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Means of a forced restructuring of banks in the Polish legal system

The presented work deals with issues connected with means of a forced restructuring of a bank in the Polish legal system. The term forced restructuring of a bank should be understood as a set of legal rules which allow to reorganise the bank under the threat of bankruptcy. Means of forced restructuring constitute an administrative and legal method of affecting banks whose functioning threatens the stability of the financial system. However, the subject who has been granted the competence of using means of forced restructuring towards banks is the Bank Guarantee Fund.

Forced restructuring of a bank constitutes an extrajudicial mode which allows to conduct procedurally fast and simplified changes in the organizational and capital structures of the bank in a crisis situation. As such, means of forced restructuring can only be used in an emergency situation. The Bank Guarantee Fund is obliged to use the means when the bank is under the threat of bankruptcy and there is no indication that the possible supervisory actions or the actions of the bank will make it possible to remove the risk of bankruptcy. Means of forced restructuring constitute a method of protecting common good which is the stability of the financial system and security of public finance. The Bank Guarantee Fund, on the other hand, protects the public interest using means of forced restructuring of the bank.

The topic of the studies presented in the work falls within a wider issue of the security of the financial market. Means of forced restructuring constitute an element of providing the stability of the financial system. The aim of their application is to minimise negative effects connected with the threat of the bankruptcy of the national bank. The issue discussed in this work concerns public and legal regulation of the actions of national banks, the banks domiciled in the territory of the Republic of Poland.

The thesis of this work constitutes the statement that means of forced restructuring create a coherent, complementary system of legal means that allows to reorganise the national bank without having to spend public funding. Thanks to means

of forced restructuring, the responsibility for the bank losses, including the cost of its forced restructuring, remains with the shareholders or members of the bank as well as with its creditors, not with the state budget. Variability of using means of forced restructuring allows to adjust the reorganisation process of the bank to the circumstances that relate to the bank itself and to the level of recession in the financial markets.

The thesis presented above will be proven in the course of the research. This is enabled through both identifying the main purpose and detailed objectives of the research. The main purpose of the work is to describe normative construction of the means of forced restructuring of the bank and legal issues related to the topic. As a result, correctness of the legislative measures regulating particular means of forced restructuring will be analysed. The comparison of the specifics of their implementation, depending on the organisational and legal form of the bank's operation under forced restructuring, was made where needed to provide a picture of the construction of the analysed means.

In order to achieve the main purpose, specific objectives had to be pursued. The main purpose of the work encourages researches on the essence and nature of the regime of forced restructuring of the bank. Factors of a normative nature, that shape decision making of the Bank Guarantee Fund, were examined. The assessment of those factors and the resulting effects have an influence on the decision making associated with the specific means of forced restructuring of the bank.

In order to achieve the research objectives of this work it became necessary to use the method of the dogmatic analysis. The basic normative material were the law sources commonly binding such as the Act of 10 June 2016 on the Bank Guarantee Fund, deposit-guarantee schemes and forced restructuring, the Act of 29 August 1997, banking law as well as the Act of 7 December 2000 on the functioning of cooperative banks, on their association and associating banks. In the alternative, for legal and comparative purposes, the provisions of the European Parliament and the Council, Directive 2014/59/UE of 15 May 2014, were used for the purpose of corrective actions and of restructuring and organised resolution with regard to credit institutions and investment companies. The paper also has a theoretical and legal nature. It addresses the problem of formulating general claims of the examined legal developments using achievements in the field of the theory of law. However, it is only a supplement to the dogmatic issues.

Current state of the study of the law interpretation concerning means of forced resolution of banks in the Polish legal system does not seem sufficient. So far, in the Polish and foreign literature there have been undertaken studies in the field of the European Union law only. The studies referred mainly to the Directive 2014/59/UE of the European Union and the Council of 15 May 2014 establishing a framework for the recovery and resolution of credit institutions and investment firms. This work, however, is structured around the analysis of the normative construction of forced means of the restructuring of the bank in the Polish legal system. The issue devoted to the means of restructuring of the national bank is extremely poorly presented in the literature of the law. There is a lack of numerous scientific studies within this area, particularly those of the monographic nature. There is no doubt that it is related to the novelty of the research issue. As such, the method of the critical analysis of the scientific literature presented in this work has only auxiliary significance.

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