

Legal nature of derivatives

This diploma thesis deals with the legal nature of derivatives. To the legal aspects of the nature of derivatives has not been yet devoted much attention in Czech or foreign literature, even if it is the legal nature that could provide the answers to many questions, seeking the cause of the current economic crisis in an incorrect and unprofessional use of derivative contracts.

The thesis is divided into three separate parts. The first chapter is devoted to the issue that arises from the definition of derivatives. Next part classifies derivatives into several groups, especially in terms of their place where they are traded on those that are traded on the market and those they are traded over the counter. The second part focuses on the legal nature of derivatives. First, their similarity is analyzed in terms of character as a gambling contract, and then in terms of their purpose as an insurance policy. This section concludes with the list of various derivative contracts such as swaps, forwards and options and their legal characterization, with regard to the provisions relating to the Czech law, applicable in the case of trading in derivative contracts. In all parts of dealing with the legal principle is allowed for future regulation of private law contained in the new Civil Code. The third and final part of this thesis is given the current legislation of derivative contracts in the Czech Republic. With regard to treatment characteristics, we can say that it is quite inconsistent, therefore, is fragmented into several statutes that are not linked to each other. It is quite difficult, under these arrangements, to conclude what actually constitute derivatives. At the end of this chapter, I came up with their own definition of the derivative contracts, which should be able to succeed in the field of regulation of derivatives. The definition takes into account all relevant aspects of derivative contracts.