

# Interim manager: An employee or not?

Dr Szymon Kubiak

**An interim manager is most often a person with very high qualifications, serving as an outside expert for special tasks, who comes onboard for a strictly defined purpose, such as putting the firm back on its feet when problems grow beyond the control of management. An interim manager temporarily manages the enterprise, a division, or a specific project.**

The need to bring in an interim manager arises most often when an organisation (the employer) is carrying out a transformation, for example to handle a crisis, or when the company must make changes but

does not have the right people on staff to implement them. Or it may be a simple need to improve the financial results or to restructure employment, or to create something new from the ground up. Projects implemented by interim managers generally last from 3 months to a year.

Interim managers are undoubtedly an elite profession. The profession is the most popular in Germany, where there are about 10,000 interim managers. On the developed market of the UK there are about 5,000–7,000 of them, and in Poland perhaps 200–300 truly experienced people in this field, which began to gain popularity here only quite recently.

The most important things an interim manager offers are experience and characteristics like skill at managing projects and people, independence, analytical skills, assertiveness, the ability to quickly build strong authority and an image as an expert, mobility, entrepreneurship and a goal-oriented attitude. Interestingly, a people-centred approach may actually get in the way of achieving the interim manager's goals in certain projects, such as employment restructuring.

## **Basis for hiring**

The ways in which an interim manager may be hired fall within the broad category of flexible forms of employment. From the point of view of a lawyer practising employment law, the nature and characteristics of the legal relationship between an interim manager and the company where he is performing his tasks deserve some thought. Whether it would be more appropriate to hire the interim manager on an employment or non-employment basis is not so obvious. In my view, however, the most appropriate form of hiring is not an employment contract but a civil-law agreement. There are several reasons that emerge when we analyse the key characteristics of the work or services performed by an interim manager.

- **Personal performance.** This is closely connected with the high individual qualifications which are the main reason for selecting and hiring the specific person. In my view, the interim



manager's ability to work through a substitute or assistant seems dubious at best. But this follows more from the crucial importance of his individual characteristics than from the "personal" nature of the work, which is a characteristic of an employment relationship.

- **Pay.** As a rule, the compensation of an interim manager is strictly tied to the requirement to achieve a specific result. A modest fixed monthly component (which is not always present, and sometimes the compensation is paid less frequently than once a month as would be required under the Labour Code) is often much less significant than the bonus he will receive for results, for example calculated as a percentage of the increase in enterprise value upon project completion. Consequently, the compensation of interim managers is on average some 50–100% higher than that of managers hired as permanent employees. The contract with the interim manager usually sets a strictly defined goal (e.g. increasing sales or margins to a certain level within a certain time). Customarily the interim manager reserves the right in the contract to have a final say on the instruments to be used to achieve the agreed result. Therefore it should be recognised that an interim manager directly bears the economic risk associated with the tasks he performs, which is impermissible in an employment relationship.
- **Definite term.** By definition, cooperation with an interim manager is established for a fixed period determined in advance, during which time the interim manager is to perform strictly defined tasks. The interim manager may devote his downtime between jobs to seeking the next project or, for example, pursuing personal interests. This is a feature that is shared with an employment contract for a definite period or a contract to perform specific work.
- **Subordination.** In the case of interim managers, we may say that they are subordinated not so much in the sense of the classic, strict employment subordination (which is an essential characteristic of an employment relationship), but rather of "autonomous subordination," which is permitted, according to rulings by the Supreme Court of Poland, particularly when a member of the management board is hired on the basis of an employment contract. Although the range of decision-making discretion left to an interim manager is usually broad,

this generally does not imply that he is assuming total management of the enterprise with no supervision whatsoever. It may thus be recognised that the autonomy of an interim manager, extending beyond the subordination found in an employment relationship, is an inherent feature of the work performed by an interim manager.

- **Working time.** Under the current regulations of the Labour Code, there is no system of working time ideally suited to the rigorous requirements of the work of an interim manager, who often works far longer hours than normally allowed by the code. This may seem surprising in light of the exceptions in the code for employees managing the workplace on behalf of the employer, but even these employees may not work constantly, for limitless hours, in violation of the mandatory periods of rest required by the Labour Code. It is not unheard of for an interim manager to work nearly 24/7 in extreme cases.

It cannot be ruled out that an interim manager could be hired on the basis of a properly structured employment contract, but using a civil-law agreement would be more appropriate in my view. The decisive factors are the greater flexibility and freedom of the parties when drawing up a civil-law agreement, which usually better suits the nature of the work performed by an interim manager than an employment relationship. But this solution is not entirely risk-free, as may be seen from an analysis of the case law, particularly concerning reclassification of civil-law managerial contracts concluded with management board members.

The demands of today's dynamic, knowledge-based economy lead to the use of a broad array of legal arrangements for the performance of work or services by interim managers. These include other forms, such as hiring the interim manager as a temporary employee and lending him to the enterprise, various forms of outsourcing, and self-employment.

#### Advantages of interim managers

In summary, there is certainly no cause to fear this method for supporting management which is innovative in Poland. As demonstrated by the experience of numerous companies, in most cases scepticism has quickly given way to enthusiasm when they see the results.

How can interim managers be so effective? Managers who have been employed at the company "forever" always owe their position to some extent to their sur-

vival skills, and they are closely wed to the employer-employee relationship. Trapped in the corporate mindset, they simply may not notice issues that are vital to the success of the organisation.

In order to overcome any mistrust, when hiring an interim manager, the employer may also secure its own interests, for example through a confidentiality

agreement or a non-competition agreement. Given the brief duration of the projects implemented by interim managers, the question arises whether it would still make sense for the interim manager to commit to a project under such restrictions, and what liability the interim manager might face for breaching such an agreement. But that is a topic for another article.

*Dr Szymon Kubiak, legal adviser, is a partner in the Employment Law Practice.*