

PENSION FUND GOVERNANCE: THE POLISH EXPERIENCE

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Abstract

Despite a comprehensive pension related debate held on the governmental level and in media in Poland, little time was spent, however, on discussing nature and usefulness of governance in the context of pension systems aimed at would-be-pensioners. Attention is predominantly paid to the role of governance for investments. Unfortunately, governance is not addressed, with reference to pension funds, the way it should be. The author is looking for answers to questions about the state of pension fund governance in Poland, thus trying to find methods for improvement. Nevertheless, this text concentrates on a small fragment of the pension system in Poland. The article aims at attempting identification of issues to be faced by governance in voluntary pension funds that are managed by universal pension fund management companies.

Keywords: Pension Fund, Poland, Governance

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1. Introductory Remarks

For many years the investment sector has been based on some presumptions related to the way financial markets function, i.e. that the markets are relatively effective, that the market regulation (not government regulation) is effective and that financial innovations are always beneficial, etc. (Woods and Urwin, 2010). However, the financial system has become too complicated and at the same time too homogeneous. A majority of financial institutions functioning globally diversified their assets and risk in the similar way opting for more and more complex and less and less transparent financial instruments. In the course of this process, financial institutions got interdependent, which is a problem that it is difficult to solve (Cook et al., 2009a, 2009b). Financial markets have witnessed change at pace never seen before, resulting in increased complexity. This ever growing complex world is becoming more unpredictable and is becoming increasingly more out of control and unmanageable. On the one hand, increased financial markets integration leads to increased complexity. On the other hand, increased complexity leads to increased risks. Results of financial market integration are increased risks, i.e. less control. From the perspective of financial integration efforts, it is paradoxical because the primary challenge behind integration efforts was mainly to increase control. Therefore, by integration we increase complexity which leads to increased risks (Hanseth, 2007). Complexity increases challenges that have to be addressed by financial institutions. Constant innovation, complicated regulations and government

oversight, too much information, and the variability in today's world are among the challenges. Given the rapidly changing nature of fundamental causes of complexity, the underlying driver of complexity has developed. All this has led to new risks to manage (ERMIS). As a result of the global financial crisis in 2008 some of the assumptions concerning the way financial markets functioned started to be questioned, not only by leftist economists (e.g. Stiglitz), but also by those who trusted that market (e.g. Greenspan) (Woods and Urwin, 2010). Ever since the Great Recession began late in 2007, there have been continual and insistent calls for greater governance in financial institutions. These calls have come from financial market participants, national politicians, financial leaders (Frieden, 2012). Despite a comprehensive pension related debate held on the governmental level and in media in Poland, little time was spent, however, on discussing nature and usefulness of governance in the context of pension systems aimed at would-be-pensioners. Attention is predominantly paid to the role of governance for investments. Unfortunately, governance is not addressed, with reference to pension funds, the way it should be. Some initiatives are, of course, undertaken in order to regulate independence of supervisory board members but at the same time usefulness of governance systems in new economic conditions including the institutional environment in which employers, employees and pension providing institutions function is totally forgotten (NAPF, 2005). The author is looking for answers to questions about the state of pension fund governance in Poland,

thus trying to find methods for improvement. Nevertheless, this text concentrates on a small fragment of the pension system in Poland. The article aims at attempting identification of issues to be faced by governance in voluntary pension funds that are managed by universal pension fund management companies (general pension society).

Author's considerations are based on the legislation available as of the 1st of February 2014.

2. What is Pension Fund Governance?

In a majority of legal systems, basic principles of corporate governance, depending on the legal structure involved, may also be applied in management bodies of pension funds (IOPS, 2008). Basic rules of corporate governance including transparency, accountability, fairness and responsibility are applied in this context (World Bank, 2007). However, it is frequently necessary to establish additional or other requirements that, as a result of legislation implemented, govern issues of particular importance for pension funds. There is a major difference between a corporate governance concept and governance in pension funds (IOPS, 2008).

It is necessary for mechanisms of corporate governance to concentrate on interests of shareholders, whereas pension fund governance focuses on other set of stakeholders (usually members of the pension scheme and the scheme beneficiaries although in case of some structures on employers as well) who in some situations represent totally different interests, sometimes even contradictory to interests of shareholders or others – owners of the management body. The difference in question is most visible in the systems whose management bodies are commercial business entities (IOPS, 2008). Governance in pension funds refer to delegating ownership rights by a principal to their agent and as a result to employing professional skills and managerial effectiveness of the agent in question (World Bank, 2007). Therefore, private pension schemes function on the basis of relationships between scheme participants and scheme beneficiaries and individuals or entities that are involved in administering or financing the very pension scheme (e.g. a scheme administrator or a scheme sponsor). Governance in such plans involves all relationships between entities and individuals engaged in functioning of their pension scheme. Moreover, governance provides structure that is used to establish pension scheme objectives along with means that can facilitate realisation of such objectives and monitoring of performance results (OECD, 2002).

In the context of pension schemes and funds, governance refers to some framework that is used by a management body regardless the body in question is a natural person or a corporate body to make decisions concerning the way a pension fund operates.

The decisions in question refer to:

- structure of the management body (including legal bases and function distribution);
- decision-making processes within the management body (including internal control, risk management, compliance and structure of internal supervision);
- required skills and competencies of the management body;
- means to be used by stakeholders (mainly members of the scheme and beneficiaries but also a wider group of stakeholders including employers, supervisory board, supervising institution, regulators and government) to make the management body accountable for their actions undertaken (IOPS, 2008).

Governance in a pension scheme refers to all aspects of decisional processes observed inside this pension scheme (Ambachtsheer, 2008). Corporate governance in pension schemes may be described as supervision, accountability, transparency and decision making standards that form foundations of pension scheme's operational and investment activities. Governance in pension schemes is also influenced by legal requirements of the domestic legislation and their articles of association. By virtue of the above regulations, pension fund trustees have certain responsibilities in relation to beneficiaries of the funds they manage (Woods and Urwin, 2010).

Governance in private pension schemes and funds involve management control in organisation and legal solutions that determine the way such control functions including accountability of management and the way the management is supervised (Stewart and Yermo, 2008). Basic objective of corporate governance in a pension fund is to minimise potential problems of agency or conflicts of interests that may arise between fund stakeholders and the fund management body and that may affect security of pension savings and commitments involved. Good corporate governance is of major importance since it helps build trust between the fund's management body and its stakeholders, which should increase effectiveness of the fund or the scheme (IOPS, 2008). In their research, Ambachtsheer, Capelle and Lum (2008) proved that transparent and accountable pension schemes generated from 1 to 2 per cent of additional growth annually. Similar conclusions were reached by Wellman and Zhou (2007) in their research (Davis et al, 2009).

In order to achieve the above objective, structure of governance in pension funds takes a form that is specific for a particular country. Challenges to be faced by corporate governance in pension funds are, therefore, mainly determined by the form such funds are organised. Firstly, some attention has to be paid to autonomous funds and trusts. It is possible to distinguish two forms of autonomous pension funds. The former refers to pension funds of a contractual type. This kind of a fund consists of a designated pool

of assets, does not have any legal entity and is not able to perform legal acts. Funds of this type are managed by an appointed body - usually a financial institution including a bank, insurance company or a company that manages a pension fund. A body of a fund of a contractual type is usually a board of directors (one level system of management) or the management board of the management body (a two level system of management). The latter refers to pension funds of institutional nature where a pension fund is an independent entity of legal status, thus being able to perform legal acts. As a result, such a fund has its own internal management body that is organised in the either monistic or dualistic form. Another legal form of a pension fund is provided by a trust. Trusts come from the Anglo-Saxon legal tradition. They cannot be clearly classified into any of the above categories. They have features of both institutional and contractual types of pension funds (Stewart and Yermo, 2008).

In case of an external management body, the challenge is to overcome all possible conflicts of interests. However, in case of a corporate form of a pension fund with its internal management body, major challenge to be faced by governance is to make sure that trustees and members of the board of directors (management board or supervisory board) have sufficient knowledge and understand any advice they might obtain.

Governance in pension funds is also strongly inter-connected with a form of the pension scheme involved. In case of employee pension funds, two parties involved in administering a pension fund are to be dealt with, i.e. an employer or a scheme sponsor and a body that manages the fund in question. Some challenges to be faced here include avoiding conflicts of interests and making sure that the management body acts to the benefit of pension scheme members and beneficiaries. In case of individual pension schemes there is only a management body. Contracts are concluded between an entity that offers a pension fund and individuals, which results in 'governance vacuum' when common interests of beneficiaries are not taken into account. "Governance vacuum" is becoming a major challenge to be faced by governance in numerous countries nowadays (IOPS, 2008).

Another important classification criterion that influences governance is a division of pension funds taking membership nature into consideration. Closed pension funds, contrary to their open equivalents, limit their memberships to defined groups of employees. Transferring within closed pension funds is subject to more constraints as compared to open pension funds whose members may change them frequently. A major challenge to be faced by closed pension funds is lack of market forces that would discipline their management bodies and that are connected with the fact that their members may simply leave them. However, such funds might

enjoy substantial cost advantage over open pension funds because the specifics of their activities undertaken do not involve any costs related to marketing and advertising aimed at attracting new members. Open pension funds have to employ expensive distribution channels including sales agencies and agents and advertising campaigns. Since costs involve are somehow transferred to fund participants and fund beneficiaries in form of commissions and fees, the way distribution channels are managed may significantly influence the amount of would-be-pension benefits. Monitoring such costs may turn out to be the most important challenge to be faced by open pension funds (IOPS, 2008).

Some implications for the legal status and structure of governance in pension funds are to be found in case of defined contribution schemes (DC) and defined benefit schemes (DB). In case of the former schemes (DC), challenges to be faced by governance include, inter alia, offering adequate and appropriate investment opportunities while simultaneously making sure that such opportunities are understandable for the scheme users, etc. This may require more attention of the supervisory body involved, especially in case such a form of collective savings gets more popular. In case of DB schemes, to ensure their viability and solvency, it is necessary to use services provided by actuarial and insurance experts (IOPS, 2008).

3. Agency Relationships Where Decision-Making Powers Are Delegated

Despite adoption of numerous regulations aimed at maximising beneficiaries' interests (or other stakeholders' interests) in the pension system, pension institutions have to deal with the same governance related problems as in case of modern corporations. It is worth pointing out to issues of agency that affect pension funds to more extent than a majority of corporations. A list of important issues includes the following: members of the pension scheme and its beneficiaries (principals) who are not able to monitor scheme administrators' actions and scheme trustees; it is possible to distinguish more than one principal (if programme sponsors are taken into consideration in case of DB schemes); there is a complex network of agents (like e.g. investment managers) whose motivations and benefits are difficult to grasp and relate to principals' interests (Clark, 2008). Hence, basic issues result from delegating decision-making powers and emergence of agency relationships.

Agency relationship emerges when one entity – a principal – delegates other entity – an agent - to perform specific actions. Principals delegate decision-making powers necessary to perform specific actions to agents (Mesjasz, 2002). Theory of agency attempts to describe agency relationships by means of the metaphor of a contract (Eisenhardt, 1989). Therefore, agency relationship may be perceived to be certain

formal explicit contract or informal implicit contract that aims at making agents undertake actions in order to maximise principal's benefits (Mesjasz, 2002). Agency theory is focused on solving problems that result from agency relationship. In the related literature some attention is paid to two types of such problems. The former refers to the issue of agency that has to be dealt with when a) principal's desires seem to conflict objectives set, and b) it is difficult for a principal to verify what their agent is currently doing. Besides, such actions are also expensive. Principals cannot verify whether agents' behaviours are appropriate, which is a problem. The latter refers to the issue of risk distribution that emerges when principals and agents represent different attitudes to risk. Principal and agents may prefer different actions because of different preferences connected with risk, which is a problem, too (Eisenhardt, 1989).

Since a contract that regulates relationships between a principal and an agent is subject to some analysis, the theory concentrates on identification of the most effective contract that would regulate relationships between the parties involved, i.e. between a principal and their agent taking into account pre-defined assumptions concerning individuals involved (own benefits, limited rationality or risk aversion), organisation (e.g. some conflict between its members) and information (Information is now a merchandise that can be bought). Theory of agency stresses relationships that meticulously reveal basic agency structure of any principal and agent who are involved in corporate actions but have different objectives and attitudes towards risk (Eisenhardt, 1989).

Theory of agency is useful while trying to understand and improve governance in corporations. Theory of agency should contribute to improvement in governance quality in pension funds. However, since there is no any universal governance structure in corporations (even within one country), there is no one governance structure that could be commonly applied in pension funds as well. Different objectives, limitations, political environment, local market conditions, availability of competent asset managers and numerous other factors influence what the appropriate governance structure of a pension fund should be like. However, it is important to recognise potential problems of agency – regardless they result from uncertainty or conflict of objectives. This recognition really matters if adequate control mechanisms of governance are to be employed (Hess and Impavido, 2004).

Assuming that a pension fund, like every organisation, is a nexus of contracts, it is possible to identify not only different expectations of pension fund stakeholders but also areas of potential conflicts along with possible solutions (Samborski, 2013a; Samborski, 2014a).

Voluntary pension funds (VPF) may only be established by universal pension fund management

companies (general pension society) that function in form of corporations. Major shareholders of universal pension fund management companies include different financial institutions like international insurance companies, Polish financial institutions and various consortia of Polish and international financial institutions. Funds (VPF) gain their legal status when they are entered into the register of funds. Then, companies become funds' bodies. The pension fund (VPF) lifespan is unlimited. Funds operate in form of mutual funds and offer defined contribution schemes – DC (individual retirement savings account, individual retirement account). Articles of association become the most important document that regulates internal relationships of the fund. The articles are passed by the society's general meeting and determine, inter alia, methods of fund representation to be adopted by the society involved (Samborski, 2013; Samborski, 2014a).

Within voluntary pension funds, it is possible to identify two major groups of stakeholders, i.e. scheme participants and a management body. The former group of stakeholders includes active participants (who are now contributing), retired members (who are now receiving their benefits), and those who are somehow maintained by scheme participants. Scheme participants are interested in the amount of potential or present pension benefits. The latter group of stakeholders refers to a management body that is interested in the amount of fees and charges taken. In voluntary pension funds a conflict of objectives along with uncertainty may result in problems of agency in the same way a conflict of objectives along with uncertainty results in a problem of agency in corporations. It is possible to distinguish five groups of risk directly related to governance in voluntary pension funds. They refer to the following:

- risk of loss in voluntary pension funds – resulting from the fact that in the context of fund management and representation universal pension fund management companies do not exercise their responsibilities or do it in the wrong way,

- risk related to management of conflict of interest in voluntary pension fund and universal pension fund management companies – risk connected with acting to the detriment of voluntary pension funds by employees of universal pension fund management companies or third parties, in particular including risk of insider trading with reference to investment, transactions planned by a voluntary pension fund or investment strategies. This risk particularly refers to issues of own investment of universal pension fund management companies' employees and conflict of interest of companies within a particular financial group a voluntary insurance fund is a part of,

- risk that principles of corporate governance applied are not appropriately matched - risk of loss to be faced by voluntary pension funds as a result of not using or misusing corporate governance with

reference to companies in voluntary pension funds' portfolios and companies in financial groups the pension funds and universal pension fund management companies belong to (e.g. by means of applying other principles than profitability and security of deposits in depositing activities undertaken by voluntary pension funds),

- risk of managing contracts that are concluded by universal pension fund management companies with external entities - risk that universal pension fund management companies on behalf of voluntary pension funds might conclude unbeneficial contracts with third parties, and all resulting negative consequences for members of voluntary pension funds or events that affect financial standing of universal pension fund management companies,

- risk of a transfer agent – risk of loss in voluntary pension funds resulting from inconsistencies observed while performing contracts by external entities or units within universal pension fund management companies that take roles of transfer agents for voluntary pension funds in the following areas: management of contracts concluded with voluntary pension funds, keeping register of voluntary pension fund members, calculating and cancelling units of account (KNF).

In voluntary pension funds the following problems may be observed: self-dealing and corruption or simply responsibility evasion, and using fund pension assets to realize own objectives. A challenge to be faced today by any legislator or the very management body is to create such solutions within the system of control that would generate adequate incentives. However, in order to find out which governance mechanisms are adequate, firstly it is necessary to identify which behaviours a management body should reward or punish. In their analyses of public pension schemes, Hess and Impavido (2004) emphasise much significance of a residual claimant in monitoring and controlling. The residual claimant in question also takes a major role in diminishing ineffectiveness resulting from division between decision-making and risk taking (Hess and Impavido, 2004). According to Besley and Prat (2003) ineffectiveness results from the fact that decision makers are not fully responsible for the costs of their decisions. Such ineffectiveness may significantly affect a residual claimant. With reference to private pension systems, identification of a residual claimant is necessary to determine the most effective structure of governance. Besley and Prat believe that in case of defined contribution schemes, their beneficiaries are residual claimants (Besley and Prat, 2003; Hess and Impavido, 2004).

4. Solutions Aimed at Diminishing the Agency Problem in Voluntary Pension Funds

Problems that are to be faced today by governance in voluntary pension funds that are managed by universal pension fund management companies are connected with their contractual nature, individual form, open formula and form of pension schemes offered, i.e. defined contribution schemes. Contractual nature of voluntary pension funds requires governance to make sure that the management body acts in the interests of the pension scheme members. An individual form involves some risk of 'governance vacuum' emergence, i.e. not taking interests of a collective beneficiary into account. An open formula poses a major challenge for governance when costs have to be monitored. On the other hand, defined contribution schemes involve providing adequate and appropriate investment opportunities. Delegating decisional powers within financial risk to be taken by a scheme beneficiary is a basic source of conflicts between members of the pension scheme and the management body. Therefore, conflicts in voluntary pension funds can be found in the following areas: relationships between fund members and the fund management body, amount of fees and charges taken by a universal pension fund management company and investment opportunities (Samborski, 2014b).

Major legal regulations aimed at limiting potential problems resulting from relationships between fund members and the management body refer to setting minimal standards that have to be met by both members of the board and members of the supervisory. It is also necessary to define clearly tasks and roles of the supervision authority, informational duties and responsibilities of universal pension fund management companies. Discussing regulations in question, one cannot forget about a necessity to appoint a depositary and the role of insurance ombudsman (Samborski, 2014b).

A voluntary pension fund is managed by a universal pension fund management company (general pension society) that functions in form of a corporation. The following are the governing bodies of a universal pension fund management company: the management board, the supervisory board and the general meeting (Article 39). Save as otherwise provided in the Articles of Association, the members of the management board of a universal pension fund management company shall be appointed and recalled by the general meeting (Article 40). Those eligible to sit on the management board of the a universal pension fund management company shall be those who meet all the following requirements jointly:

- 1) they possess full legal capacity;
- 2) they have not been sentenced under a valid court verdict for offences listed in the Act;
- 3) they have a university degree;

4) they have a record of employment of at least seven years; and

5) they provide the guarantee of the proper performance of their duties as management board members (Article 41).

Those eligible to sit on the supervisory board of a universal pension fund management company shall be those who meet the requirements laid down in Article 41 clause item 1 and 2, and they provide the guarantee of the proper performance of their duties as supervisory board members. No less than a half of the members of the supervisory board of a universal pension fund management company shall have their university degrees in law or in economics. At least half of the members of the supervisory board of a universal pension fund management company shall be appointed from circles other than shareholders of the company in question, affiliated entities of such shareholders, members of the management body or supervisory body of entities affiliated with a shareholder of the company, as well as persons linked by an employment relationship, service relationship or other legal relationship of similar nature or entity affiliated with a shareholder (Article 44) (Ustawa z dnia 28 sierpnia 1997 r.).

Activities undertaken by voluntary pension funds are supervised by the Financial Supervision Authority hereinafter referred to as the "authority" (Article 15). The authority as a supervision body issues licences for creating funds (Article 15), amendments of their Articles of Association, change in depositaries and amendments of the agreements with depositaries (Article 58). Each purchase or acquisition of shares in a universal pension fund management company shall require a prior licence of the supervision authority (Article 38). The supervision authority may suspend the exercise of voting rights at the general meeting of the a universal pension fund management company by a major shareholder that does not guarantee that affairs will be managed by the a universal pension fund management company in a manner ensuring adequate protection of the interests of members of the open fund (until the situation has been adjusted) (Article 38a). Both a universal pension fund management company and a fund have to furnish the supervision authority with periodical reports and day-today information on their performance and financial standing (Article 195). If the supervision authority finds that publications or information made available or disseminated to the public are misleading or may be misleading, the supervision authority may, by way of an administrative decision, prohibit the universal pension fund management company from publishing such information, making it available or disseminating it (Article 197). The supervision authority may conduct an inspection of the operation of a fund, a universal pension fund management company, depositary or any third party in which the fund or the universal pension fund management company vested the

performance of certain tasks (Article 204a). If a universal pension fund management company or a fund conducts its activities in violation of the law or of its articles of association or in gross violation of the interests of fund members, the supervision authority may impose a fine on the management board responsible for those violations (Article 204c). The supervision authority may request that a meeting of the management board or supervisory board or general meeting of a universal pension fund management company's shareholders be convened, and that certain issues be included in the agenda of such meeting if it considers this necessary for the proper supervision of the activity of the fund or a universal pension fund management company (Article 206) (Ustawa z dnia 28 sierpnia 1997 r.).

A voluntary pension fund is required, once a year, to publish an information prospectus in a national daily newspaper designated for announcements made by that fund. A fund's information prospectus should include its articles of association, information on its investment performance, and the approved annual financial statements of the fund (Article 189). The information prospectus and financial reports of the fund should be submitted to the supervision authority immediately after being prepared (Article 190). A fund shall send to each member, at regular intervals, yet at least every twelve months, information on the amounts standing to the member's account, the dates of contributions and transfer withdrawals made in that period, and the conversion of such contributions and transfer withdrawals into units of account, as well as about the fund's investment performance. Such information should be sent in the manner and form agreed upon with the member. The manners and forms in which information can be provided by a particular fund should be stated in its articles of association (Article 191) (Ustawa z dnia 28 sierpnia 1997 r.).

With reference to individuals who joined the fund, universal pension fund management companies are liable for any damage or loss resulting from not completion of their responsibilities or any negligence referring to managing and representing the fund unless not completion of such responsibilities or negligence results from circumstances beyond control of the universal pension fund management companies or circumstances that could not be prevented in spite of all possible efforts involved (PZU, 2013).

A fund must appoint a depositary to have custody of the fund's assets under an agreement (Article 157). A depositary should inform the supervision authority forthwith of any act or negligence by the fund which in the depositary's opinion contravenes the law or the fund's articles of association, or through which interests of the fund members are not duly protected. On becoming satisfied that the fund has established its net asset value, accounting unit rate, and rate of return figures incorrectly, the depositary should forthwith inform the

supervision authority of any irregularities (Article 164) (Ustawa z dnia 28 sierpnia 1997 r.).

The Polish Insurance Ombudsman responsible for the pension insurance market makes sure the rights of the pension fund members are followed and represents their interests in dealing with universal pension fund management companies. Activities undertaken by the Ombudsman particularly include protecting interest of individuals this institution represents and trying to obtain amicable solutions to any disputes that may arise between universal pension fund management companies and members of pension funds (Article 20) (Ustawa z dnia 22 maja 2003 r.).

Another potential source of conflict between voluntary pension fund members and the fund's management body related to the fund's open nature is the amount of fees taken. In case of a voluntary pension fund there are usually two types of fees, i.e. an initial fee and a management fee. A fund charges fees by deducting a pre-defined part of payments into the account of a pension scheme (individual retirement savings account, individual retirement account). Deduction is made before conversion to units of account. Amount of fees and the way they are charged is defined in the articles of association. The fund uses its assets to cover directly costs related to its functioning, i.e. fund management costs, costs related to depositing fund's assets by a depositary that are equal to depositary's fee up to the amount set in the articles of association, costs related to carrying transactions of purchase or sale of fund's assets, being equal to payments made to third parties whose intermediation has to be used by the fund. Costs of fund's operations that are not covered directly using fund's assets are borne by a universal pension fund management company. Universal pension fund Management Company's fee resulting from management of the fund is defined in its articles of association and consists of a fixed fee resulting from fund management and additionally in case of some voluntary pension funds, a variable fee resulting from not only fund management but also performance related. In case of a fixed fee for fund management, its top level is set. A variable fee for fund management depends on results of fund management in relation to the fund benchmark. This is only paid in case when the return rate in a given accounting period is positive and when – simultaneously – the fund's return rate is higher than the benchmark's return rate. In this case a top level is also defined. There are also other fees and charges set in articles of association (Nordea, 2013; PZU, 2013).

Other sources of conflicts between fund members and their management body can be found in the investment strategy adopted. While determining an investment strategy, a major role is played by both governance structure and external regulations. The former defines objectives and principles of investment policy and tools that are used by those who manage funds. The latter influences allocation of portfolio

assets (fund's assets may be invested in financial instruments that are permitted by regulations set by the Law dated on the 28th of August 1997 on organisation and operation of pension funds) (Samborski, 2013b). In case of voluntary pension funds, investment decisions and transactions are made to the pre-defined limits and on the basis of the fund's articles of association and other internal acts in use, particularly including principles of investment strategies of given voluntary pension funds (PZU). Deciding to select a particular voluntary pension fund, individuals are not given any choice of a specific investment option, e.g. sub-fund of bonds or shares. They may only choose active allocation, selective allocation or balance allocation funds within their voluntary pension funds (Samborski, 2014b).

5. Conclusions

Depending on the form of a fund and pension scheme, it is possible to identify different expectations of stakeholders and different areas of possible conflicts. In case of voluntary pension funds, conflicts may be found in the following areas: relationships between fund members and their management body, the amount of fees charged by universal pension fund management companies and investment opportunities (Samborski, 2014b).

In case of relationships between fund members and their management body, a major role may be played by a supervisory board. Legislator sets minimal standards to be met by members of both a management board and a supervisory board, which seems to be a very good solution. However, it is not totally clear why a general meeting – and not a supervisory board – is vested with powers to appoint or dismiss members of the board of universal pension fund management companies (unless the articles of association provide otherwise). It is worth remembering that a solution according to which a pension fund is a legal entity and its body is a universal pension fund management company established as a corporation involves some limitation of effectiveness of the management body's actions aimed at the best interest of pension fund members. In a majority of cases, funds are established by universal pension fund management companies whose major stakeholders are financial institutions whose actions are aimed at increasing value for shareholders, frequently in a short-term perspective. As a result of the legal solutions adopted, financial institutions find it very easy to introduce their representative into both supervisory boards and management boards of funds. It may turn out that a financial institution controls both supervisory and management boards. Therefore, it is suggested to undertake some actions that would aim at increasing independence of supervisory boards in universal pension fund management companies and providing supervisory boards with powers to appoint or dismiss members of the board resulting from the

Commercial Companies Code (Article 368 of the Polish Commercial Companies Code) (Samborski, 2013a; Samborski, 2014a).

In case of fees that are applied by the company, governance in voluntary pension funds has to deal with cost monitoring, which is a major challenge. Much attention is paid here to a co-called market mechanism, i.e. a free flow of fund members and voluntary nature of this type of pension saving.

As far as investment opportunities are concerned, basic sources of conflicts between members of the pension scheme and their management body refer to delegating decision-making powers within the financial risk to be taken by scheme beneficiaries to a representative. A solution may be provided by introducing a possibility to share a part of contribution among different sub-funds within the pension scheme (individual retirement savings account, individual retirement account). In order to do that, members should be able to choose a specific investment programme as in case of e.g. an individual pension account offered by PZU Życie SA, a life insurance company, that allows the insured to make their own choice concerning one of two investment programme: a recommended programme or an individual programme (Samborski, 2014b).

References

1. Ambachtsheer K., Capelle R. and Lum H. (2008), "The Pension Governance Deficit : Still With Us", *Rotman International Journal of Pension Management*, Vol. 1, Issue 1, pp. 14-21.
2. Besley T. and Prat A. (2003), *Pension Fund Governance And The Choice Between Defined Benefit And Defined Contribution Plans*, The Institute For Fiscal Studies, WP03/09, <http://econ.lse.ac.uk/staff/prat/papers/pengov.pdf>
3. Clark G. L. (2008), "Best-practice pension fund governance", *Journal of Asset Management*, Vol. 9, pp. 2–21.
4. Cook C., Cookson C. and Tett G. (2009a.), "Organic Mechanics", *Financial Times*, Nov. 26, <http://www.ft.com/intl/cms/s/0/d0e6abde-dacb-11de-933d-00144feabdc0.html#axzz329s36xBI>
5. Cook C., Cookson C., and Tett G. (2009b), "Finansiści szukają ratunku w biologii i fizyce", *Dziennik Gazeta Prawna*, No. 237, pp. 4-6. (Financial Experts Are Looking Help in Biology and Physics).
6. Davis S., Lukomnik J. and Pitt-Watson D. (2009), "Active Shareowner Stewardship: A New Paradigm for Capitalism", *Rotman International Journal of Pension Management*, Vol. 2, Issue 2, pp. 10-17.
7. Eisenhardt K. M. (1989), "Agency Theory: An Assessment and Review", *Academy of Management Review*, Vol. 14, No. 1, pp. 57 – 74.
8. ERMIS (Enterprise Risk Management Initiative Staff), *Increasing Complexity Creates Challenges for Risk Management*, <http://erm.ncsu.edu/library/article/complexity-challenges-risk/#.U100HNIkAyU>
9. Frieden J. (2012), "Global Economic Governance After the Crisis", *Perspektiven der Wirtschaftspolitik*, Vol. 13 (Special Issue), pp. 1–12.
10. Hanseth O. (2007), "Introduction. Integration – Complexity – Risk, The Making of Information Systems out-of-control", in Hanseth O. and Cibora C. (Ed.), *Risk, Complexity and ICT*, Edward Elgar Publishing, International Edition, pp. 1 – 20.
11. Hess D. and Impavido G. (2004), "Governance of Public Pension Funds: Lessons from Corporate Governance and International Evidence", in Musalem A. R. and Palacios R. J., *Public Pension Fund Management. Governance, Accountability and Investment Policies*, World Bank, Washington DC, pp. 49 – 90.
12. IOPS (2008), *Supervisory Oversight Of Pension Fund Governance*, The International Organisation Of Pension Supervisors Working Paper No. 8, <http://www.oecd.org/site/iops/41269776.pdf>
13. KNF, BION w powszechnych towarzystwach emerytalnych (PTE) – mapa klas ryzyka i ich definicje (Polish Financial Supervision Authority, Research and Management Assessment); http://www.knf.gov.pl/Images/PTE_mapa_ryzyk_tcm_75-25316.pdf
14. Mesjasz C. (2002), "Kontrakty niekompletne jako podstawa teoretyczna nadzoru korporacyjnego", in Rudolf S. (Ed.), *Strategiczne obszary nadzoru korporacyjnego zewnętrznego i wewnętrznego*, Uniwersytet Łódzki, Łódź, pp. 53 - 66. (Incomplete Contracts as a Theoretical Foundation for Corporate Governance in: Strategic Areas of Corporate External and Internal Supervision).
15. NAPF (2005), *Pension Scheme Governance – fit for the 21st Century? NAPF Discussion Paper No 1*, http://www.ecgi.org/codes/documents/napf_discussion_paper_jul2005.pdf
16. Nordea (2013), *Statut Nordea Dobrowolnego Funduszu Emerytalnego. Tekst jednolity Statutu Nordea DFE, uwzględniający zmiany wprowadzone przez NWZ Nordea PTE S.A. dnia 29 kwietnia 2013 roku (Articles of Association of the Nordea Voluntary Pension Fund. The consolidated text including amendments introduced by NWZ Nordea PTE S.A. on the 29th of April 2013)*, http://www.nordeapolska.pl/wp-content/uploads/2013/07/STATUT_NORDEA_DFE_01_07_2013.pdf
17. OECD (2002), *Guidelines for Pension Fund Governance*, OECD, Paris, <http://www.oecd.org/pensions/private-pensions/2767694.pdf>
18. PZU (2013), *Prospekt Informacyjny Dobrowolnego Funduszu Emerytalnego PZU*. Warszawa, 9 maja 2013 r. (Information Prospectus of the PZU Voluntary Pension Fund. Warszawa, the 9th of May 2013), http://www.pzu.pl/c/document_library/get_file?uuid=2a0125f5-52b9-4d7c-bdc8-7632c3977784&groupId=10172
19. PZU, *Deklaracja zasad polityki inwestycyjnej Dobrowolnego Funduszu Emerytalnego PZU (Declaration of Investment Policy Principles of the PZU Voluntary Pension Fund)*, http://www.pzu.pl/c/document_library/get_file?uuid=52e1898c-36cf-489a-ac2d-113b1e542c6d&groupId=10172
20. Samborski A. (2013a), "Pension Funds Governance", in Szczepański M. (Ed.), *Old-Age Crisis and Pension Reform. Where do we stand?*, Publishing House of

- Poznan University of Technology, Poznan, pp. 123 – 137.
21. Samborski A. (2013b), „Governance w funduszach emerytalnych, strategie inwestycyjne i ich rola w nadzorze korporacyjnym. Przykład otwartych funduszy emerytalnych”, in Szczepański M. (Ed.), *Reformowanie systemów emerytalnych – porównania i oceny*, Wydawnictwo Politechniki Poznańskiej. Poznań, pp. 217 – 226. (Governance in Pension Funds, Investment Strategies and Their Role in Corporate Supervision. Case of Open Pension Funds. In: *Reforming Pension Systems – Comparisons and Assessments*)
 22. Samborski A. (2014a), “Pension Fund Governance”, in Szczepański M. and Turner J. A. (Ed.) *Social Security and Pension Reform: International Perspectives*, Upjohn Institute. Kalamazoo, MI, pp. 287 – 298.
 23. Samborski A. (2014b), „Nadzór korporacyjny w funduszach emerytalnych. Przykład dobrowolnych funduszy emerytalnych”, *Studia Prawno – Ekonomiczne*, Vol. 91/2, pp. 345 – 360. (Pension Fund Governance: The Case Of Polish Voluntary Pension Funds).
 24. Stewart F., Yermo J. (2008), *Pension Fund Governance Challenges And Potential Solutions*, OECD Working Papers on Insurance and Private Pensions No. 18, <http://www.oecd.org/pensions/private-pensions/41013956.pdf>
 25. Ustawa z dnia 22 maja 2003 roku o nadzorze ubezpieczeniowym i emerytalnym oraz Rzeczniku Ubezpieczonych (Dz. U. 2003, nr 124, poz. 1153 z późn. zm.). (The Law of the 22nd of May 2003 on insurance and pension supervision and the Insurance Ombudsman (Polish Journal of Laws of 2003, No 124, item 1153 with later amendments)).
 26. Ustawa z dnia 28 sierpnia 1997 r. o organizacji i funkcjonowaniu funduszy emerytalnych. (Dz.U.2010, nr 34, poz. 189 z późn. zm.). (Act of 28 August 1997 – Law on the organisation and operation of pension funds (Polish Journal of Laws of 2010, No 34, item 189 with later amendments)).
 27. Woods C. and Urwin R. (2010), “Putting Sustainable Investing into Practice: A Governance Framework for Pension Funds”, *Journal of Business Ethics*, No. 92, pp. 1–19
 28. World Bank (2007), *Czech Republic. Pilot Diagnostic Review of Governance of the Private Pension Fund Sector*, World Bank, Washington, DC, http://siteresources.worldbank.org/INTCZECH/Resources/Czech_PensionGovernanceReview.pdf