

## THE CONCEPT OF COMPULSORY GOVERNANCE STRUCTURE

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**Purpose:** identification of the original concept of compulsory governance structure.

**Design/methodology/approach:** institutions that legally compel owners to entrust the governance of the firm to an independent outsider were sought. Their features were subjected to a cluster analysis in a form of Czekanowski's diagram. Based on Coase theorem, a definition is proposed.

**Findings:** the compulsory governance structure is a regulatory mechanism aimed at neutralizing the social cost for stakeholders caused by ineffective firm. It introduces an external manager to the firm, who under special powers aims to remove the causes of inefficiency. During compulsory governance structure collateral transaction costs are internalized by the firm and transformed into additional coordination costs. The second finding is an observation that firm's ineffectiveness might be measured by the level of stakeholders transaction costs.

**Research limitations/implications:** relying solely on manifestations of compulsory governance structure in Poland.

**Originality/value:** identification of a new research unit called compulsory governance structure and noting the relationship between firm ineffectiveness and stakeholders transaction costs.

**Keywords:** corporate governance, compulsory governance structure, new institutional economics, transaction costs.

**Category of the paper:** Research paper.

### 1. Introduction

One of the rare and counter-intuitive events in enterprises are cases when an outsider is brought into the firm with the purpose of managing it, usually against current owner's will. These instances, which influence coordination and transaction costs, are manifestations of economic institutions (Williamson, 1985). Therefore, this article will be placed in the new institutional economics, in particular in the scientific research of the Nobel laureate R.H. Coase (Coase theorem). It will be placed in the basic (theoretical) research based on qualitative

analysis (Nowosielski, 2016). Its purpose is to identify the original concept of compulsory governance structure.

For this purpose, the article requires identification of the cases that will fall under the scope of the compulsory governance structure concept. Due to research limitations, they will be limited to the legal regime of the Republic of Poland. It should also be noted that only general institutions related to the broad market were selected, while specialized (qualified) forms related specifically to associations, education or banking were omitted. Listing and briefly presenting the examined institutions:

1. Three variants of civil compulsory administration. In the event of a firm's debt, an external administrator may be introduced into the firm. Firstly, to protect the firm's assets against loss during a debt lawsuit, secondly to collect the debt from the firm's income, thirdly to collect the debt by selling the firm.
2. Bankruptcy of an insolvent firm. A situation where a trustee is brought into the firm in order to liquidate its assets and settle debts (also separate institution for securing the firm during preliminary bankruptcy proceedings).
3. Liquidation of a solvent firm. A situation where a liquidator is introduced into the firm in order to liquidate its assets and settle debts.
4. Two types of curator. A situation where the firm's statutory bodies remain vacant or when the firm has no representative during the court proceedings.
5. Inheritance administration. A situation when the owner-manager dies and external administrator is placed to manage the firm until the inheritance proceedings are resolved.
6. Penal compulsory administration. In the course of criminal proceedings, an administrator is placed in the suspect's firm to monitor whether it is not used to commit further crimes or to conceal evidence and benefits obtained from crime.
7. Three variants of supervision in four types of restructuring proceedings. In simple terms, in firms threatened with insolvency, an external supervisor negotiates an agreement with creditors for the survival of the firm.

Secondly, it is necessary to identify the research gap which lies between the two tiers of scientific publications relating to subject and scope of research gap. The most significant subject publications are restructuring publications on the theoretical (Lachiewicz et al., 2005) and managerial levels (Lubián, 2014) in the aspects of economy (Borowiecki and Wysłocka, 2012; Podczarski, 2016), law (Zaremba, 2021), actors and stakeholders (Gilejko, 2006; Janda, 2011) or history (Mączyńska, 2001; Kamosiński, 2015). Followed by publications on bankruptcies (Antonowicz, 2015) and liquidations (Missala and Wolbach, 2013; Witosz, 2014). Other institutions are described mainly in legal publications based on jurisprudence in the field of civil (Machnikowski, 2022), criminal (Skorupka, 2021), corporate (Jara, 2022), procedural law (Zieliński and Flaga-Gieruszyńska, 2022), bankruptcy and restructuring (Zimmerman, 2022). In terms of scope of research gap, it is recognized that the mainstream theory of the firm started

with two fundamental works: “The Nature of the Firm” (Coase, 1937) and earlier “Risk, Uncertainty and Profit” (Knight, 1921). While many authors consider the latter to be more acute and despite many criticisms (Kennedy, 1981; Schmitz, 2001; Fox, 2007) it was the Coase's article that became the starting point for analysis of the firm and more broadly theory of economic organization (Walker, 2021). The works of Coase are designated by some as the Coase theorem, despite many disputes as to the correct way of interpreting it (McCloskey, 1998), since the paradigm is considered still in the making (Rudolf, 2005). Nevertheless during his life, Coase did not make any significant revisions to his claims (Aslanbeigui and Oakes, 2015). Coase's works have a second essential stage (Press release. NobelPrize.org., 1991), in which he depict the problem of social costs of *externalities* (market failures) and judges decisions (Coase, 1960). The author himself claimed that this work had more impact on legal scholarship, than economics (Coase, 1991) which may be due to the fact that costs and benefits balancing in a market is ordinarily carried out by economic exchange (Campbell, 2016). Leaving the parties freedom to choose, they will find an effective solution regardless of the legal system of liability for damages (Frank, 2007). It is broadly pointed out that Coase theorem is unrealistic in the sense that it assumes an efficiency of solutions due to absence of transaction costs, nevertheless transaction costs undoubtedly do exists (Zerbe, 2000). On the other hand this is a logical consequence of Adam Smith's assumptions that economic system depends on division of labor, but is only achievable when division of labor is provided with at the lowest possible cost of exchange (lowest possible transaction costs) (Coase, 1998). As a whole, institutions mostly have the status of an economic growth factor (Szplit, 2016) but not all authors share this opinion (Glaeser et al., 2004). In addition, institutions create a number of measurement problems (Voigt, 2013). In summary, the subject of the research gap for compulsory governance structure concept lie in common denominator for institutions from various fields of law. The scope of research gap is framed by assessing them as a tools to deal with *externalities* (market failures) which usually should be internalised by price mechanism rather than by institutions. So far, it has not been discussed in the literature, therefore it constitutes an original concept and proposal for new research unit.

Since *ECONOMIC theory has suffered in the past from a failure to state clearly its assumptions. Economists in building up a theory have often omitted to examine the foundations on which it was erected. This examination is, however, essential not only to prevent the misunderstanding and needless controversy which arise from a lack of knowledge of the assumptions on which a theory is based, but also because of the extreme importance for economics of good judgment in choosing between rival sets of assumptions* (Coase, 1937, p. 386). Therefore, in order to correctly identify the concept of compulsory governance structure, it is necessary to identify the underlying assumptions of this concept in advance. They will constitute a starting point for theoretical considerations. As Coase theorem does not provide undisputed summary, the choice fell on two summary statements derived from two major publications (Coase, 1937, 1960). They are not in themselves the best depiction of Coase

theorem that we can find in scholarly literature (Zerbe, 2000), however they provide the best reference for compulsory governance structure. Selected:

1. (...) *the operation of a market costs something and by forming an organization and allowing some authority (an "entrepreneur") to direct the resources, certain marketing costs are saved. The entrepreneur has to carry out his function at less cost, taking into account the fact that he may get factors of production at a lower price than the market transactions which he supersedes, because it is always possible to revert to the open market if he fails to do this (Coase, 1937, p. 392).*
2. *The problem which we face in dealing with actions which have harmful effects is not simply one of restraining those responsible for them. What has to be decided is whether the gain from preventing the harm is greater than the loss which would be suffered elsewhere as a result of stopping the action which produces the harm. In a world in which there are costs of rearranging the rights established by the legal system, the courts, in cases relating to nuisance, are, in effect, making a decision on the economic problem and determining how resources are to be employed. It was argued that the courts are conscious of this and that they often make, although not always in a very explicit fashion, a comparison between what would be gained and what lost by preventing actions which have harmful effects. But the delimitation of rights is also the result of statutory enactments. Here we also find evidence of an appreciation of the reciprocal nature of the problem. While statutory enactments add to the list of nuisances, action is also taken to legalize what would otherwise be nuisances under the common law. The kind of situation which economists are prone to consider as requiring corrective Government action is, in fact, often the result of Government action. Such action is not necessarily unwise. But there is a real danger that extensive Government intervention in the economic system may lead to the protection of those responsible for harmful effects being carried too far (Coase, 1960, pp. 27-28).*

At this point, the individual institutions covered by the study were described and a research gap was identified. The underlying assumptions that will be the basis for further theoretical considerations have been also determined. This completes the stage where the subject and theoretical background for the research is presented. The next stage, as described in research methodology, will aim to create a definition based on steps taken so far.

## 2. Methods

The premise of this article is to identify the original concept of compulsory governance structure. This goal will be achieved by formulating a definition of this phenomenon. The compulsory governance structure will be *definiendum*. What is sought is the element of the definition marked as *definiens*. It is a statement in a given language, containing an appropriate degree of generalization, characterizing a certain phenomenon or presenting the meaning of a certain word (Ziemiński, 2002). When there is an existing definition, the cognitive process of understanding the phenomenon requires familiarization with the written definition which in turn provide the reader with a generalized picture of the phenomenon. Understanding the general form, the reader independently assesses whether individual manifestations fall within the general definition. Such process goes from general aspects to individual display. However, to create previously non-existent definition, this cognitive process need be reverse engineered. It requires heuristic, diagnostic examination aimed at determining the features and principles of a specific manifestations of phenomenon. Only on their basis, the researcher will undertake generalizing examination aimed at discovering and justifying general regularities (Apanowicz, 2000).

The research will start with qualitative revision of legal provisions. The result will be shown in the table with weights assigned to individual records, for the purpose of cluster analysis in the form of Czekanowski's diagram (Jaskulski and Sołtysiak, 2004). Developed with the help of the tool MaCzek version 3.3.44<sup>1</sup>. The following scale of weights will be adopted: in 'Established by' category a weight [1] will be assigned to the court office with affiliates while weight [2] will be assigned to owners. In 'Scale of court supervision' will be assigned: [1] high, [2] medium, [3] small. In 'Range' will be assigned: [1] entire firm, [2] all or part of the firm. In 'End method' will be assigned: [1] termination or loss of the firm [2] survival of economic activity in hands of the owner. In 'Impact on owner authority' assigned: [1] taking all power from the owner [2] cooperation with the owner [3] acting on behalf of the owner. In 'Administrator' will be assigned: [1] licensed entity [2] any person meeting minimum requirements. In 'Type of salary' will be assigned: [1] the amount of salary is legally imposed [2] the amount of salary depends on the owner. In 'Source of salary' will be assigned: [1] costs borne by the owner or the liable third party [2] costs principally covered by the firm. In the case of the strategic and operational goals, they were not included in the Czekanowski's diagram, due to incomparable end goals for cluster analysis. The weights were allocated on the assumption that the scale starts with the solutions most distant from the typical governance structure.

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<sup>1</sup> Freeware MaCzek version 3.3.441 is available to download on the website of the University of Warsaw: <http://www.antropologia.uw.edu.pl/MaCzek/maczek.html>.

At this stage, the study will identify individual manifestations and features of the phenomenon being defined. While formulating the *definiens*, it is necessary to grasp the ‘essence of the phenomenon’ while deciding which features are important and which are irrelevant. Often, the inadequacy of the definition come not from the definition itself, but from the researcher's perception of the phenomenon. There are many definition errors, such as defining the unknown by the unknown *ignotum per ignotum*, the same by the same *idem per idem*, too broad and too narrow a range or categorical shifts related to ontological categories (Ziemiński, 2002). At this point, the importance of correctly identifying the underlying assumptions is emphasized. Therefore, adopting and relying on the Coase theorem allows the *definiens* to be placed in a specific conceptual scheme. Two underlying assumptions will be selected from Coase's most important works, representing two separate stages of his research. This presumption permits to go beyond the reporting legal definition (describing the meaning of a word in a language) and create a design economic definition placed in semantic stylization of a regulatory nature (determining the meaning of a word for the future, in the designed way of speaking) (Ziemiński, 2002).

### 3. Results

A simple criterion was adopted for sought institutions, where an outsider is introduced to the firm and entrusted with its management (excluding everyday employment). Therefore, thirteen institutions have been identified in total.

**Table 1.**

*Civil compulsory administration 1 (zarząd przymusowy w trybie art. 747 pkt 6 k.p.c.)*

<b>Established by</b>	court [1]	Art. 752(4) § 1(1) k.p.c.
<b>Scale of court supervision</b>	high [1]	Art. 752(4) k.p.c.
<b>Range</b>	all or part of the enterprise [2]	Art. 752(4) § 1 k.p.c.
<b>End method</b>	as a rule, 2 months after the end of the court case [2]	Art. 754(1) § 1 k.p.c.
<b>Impact on owner authority</b>	deprives the debtor's rights [1]	Art. 752(5) k.p.c.
<b>Strategic goal</b>	securing pecuniary claims	art. 747 pkt 6 k.p.c.
<b>Operational goal</b>	activities needed to run proper management	Art. 752(4) § 1 w zw. z art. 935 § 1 k.p.c.
<b>Administrator</b>	everyone except the obligated person [2]	Art. 752(4) § 1(1) k.p.c.
<b>Type of salary</b>	dependent on workload and profitability of company [1]	Art. 752(4) § 1 w zw. z art. 939 § 1 k.p.c.
<b>Source of salary</b>	in principle, from the company's income [2]	Art. 752(4) § 1 w zw. z art. 940 pkt. 1 k.p.c.

Source: based on: (Ustawa z dnia 17 listopada 1964 r. - Kodeks postępowania cywilnego (t.j. Dz. U. z 2021 r. poz. 1805 z póź. zm.), 2022).

**Table 2.***Civil compulsory administration 2 (zarząd przymusowy w trybie art. 1064(1)-1064(13) k.p.c.)*

<b>Established by</b>	court [1]	Art. 1064(3) § 3 k.p.c.
<b>Scale of court supervision</b>	high [1]	Art. 1064(1)-1064(13) kpc
<b>Range</b>	all or part of the enterprise [2]	Art. 1064(5) k.p.c.
<b>End method</b>	6 months or earlier debt recovery [2]	Art. 1064(6) § 1 k.p.c.
<b>Impact on owner authority</b>	deprives the debtor's rights [1]	Art. 1064(9) k.p.c.
<b>Strategic goal</b>	debt enforcement	Art. 1064(1) § 1 k.p.c.
<b>Operational goal</b>	debt enforcement from the company's income	Art. 1064(1) § 1 k.p.c.
<b>Administrator</b>	person or enterprise with a restructuring advisor license [1]	Art. 1064(10) § 1 k.p.c.
<b>Type of salary</b>	dependent on workload and profitability of company [1]	Art. 1064(1) § 2 w zw. z art. 939 § 1 k.p.c.
<b>Source of salary</b>	in principle, from the company's income [2]	Art. 1064(11) § 1 w zw. z art. 940 pkt. 1 k.p.c.

Source: based on: (Ustawa z dnia 17 listopada 1964 r. - Kodeks postępowania cywilnego (t.j. Dz. U. z 2021 r. poz. 1805 z póź. zm.), 2022).

**Table 3.***Civil compulsory administration 3 (zarząd przymusowy w trybie art. 1064(14)-1064(23) k.p.c.)*

<b>Established by</b>	court [1]	Art. 1064(14) § 1 k.p.c.
<b>Scale of court supervision</b>	high [1]	Art. 1064(14)-1064(23) kpc
<b>Range</b>	entire enterprise [1]	Art. 1064(14) § 1 k.p.c.
<b>End method</b>	pending sale [1]	Art. 1064(14) § 1 k.p.c.
<b>Impact on owner authority</b>	deprives the debtor's rights [1]	Art. 1064(15) § 1 w zw. z art. 1064(9) k.p.c.
<b>Strategic goal</b>	debt enforcement	Art. 1064(14) § 1 k.p.c.
<b>Operational goal</b>	sale of the company	Art. 1064(14) § 1 k.p.c.
<b>Administrator</b>	person or enterprise with a restructuring advisor license [1]	Art. 1064(15) § 1 w zw. z art. 1064(10) § 1 k.p.c.
<b>Type of salary</b>	dependent on workload and profitability of company [1]	Art. 1064(14) § 2 w zw. z art. 939 § 1 k.p.c.
<b>Source of salary</b>	in principle, from the company's income [2]	Art. 1064(15) § 1 w zw. z art. 1064(11) § 1 i art. 940 pkt. 1 k.p.c.

Source: based on: (Ustawa z dnia 17 listopada 1964 r. - Kodeks postępowania cywilnego (t.j. Dz. U. z 2021 r. poz. 1805 z póź. zm.), 2022).

**Table 4.***Penal compulsory administration (zarząd przymusowy w trybie art. 292a k.p.k.)*

<b>Established by</b>	court (prosecutor in preparatory proceedings - then approved by the court) [1]	Art. 292a. § 1-6 k.p.k.
<b>Scale of court supervision</b>	medium [2]	Art. 292a. § 1-6 k.p.k.
<b>Range</b>	all or part of the enterprise [2]	Art. 292a § 1 k.p.k.
<b>End method</b>	pending the sentence in a criminal case [2]	Art. 294. § 1 k.p.k.
<b>Impact on owner authority</b>	management next to the debtor [2]	SN 17.10.19 r. III PZ 15/19
<b>Strategic goal</b>	monitoring and management of the company	Art. 292a § 8 k.p.k.
<b>Operational goal</b>	the administrator ensures the continuity of the work of the secured enterprise and provides the court or the prosecutor with the information that is relevant to the criminal proceedings.	Art. 292a § 8 k.p.k.
<b>Administrator</b>	person with a restructuring advisor license [1]	Art. 292a § 1 k.p.k.
<b>Type of salary</b>	dependent on workload and profitability of company [1]	Art. 292 § 1 k.p.k. w zw. z art. 939 § 1 k.p.c.
<b>Source of salary</b>	State Treasury expenditure included in the court costs borne by the convicted person [1]	Art. 616 § 2 ust. 2 w zw. z art. 618 § 1 ust. 9b k.p.k.

Source: based on: (Postanowienie Sądu Najwyższego z dnia 17 października 2019 r. sygn. akt: III PZ 15/19, 2019; Ustawa z dnia z dnia 6 czerwca 1997 r. Kodeks postępowania karnego (t.j. Dz. U. z 2021 r. poz. 534 z póź. zm.), 2022).

**Table 5.***Inheritance administration (zarząd sukcesyjny)*

<b>Established by</b>	entrepreneur <i>mortis causa</i> , heir [2]	Art. 9 i art. 12 z.s.
<b>Scale of court supervision</b>	small [3]	Art. 60 z.s.
<b>Range</b>	entire enterprise [1]	Art. 17 ust. 1 z.s.
<b>End method</b>	pending the sentence in a inheritance case [2]	Art. 51-60 z.s.
<b>Impact on owner authority</b>	the owner's representative according to the provisions of the civil contract [3]	Art. 26 z.s.
<b>Strategic goal</b>	temporary management of the enterprise after the death of the entrepreneur	Art. 1 ust. 1 z.s.
<b>Operational goal</b>	performs the rights and obligations of the deceased entrepreneur resulting from his economic activity and the rights and obligations resulting from running an enterprise in the estate. Seeks to preserve property	Art. 13 ust. 1 i art. 29 z.s.
<b>Administrator</b>	person without issued bans to conduct business [2]	Art. 8 z.s.
<b>Type of salary</b>	owners according to the provisions on civil contracts [2]	Art. 26 z.s.
<b>Source of salary</b>	owners according to the provisions on civil contracts [1]	Art. 26 w zw. z art. 1 z.s.

Source: based on: (Ustawa z dnia 5 lipca 2018 r. o zarządzie sukcesyjnym przedsiębiorstwem osoby fizycznej (t.j. Dz. U. 2021 poz. 170), 2022).



**Table 6.***Curator 1 (kuratela w trybie art. 42 k.c.)*

<b>Established by</b>	court [1]	Art. 42 § 1 k.c.
<b>Scale of court supervision</b>	high [1]	Art. 42 k.c.
<b>Range</b>	entire enterprise [1]	Art. 42 § 2 k.c.
<b>End method</b>	a period not exceeding one year, or an earlier filling of vacancies in the authority [2]	Art. 42(1) § 1 k.c.
<b>Impact on owner authority</b>	represents an enterprise incapable of independent representation [1]	Art. 42 § 2 k.c.
<b>Strategic goal</b>	management of an enterprise incapable of independent representation	Art. 42 § 1 k.c.
<b>Operational goal</b>	appointment or supplementation of the management body	Art. 42 § 2 k.c.
<b>Administrator</b>	court curator [1]	Ustawa k.s.
<b>Type of salary</b>	as a rule, not exceeding 40% of the minimum fees for lawyers [1]	§ 1 ust. 1 rozp. o wynagrdz.
<b>Source of salary</b>	in principle, enterprise for which curator was appointed [2]	Art. 603(4) § 4 k.p.c.

Source: based on: (Rozporządzenie Ministra Sprawiedliwości z dnia 9 marca 2018 r. w sprawie określenia wysokości wynagrodzenia i zwrotu wydatków poniesionych przez kuratorów ustanowionych dla strony w sprawie cywilnej (Dz.U. 2018 poz. 536), 2022; Ustawa z dnia 23 kwietnia 1964 r. - Kodeks cywilny (t.j. Dz. U. z 2020 r. poz. 1740 z póź. zm), 2022; Ustawa z dnia 27 lipca 2001 r. o kuratorach sądowych (t.j. Dz. U. z 2020 r. poz. 167), 2022).

**Table 7.***Curator 2 (kuratela w trybie art. 69 k.c.)*

<b>Established by</b>	court [1]	Art. 69 § 1 k.p.c.
<b>Scale of court supervision</b>	high [1]	Art. 69 k.p.c.
<b>Range</b>	entire enterprise [1]	Art. 69 k.p.c.
<b>End method</b>	pending the sentence in a court case or appointing a probation officer under Art. 42 § 1 k.c. [2]	Art. 69 § 1 i 4 k.p.c.
<b>Impact on owner authority</b>	represents an enterprise incapable of independent representation [1]	Art. 69 k.p.c.
<b>Strategic goal</b>	conducting a court case of an enterprise incapable of independent representation	Art. 69 § 1 k.p.c.
<b>Operational goal</b>	termination of the court case	Art. 69 § 3 k.p.c.
<b>Administrator</b>	court curator [1]	Ustawa k.s.
<b>Type of salary</b>	as a rule, not exceeding 40% of the minimum fees for lawyers [1]	§ 1 ust. 1 rozp. o wynagrdz.
<b>Source of salary</b>	in principle, enterprise for which curator was appointed [2]	Art. 603(4) § 4 k.p.c.

Source: based on: (Ustawa z dnia 17 listopada 1964 r. - Kodeks postępowania cywilnego (t.j. Dz. U. z 2021 r. poz. 1805 z póź. zm.), 2022; Ustawa z dnia 27 lipca 2001 r. o kuratorach sądowych (t.j. Dz. U. z 2020 r. poz. 167), 2022; Rozporządzenie Ministra Sprawiedliwości z dnia 9 marca 2018 r. w sprawie określenia wysokości wynagrodzenia i zwrotu wydatków poniesionych przez kuratorów ustanowionych dla strony w sprawie cywilnej (Dz.U. 2018 poz. 536), 2022).

**Table 8.***Liquidator (likwidacja w trybie k.s.h.)*

<b>Established by</b>	partners/owners [2]	Art. 58, art. 98, art. 148, art. 270, art. 459 k.s.h.
<b>Scale of court supervision</b>	small [3]	Art. 71 § 1, art. 271 k.s.h.
<b>Range</b>	entire enterprise [1]	Art. 58, art. 98, art. 148, art. 270, art. 459 k.s.h.
<b>End method</b>	until the liquidation activities are completed; at Sp. z o.o. not faster than 6 months, and with S.A. not earlier than one year from the activities commencing liquidation. [1]	Art. 286 § 1, art. 474 § 1 k.s.h.
<b>Impact on owner authority</b>	In the absence of other dispositions - the usual rules of representation and management [3]	Art. 68, art. 280, art. 466 k.s.h.
<b>Strategic goal</b>	liquidation of the enterprise	Art. 58, art. 98, art. 148, art. 270, art. 459 k.s.h.
<b>Operational goal</b>	ending the company's current interests, collecting debts, fulfilling obligations and liquidating the company's assets.	Art. 77 § 1, art. 282 § 1, art. 468 § 1 k.s.h.
<b>Administrator</b>	liquidator [2]	Art. 70 § 1, art. 286 § 1, art. 463 § 1 k.s.h.
<b>Type of salary</b>	set by the owner [2]	Art. 68, art. 275 § 1, art. 462 § 1 w zw. z art. 203(1) k.s.h.
<b>Source of salary</b>	in principle, enterprise for which liquidator was appointed based on civil contract [2]	Art. 203(1) w zw. z art. 280, art. 378 w zw. z art. 466 k.s.h.

Source: based on: (Ustawa z dnia 15 września 2000 r. Kodeks spółek handlowych (tj. Dz. U. z 2020 r. poz. 1526 z póź. zm.), 2022).

**Table 9.***Preliminary bankruptcy trustee (tymczasowy nadzór sądowy w trybie art. 38-43 p.u.)*

<b>Established by</b>	court [1]	Art. 38 § 1 p.u.
<b>Scale of court supervision</b>	medium [2]	Art. 38 § 3 p.u., Art. 56aa p.u.
<b>Range</b>	entire enterprise [1]	Art. 38a p.u.
<b>End method</b>	ends on the day of the declaration or refusal to declare bankruptcy [2]	Art. 43 p.u.
<b>Impact on owner authority</b>	debtor entitled to ordinary management activities. For activities exceeding the scope of day-to-day management, the consent trustee is required, otherwise null and void [2]	Art 38a p.u.
<b>Strategic goal</b>	securing the debtor's assets at the stage of examining the bankruptcy petition	Art. 38 § 1 p.u.
<b>Operational goal</b>	control of the debtor's management activities and expenses	Art. 39 § 2, art. 38a p.u.
<b>Administrator</b>	person or enterprise with a restructuring advisor license [1]	Art. 157 § 1-2a w zw. z art 38 § 1 p.u.

Cont. table 9.

<b>Type of salary</b>	dependent on the amount of work, the scope of activities undertaken in the proceedings, the degree of their difficulty, and the time of performing the function [1]	Art. 38 § 1b, 1c, 1d p.u.
<b>Source of salary</b>	in principle, an indebted enterprise [2]	Art. 38 § 2 w zw. z art. 32 p.u.

Source: based on: (Ustawa z dnia 28 lutego 2003 r. Prawo upadłościowe (t.j. Dz. U. z 2020 r. poz. 1228 z póź. zm), 2022).

**Table 10.***Bankruptcy trustee (syndyk w trybie p.u.)*

<b>Established by</b>	court [1]	Art 157(1) § 1 p.u.
<b>Scale of court supervision</b>	high [1]	Art. 168, art. 165 p.u.
<b>Range</b>	entire enterprise [1]	Art. 173 p.u.
<b>End method</b>	until the bankruptcy (liquidation) activities are completed [1]	Art. 364 w zw. z art. 361 p.u.
<b>Impact on owner authority</b>	all rights of the bankrupt related to participation in companies or cooperatives are exercised by the trustee [1]	Art. 186 p.u.
<b>Strategic goal</b>	liquidation of the enterprise	Art. 173 p.u.
<b>Operational goal</b>	manages the debtor's property, secures it against destruction, damage or removal by third parties	Art. 173 p.u.
<b>Administrator</b>	person or enterprise with a restructuring advisor license [1]	Art. 157 § 1-2a p.u.
<b>Type of salary</b>	depending on the amount paid to creditors, the number of employees in the liquidated enterprise, the number of creditors, duration, degree of difficulty [1]	Art. 162 p.u.
<b>Source of salary</b>	in principle, an indebted enterprise [2]	Art. 164 w zw. z art. 32 p.u.

Source: based on: (Ustawa z dnia 28 lutego 2003 r. Prawo upadłościowe (t.j. Dz. U. z 2020 r. poz. 1228 z póź. zm), 2022).

**Table 11.***Restructuring supervisor I (nadzorca układu w trybie art. 35-37 p.r.)*

<b>Established by</b>	debtor [2]	Art. 35 § 1 p.r.
<b>Scale of court supervision</b>	small [3]	Art. 31 p.r.
<b>Range</b>	entire enterprise [1]	Art. 3 § 1 p.r.
<b>End method</b>	until the restructuring activities are completed [2]	Art. 27 § 1 p.r.
<b>Impact on owner authority</b>	does not limit the debtor in the management of his property [3]	Art. 36 § 1 p.r.
<b>Strategic goal</b>	conclusion of an arrangement by the debtor with creditors without the participation of the court, as a result of self-collection of creditors' votes	Art. 3 § 2 ust. 1 p.r.
<b>Operational goal</b>	controls the activities of the debtor with regard to his property and the debtor's business and whether the property is sufficiently protected against damage or loss	Art. 37 § 1 p.r.

Cont. table 11.

<b>Administrator</b>	person or enterprise with a restructuring advisor license [1]	Art. 24 § 1 p.r.
<b>Type of salary</b>	depending on the degree of repayment to creditors [1]	Art. 35 § 2a, 2b p.r.
<b>Source of salary</b>	in principle, an indebted enterprise [2]	Art. 35 § 1, 2 p.r.

Source: based on: (Ustawa z dnia 15 maja 2015 r. - Prawo restrukturyzacyjne (t.j. Dz. U. z 2021 r. poz. 1588 z póź. zm.), 2022).

**Table 12.**

*Restructuring supervisor 2 (nadzorca sądowy w trybie art. 38-50 p.r.)*

<b>Established by</b>	court [1]	Art. 38 § 1 p.r.
<b>Scale of court supervision</b>	high [1]	Art. 31 p.r.
<b>Range</b>	entire enterprise [1]	Art. 3 § 1 p.r.
<b>End method</b>	until the restructuring activities are completed [2]	Art. 27 § 1 p.r.
<b>Impact on owner authority</b>	the debtor may perform ordinary management activities. The consent of the court supervisor is required to perform activities exceeding the scope of day-to-day management, unless the law provides for the consent of the board of creditors [2]	Art. 39 § 1 p.r.
<b>Strategic goal</b>	conclusion of an arrangement by the debtor, with creditors with the participation of the court	Art. 3 § 3 ust. 1, art. 3 § 4 ust. 1 w zw. z art. 38 § 1 p.r.
<b>Operational goal</b>	controls the activities of the debtor with regard to his property and the debtor's business and whether the property is sufficiently protected against damage or loss	Art. 39 § 2 w zw. z art. 37 § 1 p.r.
<b>Administrator</b>	person or enterprise with a restructuring advisor license [1]	Art. 24 § 1 p.r.
<b>Type of salary</b>	depending on the number of creditors, total receivables, type of proceedings, duration [1]	Art. 42 p.r.
<b>Source of salary</b>	in principle, an indebted enterprise [2]	Art. 45 § 5, art. 207, art. 208 § 1 p.r.

Source: based on: (Ustawa z dnia 15 maja 2015 r. - Prawo restrukturyzacyjne (t.j. Dz. U. z 2021 r. poz. 1588 z póź. zm.), 2022).

**Table 13.**

*Restructuring supervisor 3 (zarządca w trybie art. 51-64 p.r.)*

<b>Established by</b>	court [1]	Art. 51 § 1 p.r.
<b>Scale of court supervision</b>	high [1]	Art. 31 i 32 p.r.
<b>Range</b>	entire enterprise [1]	Art. 3 § 1 p.r.
<b>End method</b>	until the restructuring activities are completed [2]	Art. 27 § 1 p.r.
<b>Impact on owner authority</b>	takes over the management of the restructuring mass [1]	Art. 51 § 2 p.r.
<b>Strategic goal</b>	carrying out extensive restructuring and repair of the enterprise	Art. 3 § 5 w zw. z art. 51 § 1 p.r.
<b>Operational goal</b>	legal and factual actions aimed at improving the economic situation of the debtor and restoring the debtor's ability to fulfill obligations, while protecting against debt enforcement	Art. 3 § 6 p.r.

Cont. table 13.

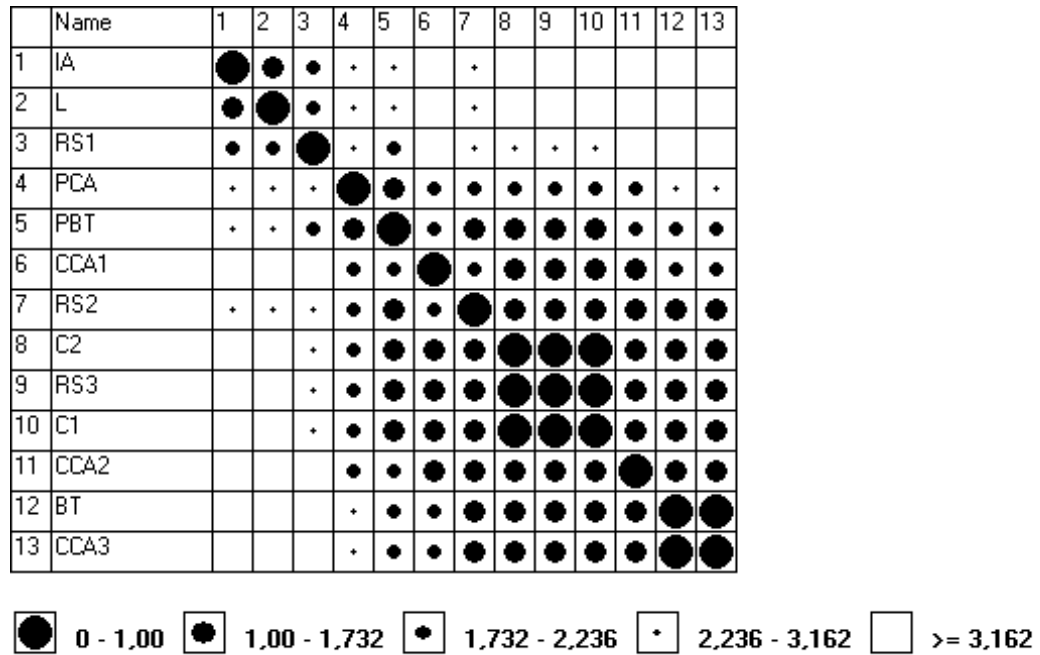
<b>Administrator</b>	person or enterprise with a restructuring advisor license [1]	Art. 24 § 1 p.r.
<b>Type of salary</b>	dependent on the number of creditors, total receivables, average monthly turnover, administrator's workload, duration [1]	Art. 55 p.r.
<b>Source of salary</b>	in principle, an indebted enterprise [2]	Art. 59 § 10, art. 207, art. 208 § 1 p.r.

Source: based on: (Ustawa z dnia 15 maja 2015 r. - Prawo restrukturyzacyjne (t.j. Dz. U. z 2021 r. poz. 1588 z póź. zm.), 2022).

Further look at clustering (Table 14 and Figure 1) led to the conclusion that selected institutions should be excluded ('Inheritance administrator', 'Liquidator' and 'Restructuring supervisor 1'). This conclusion was also justified by the fact that these three cases were incompatible with the other institutions. They were not 'compulsory' in their nature. To a certain extent all institutions are subject to legal constraint, however excluded institutions left owner (shareholders) more freedoms such as choosing whether to use this institution, who to nominate as an administrator, and how to pay for it. Since certain issues are decided by the owner, it is redundant for the court to check whether his rights are not harmed by his own decisions. It effectively leads to noticeably less judicial supervision, while strong judicial review is an important feature of other institutions.

**Table 14.***Clustering matrix*

<b>CCA1</b>	0.00	1.00	1.73	2.00	3.46	1.41	1.41	3.46	2.00	1.73	3.32	1.73	1.41
<b>CCA2</b>	1.00	0.00	1.41	1.73	3.61	1.00	1.00	3.61	1.73	1.41	3.16	1.41	1.00
<b>CCA3</b>	1.73	1.41	0.00	2.24	3.61	1.00	1.00	3.32	1.73	0.00	3.16	1.41	1.00
<b>PCA</b>	2.00	1.73	2.24	0.00	2.45	2.00	2.00	2.83	1.41	2.24	2.24	1.73	2.00
<b>IA</b>	3.46	3.61	3.61	2.45	0.00	3.46	3.46	1.41	2.45	3.61	1.73	3.00	3.46
<b>C1</b>	1.41	1.00	1.00	2.00	3.46	0.00	0.00	3.46	1.41	1.00	3.00	1.00	0.00
<b>C2</b>	1.41	1.00	1.00	2.00	3.46	0.00	0.00	3.46	1.41	1.00	3.00	1.00	0.00
<b>L</b>	3.46	3.61	3.32	2.83	1.41	3.46	3.46	0.00	2.45	3.32	1.73	3.00	3.46
<b>PBT</b>	2.00	1.73	1.73	1.41	2.45	1.41	1.41	2.45	0.00	1.73	1.73	1.00	1.41
<b>BT</b>	1.73	1.41	0.00	2.24	3.61	1.00	1.00	3.32	1.73	0.00	3.16	1.41	1.00
<b>RS1</b>	3.32	3.16	3.16	2.24	1.73	3.00	3.00	1.73	1.73	3.16	0.00	2.45	3.00
<b>RS2</b>	1.73	1.41	1.41	1.73	3.00	1.00	1.00	3.00	1.00	1.41	2.45	0.00	1.00
<b>RS3</b>	1.41	1.00	1.00	2.00	3.46	0.00	0.00	3.46	1.41	1.00	3.00	1.00	0.00



**Figure 1.** Czekanowski's diagram. Source: MaCzek version 3.3.44.

Final economic definition reads as follows:

*The compulsory governance structure is a regulatory mechanism aimed at neutralizing the social cost for stakeholders caused by ineffective firm. It introduces an external manager to the firm, who under special powers aims to remove the causes of inefficiency. During compulsory governance structure collateral transaction costs are internalized by the firm and transformed into additional coordination costs.*

#### 4. Discussion

The purpose of this chapter is to present the thought process that underlies the definition in a repeatable manner. The issues will be presented step by step, leading to new issues for consideration. The entire process will end with the definition.

The first underlying assumption can be simplified as such: a firm operating in the market, functions in a certain quasi-balance, which necessitate that, coordination costs within the firm need to be lower than the transactions costs on the market (assumption 1). If this quasi-balance is sufficiently upset by increasing coordination costs, it would be preferable to buy in the market without a firm (implication 1). Therefore, replacing typical governance with a compulsory governance structure in this logical framework has its consequences. The effect of this substitution is an appearance of new coordination costs for the owner – shareholder (corollary 1). This is the cost of external administrator, long-term court supervision, formalized procedures, restrictions on business activity and inhibition of decision-making. According to

the Coase theorem, substituted compulsory governance structure should limit scope of the firm, or even force it to cease activities. This supposition is confirmed in the effects of individual institutions, that end with the cessation of business activity, (e.g. bankruptcy) or its limitation. This line of thought raises two questions. Beyond its legal goals, what is the economic purpose of a compulsory governance structure (question A)? Is there a mutual relationship between coordination costs and transaction costs in compulsory governance structure (question B)?

The second underlying assumption is derived from Coase's reflections on the social cost of business operations. In his original work, he analyzed courtroom examples of neighbor disputes concerning noise, vibration, smoke nuisance, bleaching fumes etc. He notes that judges hearing these cases often seek free market solutions. Judges try to recreate the behavior of the disputed parties, as if they were still in agreement (assumption 2). Therefore it leads to simple observation. If judges are looking for market solutions, then this search will inextricably evaluate the transaction costs of the opposing parties. The judges will want to neutralize unnecessary transaction costs (implication 2). Replacing typical governance with a compulsory governance structure in this logical framework also has its consequences. Although specific powers of judges may vary, the conclusion is that a compulsory governance structure also strives to restore the market mechanisms (corollary 2, answer A). This supposition is confirmed in the objectives of individual institutions that aims to restore the previous state. However, this logic seems to be counter intuitive. It leads to the question, why would judges restrict the free market to protect the free market (question C)?

At this point, the relationship between coordination costs and transaction costs should be considered. The compulsory governance structure used in a single entity might affect entire free market (assumption 3). Through the prism of a cause-and-effect relationship, it will suggest that the internal problems of an individual firm (micro aspect) might have at least some impact on free market transaction costs (macro aspect). The firm is a part of the market, so it has some influence on it (implication 3.1). The strength of this influence although, will depend on where the firm is placed between monopoly and perfect competition (implication 3.2). Since monopolies are irregularities and Coase theorem assumes perfect competition, therefore this impact should be statistically negligible in the scale of developed market. However, if from the broad market (macro aspect) we separate market participants related to the firm, i.e. stakeholders (micro aspect), it turns out that this impact on transaction costs is of a grand importance. This means that the relationship between coordination costs and transaction costs in compulsory governance structure exists, but only for stakeholders (corollary 3, answer B).

Summarizing the logical reasoning so far. A firm operating in the market, functions in a certain quasi-balance. Simplified, coordination costs within the firm must be lower than the market transactions costs. Compulsory governance structure affects both sides of this balance, by increasing coordination cost and lowering stakeholders transactions cost. Notwithstanding, this finding is incomplete, since these traits do not occur simultaneously. There is a certain

sequence of events to consider. In order to present the timeline, it is necessary to introduce a division between 'before' and 'during' compulsory governance structure (assumption 4).

Pre-establishment, the firm operates in the normal governance structure. As consequence of certain events it loses financial liquidity or decision making ability. Such ineffectiveness is a fundamental problem for its stakeholders. It is not uncommon for the firm well into crisis to prioritize its own survival over the interests of business partners and stakeholders. It may refuse to pay obligations and delay deadlines. This causes both, financial harm and necessity to find replacement solutions. This search for substitution generate collateral transaction costs (implication 4.1).

Post-establishment, the firm is facing an external administrator, long-term court supervision, formalized procedures, restrictions on business activity and inhibition of decision-making. They provide predictable, repeatable legal environment for stakeholders thus, neutralizing collateral transaction costs. This does not mean that stakeholders will no longer incur financial costs related to the ineffectiveness of the firm. However, the stakeholders collateral transaction costs are transformed into additional coordination costs for the firm (implication 4.2).

The above observations allow us to conclude that among many types of social costs, there is a specific social cost resulting from the ineffectiveness of the firm. Compulsory governance structure is a regulatory mechanism that aims to neutralize this social cost by shifting the burden from stakeholders to the firm. In a way, it functions much like a directional tax levied on the culprits of extensive noise, vibration, smoke nuisance, bleaching fumes etc. introducing certain restrictions to protect the free market (corollary 4, answer C).

Nevertheless, the mechanism of linking the increase in firm inefficiency with the increase in transaction costs of stakeholders leads to the unintended observation that firm's ineffectiveness can be measured by an increase in collateral transaction costs for stakeholders. However, as this was not the purpose of this article, it remains a topic for further research.

In Assessment of the above considerations, certain limitations should be addressed. Undoubtedly, the analysis suffers from the fact that it is based on the legal regime in Poland. Nevertheless, it can be assumed that the vast majority of these institutions would be mirrored in other countries with common roots in Roman law (the case of the Anglo-Saxon legal system remains to be explored). This limitation and even further divergences or detailed provisions remain mostly irrelevant since the analysis is placed in the in economic theories. Since compulsory governance structure is based on the Coase theorem, it shares some of its burdens. Following (Zerbe, 2000) the unrealistic nature of this theory is that it assumes an efficiency of solutions due to absence of transaction costs, notwithstanding transaction costs undoubtedly do exist. Compulsory governance structure does not solve this. Admittedly it aims to keep transaction costs as low as possible, however it does so by transmitting them into coordination costs. This is a mechanism for removing *externalities* (market failures), but not by means of increasing overall (total) efficiency. Positive or negative changes in overall efficiency cannot



be ruled out as they were not analyzed (overall efficiency understood as the sum of transaction costs and coordination costs), nevertheless compulsory governance structure only focuses on one side of the equation reducing transaction costs. Thus, it does not achieve the 'ambition of efficiency', but also does not become 'unrealistic' which is associated with the Coase theorem. Notwithstanding so-called Coasian paradox point to intrinsically unobjectionable cost-benefit analysis of Coase theorem (Aslanbeigui and Oakes, 2015). In a broader sense, the institutions of the new institutional economy are accused of not being precise, objective and not prerequisite for economic growth (Voigt, 2013). Such allegations should not be made against compulsory governance structure concept which is relatively precise and objective. On the other hand, the question of whether it supports economic growth or impact overall efficiency remains a topic for further research.

## 5. Conclusions

As a result of the research, it was concluded:

1. in the Polish legal system there are a number of legal provisions where an outsider is introduced to the firm and entrusted with its management, often against current owner's will;
2. the cases in question are to be considered as institutions under the new institutional economy;
3. excluding three atypical cases with outlier characteristics, ten institutions have common features that allow them to be grouped and collectively designated as compulsory governance structure;
4. the compulsory governance structure is a regulatory mechanism aimed at neutralizing the social cost for stakeholders caused by ineffective firm. It introduces an external manager to the firm, who under special powers aims to remove the causes of inefficiency;
5. during compulsory governance structure collateral transaction costs are internalized by the firm and transformed into additional coordination costs;
6. the compulsory governance structure despite its coercion characteristic should be considered a mechanism for preserving the free market by removing *externalities* (market failures);
7. an observation was made that firm's ineffectiveness can be measured by an increase in collateral transaction costs for stakeholders.

The proposed definition presented in this article creates a new research unit called compulsory governance structure. It provides a deeper understanding of the internal mechanisms governing firm at the time these rare and specific institutions.

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