

Edyta Rutkowska: Bankowe wzorce umowne

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Jedną z cech charakterystycznych dla współczesnego obrotu gospodarczego jest wykorzystywanie wzorców umownych przez jego profesjonalnych uczestników. Wzorce umowne to przygotowywane (zwykle przez owych profesjonalnych uczestników obrotu) ogólne warunki umów, wzory umów, regulaminy oraz inne postanowienia, przeznaczone do wielokrotnego wykorzystania na rynku przy zawieraniu powtarzalnych transakcji. Na masową wręcz skalę wzorce umowne stosowane są przez banki. Z tego też względu problematyka stosowania wzorców umownych w praktyce bankowej cieszy się dużym zainteresowaniem zarówno w środowisku bankowym, jak i wśród kontrahentów banków. Wynikającemu z tego zainteresowania zapotrzebowaniu na wiedzę wychodzi naprzeciw książka Edyty Rutkowskiej: *Bankowe wzorce umowne*, która niedawno ukazała się nakładem Oficyny Wydawniczej Branta.

Wykorzystywanie wzorców umownych w obrocie bankowym, podobnie jak wiele innych aspektów działalności bankowej, ma pewną specyfikę, wynikającą ze szczególnych uwarunkowań prowadzenia tej działalności. Uwarunkowania te wynikają z pozycji banku w obrocie gospodarczym, będącego jednocześnie instytucją zaufania publicznego i przedsiębiorcą, który ze względu na swój potencjał z reguły zajmuje pozycję „silniejszego” w stosunkach ze swoimi kontrahen-

tami. W wymiarze normatywnym owe szczególne uwarunkowania są wyrażane w regulacjach tworzących otoczenie prawne działalności bankowej. Zawarta w przepisach Prawa cywilnego, mająca charakter powszechny, podstawowa regulacja dotycząca wzorców umownych w aktualnym kształcie obowiązuje stosunkowo niedawno. Z uwagi na bliskie uzyskanie przez nasz kraj członkostwa w Unii Europejskiej jej kształt oceniany jest przez pryzmat zgodności z regulacjami unijnymi. Koncentrują się one na ochronie praw konsumenta w stosunkach z profesjonalnym kontrahentem, który przygotował wzorzec umowny. Okazuje się jednak, że konieczność uwzględnienia pozycji konsumenta może czasami kolidować z potrzebą właściwej ochrony interesów banku, który przygotował i wykorzystuje wzorzec umowny. Niejednokrotnie interesy banku chronione są ustawowo - działalność bankowa poza regulacjami powszechnie obowiązującymi podlega bowiem także szczególnej reglamentacji prawnej, wynikającej z przepisów szeroko rozumianego prawa bankowego. Wszystko to sprawia, że właściwe interpretowanie norm tworzących ramy prawne wykorzystywania bankowych wzorców umownych jest zadaniem trudnym. Na dodatek prawidłowe stosowanie przez banki wzorców umownych może być weryfikowane przez różne ośrodki (sądy, organy ochrony praw konsumenta, a także nadzór bankowy).

W tym kontekście pojawienie się na rynku książki Edyty Rutkowskiej należy więc przyjąć z zadowoleniem. Na rynku brakuje bowiem publikacji, które dotyczyłyby problematyki bankowych wzorców umownych, uwzględniających obowiązujący stan prawny. Bardzo ważne jest to, że Autorka podjęła trud kompleksowej prezentacji otoczenia prawnego, w którym banki wykorzystują wzorce umowne. Książka prezentuje wszystkie obszary obowiązujących regulacji prawnych, istotnych z punktu widzenia funkcjonowania bankowych wzorców umownych w obrocie prawnym.

Jako pierwsze, niejako tytułem merytorycznego wprowadzenia do głównej tematyki zaprezentowanej w książce, omówione zostały bankowe stosunki obligacyjne. Stosunki te charakteryzują się specyfiką wynikającą z „nałożenia” na powszechnie obowiązującą regulację prawa cywilnego postanowień szczególnych, zawartych w unormowaniach prawa bankowego.

Obszerna prezentacja problematyki ujętej w tytule książki rozpoczyna się od zagadnień odnoszących się do kwestii podstawowych dla praktycznego stosowania bankowych wzorców umownych, czyli ich treści i charakteru prawnego. W rozdziale poświęconym tym zagadnieniom szczególnie warto zwrócić uwagę na - otwierające go - rozważania dotyczące prawnego charakteru bankowych wzorców umownych jako „głównych regulatorów bankowych stosunków umownych”.

Z tematyką dotyczącą treści i charakteru bankowych wzorców umownych bezpośrednio wiąże się kwestia dotyczące nabywania przez wzorce mocy wiążącej dla stron bankowych stosunków cywilnoprawnych. Stąd też zapewne w kolejnym rozdziale Autorka obszernie prezentuje uwarunkowania prawne obowiązujące zarówno przy zawieraniu umowy, w której użyto wzorca, jak i wpływu wydania wzorca lub jego zmiany na treść uprzednio zawartych umów.

Jak to powiedziano wcześniej, regulacje unijne koncentrują się na ochronie praw konsumenta w stosunkach z profesjonalnymi kontrahentami posługującymi się wzorcami umownymi. Podobnie jest w obowiązujących obecnie unormowaniach krajowych. Tej tematyce poświęcony jest kolejny rozdział książki. Zaprezentowano w nim uwarunkowania przemawiające za potrzebą zapewnienia ochrony prawnej kontrahentów banku stosującego wzorce, standardy europejskie, wyznaczające poziom ochrony konsumenta przed niedozwolonymi klauzulami umownymi, oraz obowiązujące w tym zakresie unormowania prawa polskiego.

Odrębna grupa zagadnień omówionych w kolejnych trzech rozdziałach dotyczy kontroli bankowych wzorców umownych. W pełnym zakresie kontrola ta może być prowadzona przez sądy (w tym Sąd Antymonopolowy) i Prezesa Urzędu Ochrony Konkurencji i Konsumentów. Zdaniem Autorki, istnieje także możliwość kontroli wzorców przez Komisję Nadzoru Bankowego. Problematyka związana z kontrolą bankowych wzorców umownych została przedstawiona w ramach obszernej prezentacji norm ustrojowych i kompetencyjnych regulujących działalność organów, które mogą tę kontrolę wykonywać, oraz regulacji i praktycznych doświadczeń zagranicznych, w tym przede wszystkim unijnych, na których wzorowane są rozwiązania przyjęte w naszym kraju.

Całość zamyka zakończenie, podsumowujące i spinające rozważania zawarte w książce.

Bez wątpienia omawiana książka jest pozycją potrzebną i użyteczną dla szerokiego kręgu czytelników. W trakcie lektury zwraca uwagę, sygnalizowane wcześniej, kompleksowe potraktowanie każdego z zagadnień omawianych przez Autorkę. Czytelnik uzyskuje w zasadzie pełną wiedzę dotyczącą problematyki omówionej w książce. Poszczególne zagadnienia zaprezentowano w ujęciu historycznym - rozważania nad poszczególnymi elementami regulacji dotyczących bankowych wzorców umownych rozpoczyna zwykle omówienie zmian, które doprowadziły do ustalenia obowiązującego stanu prawnego. Niezaprzeczalnym atutem tej książki jest również to, że Autorka obszernie prezentuje i wykorzystuje dotychczasowy dorobek doktryny i orzecznictwa. Podobnie należy ocenić szerokie omówienie regulacji i rozwiązań zagranicznych (głównie unijnych), które można lub należy wykorzystać w polskich realiach. Taka metoda sprawia, że książka może okazać się bardzo użyteczna dla szerokiego kręgu czytelników. W tym miejscu godne odnotowania jest także to, że choć mamy do czynienia z opracowaniem przygotowanym zgodnie z kanonami poważnej profesjonalnej rozprawy naukowej, to sposób i język prezentacji czynią tę książkę przystępną także dla osób niemających wykształcenia prawniczego.

Jestem przekonany, że książka okaże się użyteczna dla wszystkich czytelników zajmujących się problematyką stosowania przez banki wzorców umownych, niezależnie od poziomu ich zaawansowania zawodowego.

rec. Bernard Smykla

The balance of payments equilibrium model. The model's application to the zloty exchange rate

Michał Rubaszek

The article presents the analysis of the factors which affected the level of the zloty exchange rate in the period from 1990 to 2002. For this purpose, the administrative and legal solutions have been presented as well as the econometric model (the so-called balance of payments equilibrium exchange rate model) which came to be applied as the basis in the measurement of the dependencies between the real exchange rate and the macroeconomic variables. Next, on the basis of the model, which can be included into the group of behavioural models of the equilibrium exchange rate, an exchange rate cohesive with the short-term external equilibrium was set.

The article has been divided into the following parts: section one and two present the evolution of the exchange rate system and the general outline of the zloty exchange rate in the period from 1989 to 2002. Section three offers a description of the balance of payments equilibrium model. In the section four, the model is compared to other selected exchange rate models. Section five describes the construction of the variable observation sequences used to estimate the parameters of the model, while section six presents the results of the estimation. The article ends with a summary of the results and their interpretation and discusses possible directions for the development and application of the method it describes.

The Argentinean currency crisis. The attempts to overcome it

Urszula Żuławska

The study describes the development of economic processes in Argentina in the crisis year 2002, the arguments between economists who searched for the optimal way out of the crisis and lawyers who wished to thwart those plans and advocated keeping private ownership as well as the course of

exceptionally difficult negotiations with the International Monetary Fund. Special emphasis was given to the financial sector, the collapse of which could erase the first signs of recovery in the real sector of the economy.

Selected aspects of the information economy versus the labour market

Katarzyna Saczuk

The information economy assumes that market participants are provided with imperfect information and allows to establish models of phenomena that have not been clearly understandable so far. It also accounts for the existence of certain market institutions, which is often not fully explicable under the economic criteria when judging from the standpoint of the traditional theory of economy. It appears that even the tiniest imperfections of information and non-zero costs of obtaining the information may bring about far-reaching consequences, utterly twisting the results of the analysis. Issues clarified by the application of the information economy, such as the problems of selection, quality of goods, impulses or the extent of temptation for abuse (moral gambling), lead to interesting, often non-intuitive conclusions when considered in the context of the labour market.

For example, the employers' inability to control the reliability of employees may lead to a situation where the employees are paid salaries in excess of the market rates to encourage them to work in a fair and honest manner. If such an approach becomes a common practice on the market, the average salary levels will rise above an economically practicable level, leading to unemployment. However, companies will not longer see it as being worthwhile to cut salaries back, since unemployment is a factor that introduces some discipline among employees (suspensions for absenteeism and negligence will not pay).

Another example is the problem of selection (identification of unobservable characteristics). Since the employer is not aware of the actual capacities of an employee at the time of their commencement of employment, the salary that he offers should be adequate for the average skills

(qualifications) available on the market. However, such a salary could become inadequate in case of the employees with the highest qualifications and result in their leaving the market, thus decreasing the available pool of suitably qualified labour. In order to prevent this and to attract better candidates, the employees offer salaries above the market level, at the same time accepting the unemployment which results from such an approach. Another attempt to solve the selection problem can also be made by establishing institution which would allow

employees to communicate their qualifications (e.g. a selected level of education) to employers and allow the latter to assess the unobservable characteristics of the employees on the basis of their behaviour. It happens that such solutions, albeit effective, allow for ineffective use of valuable resources.

Therefore, the existence of some unfavourable (ineffective) phenomena or behaviour on the market may be caused, not by the lack of balance, but by the asymmetry of information among market participants.

The analysis of the problems in the implementation of the SAPARD program in Poland as compared with the background of the Spanish and Portuguese path to the EU. The comparative aspect

Katarzyna Stabryła, Rafał Góral

Funds are distributed under the SAPARD Program (Special Accession Programme for Agriculture and Rural Development) with the object of providing assistance to the EU candidate countries in the process of adjusting their agricultural sector to EU standards. In order to meet this objective, in-depth modernisation of agricultural production is required, together with the enhancement of the attractiveness of rural areas for domestic and foreign investors and the creation of new employment opportunities for those who have been hitherto employed in the agricultural sector.

The article describes all the actions taken in Poland intended to effect the comprehensive introduction of SAPARD. It also compares the Polish case with action

taken in Spain and Portugal in the first half of the 80s, i.e. before they entered the European Community in 1986. Development and, primarily, modernisation of the agricultural sector of both member states constituted an important area of adjustment to European standards within the entire pre-accession period.

In the article, an attempt is made to analyse the condition of Polish rural areas on the eve of entering the European Union and point to the similarities in the situation of Spain and Portugal over a dozen years ago.

In the summary, the authors have presented predicted effects of the introduction of the SAPARD Program in Poland as well as financial implications arising from the future membership of Poland in the European Union.

Financial ratios and the auditor's opinion

Marek Gruszczyński, Barbara Pajdo

The auditor's opinion gives a general indication as to the quality of a financial report. A qualified opinion expressed by the auditor gives a serious signal of the financial condition of a company for its investors and creditors. Appropriate decisions such as filing for bankruptcy can be made on its basis.

The article presents the results of examination of relations between the financial standing of a company and the auditor's opinion. Some econometric models known from the literature are presented, which describe such a relationship.

The authors describe the interrelation between the type of opinion and financial ratios based on the data supplied by the companies quoted on the Warsaw Stock

Exchange in the period from 1998 to 2000 by applying micro-econometric models. The choice of the variables describing the type of opinion Y ($Y = 1$ for unqualified opinions, $Y = 0$ for qualified opinions) was guided by the coincidence principle and the modified interrelationship matrix (the equivalent of the correlation matrix).

The results of the research indicate that a qualified opinion is closely related to the financial condition of a company, i.e. an unfavourable level of financial ratios, including financial problems and difficulties in meeting payment obligations. Furthermore, privatised companies and companies which pay out dividends are more likely to receive unqualified opinions from their auditors.

The stock exchange consolidation process in Europe viewed from the perspective of the Warsaw Stock Exchange

Lidia Adamska

Transformation of global stock exchange markets means that the traditional stock exchange model is a thing of the past. The key factors which affect transformation of stock exchange operation include:

- growing competition between different stock exchanges, which forces price reductions,
- technological progress, which means that the traditional exchange floor is losing its importance whilst the stock market is becoming more accessible,
- progress in European integration, including the introduction of the euro and the introduction of uniform EU regulations to capital markets,
- relatively declining involvement in small markets and companies on the part of investors.

The main stream of changes going through the leading European exchanges is defined by the alliances and agreements concluded among the exchanges as well as by the transformation of their ownership structure (the so-called demutualisation), including the public offering of their shares.

The traditional mutualised model of exchange ownership is the starting point for ownership changes. Demutualisation means that the circle of exchange owners is extended by entities which are not members of the stock exchange. Additional opportunities for raising external capital are created and the organisation will evolve towards a for-profit profile. The main factors leading exchanges towards selling their shares as public offers include: the increasing globalisation of financial markets, growing competition among exchanges and their growing financial needs.

Many European and Asian exchanges and the Australian exchange have transformed their ownership structures to de-mutualise them, while the American exchanges did not take a leading position in the demutualisation process.

So far, Euronext – a joint project of the exchanges in Paris, Amsterdam, Brussels and Lisbon and the London derivatives stock exchange LIFFE – should be seen as an example of a successfully formed stock exchange alliance of considerable size in Europe. Moreover, the integration of the capital markets has also its "vertical" dimension. Exchanges, clearing-houses and deposit institutions are involved in this process. At present, the solution servicing Deutsche Boerse market is the most complete example of vertical integration on the European market.

The issues connected with surviving when threatened by marginalisation is of key importance for small and medium exchanges. The situation in this group of exchanges varies, primarily in terms of their size and potential for development.

The model directions of consolidation-related activities of the CEE exchanges include:

- the path of independent operation of the national exchange – the establishment of a common platform for the exchanges in the region,
- individual decisions made by specific exchanges on selecting strategic partners among the leading European exchanges,
- all the exchanges from the CEE region joining one main European floor.

Contrary to other exchanges in the region, the WSE is not under any time-pressure as far as the decision about entering an alliance with a strategic partner is concerned. The reason for this is the significantly larger potential of the Polish economy and capital market, the existing economic potential in the field of privatisation, the forecast improvement in the economic situation and the possible growth effect after Poland enters the European Union.

Measuring investment effectiveness of open pension funds

Tatiana Czerwińska

Apart from banks and investment funds, pension funds have been long considered the most important capital market investors on the international financial markets. However, in Poland, pension funds form a new group of investors as they have been creating open pension funds and managing these funds only since 1999.

A pension fund develops its investment policy and concludes capital market transactions in the name and on behalf of its participants. Both the fund managers and its members are interested in a reliable and fair measurement of investment effectiveness. The investment fund members make decisions on their remaining or resigning from a given

pension fund on the basis of the assessment of the returns on the investment, while the managers use this assessment for comparison with the results achieved by other funds and to assess the effectiveness of the fund management staff.

Open investment funds are obliged to invest the assets they have been entrusted with in such a way to generate a maximum return on investments with a given (assumed) level of investment risk. Therefore, in the process of creating the investment portfolio, a pension fund is guided by two core criteria: returns on investments and risks. For this reason, the mechanism of a minimum required rate of return has been introduced to guarantee the fund participants that there will be no significant negative differences between the rate of return generated by their funds and the average rate of return of all pension funds.

The binding methods measuring the investment effectiveness of the open pension funds by the rate of return do not account for the costs of fund operation and costs of risks connected with the investment activities of the funds. The fact that consequences of risk are not included in the assessment of pension fund effectiveness will eventually undermine reliability and credibility of the assessment.

In the article an attempt has been made to apply the measurements of effective portfolio management to assess investment activities of the open pension funds in Poland in the period from May 1999 to June 2002, with consideration given to the rate of return and risk. The analysis allowed for the comparison of performance of the open pension funds, their comparison to the market and the rate of risk-free returns.

Modelling credit portfolio risk

Wojciech Kuryłek

Many achievements in the modelling of risk, which are connected with the development of financial mathematics are primarily related to market risk rather than credit risk. Nevertheless, recent years have seen a growing interest arising in credit risk, mainly caused by the increasing competition in the banking sector, the blooming secondary credit market based on securitisation, as well as the development of credit derivatives.

Models describing the risk of a single loan (so-called scoring methods) are considerably more developed and more often applied than the models which concern the risk of the whole credit portfolio. Despite the fact that, in most cases, a profit or a loss generated by a bank depends on a skilful risk management of a whole credit portfolio, the development of methods supporting these decisions is obstructed by a number of factors. Key problems include low availability of data that inhibits scientific research and difficulties in applying the classical theory of Markowitz' portfolio analysis in practice and they arise primarily from the very low liquidity of the loans and the absence of some unambiguous methods to measure return on loans and the risks of individual credit contracts. However, it was the classical theory formulated by Markowitz which underlay the development of the first

models describing behaviour of credit portfolio risk by Gollinger, Morgan and Altman. However, for the reasons stated above, these models could not serve as the basis for the development of commonly used commercial products. Their fate was also shared by the models prepared by Bennet, Chirinko and Guilla, in which they tried to show the connections between the macroeconomic processes and the quality of credit portfolio. Only the most recent models such as CreditPortfolioView, Credit Metrics or CreditRisk+ have fully complied with the demands of the market. Their success can be attributed to the fact that they have been developed by commercial companies for commercial purposes. However, the origins of these approaches vary. The first above-described model is an econometric model, which uses Monte Carlo methods; the second one is based on the use of the enterprise behaviour model proposed by Merton, while the third relates directly to actuarial mathematical techniques. They use Value at Risk as the base measurement of the credit portfolio risk and refer to Monte Carlo methods to a larger or smaller extent. The article offers a detailed analysis of all the above-mentioned approaches, both theoretical ones as well as those that have been adopted in practice.

The Bank's head office and operational units: conditions and directions of changes

Miroslawa Capiga

A shift from being a traditional to a competitive bank means that new relationships need to be established between the head office and operational units. At present, changes at the head office level include primarily an increase in headcount and a take-over of the support function, while at the branch level they involve headcount reduction, moving away from staff specialisation in favour of a more universal approach, focusing on customers and the introduction of standard solutions and Internet branches.

In this context, a question should be asked as to whether the hierarchy of strategic objectives and the ratios

used to assess performance arise from the changes; in particular, changes in the area of organisation, or are they typical relationships existing in the classic approach to banking.

In the article, an attempt has been made to show differences existing between the strategic objectives and the bank performance assessment ratios used at the head office and operational unit level in view of the new relationships being formed between the head office and the operational units.