PRACE NAUKOWE
Uniwersytetu Ekonomicznego we Wrocławiu
RESEARCH PAPERS
of Wrocław University of Economics

321

Zarządzanie finansami firm – teoria i praktyka

Redaktorzy naukowi

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Wydawnictwo Uniwersytetu Ekonomicznego we Wrocławiu
Wrocław 2013

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Korektor: Barbara Cibis

Łamanie: Adam Dębski

Projekt okładki: Beata Dębska

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ISSN 1899-3192
ISBN 978-83-7695-359-5

Wersja pierwotna: publikacja drukowana

Druk: Drukarnia TOTEM

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PRACE NAUKOWE UNIWERSYTETU EKONOMICZNEGO WE WROCŁAWIU
RESEARCH PAPERS OF WROCŁAW UNIVERSITY OF ECONOMICS nr 321 • 2013

Zarządzanie finansami firm – teoria i praktyka ISSN 1899-3192

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WHOLE BUSINESS SECURITIZATION IN THE STRUCTURING AND REFINANCING OF LBOs

Summary: One of the latest innovations within the securitization field is whole business securitization. Such a technique allows to finance or refinance operating assets of the company. WBS has its origins in structuring and refinancing LBOs where it is known as SBO (Securitization Buy-Out). In fact, SBO is more than just an alternative source of financing of the operations of the company. It is a quite complex instrument of financial management which allows to swap the sources of financing and associated risk of LBO from the banking sector into the capital market, especially under the conditions of deteriorated access to traditional borrowing, due to the public debt crisis and the European economic slowdown. SBO can be treated as an effective tool to solve the problem of the "wall of debt" which will emerge in 2014-2017 in Europe when LBO peak period leveraged loans will mature. The paper presents the idea of WBS, an application of WBS in practice, developments of LBO, structuring and managing LBO through securitization. It also contains an analysis of SBO of the French company, Fraikin SA.

Keywords: whole business securitization, LBO, SBO, risk.

1. Introduction

Coinciding with fast development of financial markets, new products, instruments and techniques are being implemented to enhance investment profits, reduce costs of financing and manage more effectively various types of risk. In recent years, structured finance and securitization are major fields where many innovations and novel solutions have emerged. In particular one of the most innovative use of securitization has been refinancing of whole business operating assets. Such a type of securitization appeared in the UK in LBO transactions strongly developing in the last two decades. In fact, the securitization of whole business operating profits (called whole business securitization – WBS) created the possibility to collect capital for LBO deals outside of the banking sector, to disperse their financial risk, to reduce the cost of refinancing as well as to became a new tool to manage the finance of buy-out transactions. Hence securitization as a financial technique has gained a new important function, i.e. the structuring and refinancing of LBOs. LBO deals securitized with WBS have started to be termed SBOs (Securitization Buy-Outs).

The aim of this paper is to propose an explanatory analysis of a new practice regarding both WBS and LBO transactions, i.e. the structuring and financing of leveraged deals through securitization, known as SBOs. The authors focus primarily on the characteristics of WBS, the manner of its practical application and its function within LBO transactions. Also the authors consider the benefits and limits of SBOs and describe the conditions of their development. The authors also analyze if, in the current European context of debt crisis, SBOs could effectively help to refund and structure LBO debts by raising funds in the capital markets. The paper will contain a description of a practical case i.e. one of the most famous and successful SBOs − the French leasing company Fraikin SA.

This paper is organized as follows. Firstly, it contains a short description of the main characteristics of this new type of securitization, i.e. WBS. Then it presents its mechanism and ways of application. Next the paper describes the general features of a LBO and goes on to the implementation of the WBS within a LBO, known as an SBO. Later, the paper describes SBO's purposes, advantages and disadvantages as well as the ways of its application against a background of traditional securitization. Finally, the authors assess the conditions of development and open a discussion on the practical use of SBOs for companies in turbulent economic conditions. As an SBO is a rather new and not commonly used financial technique and the details of many deals are not revealed, the paper will be mostly based on theoretical consideration with regards to the data of the SBO conducted by the French company Fraikin SA.

2. A concept of whole business securitization (WBS)

One of the latest developments of securitization, especially in the scope of corporate finance, is whole business securitization (WBS) alternatively called a securitization of operating assets or operating revenues. Such a technique is an innovative way of refinancing the operating activities of a business, and thus can be used as an alternative instrument to traditional bank loans, collateralized loans, equities or even traditional assets-backed securitization. In general, WBS relies on the valuation of a business according to its potential to generate free cash flows and conversion of such value into marketable debentures [V. Kothari, 2006]. WBS is a tailor-made technique that resembles typical secured borrowing, rather than a typical securitization based on the true sale of underlying assets. In fact WBS uses an SPV bankruptcy-remote conduit which grants a loan to the originator against the claims on all of the free cash flows of the securitized assets. The SPV refinances the loan with the cash inflows coming from bond tranches that are sold to investors. Contrary to the traditional securitization, WBS securitized assets cannot be isolated and moved out from the originator to the SPV due to their need for day-to-day operations and their function of as a source of free cash flows to the originator. Nonetheless, the ownership and management of securitized assets is often passed to a special operating company (OC) established within the originator's holding. The transfer of assets to the OC has to separate them from risks from the other operations of the originator, and facilitate recourse in case of its insolvency. Due to the legal separation of credit risk of the originator and its operating assets (business), SPV bonds can obtain a higher credit rating than the corporate rating of the originator. The transfer of cash flows and risk between the originator, OC and SPV is conducted through a loan structure (securitized assets are accounted on-balance) rather than by true sale of assets typical for traditional securitization. Despite moving the assets to the OC, the structure is considered as bankruptcy-remote i.e. creditors can continue to exploit free cash flows through the bankruptcy process. Simply put, in the case of the default of the originator and/or OC, control over the assets is passed to the trust which acts on behalf of SPV and bondholders for the remaining term of the financing [Vink 2007]. Thereby, securitized assets are used still for operations, allowing the generation of free cash flows. In fact it is also possible to structure WBS without establishing of SPV.

3. Application of WBS

The first deal of WBS was conducted in the mid-1990s in the UK, based on nursing home revenues [Fabozzi, Kothari 2008]. In the US, the first transaction was completed in 2000 in the restaurant franchise sector. Nowadays this technique is still developing primarily in the UK and the US, however it has also been used in France and some Asian countries (Japan, Malaysia). So far it has been developing in a rather narrow group of countries dominated by Europe (especially the UK). According to the AFME data which monitors the European securitization market, the value of WBS outstanding securities is still lower than the value of papers backed by mortgages, car and consumer loans, however since the beginning of the last decade they are becoming an important part of the asset-backed securities market with an outstanding balance in Europe of approximately 50 billion euros [Kothari 2006]. Contrary to asset-backed securitization relying on standardized pools of homogenous assets, WBS generally is based on free cash flows from virtually all operating assets possessed by the company as well as those not yetexisting. That means, the WBS is essentially suitable for rather mature companies with very predictable and steady revenues, especially those delivering very unified types of products. So far, WBS has been used primarily to securitize income from intellectual property (e.g. music, films), motorway service stations, pubs, hospitals, entertainment, amusement sites, airports, railways, shipping companies, franchises, leasing, football, etc. Table 1 presents a comparison of the main features of WBS against traditional securitization.

Table 1. WBS vs. traditional securitization

Feature	WBS	Traditional securitization
Assets suitable for securitization	All operating assets that generate free cash flows	Loans, debts, lease payments, royalties,
Type of cash flows	All predictable cash flows from existing and non-existing operating assets of a business	All predictable cash flows from standardized pools of assets
Motives of securitization	Refinancing of a whole business, changing capital structure, increase of debt capacity, reduction of whole business financing cost, LBO refinancing.	Liquidation of undesirable assets, improvement of financial ratios (profitability), obtaining liquidity management, credit risk management, partial refinancing of a business, cheap financing.
Companies suitable for securitization	Service companies with predictable cash flows and steady growth	Financial institutions, service companies, distressed companies
Accounting	On-balance sheet accounting	Off-balance sheet accounting
Originator	Owner of the securitized assets	Owner of the securitized assets, sponsor,
Transfer of assets	Loan structure	True sale, credit derivatives
Management of securitized assets	Active	Passive
Portfolio of securitized assets	Changing and renewable	Fixed and not recurring
SPV	Not obligatory	Obligatory
Bonds maturity	Usually long-term (25-30 years)	Short, medium or long-term
Major risk types	Operating risk, Credit risk, Default risk	Credit risk, market risk, counterparty risk
Investors rights	Investors may have recourse against operating assets	Lack of recourse against originator or sponsor
Regions of development	Countries of developed capital market and favourable insolvency regulation	Most of developed countries of the world
Bankruptcy susceptibility	Structure partially protected against bankruptcy	Bankruptcy remote structure

Source: own elaboration.

4. LBO developments

An LBO is any transaction in which the target company is taken over by a private equity firm (sponsor) with the substantial participation of debt. Usually it includes a buyout of a company by a sponsor, a follow-on acquisition, a dividend payout to the sponsor, refinancing, and its management[1]. Based upon the financial leverage, the LBO transaction is financed with the prevalent share of senior, mezzanine and junior debts. The choice of the target company, the structuring of the deal and the proportion of debt in the transaction is mostly conditioned by the amount of free cash flows expected from the target, the cost of capital, the availability of loans, the risk aversion of the sponsor and general features of the ecocnomy.

LBOs in Europe started to develop quickly since the establishment of the euro-zone, where the growth of the European leveraged loan market had been fuelled by the efficiency provided by the new European currency. The private equity activity boosted overall growth in M&A activity and particularly leveraged buyouts (LBO). Because regional as well as financing barriers were liquidated the capital could be raised and used to finance cross-border and large LBOs. A broader range of regional banks as well as US financial investors started providing funds for acquisitions financed with debt especially from 2005 to 2007. Such easy access to relatively cheap funds was used by private equity funds which created a major part of the European LBO lending as sponsors of the deals. In fact the very advantageous macroeconomic and financial conditions in the USA and Western Europe entailed a strong growth of LBOs volume and value, also led to the emergence of new innovative solutions related to debt financing. In particular, at that time, LBO originators and sponsors benefited from a period of abundance of liquidity, low interest rates and strong competition between providers of funds. Such conditions strongly supported the use of debt for acquisitions, as well as encouraged to increase leverage and EBITDA multipliers.

The peak period for LBO and their financing was from 2005 to 2007. At that time banks, due to very good prospects, were more than eager to finance mega-sized deals and collect the large fees that accompanied them [Carey, Banerjee 2013]. In fact LBO transactions volume in Europe reached peak levels of 110,0 billion € (2005), 164,5 billion € (2006) and 152,3 billion € (2007) [LCD… 2012]. Altogether, with the significant deterioration of conditions on the global financial markets in 2009 in Europe, there was a significant decrease in the volume of LBOs. There was also noted a significant increase of defaults and restructurings of LBO deals in terms of volume and value, as well as a deterioration of LBO credit quality. In spite of a visible calming and slight improvement in the situation in the LBOs market in 2011-2012, the future development of such transactions might be seriously slowed down as the economic and public debt conditions of many euro zone countries are not favorable to intensive and risky bank activities. Independent of the direction of the future development of LBOs in Europe, the financial markets have also had to cope with the deteriorating results of deals made in 2005-2007 and 2008-2009. Too optimistic pricings, worse economic conditions, lower post-transaction revenues and

[1] In the US an LBO is considered in a slightly different way i.e. it includes only buyouts of a company by a sponsor and excludes recaps, refinancing, and follow-on acquisitions, https://www.lcdcomps.com/d/pdf/Glossary.pdf, 23.03.2013.

low rates of returns from investments have had a strong impact on future LBO debt repayment. Indeed, in 2014-2017, Europe will face the problem of a leveraged loans maturity cliff, when the majority of LBO loans will be due. Due to the high leverage used in prosperous years, such a cliff will create "wall of the debt". The solution to this problem might be the securitization of operating revenues.

5. Structuring and managing LBOs through securitization

WBS, due to its potential to convert all operating assets of the company into cash, can successfully structure, finance or refinance LBOs. In fact, WBS is a way of refinancing the target company's operating assets after its acquisition or a way of reducing the holding's debt rather than a primary source of financing of LBO. Using WBS within LBO (which creates the name of SBO) gives many possibilities of supporting the buyer as well as the target. Due to its complex structure, numerous co-participants and flexibility SBO functions more like a financial and risk management instrument than as a basic source of financing. Legitimacy for SBO is given ultimately by the credit rating agencies which do not set fixed thresholds for the asset-backed debt used in buyout financing. In general, papers issued from high leverage LBO deals can get investment grade rating, only if the target is suitable for securitization [Tully].

Observing the contemporary business practice, one may distinguish several main advantages of SBOs for buyers as well as for targets. They are as follows:

1. SBO provides compensation for financial stakeholders of the holding (both shareholders and lenders). It is suitable to refund a part of the acquisition debt of a holding due to the rise of bonus dividend paid by the target company.

2. SBO can be an important source of capital for target companies, especially when they implement large investment programs or refinance large working capital requirements.

3. SBO can reduce the costs of funding due to replacing the leveraged loan by capital market financing (bonds). As the operating assets are legally separated from other operations (e.g. financial) of the originator, the total investment risk is reduced, and the spreads of SPV bonds are reduced. Due to backing the transaction by additional guarantees, the SPV can get a grade of up to AAA level, which creates the low-cost funding of LBO.

4. SBO can be used as a financial hedging to falling profits and cash flows of the target company. Thanks to SBO, its sponsor can manage the acquisition risk in a more efficient way, e.g. by matching cash transfers to SPV and revenues of the target.

5. SBO can be used to improve the financial potential of the target, i.e. to increase its finance credibility or to decrease its debts and to back-up its shareholders.

6. Independently of motivation, SBO allows to transfer the risk of the LBO to the market due to the substitution of bank leveraged loans by the bondholders.

7. Using SBO helps private equity sponsors to control both the level of borrowing and associated interests costs as well as to avoid restrictive covenants of leveraged loans.

8. SBO can be used to increase the working capital level to create the value of the target.

9. SBO proceeds can be used by the sponsor to push out debt repayment and to reduce amortization pressure, transforming the post-LBO balance sheet of the holding[2].

10. SBO may be used to get more debt for LBO acquisitions, which allows to structure larger deals than compared to those traditionally financed.

Despite its many advantages, SBO as a financial innovation also creates some dangers. The major constrains and disadvantages of SBO are as follows:

1. SBO can be practically used only when the target has at least one class of assets generating clearly recognizable recurring operating cash flows. The most common assets backed within SBO are the commercial claims (receivables). Companies having seasonal activities are not good candidates for SBO as well as companies depending on some major customers or whose activity is considered too complex to assess their stability.

2. The structuring of the SBO is a complex and time-consuming process that requires many actions in various fields (i.e. establishing SPV, OC, passing the ownership of assets to OC, arranging sub-contractors, obtaining liquidity, arranging lending banks, arranging underwriters, obtaining credit rating, etc.), thus it may be profitable only for large deals.

3. SBO requires substantial organizational adjustment and the legal transfer of assets or employees to OC. Such an adjustment can generate significant costs.

4. As the securitized operating assets are kept within the holding, they have to be properly maintained and developed.

5. Lower than predicted cash flows combined with the increased financial leverage of SBO may require abnormal liquidity to pay compensation to bondholders. Such liquidity can be achieved only through the liquidation of part of the business.

6. If securitization is used on the target company level within an existing LBO, it may cause conflicts between the lenders of the buyer, the lenders of the target and the bondholders. In case of default, some part of the debt on the holding structure level (junior debt) may interfere with the debt at the target level and the loan obtained via securitization. For example in France the target company is prevented by law from guaranteeing the holding's debt. Nonetheless, after the securitization, the available asset base of the target company is much lower, which means the security of the target company debt is vitally reduced. This problem should be considered in particular when WBS has to be used as post-LBO restructuring or refinancing instrument. In fact, such SBO structures may appear very risky for debt holders at the target level.

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[2] http://www.demica.com/solutions/securitization/54-securitization-benefits.

The credit risk which was at the holding level before the SBO, will be transferred to the target level.

Table 2. SBO vs. traditional LBO

Feature	SBO	Traditional LBO
Motives of the transaction	Restructuring of debt Recapitalization of a target company Leveraged value creation for shareholders Enlarging financial leverage Enhancing debt repayments Reducing cost of funding	Taking control over a business Entering new markets Going private Leveraged value creation for shareholders Achieving of a high rate of return
Target companies	Mature companies of low turnover growth, constant margins and recurring cash flows	Regular cash flows companies with high growth perspectives.
Characteristics of the target company assets	Assets must generate predictable stable cash-flows, easy to identify and without being interrupted by macro-economic stresses	High regular free cash-flows to be paid as dividends to the holding in order to reimburse the acquisition debt
Investments requirements	Can be important	Low
Level of debt of the target	Can be important	Low
Level of debt of the holding	Can be rapidly refunded through the loan obtained by the target company. The acquisition debt can be placed in the target and then refunded	Generally important with a complex structure (senior debt, subordinated debt, PIK) and a large part is in fines. Some debt holders wait between 4 and 7 years to be reimbursed
Financing costs	The loan rate obtained through the securitization is lower than the rate of the whole debt of the holding	The cost of the whole acquisition debt is important, especially if the structure of this debt is complex
Leverage	Diversified and increased	In the holding company
Lenders rights in case of default	As far as the asset base of target company is moved to OC, conflicts of interests between lenders to the SPV and lenders to the target and holding may appear	The assets of the target company are collateral to its debt. The debt holders of the holding company have no collateral on target assets but a lot of covenants are written in debt contracts. Senior debt holders have a priority on junior debt holders
Shareholders expectations	Value creation through company operating management The interest rate return expected is high even if the holding debt is low or does not exist	Value creation through financial leverage The interest rate return expected is high due to the large amount of the debt in the holding company
Risk financed	Operating risk, credit risk	Credit risk

Source: own elaboration.

One has also to take into account the other risks and consequences of the implementation of the SBO. Because the structuring of the SBO is virtually justified only for large deals, the failure of single SBOs may cause turbulence in local financial markets. As a rule the SBO leads to an increase of the debt level in the holding structure, securing debt capacity by future cash flows, which may considerably exceed the value of traditional loans secured by the assets in current possession. The SBO is strongly dependent on the risk of the securitized operating assets and their management. The deterioration of the assets quality or their ineffective management will lead to an increase of the credit risk of asset-backed securities. Using very long-term structures of assets-backed securities will additionally affect the credit risk level of the issued securities. As the notes (bonds) secured by future cash flows coming from securitized operating assets are reflecting the risk of a specific set of assets of a particular company, but not the risk of the asset class as in a traditional securitization, their market liquidity might be very low. Thus, their valuation may very quickly fall together with a deterioration of the quality of the securitized asset and/or financial condition of the holding company. Upon analysis of the features of the SBO, one may present it against traditional LBO.

6. Fraikin SA – an example of SBO in France

The SBO mechanism, i.e. financing of LBO by subsequent WBS has been used several times in France. The most well-known case is the company Fraikin SA, a European leader of industrial and commercial vehicle hire[3]. Its SBO was one of the earliest in France and also in Europe[4]. At the beginning of 2003, the French investment company Eurazeo decided to buy Fraikin SA which was put up for sale by its parent company, Fiat. The amount of the transaction was 3,2 times EBITDA, i.e. 805 million euros (plus costs of servicing the deal). The equity put by the Eurazeo consortium was 250 million euros. To complete the transaction Credit Mutuel-CIC and Credit Agricole brought 430 million euros of a bridge loan on the LBO which had to be repaid within the year and 30 million of revolving credit [Esjberg, 2003]. Both banks

[3] Fraikin SA (est. 1944) provides commercial vehicle rental services through 200 branches in France, the United Kingdom, Spain, Belgium, Luxembourg, Poland, the Czech Republic, Slovakia, Morocco and Switzerland. The company provides contract hire, truck rental, and fleet management services for transportation, industrial, distribution, and service sectors. It also offers long-term leases and purchase leaseback arrangements for the clients. Fraikin SA is a former subsidiary of Iveco Nederland B.V. 31/12/2010 its turnover reached 694 mln €, the fleet was 60.000 cars and the numer of clients was 10.000. Fraikin SA serves i.a. DHL, Schenker, Carrefour, Bouygues, Danone, Vivendi, Pepsico, Nestle, TNT Express, Overview Bloomberg Businessweek,http://investing.businessweek.com/research/stocks/private/snapshot. asp? privcapId=4155356 and http://www.pl.fraikin.com/fraikin-pojazdy-przemyslowe.html, 23.03.2013.

[4] Examples of large SBOs in France conducted before Fraikin SA were: Saint-Louis Sucre, a sugar manufacturer and in Europe: Buhrmann, the Dutch office supply group, and Punch Taverns, a UK pub group [Esjberg 2003].

acted as joint mandated lead arrangers and granted the loan directly to the target (i.e. Fraikin SA). Additionally, Fiat lent 150 million euro for 7 years to facilitate the deal. The banks and Fiat borrowings created the conditions for investors to benefit from the financial leverage effect. The deal was structured in such a way that the loans would be refinanced in the short-term through an asset-backed bond secured on receivables from Fraikin's truck leases and on the residual value of the vehicles. Fraikin also planned to set up a new program of asset-backed commercial papers to finance the purchase of new trucks. As LBO loans were granted directly to the target, so the transaction had the character of a reversed LBO. In fact, crediting a target gave the lenders access to the revenue of the operating company, instead of the cash flows transferred to the holding as dividends. Due to the very predictable and recurring cash flows of Fraikin SA, the bridge loans could be refinanced through WBS instead of traditional long-term leveraged loans. In practice, the management of Fraikin SA considered other refinancing solutions but WBS seemed to be most flexible and low-cost alternative. Thanks to it, Fraikin SA could avoid the consequences of LBO financing limits, refinance a bridge loan, prolong the payback period and reduce the costs of financing. Thanks to US-based MBIA, assurance the securitization papers obtained a credit rating of AAA what translated into larger amount of loan and reduced the yield on bonds (by more than 200 b.p.). The reason for choosing WBS was also to support the asset-intensive activities of Fraikin SA. Indeed, to keep its strong position and competitiveness Fraikin SA has had to invest continuously in fixed assets (trucks), thus it was not able to generate free cash flows as stipulated in traditional LBOs. WBS allowed, then, to replace the traditional leveraged loan in LBO financing as well as to gather new means to develop its fleet of trucks and increase turnover. In this SBO, Fraikin SA funded 600 million euro.

At the beginning of 2007, Eurazeo decided to sell its shares of Fraikin SA to CVC Partners[5]. The operations of Fraikin SA always required large investment spending, thus Calyon, the Royal Bank of Scotland and Crédit Industriel and Commercial (CIC), assured the missing amount to the securitization cash inflows. In April 2008, Fraikin SA obtained 800 million euro of refinancing by proceeding to a second global securitization.

In 2012, Fraikin SA entered into a third securitization arranged by Crédit Agricole CIB, as lead arranger, and Natixis, as co-lead arranger[6].

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[5] Eurazeo realized an IRR of 35 % buy selling its shares.

[6] This securitization assumed issuing of senior and junior notes which would be backed by long-term lease receivables and related truck's residual value related to a fleet of 49,000 trucks in France, the United Kingdom and Spain managed by Fraikin. At the close of the deal 577 million euro of senior notes rated A by Standard & Poor's and 42 million euro of junior notes rated BBB by Standard & Poor's were issued. The purpose of this transaction was to refinance the French fleet securitization, whose revolving period came to an end in February 2013, and to refinance the borrowing base facility which was maturing in February 2013. The purpose of the securitization was also to provide committed funding for new trucks purchase for the next five years.

7. Conditions and prospects for SBO development

Despite the slowdown of the many European economies, as well as the difficult economic conditions of many financial institutions in euro zone countries, the SBO can be still an effective way of alternative financing of LBO deals. In fact, together with the financial problems of banks and their higher aversion to risk, the interest in capital market funding should increase. Conditions supporting SBO's development are in particular: the deteriorated accessibility of funds from traditional borrowings, LBO or asset-backed loans, low interest rates and growing capital markets (as one could observe in US in 2012 and 2013). During periods of low interest-rates but rigid policies of banks relating to lending money, an alternative can be issuing of WBS bonds. In this way a shortage of bank capital can be covered by capital market investors. Simultaneously, the repayments and risks of LBO's debts will be dispersed and spread out over a long-term period. Due to SBO the originators get low-cost financing (the reduction against leveraged loans is typically approx. 100-200 b.p.) while capital markets are going to be enriched by free cash flow backed notes. The economic and financial market conditions in 2012/2013 were then favorable for SBO growth and development. In the long-term, even during the high volatility of the markets and uncertain economic conditions, SBO can be treated as an instrument that flexibly swaps financing between banking loans and capital markets or vice-versa.

Undoubtedly, SBO requires a developed and relatively liquid debt market as well as a developed institutional infrastructure. In countries where investment banks play an important role in the financial system (e.g. the UK, France, the US) the SBO has better prospects for growth and development. Due to very early stage of stock-exchange debt trade in Poland, as well as only incidental securitization transactions (mostly through securitization closed-end funds), this technique is not expected to emerge in the Polish financial market in the nearest future.

The development of the SBO also requires special solutions of commercial and insolvency law to separate legally assets from the originator, while allowing him/her to keep operating control and service the assets. At the same time the bondholders of SPV, which in fact refinance the target, must receive special security rights, i.e. seniority over other creditors. As there are three major groups of lenders (buyer's, target's and SPV's), as well as debt repayment subordination within each group, conflicts of interest may emerge in cases of the originator's default. Structuring SBO insolvency law should secure the operating assets of the target against forced sale due to bankruptcy and increase the role of the SPV to control insolvency proceeds at the expense of other creditors (floating charge). Such a legal solution emerged in the UK in the Insolvency Act of 1986 and the Enterprise Act of 2002. The lack of special legal protection of the creditors having control over substantially all the borrower's operating assets, as well as the difficulties with securing their financial interest, hinders the appearance and development of WBS in Poland, as in many other countries of Europe.

The development prospects of SBO should be linked also with some privatization processes in countries of Eastern Europe, where state-owned companies are being sold to industry investors. Such a technique can facilitate financing large deals − particularly in the electricity, energy, water supply, telecommunication, transport and postal services sectors.

8. Conclusions

WBS is a innovative financial technique which can be used for the structuring and refinancing the LBO transactions. It set up an alternative to traditional borrowing to asset-backed loans. In general, the combination of WBS and LBO, called SBO, brings profits to the target as well as to the holding structure. Due to the separation of risk of the originator and its operating assets, which leads to obtaining investment grades of credit rating, the deal brings a significant reduction of the costs of financing and a flexible way to replace the leveraged loans by investment grade bonds. Using SBOs also gives the possibility to increase the credit capacity and creditworthiness of the buyer and the target. This feature seems to be particularly useful for heavily-indebted groups, where new means are required for development. One of the most important features of SBO is that it does not directly interfere in the day-to day operations and obstruct necessary expansion investments. Nonetheless, such a technique is very complex and expensive considering the upfront costs, and requires special legal solutions to protect the creditors. Generally, before the financial crisis, one could see its fast development especially in the UK and the US. Nowadays its development potential is not certain, however this is rather a problem of the present imperfection of the financial markets, not WBS and SBO as techniques themselves.

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SEKURYZYTYZACJA AKTYWÓW OPERACYJNYCH W STRUKTURYZOWANIU I REFINANSOWANIU TRANSAKCJI WYKUPU LEWAROWANEGO LBO

Streszczenie: Jedną z ostatnich innowacji w zakresie techniki sekurytyzacji jest sekurytyzacja aktywów operacyjnych przedsiębiorstw. Technika ta pozwala na finansowanie lub refinansowanie działalności operacyjnej instytucji niefinansowych. Wymieniona sekurytyzacja ma swoje korzenie w refinansowaniu i strukturyzowaniu wykupów lewarowych LBO; znana jest pod nazwą SBO. W praktyce SBO jest nie tyle alternatywnym źródłem finansowania działalności operacyjnej przedsiębiorstw, ile złożonym instrumentem zarządzania finansami, który pozwala na refinansowanie i transfer ryzyka transakcji LBO z sektora bankowego na rynek kapitałowy, w szczególności w warunkach kryzysu zadłużenia finansów publicznych i spowolnienia gospodarczego w Europie. SBO może być traktowane jako efektywne narzędzie rozwiązania problemu „ściany długu", który pojawi się w latach 2014-2017 w Europie, kiedy nastąpi kulminacja zapadalności pożyczek podwyższonego ryzyka finansujących transakcje LBO. Niniejsze opracowanie przedstawia istotę sekurytyzacji aktywów operacyjnych i jej zastosowanie w praktyce, a także opisuje transakcje LBO i sposoby zarządzania nimi poprzez sekurytyzację. Praca zawiera również analizę transakcji SBO francuskiej spółki Fraikin SA.

Słowa kluczowe: sekurytyzacja aktywów operacyjnych, LBO, SBO, ryzyko.