THE MANAGEMENT OF FINANCIAL CRISES IN COMPANIES

LEPADAT ELENA DOINA
FACULTY OF ECONOMICS, "TIBISCUS" UNIVERSITY TIMISOARA, elena.lepadat@yahoo.com

Abstract:
Management control in corporate governance is the main modality to prevent insolvency through the company`s own internal means. The main modality through which the participation in the General Shareholders Meeting. The shareholders can also get involved individually in the mechanisms of the company, the law entitling them to a series of rights regarding access to information, control of the company`s administration and even triggering the alert.

Key words: *the alert procedure, contractual discipline, the financial discipline*

JEL classification*-K-33*

Introduction

The existing studies and solutions can be implemented by a company *in bonis*, to prevent financial difficulties, or by a company already in trouble, which could surpass the crisis period, if crisis management is established. More or less, the solutions can be used to mitigate or eliminate the risk of insolvency, in order to preserve the economic independence of enterprises, according to the conditions imposed by the financial market.

Materials and methods

1. The prevention of insolvency through the mechanisms of corporate governance.

Management control in corporate governance is the main method to prevent insolvency through the company's own, internal means. The corporation is the most advanced and complex organization entity of the enterprise. Corporate governance standards are designed to streamline the operation of the enterprise. These standards and principles aim at:

- stipulating by contract the legal relationships between shareholders, respectively, between shareholders and managers;
- separation of power within the company; the company's administration should separate into bodies responsible for implementing and bodies responsible for control and supervision.

Corporate governance principles do not mix up administrators with managers. Managers are the executives of the company, while the company's representatives are recruited among them;

- management control through contract terms mechanisms, separation of power or by means of other mechanisms, such as the game of competition on the company's product market, the insolvency proceedings and the capital market (mergers, acquisitions and takeovers)
- ordering the managerial behavior through the company's interest. Corporate governance proposes two fundamental ways to order managerial behavior, respectively, penalties for failure and rewards for success;
- information and transparency; the manager's adjustment to the demands of the capital market is required to give credibility to the company.

Corporate governance is intended, primarily, to control and limit exploitation from the managers or the main shareholders. The strategy of the company stands for its vision, line of action and its long-term objectives[1].

The company is constituted on the basis of a partnership agreement but once it acquires judicial character it also acquires institutional character. The institutional character of a company that has judicial personality must not be overstated.

The main modality through which the participation in the General Shareholders Meeting. The control exercised though the general meeting is the main method of preventing the risks of exploitation. The possibility to vote in the General Shareholders' Meetings is the first and foremost important method to control the Board of Directors.

The shareholders can also get involved individually in the mechanisms of the company, the law entitling them to a series of right regarding access to information, control of the company' s administration and even triggering the alert.

An important method to control the management of a company is to interpose a deliberative organ between the shareholders' general assembly and the shareholders considered individually on the one hand, and management of the company on the other hand. In joint stock companies this refers to the Board of Directors or to the Supervisory Council.

Just like the agency contract, the position of administrator has an intuit personae character. This characteristic explains the ad nutum revocability of the agency contract and, implicitly, of the position of administrator, even if this position is exercised on the basis of a management contract.

2. The alert procedure

The censors and the internal auditors, elements of organizational and functional structure in a joint stock company, as well as external financial auditors, can be useful instruments in the prevention of the insolvency of that particular company. The internal audit, through the specific characteristic of its activity, can be constituted in a means of preventing the insolvency of that particular company, as well as for all other institutions subject to the obligation of auditing. The censors and the auditors have the attribution to start the alert when the management of a company jeopardizes the well-functioning of the company, managing it in an alarming manner, which may lead to bankruptcy.

The alert procedure may also be started by the shareholders of the company, either directly or through the censors.

The results of the internal audit performed by experts are communicated, exclusively, to the shareholder who solicited and obtained the audit, by court order, and they are officially conveyed to the censors of the company, in order to take appropriate measures. The concerned shareholder may reclaim the results, but he is not required to share the information with the other shareholders[2].

3.The management liability insurance

After the enforcement of the Law no.441/2006 that modified, in December 2006, the Romanian Company, the administrator of a joint stock company is no longer considered, *lato sensu*, as a simple employee, agent or clerk of the company, who also has management or legal representation attributions. The position of administrator becomes a profession, at least from the aspect of independence and professional accountability insurance.

In the doctrine previous to Law no.441/2006 it was stated that "modern economy recognizes management as a true profession and the manager as a true professional in the management activity of an economic entity"[3].

As any freelancing professional, the manager must sign a professional accountability insurance, in favor of his client or of the company he manages. The sum insured in case of prejudice can be an effective way to prevent insolvency, especially in

the case in which the prejudice resulted from the adverse management is so large so as to affect the solvency of the company.

4. Financial recovery and reorganization

During the years of transition, the Romanian law makers have experimented with several measures of financial recovery and reorganization, all of which were confined to autonomous administration and fully or partially state-financed companies.

The unassertive attempts at redressing certain enterprises in a state of insolvency were accompanied, through time, by severe anti-competitive and anti-economic measures.

The attempt to prevent insolvency through administrative methods, imposed to some private economic agent, ignoring the will of creditors from the private field of economy, focusing on state-related economic agents, the renouncement of fiscal debts etc, all these procedures were absolutely incompatible with the principles of free competition, disguising illegal state aid.

The strategy for reorganization was a total failure, the great majority of economic agents targeted by the reorganization procedure being, at present, in the state of bankruptcy or erased from the Registry of Commerce.

5.The Financial Discipline

Adopting and using international financial reporting standards (IFRS) certify proper quality information, trustworthy and comparable to other countries.

Unlike the Anglo-Saxon and the international accounting reporting standards, Romanian accounting, having French origins, in a reflection of the fiscal obligation of the tax payer and not of the real economic situation of the enterprise.

6.Contractual discipline

In order to prevent the insolvency of the „economic agent" the Romanian law makers set up a law regarding some measures for the strengthening of the contractual discipline.

Law no.469/2002 constitutes it self in a limit to the principle of free will, a principle which has constitutional support, a matter for which the compatibility of this law with the Constitution is doubtful.

The contractual discipline law is applied to all the contracts drawn for, commercial activities by the „trade economic agents" legal persons, and natural persons traders, named „contractual parties", irrespective of the form of the property.

From the point of view of the validity procedures, the law of contractual discipline seems to impose the written form ad validitatem.

The parties are forced to regulate the way in which the litigation between them will be dealt with.

Constraining the parties to introduce clauses in order to consolidate the price (expressing it in convertible currency) offers the parties methods to avoid the risk of depreciation of the national currency.

The law of contractual discipline imposes the information of traders regarding the credibility of the contracting-parties, before drawing up the contract, including an appeal at the Registry of Commerce and at the Payment Incidents Register within NBR.

7 .Forecasting accountancy

Early warning regarding financial difficulty is possible both on the basis of retrospective internal accountancy information and also the basis of financial-accountancy prediction than any enterprise can make.

The B-score function, developed by Professor Gh Băilesteanu, is a Romanian model of bankruptcy prediction. The author believes that the situations which can signal the occurrence of bankruptcy in a company include: the inability to pay current obligations, the lack of financial resources to repay medium and long-term debts, the

overdue reception of the charge for the delivered products and the lack of profit. Based on the value of "B", companies fall within a favorable or a bankruptcy state[4].

Of a real interest are the forecasting accounts (planning, prognosis ones).

8.Hedging

Financial risks too can be sold on the financial markets. Through hedging it is intended to transfer the risks of future fluctuation in the price or the rate of the interest, through selling secondary financial instruments (such as futures, forward or option contracts) which guarantee a prospective prince for their active. Derivative financial instruments are usually used to reduce or to control the risk.

Results and discussion

Derivative financial instruments do not address the investors who have low incomes, but, especially, those who have significant financial resources and are interested in risk management related to these financial resources.

The company in financial difficulty, in a desperate search for funds, is a vulnerable company, being contingent upon the refinance banks, other creditors and the staff as well, all these partners having their own policies, which do not correspond, but in rare cases, to the one that would best suit the company.

Conclusions.

Consulting, required in an early stage, may provide sufficient information to the debtor, in order to clearly understand the different options that are available. Thus, well-informed entrepreneurs will be able to take the necessary measures in advance.

The warning upon a crisis situation within the company may come from external sources (banks, external auditors) or internal sources (accounting information, internal auditors or censors).

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