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The role of a MAC clauses in mergers and acquisitions during economic uncertainty

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Abstract— In the era of many economic uncertainties that significantly strain the system of market forces, some enterprises have been forced to use mechanisms allowing to limit the impact of unfavorable financial parameters on their financial condition. Enterprises which failed to cope with a number of negative economic events in recent years have made decisions to reduce their activities or even to liquidate. Some of them were forced to postpone the performance of contractual obligations due to the loss of liquidity or the ability to quick respond to market changes. A concern for the fulfillment of these obligations is visible in particular in long-term contracts which entail the necessity to bear high costs and investment risk. Such transactions include both long-term credit transactions and agreements as part of mergers and acquisitions. Nevertheless, each contract, including the M&A contract, carries the burden of contractual liability, which the parties are not always able to fully comply with as a result of, for example, an unfavorable change. The solution may be to use contractual clauses, e.g. a MAC clause, because if it is included in the contract, it will enable to achieve additional protection of legal and financial interests..

Index Terms— mergers and acquisitions, material adverse change, force majeure, COVID-19, rebus sic stantibus

I. INTRODUCTION

The current geopolitical situation and economic uncertainty resulting, inter alia, from the COVID-19 pandemic, the war in Ukraine, supply chain disruptions, sanctions imposed on Russia by Western countries as well as the rising inflation rate in many European countries and exchange rate volatility, cause great difficulties for the timely and unwavering performance of trade agreements. All this have an influence on the process of planning mergers and acquisitions, which - by assumption - long-term nature, costly and economic uncertainty - prompts investors to exercise caution and a kind of business restraint. Investors often have to re-analyze the enterprise and the adopted business model, paying attention to new factors, such as rising prices, the share of trade with the East, or dependence on the supply of raw materials from areas affected by hostilities. Moreover, there is a phenomenon that has so far been rare in

post-war history, and consists in infamy companies which, despite the ongoing war in Ukraine, are still unable to withdraw from lucrative contracts in Russia. This is both a business and a sociological issue. Many companies do not want to be associated with the Russian regime and they do not want to expose themselves to negative public opinion and some of them calculating the possibility of a boycott by customers, decide to continue their activities anyway. In practice, all these events, to a greater or lesser degree, affect the suspension of certain M&A transactions (Toborek-Mazur, Wójcik-Jurkiewicz, 2022). The beginning of the COVID-19 pandemic, in particular 2020 and 2021, has shown that in a dynamically changing world it is very important to plan and develop contingency (preventive) strategies.

One of such strategies is a MAC clause, which is present in many international contracts, in particular as part of international mergers and acquisitions. The application of this clause, with the appropriate structure of the content of the contract, may turn out to be key to the company's existence. It may not only enable the withdrawal from the contract, but also to be a specific procedure justifying the suspicion of the occurrence of negative events on the continuation of operations or even the implementation of contract terms for each of the parties. The discrepancy between the expectations and the possible benefits of a merger transaction under given circumstances affects the number of these transactions (Hill, Solomon, 2022, p. 183). M&A agreements participants, both the acquiring companies and the acquired companies or the merging companies, must demonstrate greater flexibility in negotiations as to the structure and elements of the contract. Enterprises, protecting themselves against the adverse consequences of contracts, more often began to apply more restrictive contractual provisions regarding the resolution of possible disputes based on the expected financial results, applied and adopted accounting principles or valuation methods.

In the following paper the author analyses the usefulness of a MAC clause on the basis of both a source literature review and empirical data to illustrate its practical application in the



implementation of commercial contracts based on mergers and acquisitions. The author also examines the events and legal and financial consequences for the activities of individuals in times of economic uncertainty. For this purpose, the author poses the following research questions:

Q1. What is a MAC clause and what is its role in the implementation of commercial mergers and acquisitions?

Q2. How can a MAC clause reduce the risk of economic uncertainty as a result of changing conditions and circumstances?

Q3. Can a MAC clause effectively protect the interests of the parties to the M&A contract?

II. THE ESSENCE OF THE APPLICATION OF A MAC CLAUSES

The Polish Code of Commercial Companies includes two basic methods of merging companies, i.e. acquisition and merger understood as a method of creating a new company from two existing ones (Toborek-Mazur, Partacz, 2022a). However, it should be remembered that both of these methods are fundamentally different from each other, and their use results from specific economic conditions, as well as stakeholders' expectations regarding the concept of the development of combined enterprises (DePhamphilis, 2017, p. 56). Mergers and acquisitions as forms of external financing of investments in the enterprise allow not only to remodel the organizational structure of interested enterprises, but also improve the financial condition as a result of increasing the scope of activities, diversifying the product range, or simply more effective cooperation thanks to the synergy (Toborek-Mazur, Partacz, Surówka, 2022). These transactions also allow for the elimination of duplicate functions and redundant assets, thanks to increasing the efficiency of management (Czerkas, 2018, p. 24).

Nevertheless, the goals resulting from mergers and acquisitions are very often not achievable in a short time, but are spread over many years, which may be preceded by adaptation to market expectations, which does not always bring the expected operating profit (Korpus, 2014, p. 25). The emerging problems not only at the stage of determining the terms of the contract, but above all its implementation, may thwart the efforts of the merging companies (Toborek-Mazur, Partacz, 2022b). Hence, Polish law and M&A business practice knows a number of mechanisms to reduce the risk and adverse impact of various events on the functioning of enterprises (Świetla, Toborek-Mazur, 2021). One such mechanism is a MAC clause (TRPL, 2022).

A MAC (material adverse change) clause is a solution adopted from the Anglo-Saxon legal culture that is used in the implementation of contractual obligations in difficult economic conditions, e.g. caused by the COVID-19 pandemic or the war in Ukraine. Thus, a MAC clause allows for withdrawal from investment as a result of events significantly interfering with the activity of a given entity. Due to its immaterial nature being the result of negotiations between the parties (as a contractual provision), it can only (and this is most often the case in economic practice) only generally indicate the events

constituting the basis for its application. According to art. 6 of the Civil Code the burden of proving the fact rests with the person who derives legal consequences from it. Therefore, it is the investor who should prove the existence of a more seriously infringing premise, so having a negative impact on its activity, in such a way that it would materialize unfavorable changes in circumstances. It is worth emphasizing that such an event does not have to be related to the investment carried out (resulting from the investment agreement), but it may also be based on a loan agreement. It is worth paying attention to the fact that banks and credit institutions treat a MAC clause as a kind of "safety valve" justifying the occurrence of an event that has an adverse impact on the entity, in such a way as to be able to withdraw from the unfavorable, from its point of view, financing model of a given enterprise or investments, e.g. as part of M&A. However, as already mentioned, the provisions of a MAC take different forms, and therefore their scope of regulation is different for each company. The wider it is, the higher the risk of its implementation in practice.

As has already been mentioned, the role of a MAC clause plays an important role in loan and M&A agreements. It is much more in the contracts concluded in the United States than in Europe. In 2018 and at the beginning of 2019, approximately 97% of contracts in the USA contained this clause, while in Europe only 15% (CMS, 2021). Although such a difference may be surprising, it is worth remembering that the implementation of this clause in the European order is still not popular, but under the influence of many economic factors, the difference between the USA and Europe in this respect will most likely decrease. Enterprises will strive to fully protect their interests as a result of unfavorable changes.

A MAC clause allows to judge whether, firstly, there has been a breach in a given case, secondly, whether there has been an adverse change that has or may have an impact (in the opinion of the company's representatives), and finally how this situation may affect the performance of the borrower. resulting from the contract. A MAC clause therefore refers to an unfavorable change, i.e. a comparative analysis of the situation prior to the circumstances determining its application, with the situation that occurred after the occurrence of these circumstances. It follows that, apart from the assessment of an unfavorable change, it is also important to assess the unfavorable impact. It follows that in the case of the loan agreement in question, the borrower and the lender must agree on the scope of the adverse change, but also its impact (hence, the second name for a MAC clause is MAE which means Material Adverse Effect). Therefore, circumstances that significantly affect the situation, ownership or financial condition (not only of borrowers in loan agreements), and the ability to fulfill their contractual obligations (Bartosiewicz, 2018, p. 224), should be treat as unfavorable influence.

A MAC clause may significantly reduce the transaction risk, but for its effectiveness, and at the same time contractual transparency, it is required that it be precisely specified. This term may take a positive character, being a catalog of premises justifying the implementation of a MAC clause, or on the contrary - being a set of exclusions that do not justify the

occurrence of unfavorable changes for the enterprise, and thus the implementation of a MAC clause. The most popular negative events under a MAC clause include, *inter alia*, the occurrence of statutory grounds for declaration of bankruptcy or the opening of remedial proceedings, loss of margin, termination of contracts with key contractors or termination of employment contracts with employees, issuance of a negative decision by an authorized body, e.g. a judgment as a result of a court dispute or administrative decision.

Thanks to the precise definition of the scope of a MAC clause in contractual provisions, a potential dispute resulting from differences of interests (e.g. a different interest can have the lender and the borrower) will be limited due to the transparency of the solutions applied. The author emphasizes that the vagueness of the language and the adopted wording in the content of the contract itself, in particular with regard to a MAC clause, may contribute to the emergence of problems that prevent the implementation of this contract.

III. MAC CLAUSE, FORCE MAJEURE AND THE REBUS SIC STANTIBUS CLAUSE IN M&A AGREEMENT

Civil law regulations provide for the possibility of extraordinary change of circumstances in the performance of contracts. This is called the *rebus sic stantibus* clause. Pursuant to art. 357¹ § 1 of the Civil Code in the event of an extraordinary change in relations, the performance of the service would be associated with excessive difficulties or would threaten one of the parties with gross loss, which the parties did not anticipate before, the court may, after considering the interests of the parties, on the basis of the rules social coexistence, indicate the manner of performing the obligation, the amount of the benefit or decide on the termination of the contract, including the terms of settlement of the parties. Therefore, it is a mechanism that allows to reduce negative, unforeseen at the time of concluding the contract, circumstances that adversely affect the formula of cooperation, but also the ability of the party or parties to the contract to provide mutual benefits. Its use, therefore, results only from exceptional events, which are additionally connected with excessive difficulties and a gross loss (Kowalski, 2021). These concepts correspond to the issue of the so-called *force majeure* (*vis maior*), although the concepts of *force majeure* and *rebus sic stantibus* are not identical to each other. Acts of *force majeure* may, however, contribute to an extraordinary change of relationship, in a way conditioning the application of the *rebus sic stantibus* clause. Due to the lack of a legal definition of *force majeure* (and the lack of regulations referring to "*force majeure*" in relation to contractual liability), legal doctrine and economic practice have developed their own standards of understanding it. Therefore, it is treated as an external event which could not be prevented or foreseen, and which occurred only after the conclusion of the contract. This event must have an external nature and it must be impossible to prevent or neutralize with the use of measures within the limits of typical precaution, such as the creation of a financial reserve (Radwański, Olejniczak 2016, p. 84). It seems right to consider

that such external events include the COVID-19 pandemic or hostilities. Separately, this issue should be regulated in the M&A contract in the context of a MAC clause, adapting it to your own facts and circumstances.

Pursuant to art. 471 of the Civil Code, the debtor is obliged to repair the damage resulting from non-performance or improper performance of the obligation, unless the non-performance or improper performance is a consequence of circumstances for which the debtor is not responsible. In the context of the above considerations, it can be concluded that the occurrence of *force majeure* does not exhaust the scope of events for which the debtor is not responsible, due to the impossibility of assigning fault to him. Bearing this in mind, it can be noted that the prior determination of no fault leads to the exclusion of his liability, while the occurrence of damage only creates a presumption of no fault of the debtor. Thus, the rebuttal of this presumption by the creditor will lead to a situation in which the debtor will not be released from liability. The parties have the right to exercise the right to shape their legal relationship pursuant to art. 353¹ of the Civil Code to protect one's interests (Matusik, 2021). Therefore, it should be emphasized once again that the contract should contain specific wording as to the scope of liability, including in connection with the occurrence of *force majeure* or based on the provisions of a MAC clause, and not only general indications as to potential events.

It follows that among the basic premises of the *rebus sic stantibus* clause are: an extraordinary change of relations, excessive difficulty in fulfilling a service or a threat of loss for either party, a causal relationship between a change in the relationship and difficulties in performance of an obligation or the threat of loss, or the impact of changing relations on performance obligations. The change in relations is, *inter alia*, limitations caused by the COVID-19 pandemic, as they constitute a change in circumstances, e.g. in relation to the previous year (Kondek, 2021).

The *rebus sic stantibus* clause is therefore a kind of counterweight to the *of pacta sunt servanda*, which is the general principle that contracts should be kept. It should be added that the application of the principle of extraordinary change of relations does not lead to the creation of a new obligation relationship, but only to the designation of a new way of performing the obligation. Therefore, this rule affects the given contractual relationship and the content of the obligation or the form of termination by the court as a result of the party's subsequent inability to provide performance. A MAC clause, in turn, allows for the limitation of financing or direct withdrawal from financing in the event of an unfavorable change, the scope and content of which should be provided for in the contract.

Regardless of the usefulness of the norm which provides for the use of the *rebus sic stantibus* clause in Polish civil law, it may not be sufficient. Therefore, the principle of freedom of contract resulting from art. 353¹ of the Civil Code, Polish law provides for the possibility of using a MAC clause as adopted from Anglo-Saxon law. Due to its immaterial nature and the lack of strict rules of application in Polish law, for its effective application, it is necessary to describe in detail in the content of

the contract the circumstances that allow its application in order to avoid possible inaccuracies or even disputes as to being a party entitled to use it. Hence, it is postulated that the interested parties should each time precisely define the scope of the clause's usefulness, based on both financial factors, e.g. selected financial results of the company and non-financial ones, e.g. related to the specificity of the industry in which enterprises operate (Kasiarz, Laprus, 2022).

Mostly, MAC clauses are reserved for investors who bear the greatest financial liability under the contract, so this may be the case of the acquiring company, which participates to a large

extent in the steadfast organization and performance of the terms of the merger agreement. It is worth mentioning here the obligations arising from the preparation of the merger plan. Nevertheless, it may happen that in a specific contract the provisions of a MAC clause are structured in such a way that it will allow both parties of the merger transaction to apply it, i.e. the acquiring company and the acquired company or the merging companies to apply it. Table 1 presents a comparative statement of the *rebus sic stantibus* clause, force majeure clause and a MAC clause.

TABLE 1. LIST OF SELECTED LEGAL AND CONTRACTUAL MECHANISMS RELATED TO THE LIABILITY OF THE CONTRACTING PARTY.

	MAC clause	Rebus sic stantibus clause	Force majeure
Legal basis for regulation	No code regulation.	Code regulation - art. 357 ¹ of the Civil Code.	No strict code regulation.
Scope of application	It covers both concluded contracts and the necessity to perform obligations.	It covers both concluded contracts and the necessity to perform obligations.	It exists separately from the contract, although it can be extended in the contract.
Key features	Extraordinary, unpredictable Change disadvantage and impact disadvantage.	Permanence of the extraordinary change of relations.	Suddenness and extraordinariness.
An effect	The scope of responsibility and obligations lies with the parties to the contract, who have the right to freely determine the occurrence of MAC clauses in the loan agreement or M&A.	Possibility of modification of the benefit by the court.	No regulations as to the expiry of the obligation - contractual specification required. Withdrawal from penalties, damages or the obligation to complete the contract after the cessation of force majeure is possible, if the contract provided for any of them.

Source: author own studies.

IV. IMPLEMENTATION OF THE TRADE AGREEMENTS DURING THE COVID-19 PANDEMIC AND THE WAR IN UKRAINE

A MAC clause is commonly used in the construction of merger and acquisition agreements. Such a clause makes it possible to withdraw from a planned transaction in a situation in which, between the conclusion of the contract and its finalization, there are unfavorable changes in the acquiring or acquired company or in one of the merging companies. An unfavorable change that is a prerequisite for the activation of a MAC clause should be permanent (or even long-term), rather than temporary, temporary. This view is also presented by American and British jurisprudence, e.g. in a case popular in the context of the MAC clauses Grupo Hotelero Urvasco SA which is a Spanish hotel company versus Carey Value Added SL & Anor which is a Spanish fund which invests in hotels (Burnett, Demblowski, Holt, 2020). Although this criterion is not straightforward to assess, the duration of some events is difficult to predict. The current geopolitical situation, resulting from, inter alia, from the COVID-19 pandemic, the war in Ukraine, disruptions in the supply chain and sanctions imposed on Russia by Western countries, as well as the rising inflation rate in many European countries, cause great difficulties for the timely and unwavering implementation of trade agreements. Russia is one of the world's largest producers of oil, natural gas, steel, nickel and aluminium and a key exporter of wheat. Europe appears to be the region most exposed to the consequences of this conflict because of its dependence on Russian oil & natural gas. It seems to impossible in the short and even medium time to replace all Russian sources (oil and natural gas) to Europe. It

is highly predictable that medium current price levels will have a significant effect on inflation. Ukraine, in turn, is a key producer of corn, wheat, sunflower, sugar beet, soybeans, rape and barley. There is a reason why it is called "the breadbasket of the world". It supplies not only European, but also African countries, effectively contributing to the fight against hunger in the world. In many countries around the world, the economic consequences of these developments are felt mainly due to the rise in commodity prices, which fuel inflationary pressures. Rising prices of commodities, energy products (coal, oil) and food products, as well as falling demand from Europe, hinder world trade. The problem is also noticeable from the communication perspective - car, air, sea and rail. Ukraine is one of the important links in the supply chain that supplies car manufacturers in Western Europe with the necessary components, such as semiconductors. Due to the sanctions against Russia, rail and air traffic between the countries of the West and Russia is significantly impeded. This necessarily increases costs, as these lines have to serve longer routes, which also affects trade and freight traffic with Asia.

All these geopolitical factors, to a greater or lesser degree, affect the process of planning and execution of transactions, also in the field of mergers and acquisitions, which by assumption - long-term nature, costly and economic uncertainty (business risk), prompting investors to exercise caution and a kind of business restraint. In practice, this often means the suspension of ongoing M&A transactions in those areas that are most susceptible to geopolitical changes.

The economic, political and social assessment of the duration of these phenomena is difficult to unequivocally estimate (Stefanowski, 2018, p. 43). This situation may also be

influenced by factors such as the availability of government aid for companies, such as the government's anti-inflationary shield. Therefore, it seems more correct to consider that a MAC clause is applied based on current and current events, as well as economic forecasts for the future - this is also how the individual provisions of the agreement are shaped. In order to understand this issue more precisely, the following example can be used. The mutual obligations of enterprises that concluded contracts before the advent of COVID-19, e.g. in mid-2019, shaped their mutual obligations differently, and differently in the corresponding period of the next year (after the first cases of disease appeared). It is more difficult for the parties to the contract who entered into transactions after the start of the COVID-19 pandemic to invoke the adverse impact that they did not anticipate, since the contract itself was signed after the COVID-19 pandemic. In such a case, the parties to the contract would have to demonstrate that there was a change that they did not know about at the time of the conclusion of the contract, e.g. circumstances that accompanied the pandemic caused effects that were not previously foreseeable. It is also possible that the parties to the contract have excluded the COVID-19 pandemic as a premise justifying the use of a MAC clause (Shapiro, 2021). This was the case in 2020, for example, with the acquisition by the American investment bank Morgan Stanley, a financial services company E*Trade (PwC, 2020). In such a case, the acquiring company will be obliged to finalize the transaction regardless of its financial condition. If, on the other hand, the agreement did not provide for the impact of external factors, such as the COVID-19 pandemic or the war in Ukraine, the analysis should begin with an assessment of their (negative) impact on the financial condition. It is not difficult to imagine that in a different economic situation there are companies from the tourism industry (limited passenger traffic as a result of a pandemic or as a result of military operations in Ukraine), or companies from the pharmaceutical, defense, telecommunications or IT industries, which in recent years have mostly increased production and sales (Coface, 2022). It is worth paying attention to the fact that COVID-19 vaccines or components are produced by companies from the IT industry. At the beginning of 2022 in Poland, companies from the TMT sector (technology, media, telecommunications) had the largest share of acquired entities and buying parties in M&A - 28% (Q1 2022) and 22% (Q2 2022) as acquirers and 20% (Q1 2022) and 16% (Q2 2022) as buyers (Fordata, 2022).

Investors often have to re-analyze the enterprise and the adopted business model, paying attention to new factors, such as rising prices, the share of trade with the East, or dependence on the supply of raw materials from areas affected by hostilities. Due to the martial law in Ukraine and the disruption of the functioning of many domestic and foreign enterprises in Ukraine, the Ukrainian Chamber of Commerce and Industry is authorized to issue certificates of the existence of force majeure, and in Poland the Polish-Ukrainian Chamber of Commerce (Rasiewicz, 2022). The parties in international agreements concluded after the initiation of an armed conflict by Russia in Ukraine should consider a specific reference to this situation under the relevant clauses in order to clarify the issues

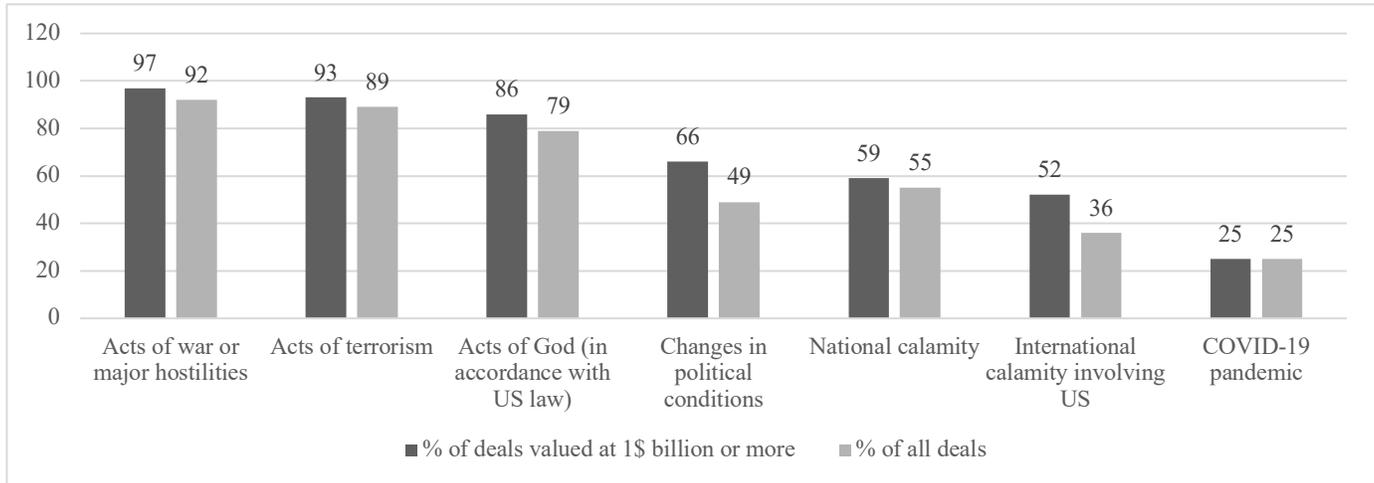
related to risk-sharing or potential exemption from performance. The significance of a MAC clause in the context of the invasion of Ukraine and the subsequent possibility of initiating the necessary procedures under the agreement will be determined by the terms adopted at the time of signing the agreement.

In a study conducted by the American company in the field of business consulting FTI Consulting from 2020 (FTI Consulting, 2020), out of 128 analyzed mergers and acquisitions with reference to a MAC clauses, only in 22 cases (i.e. in about 17%) the risk of occurrence was taken into account. pandemic / virus epidemic or related events. Only in two cases - the aforementioned Morgan Stanley and E * Trade transaction and the second transaction between Assertio Therapeutics and Zyla Life Sciences, specifically referenced COVID-19. In their merger agreements, enterprises placed the greatest emphasis on the risk of an armed conflict resulting from war, civil unrest or terror. In 120 agreements (93.8%) refer to this type of hostilities and 94 (73.4%) refer to typical natural disasters (e.g. tornados, earthquakes, hurricane).

Similar conclusions can be drawn from the analysis of the report conducted by the American law corporation Nixon Peabody from 2020 (based on data also collected in 2019) (Nixon Peabody, 2020). The survey was divided into two groups of M&A contracts, i.e. deals valued at 1 \$ billion or more having MAC element / exception and all deals having the specified element / exception and 6 criteria. Among the examined criteria were acts of war and armed conflicts, acts of terrorism, force majeure (the so-called Acts of God, i.e. natural factors beyond human control and relevant from the point of view of American legislation), changes in political conditions, national calamity (e.g. floods , earthquake, landslide, tsunami) and other international disasters directly or indirectly related to the USA. According to the study, in 93% of cases (in both studied groups), acts of war and terror were revealed as a potential risk of using a MAC clause. The remaining factors did not exceed 75%. The study also partially considered the risk of the COVID-19 pandemic. This exception appeared in 25% of both all of the survey agreements. However, this study may be underestimated due to the time horizon and the fact that only 70 of the 220 contracts examined were concluded on February 1 or after February 1, 2020, which is close to the global spread of COVID-19. It can therefore be noted that while before the outbreak of the pandemic, this factor was not taken into account as significant in a MAC clauses in M&A contracts, it seems that contracts concluded in the following years will change this trend. Nevertheless, the risk of a war outbreak was one of the most important factors conditioned by a MAC clauses and the conflict in Ukraine will not change this high percentage, but will only confirm its legitimacy as a risk factor. Figure 1 presents a summary of data on the conditions of a MAC clause in M&A contracts.

The basic point of reference for introducing MAC clauses into the content of trade agreements is the correct distinction between potential threats and threats to their implementation.

FIGURE 1. LIST OF SELECTED FACTORS FOR THE APPLICATION OF A MAC CLAUSE IN M&A AGREEMENTS



Source: author own studies based on (Nixon Peabody, 2020).

The longer the time horizon, the greater the difficulty in anticipating, and such a problem may occur in M&A transactions. Thus, the form and content of MAC clauses varies depending, first, on the nature of the transaction, secondly, the industry in which enterprises operate (market concentration or deconcentration), thirdly, the jurisprudence of participating countries, and fourthly, macroeconomic events, e.g. inflation, pandemic or actions war. The very fact that a MAC provisions in the contract itself should be carefully added to this should also be added. The more precisely defined the text, the greater the likelihood of a restrictive interpretation of its provisions. If the parties to the M&A agreement have concluded a MAC clause, which is general, any deterioration of the party's financial condition will require proving that these events, e.g. the pandemic or the war in Ukraine, are causally related to this deterioration, which in practice can be difficult to provable and takes time. At the same time, such events can be relativized by the other party to the contract, as those that do not cause adverse consequences for the company long enough to justify the application of a MAC clause (Kuś, Bieszczad, 2020).

From the investor's perspective, the most attractive solution is the most general wording of the provisions of a MAC clause, which will entitle him to withdraw from the contract in the broadest possible range of cases, e.g. as a result of the deterioration of the financial condition of the acquired company (Marcinkowski, 2020), the economic uncertainty of a pandemic or war. The provisions of a MAC clause can be formulated only in general terms (by general indication), which makes it difficult to interpret unequivocally, as well as contain a catalog of specific events, e.g. a decrease in the company's revenues, loss of a strategic contractor or just natural disasters or armed conflicts.

V. CONCLUSIONS

A MAC clause is an additional opportunity for investors to respond to threats to their business activities by renegotiating, changing the terms or even withdrawing from a commercial contract. This applies in particular to long-term contractual

obligations, but also to those significantly changing the existing organizational formula of the company, e.g. as a result of a merger or acquisition decision (Q1). A MAC clause most often places the burden on investors and entities bearing the financial burden of the transaction. There is no doubt, therefore, that the impact of the current geopolitical situation - the COVID-19 pandemic, the Russian-Ukrainian war, a supply chain disruption, mutual economic sanctions, high inflation in many countries around the world, the collapse of unprofitable enterprises, or even worries that follow all these factors social, negatively affect the possibility of free decision-making, in particular in agreements that significantly change the structure of enterprises, such as mergers and acquisitions (Stone Herman, 2021).

A MAC clause is neither a source of solutions to all problems in the enterprise, nor is it a comprehensive protection against every threat, and it should not be expected, but it is the basis for effective protection of interests by selecting potential undesirable and difficult to predict events in the content of the contract concluded earlier. As a result of its proper (comprehensive and specific) implementation into the contract, it allows for a beneficial change of the legal relationship or even withdrawal from the contract, which may often help to protect the company from the need to immediately fulfill obligations, or even, as a consequence, from the risk of bankruptcy. As a natural consequence of unfavorable events in recent years and the risk of other threats appearing in the future, the popularity of MAC clauses and the awareness of their existence and application in the economic space as part of mergers and acquisitions has increased (Q2). Moreover, it is worth remembering that a MAC clause is not one of the solutions that can potentially reduce legal and financial risk. Apart from it, there are a number of other additional instruments, e.g. due diligence analysis or even warranties and indemnities insurance, hardship clause (facilitating contract renegotiation), dedicated escrow and escrow accounts, which allow for more effective economic and legal evaluation and assessment of the effectiveness of mergers and acquisitions and serve to secure financial resources (Pilarski, 2020). In this sense, a MAC clause

allows for the effective protection of the interests of enterprises, in particular from the perspective of the entity that bears the greater financial burden resulting from the contract (Q3). From the perspective of mergers and acquisitions, which are sources of capital concentration (Kozłowska-Makós, 2016), this seems to be a significant advantage.

Nevertheless, the general principles of contract performance, as well as the principle of contractual loyalty of the parties, require that the parties to the contract immediately and mutually inform each other about the occurrence of such events that adversely affect its ability to settle contractual obligations and possibly their impact on the proper performance of the contract. The use of various contractual clauses is a solution that will not replace the ability to cooperate between enterprises (including limiting unfavorable phenomena in the economic space) and mutual methods of settling liabilities, e.g. by renegotiating contracts. It can not be also a result of hasty or ill-considered decision, but it should be the result of a careful analysis of legal and financial documentation, taking into account the current circumstances.

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