UNIWERSYTET SZCZECIŃSKI
ZESZYTY NAUKOWE NR 455
PRACE INSTYTUTU EKONOMIKI
I ORGANIZACJI PRZEDSIĘBIORSTW NR 50

ZARZĄDZANIE FINANSAMI

Zarządzanie ryzykiem i kreowanie wartości

Tom II

Redaktor naukowy
Dariusz Zarzecki

Szczecin 2007

Referaty opublikowano zgodnie z oryginałami dostarczonymi przez Autorów.
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ul. Wrocławska 53, 30-011 Kraków

ISSN 1640-6818
ISSN 1232-5821

SPIS TREŚCI

ANALIZA FINANSOWA I PLANOWANIE FINANSOWE

FINANCIAL ANALYSIS AND PLANNING

ŹRÓDŁA FINANSOWANIA

SOURCES OF FINANCING

WYCENA WARTOŚCI NIEMATERIALNYCH I PRAWNYCH

VALUATION OF INTANGIBLE ASSETS

FUZJE, PRZEJĘCIA I NADZÓR KORPORACYJNY

MERGERS, ACQUISITIONS AND CORPORATE GOVERNANCE

Analiza finansowa i planowanie finansowe

Financial analysis and planning

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Streszczenie

Relacje inwestorskie (IR) z instrumentu komunikowania rynkowi o wynikach spółki, przekształcają się w instrument generowania wartości firmy oraz ograniczający amplitudę wahań kursu akcji. W opracowaniu m.in. zaprezentowano genezę IR, sformułowano definicję IR, a także przedstawiono wpływ IR na poziom ryzyka inwestycyjnego. Rozważania teoretyczne wzbogacono o case study Grupy ORLEN Grupy APATOR.

INVESTOR RELATIONS IN STOCK-QUOTED COMPANIES

Summary

Investor relations (IR) move from the instrument of communicating to the market about company's results to the instrument of generating company's value and instrument for reducing share prices fluctuations. In the article the author has presented, among others, the origin of IR, the author's own definition of IR and the influence of IR on the level of investment risk. Theoretical considerations have been broadened by two case studies: ORLEN Group and APATOR Group.

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AGNIESZKA HERDAN

THE ROLE OF AUDIT AND INTERNAL CONTROL IN EFFICENT CORPORATE GOVERNANCE

Introduction

Corporate governance has been rarely encountered before the 1990s. In the last ten years the attention has been focused on corporate governance due to the rising number of corporate scandals. The catastrophes of Enron, Arthur Andersen, WorldCom, Adelphia and Tyco led to the destruction of billions of dollars of shareholder wealth, the loss of thousands of jobs, the criminal investigation of dozens of executives, and record-breaking bankruptcy. Concerns had been widely expressed that the contemporary monitoring and control of publicly held companies is seriously defective.

This created an atmosphere of doubt and distrust among the investing public and confidence in the ability of investors to make informed decisions failed, and the markets on which stocks of public corporations were traded faltered[1].

This scrutiny has triggered reforms in corporate governance by nations worldwide and resulted in issuance of stringent rules and regulations that publicly traded companies around the world have to abide by. It has been stress that an important role in proper corporate governance is played by efficient internal control and audit.

1. What is corporate governance?

There is no single universally accepted definition of Corporate Governance as there are significant differences in definition according to which country is being considered. Some of the existing definitions of corporate governance comprise 'narrow' views on one hand and more inclusive 'broad' views on the other[2]. The traditional finance paradigm, expressed in the 'agency theory', adopts the narrow view to corporate governance which is restricted to the relationship between the company and its shareholders. The stakeholder theory on the other hand, adopts the view that corporate governance it to be seen as a web of relationships, not only between the company and its owners (shareholders) but also between the company and a broad range of other 'stakeholders' like employees, customers, suppliers, bondholders etc.[3]

[1] J. Colle et all: *What is corporate governance?* McGraw-Hill, 2005, p. 7.
[2] J. Solomon, A. Solomon: *Corporate governance and Accountability*. John Wiley&Sons, 2004, p. 14.
[3] *Ibidem*, p. 12.

According to Solomon "Corporate Governance is the system of checks and balances, both internal and external to companies, which ensures that companies discharge their accountability to all their stakeholders and act in a socially responsible way in all areas of their business activity"[4]. It is a term used to describe the role of persons entrusted with the supervision, control and direction of the entity. Depending on jurisdiction, different bodies may have responsibility for corporate governance. The main role is played by Board of Directors, with help of internal control system, internal audit unit, other supervisory committees, external auditors etc. (see Figure 1). Proper corporate governance should be transparent and allow the users of financial information to be provided with reliable information about company performance.

2. Role of transparency in Corporate Governance

The essential function of financial markets is to price risk and value assets in order to allow investors to estimate what such assets will be worth in the future. Disclosure of past and current financial results and business operations is important to this function.

The term 'disclosure' refers to a whole array of different forms of information produced by companies, such as:

- the annual report which includes the directors' statement,
- the Operating and Financial Review (OFR),
- financial statements, e.g. profit and loss account, balance sheet, cash flow statements,
- other mandatory items, e.g. segmental reporting, environmental reporting, social reports,
- all forms of voluntary corporate communications, e.g. management's forecasts, analysts' forecasts, press releases, information placed on corporate websites.

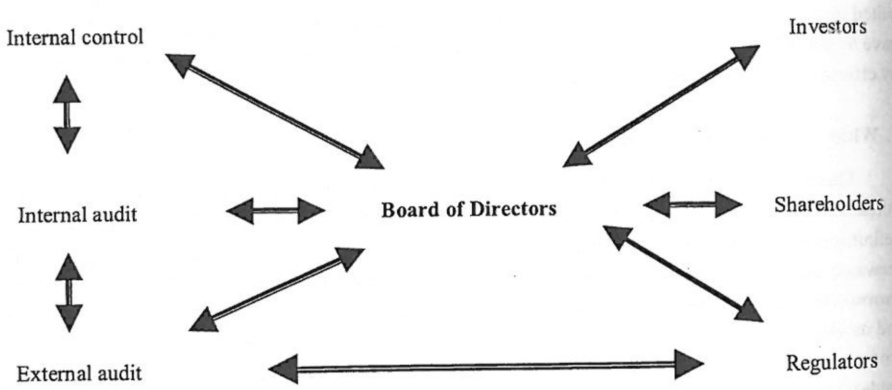

Figure 1. Place of internal control and audit in corporate governance system

Source: based on D. Broadley, *Auditing and its role in corporate governance*, www.oecd.org/dataoecd/50/6/37178451.pdf, 2.12.2006.

[4] *Ibidem*, p. 14.

A fundamental element of a well functioning system of corporate governance is transparency. Corporate disclosure to stakeholders is the fundamental means by which companies can become transparent[5]. Transparency links two sets of rights[6]:

- the public's right to know – stakeholders are interested in obtaining corporation information about management strategy,
- corporation's right to privacy – the corporation's right to control the collection, use and disclosure all information and management strategies related to the firm.

Investors perceive a high value to corporate disclosure. Subsequent research in accounting has shown that regulated disclosure provides new and relevant information for investors[7]. The disclosure of relevant and reliable information attracts institutional investors and enhances their interest in increasing their ownership.

Corporate disclosure is not only aimed at investors, but also at creditors, employees, regulatory agencies, and the general public. As a rule, disclosure performs a facilitating function: it is designed to facilitate, assist or enable the decision making of the persons to whom it is addressed[8].

In the agency theory framework, disclosure of accounting information can be used to control management through disclosure of their remuneration, as the principal-agency model assumes that there is a link between company performance and managerial remuneration[9].

One way of reducing agency problems is by establishing contracts between managers and their suppliers of finance. These contracts require management to disclose information that enables shareholders to monitor their compliance with the agreements, so as to evaluate the extent to which management has utilized the company's resources in the interests of its shareholders.

The use of financial information in determining remuneration packages has been of a considerable debate[10]. In most cases managerial bonuses are determined by corporate performance, as reported in the financial accounts.

Agency theory, however, states that managers should maximize shareholder value, then surely managerial remuneration should more logically be linked to share price, not financial accounting disclosure. This is the case to a certain extent but research shows that share price is one of many factors found to influence remuneration contracts[11].

Increasing corporate transparency is a major initiative of corporate governance reform all over the world. Cadbury Report stresses that "the lifeblood of markets is information and barriers to the flow of relevant information represent imperfections in the market (...) The more the activities of companies are transparent, the more accurately will their securities be valued"[12].

[5] *Ibidem*, p. 12.

[6] F. Borgia: *Corporate governance and transparency, role of disclosures: how prevent new financial scandals and crime?* http://www.american.edu/traccc/resources/publications/borgia02.pdf, 2.12.2006.

[7] J. Kothari: *Investor Protection and Corporate Governance: Evidence from Worldwide CEO*. Turnover Journal of Accounting Research Volume 42 Issue 2, May 2004, p. 269.

[8] F. Borgia: *op.cit.*

[9] J. Solomon, A. Solomon: *op.cit.*, p. 118.

[10] R.M. Bushman, A.J. Smith: *Financial Accounting information and corporate governance*. "Journal of Accounting & Economics" 2001, p. 237–333.

[11] J. Solomon, A. Solomon: *op.cit.*, p. 120.

[12] *Ibidem*, p. 121.

3. Internal control and Corporate Governance

From an agency theory perspective, internal control represents another corporate governance mechanism that can be used to align the interests of managers and shareholders[13]. It has been defined as "*The whole system of controls, financial and otherwise, established in order to provide reasonable assurance of: effective and efficient operations; internal financial controls; and compliance with laws and regulations*"[14].

Establishing and maintaining an effective internal control is an important management responsibility. It is fundamental to the accurate recording of transactions and the preparations of reliable financial statements. In the absence of proper internal control, the financial data recorded may be unreliable and undermine the management's ability to make informed decisions, as well as damaging management's credibility with shareholders, regulators, business partners, and the general public.

Companies need to establish a system for internal control so that they can manage risk effectively, thereby increase transparency[15]. An effective system of internal control is comprehensive and involves people throughout the organization and should be under continual supervision and monitoring by management to make sure that it is operating as intended and that it is modified appropriately for changes in conditions.

Before the publication of Turnbull Report in 1999, listed companies had been focusing generally on developing complex and detailed systems of internal control. There was a general consensus, however, that because each company produced its own system, the issues related to internal control may not have been addressed properly.

Although it was noted that a general format of internal control was impossible to establish as companies' risks varied so diversely, some common recommendations were deemed necessary. The Turnbull Report attempted to formalize the sets of procedures and represent an explicit framework for companies to refer to as a benchmark when developing their own internal control strategies (see Figure 2).

The diagram shows that there are several stages involved in a company's internal control. The first staged is the identification which involves both the identification and prioritization of relevant risks. The company directors should consider the following in determining its internal control policies[16]:

- the nature and extent of the risks facing the company,
- the extent and categories of risk which it regards as acceptable for the company to bear.

The types of risk had not been specified as it is up to the company to identify the ones relevant to them.

The estimation stage of the framework involves the assessment of the potential impacts of the identified sources of risks. A company is required to develop its specific risk management strategy at the developmental stage. This should be tailored to match the specific risks[17].

[13] *Ibidem*, p. 124.

[14] Rutteman Working Group, 1994, Pg. 1 cited in J. Solomon, A. Solomon: *op.cit.*, p. 124.

[15] J. Solomon, A. Solomon: *op.cit.*, p. 125.

[16] *Turnbull Report – Internal Control – Guidance for Directors on the Combined Code.* ICAEW, London 1999, Para. 17.

[17] J. Solomon, A. Solomon: *op.cit.*, p. 125.

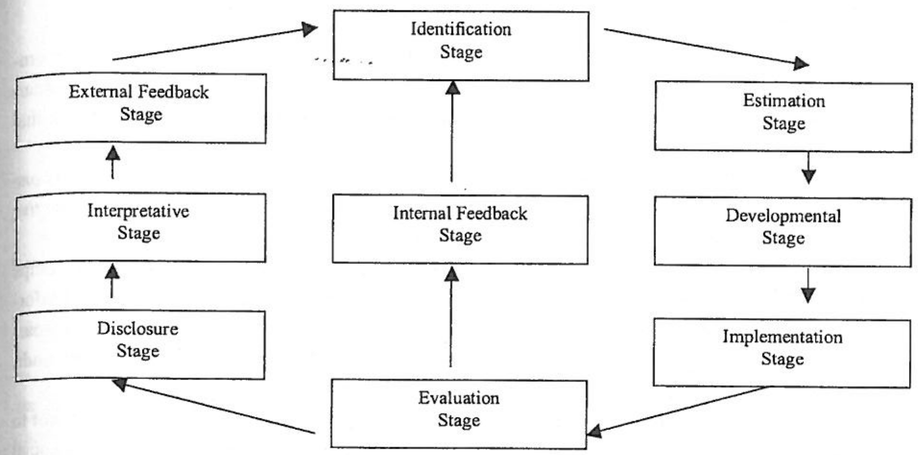

Figure 2. The Turnbull Framework for internal control

Source: J. Solomon, A. Solomon: *op.cit.*, p. 127.

The board should consider "company's ability to reduce the incidence and impact on the business of risks that do materialize"[18] as well as "costs of operating particular controls relative to the benefit thereby obtained in managing the related risks"[19].

Followed by the evaluation stage is the implementation stage, where the board put their chosen risk management strategy into operation. Evaluation stage is involved once again after the implementation stage, where the effectiveness of the implemented strategy is evaluated. This stage involves continuous effective monitoring on implemented strategies.

To ensure a dynamic and effective system of internal control, the evaluation stage flows into an internal feedback stage, as frequent feedback in the form of reports from managers to the board, as well as, in some cases, an internal audit, to link evaluation to internal disclosure[20].

Formal public disclosure to its shareholders is used as an outlet for the company's risk management strategy. Known as the disclosure stage, it involves reporting information relating to the company's risk management strategy, its effects and success, as well as some predictive discussion of the company as a going concern[21].

The final stage of the framework is interpretation of the disclosed material by stakeholders, which was intended to facilitate external feedback and control. This feedback should be incorporated in the first identification stage of the framework as a crucial aspect of the company's overall risk management strategy and system of internal control[22].

[18] *Turnbull Report...*

[19] *Ibidem.*

[20] J. Solomon, A. Solomon: *op.cit.*, pp.124, 126–129.

[21] *Ibidem*, p. 128.

[22] A system similar to the one described above is recommended by Ernst & Young for publicly listed companies (Ernst & Young, 2004).

4. Audit & Corporate Governance

The external audit represents one of the most indispensable elements of corporate governance that help to monitor company management's activities and increasing transparency. Kothari (2001) found that shareholders consider audited accounting information to be credible and that share prices react to earnings announcements.

The Cadbury Report shed light on the Audit function and emphasized that *"The audit is one of the cornerstones of corporate governance (...) The audit provides an external and objective check on the way in which the financial statements have been prepared and presented"*[23].

The audit function represents another important corporate governance mechanism that helps shareholders in their monitoring and control of company management. The audit of financial information makes disclosure more credible, thereby instilling confidence in the company's transparency. It is important however, to realize the existence of an 'audit expectations gap', as the audit function can only do so much where fraud is rifle.

According to the Cadbury Report, it is important to understand that auditor's role is not to prepare the financial statements, nor to provide absolute assurance that the figures in the financial statements are correct, but only to state if the financial information show a *'true and fair view'*. It was emphasized by the Cadbury Report that there was no question as to whether or not there should be an audit but rather how its effectiveness and objectivity could be ensured[24].

It had been stressed[25] that in many cases auditor independence could be compromised due to close relationship that is inevitable between auditors and company management. Cadbury emphasize that auditors should achieve the balance and remember that they needed to serve shareholders. Establishing Audit Committees and developing effective accounting standards were suggested as the most appropriate means of ensuring this balance is attained. Some of the other issues relating to auditor independence are discussed below:

1. **Provision of multiple** – auditing generally tended to comprise only a part of the auditor's business with their client companies. The desire for auditors to compete on price in offering a number of services, as well as their desire to satisfy their client's wishes, can lead to shareholder interests being sideline[26]. Audit companies normally offer consultancy and IT services to their clients. It had been stressed that a prohibition of such services would increase corporate costs significantly, as their freedom of choice in the market would be restricted[27].
2. **Rotation of auditors** – could help with avoiding cozy auditor-client relationships and guarantee better independence and transparency. It has become a very important initiative worldwide after the collapse of Enron.
3. **Audit committees** – companies should establish internal audit committees. The audit committee should ensure the independence and objectivity of the external auditor, as well as in

[23] *Cadbury Report – The Financial Aspects of Corporate Governance.* Burges Science Press, 1992, Pg. 36, Para 5.1.

[24] J. Solomon, A. Solomon: *op.cit.*, p. 139.

[25] *Cadbury Report...*; J. Solomon, A. Solomon: *op.cit.*; R. Monks, N. Minow: *Corporate governance.* Blackwell Publishing, 2003.

[26] J. Solomon, A. Solomon: *op.cit.*, p. 144.

[27] Smith Report – Audit committees – combined code guidance. FRC, 2003, Pg. 27, Para. 35.

monitoring company management. The main role and responsibilities of audit committees should be to[28]:

- monitor the integrity of companies' financial statements,
- evaluate companies' internal control systems,
- monitor and review the effectiveness of companies' internal audit functions,
- make recommendations to the board in relation to the appointment of the external auditor and approve the remuneration and terms of engagement of the external auditor,
- monitor and review the independence, effectiveness and objectivity of the external auditor,
- develop and implement policy on the engagement of the external auditor to supply non-audit services.

It had also been stressed that all members of the audit committee should be independent non-executive directors and that the companies' annual reports should disclose detailed information on the role and responsibilities of audit committee and action taken by the audit committee in discharging their responsibilities[29].

Conclusion

In the last ten years we have been observing the increasing importance of efficient corporate governance. Spectacular collapse and bankruptcies of the worldwide companies shows that the governance system is not working properly and fails in fulfilling its goals. The information disclosed by companies should show true and fair view of the company. To meet its obligation to the shareholders the Board of Directors must implement relevant procedure and create proper relationship with internal and external auditors.

The first step is to create the accurate system of internal control which will enhance the proper risk management. Secondly the internal audit unit should be established to monitor efficiency of internal control system as well as create added value. Finally the appropriate relationship with external auditor should be created. It has to be noted that the auditor does not have direct corporate governance responsibility but rather provide assurance of the reliability and quality of the information disclosed by the company.

It should be stressed that efficient internal control system, professional internal audit and proper relationship with external audit provide confidence, reduce uncertainty and risk and adds value to the company.

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[28] *Ibidem*, p. 6, Para 2.1.

[29] *Ibidem*, Pg. 17, Para 6.1.

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Summary

Corporate governance is the process of supervision and control intended to ensure that the company's management acts in accordance with the interests of shareholders. The recent corporate scandals such as Enron, WorldCom or Parmalat shows that this process is not working efficiently and information disclosed by companies are unreliable.

The system of corporate governance contains many elements. Some of them are internal control, internal audit and external audit. The aim of the paper is to review the role of these three elements in enhancing the efficiency of corporate governance.

ZNACZENIE AUDYTU I KONTROLI WEWNĘTRZNEJ W EFEKTWNYM FUNKCJONOWANIU NADZORU KORPORACYJNEGO

Streszczenie

Nadzór korporacyjny to proces mający zapewnić, że podmiot gospodarczy jest zarządzany zgodnie z interesami akcjonariuszy. Ostatnie skandale finansowe, takie jak Enron, WorldCom czy Parmalat pokazują, że procesy te nie funkcjonują prawidłowo zaś informacje ujawniane przez spółki okazują się nierzetelne.

System nadzoru korporacyjnego składa się z wielu elementów. Zalicza się do nich między innymi system kontroli wewnętrznej, system audytu wewnętrznego oraz audyt zewnętrzny – rewizja finansowa. Celem niniejszego opracowania jest omówienie roli, jaką pełnią te elementy w efektywnym sprawowaniu nadzoru korporacyjnego.

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ZBIGNIEW KORZEB

WPŁYW PIERWSZYCH INFORMACJI O FUZJACH I PRZEJĘCIACH NA KSZTAŁTOWANIE SIĘ WYNIKÓW FINANSOWYCH BANKÓW KOMERCYJNYCH UCZESTNICZĄCYCH W TYCH TRANSAKCJACH

Wprowadzenie

Ocena dotychczas dokonanych transakcji fuzji i przejęć w sektorze bankowym w Polsce jednoznacznie wskazuje, że bardzo często były to działania spontaniczne i intuicyjne, przynoszące odmienne efekty od preliminowanych celów. Jednym z najczęściej popełnianych błędów było niedocenianie lub pobieżne traktowanie fazy przygotowawczej integracji, która należy do najbardziej istotnych elementów całego procesu konsolidacyjnego. Tymczasem sukces całego przedsięwzięcia jest w coraz większym stopniu determinowany umiejętnością pozyskiwania, przetwarzania i wykorzystywania informacji, niezbędnych do antycypowania przyszłych wyników finansowych połączonych banków oraz przewidywania przyszłych zdarzeń w kontekście maksymalizowania efektu synergii. Wybór najbardziej korzystnego wariantu dla banku przejmującego lub inicjującego połączenie nie może opierać się wyłącznie na analizie retrospektywnych danych, ale powinien uwzględniać zmienność zachowania potencjalnych kandydatów do przejęcia w dynamicznie zmieniającej się rzeczywistości rynkowej. Celem artykułu jest określenie wpływu pierwszych informacji o fuzjach i przejęciach w sektorze bankowym na kształtowanie się wyników finansowych banków komercyjnych, uczestniczących w tych procesach, oraz przedstawienie implikacji tego zjawiska na ostateczną efektywność integracji.

1. Istota transakcji fuzji i przejęć w sektorze bankowym

Największym wyzwaniem stojącym przed osobami bezpośrednio nadzorującymi i koordynującymi transakcje konsolidacyjne w sektorze bankowym jest racjonalne i umiejętne zrealizowanie kolejnych etapów procesu połączenia, począwszy od identyfikacji możliwości zewnętrznego wzrostu wartości banku, poszukiwania i wyboru potencjalnych kandydatów, oszacowania wartości przejmowanego banku, analizy opłacalności przedsięwzięcia, doboru sposobów i źródeł finansowania, przeprowadzenia *due dilligence* oraz sfinalizowania negocjacji, a skończywszy na właściwej integracji oraz pełnej asymilacji niezależnego dotąd banku[1]. Niestety dosyć często ocena *ex-post* dokonanych fuzji i przejęć w sektorze bankowym wskazuje, że wielokrotnie ich zrealizowanie było

[1] Z. Rezaee: *Financial Institutions, Valuations, Mergers and Acquisitions. The Fair Value Approach. Second edition.* John Wiley & Sons, New York 2001, s. 93–94.