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Restructuring support provided to companies by banks and guarantee funds

In Poland, there are about 1.7 million companies (according to the estimates of really functioning companies and not companies that are only in the register), each year about 300-350 thousand companies start and the same amount end their business activities, including going bankrupt. Oftentimes, a crisis situation in a company is a coincidence of various circumstances, many of which are external factors the company had no influence on, and then it is worth to “throw a lifeline”, which is expressed by restructuring and recovery procedures.

The new Restructuring Law is an implementation of the European principle of “the second chance” for entrepreneurs in Poland. It alters the philosophy of the approach to restructuring of companies. The purpose of such proceedings, apart from satisfying creditors, is mostly to support restructuring activities and to leave these entities in business. The new regulations are to implement the state economic strategy aimed at protecting businesses, workplaces, intellectual capital and *know-how*.

In accordance with the principle of survival formulated by H.I. Ansoff: *if any organisation faces the prospect of liquidation, it focuses all its energy on finding the way to survive*. Here, the objectives of the government and entrepreneurs become convergent, but a so-called survival capital is necessary. Naturally, the companies with a staged crisis or bankruptcy should

be excluded from the aid and the use of recovery restructuring pathways.

An important mission and function of banks, savings and credit unions and guarantee funds is the participation in the recovery restructuring of the companies facing crisis – financial institutions have the possibility to activate a financial leverage to this process. Without the financial leverage it is usually impossible to effectively and efficiently repair the company. A little-known model of the financial leverage is the application of *mezzanine* capital; hence, a special attention is paid to it here. The research methods used in the work consist of literature analysis, legal analysis, *desk research* analysis, case studies and the presentation of own research.

Restructuring and financial leverage theories

Adverse changes in the environment, flawed management of various risks, natural and technical disasters, create crises in enterprises. It may be argued that crises can never be ruled out. In a broader sense, a crisis in a company may be described as a state of the organisation which leads to the violation of its stability, or even a delay in the development of the company in relation to the changes in the environment. If the crisis continues for a long time, it endangers the existence of this company [Kralm Zabłocka-Kluczka, 2004].

There are different definition attempts in literature. Crisis can be defined as a phenomenon in the following areas:

- change management process (including a marketing crisis),
- business refinancing sources,
- collection of specific situations affecting decisions and crisis deactivation instruments,
- hazard identification procedures (early warning systems),
- legal restructuring and insolvency procedures (*compliance* risk and others).

In the life cycles of companies three types of crises may occur, caused by external or internal factors (Figure 1) [Doem, 2016].

Crisis management, according to I. Mitroff and C. Pearson, *is a proper managing of the organisation through five distinct phases, characteristic for all situations of this kind, namely: signal detection, preparation and prevention actions, harm reduction, return to pre-crisis situation and lesson that may be learnt from it* [Mitroff, Pearson, 1998, p. 28].

It can be assumed that any recovery restructuring of a company will be effective if there is a sufficient financial leverage involved in this process. A financial leverage means a new external or internal (from shareholders) capital, enabling the execution of the remedial process (sanation, recovery restructuring) of the company that found itself in a crisis situation [Masiukiewicz, Nowak, 2013].

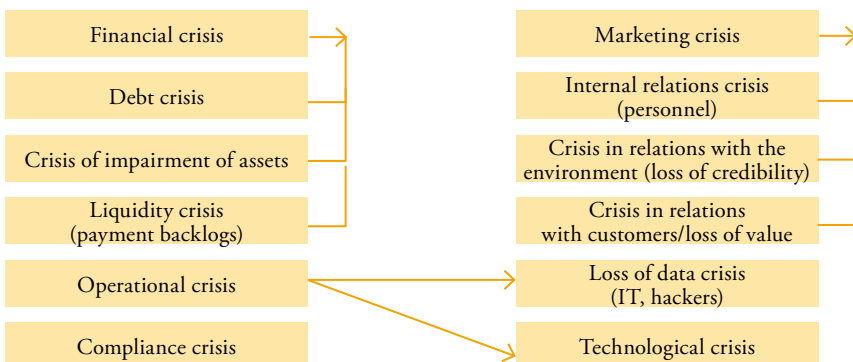
Restructuring is a set of tools used to implement radical changes in the functioning of a given company, the purpose of which is to increase its economic efficiency, as well as to adapt to changing environmental conditions in the future.

The process of restructuring of a company can be defined as a thoughtful reorientation of its objectives and strategies, adequately to the present or future changes in the environment and adaptation of technology, management, finances and human resources to that. Restructuring refers to assets, capital, employment as well as organisation or ownership structure [Kožuch, 2010, p. 80]. In economic practice, restructuring is undertaken not only to repair or rescue a company threatened with bankruptcy, but it can also result from anticipatory or creative reasons, thus increasing the market position of a company, provided that, of course, the financial leverage is obtained.

New regulations and recommendations of the European Union and institutional solutions of restructuring and recovery processes are not sufficiently popularized; in Poland they have only been implemented since 2015. The previous Polish regulations have proven to be ineffective.

The approach of the European Commission to insolvency issues can be considered revolutionary, as the legal bankruptcy is to be the last resort, if the ways

Figure 1 **Basic areas of crises in an enterprise**



Source: own elaboration.

of helping an entrepreneur are exhausted [Palmer, Rapisardi, 2009]. Even despite insolvency, an entrepreneur should – with the support of various institutions – have a second chance to conduct its business activity again. The basic legal and advisory instruments recommended by the Commission have been specified in the following documents:

- The Commission of the European Communities, the Commission Communication to the Council, the European Parliament, Economic and Social Committee, and the Committee of the Regions, *Overcoming the stigma of business failure – For a second chance policy*, of 05/10/2007, Brussels,
- The Commission of the European Communities, the Commission Communication, *Guidelines on State aid for rescuing and restructuring firms in difficulty* of 01/10/2004, Brussels,
- Directive 2011/7/EU of the Committee and of the Council on combating late payment in commercial transactions, 2011, Brussels.

The European Commission believes that the environment that is more conciliatory and supportive to the companies at risk of bankruptcy may prevent their failure. Highlighting the problem of negative effects of business failure and the negative reception of such events would help in using creativity of people in Europe best to limit them, boost entrepreneurship and promote innovation and creation of workplaces.

Recovery regulations in force until 2015, have been the subject of widespread criticism [Masiukiewicz, 2012, 2013]. As a consequence of entering into force of the Restructuring Law, companies and banks in Poland received new legal and financial instruments for restructuring and recovery procedures [Ustawa, 2015].

New restructuring regulations in practice

The Restructuring Law [Ustawa, 2015] contains modern structures for recovery procedures, and also introduces revolutionary changes for enterprises. The Act came into force in 2016, and the old, impractical provisions on recovery proceedings were repealed. The paradigm of this regulation is a priority for the restructuring and recovery processes in relation to insolvency. It covers also micro, small and medium-sized enterprises (SMEs), including agricultural establishments, research institutes, and others. The act unified jurisdiction of courts in accordance with EU directives. Four company restructuring paths have been introduced:

- 1) composition approval proceedings,
- 2) accelerated composition proceedings,
- 3) composition proceedings (in a normal mode),
- 4) sanative proceedings.

The Act [Ustawa, 2015] introduced a number of solutions that are beneficial to companies, including:

- tax changes – repealing the provision on the taxation on the redemption amount of outstanding liabilities,
- shortening court time limits, low fixed fee for an application for composition – PLN 1,000,
- inadmissibility of termination of some agreements, e.g. credit and leasing,
- cancellation of enforcement as a result of composition, protection of creditors not covered by the composition,
- in accelerated proceedings – there is no obligation to carry out a physical inventory,
- possibility of public aid – *de minimis*,
- preference as to reimbursement of the financing provided as a part of restructuring procedure in the event of insolvency,
- creation of a central register of

- restructuring and insolvency,
- other solutions beneficial for businesses.

The Restructuring Law, apart from the aforementioned four recovery proceedings to choose from, gives the possibility to use a restructuring adviser. At the time of opening a restructuring procedure, a significant burden of the procedure rests with the adviser, as the primary objective is to make an arrangement with creditors. The Act requires from the restructuring adviser not only to prepare necessary documents, but mostly to support an entrepreneur in the process of changes. Accurate diagnosis of the entrepreneur's situation, inhibiting and reversing negative trends, potentially changing the business model, require not only practical knowledge on management, public aid, ability to analyse financial statements, business processes, but also competence in establishing relations with key creditors, investors or banks.

In most cases it is not feasible to carry out a successful restructuring if the company does not receive a minimum capital to survive [Doem, 2016; Masiukiewicz, 2016; Palmer, Rapisardi, 2009]. Banks, savings and credit unions and guarantee funds are basic institutions that can activate financial leverages for restructuring processes in the economy. Exclusion from restructuring aid should apply in the following cases:

- staged bankruptcy,
- leading to insolvency as a result of criminal activities of employees or management,
- running illegal activities (e.g. financial pyramids),
- having already received restructuring aid from state recovery funds.

However, such situations in Poland are quite rare; there is also no research in this field.

In the light of the statistics of the Ministry of Finance, a number of companies has already benefited from the new recovery restructuring paths (Table 1). In 2016, the inflow of cases involving legal remedies, considered by judges in the number of 269 is a signal of problems occurring in restructuring procedures.

New restructuring regulations and discontinuation of proceedings

A motion presenting the reasons for discontinuation of restructuring of a developer "Włodarzewka" was submitted to court in January 2017. It was filed by the firm "Zimmerman Filipiak Restrukturyzacja", a court supervisor of the developer. Subsequent motions for discontinuation of proceedings were filed by creditors, apartment buyers and bondholders.

The accelerated composition proceeding against "Włodarzewska" was opened in September 2016. Four months earlier,

Table 1 **New restructuring procedures in practice of district courts in 2016**

No.	Specification / companies' motions	submissions	closed	remaining
1	for opening a restructuring procedure (GR)	563	437	126
2	for composition approval (GRz)	8	5	3
3	after opening of accelerated composition proceedings (GRp)	143	57	86
4	after opening of composition proceedings (GRu)	36	3	33
5	after opening of sanative proceedings (GRs)	58	3	55
6	complaints considered by the restructuring court (GRz)	17	4	13
7	legal remedies recognized by the judge – commissioner (GRk)	269	79	190

Source: own elaboration on the basis of: Wydział Statystycznej Informacji Zarządczej, Departament Strategii i Funduszy Europejskich, Ministerstwo Sprawiedliwości [2017] (Department of Statistical Management Information, Department of Strategies and European Funds, Ministry of Justice), table I *Ewidencja spraw w sądach powszechnych wg. działów prawa i instancyjności w 2015 i 2016 roku*, (Register of cases in common courts according to law and instance in 2015 and 2016) www.ms.gov.pl, access on 15/05/2017.

a deadline for the repayment of two series of bonds, worth a total of PLN 175 million, expired. However, the problems of the company are more serious, as the value of composition liabilities is over PLN 200 million. In 2017, the court supervisor did not preclude making an arrangement with creditors, and indicated that “the company has undertaken some activities that would give it a chance to continue the proceedings”. These activities turned out to be insufficient.

According to the opinion of the firm “Zimmerman Filipiak Restrukturyzacja”: *There are liabilities that are not paid for. Some are settled, but by other entities associated with Włodarzewska. There is some support from the outside, but not in the extent that is necessary [Restrukturyzacja Włodarzewskiej umorzona, 2017].* Finally, the court issued a decision to discontinue the accelerated composition proceedings against the developer. After the discontinuation of the company’s restructuring, a declaration of insolvency can be expected.

In the letter of the supervisor addressed to the court in April 2017, a number of arguments for the discontinuance of the proceedings were included: no funds for the continuation of development projects, no agreement with creditors (including with the BOŚ Bank, and a subcontractor), failure to submit composition proposals within the time limit, or failure to fulfil the instructions of the court supervisor in time. In the above letter, attention was drawn to the formation of a new company Faenum before opening the restructuring proceedings. Its shareholder was only “Włodarzewska”, whose share capital in the amount of PLN 1 million was contributed in kind in the form of perpetual usufruct right to the property located in the centre of Warsaw, and in December 2017, the capital was increased by the company Sobienie Królewskie (associated with “Włodarzewska”) – recapitalisation with the amount of PLN 1.5 million was

paid, unfortunately, with a claim. Finally, in view of the doubts as to the activities of the company “Włodarzewska” concerning the creation of the new entity, the court supervisor submitted a notification on suspicion of committing crimes, referring, among others, to Article 300 (1) of the Bankruptcy Law. This is an example of unfair use of the restructuring law by the described company.

Restructuring functions of banks and unions

The analysis of the reasons of crises in Polish companies shows that more often they are external rather than internal reasons [Masiukiewicz, Nowak, 2013; Masiukiewicz, Bodnarowski, 2015]. The factor that constantly threatens Polish and European companies are payment backlogs. This phenomenon should be monitored both in individual enterprises as well as within the country [Masiukiewicz, 2017]. The Index of Receivables of Companies (IRC) indicates increasing overdue receivables since 2013 in Poland (Table 2). The method of the index construction has been developed by the Conference of Financial Enterprises [Portfel należności polskich przedsiębiorstw, 2016].

Banks and unions (e.g. cooperative savings and credit unions, SKOK) are the institutions which may deliver capital to survive crisis to the companies in difficulties. The most important arguments in favour of active participation of banks in the restructuring and recovery process include:

- the possibility to recover debts with the support of recovery restructuring programme in a company,
- maintaining long-term relationships with a customer (e.g. a company with an established position on the market, which suffers from temporary financial difficulties),
- premises of corporate social responsibility (e.g. important activities

Table 2 Index of Receivables of Companies (IRC) presenting the ratio of overdue receivables

year	2009	2010	2011	2012	2013	2014	2015	2016	2017
INP Index	83,7	86,2	86,7	82,2	88,6	90,4	91,6	90,7	91,3

Note: data for October of each year.

Source: own elaboration on the basis of: *Portfel należności polskich przedsiębiorstw* [2016] (*Portfolio of receivables of the Polish companies*), research project of KPF and KR D, October 2016, www.kpf.pl, access on 15/12/2006.

of the company in the community, maintaining employment, and others), in accordance with the concept of corporate social responsibility implemented by the bank,

- preservation of intangible assets of the bank, which is the customers' value,
- increasing competitiveness of the bank on the credit market (increasing good reputation),
- strengthening of confidence in the bank among corporate customers [Masiukiewicz, 2016b; Masiukiewicz 2012, 2011].

The main negative premise, from the point of view of the bank is a significant delay in time of potential proceeds from cooperation with an entrepreneur experiencing crisis and the limitations concerning its own capital adequacy ratio [Masiukiewicz, 2016a, 2016b]. The participation in restructuring is not fostered by the bank tax and the increased requirements as to the banks' own capital.

The bank cooperating with a company may apply various strategies to deal with the crisis situation and the need to introduce a recovery process at the customer, including:

1) making credits immediately enforceable and quickly collecting debt (consequently, this may mean the acceleration of the customer's insolvency),

2) passive role towards the recovery process, taking incidental actions (e.g. temporary suspension of interest payments, sale of a part of debts, etc.),

3) active participation in the restructuring of the company, using the range of

financial and organizational instruments, 4) not taking any actions, waiting for the course of events.

From the point of view of efficiency of the restructuring and recovery process, the most desirable is the active role of the bank in this process. For a company, the participation of the bank in the recovery process means that the bank:

- makes the restructuring plan credible,
- acts as a stabiliser of restructuring changes in the company,
- provides a financial leverage for the implementation of the recovery programme,
- controls the implementation of the recovery programme,
- the recovery programme is made credible by the bank to other stakeholders of the company.

The bank may apply a range of instruments to support the recovery process, (Table 3), i.e. restructuring of the existing debt (debt conversion, credit consolidation, cancellation of a part of interest, re-division of instalments, securitization, and others), re-crediting, *mezzanine* type financing and others [Masiukiewicz, 2014; Masiukiewicz, 2015]. It may also apply non-financial instruments, such as participation in the supervisory board, advisory services and *cash pooling*.

An effective (although still not well-known) instrument to be used by banks could be the support P&A (purchase & assumption) model, that is bank's participation in losses and profits at the capital entry. If the bank, temporarily taking

Table 3 Bank's financial instruments of recovery restructuring of the company

No. Debt instruments	No. Equity instruments
1 suspension of credit repayments	1 bank-company joint venture
2 debt conversion – capitalisation of interest rates and re-division of instalments	2 participation in financing according to the mezzanine model
3 consolidation of debt and re-division of instalments	3 shares or bonds underwriting services
4 cancellation of overdue interests	4 debt conversion – securitization
5 re-crediting, also against company securities or shareholder bills of exchange	5 repurchase of preferential stocks/shares with a disinvestment guarantee
6 liquidity loan based on Bank Gospodarstwa Krajowego de minis guarantees	6 recapitalisation in the P&A model
7 7 factoring/forfeiting financing of company receivables	7 purchase of short-term securities of depositary type
8 leasebacks	8 others
9 others	

Source: own elaboration.

over the ownership of the company, fears that it will suffer losses, it can insure itself or obtain a guarantee from the guarantee fund on a partial compensation of losses. However, such projects practically have not been undertaken in Poland.

The basic barrier to a wider engagement of banks are the regulations concerning credit risks. It seems that they should be mitigated in the situations of undertaking restructuring actions as legal pathways set forth in the Restructuring Law [Masiukiewicz, 2016a].

Company-bank cooperation in the light of research

The research conducted by the author, under the grant of the National Centre for Science and in cooperation with the research company Indicator in 2015 [Raport etapowy Nr II, 2015 (Stage report)] included the companies' evaluation of the aid granted by banks to companies under crisis situations. The research was

conducted in 609 companies, divided into three groups: micro (1-9 employees), small (10-49 employees) and medium-sized companies.

The overall assessment of the cooperation with the financing bank, in the light of the research was quite well. As many as 75% of the surveyed micro and medium-sized companies found that they can count on help in financial restructuring; although the percentage having no opinion on the matter was quite high (17% among small companies, Table 4). The problems of small and micro companies in this field are usually connected with the lack of possibility of the credit collateral.

Extending the repayment period and suspension of capital repayment were the most common forms of restructuring used by banks financing companies (Table 5). It should be noted that most of the surveyed companies (76-93%) had no overdue liabilities to banks. In the sector

Table 4 Overall opinion on the cooperation with one's primary bank

Answer choice	micro (1 to 9 employees)		small (10 to 49 employees)		medium (50 to 249 employees)	
	indications	percent	indications	percent	indications	percent
1. We can count on help in financial restructuring	153	75.4	130	64.0	152	74.9
2. We cannot count on help in financial restructuring	26	12.8	37	18.2	22	10.8
3. I have no opinion	24	11.8	36	17.7	29	14.3
4. others	0	0.0	0	0.0	0	0.0
in total	203	100.0	203	100.0	203	100.0

Source: own elaboration [Raport etapowy Nr. II, 2015].

of small companies, 10% of the surveyed did not use any forms of restructuring from banks – despite overdue liabilities.

When asked about the forms of the bank's assistance used by the company during the last three years – if the company was affected by crisis (it pertained to an additional financial leverage), the companies most often indicated granting a credit guarantee by the bank, consolidation of credits from different banks and re-division of instalments and increasing the current credit (Table 6).

To sum up, the companies with a significant proportion of problems with payment backlogs, as indicated by the research, ensured timely repayment of debts to their most important creditor – the bank. The surveyed companies were mostly satisfied with cooperation with banks. There are no studies on the participation of unions in restructuring of small businesses. Their role may be significant and is an important mission within implemented programmes of corporate social responsibility.

Mezzanine capital as a new financial leverage of restructuring

Mezzanine finance, as a hybrid form of financing, connects debt financing with capital financing. This solution seems to be a convenient way to finance higher-risk undertakings, especially in crisis situations of the companies [Amon, Dorfleitner, 2013, Dec, Masiukiewicz, 2017]. Some authors qualify *mazzanine* to investment forms of a *private equity* type.

This financing model is defined as a higher-risk debt, an intermediate instrument between debt and equity financing. It is an element of external financing of entrepreneurs who are looking for a way to get funds with the intention of carrying out an investment project [Mezzanine Finance, 2008].

Mezzanine financing allows for obtaining investment capital, but on the other hand, provides a share in the profits to investors, if the project proves to be successful. The specificity is the so-called *bullet payment* – repayment of the obligation takes place only after the expiry of the contract. The dynamics of the application of such financing is presented in

Table 5 Debt restructuring – forms of debt restructuring by the bank used by the company in the period 2014-2016

Answer choice	micro (1 to 9 employees)		small (10 to 49 employees)		medium (50 to 249 employees)	
	indications	percent	indications	percent	indications	percent
1. extension of the repayment period	6	2.9	21	10.2	8	3.9
2. suspension of capital repayment	0	0.0	2	0.9	1	0.5
3. suspension of instalment repayments	0	0.0	3	1.5	1	0.5
4. interest on debt conversion (capital)	0	0.0	0	0.0	0	0.0
5. cancellation of a part of the credit	1	0.5	0	0.0	1	0.5
6. cancellation of a part/total overdue interest	0	0.0	0	0.0	0	0.0
7. securitization of debt	0	0.0	0	0.0	0	0.0
8. restructuring consulting	1	0.5	0	0.0	2	1.0
9. others (please specify): – the company did not use any forms	5	2.5	22	10.7	18	8.8
10. lack of overdue liabilities to the bank	191	93.6	157	76.7	174	84.8
in total	204	100.0	205	100.0	205	100.0

Source: own elaboration [Raport etapowy Nr II, 2015].

Table 6 Re-crediting in a company crisis situation – restructuring and aid forms offered by the bank, used by the company in the past three years

Answer choice indications	micro (1 to 9 employees)		small (10 to 9 employees)		medium (50 to 249 employees) indication percentage	
	percentage	indication	percentage	indication	percentage	indication
1. providing a credit guarantee by the bank	1	0.5	5	2.5	5	2.4
2. consolidation of credits from different banks and re-division of instalments	1	0.5	11	5.4	4	1.9
3. increasing the current credit (additional tranche)	3	1.5	4	1.9	5	2.4
4. granting a new credit for restructuring	2	0.9	1	0.5	0	0.0
5. redemption of stocks/shares in the company	0	0.0	1	0.5	0	0.0
6. redemption of company bonds	0	0.0	0	0.0	1	0.5
7. others, please specify – the company did not use any forms of debt restructuring	5	2.5	24	11.8	16	8.0
8. lack of overdue liabilities to the bank		94.1	157	77.4	174	84.8
in total	203	100.0	203	100.0	205	100.0

Note: In answer, the respondent could indicate all correct answers corresponding to the situation of the company.

Source: own elaboration [Raport etapowy Nr II, 2015].

In the economic sense, *mezzanine* is capital; in the legal sense, it is a combination of debt and capital or only a high-risk debt. There are two types of *mezzanine*, namely: *debt mezzanine* and *equity mezzanine*. *Debt mezzanine* may involve: a subordinated loan, a stakeholder loan or an unsecured loan. *Equity mezzanine*, in turn, may comprise preference shares and silent participation (such participation in limited liability companies is prohibited in some countries) [Kuryłek, 2014]. With such a solution, an investor takes the possession of ownership rights, wider information about the company, and has the possibility to affect the company's development, so may count on the benefits resulting from increasing the value of the company [Dec, Masiukiewicz, 2017].

Mezzanine financing is used, when there is a capital gap, i.e. the entity is not able to obtain financing, for example, by a credit, and on the other hand, the means from the existing shareholders are also insufficient. This form of financing is intended for both the already well-pros-

perous companies as well as those being in crisis.

It should be noted that the entities financing *mezzanine* accept the higher risk level of the undertaking than banks, and on the other hand, require a smaller share in profits than strategic owners, but larger than ordinary shareholders in the case of issue of shares. Thus, the entities providing *mezzanine* financing get involved in the development of the company and are able to wait for the increase in the value of the company.

Another beneficial feature of *mezzanine* is the fact that the repayment of debt and leaving the investment by the capital provider, is usually at the end of the financing period. It is a significant relief for the company cash flows during the project (e.g. implementation of the restructuring programme). Additionally, the flexibility of *mezzanine* (repayment time, manner, time limits for the payment of interest, type of hedging instrument) allows to use of the investment time horizon favourably. Also *mezzanine* hedging is charac-

Table 7 *Mezzanine capital for investments in Europe*

Specification	2008	2009	2010	2011	2012	2013	2014
1. <i>Mezzanine</i> capital in million euro	2046.2	720.5	865.6	2836.8	2107.7	1517.1	2266.2
2. dynamics in %	–	35.2	120.1	327.7	74.3	72.0	149.4

Source: EVCA Report [2014], European Private Equity Activity, www.evca.eu, access on 10/02/2017.

teristic, as this usually comprises stocks or shares of the capital provider, and not assets, as it is in the case of a credit. Popular forms are: *junior mezzanine* and *warranted mezzanine*. The first possibility is mostly used in the countries of Western Europe and in the United States and involves hedging in a form of a high interest rate loan or bonds, where the latter may include the instrument of the payment in kind, which means repayment of interest in a form of another bonds. *Warranted mezzanine*, used also in Poland, consists in the possibility to exchange the bonds into other securities. A *warrant* means a preference registered security, entitling to the purchase of shares (it can apply, e.g. to preference voting rights, rights to receive dividends, etc.) [Mezzanine Finance, 2008]. Banks often treat *mezzanine* as an element of the equity of the borrower, which is beneficial, but in the balance sheet of a limited company it is classified as debt.

The expected return on investment in practice was from 14 to 21%, which compared to even 35% profit expected by the *private equity* investors is not a high level [Kuryłek, 2014].

The *junior mezzanine* and *warranted mezzanine* solutions differ in structure and financing ways. *Junior mezzanine* is a solution close to a classic loan, accepting a higher level of risk, and thus, having higher interest rates and being secured better. *Warranted mezzanine* is a variety of debt, which gives the right to participate in the financial capital of the entity or the profits from the financed project.

Mezzanine financing entities take into account two issues related to a human factor: assessment of the management and evaluation of the project sponsor. In

the case of management, its achievements and experience so far are assessed. *Mezzanine* financing is a good instrument for recapitalisation in the times of economic downturn, it is prepared for risky projects, it is a good addition to or a substitute for a bank credit and can be less expensive than the issuance of shares.

We may draw the following conclusions from the above brief analysis:

- *Mezzanine* can be useful to all companies, in particular in crisis situations, mergers and acquisitions, changes in ownership and the lack of creditworthiness,
- *mezzanine* financing is especially useful during a downturn in the stock market,
- such financing can be a lifeline for companies in crisis going bankrupt, also through financing from public and private or state funds [Masiukiewicz, 2015; Dec, Masiukiewicz, 2017].

So far, this instrument has been barely used in Poland.

Supporting restructuring with guarantee funds

The purpose of guarantee funds is to facilitate access to external financing to companies or entrepreneurs starting their business activity, e.g. in a form of bank credits or loans. They offer guarantees for financial liabilities of companies, who are creditworthy but do not have the required collaterals. In Poland, there are dozens of guarantee funds that provide guarantees to entrepreneurs, as a form of security of incurred liabilities. They provide services in terms of credit, loan and tender security guarantees. Most of them also function as

a part of the KSU (Krajowy System Usług – National Service System). Guarantee funds operating under this system are rated, i.e. they are subject to creditworthiness evaluation in a long- and short-term perspective. At the same time, it is worth noting that Bank Gospodarstwa Krajowego (BGK) is a shareholder in more than 20 credit guarantee funds [*Fundusze poręczeniowe i pożyczkowe*, 2017].

After the central state fund in the BGK was liquidated, regional guarantee funds remained [Jóźwik, 2017]. The scale of operation of guarantee funds is definitely more moderate – in the years 2007-2013 approx. 50 of this type of entities provided from 5 to over 7 thousand guarantees per year. In 2013, their total value amounted to PLN 877 million and was 20% lower than a year earlier. The decrease was an effect of, among others, *de minimis* guarantee scheme, which is a competitive product to the offer of the funds. The programme launched by the BGK applied mainly to the guarantees for working capital credits, which the companies use most often, also through funds. As a side note – it is difficult to consider normal a situation, in which two institutions using public money compete with each other, and that money would be effectively used.

On the other hand, guarantee funds operate locally, most often in one province. Virtually each fund has a different contract model, different terms and conditions of guarantees – for national banks the cooperation with the funds offering the same service, but operating according to 50 different standards, is not only cumbersome, but also generates additional costs. In this situation, banks are much more willing to accept the BGK guarantee than that of funds. One of the proposals for improving the surety and guarantee system is, thus, standardisation of contracts and procedures according to which the funds operate, whereas the

banks demanded unification of offers of the funds.

But the most important point of the proposed system reform is the creation of a national re-guarantee fund, to which funds could partially transfer the risks associated with guarantees. Thus, they would be more willing to grant them – at least such is the example from other countries. In Italy, Spain and Lithuania, the so-called equity multiplier is 8-9, which means that the funds there provided guarantees exceeding 8-9 times the capital available to them. Also Turkey compares favourably with the multiplier of 6. Meanwhile, in Poland, the funds, which at the end of 2013 had the capital with a value of PLN 1.3 billion, granted guarantees of roughly the same value.

Śląski Regionalny Fundusz Poręczeniowy (ŚRFP) specialises in granting guarantees to micro, small or medium-sized enterprises established in the province of Silesia. ŚRFP is the biggest player of this type in the province, the only one with a regional reach. The institution operates within the National Credit Surety and Guarantee System for Small and Medium-Sized Companies [Śląski Regionalny..., 2017]. With guarantees, it is possible to get a credit in a situation, when the forms of securities for the repayment of a credit or a loan owned and proposed by the entrepreneur are insufficient to a financial institution. The guarantees of Śląski Regionalny Fundusz Poręczeniowy (ŚRFP) support entrepreneurs planning to grow their companies by increasing the value of working capital and investment credits, and the guarantee is a fast and uncomplicated form of additional credit collateral. These guarantees are offered to entrepreneurs applying for a credit or a loan in cooperating financial institutions.

Conclusions

Polish companies have new possibilities of implementation of recovery

restructuring processes and should use them in the interest of the entire economy. The priority now and in the future is the recovery and not insolvency of a company. Without “the capital to survive” (or a credit guarantee) delivered by banks and unions, in many cases, restructuring will not be possible. Banks, cooperative credit and savings unions and guarantee funds should establish the scope of risk that may be involved in restructuring of their customers, especially SMEs.

The evaluation of availability of the credit by small and medium-sized enterprises and the evaluation of the participation of banks in restructuring of companies, in the light of the latest research in Poland, is quite well. This does not mean that there should not be any actions taken to eliminate the remaining barriers in this area. Unfortunately, many restructuring instruments are not used in practice. The studies on the functioning of new restructuring procedures show that they are implemented quite well, but the possibilities are not fully utilized. A significant barrier to granting aid by banks are regulations concerning specific reserves; banks must create high reserves for company restructuring – which needs to be changed.

Despite modern regulations in the

Restructuring Law, it requires some adjustments, particularly in the area of assistance to SMEs from public institutions and court procedures in order to limit the number of appeals of companies in these cases.

Apart from banks, a number of other institutions should support remedial processes in enterprises. Unfortunately, the institutions supporting entrepreneurship in Poland are mainly concerned with healthy companies. PARP (the Polish Agency for Enterprise Development), Agencja Restrukturyzacji Przemysłu (the Agency for Industry Restructuring) and chambers of commerce of small and medium-sized enterprises, tax authorities, can support the recovery processes of companies. Unfortunately, also regional guarantee and surety funds are interested mostly in companies in a good condition. Extensive trainings on the new Restructuring Law are necessary, applying also to new possibilities of financing restructuring by PARP.

The implementation of the mission of corporate social responsibility by financial institutions justifies their wider participation in the processes of company restructuring, in the interest to and for the benefit of both parties.

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