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Market Conditions of the Credit and Loan Relationships

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ABSTRACT
The article is devoted to determining the main essential conditions for credit and loan relations. The relevance of the research is due to the absence of the concept of market conditions for credit and loan relations, and therefore it is advisable to use the concept of "economically feasible terms of the contract" for credit and loan relations in scientific circulation and judicial practice. In the analysis of essential conditions of the contract, in addition to interest rates, you must consider the reliability for the lender of the funds (security Deposit, guarantee), the financial situation of the potential borrower, the frequency of clearing debt etc. Social relations between economic entities, including in cases when bankruptcy of the debtor, the implementation of fiscal functions of the tax authorities, formed a need to develop clear criteria for determining the presence (or absence) of economically viable terms of the agreement in credit and and loan relationships.
This article will assist in the formation of principles for determining whether the terms of credit and loan agreements correspond to the fair conditions of relations between economic entities on the open market.
Keywords: *interest rate, discount rate of the Central Bank of the Russian Federation, credit and borrowing relations, market value, economic feasibility, borrowed policy, valuation activity*

1. INTRODUCTION

In Economics, when performing various analytical procedures, the issue of determining equity and debt capital is acute [4]. The company's equity and debt capital are one of the bases for determining many of the company's financial performance indicators [1]. In the course of analyzing the company's activities, there is often a need to determine the payment of borrowed capital, there is a need to determine the amount of interest rate on borrowed capital. Of course, the payment of credit resources is one of the most important criteria in the analysis of debt capital. In the course of analytical procedures, it is necessary to determine how much the interest rate on credit and loan resources corresponds to market conditions.
In various areas of economic thought, it has long been common practice to determine the market value of property values. This is also due to the need for tax control, control over foreign economic transactions, analysis of interactions between affiliates, determination of liens and sureties, analysis of the activities of bankrupt enterprises, including in order to identify signs of fictitious and deliberate bankruptcy [11].

2. RESEARCH METHODOLOGY

Determination of market value in relation to property, property rights there is a widespread practice of valuation activities, there are fundamental scientific research, there is an extensive judicial practice [7]. However, there is no unified methodology and tools for determining market conditions in relation to the interest rate (fee) for credit and loan relations. There are scientific studies on this issue, but they do not fully disclose this problem. Comments and explanations of authorized Federal government bodies also inform about the absence of such a concept as the market rate for credit and loan relations. Judicial practice, including those generalized by the Supreme Arbitration court of the Russian Federation and the Supreme court of the Russian Federation, also indicates that there is no single concept of a market interest rate. Thus, when analyzing debt capital, it is necessary to take into account not only the interest rate, but also other essential conditions of borrowed funds.

3. THE RESULTS OF THE STUDY

The study considers the main economically feasible and reasonable conditions of credit and loan relations in the course of business entities ' activities. Before proceeding to a more detailed analysis of the interest rate, let's look at the basic principles of credit and loan relations. Speaking about credit and loan relations, the author implies a wide variety (from an economic and legal point of view) of forms, mechanisms and instruments of borrowing and investment:

– credit relations (issuance of loans by credit organizations licensed by the Central Bank of the Russian Federation);
– commercial loan relations (issuing loans by non-governmental microfinance organizations, leasing companies, etc.);

– provision of loan relations on preferential terms and / or subsidized by the state (at the Federal, regional or municipal level) interest rates (provision of borrowed funds at preferential interest rates and on conditions aimed at maintaining certain categories of economic entities by the state (small enterprises, organizations of scientific and innovative activities, agricultural producers, housing and communal services companies));

– non-commercial loan relations (loan relations within the framework of a credit cooperative, an agricultural credit cooperative, a housing savings cooperative, a state or municipal microfinance organization, and other non-profit organizations whose goal is to achieve socially significant goals);

– borrowing relationship, including a royalty-free, arising between affiliated (interdependent) individuals.

The list of credit and loan relations is not limited to the above list. There are such relations as a loan in a pawnshop (for consumer and other purposes secured by valuables), an investment tax credit (article 66 [15]), a budget loan (credit), participation in shared construction, a commodity loan, a loan, etc. [3]. Let's return to the analysis of the economically justified interest rate on credit and loan relations. The relevance of the study of this issue is due to the need to determine fair, market conditions for credit and loan relations in order to perform state fiscal functions [15, 16], to develop a uniform judicial practice on tax disputes, as well as to form a clear system for legal disputes arising during bankruptcy procedures.

Analysis of the conditions of credit and loan relations will also be essential in determining the absence (presence) of bonded conditions (adverse circumstances) for the borrower in court proceedings (article 179 [13]). In the event of a financial crisis, the company may take some measures that are not typical for normal (non-crisis) activities [2]. However, such measures can both lead out of the crisis and worsen the financial situation of the company.

Business entities that are not interdependent entities and are located on the open market of credit and loan resources will strive to conclude the relevant transaction on the most favorable terms, taking into account the available opportunities. And in such cases, it is reasonable to consider the terms of such transactions as economically reasonable, fair and appropriate (except in cases of bonded conditions (unfavorable circumstances for the borrower)). However, it is reasonable to talk about the existence of unfavorable circumstances for the borrower in relation to individuals who borrow funds for personal consumption, economic entities relatively rarely borrow funds on bonded terms.

The parties to a potential loan agreement may be able to make a transaction on terms that are not possible for other entities, for example: loan relations in a credit cooperative (transactions with shareholders of the cooperative) [3], loan relations of certain categories of economic entities under certain target programs (transactions on preferential terms or with compensation (subsidy) from the budget of interest (in whole or in part) on borrowed funds). Such loan relationships may have economic feasibility (signs of "market conditions" of the loan agreement), taking into account the following circumstances:

– the borrower can also borrow money from other sources operating on the open credit and loan market;

– the lender (including a non-profit organization) carries out activities for issuing loans on the principles of self-sufficiency:

– the lender compensates for lost profit (interest income) from budgetary (or other similar) sources;

– the borrower compensates part of the expenses for the interest paid (will receive a subsidy) from budget (or other similar) sources.

These circumstances must be taken into account when determining the appropriateness and reasonableness of the terms of the loan agreement.

4. DISCUSSION OF THE RESULTS

Based on the analysis of well-known business practices, judicial practice, and scientific literature, the author came to the conclusion that economically impractical loan relationships that do not meet fair conditions may arise in the following cases:

– the existence of bonded conditions for the party to the transaction, including the presence of a financial crisis for the borrower;

– interaction between affiliates.

Loan relations on preferential terms, at subsidized rates (according to the relevant targeted state, international, grant and other programs) may not have direct economic feasibility, but they have indirect, non-direct economic, social, political or other validity and reasonableness (for example: preserving jobs, maintaining strategically important sectors of the national economy, reducing social tension, helping to strengthen the country's defense capability, establishing international relations, etc.). Such loan relations are considered by the author as economically feasible, but do not have obvious and direct (namely direct) signs of reasonableness, fairness and efficiency.

Current legislation and established business practices provide for the provision of interest-free loans (0% rate), preferential credit and loan resources (for various reasons, including support for socially significant economic entities by the state or non-profit organizations), credit and loan relations between affiliates may also have signs of "non-market" relations, i.e. they may not have a legitimate, direct economic feasibility [9].

Speaking about non-market conditions for loan relations, the author draws attention to the fact that the scientific literature [5, 8], established judicial practice (see, for example: [23,24,25]) and explanations of the authorities (see, for example: [19,20,21] the concept of "market conditions" in relation to credit and loan relations is not applicable.

That is why (the impossibility of using the term "market conditions" in relation to the interest rate on credit and loan relations) for the purposes of this study, the author suggests using the concept of "economically justified interest rate on credit and loan relations", which can be perceived as an economic analog of the market value of the interest rate on credit and loan relations.

Commercially reasonable interest rate on credit-debt relations are the most likely interest rate at which cash (or other property which may be granted borrowing principles) can be provided taking into account the main essential conditions (in the presence (absence) of a security measures the return of loan-borrowings, the level of financial sustainability of the borrower, amount of loan (credit, loan) term loan-borrowings, the frequency of accrual and redemption of interest, the frequency of the damping body provided by credit deleveraging, the size of sanctions for the improper performance of the contractual relationship the possibility (or impossibility) of the control of target use of credit borrowings, the possibility (impossibility) of monitoring the financial condition of the borrower before debt repayment and other conditions) according to the principles of urgency, payment, repayment on the open market in a competitive environment, when the parties to the transaction act reasonably, having all the necessary information, and the terms of the transaction are not affected by any extraordinary circumstances, that is, when:

– one of the parties to the transaction is not obligated to provide credit and loan funds, and the other party is not obligated to accept credit and loan funds;
– the parties to the transaction are well aware of the subject of the transaction and act in their own interests;
– -information about the terms of the transaction is available on the open market;
– the interest rate on credit and loan relations is a reasonable remuneration for the use of monetary funds (or other property);
– there was no compulsion to make a transaction with respect to the parties to the transaction from any party;
– payment at the interest rate on credit and loan relations is expressed in monetary form [10].

The interest rate on credit and loan relations (taking into account the principles of urgency, payment and repayment) on the open market, between unaffiliated persons is set taking into account the following significant conditions:

– availability of security measures for the return of credit and loan funds, including through collateral, guarantees;
– availability of collateral insurance;
– the level of financial stability of the borrower, including high or low probability of bankruptcy of the borrower;
– the amount (size) of the loan (loan, loan), taking into account the scale effect;
– term of providing credit and loan funds; -frequency of accrual and repayment of interest (monthly, quarterly, once a year, at the end of the term, etc.);
– frequency of repayment of the body of the provided loan funds;
– the ability to control the intended use of borrowed funds, monitor the financial condition of the borrower before debt repayment, etc.;
– the amount of sanctions for improper performance of obligations under the agreement;
– other condition.

In this study, we will consider the basic value of an economically reasonable interest rate. To do this, we use regulatory and legal sources. "In cases where the law or contract provides that interest is payable on the amount of a monetary obligation for the period of use of monetary funds, the amount of interest is determined by the Bank of Russia's key rate (legal interest) in effect during the relevant periods, unless a different amount of interest is established by law or contract" (clause 1 of article 317.1 [13]). A similar rule is specified in clause 1 of article 809 [14]. The very concept of the key rate was introduced [18] and is determined "by unifying interest rates on operations of providing and absorbing liquidity on an auction basis for a period of 1 week".

The key rate of the Bank of Russia is systematically used as a bet (basic, risk-free) cost of money over time (evaluation, financial analysis, etc.). Given the above, the author makes a reasonable conclusion that in the calculation of appropriate interest rates on credit and debt relations, it is reasonable to use the key rate of the Central Bank of the Russian Federation, which will be brought up to rate on the transaction taking into account all other essential terms of the contract.

When analyzing the interest rate, it is advisable to determine the economically justified lower and upper limits of the interest rate, within which the economically feasible interest rate is located for specific existing conditions. Current legislation, including tax legislation, provides for an acceptable fluctuation relative to the average level of interest on similar debt obligations on comparable terms in the amount of 20 relative percent (see, for example: [22]; article 40 [15]).

Speaking about the cost of money over time, the author determines that the interest rate on borrowed funds should not be lower than the level of inflation (consumer price index), otherwise the funds placed for the investor will have a negative actual return: interest on the loan will not cover the inflationary decrease in the asset value. Let's consider the impact of other significant conditions of the loan relationship on the determined interest rate.

Taking into account the norms of financial analysis, the established practice of the credit market, and the main economic trends of scientific thought, the criteria for evaluating loan relations can be reduced to three main characteristics of the conditions of loan relations that affect the economic validity of loan relations:

– urgency (liquidity);
– returnability (reliability, i.e. the probability of a refund of funds and interest on them);
– fee: yield (for the lender) or expense (for the borrower);

– frequency of payments for repayment of the credit resource and interest on it. Let's take a closer look.

The urgency criterion covers the term of loan disbursement, the schedule for repayment of principal and interest. Borrowed funds can be divided into:

– current (on demand);
– short-term (up to 1 month);
– short-term (from 1 to 12 months);
– long-term (12 months or more).

Reliability criterion covers the availability of guarantees for the repayment of borrowed funds and interest, including interim measures (pledge, mortgage insurance, life insurance and health of the borrower, guarantees from third parties), the financial condition of the borrower (high financial stability, the lack of signs of bankruptcy, etc.).

Against the debtor with a negative value of the net assets, signs of bankruptcy, or other aspects of the crisis interest rate loans can be significantly higher than the above size, because the lender is acting in their interests are denied a loan or significantly increase the interest rate to compensate for their high risk of default.

The criterion of profitability (expenditure) should be considered taking into account the schedule of accrual and repayment of borrowed funds and interest on them, all hidden additional commissions and payments servicing the loan, etc. If interest under the terms of the agreement is accrued and accounted for at the end of the year, the real rate of return (excluding additional commissions and payments) will be equal to the interest rate specified in the agreement. If the terms of the agreement provide for the accrual and payment of interest on a monthly or quarterly basis, then the corresponding yield must be calculated taking into account the capitalization of interest (as if the funds received in the form of repaid interest and part of the repaid loan would be placed (received) on the terms of the available yield).

A loan at 12 % per annum with a maturity of interest at the end of the year will have a real (including capitalization) rate of 12% per annum.

A loan at 12 % per annum with a quarterly interest repayment period will have a real (including capitalization) rate of 12.55 % per annum.

A loan at 12 % per annum with a monthly interest repayment period will have a real (including capitalization) rate of 12.68% per annum.

As part of the analysis of the cost of attracting debt capital, it is necessary to consider all the costs of attracting debt capital, including:

– the cost of collateral insurance;
– the cost of sureties, guarantees of third parties when receiving a credit resource;
– the cost of appraiser's services in determining the value of collateral;
– the cost of the auditor's services to confirm the reliability of the potential borrower's financial statements;
– the cost of working as a financial analyst to analyze the credit market;
– the cost of the lawyer's work in preparing documents for attracting borrowed funds.

The criterion for the periodicity of payments for the repayment of a credit resource and interest on it can become one of the essential conditions of credit and loan relations. There is a possibility that the borrower will not be able to return the funds received during the first year of its activity. In this case, the appropriate conditions for debt repayment will suit the borrower, and the borrower will not consider other conditions. Accordingly, the cost of borrowed capital under such an agreement will be taken into account taking into account the corresponding repayment schedule [6].

If the borrower has a financial crisis, the interest rate on the loan relationship may be significantly higher, but in this situation, there may be signs of a bonded transaction.

The principle indicated in this study can be used to analyze the economic feasibility of leasing agreements. For leasing agreements, the interest rate is not the only significant condition of the concluded lease agreement. It is also necessary to take into account the amount of the initial payment, the technical condition of the leased item, the lease term, the frequency of payments, the possibility of applying accelerated depreciation, etc. Taking into account a comprehensive analysis of the terms of the lease agreement, it is possible to adequately assess the market value of the leased item and determine the economic feasibility of the concluded lease agreement [12].

5. CONCLUSION

The results of the study can be used in relation to an orderly (taking into account market competition) credit and loan market, when the parties to the transaction are financially stable, act reasonably and in their own interests.

The principles described in this article can be used in analyzing the relationships between affiliated entities, including in bankruptcy proceedings. In the course of bankruptcy, the question of whether there is (or is not) an economic feasibility between economic entities, including between affiliated persons, becomes acute [11]. The absence (or presence) of the economic feasibility of a transaction on specific terms may be the reason for challenging (refusing to challenge) transactions in a bankruptcy case [17].

The inability to use the term "market conditions" for credit and loan relations leads to the need to use an economically similar term, for example, "economically feasible terms of the contract for credit and loan relations". When analyzing the economically feasible terms of the contract, all the essential conditions for credit and loan relations should be taken into account.

The author hopes that the obtained research results will help to form clearer and more transparent relationships between economic entities in the credit and loan market, as well as contribute to the improvement of legislation in the field of credit and loan relations.

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