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MEDIATION AS A NEW SOLUTION FOR SOLVING CONFLICTS ON FINANCIAL MARKETS

MEDIACJA JAKO NOWY SPOSÓB ROZWIĄZYWANIA KONFLIKTÓW NA RYNKACH FINANSOWYCH

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Summary: The development of the financial market is usually described in terms of new instruments, institutions or integration groups. Aspects often result in a delayed increase in market participants' confidence, as the learning process of innovation is necessary. In the meantime, the anti-conflict mediation procedure, conflicts of diverse background, allow the parties to compromise and work out agreements that also benefit the entire financial market. The article attempts to argue for the hypothesis emphasizing the role of mediation in improving the level of financial market functioning and the level of investment attractiveness of financial market players. The article shows mediation as a solution to potential conflicts, as described in the current theory of economics and finance, as well as to problems in reality. The research was based on the literature of the subject and on mediation practices on the Polish financial market. The mediation procedure present on the Polish financial market is used especially in the insurance and banking sectors as well as in public finances, contributing to raising the level of trust of the individual entities.

Keywords: mediation, financial markets, capital markets, information asymmetry.

Streszczenie: Rozwój rynku finansowego opisywany jest zwykle pod kątem powstawania nowych instrumentów, instytucji bądź ugrupowań integracyjnych. Aspekty te wywołują często efekt wzrostu zaufania uczestników rynku z opóźnieniem, ponieważ konieczny jest przebieg procesu uczenia się innowacji. Tymczasem znana od starożytności procedura rozwiązywania konfliktów (o zróżnicowanym podłożu) za pomocą mediacji pozwala stronom na osiągnięcie kompromisu i wypracowywanie porozumień przynoszących korzyści również dla całego rynku finansowego. W artykule podjęto próbę argumentacji w celu weryfikacji hipotez podkreślających rolę mediacji w podnoszeniu poziomu efektywności funkcjonowania rynku finansowego oraz poziomu atrakcyjności inwestycyjnej podmiotów na rynku finansowym. Procedura mediacji obecna jest również na polskim rynku finansowym, szczególnie w sektorach ubezpieczeniowym i bankowym, a także w finansach publicznych.

Słowa kluczowe: mediacja, rynki finansowe, rynki kapitałowe, asymetria informacji.

1. Introduction

Failure to respect the real interests of the parties on the financial markets and rising costs (especially non-cash: time, human resources, social solidarity) is characterized by contradictory dispute resolution, founding the system “win – lose”. Only stopping the zero-one thinking can allow the social and financial system development where conflict resolution benefits both parties.

Mediation is used to solve conflicts of an economic, financial interpersonal, organizational, legal, local, transnational, and ethnic nature. In addition to finding a solution to the problem, mediation may turn out to be a closer relationship between the parties, which will lead to easier agreement in the future.

It is necessary to find a solution to develop a relationship on the financial markets not only by technical or communication innovations but based on building trust in financial institutions.

In the considerations contained in this article, the following research hypotheses will be verified:

H1: Mediation can be one of the tools for increasing confidence in financial markets by providing alternative means of conflict resolution resulting from information asymmetry.

H2: Mediation can be important for the level of increasing the market attractiveness and investment attractiveness of financial market players.

2. Theoretical background of conflicts on financial markets

There are many theories explaining the process of building relationships between financial market participants. The most important and most interesting theory is the agency theory. There are also some other factors affecting the company’s ability to build their position on the market, including international financial markets.

The problem of separating the owners from control over the company was raised in the 1930s by A. Berle and G. Means, and the principal-agent concept was used in the literature for the first time by S.A. Rossa in 1973 [Wojtyna (ed.) 2005, p. 7]. In economic relationships (as well as political ones, to which the agency theory also applies), among people many issues are based on the principle of honesty [Carson 1987, p. 4]. When it is breached, the functioning of the business entities with whom the persons are connected is also disturbed. Agency theory is based on the careful observation of different situations in which business owners cannot control the full work of managers who perform real management functions in their businesses (principal-agent arrangement) [Bamberg, Spremann (eds.) 1989, pp. 9-10]. The difference between the two groups of people is first of all asymmetric of the information – access to confidential data relating to the day-to-day operations of the company (these data are extremely valuable to prospective investors when assessing the cost effectiveness of alternative investments). Also, delegating to a task manager causes

problems if the goal is different from the business owner (conflicts arise), who in turn has insufficient information. In addition, in the light of this theory, it is necessary to assume the assumptions about people: their limited rationality and their reluctance to risk (the principal and agent may have different preferences for the size).

The agency theory points to the need for such a principal-agent relationship to ensure that managers do not submit their particular interests to the owners (shareholders). Managers may be guided by the so-called moral hazard when they take actions that are not monitored by the employer [Varian 1992, p. 445]. The solution to the problem is an appropriately formulated contract, which should include the proper definition of incentives (material incentives) that would induce a plenipotentiary to behave according to the expectations of the principal. For this reason, the theory of agencies is considered to be the same as the theory of incentives. In addition, a more effective solution seems to be based on the contract on the outcome of the action rather than on the behavior of the agents. Neoclassical economics treated companies as “black boxes” whose purpose was to maximize the profits of the owners. In fact, however, the abrogation of the assumption of perfect information and of management-like property had far-reaching consequences for the theory of general equilibrium.

The agency theory also emphasizes the perception of information as a commodity that has its own cost and can be acquired. Under conditions of uncertainty, the owner cannot be completely sure whether the agent actually qualifies for his/her interests. In addition, there is no guarantee that the agent has made every effort necessary to accomplish the task. In this context, companies may invest in information systems (monitoring procedures) to control the agent’s opportunism (its tendency to transmit incomplete or distorted information so as to mislead the principal in his/her own interest). Another solution may be to link the remuneration of management (in order to discipline their actions) to the value of the company’s shares and, consequently, to the benefits of the owners. In conclusion, the existence of a principal-agent relationship is the source of many conflict situations that can be resolved through mediation.

Another theory that may be the basis for the use of mediation on the financial market, especially in the relationship between public company management and shareholders, is the theory of servility, proposed by C. Argyris [Argyris 1973]. It presents a completely different approach than the theory of the agency, because the nature of man is perceived in it through the prism of sociology and psychology. The manager is guided not by interest but by the need for success and self-fulfillment (which in turn brings him/her closer to the interests of the company’s owners). The assessment of the principal is the main source of satisfaction and long-term employment (or respect for the environment and better employability). In this model, work is considered to be a natural need for a person who has a tendency to assume responsibility and show creativity. In the agency theory, the control function was considered essential to the supervisory board; here, however, it is a supportive,

advisory role for the board in times of crisis (which creates a better opportunity for cooperation and understanding through mediation).

The negative approach to decision-making and conflict resolution through mediation, particularly in companies in the capital market, derives from J. Galbraith's theory of managerial hegemony [Galbraith 1967, p. 145]. It speaks of the monopoly on managerial knowledge and competencies among executives. It makes all the strategic decisions and should be taken by those who are best informed about the actual situation of the company.

An entirely different approach is presented by resource-based theorists, including J. Barney [Barney 1991]. It is based on the premise that the only way to gain a competitive advantage by an enterprise is to provide access to key, rare skills. One is human capital (it fulfills all the necessary conditions because it is valuable and impossible to replace), also understood as the competence or experience of the board of directors. Hence, the need to select members of these bodies on the basis of their education, employment, vocational curricula, and to draw attention to the need to differentiate its composition in terms of the different perspectives for evaluation. This theory is reflected in practice, in the case of the need to make public information on the appointed members of the authorities and their competences. Also the ability to resolve conflicts and admit to the diversity of human capital is the basis for the use of mediation in entities present in the financial market.

In neo-classical theory, the market is seen as fully transparent. Unfortunately, these assumptions do not fit in with reality, especially in today's global economy where uncertainty prevails. The aforementioned theory triggered a series of alternative theories, including behavioral theory, which did not recognize the company as a "black box". The basic problem, explained in this theory, is how to allocate resources within an enterprise. The first representative of this theory is H.A. Simon [Simon 1955]. The market (also financially) is perceived as the arrangement of various interest groups which creates internal conflicts, so the primary task of the executives is to strike a balance between them, and this can be done through mediation. The weakness of this theory is due to the omission of the external conditions of the company's operations which are the basis for achieving a competitive advantage in the market.

Another group of theories related to the financial market (and especially the capital market) are management theories. Their basic premise is the thesis of separating the control function from the owners and taking it over by the employed managerial staff. Consequently, the primary motive for executives is to maximize their usefulness, of course, after satisfying the basic needs of the owners, expressed in the expected rate of dividends or investment expenditures. Conflicts that arise in these fields can also be resolved using mediation. Within the managerial theory we can distinguish:

- Discretionary models (W. Baumol, O.E. Williamson), in which managers with a lot of freedom can count on support from shareholders. The company's primary goal is to increase sales, as it is highly correlated with pay, achievements and

prestige, as well as showing the strength of the company against the competition [Baumol 1959, p. 260]. This is also a factor verified by capital market participants. The dominant position of a company in the sector is a prerequisite for this theory to practice, and it is not a stable, secure and easily achievable situation. Managers also strive to maximize their own benefits (salaries and additional terms), as well as the level of employment and prestige investments.

- Growth-oriented models (R. Marris), where the main goal of managers is “long-term and sustainable growth of the company” [Marris 1964, p. 36], understood as the increase in sales and value of the company, which means independence from the financial markets. Such a goal is aimed at meeting the needs of managers and shareholders. However, managers are constrained (competency or financial), which slows the growth rate (also by avoiding risky investments).
- The bureaucratization model (R. Morsen, A. Downs), which emphasizes quality factors as decisive in the functioning of the company on the market. Distributed ownership is not able to stop the growing bureaucratization of organization and control of managers (undertaken to facilitate management functions) [Morsen, Downs 1965].

The last discussed group of basic theories for the use of mediation on the financial market are institutional theories (in the modern edition of new institutional economics). They emphasize the fact that “a company is a complex organizational system, not just a production unit, and its functioning depends on how the organization is organized, coordinated and regulated” [Williamson 1998, p. 30], and the institutions are perceived as socially accepted rules of the game and value systems. They regulate relations between the participants of social and economic life, which also results in limitations, e.g. in making transactions. The quality of the political, legal or financial system in a given country is therefore considered to be the basis for the functioning and competitiveness of the market and its subjects. All of the mentioned elements can be regulated in capital market companies, especially in the company-shareholder relationship, using mediation tools.

Within the new institutional economy it is necessary to maintain the transaction cost theory developed by R.H. Coase. According to him, there is no free market, it is necessary to spend: “gathering information about potential contractors, negotiating costs, monitoring and enforcement costs and insurance costs of purchased materials” [Coase 1937]. Market players do not try to compete in any situation, because sometimes they can achieve lower transaction costs through collaboration. This theory is the basis for developing new types of agreements, such as alliances and the use of mediation. However, one cannot overlook the fact that in the era of modern technological and telecommunication solutions, network organizations become more and more popular, and the existence of the company is based on contracts.

Each of the aforementioned theories gives a picture of the market, including the financial and its participants, who must find a way to deal with uncertainty. In the age of globalization, none of them can be used uncritically, a rather pluralistic approach is needed, also using mediation.

3. Mediation and its application in finance

Mediation can generally be defined as “intervention in negotiation or conflict of an acceptable third party that has minimal or no opportunity to make a decision that accompanies the parties involved in a voluntary approach to a mutually acceptable agreement” [Moore 2003, p. 30]. This definition has all the qualities that should be characterized by properly prepared and performed mediation:

- the acceptability of the mediation process (based on knowledge of its principles),
- voluntary mediation,
- neutrality of the mediator,
- the confidentiality of the mediation process,
- impartiality of the mediator.

The main benefits of mediation are:

- to make the parties aware of their relationship to the conflict and how to reach a consensus, to give them the opportunity to decide for themselves,
- convince the parties of their good will,
- voluntary,
- low cost,
- resolution speed (statutory within 30 days instead of multi-year processes),
- legal protection – after approval of the settlement by the court, it is legally valid,
- ability to achieve psychological satisfaction, not just material,
- possibility to compensate the injured person,
- guarantee of secrecy,
- guarantee equality of rights for the parties to the conflict.

In Judaism, secular and religious misconceptions were resolved through mediation. The role of mediators was played by rabbis, they were rather formal means of resolving disputes. The Jewish tradition was reformed and found to apply also in the Christian tradition (as the supreme mediator – between God and Man – is considered Christ). Following this pattern, the clergy became mediators between the community of the Church of God or the unbelievers. Church officials in the course of history undertook the task of building truces and alliances. At the lower levels of the hierarchy of the clergy, they provided support in solving family, proprietary, criminal or diplomatic conflicts.

An equally long and rich tradition of mediation is noted in Islam. Disputable issues (e.g. tribal) were settled among the Muslims by the councils of the elderly, and then by the sharia-interpreters. The practice of resolving conflicts through mediation has evolved into so-called *Musyawah*, the customary conflict resolution law in Indonesia (the largest Muslim country in the world).

The use of mediation also derives from Buddhism and Hinduism. The use of community council members as arbiters or advisors is also used today in China or Japan. In Asian communities, a great deal of emphasis is placed on building social order and harmony in interpersonal relationships.

The increasing importance of mediation as a means of “relieving” the judicial system, while at the same time more effective in finding solutions to conflict, dates back about 30 years. Generally imputed authoritarian decisions have ceased to be satisfactory for societies of ever-higher levels of development, where the individual’s freedom and the right to privacy come first.

The rise of mediation began in the United States and Canada. The first scope of formalization of mediation is, among others labor law regulations, to solve problems between employees and employers, usually in the form of collective bargaining. In Western Europe – Germany, Great Britain and the Scandinavian countries, mediation is primarily used in economic disputes. In Japan, there is a tradition of using mediators in business dealings.

With the development of the free market and businesses, the use of mediation by the business community has increased (mediation has become even more attractive than arbitration because it is not necessary to employ and remunerate selected arbitrators). A large number of business contacts make it possible to use mediation in the following cases [Victor 1992, p. 189]:

- failure to meet contractual conditions,
- responsibility for products,
- use of intellectual property,
- use of patents or utility models,
- claims for damages.

Thanks to the advancement of globalization and the development of technology, mediation is increasingly being carried out using modern audiovisual techniques and teleinformatic channels (e.g. audio conferencing over the Internet when websites are long distances). Such a solution is possible in the case of intra-organizational disputes as well as in the field of electronic commerce (e.g. domain names disputes are resolved by World Intellectual Property Organization Mediation and Arbitration).

Effective cross-border mediation in Europe has several conditions of success. Certainly, the development of the European Union and its standards is conducive to the dissemination of modern conflict resolution methods (especially through institutions such as ACAS, Advisory, Conciliation and Arbitration Service, CEDR-Center for Effective Dispute Resolution, CPR – International Institute for Conflict Prevention and Resolution) [*Effective...* 2006, p. 1]. Even if mediation does not deliver satisfactory results, it is the reason for improving the relationship between the parties. Despite the increase in popularity, mediation continues to face obstacles to development that make this method still not the dominant way of resolving conflicts.

Stock exchanges around the world, as a part of the international financial markets, are such a part of the financial system that it is hard to find a clear answer to what is their strength – access to capital for investors, ease of transaction and liquidity for investors, or access to information. It seems reasonable to assume that the transparency of the market ensures its allocation efficiency and at the same time increases the

level of trust of market participants in the manner of closing transactions according to strictly defined rules. It can therefore be argued that the rules of legitimate (ethical, lawful) conduct are useful for market participants and therefore they are inclined to follow them. However, there is still the unresolved issue of competition for access to hidden information that could affect investor decision-making. According to J.M. Keynes, the stock market is like a casino – it operates according to certain rules, but it maximizes the responsibility and risk for capital donors, which automatically translates into the unwillingness to participate in it [Keynes 1936, p. 142]. The decline in confidence in public limited companies also negatively affects other parts of the financial market, and therefore the whole economy. It is therefore important to reflect on, and continually seek equal access to, information for capital market participants.

Insider trading is a particularly negative impact on the capital market. The allocation of financial resources to donors of capital can be effective to varying degrees, which depends precisely on the access of all parties to exchange information. If a company hides data about its activities, it either does not want them to be completely discovered by the competition, or the transparency of its activities is insufficient. The market is considered effective when all market information, its entities and instruments, are generally available and immediately reflected in the prices. Information can be divided into relevant and irrelevant for decision making on the buying and selling of securities. Firstly, it is important to separate them in such a way that they do not interfere with the process of market communication and are not merely used to create an image. Secondly, information about the future and the secrecy of market participants may be used in a manner incompatible with market rules. Such negative situations, morally dubious and with a distorted sense of the market, are, for example, pre-emptive transactions (which can be made by, for example, stockbrokers, if they know their clients' investment plans, such actions are prohibited on many exchanges) or sell / buy shares of companies by their managers to make a profit using information not yet available on the market (hence the establishment of so-called closed periods – the prohibition of securities trading by companies employed by them before the publication of periodic reports). Such behavior primarily results in loss of confidence in the financial system and its institutions (intermediaries), hence their penalisation and expected negative social judgment. The analysis of the foregoing considerations shows that, in addition to access to information, market participants must also have knowledge of ethics and be predisposed to resist the temptation to abuse their information. Otherwise, the use of the caveat emptor rule on the financial market, with a high degree of transaction complexity, can lead to a reduction in the number of players active on the market.

The issue of profitability, achieved by market players, is intended to serve the public. Developing a common denominator for the needs and capabilities of their finances may seem necessary when confidence in the global financial institutions and markets has been shaken by the global financial crisis of 2008 and subsequent

turbulences in the global economy. Considering the fact that ethics allows for nurturing and developing human personality, which is related to the quest for universal values, integrity and discipline of work, professionalism and respect for the rights and dignity of other people, this can be the basis for the ethos of work in the financial sector. Not necessarily related to the performance of employees of financial institutions and entities in financial markets worldwide, this assessment, based on earnings, may be short-term and non-rational in terms of impact on overall well-being.

Financial markets have this specific trait that traded on them are instruments that have a large information gap between sellers and buyers compared to other markets [Schneider 2003, p. 195]. In order to analyze and make a rational investment decision, there should be made not only the assessment of the entity itself, but also its history, economic situation of competitors or macroeconomic conditions. Some of them are publicly available – sufficient knowledge is needed to properly interpret them. Others are only revealed after a certain time after the incident – here the timeframe in the transmission of information is trying to reduce the legal regulations in this area. It is also important to take into account unpredictable situations that damage the confidence of exchange’ participants, which is increasingly common in the turbulent financial market (see World Crisis 2008).

4. Mediation as a solution for solving conflicts on financial markets – evidence from the Polish financial market

Ethics treated as a way of shaping the relation of entities with respect to common values may be based on the principle of derealization. This principle in practice consists in determining the equivalents of certain values. If any behavior is judged to be positive then it requires recognition and reward (see RESPECT index [RESPECT]). If, however, the conduct of a financial entity is judged unlawful it must be punished. In the case of ethical issues, the punishment itself, often associated with prolonged court proceedings, may not bring satisfaction to customers or shareholders. In such a case, the ethical cause of harm requires financial institutions to repatriate it, or even its repentance. This is particularly important at a time when we compare the opportunities to influence others in the case of a bank and its customers, for example. In such a situation, it seems that the mediation of disputes can serve as a mediation process, and its importance for the company’s information policy is significant. First of all, the point is addressed here as to the needs of both sides of a possible conflict – they are able to inform one another about their needs and thus reach an agreement. On the other hand, the negotiated approach gives a signal to the financial market about the responsible approach of the subject to his/her clients, thus increasing his/her competitive strength. It cannot be forgotten that pro-social issues, “soft”, are often more important for investment decisions by customers (especially banks) than their competitors’ approach.

The financial system, owing to the occurrence of the information asymmetry described earlier in the various relations of institution-client, institution-employee or company-shareholder, is an environment in which conflicts of interest occur very often. Failure to reach an agreement reduces confidence in the entire financial system, leading to a weakening of the economic strength of the country or region. Also, potential solutions to the problem should be fair and ensure full access to information for the parties to the conflict. Meanwhile, in Polish conditions there are such answers to the troubles of customers that do not guarantee the equality of parties in the pursuit of their rights. Here, for example, functions the Borrower Support Fund. According to the idea of its creation, banks “make it up” to help their clients, because it can take up to 18 months for the borrower to pay its installments (up to 27,000 PLN). However, the rules of operation of the Fund state that unused funds are returned to banks. At the same time, it is the banks that decide who can get help. Consequently, there is a temptation to abuse this instrument or to make it unprofitable for banks. There are numerous voices on the part of bank clients who were refused help despite meeting all the conditions or lack of information about the rules of operation of the Fund [*Dziurawe koło ratunkowe?*]. In order to solve such situations, it is necessary to provide all the information to institutional clients, to carry out educational actions among employees (also involving ethical approaches), and to try to reach an agreement, for example through mediation.

The use of mediation, a still unpopular method of resolving conflicts without the need for judicial (or ongoing) mediation, can be a way for financial institutions to create new foundations for trusting the whole system. Mediation, as a universal form of legal protection, carries with it a number of advantages: the reduction of costs and time of court proceedings, the possibility of presenting one’s point of view informally, the possibility of concluding a settlement which, when approved by the court, has legal force. Mediation gives the chance to both sides of the conflict to reach BATNA, the best alternative to a negotiated agreement. First and foremost, the mediations raise the level of the subjectivity of the parties involved in the dispute, which particularly concerns the clients of financial institutions. Through mediation they can feel that their needs are being seen, and the size of the other side of the conflict is no longer blocking the reaching of an agreement. Financial disputes that can be resolved in this way include, for example, setting repayment terms or saving payments, determining financial services costs, repaying obligations, determining party obligations in a factoring contract, and disputes with employees or shareholders. However, this requires a broad educational campaign among employees and managers in the financial markets in order to realize the merits of such an ethical solution but also to bear the costs (financial and reputational as pro-consumer behavior). Mediators can benefit both financial institutions and their clients as applicants. In Poland, the institution that can use this procedure is the Center for Mediation of the Court of Arbitration, acting at the Polish Financial Supervision

Authority. The overwhelming number of requests for mediation comes from institutional clients, but there is also a growing trend among financial market players. With an effectiveness of about 80% of such proceedings, consideration should be given to broadening the idea of mediation to raise the level of ethics in finance.

Mediation in the financial market is most important in the insurance and banking sectors. Disputes usually concern insurance matters, concerning the refusal or partial refusal to pay compensation or insurance benefits by insurance companies. This has to do with the claims for redress that have recently been made more and more frequently to the insurance companies by the victims and their families. The next place is occupied by the disputes in the banking sector regarding the implementation of a loan or loan agreement. There is also a significant number of disputes concerning the lack of complete information for the customer about the investment product being purchased for investment or investment-protection purposes [*Arbitration Court...*].

In 2015, a total of 511 applications for mediation proceedings and 36 applications for arbitration were submitted to the Arbitration Court at the Polish Financial Supervision Authority. The largest number of applications for mediation concerned the insurance sector (393) and banking (119). Of the 511 requests for mediation proceedings, the mediator's agreement to mediation was obtained in 135 cases. For comparison, in 2014 the requests for mediation were 347 and the agreement in the other 62. In 2015, the average value of the subject of the dispute in the cases considered by the Arbitration Court amounted to 95 thousand PLN [*Arbitration Court...*]. Since 2014, the Polish Financial Supervision Authority has been honored with the distinction of "Financial institution of friendly mediation" for promoting the amicable settlement of disputes and an open approach to the client. These institutions work not only to improve the level of financial services, but also to build confidence in the entire financial market. The winners, among others, are: PZU SA, STU Ergo Hestia SA, Bank Pocztowy SA. Granting a financial institution this distinction is a clear signal to clients that, in the case of possible disputes, they can count on its pro-consumer behaviour and resolve the dispute in the most friendly way possible. Maybe this is one of the prerequisites for the customer to decide about which financial institutions they should cooperate with.

Mediation is considered to be a successful procedure also in public finance, which is beneficial in many situations for the State Treasury. The choice of an amicable way to resolve disputes is not only the argument of time or cost savings, but above all the efficiency of contracts. Dispute resolution with a neutral mediator, in a collaborative atmosphere, allows for a lasting compromise and further common action in the future.

The potential violation of public finance discipline is one of the concerns for which the use of mediation benefits in this area has not yet been sufficiently popularized. Most parties decide to go to court. Any concession of the parties is

perceived as a violation of the public interest, but the most common solution is to rigorously penalize contractual penalties to contractors, deducting remuneration or securing performance of the contract. In such a situation, the only way out for contractors is to defend their rights in the courts. This way of resolving a dispute results in the suspension of work (sometimes the need to search for a new contractor), as well as the remuneration of an entity, which may even result in loss of liquidity and bankruptcy. The negative consequences are so obvious to all parties to the dispute, and the lack of awareness of the possibility of compromise generates increasing costs.

It is also worth noting that in the public finance the interest is mainly secured on the part of the ordering party to perform the task, while the contractor is forced to assume almost all risks, including being objectively independent of each other. In cases where it is not possible to resolve the dispute in a satisfactory manner, it is possible to use mediation (the Polish Civil Procedure Code permits this, and public finance contracts are not subject to any exclusion from the possibility of such proceedings). In public finance, mediation may be particularly applicable in the case of contractual penalties (due to their high and often conflicting causes) or to the interpretation of particular clauses of a contract (especially as regards parties' obligations) [*Mediacja korzystna...*]. It is worth remembering that a mediation agreement is recognized by the court, and may contain only provisions that can be entered as an annex to the contract if the settlement requires changes to the original document. Mediation, however, allows the planned execution of public contracts and facilitates cooperation between the parties, allowing the framework of existing cooperation and financial stability of both parties to be maintained.

5. Conclusion

The future of the subject is largely based on the acquisition of patterns from countries where the mediation process has a strong, and sometimes even fundamental, role in the functioning of justice. This is not just a matter of adjusting the rules of the functioning of mediation or mediators. The basic issue seems to be that changes are necessary in the mentality of society. Without proper reforms that promote the use of mediation in dispute resolution, it will be difficult to expect stability to grow in importance.

Mediation can be used both within entities operating in the system of the financial market as well as within the framework of public finances. The likelihood of solving disputes reduces costs (in terms of time, money and organization), allows for the maintenance and enhancement of confidence among market participants, as well as the possibility of further cooperation between the various entities. Dissemination of the use of mediation is therefore also justified on the financial market, because it gives the financial institution the ability to maintain a relationship with the client.

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