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FINANCIAL LEVERAGES FOR REHABILITATION PROCESS OF ENTERPRISE

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Introduction

Financial crises showed the importance of financial leverage for rehabilitation proceedings of enterprises. It may prevent bankruptcy and gives enterprise a “second chance”.

A “second chance”, in a broad perspective, means not only a reengagement of an entrepreneur in a new economic entity after the first failure, but also rehabilitation and restructuring of an enterprise facing a threat of bankruptcy – under a rehabilitation proceeding; according to the Polish law there are two types of rehabilitation proceedings, one conducted under the civil law and the second with a court engagement that acts upon *The Bankruptcy and Reorganization Law* (“Ustawa prawo upadłościowe i naprawcze”). The policy of a “second chance” is recommended by the European Commission.

There are numerous definitions of the process of an enterprise rehabilitation. In the European Union documents the term of restructuring rehabilitation is used. In Polish literature, synonymous to this term are company’s rehabilitation, restoration or recovery processes.

The aim of this paper is to discuss arguments justifying the application of financial leverage, to present institutions of support and to evaluate the effectiveness of financial leverage models.

The process of a company’s recovery is not only a legal procedure, it is also an economic process, management process, and finally also a social process

as main rehabilitation strategy elements. Hence, it is important to analyze this issue from a broad variety of perspectives.

1. Arguments for financial leverages application

A crisis most often lowers the value of the relationships with customers and suppliers as well as the value of financial assets and fixed assets. The repair process is to rebuild the company value, or at least halt the decline in this value¹. Financial leverage plays an important role in this process.

Briefly, the process of rehabilitation can be defined as the restoration of long-term solvency. Remedial restructuring can be seen as a special, personalized way of a company's adaptation to changing environmental conditions, namely the transformation of the attributes of a company, i.e. its resources, organizational culture, credibility in the market, etc. According to C. Suszyński, remedial restructuring often is a consequence of a prolonged crisis and difficult situation of a company².

Arguments for the initiation of rehabilitation proceedings are as follows:

- 1) economic costs of insolvency³,
- 2) social costs of insolvency⁴,
- 3) growth in no fault reasons for bankruptcies⁵,

¹ **P. Masiukiewicz, M. Nowak**, *Bariery procesów naprawczych a zmiany regulacyjne*, [in:] **E. Mączyńska** (ed.), *Procesy upadłościowe i naprawcze w Polsce na tle doświadczeń UE*, Warszawa 2013, pp. 155–179; **P. Masiukiewicz**, *Rehabilitation Proceedings and Company Value*, [in:] **S. Morawska** (ed.), *Ekonomia i prawo upadłości przedsiębiorstw. Zarządzanie przedsiębiorstwem w kryzysie*, Oficyna Wyd. SGH, Warszawa 2012, pp. 161–181.

² **C. Suszyński**, *Restrukturyzacja, konsolidacja, globalizacja przedsiębiorstw*, PWE, Warszawa 2003.

³ **E.I. Altman, E. Hotchkiss**, *Trudności finansowe a upadłość firm*, CeDeWu, Warszawa 2007, **H. Davies, D. Green**, *Global Financial Regulation*, Polity Press Ltd., Cambridge 2008; **P. Masiukiewicz**, *Udział banków w tworzeniu drugiej szansy dla przedsiębiorstw*, [in:] **A. Szelągowska** (ed.), *Współczesna bankowość korporacyjna*, CeDeWu, Warszawa 2011, pp. 127–147.

⁴ **E.I. Altman, E. Hotchkiss**, *Trudności finansowe...*; **H. Davies, D. Green**, *Global Financial Regulation...*; **S. Morawska**, *Przedsiębiorca w obliczu upadłości. Diagnoza i propozycje zmian systemu instytucjonalnego w Polsce*, Oficyna Wyd. SGH, Warszawa 2013.

⁵ **P. Masiukiewicz**, *Rehabilitation Proceedings...*, pp. 161–181; **S. Morawska**, *Przedsiębiorca w obliczu upadłości...*

- 4) contagion effect of an enterprise in a crisis as cause of bankruptcy⁶,
- 5) growing costs of launching a new business and entering the market⁷.

The general measure of financial leverage in an enterprise is WDF indicator, which is calculated as follows:

$$\text{WDF} = \frac{P - K_w}{K_w}$$

Where:

WDF – financial leverage indicator;

P – liabilities of an enterprise;

K_w – equity.

Source: the author's own.

Financial leverage which is used to support a rehabilitation program in an enterprise, should be analyzed in terms of its effectiveness. The effectiveness of leverage is achieved when:

$$Z(f:\text{WDF}) > ZN \text{ or } S(f:\text{WDF}) < SN$$

Where:

ZN – regular profit, without financial leverage;

SN – loss, without financial leverage;

$Z(f:\text{WDF})$ – profit with financial leverage;

$S(f:\text{WDF})$ – loss with financial leverage;

– the other symbols – as explained earlier.

Source: the author's own.

In practice there have been cases of an application of excessive financial leverage in business, which, as a consequence, brings losses. Of course the price of capital (interest rate) set in the process of financial leverage in rehabilitation proceeding is an essential issue. This price should fulfill the following conditions:

⁶ **M. Krajewski**, *Kierunki efektywnego zarządzania finansami w przedsiębiorstwach*, Zeszyty Naukowe Uniw. Szczec. 634, Finanse, Rynki Finansowe, Ubezpieczenia 2010/34, pp. 187–196.

⁷ **E.I. Altman**, **E. Hotchkiss**, *Trudności finansowe...*; **S. Morawska**, *Przedsiębiorca w obliczu upadłości...*

- 1) it should be lower than the market price of capital, which means it must be accessible to a failing enterprise;
- 2) it should ensure a higher than average IRR (internal return ratio), which will enable the enterprise to recuperate the loss faster.

A special program of a “second chance” for enterprises is implemented in the European Union.

“A second chance” from a broad perspective means not only a reengagement of an entrepreneur in a new economic entity after his first failure, but also rehabilitation and restructuring of an enterprise facing a threat of bankruptcy – realised under a rehabilitation process.

New EU regulations and institutional arrangements are neither implemented nor popularized in Poland. The European Commission approach to bankruptcy cases can be considered revolutionary, because bankruptcy is to be a last resort if all forms aid for entrepreneurs have been exhausted. Moreover, despite bankruptcy, the entrepreneur should – with the support of various institutions have a second chance – a chance to re-operate⁸. Basic legal and advisory instruments established by the EU are set out in the following documents:

Communication from the Commission to the Council, the European Parliament, European Economic and Social Committee and the Committee for the Regions “Overcoming the stigma of business failure – for a second chance”⁹;

“Community guidelines on State aid for rescuing and restructuring firms in difficulty”¹⁰;

The Directive of the European Parliament and the Council on the reorganization and winding up of credit institutions¹¹.

Furthermore, in many countries in the EU there operates a network supporting processes of enterprise rehabilitation – Enterprise Europe Network.

⁸ **H. Wyřębek, A. Kompa**, *Risk Management in the Face of Enterprise Restructuring*, [in:] **B. Domańska-Szaruga, W. Wereda** (eds), *Management Under Conditions of Risk and Uncertainty*, Wyd. Studio Emka, Warszawa 2011, pp. 192–210.

⁹ Komisja Wspólnot Europejskich, *Komunikat Komisji do Rady, Parlamentu Europejskiego, Europejskiego Komitetu Ekonomiczno-Społecznego i Komitetu Regionów* „W jaki sposób przezwyciężyć piętno porażki poniesionej w działalności gospodarczej – działania na rzecz drugiej szansy”, Brussels Official Journal 584, (KOM 2007) z dn. 5.10.2007 r.

¹⁰ Komisja Wspólnot Europejskich, *Komunikat Komisji* „Wytyczne wspólnotowe dotyczące pomocy państwa w celu ratowania i restrukturyzacji zagrożonych przedsiębiorstw”, Brussels Official Journal 244, (P. 0002-0017) z dn. 01.10.2004 r.

¹¹ Dyrektywa 2001/24/WE Parlamentu Europejskiego i Rady z dn. 4.04.2001 r. w sprawie reorganizacji i likwidacji instytucji kredytowych, (Dz.U. UE, Nr L z dn. 5.05.2001 r.).

EEN is an extensive network (numbering 600 organizations and four thousand consultants) providing among others information and advice to companies facing bankruptcy and entrepreneurs who survived bankruptcy and decide to start a business again.

The European Commission believes that a more supportive environment for businesses at risk of bankruptcy can prevent their failure. Highlighting the problem of negative effects of business failure and its negative reception by society would help to make the best of human creativity in Europe, encourage entrepreneurship and promote innovation and job creation¹².

In the guidelines of the European Commission the definition of a firm in difficulty was formulated and it is very broad¹³. Before, European definition of companies threatened with bankruptcy did not exist, however for the purpose of the Guidelines for the European Commission – it was established that a business is threatened, if it is unable, whether through its own resources, or with the funds it is able to obtain from its owners (shareholders) or creditors, to stem losses which, without outside intervention by the public authorities, will almost certainly condemn it to going out of business in the short or medium term.

Even when conditions listed above are not met, the company may be considered at risk, particularly when there are usual signs, such as increasing losses, diminishing turnover, growing inventory, unsold excess capacity, declining cash flow, mounting debt, rising interest charges and falling or nil net asset value¹⁴.

In the light of the Guidelines cited a newly created firm is not eligible for state aid for rescuing and restructuring, even if its initial financial position is precarious.

In Poland, the number of bankruptcies is relatively small; however there is a large percentage of companies going bankrupt without undergoing bankruptcy proceedings (due to lack of funds) and the number of procedures of enterprise recovery is very small¹⁵. This is probably the implication of poor

¹² Komisja Wspólnot Europejskich, *Komunikat Komisji do Rady, Parlamentu Europejskiego, Europejskiego Komitetu Ekonomiczno-Społecznego i Komitetu Regionów* „W jaki sposób przewyciężyć...”

¹³ Komisja Wspólnot Europejskich, *Komunikat Komisji* „Wytyczne wspólnotowe...”

¹⁴ *Ibidem*.

¹⁵ **E. Mączyńska** (ed.), *Cykle życia i bankructwa przedsiębiorstw*, Oficyna Wyd. SGH, Warszawa 2010, pp. 435–446.

design of insolvency proceedings in *Law on Bankruptcy and Rehabilitation* and the lack of sufficient leverage to support the process of company recovery¹⁶.

Support of government for rehabilitation process is motivated through the structure of receivables in enterprises. Research made by S. Morawska about receivables structure in bankruptcy firms is an important signal for government¹⁷. Public receivables are equaled (depend of region) from 20 to 60% of total receivables in investigated enterprises (table 1). This problem needs the activity of the finance ministry.

Relative low ethic of debt payment in enterprises is one of factor of payment delay creation – this problem needs additional researches.

TABLE 1: *Ratio of public receivables versus private receivables in investigate bankrupted enterprises in time period 2004–2010*

No.	Study of bankruptcy records in local court	Number of cases	Public receivables in %	Private receivables in %
1	SR Wrocław-Fabryczna – court	98	20,0	80,0
2	SR m. st. Warszawa – court	250	35,0	65,0
3	SR Kraków Śródmieście – court	144	17,0	83,0
4	SR Białystok – court	21	60,0	40,0

Source: S. Morawska, *Przedsiębiorca w obliczu upadłości...*, p. 159.

The aim of rehabilitation proceedings of an enterprise should be to regain liquidity and an ability to generate profit. This aim is achieved through:

- preparation and implementation of a rehabilitation program,
- gaining a source of financial leverage for the implementation of the program.

2. Support institutions in Poland

There is a variety of institutions which can support financially a rehabilitation process. They can be divided into private institutions (e.g. venture capital companies, banks, credit unions) and governmental institutions. To government financial support institutions belong: finance ministry or treasury ministry, state

¹⁶ P. Masiukiewicz, *Udział banków...*, pp. 127–147; Masiukiewicz P., *Rehabilitation Proceedings...*, pp. 161–181.

¹⁷ S. Morawska, *Przedsiębiorca w obliczu upadłości...*, p. 159.

quasi-budget funds and tax offices. The European Commission is working on a special financial fund to support rehabilitation proceedings and orderly liquidation for financial institutions (Recovery and Resolution Regime)¹⁸.

The important practice is application of enterprise liquidity instruments such as banking loan, securitization, factoring, return lease and franchising¹⁹.

The bank that is cooperating with the company may also use different strategies to deal with situations of a crisis on the client's need for a process of recovery. In practice, there are four possibilities²⁰:

- placing immediate maturities of the loan status and their recovery (as a consequence, this may mean acceleration of bankruptcy);
 - passive role in the process of recovery; incidental action taking (such as temporary suspension of interest payments, the exchange of information with other lenders to the company, sale of the liabilities to another bank, etc.);
 - active participation in the restructuring of the company and exploiting of a range of financial instruments and organizational tools;
 - refraining from any action, waiting for developments.
- From the standpoint of the efficiency of the process of recovery, what is desirable is the active role of the bank. It has at its disposal a variety of financial instruments to support the process which was presented in literature²¹.

2.1. Preferred types of financial leverage

In the ground of Delphi research, which was realized by author²², research experts admitted that state budget was a source of financial capital for rehabilitation processes (table 2).

¹⁸ **T.H. Hannan, G.A. Hanweck**, *Bank Insolvency Risk and the Market for Large Certificates of Deposit*, Journal of Money, Credit and Banking 1988/5, pp. 210–231.

¹⁹ **A. Antonowicz, P. Antonowicz**, *Koncepcja franszyzy jako strategii restrukturyzacji zadłużenia upadłego*, Zarządzanie i Finanse 2013/4/3, pp. 23–33; **K. Haładyj**, *Sekurytyzacja wierzytelności – aspekty prawne*, www.e-prawnik.pl, access 15.02.2012.

²⁰ **P. Masiukiewicz**, *Udział banków...*, pp. 127–147.

²¹ **A. Antonowicz, P. Antonowicz**, *Koncepcja franszyzy...*, pp. 23–33; **K. Haładyj**, *Sekurytyzacja wierzytelności...*; **P. Masiukiewicz**, *Udział banków...*, pp. 127–147.

²² **P. Masiukiewicz, M. Nowak**, *Bariery procesów naprawczych...*, pp. 155–179.

Experts considered that the best support of rehabilitation were warrants from various institutions. Warranties and guaranties from fund managed by BGK-bank, PARP and regional foundations for SMB development and another were indicated. The most often indicated criterions for help allowance were the independent external problems.

TABLE 2: *Important types of financial leverage for support of rehabilitation processes of enterprises in expert opinion (%)*

No.	Type of financial leverage	Answers in %
1	Restructuring loan from private bank with refund part of rate from government	16,0
2	Restructuring loan from government bank with refund part of rate from government	8,0
3	Credit guarantee and warranty from guarantee fund managed by BGK-bank	48,0
4	Credit warranty not provision by PARP	40,0
5	Credit warranty not provision by ARP	20,0
6	Credit warranty not provision by regional foundations for SMB development	36,0
7	Loan from special state found for rehabilitation process with preference rate	12,0
8	Loan from special private-public found for rehabilitation process with preference rate	24,0
9	Obligation loan from state budget (liquidity obligations)	4,0
10	Temporary tax exemption from local tax office	24,0
11	Capital enter into company of state budget for time of rehabilitation process	20,0

Source: the author's own.

Majority of experts had negative opinion about possible aid for enterprises which have produced troubles themselves.

2.2 The importance of support of tax offices

Tax authorities have an important role in the restructuring process, but usually their policy is to immediately recover the taxes.

The research done in Polish enterprises (zachodniopomorskie province) shows (tab. 3) that in 57% of cases of rehabilitation proceedings government institutions (e.g. tax offices, city and municipality halls) did not waive any liabilities of the enterprises.

Polish tax legislation does not *expressis verbis* provide for tax exemptions for businesses (as well as financial institutions) implementing programs of recovery. However, the legislature ensured a way of escape, which is very little known and rarely used. Namely, if a company is threatened by bankruptcy, and received an order for enforcement of tax arrears and its request for their redemption was rejected, it may request a suspension of implementation of the decision claiming that it is in companies major interest to do so.

TABLE 3: *Waiver of liabilities upon the request of enterprises*

No.	Office response to an application for a waiver of liabilities	Response expressed in % N = 59 enterprises
1	Denial	57.1
2	Waiver of up to 50% of liabilities	21.4
3	Waiver of more than 50%	14.3
4	Waiver of 100% of liabilities	7.1

Source: I. Dziedziczak (ed.), *Procesy upadłościowe i naprawcze w polskiej gospodarce*, Rozprawy i Studia t. (DC) 526, Uniwersytet Szczeciński, Szczecin 2004, tabl. no 3.5.

The goal of prohibiting the implementation of the tax (Article 224 & 2 Polish Tax Act) is the temporary protection of the taxpayer against the decision he challenges until its final verification. In the past, some tax authorities, unfortunately, felt that it depends solely on their discretion to grant such a postponement. Fortunately, the tax authority is now obliged to suspend the implementation of decisions not only at the direct request of the taxpayer, but it can also do this *ex officio* – if only it is in an important interest of the taxpayer or the public interest.

In 2008 an entrepreneur was refused to suspension of the implementation of the tax. The taxpayer in the application demonstrated a substantial interest, which was the risk of a loss of financial liquidity and the market in which he was operating and even a threat to the existence of his family. However, the tax office did not agree to suspend the decision – on grounds, namely that the suspension of the decision depends on administrative discretion of the tax office. In addition, Tax Chamber confirmed the correctness of this reasoning²³. However, Regional Administrative Court in Krakow ruled on the subject that if the conditions of an important interest of the taxpayer or the public interest

²³ P. Łabno, *Jeśli firma jest zagrożona, fiskus powinien wstrzymać egzekucję*, Rzeczpospolita z dn. 29.05.2008 r.

are fulfilled a tax authority is obliged to suspend the implementation of the decision. For example, an interest must be equivalent to the probability of cessation of business operations due to loss of liquidity.

Unfortunately, despite such a state of the law, certain tax office continue to claim a right to discretion to withhold the payment of the tax due, even if the facts regarding the matter are clearly in favor of stopping the execution²⁴.

3. Evaluation of the effectiveness of financial leverage models

The management of the company's finances is driven by the desire to obtain long-term liquidity – ensuring solvency. Hence, there is a need for effective management of current assets, which affects the formation of long-term assets and ensures the development and therefore an increase in shareholder value²⁵. Diligent studies not only help companies find the causes of troubles but also enable the design of future activities in the recovery program and become a planning tool. Liquidity management (its level is sometimes more important than the profit itself) must be based on continuous monitoring of changes and forecasting.

A rehabilitation proceeding does not always require external financial leverage. It is important to establish an optimum level of aid. Insufficient leverage will result in an ineffective rehabilitation proceeding²⁶.

The selection of a method of the process of recovery, based on a certain financial leverage, should be preceded by an analysis of the effectiveness. The analysis of the options of the effectiveness of rehabilitation process (and subsequently the analysis of deviations from the plan during implementation) should be performed based on a set of carefully selected financial measures. In addition to traditional measures such as ROA, ROE, return on cost, level of equity and debt, carry-forward losses one can apply additional specific measures of assessment which are shown below.

A basic method in this regard is the comparative analysis of the cash flow for various regulatory pathways estimated in the recovery program – by

²⁴ P. Masiukiewicz, *Rehabilitation Proceedings...*, pp. 161–181.

²⁵ M. Krajewski, *Kierunki efektywnego zarządzania...*, pp. 187–196.

²⁶ P. Masiukiewicz, *Udział banków...*, pp. 127–147; P. Masiukiewicz, *Rehabilitation Proceedings...*, pp. 161–181.

means of DCF. Discounted cash flow model (DCF) used for the selection of a rehabilitation process, can be described as follows:

$$ZWNPF_n = \sum_{t=1}^m \frac{NCF_t}{(1+d)^t}$$

Where:

ZWNPF_n – discounted net value of cash flow estimation for method *n*;

NCF_t – net cash flows for the year *t* of the estimation;

T – number of years of estimation;

D – discount rate;

N – number of rehabilitation method.

Source: the author's own

A comparative study, answering the question which method gives the maximum surplus of ZWNPF – requires defining the number of years when the leverage will be used, the discount rate *d*, and finally defining a cash flow forecast.

A sensitivity analysis of the financial forecasts contained in the recovery program is needed. Usually one conducts such an analysis in regard to market conditions (e.g. changes in interest rates, demand and others). An important criterion for choosing the method of financial rehabilitation is an assessment of the risk of volatility of ROA. ROA volatility risk can be estimated for the sub-periods of the analysis, for the different line of business (active operations) and for changes of the structure of refinancing. ROA volatility risk index is calculated as follows:

$$RR = \frac{E(ROA) + CAP}{\sigma ROA}$$

Where:

RR – ROA volatility risk index;

eROA – expected value of ROA (estimation);

CAP – relation of shareholders capital to assets;

σ ROA – ROA standard deviation.

Source: T.H. Hannan, G.A. Hanweck, *Bank Insolvency Risk...*, pp. 210–231.

ROA sensitivity to changes in the structure of refinancing seems particularly relevant for a program of bank rehabilitation, because of the uncertainty surrounding the trust of customers and suppliers as well as access to capital to finance further activities.

An important issue is to determine the number of years and the amount of the restructuring loan needed for the recovery process of a business. According to this criterion, in theory, any company regardless of the level of losses can be repaired; provided the arrangement and obtaining of the adequate amount of the loan is possible. However, this situation would not be economically justified, as a bankruptcy has a function of purifying the economy.

The model of balance sheet loss coverage with the use of leverage, assuming a loss generation for another two years from starting the rehabilitation process, is as follows:

$$\sum_{m=1}^{n-1} S_m + S_{1,2} - K(1+r)^n + O_n + P - Z_{n+2} = 0$$

Where:

- S – loss in a year m ;
- m – the number of years in the past with a loss;
- 1,2 – losses in two first years of the rehabilitation process;
- $n(1\dots z)$ – duration of the rehabilitation process with the use of a restructuring loan maturing in n years;
- K – the amount of the restructuring loan;
- r – agreed interest rate for n period; that is a compounded rate of return from operating assets of the company;
- Z_{n+2} – profits in consecutive years starting from third year of the process;
- O_n – interest paid to the creditor in n period;
- P – fees paid to the creditor in n period.

Source: the author's own.

If the amount of carry-forward losses is known, and a maximum period of the rehabilitation loan and its cost of service are known, the weighted average rate of return on bank's assets and projected profits in subsequent years (from the third year in the above-presented model) are known – it is possible to calculate the required amount of the loan covering the losses in the years of the rehabilitation process, namely:

$$K = \left[\sum_{m=1}^{n-1} S_m + S_{1,2} + O_n + P - Z_{n+2} \right] x \frac{1}{(1+r)^n}$$

Where:
designations like above.

Source: the author's own.

Deviations from the financial plan during the rehabilitation period and deviations from the whole volume of sales represented across the sector can be analysed with the use of volume elasticity indicator²⁷. Volume elasticity allows assessing both the degree of the rehabilitation program realisation and the degree of the adjustment to changes in market demand. A formula for the indicator computation for a three-year period as follows:

$$EW = \sqrt{\frac{(R_1)^2 + (R_2)^2 + (R_3)^2}{3}}$$

Where:

EW – volume elasticity of credits or deposits;

Rn – the ratio of a maximum volume to minimum volume in a given year;

n – consecutive years chosen to computation.

Source: **F.F. Suarez, M.A. Cusumano, Ch.F. Fine**, *An Empirical Study...*, pp. 173–192.

To assess the effectiveness of financial leverage that was used in a rehabilitation process it is vital for creditors to compute a net receivables recovery ratio. During a rehabilitation process total receivables should be settled and paid in 100% unless due to negotiations a partial repayment was agreed (such a repayment is also a form of financial leverage allowed by creditors). This ratio can be also a criterion on the basis of which one can choose a rehabilitation method for a company. Receivables retrieval coefficient can be computed with the following formula:

$$WOWN_n = \sum_{i=1}^n \frac{OW_i}{(1+r)^i} : [WO - WOxm] x 100$$

²⁷ **F.F. Suarez, M.A. Cusumano, Ch.F. Fine**, *An Empirical Study Advantage for Small Firms*, Strategic Management Journal 1991/12, pp. 173–192.

Where:

WOWN – net receivables recovery ratio;

OWi – receivables due recovered in the year of an estimation;

WO – total receivables due;

m – a percentage of receivables redeemed;

i – a consecutive year of an estimation;

r – discount rate.

Source: the author's own.

To conclude, the financing model of each rehabilitation process differ subject to the implication of several factors, which derive from the expectations of stakeholders in the process²⁸.

Conclusion

Rehabilitation proceedings in the European Union will gain in importance. New conditions of management of enterprises and the guidelines of the European Commission call for a reform of the current institutional solutions supporting leverage of rehabilitation process in Poland. There is no public restructuring fund (bad debts fund), which together with the bank would provide financing in a form of “the survival capital” for companies in crisis. A small fund supporting the processes of bankruptcy, which has a Minister of the Treasury – does not solve the problems. Unfortunately Polish tax system isn't friendly for rehabilitation proceedings; f.e. debt forgiveness has consequences – enterprise must pay tax of this debt.

The following actions are needed in Poland:

- changing the *Law on Bankruptcy and Rehabilitation* and creating a separate act for rehabilitation proceedings;
- specifying in the law the institutions and legitimate financial instruments (financial leverage) that would support rehabilitation processes;
- establishing criteria for the application of financial leverage for failing enterprises;
- payments of public commitments in due time.

²⁸ P. Masiukiewicz, *Rehabilitation Proceedings...*, pp. 161–181, **Dziedziczak I.** (red.), *Procesy upadłościowe...*; **H. Wyrębek, A. Kompa**, *Risk Management...*, pp. 192–210.

Financial leverage is not required in the case of all rehabilitation proceedings. The decision whether to use it should be based on an analysis of the effectiveness of financial aid for an enterprise.

The idea of a “second chance” implemented in the EU countries is well-grounded and its validity is supported by the recent international subprime crisis experience.

Bibliography

- Altman E. I., Hotchkiss E.**, *Trudności finansowe a upadłość firm*, CeDeWu, Warszawa 2007.
- Antonowicz A., Antonowicz P.**, *Koncepcja franszazy jako strategii restrukturyzacji zadłużenia upadłego*, Zarządzanie i Finanse 2013/4/3, pp. 23–33.
- Davies H., Green D.**, *Global Financial Regulation*, Polity Press Ltd., Cambridge 2008.
- Dziedziczak I.** (red.), *Procesy upadłościowe i naprawcze w polskiej gospodarce*, Rozprawy i Studia t. (DC) 526, Uniw. Szczec., Szczecin 2004.
- Haładaj K.**, *Sekurytyzacja wiarytelności – aspekty prawne*, www.e-prawnik.pl, access 15.02.2012.
- Hannan T.H., Hanweck G.A.**, *Bank Insolvency Risk and the Market for Large Certificates of Deposit*, Journal of Money, Credit and Banking 1988/5, pp. 210–231.
- Krajewski M.**, *Kierunki efektywnego zarządzania finansami w przedsiębiorstwach*, Zeszyty Naukowe Uniw. Szczec. 634, Finanse, Rynki Finansowe, Ubezpieczenia 2010/34, pp. 187–196.
- Łabno P.**, *Jeśli firma jest zagrożona, fiskus powinien wstrzymać egzekucję*, Rzeczpospolita z dn. 29.05.2008 r.
- Masiukiewicz P.**, *Udział banków w tworzeniu drugiej szansy dla przedsiębiorstw*, [w:] Szelałowska A. (red.), *Współczesna bankowość korporacyjna*, CeDeWu, Warszawa 2011, pp. 127–147.
- Masiukiewicz P., Nowak M.**, *Bariery procesów naprawczych a zmiany regulacyjne*, [w:] Mączyńska E. (red.), *Procesy upadłościowe i naprawcze w Polsce na tle doświadczeń UE*, Warszawa 2013, pp. 155–179.
- Masiukiewicz P.**, *Rehabilitation Proceedings and Company Value*, [in:] Morawska S. (red.), *Ekonomia i prawo upadłości przedsiębiorstw. Zarządzanie przedsiębiorstwem w kryzysie*, wyd. popr. i uzupeł., Oficyna Wyd. SGH, Warszawa 2012, pp. 161–181.
- Mączyńska E.** (red.), *Cykle życia i bankructwa przedsiębiorstw*, Oficyna Wyd. SGH, Warszawa 2010.
- Morawska S.**, *Przedsiębiorca w obliczu upadłości. Diagnoza i propozycje zmian systemu instytucjonalnego w Polsce*, Oficyna Wyd. SGH, Warszawa 2013.
- Suarez F.F., Cusumano M.A., Fine Ch.F.**, *An Empirical Study Advantage for Small Firms*, Strategic Management Journal 1991/12, pp. 173–192.
- Suszyński C.**, *Restrukturyzacja, konsolidacja, globalizacja przedsiębiorstw*, PWE, Warszawa 2003.

Wyrębek H., Kompa A., *Risk Management in the Face of Enterprise Restructuring*, [in:] B. Domańska-Szaruga, W. Wereda (eds), *Management Under Conditions of Risk and Uncertainty*, Wyd. Studio Emka, Warszawa 2011, pp. 192–210.

Regulations:

Dyrektywa 2001/24/WE Parlamentu Europejskiego i Rady z dn. 4.04.2001 r. w sprawie reorganizacji i likwidacji instytucji kredytowych, (Dz.U. UE, Nr L z dn. 5.05.2001 r.).

Documents:

Global Business Failures Report, Dun & Bradster, September 2011.

Komisja Wspólnot Europejskich, *Komunikat Komisji do Rady, Parlamentu Europejskiego, Europejskiego Komitetu Ekonomiczno-Społecznego i Komitetu Regionów „W jaki sposób przezwyciężyć piętno porażki poniesionej w działalności gospodarczej – działania na rzecz drugiej szansy”*, Brussels Official Journal 584, (KOM 2007) z dn. 5.10.2007 r.

Komisja Wspólnot Europejskich, *Komunikat Komisji „Wytoczne wspólnotowe dotyczące pomocy państwa w celu ratowania i restrukturyzacji zagrożonych przedsiębiorstw”*, Brussels Official Journal 244, (P. 0002-0017) z dn. 01.10.2004 r.

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DŹWIGNIE FINANSOWE DLA PROCESU NAPRAWCZEGO PRZEDSIĘBIORSTWA

(Streszczenie)

Procesy restrukturyzacji naprawczej przedsiębiorstw w UE będą zyskiwać na znaczeniu; m.in. wytyczne Komisji Europejskiej w sprawie „drugiej szansy dla przedsiębiorstw” wymagają reformy dotychczasowych rozwiązań instytucjonalnych, wspierających procesy naprawcze w Polsce. Brakuje w naszym kraju publicznego funduszu restrukturyzacyjnego (lub funduszu złych długów), który wspólnie z bankiem finansującym zapewniałby tzw. kapitał przetrwania. System podatkowy nie sprzyja procesom naprawczym. Trudno też przedsiębiorcom uzyskać wsparcie z innych instytucji państwowych. Nie jest oczywiście uzasadnione wspieranie każdego procesu naprawczego. Podstawą uruchamiania dźwigni finansowej procesu naprawczego powinna być analiza efektywności pomocy dla przedsiębiorstwa i kryterium niezawinionych strat. W artykule przedstawiono podstawowe modele i mierniki analizy efektywności dźwigni finansowej, służące podejmowaniu decyzji o naprawie lub upadłości przedsiębiorstwa.

Słowa kluczowe: pomoc dla przedsiębiorstw, bankructwo, restrukturyzacja naprawcza, dźwignia finansowa