THE ORGANISATIONAL AND LEGAL FORMS OF ENTERPRISES IN FORESTRY SECTOR IN SELECTED STATE FORESTS DIRECTORATES

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Abstract. One of the main effects of outsourcing of forestry operations by State Forests was the establishment of private sector in forestry services. This sector consists mostly of individual business activity entrepreneurs. Second most common legal form is the civil law partnership. Over half of firms acts together as consortia. On average consortium consists of 4 members. Consortia are mostly founded for particular tender procedure, and the number of enterprises cooperating is increasing.

Key words: forest service sector, legal form, enterprise, consortium

INTRODUCTION

As a result of socioeconomic changes, that begin in the 90s of the last century, most of the forestry works within the State Forests National Forest Holding (PGL LP) are now performed by private companies (Kocel, 2000; Więsik, 2000; Łyp and Zychowicz, 2007; Więsik and Wójcik, 2008; Zastocki et al., 2012).

These enterprises were formed in two different ways. Firstly, the main incentive for establishing a company was so called ‘grassroots’ initiative, started by people wishing to work on their own account in the forests. The other way was the persuasion by State Forests authorities on former State Forests employees to start a company and work for State Forests as contractors (Kocel, 2000).

While establishing a business, it has to be considered which legal form is best suitable for the specific economic environment. This decision is regarded ‘the critical deci-
The greatest influence on the choice of legal form is exerted by such factors as:

1. The scale and type of responsibility of the company and its owners to the creditors.
2. The entitlement of owners and leaders in the field of management, control and representation of the company.
3. The degree of publicity of the company activities (e.g., commercial companies are required to publish their financial statements).
4. The possibility and ease of transformation of company capital.
5. The benefits regarding costs and taxes.
6. The ways of dissolution and liquidation of the company.
7. The possibility of inheritance.
8. The complexity of financial procedures (registry) (Duraj, 2000).

Legal forms of business activities allowed by the Polish Law System and the registration procedures, are described in detail in juridical literature. Most popular are: individual business activity, civil law partnership, and limited liability company (Cieślik, 2010).

One of available forms of cooperation – consortium agreement, is gaining popularity in forest service sector and deserves a special attention.

The precise description of the term ‘consortium’ is not defined in polish legal system. It occurs, amongst others, in the Bank Law Act of 29 September 1997. In the Public Procurement Law of 29 January 2004, it is permitted for joint application for a contract by several enterprises.

According to the law, ‘consortium’ must be understood as an agreement between at least two parties, to carry out a particular business enterprise. All parties under the agreement jointly participate both in profits and in risk. The consortium agreement is considered the, so called, ‘innominate contract’, which means that is has not been regulated in the Polish Civil Code. Nevertheless, the possibility to conclude such an agreement derives directly from the principle of contractual freedom, expressed in art. 353 of the Civil Code. According to this principle ‘the contracting parties may lay the legal relationship at its own discretion, as long as its content or purpose is not contrary to the properties (nature) of the relationship, the law or principles of social coexistence’. This principle allows the members of consortium for any form of mutual rights and obligations (Pojęcie..., 2015). The conclusion of the consortium agreement does not result in a legal personality. The consortium is not a company, according to the Commercial Code, and does not constitute a separate economic entity. In practice it means that consortium does not require the registration, assigning a name or location. All the parties remain independent, which allows them to perform activities not included in the agreement (Pojęcie..., 2015).

The consortium does not need to have a designated organisational structure (organs), nor to be provided with own assets – separated from the assets of its members (Przewodnik..., 2012).

The consortium agreement is a contract of ‘atypical civil law company’ (Stecki, 1997; Włodyka, 2000; Włodyka, 2001), comparable to civil law partnership. In this
form, the role of the entrepreneur is assigned to a partner in partnership, not the partnership itself, as is the case with commercial companies.

The rules of representation in civil law partnership allow any member to represent the company – to the limits of his entitlement to conduct company activities. On contrary, in consortium, only one member (the leader) is entitled to represent the consortium (Hilla, 2005).

In civil law partnership it is a free decision of partners, whether their activities will be limited to the partnership or extended outside of it (Koralewski, 2011).

The purpose of the study was the determination of legal and organisational forms of forest service enterprises on the area of Regional State Forest Directorates in Poznań, Pila and Szczecin.

MATERIAL AND METHODS

The subject of the study were the companies forming the forest service sector in Regional State Forest Directorates in Poznań, Pila and Szczecin.

In order to carry out the research, a database of enterprises was created, which consisted of entities listed as ‘Contractors who submitted their offers’ in ‘Notification of the best bid selection’ derived from the procedures of Public Procurement in the field of forestry (forest management, forest protection including fire prevention, procurement and extraction of timber, soil preparation, nursery works and seed collection) for years 2012–2015 in selected Forest Districts in Regional State Forest Directorates in Poznań, Pila and Szczecin.

The database consisted of 489 firms that participated in 129 tender procedures in 60 Forest Districts.

In order to establish the legal form of enterprises, information submitted in ‘Notification of the best bid selection’ was verified. The verification was performed using one of two available entrepreneurs registers: the database of the Central Business Activity Record and Information (CEIDG) and the National Court Register (KRS).

Furthermore, the analyses of consortia were performed. The analysed aspects were: the number and composition, the share of firms in consortia, the frequency of submitting offers including special suites. The analysis of civil law partnerships included their number and the type of partner entities.

Using the selected positional descriptive parameters, the analyses of the structure of researched communities (consortia entities within consortia, consortia involved in more than one tender procedure and civil law partnerships) were performed. The features selected for the analysis were: number of members in the consortium, share in the consortium, number of tender procedures and number of members in civil law partnerships.

Distribution was characterised by location, spread and shape measures.

The following descriptive parameters were used to statistical analysis:

− median ($Me$), mode ($D$), quartiles ($Q_1, Q_3$)
− quartile deviation ($Q$), coefficient of variation ($V_Q$)
− skewness coefficient ($A_s$)
Separate analysis concerned the consortia and enterprises that submitted their offers individually, in terms of frequency of the offer submission. It was taking into account the offers for general suites (1 suite = 1 forest range) and for specialist suites, that separated the works in the field of forest management, fire prevention, procurement and extraction of timber (including procurement and extraction with specialised equipment), soil preparation, nursery works and seed collection.

RESULTS

Percentage of legal forms of forest service sector enterprises is presented in Figure 1. The most frequently occurring legal form was individual business activity (446 companies). Second most common were civil law partnerships (35 companies). General partnerships and limited liability companies were the least frequently represented.

Civil law partnerships surveyed in this research, consisted of 83 companies. On average, one civil law partnership comprised of 2 companies (Fig. 2).

According to the statistical analysis of quartiles, in 50% of cases the number of members did not exceed 2, and in 75% of cases – 3 members. The average deviation from the middle half of a distribution was 0.50. It allows to conclude, that civil law partnerships were moderately diversified concerning the number of members. The positive skewnees coefficient qualifies the tested distribution as strongly right-side asymmetric (Table 1).
Fig. 2. Distribution of number of members of civil law partnerships in forest service sector form Regional State Forest Directorates in Poznań, Piła and Szczecin: \( n \) – number of members of civil law partnerships, \( N \) – number of civil law partnerships

Rys. 2. Rozkład liczby członków spółek cywilnych sektora usług leśnych z obszaru RDLP w Poznaniu, Pile i Szczecinie: \( n \) – liczba członków spółek cywilnych, \( N \) – liczba spółek cywilnych

Table 1. Basic characteristics of civil law partnerships in forest service sector from Regional State Forest Directorates in Poznań, Piła and Szczecin in 2011–2013, concerning the number of members

<table>
<thead>
<tr>
<th>Characteristics</th>
<th>Value</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of civil law partnerships</td>
<td>35</td>
</tr>
<tr>
<td>Minimal number of members in Civil Law Partnerships</td>
<td>2</td>
</tr>
<tr>
<td>Maximal number of members in Civil Law Partnerships</td>
<td>5</td>
</tr>
<tr>
<td>Mode</td>
<td>2</td>
</tr>
<tr>
<td>Median</td>
<td>2</td>
</tr>
<tr>
<td>Quartile ( Q_1 )</td>
<td>2</td>
</tr>
<tr>
<td>Quartile ( Q_3 )</td>
<td>3</td>
</tr>
<tr>
<td>Quartile deviation ( Q )</td>
<td>0.50</td>
</tr>
<tr>
<td>Coefficient of variation ( V_Q ), %</td>
<td>25.0</td>
</tr>
<tr>
<td>Skewness coefficient ( A_s )</td>
<td>1.00</td>
</tr>
</tbody>
</table>

Silvarum Colendarum Ratio et Industria Lignaria 14(1) 2015
About 40% of partners in civil law partnerships declared that their activities are limited exclusively to activities in civil law partnership.

In 2011–2013, 319 companies (65%) worked in 144 consortia, and 88 companies acted both individual and in consortia (Fig. 3).

In 2011, 86 companies worked in 37 consortia. The number of companies in consortia and the number of consortia doubled in the next year, and amounted to 193 and 67, respectively. In 2013 only minor changes were observed. The number of companies in consortia rose to 205, and the number of consortia reduced by 2.

Percentage of companies working both individual and in consortia in the analysed years is presented in Table 2.

The average composition of the consortium were 4 members and most frequently – 2 (Fig. 4). According to the analysis of quartiles, 50% of consortia comprised of 3 and fewer members, and 75% – consisted of 4 and fewer members. The average deviation from the middle half of a distribution was 1.00, what allows to conclude, that the consortia were moderately statistically diversified concerning the number of members. The skewnees coefficient equalled 0 what qualifies the distribution as symmetrical (Table 3).

Out of the surveyed firms, 131 companies (41%) participated in more than one consortium (Fig. 5) and 75% of companies participated in not more than 2 consortia.

The average deviation from the middle half of a distribution was 0.50. It allows to conclude, that the companies working in consortia were moderately statistically diversified concerning the participation in consortia. The positive skewnees coefficient qualifies the distribution as strongly right-side asymmetric (Table 4).
Table 2. Percentage of forest service sector enterprises from Regional State Forest Directorates in Poznań, Pila and Szczecin, acting in consortia and individually in 2011–2013
Tabela 2. Procentowy udział firm sektora usług leśnych z obszaru RDLP w Poznaniu, Pile i Szczecinie działających w konsorcjach i indywidualnie w poszczególnych latach

<table>
<thead>
<tr>
<th>Analysed years/Analizowane lata</th>
<th>2011</th>
<th>2012</th>
<th>2013</th>
</tr>
</thead>
<tbody>
<tr>
<td>Companies working together only as a consortia, %</td>
<td>36</td>
<td>52</td>
<td>54</td>
</tr>
<tr>
<td>Firmy działające tylko w konsorcjach, %</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Individual companies only, %</td>
<td>56</td>
<td>38</td>
<td>32</td>
</tr>
<tr>
<td>Firmy działające tylko indywidualnie, %</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Companies working both as a consortium, and individually, %</td>
<td>8</td>
<td>10</td>
<td>14</td>
</tr>
<tr>
<td>Firmy działające zarówno w konsorcjach, jak i indywidualnie, %</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Fig. 4. Distribution of number of members of consortia in forest service sector from Regional State Forest Directorates in Poznań, Pila and Szczecin in 2011–2013: \( n \) – number of members of consortium, \( N \) – number of consortia
Rys. 4. Rozkład liczby członków konsorcjów sektora usług leśnych z obszaru RDLP w Poznaniu, Pile i Szczecinie w latach 2011–2013: \( n \) – liczba członków konsorcjów, \( N \) – liczba konsorcjów
Table 3. Basic characteristics of consortia in forest service sector from Regional State Forest Directorates in Poznań, Piła and Szczecin, in 2011–2013, concerning the number of members.

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of consortiums</td>
<td>144</td>
</tr>
<tr>
<td>Minimal number of members</td>
<td>2</td>
</tr>
<tr>
<td>Maximal number of members</td>
<td>31</td>
</tr>
<tr>
<td>Mode</td>
<td>2</td>
</tr>
<tr>
<td>Median</td>
<td>3</td>
</tr>
<tr>
<td>Quartile $Q_1$</td>
<td>2</td>
</tr>
<tr>
<td>Quartile $Q_3$</td>
<td>4</td>
</tr>
<tr>
<td>Quartile deviation $Q$</td>
<td>1.00</td>
</tr>
<tr>
<td>Coefficient of variation $V_Q$, %</td>
<td>33.33</td>
</tr>
<tr>
<td>Skewness coefficient $A_s$</td>
<td>0.00</td>
</tr>
</tbody>
</table>

Fig. 5. Distribution of participation of forest service sector enterprises in consortia from Regional State Forest Directorates in Poznań, Piła and Szczecin in 2011–2013: $n$ – number of consortia, $N$ – number of enterprises.

Table 4. Basic characteristics of forest service sector companies acting in consortia from Regional State Forest Directorates in Poznań, Piła and Szczecin, in 2011–2013, concerning the participation in consortia

<table>
<thead>
<tr>
<th>Number of companies acting in consortia</th>
<th>319</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimal participation in consortia</td>
<td>1</td>
</tr>
<tr>
<td>Maximal participation in consortia</td>
<td>11</td>
</tr>
<tr>
<td>Moda</td>
<td>1</td>
</tr>
<tr>
<td>Median</td>
<td>1</td>
</tr>
<tr>
<td>Quartile $Q_1$</td>
<td>1</td>
</tr>
<tr>
<td>Kvartyl $Q_1$</td>
<td>2</td>
</tr>
<tr>
<td>Quartile deviation $Q$</td>
<td>0.50</td>
</tr>
<tr>
<td>Coefficient of variation $V_q$, %</td>
<td>50.0</td>
</tr>
<tr>
<td>Skewnees coefficient $A_r$</td>
<td>1.00</td>
</tr>
</tbody>
</table>

Fig. 6. Distribution of number of tendering procedures per consortium from Regional State Forest Directorates in Poznań, Piła and Szczecin in 2011–2013: $n$ – number of tendering procedures, $N$ – number of consortia

Rys. 6. Rozkład liczby postępowań konsorcjów sektora usług leśnych z obszaru RDLP w Poznaniu, Piłe i Szczecinie uczestniczących w więcej niż jednym postępowaniu w latach 2011–2013: $n$ – liczba postępowań, $N$ – liczba konsorcjów
About 20% of consortia participated in more than one tendering procedure (average 3 tendering procedures). The remaining consortia were set up only for a particular tendering procedure.

Distribution of the number of tendering procedures per one consortium is presented in Figure 6. The number of tendering procedures did not exceed 3 for 75% of consortia. The average deviation from the middle half of a distribution was 0.50. It allows to conclude, that the consortia participating in more than one tendering procedure were moderately statistically diversified concerning the number of tendering procedures. The positive skewness coefficient qualifies the distribution of the number of tendering procedures as strongly right-side asymmetric (Table 5).

Percentage of offers submitted for specialised suites by consortiums and individual companies, compared to the total number of offers in the analysed years, is presented in Figure 7. Average percentage of offers submitted for specialised suites in case of individual companies was 33%, in case of consortia – 11%.

Table 5. Basic characteristics of forest service sector consortia submitting offers in more than one tendering procedure from Regional State Forest Directorates in Poznań, Piła and Szczecin, in 2011–2013, concerning the number of tendering procedures

<table>
<thead>
<tr>
<th>Number of consortia participating in more than one tendering procedures</th>
<th>26</th>
</tr>
</thead>
<tbody>
<tr>
<td>Minimal number of rendering procedures</td>
<td>2</td>
</tr>
<tr>
<td>Maximal number of rendering procedures</td>
<td>8</td>
</tr>
<tr>
<td>Moda</td>
<td>2</td>
</tr>
<tr>
<td>Median</td>
<td>2</td>
</tr>
<tr>
<td>Quartile Q₁</td>
<td>2</td>
</tr>
<tr>
<td>Quartile Q₃</td>
<td>3</td>
</tr>
<tr>
<td>Quartile deviation Q</td>
<td>0.50</td>
</tr>
<tr>
<td>Coefficient of variation V₀, %</td>
<td>25.0</td>
</tr>
<tr>
<td>Skewness coefficient Aᵣ</td>
<td>1.00</td>
</tr>
</tbody>
</table>
The organisational and legal forms of enterprises in forestry sector...

DISCUSSION

The most common legal form of forest enterprises is individual business activity, which is not surprising. It is most suitable for independently conducted small-scale activities. Simple registration (possible to complete in a couple of days), low initial costs and flexibility in taxation are the main advantages for new entrepreneurs (Cieślik, 2010).

Similar conclusions were drawn by Kocel (2013), as a result of his surveys of forest service sector, covering the period 1993–2006.

The share of individual business activity in the surveyed firms was on average 73.5%. A pronounced interest in this legal form was recorded at the beginning of forest service transformation, when first forest service companies were founded. In 1988–2003, there has been a decline in interest in this form of business, to the benefit of companies (mainly civil law partnerships). The evident return to individual business activity was recorded back in 2006 (Kocel, 2013).
The diversity of forest service companies, in terms of legal forms, was also a subject of research conducted by Kirsten (1998). According to this author, in 1995 the share of individual business activity in Polish forest service sector was 79.6%.

According to the data published by the Central Statistical Office of Poland (GUS, 2014), 98% of individual businesses in forest service sector, were employing 9 persons or fewer.

Second most common legal form for forest services firm is the civil law partnership. Historically, the popularity of this form of economic activity was due to ease of registration and, at the same time, enabling the joint activities in a group of partners. However, changes applied in 2001 in the Economic Activity Law of 19th November 1999, reduced significantly the attractiveness of civil law partnerships to entrepreneurs. Currently, such partnership is not regarded an enterprise, and this is the key category in Polish economic law. This seemingly insignificant change raises a number of implications. Starting from the establishment of partnership, the partners must first independently register their business, and then set up a partnership. Some concerns are also raised about the ability to act independently in civil circulation. Within the scope of certain actions and events the civil law partnership is considered as an independent entity (e.g. as an employer), but within some others – not, and the partners must act individually. Some specialists in the Economic Activity Law are of the opinion that civil law partnership is currently in decline (Cieślik, 2010).

The share of Civil Law Partnerships in the general number of firms in Polish forest sector, in 1993–2006, was 23.1% according to Kocel (2013).

The initially limited interest in this legal form of business (in the 1993) could be caused by lack of knowledge of new entrepreneurs and their employees about advantages and disadvantages of various legal forms of economic activity. The highest share of civil law partnerships was recorded in the year 1999 – 29.2%, and in the year 2003 – 24.0% (Kocel, 2013). The increased interest in this form of economic activity resulted from the fact that it allowed for the equal treatment of partners, particularly by the division of profits. For Forest District – acting as a creditor, both individual business and civil law partnerships were most favourable, due to the responsibility for the obligations with all the personal property of the owners (Kruczalak, 1992; Markowski, 2011).

According to Kirsten (1998) the share of civil law partnerships in 1995 was 16.5%.

Out of 83 entities of individual business (partners), constituting 35 civil law partnerships surveyed in this research, 35 declared that their activities are limited to the partnership. In case of the remaining entities, only 1 started individual business, therefore in the created database is recorded as 2 separate entries.

Third, in terms of popularity, legal form of economic activity was the limited liability company. It is confirmed by the results obtained by Kocel (2013).

In the analysed period (1993–2006) 55 forest sector companies (0.85%) acted as limited liability companies. The greatest interest in this legal form was recorded in first years of polish forest sector transformation. In 1993 there was 13 limited liability companies in polish forestry services, and 4 years later there was 14. This form of business was somewhat limited by the new Code of Commercial Partnerships and Companies, introduced 1 January 2001 (Dz. U. 2000 r. No. 94, item. 1037, as amended). It raised the value of minimal initial capital from 4 000 PLN to 50 000 PLN. It assured better securi-
ty for the claims of creditors, but required higher investment from the partners. From 8 January 2009, this amount was lowered to the level of 5000 PLN, with minimal single share of 50 PLN. The government thus encouraged the entrepreneurs to choose this legal form of economic activity (Kocel, 2013).

In 2009, the number of newly registered economic entities was 349 600 and was 10% higher than the previous year. The number of limited liability companies was 15% higher, but the number of civil law partnerships dropped by 17% (Przedsiębiorczość..., 2010).

The limited liability company is obliged to keep the accountancy records, which requires employing the accountant or outsourcing accountancy to separate entity. Furthermore, in this legal form the taxation is doubled, which means that the profit payable to the partners is taxed with 34.4% rate (Kocel, 2013). According to Kirsten (1998) the share of limited liability companies in forest sector in 1995 was 1.7%.

Amongst other legal forms of economic activities was also general partnership. This might be the effect of the regulations in force before 2009, that obliged the existing civil law partnerships to transform into general partnerships (or other legal form) if their sales income exceeded 800 000 EUR (Ustawa..., 2003). All the general partnerships surveyed in this research were registered before 2009.


According to data published by the General Statistical Office of Poland (GUS, 2014) the number of forest service firms (legal persons) employing 9 and fewer persons was 134 (2%).

In case of commercial companies surveyed in this study, 2 persons act simultaneously as individual business, therefore they represent 2 entities in the database.

As this study shows, over half of firms in forest service sector acts in various consortia.

Forest companies, due to their limited size, are not capable of successfully influence their market environment. State Forest Districts are increasingly formulating the tender specifications in a way that small, individual firms are not able to fulfil the requirements expressed in particulars of the contract (Kocel, 2013).

Most of consortia are generally concluded for single particular tender, with no intention to last longer than the contract period. The consortium agreement is generally temporary, valid only for the duration of the joint enterprise. Clearly set target of cooperation prevents the agreement to concern the trade of goods or services, instead it creates specific community. Another reason to create consortia might be an increase in competitiveness amongst other companies through synergy (Pojęcie..., 2015).

In literature it is commonly agreed, that the cooperation strategy is used by companies operating in an attractive market, when their own assets are not strong enough to assure an independent success. It indicates any cooperation between enterprises aiming at complementation of assets to fully utilise the market opportunities and strengthen their position in relation to the competition (Klimek, 2006).
The number of forest firms acting in consortia is continuously increasing.

Forest companies mostly treat cooperation as an alternative to independent business, or sometimes as an unwanted consequence of cooperating with State Forests. Forest entrepreneurs value their independence very high. Nevertheless, if market conditions require the cooperation, they are willing to work together with potentially competitive companies (Kocel, 2013).

In case of consortia, limited formal requirements for joint offer submission is an extremely important factor allowing entrepreneurs to increase their chance to successfully bid the tender procedure (Przewodnik..., 2012).

CONCLUSIONS

The most common legal form of forest enterprises is individual business activity. Over half of firms in forest service sector acts in various consortia. Most of consortia are generally concluded for single particular tender, with no intention to last longer than the contract period. The number of forest firms acting in consortia is continuously increasing.

Companies submitting offers individually often choose specialist suites.

About 40% entities of individual business (partners), constituting civil law partnerships surveyed in this research, declared that their activities are limited to the partnership.

REFERENCES


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Silvarum Colendarum Ratio et Industria Lignaria 14(1) 2015
FORMY ORGANIZACYJNO-PRAWNE
PRZEDSIĘBIORSTW SEKTORA USŁUG LEŚNYCH
NA TERENIE WYBRANYCH REGIONALNYCH DYREKCJI
LASÓW PAŃSTWOWYCH


Słowa kluczowe: sektor usług leśnych, forma prawna, przedsiębiorstwo, konsorcjum

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