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ECONOMIC ANALYSIS OF HIRING FORMS DEDICATED TO MANAGERIAL POSITIONS IN POLAND[◇]

SUMMARY

This paper deals with the economic analysis of hiring forms dedicated to managerial positions. Theoretical frames for corporate governance are based on agency theory. Crucial problems considered within agency theory are: information asymmetry, conflict of interests and supervision (monitoring) of management. Presented analysis covers also remuneration forms and manager's participation in ownership. Theoretical underpinnings of this research supports the analysis of managers hiring methods available in Poland (managerial contracts and employment contracts) in order to point out the solution, which reduces agency costs to the greatest extent.

Keywords: agency theory, information asymmetry, conflict of interest, supervision, employment contract, law and economics

JEL Classification: D82, J41, K12, K31

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INTRODUCTION

This work is dedicated to economic analysis of managers hiring forms available in Poland. An essential reason for undertaking this issue is that managers' roles become more important in modern companies. Firms' development requires some organizational adjustments, inter alia, linked with managerial activities. Good law should create friendly business environment, that would enable companies greater performance, as well as pursuing different interest groups (owners, managers, stakeholders) goals and reducing agency costs¹.

Economic and legal research tools provide groundwork for broad analysis of managers hiring forms. Agency theory is an example of well-developed and formalized concept, that enables a precise analysis of institutional features. There are works on agency theory problems, which state that its scientific apparatus can be used in empirical context². Thus, basic agency theory categories such as conflict of interests, information asymmetry or supervision, become significant. The main purpose of this work is to indicate the best institutional form of managers hiring, available in Poland (both from manager's and firm owner's perspective). The question is whether managerial contracts are better than typical employment contracts and what is the best form of managers hiring in Poland, both from employer's and manager's point of view. I base my analysis on problems described within agency theory: conflict of interests, information asymmetry, remuneration forms, and risk aversion.

This paper is organized as follows. First, I present agency theory assumptions and main research problems. Then, the paper contains selected Polish labor law regulations description and comparison. This way of reasoning exhibits the nature of relations between employer, manager and stakeholders and reveals main objectives that formal regulations should fulfill. Conclusions follow in the final section of the paper.

¹ J. Armour, H. Hansmann, R. Kraakman, *Agency Problems, Legal Strategies, and Enforcement*, Harvard Law and Economics Research Paper, No. 644/2009.

² M.C. Jensen, C.W. Smith, *Stockholder, Manager, and Creditor Interests: Applications of Agency Theory*, [in:] M.C. Jensen, *Theory of the Firm: Governance, Residual Claims, and Organizational Forms*, Harvard University Press, Cambridge 2000; H. Landstrom, *Agency Theory and Its Application to Small Firms: Evidence from the Swedish Venture Capital Market*, „The Journal of Entrepreneurial Finance”, Vol. 2, No. 3/1993, pp. 202–218; K.D. Garbade, W.L. Silber, *Best Execution in Securities Markets: An Application of Signaling and Agency Theory*, „The Journal of Finance”, Vol. 37, No. 2/1982, pp. 493–504.

1. THE CURRENT STATE OF KNOWLEDGE

1.1. AGENCY THEORY FOUNDATIONS

Agency theory is an explication of contractual and transaction costs theories of the firm. Agency theory approach focuses mainly on relations between employer and managers treated as contractors³. Transaction costs of company's functioning occur as a result of coordinating assets allocation. Agency relationship is particular, because it assumes *per se* unequal position with regard to the access to information. Manager possesses actual information about his activities. Thus, his communication with principal can be manipulated. Principal is uncertain about agent's productivity and loyalty. Opportunism risk arises and discrepancy in owner's interests fulfilling takes place. Information asymmetry can be reduced by monitoring (supervision), but it generates additional costs and may be unfounded.

A situation of complete convergence in manager's and employer's goals occurs, when the owner plays agent's role at the same time. On the other hand, firm shares possession and shareholders supervision also stimulate managers to perform better. Information asymmetry may have *ex ante* (before an agreement) and *ex post* character (after an agreement). *Ex ante* problem concerns real competences or abilities held by manager, which are hardly verifiable by the principal, what is associated with negative selection phenomenon⁴. *Ex post* situation is related to manager's opportunism and abuses in acting. Divergence of agent's and principal's targets is a consequence of separation of ownership and control.

In case of interests discrepancy, managers usually tend to develop their careers, enlarge earnings, and stabilize their corporate positions. On the other hand, firm owners try to maximize company's market value⁵. Moreover, business risk is also crucial for this relationship. Variable earnings usage as a main remuneration element leads to focusing on short-time perspective. Research deliberations on principal-agent relationship have economic, legal, sociological and management foundations⁶.

Other incentives, like as prestige, brand recognition, labor market condition, are not included in cited models, but they also are consequential in fact.

³ T. Gruszecki, *Współczesne teorie przedsiębiorstwa*, PWN, Warszawa 2002, p. 218.

⁴ W.F. Samuelson, S.G. Marks, *Ekonomia menedżerska*, PWE, Warszawa 1998, p. 398.

⁵ R.A. Walking, M.S. Long, *Agency theory, managerial welfare and takeover bid resistance*, „Rand journal of Economics”, Vol. 15, No. 1/1984, pp. 54–68.

⁶ S. Shapiro, *Agency Theory*, „Annual Review of Sociology” Vol. 31/2005, pp. 263–284.

Latest research on agency theory and corporate governance include additional factors, e.g. principal-agent relationship sustainability, organizational structure, outsourcing management, micro- and macro-surrounding of the firm, and firm's attributes⁷. Next sections refer to definite problems of principal-agent relationship.

1.2. CONFLICT OF INTERESTS, INFORMATION ASYMMETRY AND SUPERVISION

Conflict of interests between employers and managers was presented in the 1930' by A. Berle and G. Means⁸. Authors emphasize the role of interests convergence and ability to control managers. Their analysis consists of the costs of exerting control. Special accent is put on the nature of conflicts, as hidden actions, hidden information and hidden intention can be listed⁹. Company owner is able to impose on managers acting fully convergent with his goals only when there are no supervision costs. When these costs do not equal zero, monitoring system will be undertaken, if profits from better agents control exceed incurred costs of adjusted supervision system¹⁰. Williamson managed to show that positive costs of supervision lead to discrepancy in firms owners' and managers' choices¹¹. Williamson states that managers' choice will not maximize owners' profits if monitoring costs exist. Ipso facto, Williamson showed supervision costs' impact on the conflict of manager's and firm owner's interests. Research on relations between the principal and agent is also due S. Ross¹². He claims that agency relations should be perceived as social interaction between two subjects. Ross pays significant attention to information asymmetry. The key issue is the uncertainty, if the employee does his work with maximal effort.

Jensen and Meckling¹³, apart from supervision mechanism, propose developing some incentives structure. As an example, an employee who acts differently to designated strategy, is being charged with bonding costs. Manager's

⁷ *Ibidem*, p. 270.

⁸ A. Berle, G. Means, *The Modern Corporation and Private Property*, Macmillan, New York 1932, p. 121.

⁹ C. Mesjasz, *Kontrakty i relacje przedstawicielstwa w nadzorze nad przedsiębiorstwem*, „Organizacja i Kierowanie”, No. 4/1998, p. 162.

¹⁰ R. Marris, *The Economic Theory of Managerial Capitalism*, Macmillan, London 1964.

¹¹ O.E. Williamson, *The Economics of Discretionary Behavior: Managerial Objectives in a Theory of the Firm*, Prentice-Hall, Englewood Cliffs 1964.

¹² S.A. Ross, *The Economic Theory of Agency: The Principal's Problem*, „American Economic Review” Vol. 63, No. 2/1973, pp. 134–139.

¹³ M.J. Jensen, W.H. Meckling, *Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure*, „Journal of Financial Economics”, Vol. 3, No. 4/1976.

decisions that reduce firm owner's utility, generate residual loss. Agency costs are a sum of monitoring costs, bonding costs, and residual loss. In view of managers' organizational knowledge, monitoring them is especially difficult and expensive. That is because, such an employee has an opportunity to manipulate with information strongly. However, there are differences between monitoring in dispersed ownership and blockholders cases. There are disproportionately high costs of monitoring agents in situation of dispersed ownership. Thus, rational apathy takes place, because supervision remains unworthy. On the other hand, managers are more prone to realize blockholders' interests, instead of fulfilling other expectations.

1.3. OWNERSHIP AND MANAGER'S REMUNERATION

Rewarding systems dedicated to managers are treated as incentive structures in order to support shareholders' interests fulfilling. It is important to reveal a remuneration system that promotes reaching owner's goals by manager and reduces conflict of interests. When agent gains a portion of firm's shares besides his own interests, he pursues whole firm's goals. When manager possesses a fraction of shares, the hazard of being redundant or completely subordinated falls. Additionally, the ownership structure changes manager's risk perception, forcing radical projects verification. Jensen and Meckling handle an analysis of dependency between agent's ownership degree and his tendency to defray on non-pecuniary benefits. They postulate that lower fraction of agent's ownership results in higher expenses on non-pecuniary benefits instead of investing in firm's strategic projects.

Jensen's and Meckling's approach is also enriched with monitoring costs impact on shares' market value, because an opportunity to supervise manager raises it. Another finding is that it is neutral, who would bear the agency relationship costs. Jensen and Meckling managed also to show a positive correlation between the growth of a firm and the level of agency costs¹⁴. Monitoring costs limit firm's development.

A very important aspect of manager's performance is the role of remuneration. Fixed salary leads to risk aversion, caused by a desire to keep actual corporate position. Incentive role of high fraction of variable salary level means an encouragement to pursue principal's goals. On the other hand, it induces focusing on short-term performance. Shares possession plays special role, as it was proved above. Ownership reduces expenses on non-pecuniary benefits and reduces conflict of interests scale. Fixed part of remuneration

¹⁴ *Ibidem*, p. 59.

depends usually on position, responsibility range, processes sophistication, type of business or firm size and contains cash benefits and some supplements¹⁵. Its role is to stabilize manager's income. Fixed remuneration may also mean shares or share options. Variable remuneration depends on manager's performance, mainly financial outcomes and may occur in different forms. This type of remuneration is being used in order to motivate manager's to reach firm owner's goals.

Manager's participation in ownership may be treated as a form of remuneration. Because of its character, it enhances managers' good performance in long-term perspective. Managerial ownership can be combined with fixed and variable salary as well as with other benefits in order to create proper incentives. In this manner, there is a significant link between manager's performance, his ownership and remuneration forms.

2. THE METHODOLOGY OF RESEARCH

Company, in its internal or external environment, has to operate under formal and informal contracts with shareholders, managers, employees and other stakeholders. It is crucial that those contracts require manager to pursue firm owner's interests. Polish legal frames give an opportunity to hire managers in different forms — civil and labor. In this paper, I do not take into account the case of self-employed managers. Analysis presented in next sections deals with top managers issues (omitting middle and lower levels of management), because of their authorization to make key decisions. A study on managers employment is preceded by Polish civil law principles general description.

The methodology of this research bases on institutional economics (mainly transaction costs economics and agency theory) application to legal regulation analysis. These tools refer above all to risk issues, opportunism, supervision and conflict of interests. It enables to proceed formally through interdisciplinary law and economics problem.

¹⁵ P. Urbanek, *Nadzór korporacyjny a wynagrodzenia menedżerów*, Wydawnictwo Uniwersytetu Łódzkiego, Łódź 2005, p. 149.

3. THE RESEARCH PROCESS

3.1. MANAGERIAL CONTRACTS

Some of fundamental civil law rules are especially important for relations between employer and manager. Equality principle excludes formal subordination. Autonomy allows to create any legal relationship, what has a great impact on contracting freedom. Responsibility for detriments leads to fixing deeds effects (not necessarily because of being guilty)¹⁶.

Managerial contract is an example of unnamed legal form, because Polish regulations do not mention it directly. However, the Civil Code allows to make an unnamed contract for doing some services. Thus, managerial contract is a way to transfer competences to run the business¹⁷. Management activities are being done in spite of firm's interests and on its account. Managerial contracts allows managers to do necessary physical acts as well as legal actions.

Unnamed contract that obliges manager to do some services, which are not regulated by other legal frames, can be considered as service contracts mentioned in Polish Civil Code (Title XXI of the act)¹⁸. Art. 743 of the Civil Code states that mandatory has to do some specified legal action in principal's interest. Art. 740 deals with the information sharing issue and reports from undertaken operations. Additionally, all benefits gained during services provided by manager, have to be given to principal. Those regulations exhibit clearly information asymmetry, conflict of interests and acting in the interest of employer.

Service contracts imply an obligation of accurate operating¹⁹. What is more, service contracts refer mainly to management processes. On the other hand, managerial contracts often require determined results achieving, as market position, financial goals or new product implementation, what makes them similar to contracts of specific work. As a result, managerial contracts are a sort of mixed-type civil contracts. There are no legal frames additional to basic civil law principles that could be recalled in case of uncertainty or dispute. Real legal force of this agreement depends only on notations contained in the contract. As a consequence, managerial contracts need to determine all aspects of the job.

¹⁶ A. Wolter, J. Ignatowicz, K. Stefaniuk, *Prawo cywilne. Zarys części ogólnej*, LexisNexis, Warszawa 2001, pp. 32–34.

¹⁷ *Ustawa z dnia 23 kwietnia 1964 r. — Kodeks cywilny (Civil Code, April 23, 1964)*, Dz.U., No. 16, item 93.

¹⁸ *Ibidem*.

¹⁹ *Ibidem*.

Managerial contracts allow to determine remuneration freely. The whole remuneration system, including fixed and variable salary types and payment details, should be contained in the contract. Similar to remuneration, work time within managerial contracts can be specified arbitrarily. Manager is usually obliged to be firm-loyal and not to violate non-competition rule. Because of a huge portion of organizational knowledge, non-competition violation is linked with the cooperation period as well as some time after contract expiration. If manager breaks this commitment, he is usually forced to pay the penalty. High level of severance pay is a form of rewarding for loyalty²⁰. If it is not stated directly in managerial contract, in general, manager has no rights for vacation, sick pay and other supplements. Every day of leave would be unpaid. However, both employer and manager can stipulate some paid intervals. What is more, there may exist rules of days of leave accumulation or compensation in cash²¹.

Freedom of contracts, present in managerial contracts, stimulates manager and enables the raise in the effectiveness level of agency relationship, because it fits firm's needs. Managerial contracts are more flexible than employment contracts in remuneration sphere — manager can waive from wages or postpone them. There is no minimal wage guaranteed. Additionally, managerial contracts allows manager's full responsibility for his activities²², what is limited by labor law in employment contracts²³. High responsibility is usually linked with great prestige of a job. Managerial contract can be terminated easily both by employer or manager at any time²⁴. Finally, thanks to managerial contracts, employer does not have to run specific documentation and to bear social security costs (pensions, rents)²⁵.

3.2. EMPLOYMENT CONTRACTS

Domain of labor law refers only to paid activities. Employee is economically dependent on the firm. His work is done in order to achieve employ-

²⁰ I. Rakowska-Boroń, *Kto może dyktować warunki i zawrzeć kontrakt zamiast umowy o pracę*, „Gazeta Prawna”, No. 26/2008.

²¹ W. Gujski, *Kontrakty menedżerskie. Umowy cywilnoprawne o świadczenie pracy z wzorami*, LexisNexis, Warszawa 2008, p. 25.

²² *Ustawa z dnia 23 kwietnia 1964 r. — Kodeks cywilny (Civil Code, April 23, 1964)*, *op. cit.*

²³ *Ustawa z dnia 26 czerwca 1974 r. — Kodeks pracy (Labor Code, June 26, 1974)*, Dz.U., No. 21, item 94.

²⁴ *Ustawa z dnia 23 kwietnia 1964 r. — Kodeks cywilny (Civil Code, April 23, 1964)*, *op. cit.*

²⁵ R. Sadlik, *Kiedy umowa o pracę a kiedy kontrakt menedżerski?*, „Gazeta Prawna”, No. 81/2006, p. 19.

er's interests. Moreover, the work has to be done personally and freely. Social work (unpaid and compulsory) and prisoners' work are exemptions to that.

Labor law concerns social relations linked with work done dependently. Commitments are bilateral, because employer has to pay for work done by employee. Fundamental labor law rules are mentioned in the Constitution of the Republic Poland and Polish Labor Code. Those rules are used as legislative guidelines and interpretation hints. Basic employees' rights are: labor freedom, minimal wage guarantee, reasonable remuneration and days of leave (vacation)²⁶. Main employer's obligations are: respect for employee's dignity and other personal values, safe and hygienic work, support in qualifications raising, fulfilling employees' social and cultural needs²⁷. Collective labor law stands also for associating freedom, and employees' participation in management. In law and economics perspective, the privilege rule (employment contracts may be more beneficial for employee than Labor Code regulations) and the automatism rule (if employment contracts are less beneficial for employee than Labor Code regulation, Labor Code has to be applied *ex lege*) is also important. Last, but not least, employees cannot be discriminated for any characteristics.

Managers can be hired on employment contracts in Poland²⁸. Using employment contracts means a necessity of fulfilling labor law principles. Manager has to do orders at a place and time determined by firm's owner. It is contrary to the idea of ownership and management functions separation. Typical employment contracts contain notations about sort of a job, workplace, work time and remuneration. Because of manager's special tasks, employment contracts may include some additional elements (e.g. elastic remuneration), but convergent with labor law (so wages must be at least at the level of minimal wage guaranteed). Another notations cannot limit employee's rights to vacations and sick leave. Some advantage of employment contracts from managers' point of view is social security. Thanks to compulsory contributions on health care, rents or pensions, managers get some sort of social stability.

²⁶ Ustawa z dnia 26 czerwca 1974 r. — Kodeks pracy (Labor Code, June 26, 1974), *op. cit.*

²⁷ *Ibidem.*

²⁸ Ustawa z dnia 15 września 2000 r. — Kodeks spółek handlowych (Business Organizations Code, September 15, 2000), Dz.U., No. 94, item 1037.

4. THE RESULTS OF RESEARCH

Analysis of hiring forms dedicated to managers in Poland exhibits that, in point of fact, there are two appropriate — managerial contract and employment contract. First of all, they come from separate law branches: civil and labor law. Basic principles of regulations have a crucial impact on contract characteristics. Main difference lies in the dependence issue. Managerial contracts enables manager to use his management tools, experience and business contacts freely. Elasticity of remuneration, work time and responsibility makes managerial contracts a better hiring form than employment contracts, because of a capability to reduce agency problems. Moreover, managerial contracts lead to different interest groups goals achieving, what is convergent with corporate governance assumptions. On the other hand, managerial contracts require bigger effort on contract construction and problems with optimal contract establishing. However, elasticity of managerial contracts recompenses those problems.

CONCLUSIONS

Accordingly to the hypothesis of this paper, its main research problem referred to relations between employer and manager. Manners of this issue legalization were examined in agency theory perspective. Targets that managers and firm owners pursue, may be different. This conflict of interests is a consequence of owner's and manager's functions division, however it is inevitable especially in well-developed companies. One of the methods of this conflict reduction is to oversee (monitor) managers. Another solution is incentives creating, e.g. within remuneration forms. A crucial aspect of agency theory research domain is also information asymmetry. Information asymmetry is natural in some measure, but the point is not to use it inconsistently with shareholders' targets (abuse of trust).

Some objections towards managerial contracts lie in difficulties with contract construction, implied by supervision problems and impossibility to make an absolutely complete contract. On the other hand, alternatives mean less favorable and rigid formal institutions that would probably cause mismatching between manager's and owner's expectations. As it was already mentioned above, optimal relations reduce agency costs level and support corporate governance system. I chose agency theory as a groundwork, because it enables to carry a consistent problem analysis with specified assumptions on involved people' rationality and on their interests.

Reasoning presented in this paper confirms that bilateral managerial contract enables to reduce agency problems. Managerial contract institution helps to implement selected supervision models in order to counteract negative effects of information asymmetry. Additionally, an opportunity to adjust remuneration forms elastically is motivating for both sides of the contract. Managerial contract molds also manager's risk aversion, making his interests convergent with those of owner's. Summing up, managerial contract is the best form of hiring dedicated to managers in Poland. Its legal frames causes that it reduces agency problems far more than employment contract based on labor law. The findings of this paper corroborate employment contracts' rigidity and managerial contracts' relative elasticity that is claimed very often in published articles, focused only on one from mentioned regulations. Thus, the following text is complementary to the existing literature, expands it and enriches with analytical tools that allow to figure out, which of the contracts is more optimal for hiring managers.

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