, [https://www.news.admin.ch/newsd/message/attachments/42430.pdf](https://www.news.admin.ch/news/message/attachments/42430.pdf).

Rosik P., *Skrytka bankowa to coraz większy luksus. Banki masowo likwidują sejfy i wycofują się z usług przechowywania kosztowności*, <https://strefainwestorow.pl/artykuly/produkty-uslugi/20191104/skrytki-bankowe-brak-miejsc>.

Sajewicz M., *Domowe precjoza dobrze schowane*, "Rzeczpospolita" 2 October 2014.

Wilkowicz L., *Mniej oddziałów i marmurów to również mniej skrytek*, "Dziennik Gazeta Prawna" 15 February 2021, No. 30.