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Management contracts in the company supervision and management system

K e y w o r d s: management contract, corporate governance, business management theories, business model

S u m m a r y: The paper presents the essence, structure and significance of management contracts in the process of company supervision and management. The basic premises for introducing management contracts and supervisor contracts resulting mostly from the growth of the company have also been characterised.

In particular, the first part of the paper provides the definitions of corporate governance and ownership supervision, and mechanisms of this supervision have been identified along with statement of their effectiveness and efficiency. The theoretical grounds for management contracts have been broadly analysed, with special attention paid to the ownership rights theory, contractual view of a company (nexus contracts), the management productivity concept, the issue of trusting business partners, the theory of affectuation, the agency theory, and the stewardship theory. The predictive and projective functions of the agency theory have been criticised, which is commonly considered the leading concept in corporate governance.

As regards the essence and premises for introducing management contracts, organisational and legal forms of business management have been described in detail, namely management personalisation, management autonomisation, management deconcentration and decentralisation. The analysis of the issue has been mostly focused on the provisions of a business management contract, with a special view on the subject matter of the contract, duties of both parties, responsibility of the manager, costs of the agent (manager) and the method of their compensation. The components of the manager's salary and the methods of their determination have been defined. Finally, a postulate for building high culture of contracts in the economy in general and management contracts in particular has been included.

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1. Preliminary notes

Manufacturing products as the basic activity of the company is related to executing manufacturing (organic) and management functions (regulatory). The former are most often executed by employees and are assigned to them by the owners in the first order. As the enterprise grows, management functions are also delegated, until the ownership and management functions are completely separated. The owner of the company ceases managing it at a specific stage of business development, for various reasons.[1]

When ownership is separated from management, or rather when the principal--plenipotentiary correlation arises, the problem of monitoring and control of the principal (owner) over the behaviour of the plenipotentiary (manager) comes to life. This problem in essence boils down to creating the appropriate supervision and management system for the company, which is called by the name of corporate governance.

Among many definitions of corporate governance reported in numerous and broad literature, at least some are worth quoting. In one of them, regarded as concise and usable, corporate governance is specified as "the method with which providers of finances for corporations secure the return rate on these investments (1, p. 73).

For the purpose of further analyses, the statement has been assumed that effective corporate governance consists in establishing control and stimuli, i.e. mechanisms of control over the highest management personnel, resulting from external and internal circumstances of the company, necessary to ensure protection of the capital entrusted to it by its partners or stockholders (2, p. IX).[2]

The researchers who deal with this issue have accepted the thesis that the organisation which observes principles of good supervision often achieves better results, is better perceived, enjoys trust and good reputation. It is confirmed with the research by Rafael La Porta, who declares that in the countries where better protecting is provided for stockholders, the financial markets are more developed and enterprises have definitely better possibilities of access to external financing and better conditions for development (3, p. 6). This issue may be summarised in brief with the thesis that building the proper systems of corporate governance is an important premise for development of enterprises and improvement of their productivity.

It is important that the movement initiated in the USA and in the United Kingdom in 1990s for improving systems of corporate governance has spread throughout the world. Many world-known corporations have recognised improvement of this system as a significant determinant of improvement of the results of the company and its

[1] Unlike in case of entrepreneurs, that is the owners actively participating in managing the company, there is a large group of owners who have invested their capital by participation in the company and do not want, cannot or do not have time or possibility of managing this capital (passive owners).

[2] Ownership supervision means the system of institutions and corresponding inspection tools used by the owner of the capital in the process of company supervision and management. In short, it is a method of exercising supervision and management actions in the company.

development (2, p. IX). The premise has been assumed that many current concepts and mechanisms of corporate governance stated and recognised by the researchers become in practice a low-use management method for modern companies and institutions.

2. Mechanisms of corporate governance

The mechanisms resulting from the surroundings of the corporation cannot be omitted in the characterisation of various institutions of corporate governance. The select major of them are:

- political conditions;
- legal regulations and provisions which describe the role and scope of responsibility of the persons who manage the interests of the company or of other business entities;
- legal regulations and provisions which form the framework for activities of the supervision bodies, e.g. assemblies of partners;
- the financial market, especially the stock and bonds market;
- the enterprise inspection market, especially in mergers and takeovers;
- the manager services market as a mechanism verifying management talents;
- competition in the market of products.

Culture of corporate supervision understood as corporate governance was also expressed in the standards approved by the OECD Board. They are formulated in a way general enough to be able to include in their framework any model of a joint stock company which is provided for in the OECD legislation. At the same time, they do not have the nature of mandatory obligation. Their objective is to provide master patterns for state-level regulations (4, p. 345 et seqq.).

However, in terms of a single company, both in the private and public sectors, ownership supervision inside a company will play a dominant role. It may be executed with various methods like:

- Creating and developing supervision institutions in the form of supervision boards, administration boards, additional management levels, programme and advisory boards, revision committees, etc.
- Control over the actions of the plenipotentiary by, for example, introduction of the controlling system, internal audit, a strategic results card; expansion of such tools as the information system, budgeting, reporting, developing organisational structures, which means development and implementation of principles, procedures and rules for activities, included in traditional and modern methods of management and development of the organisation.
- Preparing contracts on the results of company activities which would be based on the results of these activities related to the stimuli system. Many research-

ers believe that the problem of ownership supervision should be solved on the level of pro-effectiveness of management and direction contracts.[3]

To end the discussion of a more general issue, that is concerning effectiveness of institutions and mechanisms of ownership supervision, the actions of the bodies of the European Union should be noticed. Three successive offices believe that administrative charges imposed on the EU companies should be restricted. Activities will be undertaken to simplify and modernise the business surroundings for the companies, especially to improve legal regulations concerning ownership supervision (*Monitor Europejski*, 2009, no. 51, p. 27).

The listed mechanisms and models of corporate governance, however important and absolutely necessary, are insufficient to perform this role in a satisfactory way, and constitute only general frames for detailed solutions which should take into consideration the specific nature of the organisation and its surroundings. In other words, a statement may be made that neither code provisions, nor market mechanisms, nor good practices codes, nor even appointed supervision institutions and developed control tools constitute corporate governance with sufficient level of effectiveness and efficiency. The reason for this is, among others, the specific nature and varied conditions of functioning of various organisations (agencies), which affects the choice of corporate governance tools. Conclusions and organisational and legal solutions appropriate and valid for the given organisation may not necessarily be applied elsewhere. Moreover, the said corporate governance mechanisms make up a set of limitations of negative nature, as they include a long list of donts, dos, recommendations, and even penal sanctions, without positive stimuli which would encourage the agent to employ functional actions in reference to the expectations and objectives of the principal. For these reasons, a large number of researchers in these issues understand the problem of corporate governance, or the theory of agency in a broader sense, as a theory of economic stimuli (tangible encouragements). The most important method of solution to this problem would be to prepare a contract on the results of activities, that is based on the outcomes related to the system of stimuli (5, pp. 1–5; 6, pp. 245–246). In short, the issue of supervision should be solved, according to these authors, in the field of incentive contracts.

All in all, the traditional problem of corporate governance, with special attention paid to effectiveness of ownership supervision, comes down to finding answers to the following questions:

– How to set up a system of stimuli which would make the plenipotentiary to execute the objectives of the principal in the most effective way, at the same time discouraging him/ her from pursuing his/ her own objectives?

[3] Contract of direction shall mean a contract of employment concluded with the manager of organisational units within the given company. In-house contracts of direction create new organisational and legal forms of hiring managers of medium and lower levels of management. This situation highly affects effectiveness and efficiency of management and increase in effectiveness of the organisation.

– How and in which scope may the principal effectively control over and monitor activities of the plenipotentiary in terms of his/ her executing the appointed tasks and achieving the expected results?

Both these issues, or rather both aspects of corporate governance, seem to be of the same importance. Their solution proves to be a complex task which poses controversies and, in case of the public sector, even stirs up political emotions.

3. Theoretical grounds for management contracts

Among numerous concepts of management and interpretations of corporate governance which in particular take into account the issues of management contracts, there are: theory of ownership rights, contract-approach to the company, economic stimuli theory and the related productivity concepts.

The ownership rights theory perceives the company as a set of assets and rights to manage them. It focuses on the right of stockholders or shareholders to enforce control over the assets, the right to use them, as well as the right to residual claims (7, pp. 1047–1073). One of the definitions of corporate governance actually refers to the theory of ownership rights (see p. 1 of the paper).

The contract approach to the company regards the company as a set (bundle) of contracts (nexus contracts). In general, contract is understood as a voluntary agreement of mutual obligations related to interchange of goods between the parties (8, pp. 305–307). One has to emphasise here that the contract as a mechanism of executing obligations and, at the same time, a valid mechanism of ownership supervision, should be analysed from the point of view of explicite contracts and in the context of non-public, implicite contracts. The former aspect of the contract has formal nature and most often is the result of negotiations, and its enforcing is based on the adopted legal basis. The latter is based on informal rules, customs, assumptions as regards economic rationality of the parties, the skill of calculating risk, observation of behaviour of the parties over a longer period of time and, most of all, the level of social trust, with special attention paid to trust in business partners. These issues are described in more detail in the following text, with a view on the terms and definitions developed in the field of management.

The issue of the theory of stimuli is explained in the theory of economics in a very concise way, succinct. Its representatives have adopted an assumption of reasonable behaviour of business entities functioning under conditions of perfectly competitive markets. It means maximisation of profit by the owners and minimisation of costs, with the company being perceived as a black-box, without stating the phenomena and processes in it.

On the basis of the manager theories of company, the issue of stimuli is discussed within the framework of the concept of productivity. Their authors emphasise that this specific and efficient at the same time system of defining salaries in team work

for individual teams creates and stimulates productivity. Last but not least, the following statement is observed: if the relationship is maintained between expenditures and remuneration of employees, productivity of the entire team (which creates the salary pool) increases. If this relationship is rather loose, productivity of the team decreases (10, pp. 11–13; 11, p. 267).

To complete the presentation of the selected concepts related to corporate supervision, the stewardship theory should also be quoted. This theory, with psychological and situational factors of motivation included, assumes that managers act in the interest of their principals, owners, and may be trusted. To increase effectiveness of the organisation, the value for the stockholders, they should be given more authority, freedom of action, preferably by combining the CEO and board chairperson functions, thus creating a management board in a single-level system of supervision and business management.

The essence of this concept is the thesis that value is created not only by particular key resources and processes (components of the business model), but mostly their mobilisation and unique, creative configuration in the manufacturing process, which is the work of the entrepreneur or of the manager (the theory of affectuation).[4]

The presented concepts do not include the agency theory which is commonly considered the basic model of description and analysis of corporate governance. It assumes existence of the conflict between the owner and the manager, and its softer version refers to the discrepancy of interests between these entities. The problem of agency, according to its followers, results from many causes, some of more important of them include contradictory interests of stockholders and managers, asymmetry of information, different attitudes of stockholders and managers to risk and different degree of attitude to risk.

The assumed (pretty absurd) principle undermines the reasons for concluding contracts. The question arises, should business be made with someone who by definition will act against the expectations of the other party, i.e. stockholders? The problem of discrepancy of interests lies rather in the fact that stockholders do not want or do not have a properly precise model of business, or even a vision of this model, and they also differ considerably between each other in this respect. Whatever the angle, this group is highly differentiated (12).

Asymmetry of information between the owner and the manager is obvious and natural, resulting, among others, from separation of the supervisory and managing functions. Basically, each party in the conflict has hidden information: not all types of hidden information are necessary for the other party. Dwelling more on this issue,

[4] Managers as individuals (separately or in teams) are bodies of legal persons. In this meaning managers are representatives of the legal person who remain with it in the organisational relationship whose contents is execution of the function of the body in the way specified in the statutory provisions and in the bylaws of the given legal person. This is what differentiates them from plenipotentiaries acting for the company but not being its part and manager–employees who (even though included in the company) do not constitute its bodies in the meaning stated above.

one could state that far-reaching transparency (open access to information) is harmful for the company, which means to both parties of the contract. The problem is not in asymmetry of information and rather in using by the manager private information for actions which are contrary to the interest of the owner. This phenomenon of abuse of trust by managers is quite often, too often, yet it is difficult to see it as a standard, a principle of corporate governance.

As regards the idea of management contracts, the advocates of the agency theory have major doubts. Is there any point to conclude contracts when certain activities of the manager are hidden, invisible for the owner, when they cannot be stated in the contract because there is no way to verify them?

The trend to autonomise and decentralise management has been observed for a long time. As regards the managers, or even executive employees, the principle of management through objectives and freedom of selecting the method of execution is commonly applied. Monitoring behaviour of the manager analysed in this context seems to be peculiar and probably groundless, because what is the value of information for the contract on how hard the president is working?

Another appearing problem of the agency theory results from lack of physical possibility of foreseeing all the circumstances of the manager, which prevents the possibility of drafting a complete contract, that is one which would ex ante specify what activities may be undertaken by the manager under future conditions (14).

This issue has been seemingly satisfactorily solved. Usually there are two basic approaches to specifying the duties of the manager. Some outline them in general, detailing only areas of activities of the manager. Other strive to make a detailed letter of his/ her duties. In believe that, from the practical point of view, the indirect method is the best. It is known that foreseeing all future problems is difficult at the time of concluding the contract. Too general phrases may blur the actual objective of work. Combination of both options gives the advantage that the contract includes elements of obligation to act carefully and obligation of the result. On the one hand, the administrator may have very precise tasks assigned (resulting from strategy and long-term objectives of the company) and may be held accountable for the results, and at the same time may be obliged to apply increased diligence in other areas.

The presentation of the issues of management contracts in the light of the agency theory thus ends with indication of the costs of the agency which result from construction and application of contracts:

- the costs of contract structure;
- the costs of monitoring and inspecting activities of the agent by the principal;
- the costs of the agent—execution of the interests of the principal;
- the residual loss—the loss on the difference of values which results from discrepancies between the interests of the principal and of the agent which is incurred by the principal; it means the loss related to the fact that full execution of the contract exceeds the benefits which it brings about (15).

The following part of the paper includes an attempt at finding solution to these issues and answers to at least some of the above questions.

4. The essence of the management contract

The growth of the company is a process which results in changes in its organisational and legal form. This is what happens in case of legal persons which do not operate directly within legal regulations (from the point of view of the law they are only a contractual structure) but solely through their bodies. The bodies of legal persons are formed by individuals as single persons or teams of persons, e.g. the manager. In this meaning managers are representatives of the legal person who remain with it in the organisational relationship whose content is execution of the function of the body in the way specified in the statutory provisions and in the bylaws of the given legal person (16).

Moreover, there is a large number of owners in companies who have capital ready and who are looking for the opportunities of investing this capital by participation in a company (the so-called passive entrepreneurs). Both passive and active entrepreneurs are interested in finding persons who on their behalf, in their name and interest, as well as on their account and risk, would effect management functions. Entrepreneurs (stockholders) include the managers in their companies, use their knowledge, experience, skills, cognitive capacities, reputation in the market, in order to meet specific needs of the company to which they (the managers) bring income. It may be then assumed that the managers are representatives of the legal person and of the owners (the stockholders) who invested their financial capital in it, the representatives (the agents) who generate profits and other values for the stockholders (the stakeholders) or, in a broader meaning, who create agency benefits.

The following are among various organisational forms of enterprise management, which result from its development and at the same time constitute grounds for contracts:

- professional enhancement of management with manager services. Providing manager services has professional nature, and specific characteristics of these services justify the need to specify them in the management contract;
- management autonomisation by creating the managing body provided with competencies specified with the regulations of the law and with the provisions of the by-laws of the company (e.g. the board of directors, the proxy), which the owner cannot change, at least on the *ad hoc* basis;
- deconcentration of management by appointing plenipotentiaries who act on behalf of the owner in the scope of their authorisation and with legal consequences for him;
- decentralisation of management by assigning higher-level rights to the lower level, which is related to hiring professional management personnel with the

duties of effecting competent management over a part of the enterprise. In this case, too, performing a management function of the properly high level has professional nature, and the specific nature of these services may be described in the so-called contracts of management.

A management contract is a contract regulated with the law as the so-called innominate agreement. The legal source for this type of agreements is expressed in Article 353 of the Civil Code (PL abbr. k.c.) in the principle of freedom of agreements, on the basis of which the parties have more freedom in developing their contents, yet within the limits set forth in Article 58 k.c., i.e. that in a specific case this cannot be a contract contrary to the act of the law or aiming at bypassing the act of the law. In this contract, the individual undertakes to apply due diligence to achieve specific economic objectives. However, it is not a contract for achieving result (work), as diligence and not the result of the activities of the administrator will be the decisive measure in assessment of execution of the contract. In short, it includes, first of all, elements of the contract of mandate, with some elements of a contract for performance of a specific task.

Contract of management is different from contract of employment. The basic feature which sets the relationship of employment apart from other obligation relationships is the organisational hierarchy of the employee understood as the obligation of personal execution of work in a specified place and time, according to the recommendations of the employer. With the management contract, a relationship arises which is free of office dependency, and subordination of the manager is mostly the consequence of inspection rights due for the subordinate entity in reference to him/ her—on the one hand, and the reporting duties of the manager on the other hand. The Supreme Court indicated this in the sentence of 4 April 2002 (I PKN 776/00 OSNP2004/6/94), rightly stating that conclusion of a business management contract (the management contract) results in assigning the rights by the owners of this type of company on the managing person (the manager) to individually undertake actual and legal activities concerning management of the company, which means self-reliance in the scope of business management, freedom in selecting the method (style) of management, the possibility of taking advantage of the current trade contacts, professional experience, organisational skills, reputation, and own image. These features are absent in the relationship of employment, in which the employing entity is entitled to issue binding instructions to the employee. In case of the management contract, there is no permanent body which would regularly (daily) manage the work of the manager.[5]

It has to be stated that the contract on the basis of which work is provided cannot have mixed nature combining elements of a contract of employment and a civil law contract (see the sentence of the Supreme Court of 23 January 2002: I PKN 786/00, OSNP 2004 no. 2, Item 30). Thus, in case of disputes, if any, the court would decide what type of contract was used to connect the parties. Qualification of the given

[5] According to practicians, especially lawyers, contract of management means a civil law contract for provision of management services, and is based on Article 750 k.c.

legal relationship as a relationship of employment or a management contract is determined mostly by the method of execution of employment and the will of the parties who conclude the contract. The final qualification of the management contract as a contract of employment or a civil law contract depends on the circumstances of the specific case. It has to be stated that the name of the contract alone has no decisive significance.

The essence of the management contract, regarded as the contractual relationship of service, is the fact that one party (the service receiver: the manager, the manager group or the manager company) as a legally independent entity undertakes to manage the company of the other party on a fee-paid basis (for a consideration), i.e. the entrepreneur—the service provider, managing this enterprise as an autonomous entity—on behalf of the entrepreneur, for the benefit and in the interest of the entrepreneur and on his account and risk. The service of business management understood in the context of theory of organisation and management consists in executing the process of planning, organising, managing and inspecting the activities, using resources of the company for achievement of the defined objectives.

An important element of the definition of the management contract is the phrase "the contract for provision of services" (Article 750 of the Civil Code). Management is a typical service, therefore the standards of the civil code should be used to it in reference to the obligations of providing services, which mostly means regulations on the contract of mandate and the contract for performance of a specific task. These contracts differ basically due to the differences in the obligations.

The contract of mandate, just like the contract of employment, is based on the obligation of due action. A person receiving the order (mandate) is thus not obliged to act for the result that would be a specific result planned earlier by the parties, because his/ her due diligence would be enough to achieve the intended objective. The order is thus based on trust of the person issuing the order to the person receiving the order.

The said result is thus the basis of obligation which defines the contract for performance of a specific task, where the risk is shifted on the person receiving the order. He/ she undertakes to execute the defined work, in return for which the employer undertakes to pay the remuneration (Article 627 of the Civil Code).

The above differentiation is very significant, because the management contract is a mixed contract with elements of various mixed agreements. The obligations of due action and result often come side by side in them. Management contracts may also sometimes include elements characteristic of a contract of employment, which may often suggest their legal employment nature.

To summarise the above, it has to be emphasised that civil law gives broader grounds for free shaping of the legal relationship between a capital company and the manager(s) than the labour law. The name used for this relationship is of practical little significance, as it is not the name of the contract but its contents which is decisive. This is the reason why the analysis of the elements of the management contract in the context of rights and duties of the manager is important.

5. The costs of the agent and the methods of their compensation

Managing a company includes actual activities related to managing issues inside the company and legal activities which consist in representing the company externally. The degree of execution of these functions depends on professional competencies of the manager, i.e. on his/ her intellect, creative imagination, foreseeing and shaping the future, as well as the capacity to capture weak signals.

It may be noticed that the said designata of broadly understood manager qualifications (competencies) are of highly varied nature, yet they can be integrated into an orderly entity. Their essence is intangible and they feature multifunctionality, thus they may be used at the same time in many places and are not wearing out along the way or, quite on the contrary, even gain in value. The most significant is, however, that competencies of the manager properly used and incited by the entrepreneur create utilitarian value, i.e. they can satisfy the needs of the company by mobilisation and unique creative configuration of his/ her resources or continuous overcoming of barriers for development of the company, which ultimately brings income. Acquiring these competencies, their shaping and replication, require from the manager talents, investing in his/ her development in a relatively long period of time (time intensity), which highly increases the costs of the agent.

With the appropriate competencies and freedom of action, the manager can function independently and autonomously. These are some of the reasons why there are high requirements for the managers, as it is him/ her from whom as a professional high commitment to the growth of the company is expected, as well as bringing in new values and methods of management, such as his/ her own principles, effective forms of motivating employees, contracts with business partners and prospective clients. New, effective organisational solutions are valuable intangibles for the company, and these are significant costs of the agent.

Conclusion of the management contract increases his/ her responsibility towards the owner of the company for damages, if any. Even though the contract of management is basically a due diligence contract, the parties of the contract may include in it elements typical of contracts for performance of a specific task, that is contracts of result, imposing on the manager the obligation of achieving specific levels of profit, financial liquidity, increasing the share in the market, introduction of new products, restructuring the company. These criteria may be different and may depend on both parties, yet they should be in the form of precisely specified and easy to control economic indicators. As a result of such entries, the manager will be responsible not only for negligent execution of his/ her duties, but also for lack of the results. Moreover, the manager may be liable for the incurred losses, but also for the lost benefits which would be achieved provided diligence was applied by the administrator (16).

Concluding the contract, the manager is responsible with his/ her entire personal property (Article 471 k.c. et seqq.), and this type of contract features lack of limita-

tions in enforcement of these dues. The reigns of the management contract in the scope of responsibility of the manager are thus incomparably higher than these with responsibility of regular employees (Article 119 of the Labour Code). However, responsibility of the manager must be very precisely specified, because responsibility in the civil law is based on the principle of guilt, and suing claims for damages (on the basis of Article 471 k.c.) is pretty difficult and lengthy.

The costs of the agent are significantly increased with different protection measures which facilitate suing the manager for damages. If something is enjoyable, it cannot be forced. A blank bill of exchange with the statement specifying the basis of its activating, blockade over part of paid remuneration in a separate bank account, along with authorisation of the owner of the company to use it under specific situations, or payment of part of the remuneration in stock (shares) of the company being managed, on which pledge is established. The entity hiring a civil law administrator may protect its interests with a reservation in the contract of contractual indemnities or payment of the deposit.

Management contracts give the owner high freedom in concluding and terminating the contract with the manager. Although they are concluded for a defined period of time, as well as undefined (the objective is to ensure more efficient long-term management), the parties may add entries which specify the causes of termination of the contract. Otherwise, by virtue of Article 746 k.c., the person receiving the order and the employer may terminate the contract at any time. This facilitates the owner to release an ineffective manager.

The contract of management, just like the contract of mandate, may be fee-paid and free. The latter is a rare situation in practice, though.

The components of wages of the administrator may be shaped freely in accordance with the choices of the parties. Unlike in the contract of employment, the parties are not dependent on the existing salary regulations or collective systems of employment, which usually do not include sufficiently satisfactory flexible salary solutions. The parties may freely define the system and method of remuneration for the manager, the terms, the time and place of payment, the methodology of settlement related to the result, define the components of damages, if any, for delay in payment or unjustified diminishing, define the cases when and by how much it may be increased or reduced, define admissibility and amounts of deductions, the method of mediation in case of disputes in this respect, etc.

Usually, the remuneration is paid in two basic parts: fixed and variable. The fixed part is relatively small, yet paid regularly. The variable parts may be paid often or occasionally. Usually commission, royalties, appreciation bonus, options for securities or shares, and awarding shares and stock are also found in practice.

Commission means a specified percentage of share of the manager in the proceeds (turnover) achieved by the company in participation or with participation of the manager. It is calculated on a specific part of the proceeds of the company generated by the manager (e.g. from the proceeds on a group of products or clients, from a specific

territory or a specific organisational unit). Its amount is determined on the proceeds, linearly, progressively or degressively, usually also with factors reducing the commission included, i.e. the factors which limit its maximum allowed amount.

Percentage of profits defines the share of the manager in the profit of the company. It is one of these components of salary which depend on general productivity of the company. Percentage of profits does not give the manager the partner status, as the right to percentage of profits comes from the contents of the management contract and not from the deed of the company. It is interesting to note that percentage of profits is charged on the gross profit of the company and constitutes the cost of its obtaining, unless the provisions of the contract decide otherwise.

The statutory bonus is similar in essence to commission and percentage of profits. It partly depends on the results of work of the manager, as well as on the results of operation of the company. In the practice of concluding management contracts, it is used as a type of remuneration for execution of specific tasks of major significance for the company, independently of other components of remuneration. It has to be added here that it is characterised by a formalised method of defining the principles and conditions of awarding. If these are met by the manager, the bonus may be claimed.

On the other hand, if awarding the bonus is left to free recognition of the employing entity, then it has the nature of prize, even though it may be called a bonus. The so-called appreciation bonus is an example used in practice. Even though it is named a bonus, it actually is the award granted as a result of positive assessment of the effort of the manager. In such a case this effort cannot be precisely measured, e.g. good quality of work, execution of a task of special degree of difficulty, making improvements in work.

The right of the entity to demand such a bonus arises only at the date of the decision of the employing entity awarding the bonus (the award) to the manager.

Management option is an interesting item in the remuneration of managers of the highest level, used commonly in Western countries. These consist in entitling the manager to acquire or assume in the future, usually after a specific time, stock or shares in the managed company. Many contracts found in practice include additional motivational elements as well.

6. Conclusion

The basic premises for shaping management contracts as a mechanism of supervision and management are to be found in the growth of the company and in seeking profit by the entrepreneurs. The following are among various forms of business management, resulting from its development and at the same time constituting the basis for the contracts: management autonomisation, deconcentration and decentralisation of management and adding professional characteristics to the management. These or-

ganisational solutions have created the management personnel of various levels who, managing the company, mobilise and creatively configure its resources, incurring in this process significant expenses and expenditures, specified as the cost of the agent. This co-operation of both most important stakeholders and creative combination of their capitals, financial and intellect, brings about income for the company. The duties of both parties included in the contract, as well as other provisions of the contract, are based on trust, and discrepancy of interests, if any, asymmetry of information, or different attitudes to risk, are natural and constitute the subject matter of negotiation of the contract. It seems that the properly constructed contract of management significantly eliminates the problems of agency and provides solutions as regards the issues of ownership supervision. The internalisation of organisational objectives and objectives of the manager and the system of stimuli included in it should effectively discourage him/ her from opportunistic actions. However, the practice in the Polish companies is different. Namely, the basic feature used in systems of remuneration in the Polish companies is emphasising long-term security of the managers and neglecting criteria of success. The boards rarely ever apply more aggressive instruments of motivating the managers. Fixed remuneration is the dominant factor in remunerating persons managing Polish companies. The variable component of salaries is most often related to the indicator of increase in sale which is safe for the managers. Occasionally companies apply components of salaries based on ownership, i.e. stock and stock options (17, p. 323).

Finally, it is noteworthy that high culture of the contract may also contribute to the reduction in the costs of corporate governance, for example by limiting the institution of supervision or numerous inspection tools which, as the practice shows, are not sufficiently effective and efficient.

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Kontrakty menedżerskie w systemie nadzoru i zarządzania przedsiębiorstwem

S t r e s z c z e n i e: W artykule przedstawiono istotę, konstrukcję i znaczenie kontraktów menedżerskich w procesie nadzoru i zarządzania przedsiębiorstwem. Scharakteryzowano również zasadnicze przesłanki wprowadzania kontraktów menedżerskich i kontraktów kierowniczych, wynikające głównie z rozwoju przedsiębiorstwa.

W szczególności, w pierwszym fragmencie artykułu podano definicje nadzoru korporacyjnego i nadzoru właścicielskiego, przedstawiono identyfikację mechanizmów tego nadzoru wraz z podaniem oceny ich skuteczności i efektywności. Sporo miejsca poświęcono na omówienie teoretycznych podstaw kontraktów menedżerskich, ze zwróceniem uwagi szczególnie na teorię praw własności (*ownership rights theory*), kontraktowe ujęcie przedsiębiorstwa (*nexus contracts*), menedżerską koncepcję produktywności, problem zaufania do partnerów biznesowych, teorię tworzenia wartości (*theory of affectuation*), teorię agencji (*agency theory*), czy teorię stewarda (*stewardship theory*). Poddano krytyce spełnianie funkcji predykcyjnej i projekcyjnej teorii agencji, którą uznaje się powszechnie za koncepcję wiodącą w nadzorze korporacyjnym.

Nawiązując do istoty i przesłanek wprowadzenia kontraktów menedżerskich, scharakteryzowano formy organizacyjno-prawne zarządzania przedsiębiorstwem, takie mianowicie jak personalizacja zarządzania, autonomizacja zarządzania, dekoncentracja zarządzania i decentralizacja. Punkt ciężkości analizowania problemu położono na postanowienia umowy o zarządzanie przedsiębiorstwem, ze szczególnym uwzględnieniem przedmiotu umowy, obowiązków obu stron, odpowiedzialności zarządzającego, kosztów agenta (menedżera) i sposobu ich kompensacji. Zdefiniowano składniki wynagrodzenia menedżera oraz sposoby ich określania. W zakończeniu zawarto

postulat budowy wysokiej kultury kontraktów w gospodarce w ogólności oraz kontraktów menedżerskich w szczególności.

S ł o w a k l u c z o w e: kontrakt menedżerski, nadzór korporacyjny, menedżerskie teorie przedsiębiorstwa, model biznesu