

Tilburg University

Capital Structure and Managerial Compensation

Calcagno, R.; Renneboog, L.D.R.

Publication date:
2004

[Link to publication in Tilburg University Research Portal](#)

Citation for published version (APA):

Calcagno, R., & Renneboog, L. D. R. (2004). *Capital Structure and Managerial Compensation: The Effects of Renumeration Seniority*. (CentER Discussion Paper; Vol. 2004-120). Finance.

General rights

Copyright and moral rights for the publications made accessible in the public portal are retained by the authors and/or other copyright owners and it is a condition of accessing publications that users recognise and abide by the legal requirements associated with these rights.

- Users may download and print one copy of any publication from the public portal for the purpose of private study or research.
- You may not further distribute the material or use it for any profit-making activity or commercial gain
- You may freely distribute the URL identifying the publication in the public portal

Take down policy

If you believe that this document breaches copyright please contact us providing details, and we will remove access to the work immediately and investigate your claim.

CentER



Discussion Paper

No. 2004–120

**CAPITAL STRUCTURE AND MANAGERIAL COMPENSATION:
THE EFFECTS OF REMUNERATION SENIORITY**

By R. Calcagno, L.D.R. Renneboog

September 2004

ISSN 0924-7815

Capital structure and managerial compensation: the effects of remuneration seniority*

Riccardo Calcagno[†] and Luc Renneboog[‡]

September 7, 2004

Abstract

We show that the relative seniority of debt and managerial compensation has important implications on the design of remuneration contracts. Whereas the traditional literature assumes that debt is senior to remuneration, we show that this is frequently not the case according to bankruptcy regulation and as observed in practice. We theoretically show that including risky debt changes the incentive to provide the manager with stronger performance-related incentives (“contract substitution” effect). If managerial compensation has priority over the debt claims, higher leverage produces lower power-incentive schemes (lower bonuses) and a higher base salary. With junior compensation, we expect more emphasis on pay-for-performance incentives. The empirical findings are in line with the regime of remuneration seniority as the base salary is significantly higher and the performance bonus is lower in financially distressed firms.

Keywords: seniority of claims, remuneration contracts, financial distress, insolvency, leverage.

JEL codes: G32, G33, G34, K12.

*We would like to thank Ron Anderson for fruitful discussions and support. We also owe many thanks to Elazar Berkovitch, Sudipto Bhattacharya, Bruno Biais, Thierry Foucault, Florian Heider, Ronen Israel, Kose John, Michel Robe, Enrico Perotti, Yossi Spiegel, Roland Strausz, Elu von Thadden for valuable comments and suggestions about the theoretical model. Moreover, we are grateful to Ralph Paterson (receiver for major audit firm) and Nigel Boobier (Osborne & Clark) for discussing the UK bankruptcy code (receivership and administration) with us and detailing the (exceptional) circumstances. Finally, we thank Julian Franks, Colin Mayer, Martin Conyon and Graham Sadler for providing us with managerial remuneration data to test our predictions. The participants to seminars in Amsterdam, CentER, Louvain, LSE, the ESSFM Meeting at Gerzensee provided stimulating feedback. All remaining errors are ours.

[†]CentER, and Department of Finance, Tilburg University. E-mail: R.Calcagno@uvt.nl

[‡]Corresponding author: CentER, and Department of Finance, Tilburg University (POBox 90153, 5000 LE Tilburg, The Netherlands). E-mail: Luc.Renneboog@uvt.nl

Capital structure and managerial compensation: the effects of remuneration seniority

Abstract

We show that the relative seniority of debt and managerial compensation has important implications on the design of remuneration contracts. Whereas the traditional literature assumes that debt is senior to remuneration, we show that this is frequently not the case according to bankruptcy regulation and as observed in practice. We theoretically show that including risky debt changes the incentive to provide the manager with stronger performance-related incentives (“contract substitution” effect). If managerial compensation has priority over the debt claims, higher leverage produces lower power-incentive schemes (lower bonuses) and a higher base salary. With junior compensation, we expect more emphasis on pay-for-performance incentives. The empirical findings are in line with the regime of remuneration seniority as the base salary is significantly higher and the performance bonus is lower in financially distressed firms.

1 Introduction

During the 1990s, the use of performance-related compensation packages (based on direct ownership participation) increased dramatically (Murphy (1999)). Financial economists usually consider these forms of managerial compensation as the consequence of a rational attempt by shareholders to reduce the agency problems first illustrated by Jensen and Meckling (1976). The contemporaneous increase in the leverage of Anglo-American corporations has also stimulated interest in the role of debt as a direct incentive device for the management to generate stronger corporate performance (Baker and Wruck (1989), Smith and Watts (1992)).

In this paper, we study the link between remuneration contracts and debt and, more specifically, examine whether debt and incentive bonuses related to the firm performance are complementary in curbing agency conflicts between shareholders and managers. We show that including risky debt in the capital structure changes the "incentive to give incentives" by a principal in charge of managerial contracts. This principal usually is the compensation committee of the board of directors. Moreover, we show that the effect of debt on managers' remuneration depends on the relative priority with which the two claims would be paid if insolvency were to occur.

The question about the relative seniority of debt and remuneration is an important issue which has largely been ignored in the literature. For example, Innes (1990), Hart and Moore (1995), Berkovitch, Israel and Spiegel (2000) and Hart and Moore (1995) recognize that only "hard" (that is, senior and non-postponable) debt plays an important role in reducing managerial discretion. The only exception to this approach is John and John (1993), who study the relation between the design of optimal top-management compensation and the capital structure when salary has priority on debt, but with asymmetric information between the manager and the principal-shareholder. However, in reality, it is not always the case that managerial remuneration is junior to debt claims. Such an assumption may be acceptable for countries with pure liquidation bankruptcy codes, but cannot be generalized. The bankruptcy procedures of countries like the US, UK, Germany etc. make the seniority issue a complex problem. Let us first illustrate this point using UK (and US) regulation.

When a UK firm is insolvent and will be liquidated, the number of claims with preferential status is limited to payroll taxes, VAT and arrears in wages. These last claims are confined to those held by employees (excluding directors), and to GBP 800. Thus, top managers' claims based on salary and bonuses are not senior; they are part of the pool of unsecured claims and hence junior to all preferential debt (the floating and fixed debentures). The assumption in the theoretical literature that managerial remuneration is junior to all debt claims does not completely tie in with the insolvency practice of a liquidation code but is sufficiently close. However, there are many cases in which the managerial remuneration claims are senior to leverage.

First, in case of insolvency, the holder of a floating charge (for a more detailed discussion of UK bankruptcy, see Appendix B) can appoint a receiver who will liquidate the firm's floating assets on his behalf. However, instead of liquidating the firm, the receiver can also exercise another option: he can continue the business if the proceeds of continuation are expected to exceed those of a liquidation. If this were the case, the managerial remuneration contracts (and the arrears remuneration and bonuses) remain valid. A continuation of the business (taken out of the corporate shell) or sale to a third party triggers the "Transfer of undertakings

protection of employment” regulations of 1981 (TUPE) which stems from the European Acquired Rights directive. This regulation states that "all the [seller’s] rights , powers, duties and liabilities under or in connection with [an employee’s contract of employment], shall be transferred to the [buyer]." Furthermore, the buyer assumes liability for "anything done before the transfer is completed by or in relation to the [seller] in respect of that contract or a person employed in that undertaking or part". TUPE states that such an act "shall be deemed to have been done by or in relation to the [buyer]."

Second, another possibility is that the receiver sells one line of business to pay the secured creditors. At that point, the receiver ceases to act (he only works on behalf of the holders of the floating charge). If the firm is subsequently no longer insolvent, the company is again in the hands of the directors whose remuneration contracts remain valid.

Third, an alternative (in the UK) to the above creditor-oriented receivership is the debtor-oriented ‘administration’ procedure. In this case, the court supervises a formal workout (financial and/or asset restructuring) with the aim of corporate survival. If the incumbent management is essential for the firm and is maintained after the implementation of the reorganization plan, the claims of past remuneration may still remain valid (or may even be increased). This happened, for example, in the collapse of Barings bank. Likewise, “E&Y, which was appointed as administrator for Railtrack in October 2001 [. . .], took the decision to pay Richard Middleton £700,000 for six months’ work to prevent him from leaving the troubled rail group. [. . .] Mr Middleton was one of three directors responsible for the network’s safety. E&Y feared that, without his expertise, the network could be plunged into chaos. The engineer, who was involved in the disastrous upgrade of the West Coast Main Line, received a pay rise that included a doubling of his salary of £168,000, a hefty retention bonus and a year’s salary for loss of office” (The Times, 23 June 2003).

As a US example, the Regus case shows that in a formal workout, the employees’ remuneration contracts (including bonuses) are preserved¹ in spite of very poor past performance resulting in insolvency and Chapter 11 (the US equivalent to UK administration (Franks and Torous (2002))).

Fourth, there are numerous cases which show that management foresees insolvency and still manages to time the payment of substantial bonuses such that its remuneration is effectively senior to debt claims (by paying them out shortly before the corporate collapse). For instance, EuroTelecom collapsed in February 2001, eleven months after raising GBP 15

¹“Regus PLC which filed for Chapter 11 bankruptcy [. . .], is asking a bankruptcy court to allow it to make retention and severance payments to keep selected employees on board while it reorganizes. The company said the value of its business "cannot be preserved and maximized for the creditors’ benefit without the employees critical to the operation of those businesses" [. . .] The company is also seeking to establish a general pool of \$100,000 for discretionary bonuses to workers not initially covered under the plan. According to the motion, the plan would allow Regus to pay its four most senior U.S. corporate executives [. . .] half their bonuses, equal to 20% of their base salaries [. . .]. The remaining bonuses, also equal to 20% of salaries, would be paid by Jan. 31, 2004, subject to a performance review [. . .]. The company would also assume the executives’ current employment contracts, which call for potential bonuses of up to 40% of their salaries. Regus has also proposed to pay the executives one year’s base salary as severance plus all deferred or unpaid benefits under the plan. (Dow Jones Corporate Filings Alert, 15 January 2003).

million through an AIM flotation². Likewise, the UK management of Enron³ and of NTL⁴ cashed in their bonuses shortly before the collapse. Alternatively, in the wake of a corporate crash, top management can make the firm sign a new contract including generous severance payments (as in the Marconi case⁵).

Not only the evidence above supports the idea that debt is often "soft" compared to managerial compensation. Firms are sometimes able to keep parts of their subsidiary's profits out of reach of creditors. For example in the case of the bankruptcy filing of the US utility Pacific Gas and Electric it became clear that its profits were transferred to its subsidiary National Energy Group, allowing the management to enjoy performance bonuses even in a situation very close to financial distress of one subsidiary. "Pacific Gas and Electric transferred \$ 4.1 billion between 1997 and 1999. Most of this went to dividends and stock repurchases, but \$ 838 million was invested in other subsidiaries, primarily its National Energy Group unit. [. . .] 'Executives of the companies say the transfers were proper. Audits have shown that "we followed the rules and didn't do anything wrong" ('While a Utility May Be Failing, Its Owner is Not', The New York Times, 30 April 2001)⁶.

These are only some of the numerous cases in which top management is able to safeguard their base salary and bonuses by timing those payments well, by relating bonuses to the performance of subsidiaries where performance is amassed (at the expense of other subsidiaries) or by redesigning contracts (with substantial severance payments) even when the firm is close to insolvency. The research question as to how the relative seniority structure of managerial compensation and debt contracts determine the managerial incentives constitutes a contribution to the theoretical literature as this has – to our knowledge – not been addressed. Therefore, in this paper we theoretically analyze and empirically test the effect of, respectively, senior and junior debt on the choice of managerial incentive contracts (assuming the financing decision is taken prior to managerial contract negotiation). We show that the pay-for-performance sensitivity decreases with leverage, while the base salary increases with leverage, when debt is considered to be junior to compensation in case the firm enters a bankruptcy procedure. With senior debt, we find opposite relations.

These results are obtained from the following principles. First, at the moment of designing

² "[The BDO accountants] disclose[s] that on November 6, 2000 three cheques of GBP 50,000 were made out and entered in the cash book as "directors' bonuses in favour of" Mr Derry, Mr Linell and another director, Andy Krawchuk". (The Guardian, 31 March 2001).

³ "Senior executives at the London subsidiary of collapsed US energy trader Enron received at least GBP 500,000 in cash bonuses weeks before it went into administration." (Scotland on Sunday, 24 March 2002).

⁴ "Barclay Knapp, the chief executive of the troubled cable company NTL, was awarded a \$561,138 (£382,768) bonus for his work in 2001 as the company lurched towards bankruptcy" (The Independent, 31 May 2002).

⁵ Lord Simpson of Dunkeld (CEO) managed to extract a severance pay of GBP 2.2 million. "It was hardly news, in August, that Marconi was in trouble. Simpson knew this when he entered into negotiations with those supine non-executives on the remuneration committee. So did they. But both parties signed." (The Times, 29 September 2001).

⁶ Consider Global Crossing: "[T]he US telecoms giant's board signed what must be among the most generous employment contracts of all time. On joining the company, Robert Annunziata, chief executive, was handed a \$10 million (Euro 12 million) signing bonus, options on two million shares with an exercise price \$10 below market value, and "guaranteed annual bonus" worth another \$500,000. His contract also specified the make and model of Mercedes the company would purchase for him, sanctioned the use of the corporate jet, and agreed to pay for first class air travel for his entire family, including his mother. Annunziata lasted 53 weeks in the job, but amassed no less than \$151m in pay. As has now become clear, the board's pay policy failed to buy performance" (The Financial News, 4 February 2002).

the compensation package, the existing capital structure determines the “incentive to give incentives” by the remuneration committee of the board of directors when it acts in the interest of the existing shareholders: this effect by itself changes the optimal contract a shareholder-principal offers the managers for different levels of debt in the capital structure. Secondly, for a given level of leverage, the degree of protection of the management pay against creditors’ claims on corporate value changes the payment the manager would receive in the case of insolvency. Therefore, the relative seniority of debt versus compensation influences the management’s incentives to put effort into the firm.

The fact that compensation is paid with priority over the debt claims if the firm is insolvent has two implications. First, the base salary is partly paid by the debtholders whenever the firm is in financial distress: the shareholders do not suffer the entire cost of offering a high base salary to the management. Secondly, higher managerial effort decreases the likelihood the firm will be insolvent, thus increasing the value of debt claims. Why then should the shareholders, who enjoy positive profits only in good states of the world, give up a substantial part of these profits in the form of high incentive bonuses when part of the advantage of the higher effort will be cashed-in by the debtholders? The consequence of these two effects is that shareholder-principal offers the agent-manager a lower performance bonus in highly levered firms.

On the contrary, when the base salary is subordinated (i.e. junior) to debtholders’ claims in a bankruptcy procedure, leverage acts as a direct incentive device to enforce higher managerial effort, as in Innes (1990), Dewatripont and Tirole (1994), Hart and Moore (1995) (the so-called "incentive effect"). This is because the agent-manager payment in the low state of the world is bounded above by the presence of senior debt, forcing her to a choice of high effort. This can be implemented only through the payment of higher incentive bonus. On the other hand, under this regime, leverage reduces the resources free from debt service which can then be allocated to the management (Berkovitch, Israel and Spiegel (2000): the "cash-flow effect"). For some levels of debt the incentive effect prevails over the cash-flow effect, so that the principal has to reward the management with a greater bonus as leverage increases. In this sense, we prove that "hard" debt and junior incentives are complementary.

We also test the theoretical predictions of our model empirically using a sample selection model (type-2 Tobit model). The selection equation selects the firms where a new CEO has been appointed and the regression equation captures the relation between the CEOs monetary remuneration and pre-existing debt. As the relative seniority of debt and performance contracts are especially important in case of financial distress, we pay special attention to subsamples of poorly performing firms. Studying a UK data panel over 1988-93 (pre-Greenbury), for which we cannot distinguish between base salary and performance bonus, we find a positive relation between total remuneration and lagged leverage for poorly performing firms in financial distress. However, from a second sample of the 510 largest UK firms by market capitalization in 1997-98 (post-Greenbury) we observe that the base salary is significantly higher for poorly performing firms in financial distress, while the performance bonus is lower. The net effect of total monetary remuneration is (marginally) positive (as for the pre-Greenbury period). These findings confirm our predictions in the case where remuneration is effectively senior to debt contracts, as we have motivated with the insolvency regulation and the cases above.

The present paper is organized as follows. Section 2 presents the general model. In section 3, we study the choice of managerial remuneration contract by the shareholders in

the two different cases of seniority of (a) the manager remuneration claims and (b) the debt claims. In section 4, we collect the empirically testable implications of the model. Section 5 describes the data and methodology of the empirical study and section 6 discusses the empirical results. Section 7 concludes. Appendix A collects the proofs while appendix B details the UK bankruptcy procedures.

2 The model

Consider a firm operating in two periods $t = 1, 2$. At date $t = 1$, a principal P (typically the remuneration committee of the board of directors) offers a contract specifying a compensation scheme to a manager A and then delegates the business activity to him. As in the standard principal-agent model, the principal cannot monitor the manager's actions, but he can exactly observe the realization of the firm cash flows at $t = 2$ and verify it through a legal procedure. Hence, the principal can write contracts upon that realization of cash flows. P offers A a state-contingent, complete contract $w(q)$ specifying the payment she will get at the final date $t = 2$ for any realized cash flow \tilde{q} . We allow her to compensate the agent only through monetary payments, excluding any other form of remuneration (shares or option plans, promotions or perks).

We will consider a risk-neutral principal and a risk averse agent. If the manager accepts the contract at $t = 1$, he then chooses a non-verifiable effort level, e in an interval $\Lambda = [0, \bar{e}]$, that affects the probability distribution of the final cash flows. We assume for simplicity that, at $t = 2$, the firm can only produce a high cash-flow q_1 or a lower cash flow q_0 ⁷ without any earnings maturing at time one. For the moment, we assume that the capital structure is given at the moment of the contract negotiation and that the manager cannot change this pre-existing capital structure anymore subsequently. Still, in section 3, we discuss how the results change when this assumption is removed and the hired manager is able to change the capital structure at date $t = 1$.

At the last stage, the realized cash-flow of the firm $(q_i)_{i=0,1}$ is distributed to the different claimholders (including the agent) according to their respective claims and following a pre-specified, law-enforced rule of priority.

Assumption 1: *The cash-flow of the firm at $t = 2$ is a two-states random variable distributed according to $p(e) = \Pr(q_1; e)$ where $p(e)$ is assumed to be continuous in e , weakly increasing and weakly concave.*

Assuming that $p(e)$ is weakly increasing and concave guarantees that both Monotone Likelihood Ratio Property (MLRP) and Cumulative Distribution Function Convexity (CDFC)⁸

⁷If the firm has liquid assets-in-place L at time zero, which can be turned into cash at $t = 2$, and whose market value at time 2 is independent of managerial effort, we include them in q . Hence, q is a composite measure of both the firm liquid assets-in-place and project cash-flows, with the difference that the $t = 2$ value of the latter is affected by the effort the manager chooses previously.

⁸The MLRP holds if the likelihood ratio $\frac{p_i(e)}{p_i(e')}$ is non-decreasing in the state i , given any two actions e, e' in the set Λ and given that action e is more expensive to be implemented in first-best, i.e. $C^{FB}(e') \leq C^{FB}(e)$. The CDFC requires that the distribution function $P(q, e)$ is convex in the action e .

properties are verified⁹, so that we can be sure that the first-order condition of the agent problem only picks up global optima (Holmstrom (1979), Rogerson (1985)).

All the information about the firm returns and the contract with the agent is commonly known at time 1 by all individuals.

We make the following assumption on the preferences of the agent:

Assumption 2: *The agent's utility function is separable in effort and compensation, $U(e, w(y)) = (u(w_1)p(e) + u(w_0)(1 - p(e)) - c(e))$ where $c(e)$ is increasing, twice continuously differentiable and strictly convex in e . Moreover, $c' > 0$, $c'' > 0$, $c(0) = 0$, $c'(0) = 0$.*

The solution of the model involves two subsequent steps: at $t = 1$ the choice of the optimal remuneration contract by the principal P ; and successively the optimal effort choice by the agent A once he has signed the contract. Since the individuals are perfectly rational and have complete knowledge of the model, we can analyze the sequence of the events by working recursively. We first describe the agent's choice of effort.

Given the state-contingent, complete contract (w_0, w_1) , A solves the following problem:

$$\max_{e \in [0, \bar{e}]} u(w_1)p(e) + u(w_0)(1 - p(e)) - c(e) \quad (\text{A})$$

At time $t = 1$, the principal P (the remuneration committee) chooses the contract that maximizes the shareholders' value: in doing this she has to take as given the incentive compatibility constraint (IC) generated by the unobservable choice of effort by the agent.

Let $D \geq 0$ be the face value of the existing debt in the capital structure of the firm with maturity $t = 2$. The problem of optimal-contract is

$$\begin{aligned} w_i^* \in \arg \max_{w_0, w_1} V^E & \quad (\text{P}) \\ \text{s.t. } p(e)u(w_1) + (1 - p(e))u(w_0) - c(e) \geq \bar{U} & \quad (\text{IR}) \\ e(w_i) \text{ is the solution to (A) given } w_i^* & \quad (\text{IC}) \end{aligned}$$

where, assuming no discount and risk-neutral shareholders, the value of equity is¹⁰:

$$V_E = p(e(w_0^*, w_1^*)) \max\{q_1 - w_1^* - D; 0\} + (1 - p(e(w_0^*, w_1^*))) \max\{q_0 - w_0^* - D; 0\}$$

where IR is the participation constraint for the agent.

2.1 Some properties of the principal-agent relationship

By assumption 1 on $p(e)$, we can substitute the incentive compatibility constraint (IC) with the first order condition (f.o.c.) in the effort choice whenever IC is binding¹¹ (Rogerson (1985)). Given the contract payments (w_0, w_1) the agent solves:

⁹See Result A in the Appendix for a formal proof of this statement.

¹⁰Given that the information is symmetrically distributed across all individuals, all the investors can anticipate rationally the decisions of P and A and can then correctly price their claims on the firm payoffs. With no discount and risk-neutrality all the claims are priced under the risk-neutral probability $p(e)$.

¹¹In our framework IC is not binding for the implementation of $e = 0$: in that case P can fully insure A paying a fixed wage w^{fi} at which IR is binding (Grossman and Hart (1983)).

$$e \in \arg \max_{\hat{e} \in [0, \bar{e}]} p(\hat{e})u(w_1) + (1 - p(\hat{e}))u(w_0)$$

and the global maximum is characterized by:

$$p'(e) (u(w_1) - u(w_0)) = c'(e) \quad (1)$$

The characterization of the choice of effort by the agent allows us to determine some properties of the optimal contract problem.

Assumption 3: $\bar{U} > \frac{c'(\bar{e})}{p'(\bar{e})}p(\bar{e}) - c(\bar{e}); q_0 - u^{-1}(\bar{U}) > 0;$
 $q_1 - u^{-1}\left(\bar{U} + c(\bar{e}) + \frac{c'(\bar{e})}{p'(\bar{e})}(1 - p(\bar{e}))\right) > q_0.$

Lemma 1: *Under Assumption 1, 2, and 3, for any $e \in [0, \bar{e}]$:*

(i) *IR is always binding, and each action can be induced with positive payments to the agent; moreover, the higher the agent's reservation price for action e , (in the sense of higher $C^{FB}(e)$), the (weakly) higher w_1 , and the (weakly) lower w_0 necessary to implement such an action e .*

(ii) *for any given action $e > 0$ implemented by P , a higher w_0 requires a higher bonus $b = w_1 - w_0$ that the principal has to pay to the agent in state q_1 .*

Proof: See the Appendix.

Corollary 2 *(co-monotonicity of payoffs of A and P): a compensation scheme $(w_0(e), w_1(e))$ satisfying IR and s.t. $w_0(e) > w_1(e)$ is never optimal for P whenever $q_1 - w_1(e) > q_0 - w_0(e)$. Moreover, when $w_1(e) > w_0(e)$ we have $q_1 - w_1(e) > q_0 - w_0(e)$.*

Proof: See Grossman and Hart (1983), Proposition 4.

Assumption 3 and Lemma 1 have two important consequences: first, they guarantee that adding a limited liability constraint on the agent does not change our results: for all actions $e \in [0, \bar{e}]$ the agent always receives a positive payment in both states; secondly, they allow us to order the set of payments the principal has to offer in order to induce any action e :

$$\begin{aligned} 0 &< q_0 - w_0^{fi} < q_0 - w_0^{\min} < q_0 \\ 0 &< q_1 - w_1^{\max} < q_1 - w_1^{fi} < q_1 \end{aligned}$$

2.2 The optimal contract in an all-equity firm

If no debt with maturity $t = 2$ is present in the capital structure of the firm at the moment of the contract negotiation, the principal solves the following problem at $t = 1$:

$$\begin{aligned} e^0 \in \arg \max_e \quad & V^E = p(e(w_1))(q_1 - w_1) + (1 - p(e))(q_0 - w_0) \\ \text{s.t.} \quad & w_0(e) = h\left(\bar{U} + c(e) - \frac{c'(e)}{p'(e)}p(e)\right) \\ & w_1(e) = h\left(\bar{U} + c(e) + \frac{c'(e)}{p'(e)}(1 - p(e))\right) \end{aligned} \quad (2)$$

where the function h denotes u^{-1} .

Assumption 4 *The utility function of the agent and the probability $p(e)$ are such that $-p(e)h(\bar{U} + c(e) + \frac{c'(e)}{p'(e)}(1 - p(e)))$ is concave in $e \in [0, \bar{e}]$.*

Under Assumption 1-4 this problem is a concave problem (Laffont and Martimort (1999)) of which the first order condition is:

$$p'(e^0)(q_1 - q_0) = \frac{\partial C^{SB}(e)}{\partial e} \quad (3)$$

where $C^{SB}(e)$ is the cost for the principal to implement action e under moral hazard (second-best cost): $C^{SB}(e) = p(e)w_1(e) + (1 - p(e))w_0(e)$.

Proposition 1: *The optimal contract under full-equity financing induces the effort e^0 such that $q_0 - w_0(e^0) \leq q_1 - w_1(e^0)$ and it is characterized by the following equality:*

$$p'(e^0)(q_1 - q_0) = p'(e^0)(w_1(e^0) - w_0(e^0)) + p(e^0)(1 - p(e^0)) \frac{c'(e^0)p'(e^0) - c'(e^0)p''(e^0)}{(p'(e^0))^2} (h'(\bar{u}) - h'(\underline{u}))$$

Proof: See the Appendix.

Proposition 1 allows us to fix the benchmark solution of the optimal contract in the case of full-equity financing of the firm. We now move to check how the presence of debt in the capital structure affects the choice of contract by the principal.

3 The relative seniority of compensation versus debt

Since the equity claims are junior to both debt and to managerial monetary compensation, the equityholders receive a positive payment only in case the firm payoff q_i exceeds $w_i + D$, regardless of the relative seniority of debt and remuneration. It is easy to see that the Principal's objective function in (P) changes in a non-linear way with D , the debt due at $t = 2$ ¹². Therefore, it is clear that the optimal contract (w_i^*) chosen by P will depend on D . We call this effect of capital structure on the managerial compensation the “*contract substitution*” effect.

In this section, we show that the relation between the optimal remuneration contract and leverage depends on the relative degree of law-enforced seniority of the compensation versus debt. In many existing papers on managerial compensation (Innes (1990), Dewatripont and Tirole (1994), Robe (1999), Berkovitch, Israel and Spiegel (2000)), the management remuneration is considered junior to the debt claims. Such an assumption does not completely tie in with reality as the introduction demonstrates. Our objective here is not to discuss whether top-management compensation is junior or senior to debt in case of (near-)bankruptcy procedure as this firstly depends upon the chosen bankruptcy procedure (a debtor- or a creditor-oriented procedure) and secondly may even differ from case to case within a specific procedure. Instead, we intend to show that this relative seniority is the all-important variable to understand the effect of leverage on compensation.

¹²With a continuum set of states higher leverage reduces the states in which equity value is positive, making the function $(q_i - w_i^* - D)$ convex in the states i .

3.1 Debt is subordinated to managerial compensation

With managerial remuneration being senior to debt, the agent's problem (A) is not affected by D : the f.o.c. (1) holds for any $D > 0$ as well. What matters for the choice of the optimal contract is only the change in the payoff function for the principal.

Suppose that in the pre-existing capital structure of the firm there is debt $D > 0$ that has to be repaid at $t = 2$. The payoff function of P at $t = 1$ becomes:

$$\begin{aligned} & p(e) \max\{q_1 - w_1 - D; 0\} + (1 - p(e)) \max\{q_0 - w_0 - D; 0\} \\ = & \text{Ben}(e; D) - C^{SB}(e) \end{aligned}$$

where

$$\begin{aligned} \text{Ben}(e; D) &= p(e) \max\{q_1 - D; w_1\} + (1 - p(e)) \max\{q_0 - D; w_0\} \\ C^{SB}(e) &= p(e)w_1 + (1 - p(e))w_0 \end{aligned}$$

$\text{Ben}(e; D)$ is the benefit for the principal when action e is induced, while $C^{SB}(e)$ is the second-best cost for implementing such action. The fact that the agent's problem is invariant to D has an important consequence: a positive D does not create any direct incentive effect on the agent's effort. However, our purpose is to characterize how the solution of the following problem changes with $D > 0$:

$$\begin{aligned} & \max_e \text{Ben}(e; D) - C^{SB}(e) \tag{4} \\ \text{s.t.} & \quad w_0(e) = u^{-1} \left(\bar{U} + c(e) - \frac{c'(e)}{p'(e)} p(e) \right) \\ & \quad w_1(e) = u^{-1} \left(\bar{U} + c(e) + \frac{c'(e)}{p'(e)} (1 - p(e)) \right) \end{aligned}$$

Proposition 2: *If the agent's compensation is due with priority over the debt service in time 2 and if the solution of problem (2) is $e^0 > 0$, then, for $D > q_0$ the solution of (4) is $e^D < e^0$, $w_0^D > w_0^0$, and the bonus paid in presence of debt $w_1^D - w_0^D = b^D < w_1^0 - w_0^0 = b^0$.*

When risky debt is issued, the relative payoff of shareholders changes across states. They end up not paying the agent's compensation entirely in the low state as the fixed part, w_0 , is partly paid by the debtholders in the case of insolvency. Proposition 2 suggests that the shareholder-principal transfers part of the cost of the remuneration contract to the debtholders through a higher base salary w_0 and a lower bonus. The cost of such a bonus accrues entirely to the shareholders but it produces benefits that they cannot fully internalize, since they are partly cashed-in by the debtholders. Furthermore, an increase of w_0 has a negative effect on the managerial effort (Lemma 1). Hence, if the management's compensation is protected against the debtors' claims, a principal P acting in the interest of existing shareholders will choose a lower pay-to-performance sensitivity contract, since the marginal cost of the bonus is now higher for that principal. Implicitly, he offers an insurance to agent A (the manager) at the expense of the debtholders.

According to Proposition 2, we should observe low-powered incentive contracts under this regime in firms with risky debt. We will test this empirical prediction in section 6; Smith and Watts (1992) confirm it in firms using traditional, monetary compensation packages.

Finally, note that the result of Proposition 2 does not change when we allow the manager to change the capital structure at time 1. The intuition is simple: when the managerial remuneration is totally senior to debt, any variation of the capital structure posterior to the contract negotiation has no effect on the utility the agent-manager gets at the optimum, making her indifferent towards the debt level.

3.2 Managerial remuneration is subordinated to debt

In the present model the firm is insolvent if at time $t = 2$ the debt service and the managers' compensation exceed the generated cash flows. This is the case if the bad contingent state occurs and hence the cash flow is below the payments due ($q_0 < D + w_0$). The debtholders can now start a bankruptcy procedure that leads to the liquidation of the firms' assets. If the existing law does not give a preferential status to the managers' pay in case the firm is liquidated, we can assume that, the remuneration of the manager cannot exceed the amount $q_0 - D$ ¹³.

This legal regime implies that the wage the agent receives in state zero is directly affected by the amount of debt D because the principal is protected by limited liability. This principal cannot credibly offer a compensation $w_0 > q_0 - D$ since the agent knows he will not be able to claim more than $q_0 - D$ in case of liquidation.

The presence of risky debt¹⁴ creates then two effects on the choice of contract (as pointed out by Berkovitch, Israel and Spiegel (2000)¹⁵):

1) an "incentive effect": the debt D puts an upper bound on the wage the principal can (credibly) promise to the agent in a state with $q_0 : w_0 \leq q_0 - D$. Following from Lemma 1, the principal has to pay a higher w_1 to make the agent accept the contract and induce high levels of effort;

2) a "cash-flow" effect: higher D reduces the cash-flow in $s = 1$ available for compensation. As the maximum possible bonus b is now lower, the principal P will be less able to induce higher effort from the agent by means of bonus compensation.

As it is never optimal for P to implement an amount of effort $e > 0$ that requires the payment of a bonus to the agent of $w_1 - w_0 > q_1 - q_0$, we find (Corollary 2) for any $D \geq 0$ that $q_1 - w_1 - D \geq q_0 - w_0 - D$. This in turn implies that by increasing D we enter successively in the following regions:

(i) e^0 is such that $q_1 - w_1 - D \geq q_0 - w_0 - D \geq 0$;

(ii) e^0 would require a payment $w_0(e^0) > q_0 - D$ so that $q_1 - w_1^0 - D \geq 0$ and $q_0 - w_0^0 - D < 0$

(iii) e^0 is such that $D \geq q_1 - w_1^0$;

In the first case, the optimal contract for the principal does not change with D : the debt is riskless.

¹³Of course, the firm is also insolvent if $D + w_1 > q_1$. We will study the two cases separately.

¹⁴Risky debt is defined as debt which cannot be repaid when the state which yields q_0 is realized: $D > q_0$.

¹⁵Our analysis is different from theirs since they only study the case of junior wage compensation along with the choice of optimal managerial turnover.

In case (ii), the action e^0 is not implementable with any junior wage scheme because the principal cannot credibly offer the agent more than $q_0 - D$. While the agent's limited liability constraint¹⁶ puts a lower bound on the compensation, D imposes an upper bound on w_0 .

In case (iii), the principal cannot credibly pay more than $q_1 - D$ in the good contingency, and this puts an upper bound on the maximum compensation w_1 .

Proposition 3. *If the agent compensation is subordinated to the debt service at time 2 then $e^D \geq e^{SB(0)}$ and $w_1(e^D) - w_0(e^D) \geq w_1(e^0) - w_0(e^0)$ for $D \in [q_0 - w_0(e^0), \min\{q_0, q_1 - w_1(e^0)\}]$.*

If managerial compensation is not protected against the debtholders claims, the optimal bonus is increasing in leverage. This occurs because debt acts as a direct incentive device (as in Innes (1990)), and the participation constraint of the agent forces the principal to pay him a higher bonus, even if this is suboptimal. Leverage and junior power-incentives are then complementary.

If we allow the agent to adjust the capital structure by issuing or retiring debt and equity after the contract has been signed (i.e. at $t = 1$), the problem becomes more complex. Still, we can observe the following: once the contract has been signed, the manager A will try to postpone the debt repayment in order to increase the resources $q_i - D$ available for his own compensation. Anticipating this, the principal can afford to offer the manager contracts requiring higher payments w_i . Still, the result in Proposition 3 will hold albeit with a caveat: the debt D represents the final debt service, net of the change of the capital structure the manager performs at $t = 1$.

3.3 The optimal capital structure

Throughout the paper, we assume that the principal acts in the interest of existing shareholders and that she maximizes the total value of the firm. From this follows immediately that all-equity financing is always optimal in our setup with perfect capital markets (no taxes, no asymmetry of information). However, debt is used in most firms due to tax advantages or commitment problems.

In our model, we take a capital structure with debt as given. We also accept that the capital structure is fixed at the moment of the negotiation of the remuneration contracts. The reason is that we want to highlight the effects of pre-existing debt on the new remuneration contracts. This assumption of a fixed capital structure at the moment of contract negotiations is not unreasonable: firms are on-going economic entities in which managerial contracts are frequently renewed, renegotiated, or created, whereas the decisions about the optimal capital structure are of a more strategic nature and hence occur less frequently. However, it is still worthwhile to ask the question as to how firm value and managerial effort would change with capital structure changing over time

We can point out the differences in results between the case with no change in capital structure as discussed in sections 3.1 and 3.2 and the case with a possible change in capital

¹⁶While we impose limited liability on the principal throughout our model, the condition of limited liability on the agent (no remuneration punishments) is always satisfied following assumption 3, in line with standard principal-agent models (Laffont and Martimort (1999)).

structure for each of our two seniority regimes. With compensation senior to debt (Proposition 2), the optimal contract reduces the incentive for the management to exert high effort, while in the opposite case (Proposition 3) the optimal contract increases managerial effort. In the latter regime where debt is senior to compensation, our model also predicts higher leverage because senior, protected debt is then cheaper than junior debt. This follows from the facts that (i) debt is senior to compensation and (ii) the value of the firm increases due to increase in managerial effort.

4 Empirical implications

From our theoretical analysis we derive the following empirically testable predictions, which we analyze in section 6:

1) The relative seniority of managerial remuneration and debt claims determines the managerial compensation schemes: when compensation is senior to debt in case of financial distress, higher leverage reduces the power incentives (performance bonus), but increases the basic salary.

2) If the relative priority of managerial compensation over debtholders' claims is left unspecified, the cost of debt should be higher than in a situation in which such a priority is legally enforced ex-ante.

Before turning to the description of the empirical methodology and its results, a last observation should be made. In the model, firm leverage always referred to risky debt that is to be repaid at the payoff date $t = 2$, that is at the moment the agent receives his compensation. In our setup, we assume that the firms have no liquid assets already in place. However, even if this were the case, our analysis would still hold if one considers D as debt service at $t = 2$ net of the liquidation value of the firm's assets at $t = 2$.

5 Data and methodology

5.1 Description of the samples

The first sample consists of 250 UK firms randomly drawn from the population of all companies quoted on the London Stock Exchange, excluding financial institutions, real estate companies and insurance companies¹⁷. The data panel extends over the period 1988-93, which is an interesting period for the following reasons: (i) it captures a recession (in which substantial performance-related top management replacement can be observed) and (ii) the data refer to the pre-Cadbury/Greenbury period (which has the advantage that we see more

¹⁷We are grateful to Julian Franks, Colin Mayer for providing us with pre-Greenbury data.

heterogeneity in new managerial contracts than in later periods)¹⁸. Thus, this recession period is characterized by lower corporate governance standards than more recent years, and is therefore particularly interesting from an agency-theory point of view. The sample (henceforth labeled the ‘pre-Greenbury sample’) also includes those firms that were taken over or went bankrupt but have at least 3 years of data available allowing us to capture the dynamics.

As we are particularly interested in managerial compensation contracts in poorly performing and financially distressed firms, we create a poor performance-subsample consisting of those firms in the above sample that are in the lowest decile of performance measured by abnormal returns in at least 2 years of the sample period. We extend this subsample (henceforth labeled the ‘pre-Greenbury poor performance sample’) by another 50 poorly performing firms according to the same criterion. This bringing the total number of poorly performing firms to ninety¹⁹.

Prior to the introduction of the Greenbury code of conduct on remuneration practices in 1995-96, some remuneration data (the non-cash elements like stock- and option-grants) were not available and the detail of reporting was limited (base salary and bonus were not made public separately). That is why we also use a second sample taken from the post-Cadbury/Greenbury period in 1997-98 which consists of the 510 largest UK firms (by market capitalization)²⁰. This sample is henceforth labeled ‘post-Greenbury sample’ and represents about 87% of the market capitalization of the London Stock Exchange.

5.2 Data sources and summary statistics

For the pre-Greenbury sample, all data on managerial compensation, turnover and board composition are retrieved from the Directors’ Report and the Notes in the annual reports. The mean and median monetary compensation (salary and bonus) is around GBP 144,000 and GBP 149,000 (panel A of Table I). The mean capital gearing (defined as long term-debt on total assets) equals 32.65%. Interest coverage (EBIT on interest charges) amounts to 12.4. Yearly ownership data both for existing and new shareholders for each year of the sample period was also collected from the Directors’ Report and the Notes in the annual reports²¹. Non-beneficial share stakes held by the directors on behalf of their families or charitable trusts were added to the directors’ beneficial holdings. Although directors do not obtain cash flow benefits from these non-beneficial stakes, they usually exercise the voting rights. The status

¹⁸For the effect of the recommendations in the Cadbury corporate governance code of conduct on performance and turnover, see Dahya et al. (2002). The London Stock Exchange imposed the recommendation on all listed companies as of end of 1993. The Greenbury code of conduct of 1995 consists of a set of recommendations related to the remuneration of top managers.

¹⁹We also work with alternative subsamples of poorly performing firms which are close to financial distress (interest coverage below 2). We also check the robustness of results using alternative measures of poor performance: earnings losses combined with dividend cuts and omissions, and abnormal returns of less than minus 50% combined with earnings losses and dividends cuts and omissions.

²⁰We are grateful to Martin Conyon and Graham Sadler for providing us with post-Greenbury data.

²¹Legal disclosure of ownership applies to all the directors’ holdings greater than 0.1% as well as to other shareholders’ stakes of 5% and more and of 3% and above (from 1990 when the statutory disclosure threshold was reduced). For equity stakes in Nominees accounts, the identity of the shareholders was found by contacting the listed firms directly. In 97% of these cases, the shareholders of Nominees accounts were institutional investors.

of the directors (executive/non-executive) and the dates of CEOs joining and leaving the board were also obtained from the annual reports. The mean CEO share stake of a randomly selected pre-Cadbury sample was 2.98%.

Panel B of Table I gives a more detailed account of CEO compensation in the post-Greenbury period²². Base salary in 1997 amounts to an average of GBP 271,000 (with a median of GBP 240,000). The bonus including other cash compensation averages GBP 143,000 (panel B of Table I). As option grants and long term incentive plans grants average GBP 178,000 (with a median of zero), the average total CEO remuneration is GBP 591,000 (with a mean of 414,000). The leverage ratio (debt on total assets) is about 47% and the interest coverage averages 14.5. Panel B of Table I also shows that the average CEO holds 2.13% of the shares outstanding (with a median 0.05%). In addition, the average CEO has the right to obtain an additional average equity stake of 0.2% (median of 0.06%) by exercising options or long term incentive plans (LTIPs). The percentage of equity that those claims are translated into is calculated by multiplying the options (and of LTIP shares) as a percentage of all shares outstanding with their deltas. The delta reflects the change in the value of an option resulting from a change in the price of the underlying asset. The delta is close to one for deep-in-the money options and close to zero for deep-out-of-the money options²³.

[Insert Table I about here]

The median age of a CEO in a randomly selected firm (pre-Greenbury sample) is 52 years (with a mean of 52.6) and a median tenure equals 4 years (the mean equals 5.2)²⁴. Every third CEO also holds the position of chairman of the board of directors. The median board consists of 9 directors, 61.5% of whom are non-executive directors. In approximately 26% of the pre-Greenbury sample, CEO compensation is determined by a remuneration committee. The presence of such committees (postulated by the report) can alter compensation policies and eliminate the situation when the remuneration decision is largely influenced by CEOs themselves (Conyon (1994), Conyon et al. (1995)). The fraction of companies having such a committee is more than 95% in 1997-98.

As is typical for Anglo-American firms, ownership concentration is relatively low. The median Herfindahl-5 index equals only 0.028 (with a mean of 0.057). The median of the combined shareholdings of all executive directors (excluding CEO) amounts to less than 1%, with an average of slightly below 8%. Stakes of non-executives are lower and do not exceed 4%, on average. The most important class of blockholders consists of financial institutions: they hold a (cumulative) median stake of 13% (a mean of 16.6%). Finally, other outsiders – individuals, families and industrial firms – control on average 8.2% of equity.

Abnormal returns are calculated using the market model and are corrected for thin trading²⁵. We also use alternative performance measures like the percentage dividend changes

²²It should be noted that the data in panels A and B of Table 1 are not directly comparable for two reasons: (i) in section 6.1 was pointed out that the pre-Greenbury sample is a random sample whereas the post-Greenbury sample includes the largest firms only and (ii) the time periods are different; they are 7 years apart (1990 vs 1997).

²³For a thorough description of the methodology: see Conyon and Murphy (2000). Conyon and Sadler (2001).

²⁴Tables with ownership concentration and director characteristics are available upon request.

²⁵Both a Dimson (1979)-correction for non-synchronous trading and a Vasicek (1973)-Bayesian updating are applied.

(between years $t - 2$ and $t - 1$, and between $t - 1$ and t , respectively), which are collected from Datastream, and employ return on assets (EBIT over book value of total assets) as accounting-based performance indicators. In order to control for (potential) size effects, we introduce the logarithm of total assets (in £ thousands) at the end of a given year. Finally, we measure risk by the annual volatility of stock returns, which is gathered from the London Share Price Database. The median and mean values amount to 34.39% and 37.43%, respectively.

5.3 Methodology

Our first sample consists of a data panel, but implementation of panel data econometrics like GMM-in-systems to investigate the relation between managerial remuneration and leverage induces biases as this relation is disturbed by the occasional departure of top management. Therefore, sample selection models are applied to analyze jointly the relations between executive compensation schemes and leverage, and between CEO turnover (c.q. the nomination of a new CEO) and its determinants. The model, often referred to as a type-2 Tobit model, is specified as follows:

$$\begin{aligned}
 & \begin{cases} y_1^*{}_{it} = X_1'{}_{it}\beta_1 + \varepsilon_1{}_{it} \\ y_2^*{}_{it} = X_2'{}_{it}\beta_2 + \varepsilon_2{}_{it} \end{cases} \\
 y_1{}_{it} &= \begin{cases} 1 & \text{if } y_1^*{}_{it} > 0 \\ 0 & \text{if } y_1^*{}_{it} \leq 0 \end{cases} \\
 y_2{}_{it} &= \begin{cases} y_2^*{}_{it} & \text{if } y_2^*{}_{it} > 0 \\ 0 & \text{if } y_2^*{}_{it} \leq 0 \end{cases}
 \end{aligned}$$

where $\{\varepsilon_1{}_{it}, \varepsilon_2{}_{it}\}$ are drawn from a bivariate normal distribution with mean 0, variances σ_1^2 and σ_2^2 , covariance σ_{12} (Amemiya (1984)). y -variables are quantities of interest while X -variables correspond to the explanatory variables. Finally, β_1 and β_2 are vectors of the model coefficients. It is assumed that only the sign of $y_1^*{}_{it}$ is observed and that $y_2^*{}_{it}$ is observed only when $y_1^*{}_{it} > 0$. Moreover, it is assumed that X_{1i} are observed for all i , but X_{2i} need not be observed for i such that $y_1^*{}_{it} \leq 0$. Finally the two sets of explanatory variables, i.e. $X_1{}_{it}$, and $X_2{}_{it}$, are not disjoint (they can differ, however).

In a standard setting, error terms are assumed to be i.i.d. drawings from a bivariate normal distribution. In our models, i corresponds to a firm and t to a year. We relax the assumption of independence of ε 's across i and allow clustering of observations corresponding to a given firm, i.e. we assume error terms to be i.i.d. across firms, but not necessarily for different observations within the same firm. All the reported standard errors of estimates are adjusted for clustering (StataCorp (2001)). This procedure enhances robustness of our findings and allows us to take the panel data structure of our sample explicitly into account. To estimate the type-2 Tobit models, we employ a two-step procedure suggested by Heckman (1979), which yields consistent parameter estimates.

Equation (1a) is the selection equation, while equation (1b) is referred to as a regression equation. The selection equation explains CEO replacement, i.e. $y_1{}_{it} = 1$, corresponds to those firm-years when the CEO kept his position. The regression equation explains the

compensation of such CEOs in the subsequent year. As the notion of compensation sensitivity is not meaningful for new CEOs, we restrict the remuneration analysis to CEOs with a tenure of more than one year. Estimating the parameters of the regression equation (1b) on the basis of the non-turnover sample only, would not be a valid alternative to the proposed method because the OLS estimator of β_2 is biased when the selection of the regression sample is endogenous (i.e., $\sigma_{12} \neq 0$). Instead, our sample selection model deals with the endogeneity of selection, and therefore renders reliable parameter estimates for the regression equation (Greene (2000)).

6 Some empirical results on remuneration contracts, leverage and financial distress

Table II shows the sample selection models explaining the sensitivity of top management remuneration to leverage. We examine this sensitivity for the total pre-Greenbury sample as well as for the subsamples consisting of (i) well performing firms, (ii) poorly performing firms and (iii) poorly performing firms in financial distress. Poor performance is defined as firms in the lowest abnormal return quintile. Financial distress is defined here as companies with an interest coverage below two because investment grade companies “typically have coverage ratios exceeding two times interest expense” (Copeland et al., 1995, p.178). The results of Panel A consist of the regression equations which capture CEO turnover or, in other words, the signing of a contract with a new CEO. Panel B excludes the structural break in remuneration (due to the new contracts) and examines the remuneration sensitivity to leverage for ongoing contracts.

[insert Table II about here]

The results of Panel A of Table II indicate that high leverage is not significantly related to managerial disciplining (the removal of the CEO) in the average and well performing firms. However, in line with earlier research (e.g. Dahya, McConnell and Travlos (2002)), we find that high leverage leads to CEO departures especially the case for poorly performing and financially distressed firms. Panel A of Table II also discloses that CEO turnover is negatively related to poor share price and accounting performance. The composition of the board of directors also has a significant impact on CEO removal: large boards lead to increased CEO turnover in the well performing firms. A high fraction of non-executive directors and separation of the functions of CEO and chairman facilitates the removal of the CEO both in well and poorly performing firms (specifications 1-4). These results are in line with the traditional corporate governance predictions stating that a high fraction of non-executive directors enhances the board’s independence and fosters better monitoring. Furthermore, the fact that the CEO does not dominate the board as a chairman also reduces potential conflicts of interest and reduces agency conflicts. Whereas corporate size and risk are not related to CEO turnover, ownership concentration is correlated to turnover. We find evidence of insider entrenchment (as documented by e.g. Franks, Mayer and Renneboog (2001)): when insiders control large share blocks, the removal of top management is less frequent (specifications 1-3). The insignificant interaction terms with accounting returns indicate that insiders with large

ownership stakes are able to successfully ward off any attempts to replace the CEO regardless of performance (specifications 1 and 2). Furthermore, there is some evidence that the presence of outside blockholders leads to increased managerial turnover in poorly performing samples (specification 3).

The regression equation (Panel B of Table II) shows that industry-adjusted remuneration is not correlated to leverage for the total sample. However, we do find a positive relation between total monetary remuneration and (lagged) leverage for poorly performing firms in financial distress²⁶. The lack of detailed disclosure of remuneration contracts in the pre-Greenbury period does not allow us to test the relation between debt and remuneration in detail. If there is a positive relation between debt and base salary which dominates a negative relation between debt and bonus, the results are in line with the case in which remuneration is senior to debt. Vice versa, if that positive relation in Table II is the result of the fact that a positive debt-bonus relation dominates a negative debt-salary relation, the results support the case in which remuneration is junior to debt claims. The post-Greenbury period allows us to disaggregate the positive relation between debt and total monetary remuneration (see below).

With regard to the control variables, we find that remuneration increases with good share price performance and industry-adjusted accounting performance (specifications 1-4 in panel B of Table II). There is no significant relation between board characteristics and the CEO's monetary remuneration with the exception of board size. We also find that, in line with the UK remuneration literature (amongst others; Conyon and Murphy (2000)), CEOs of larger firms enjoy significantly higher industry-adjusted cash compensation. Top management usually tries to justify – rightly so or not – size-related compensation by the fact that to manage larger firms, more managerial skills are needed which may be in short supply. Aggarwal and Samwick (1999), and Jin (2002) argue that in an agency framework, managerial risk aversion implies that firm risk moderates performance sensitivity of executive compensation. For the whole sample and the sample of well performing firms (specifications 1-2), we find some evidence of a risk-remuneration relation, but this is not corroborated for the poor performance samples (specification 3-4).

The remuneration equation (panel B of table II) shows that when insiders hold large share stakes, the CEO's monetary remuneration is lower. It may be that CEOs deriving substantial wealth from their equity investment in their corporation, care less about their monetary income. Still, when the firm's stock performance (abnormal return) is low and the wealth of a CEO with a large ownership stake therefore decreases, the CEO is paid a relatively higher level of cash compensation (the interaction term in specification 1 of panel B). This implies that CEOs receive a higher monetary compensation in the wake of poor stock performance provided that they have strong voting power. It seems that managerial entrenchment not only eliminates the disciplining of poorly performing management but also introduces a pernicious remuneration incentive scheme. Specifications 3 and 4 show that insider control leads to higher monetary remuneration. This finding is consistent with a recently proposed “managerial power” approach to executive compensation (Bebchuk and Fried, 2003). In well performing companies (specification 2), insider ownership increases remuneration but only when stock prices rise. When outside shareholders hold large stakes,

²⁶Gilson and Vetsuypens (1993), Dial and Murphy (1995), and more extensively Murphy (1999) provide empirical evidence documenting that significant increases in junior bonuses arise in companies with high leverage.

the monetary compensation of the CEO is lower.

[Insert Table III about here]

As we do not dispose of a data panel for the post-Greenbury period, we investigate the relation between leverage and the detail of remuneration (base salary in panel A of Table III), bonus in panel B, and options and long term incentive grants in panel C) by testing differences in means for the samples of poorly performing, and of poorly performing and financially distressed firms by leverage quartile. While the first 3 panels are based on data from the post-Greenbury period, we use pre-Greenbury data (from Table II) in panel D. The predictions of the theoretical model state that (1) when compensation is senior to debt in case of financial distress, higher leverage reduces the performance bonus, but increases the basic salary, and (2) for compensation junior to debt in case of financial distress, higher leverage increases the bonus and decreases the base salary. While the left hand side of panels A-C shows little relation between the differences in means of the base salary for different subsamples of poorly performing firms with similar leverage, more interesting findings are presented for poorly performing firms in financial distress (the right hand side). In line with prediction (1), we find that the base salary in the highest leverage sample is significantly higher than in the quartiles with lower leverage (panel A) but that the bonus in the lowest leverage quartile is significantly higher than that in quartiles 3 and 1. These results (and prediction (1)) are in line with a regime in which remuneration-related claims are more senior to debt related claims. This situation does not take place in case of liquidation receivership) but is the case when a firm enters the administration procedure or when management succeeds in making their claims de facto senior as described in Appendix B (transfer of undertakings protection of employees, contract renewal in the wake of insolvency, profit transfer to subsidiaries etc.). It is not surprising that we find results in line with prediction (1) for the right hand side of panels A and B as we focus there on firms for which the seniority structure of claims is likely to become a major issue as insolvency is near. Panel C shows no difference in option and LTIP values by leverage quartiles. Finally, the results of the pre-Greenbury data in panel D confirm those of Table II: the total cash compensation is higher in distressed firms with high leverage, but the difference in means is weakly statistically significant at the 10% level. This marginal significance is not surprising as the relation between leverage, and - respectively - base salary and bonus is inverse (as shown in panels A and B).

7 Conclusion

This paper studies the effect of debt financing on managerial remuneration contracts assuming that the financing decision is taken at a point in time preceding the contract negotiation. While in previous theoretical research, the seniority of debt with regard to remuneration contracts in case of insolvency is a standard assumption, this paper contributes to the literature by questioning this issue. This paper documents that the relative seniority depends on the choice of bankruptcy procedures in case of insolvency and that there are several ways by which management can ensure its monetary compensation is de facto senior to debt even when insolvency is likely. Furthermore, we theoretically show that the effect of leverage on

managerial compensation and effort depends on the relative seniority of compensation versus debt.

We show that changing the capital structure of the firm changes the incentive for a shareholder-principal to "give incentives" to the management ("*contract substitution*" effect). In particular, our model predicts that pay-for-performance sensitivity is negatively related with leverage (while the base salary increases with leverage) if managerial compensation has priority over the debt claims. The intuition of this result is that, whenever risky debt is issued, the principal does not completely internalize the benefits of a higher incentive bonus (with respect to the bonus he would propose in a firm with 100 % equity financing) because these benefits are shared with the debtholders. This implies that in highly levered firms, we do expect a much weaker pay-for-performance relation and hence lower bonuses, than in low leverage firms. In contrast, when managerial remuneration is junior to debt claims, leverage has a direct incentive effect on the managerial effort, and is then complementary to an increase in the junior power-incentives, and to a reduction of the base salary. The reason is that an increase in senior debt financing triggers higher managerial effort, in turn requiring a higher performance-related managerial compensation in good states of the world.

Moreover, we argue that (risky) debt financing is more likely to be optimal when it is senior to the compensation claims. The intuition of this result is similar to Innes (1990) and Hart and Moore (1995) who claim that debt financing is a good instrument to enforce high effort by a residual claimant entrepreneur subject to limited liability.

We test the theoretical predictions using of two samples of UK data, one from the pre-Greenbury period (prior to 1996) and one post-Greenbury sample. In the first period, limited disclosure does not allow us to distinguish between the various components of managerial remuneration, but we observe a positive relation between leverage and total monetary remuneration. In the post-Greenbury sample, however, we dissect this relation into a positive relation between leverage and base salary and a negative one between leverage and performance bonus. These findings confirm the theoretical predictions in a world where managerial compensation is (de facto) senior to debt claims. We have documented that both bankruptcy regulation (c.q. administration or Chapter 11) and managers' ability to (re)write contracts making their pay senior to debt even in the wake of poor performance, apply to this case.

8 Appendix A (proofs)

Result A: *If $p(a)$ is weakly increasing and weakly concave, then it satisfies (MLRP) and (CFDC).*

Proof. Order the actions in $[0, \bar{e}]$ according to their reservation price $C^{FB}(e)$, higher effort requiring higher cost: for any couple $e', e \in [0, \bar{e}]$, let $e > e' \Leftrightarrow C^{FB}(e) > C^{FB}(e')$. By definition (see Grossman and Hart (1983)) such a cost is given by the minimum payment P has to guarantee to make A choosing the effort e when the effort choice is observable (first best):

$$C^{FB}(e) = u^{-1}(c(e) + \bar{U})$$

Restate (MLRP) for our two-states framework: $\forall e, e' \in \Lambda$ if $C^{FB}(e') \leq C^{FB}(e)$ then $\frac{p_i(e')}{p_i(e)}$ is non increasing in the state i (weakly decreasing; the states i have been ordered

for increasing payoffs q_i). In a simple 2-states framework this means that for any couple $e', e \in [e_{\min}, e_{\max}]$, $e > e'$ we have $\frac{1-p(e')}{1-p(e)} \geq \frac{p(e')}{p(e)} \Rightarrow \frac{1-p(e)}{p(e)} \leq \frac{1-p(e')}{p(e')}$ that is verified for $p(e)$ (weakly) increasing in e .

(CDFC) requires that the cumulative distribution function is convex in e . With only two-states, calling $F(0; e) = \Pr(q_i = q_0; e) = 1 - p(e)$ and $F(0; \lambda e + (1 - \lambda)e') = 1 - p(\lambda e + (1 - \lambda)e')$, while $\lambda F(0; e) + (1 - \lambda)F(0; e') = 1 - \lambda p(e) - (1 - \lambda)p(e')$. Then (CDFC) $\iff F(0; \lambda e + (1 - \lambda)e') \leq \lambda F(0; e) + (1 - \lambda)F(0; e') \iff \lambda p(e) + (1 - \lambda)p(e') \leq p(\lambda e + (1 - \lambda)e')$ that is guaranteed by (weak) concavity of $p(e)$. *Q.E.D*

Proof of Lemma 1: (i) Order the set $[0, \bar{e}]$ in the sense that the higher e has a higher $C^{FB}(e)$. We assume $U(0) = 0$. Grossman and Hart (1983) (see their Proposition 11) prove that in a two-outcomes moral hazard problem the participation constraint is binding for all e : hence, putting together (IR) and (1):

$$w_0 = u^{-1} \left(\bar{U} + c(e) - \frac{c'(e)}{p'(e)} p(e) \right) \quad (5)$$

$$w_1 = u^{-1} \left(\bar{U} + c(e) + \frac{c'(e)}{p'(e)} (1 - p(e)) \right) \quad (6)$$

and since

$$\begin{aligned} \frac{\partial w_0}{\partial e} &= \frac{1}{u'} \frac{\partial \left(c(e) - \frac{c'(e)}{p'(e)} p(e) \right)}{\partial e} = \frac{1}{u'} \left(c' - c' - p \frac{c'' p' - c' p''}{p'^2} \right) = -\frac{p}{u'} \frac{c'' p' - c' p''}{p'^2} \leq 0 \\ \frac{\partial w_1}{\partial e} &= \frac{1}{u'} \frac{\partial \left(c(e) + \frac{c'(e)}{p'(e)} (1 - p(e)) \right)}{\partial e} = \frac{1}{u'} \left(c' - c' + (1 - p) \frac{c'' p' - c' p''}{p'^2} \right) = \frac{1-p}{u'} \frac{c'' p' - c' p''}{p'^2} \geq 0 \end{aligned}$$

if we require $\bar{U} + c(\bar{e}) - \frac{c'(\bar{e})}{p'(\bar{e})} p(\bar{e}) > 0 \Rightarrow \bar{U} > \frac{c'(\bar{e})}{p'(\bar{e})} p(\bar{e}) - c(\bar{e})$ we have that the agent will always receive a strictly positive payment in state q_0 . All lower actions require a base salary (weakly) higher than $\bar{U} + c(\bar{e}) - \frac{c'(\bar{e})}{p'(\bar{e})} p(\bar{e})$, since w_0 is decreasing in e .

To induce $e = 0$ a performance-independent salary is required (P provides full insurance to the agent): $w_0(0) = w_1(0) = w^{fi} = u^{-1}(\bar{U} + c(0)) = u^{-1}(\bar{U})$. This is the highest base salary (and the lowest w_1) the agent can receive: imposing $q_0 - w^{fi} > 0$ guarantees that the resources created by the firm in state 0 are enough to fully insure the agent.

Finally, since w_1 weakly increases in e , the maximum payment the agent receives in state 1 corresponds to $w_1^{\max} = u^{-1} \left(\bar{U} + c(\bar{e}) + \frac{c'(\bar{e})}{p'(\bar{e})} (1 - p(\bar{e})) \right)$: letting $q_1 - w_1^{\max} > 0$ guarantees that the principal can always afford to implement \bar{e} .

(ii) Consider again (1): $\frac{c'(e)}{p'(e)}$ is increasing in e by Assumptions 1-2. Hence, the difference $u(w_1) - u(w_0)$ required to implement any given e is increasing in e .

Given the concavity of u , for any $w_1 - w_0$, $u(w_1) - u(w_0)$ is higher the lower is w_0 . For P it is always convenient to reduce w_0 at the minimum level and then fix w_1 such that $u(w_1) - u(w_0) = \frac{c'(e)}{p'(e)}$. Formally, if we denote with $b = w_1 - w_0$ the performance bonus, from(1) we have: $u(w_0 + b(w_0)) - u(w_0) = \frac{c'(e)}{p'(e)} = k(e)$ so that, keeping e constant and varying w_0 we get that

$$\begin{aligned} u'(w_1) \left(1 + \frac{\partial b}{\partial w_0} \right) - u'(w_0) &= 0 \\ \frac{\partial b}{\partial w_0} &= \frac{u'(w_0)}{u'(w_1)} - 1 > 0 \end{aligned}$$

by strict concavity of $u(w)$. *Q.E.D.*

Proof of Proposition 1: The result $q_0 - w_0(e^0) \leq q_1 - w_1(e^0)$ derives directly from Corollary 2, noticing that, if $e = 0$ is optimal for P , then $w_0 = w_1 = w^{fi}$ while, for any $e > 0$, $w_1(e) > w_0(e)$ by Lemma 1. From Assumption 4, the f.o.c. (3) is necessary and sufficient to characterize the solution in e ; then computing explicitly $\frac{\partial C^{SB}(e)}{\partial e}$:

$$\begin{aligned}
\frac{\partial C^{SB}(e)}{\partial e} &= p'w_1 + p\frac{\partial w_1}{\partial e} - p'w_0 + (1-p)\frac{\partial w_0}{\partial e} \\
&= p'(h(\bar{u}) - h(\underline{u})) + p\left(h'(\bar{u})(1-p)\frac{\partial \bar{u}}{\partial e} - h'(\underline{u})p\frac{\partial \underline{u}}{\partial e}\right) + h'(\underline{u})\frac{\partial \underline{u}}{\partial e} \\
&= p'(w_1 - w_0) + p\frac{c''(e)p'(e) - c'(e)p''(e)}{(p'(e))^2}\left(h'(\bar{u})(1-p) + h'(\underline{u})p\frac{\partial \underline{u}}{\partial e}\right) - ph'(\underline{u})\frac{c''(e)p'(e) - c'(e)p''(e)}{(p'(e))^2} \\
&= p'(w_1 - w_0) + p(1-p)\frac{c''(e)p'(e) - c'(e)p''(e)}{(p'(e))^2}(h'(\bar{u}) - h'(\underline{u}))
\end{aligned}$$

where for brevity $p = p(e)$, $h(\bar{u}) = w_1$, $h(\underline{u}) = w_0$ denoting with $h = u^{-1}$ and $\bar{u} \equiv \bar{U} + c(e) + \frac{c'(e)}{p'(e)}(1-p(e))$, and $\underline{u} \equiv \bar{U} + c(e) - \frac{c'(e)}{p'(e)}p(e)$. *Q.E.D.*

Proof of Proposition 2: For levels of debt $D \leq q_0 - w_0(e^0)$ the solution of (4) coincides with the solution of (2) since $Ben(e; D) = Ben(e; 0)$. For $D > q_0 - w_0(e^0)$ the objective function for the principal changes: shareholders get zero in state q_0 . The objective for P when $D \in [q_0 - w_0(e^0), q_1 - w_1(e^0)]$ becomes:

$$p(e)(q_1 - w_1(e) - D)$$

that, at $e = e^0$ values $p(e^0)(q_1 - w_1(e^0) - D)$. Since both $p(e)$ and $w_1(e)$ are continuous and differentiable in e , check

$$\frac{\partial p(e^0)(q_1 - w_1(e^0) - D)}{\partial e} = p'(e^0)(q_1 - w_1(e^0) - D) - p(e^0)\frac{dw_1(e^0)}{de} \quad (7)$$

and by optimality of e^0 we have (Proposition 1):

$$\begin{aligned}
p'(e)(q_1 - q_0) &= p'(e^0)w_1(e^0) + p(e^0)\frac{dw_1(e^0)}{de} - p'(e^0)w_0(e^0) + (1-p(e^0))\frac{dw_0(e^0)}{de} \\
p(e^0)\frac{dw_1(e^0)}{de} &= p'(e)(q_1 - q_0 - w_1(e^0)) + p'(e^0)w_0(e^0) - (1-p(e^0))\frac{dw_0(e^0)}{de}
\end{aligned}$$

and substituting into (7):

$$\frac{\partial p(e^0)(q_1 - w_1(e^0) - D)}{\partial e} = p'(e^0)(q_1 - D) - p'(e^0)w_0(e^0) + (1-p(e^0))\frac{dw_0(e^0)}{de}$$

which is negative for $D > q_0$ since, by Lemma 1, $\frac{dw_0(e^0)}{de} < 0$. Then, the profit function of P at $e = e^0$ is decreasing, that ensures that the new solution $e^D < e^0$.

For $D > q_1 - w_1(e^0)$ the principal gets an expected payoff of zero inducing effort e^0 . He can improve upon it inducing an effort e^D s.t. $q_1 - w_1(e^D) > D > q_1 - w_1(e^0)$. Hence a contract with $w_1(e^D) < w_1(e^0)$ is preferred by P . But this, by Lemma 1, implies $e^D < e^0$. *Q.E.D.*

Proof of Proposition 3: Suppose the optimal contract with all-equity (w_0^0, w_1^0) is s.t. $w_0^0 > q_0 - D$, but $D < \min\{q_0, q_1 - w_1^0\}$. Denote by e^0 the optimal effort chosen by the agent who signs this contract when $D = 0$. If $D > q_0 - w_0^0$ the agent knows that if q_0 realizes, he will get only $q_0 - D$ since the principal is protected by limited liability. His (IC) constraint becomes

$$u(w_1^0) - u(q_0 - D) = \frac{c'(e)}{p'(e)}$$

and since $\frac{c'(e)}{p'(e)}$ is increasing in e (Lemma 1), the agent is pushed to optimally choose a higher effort $e^* > e^0$ ("incentive effect"). However, at e^* his participation constraint is not satisfied with the payment w_1^0 :

$$p(e^*)u(w_1^0) + (1 - p(e^*))u(q_0 - D) - c(e^*) < p(e^*)u(w_1^*) + (1 - p(e^*))u(q_0 - D) - c(e^*) = \bar{U}$$

since by Lemma 1 (ii), higher efforts require higher payments in state q_1 , so $w_1^* > w_1^0$. The agent would then refuse the contract (w_0^0, w_1^0) .

By Lemma 1 (ii), we can order the set of efforts in a simple way: if $e < e' \Rightarrow w_0(e) > w_0(e')$ and $w_1(e) < w_1(e')$: hence, all efforts which require a $w_0 > q_0 - D$ are not feasible with senior debt D . The result $e^D \geq e^0$ is then immediate.

Since the marginal benefit of any e for the principal reduces to $p'(e)(q_1 - D) < p'(e)(q_1 - q_0)$ the principal will optimally choose to implement the lower feasible action: so, by Lemma 1 (ii) P will propose $(q_0 - D, w_1^D)$ s.t. both (IC) and (IR) are satisfied:

$$\begin{aligned} u(w_1^D) - u(q_0 - D) &= \frac{c'(e^D)}{p'(e^D)} \\ p(e^D)u(w_1^D) + (1 - p(e^D))u(q_0 - D) - c(e^D) &= \bar{U} \end{aligned}$$

If $D > \min\{q_0, q_1 - w_1^0\}$ the agent knows that at most he will get zero in state q_0 : in fact $q_1 - w_1 > q_0 - w_0$ for all e (Corollary 2): even if the principal would like to reward him with lower power-incentives, she has no resources to do this in q_0 . Thus, only $e = \bar{e}$ can be implemented since any lower effort requires a positive payment in state q_0 . Hence, either $w_1(\bar{e}) + D < q_1$ so the principal is constrained to offer the maximum power-incentive contract $(0, w_1(\bar{e}))$ or there is simply no contract satisfying both (IR) and (IC).

Q.E.D.

9 Appendix B

In case a UK firm is insolvent, it may enter either a receivership or administration. In the UK, the former procedure is creditor-oriented and in most cases leads to full or partial liquidation of the firm's assets. The latter procedure is debtor-oriented, resembles the US Chapter 11-procedure and formalizes a workout with the aim of corporate survival (Franks and Torous (2002) and Franks and Nyborg (1996))²⁷. When a firm is in receivership (and is bankrupt),

²⁷This concise description of seniority of remuneration and leverage in the UK bankruptcy process is based on schedule 6 of the Insolvency Act (1986) and has benefited from discussions with Mr. Ralph Paterson (who frequently acts as a receiver for a major audit firm), to Mr. Nigel Boobier (who is a bankruptcy lawyer for Osborne & Clark) and to Prof. Julian Franks (London Business School).

the following claims have preferential status: payroll taxes, VAT (from the period before the receivership) and the arrears in wages (including accrued holiday pay and occupational pension fund contributions). It should be noted that the preferential status of the arrears in wages is limited to the gross amount of GBP 800 per employee (excluding directors). This modest amount was never adjusted – not even for inflation - since the 1986 Company Act. All other unpaid remuneration is not preferential and unsecured and hence will be paid out on a pro-rata basis like all other unsecured creditors. Thus, under a liquidation code, the remuneration claims based on salary and bonuses in arrears are junior with regard to all secured debt and is put at the same seniority level of all other unsecured claims.

When a firm enters receivership, a receiver is appointed by the party holding a floating charge debenture. Essentially, a debenture is a claim over specific assets and, in case of corporate default, crystallizes into a fixed or floating charge. The former charge applies directly to a specific asset like a building or vital machinery. The latter applies to the category of ‘floating assets’ like e.g. inventory. The holder of a debenture is usually a bank, an asset financier, a private individual or a major supplier who advanced money against inventory or against plant, property or equipment (ppe) or who extended the credit period. The receiver (appointed by the holder of the floating charge) can liquidate the assets of the floating charge (e.g. the inventory) and the proceeds of the sale (including the potential surplus), net of costs, will go to the preferential creditors (c.q. debenture holder with floating charge)²⁸. The remainder of the assets will be sold by a liquidator on behalf of the unsecured claimholders. In this category belong the arrears in remuneration of managers. There are many cases in which top management can still claim remuneration (including bonuses) which is in arrears. First, instead of selling the floating charge assets, the receiver can continue the business if the proceeds of continuation are expected to exceed those of a liquidation. If this were the case, he can take the business out of the corporate shell and, if he retains the management, the managerial remuneration contracts (and the arrears remuneration and bonuses) may remain valid. This is called the ‘Transfer of undertakings protection of employment’ regulation (TUPE). Second, receiver can sell one line of business, to pay the secured creditors off. At that point, the receiver ceases to act (he only works on behalf of the holders of the floating charge) and the company is again in the hands of the directors whose remuneration contracts remain valid. Third, an alternative to the creditor-oriented receivership process is the debtor-oriented ‘administration’ procedure. The court supervises a formal workout (financial and asset reorganization) aiming at the survival of the restructured firm. If the incumbent management is essential for the firm and is maintained after the implementation of the reorganization plan, the employment contracts and hence the claims of past remuneration may remain valid. The recent changes in bankruptcy legislation²⁹ are moving the UK procedures closer to a US-style ‘debtor-in-possession’ concept³⁰. Fourth, as documented in section 1, top management is frequently able to safeguard bonuses (even if ‘performance’-related) by

²⁸If it is possible that the party holding a fixed charge will also appoint a receiver whose only aim is to sell secured fixed assets (from plant, property and equipment).

²⁹See the Enterprise Act (2002), applicable since September 2003. The changes in administration are in the first place geared towards the survival of the company and, failing that, towards the survival of the business. If these two objectives cannot be realised, the charged assets will be disposed off.

³⁰For a discussion of the US bankruptcy procedures and a comparison with the UK and Germany: see Franks and Torous (2002). The recent changes in bankruptcy legislation (of September 2003) are more geared towards the survival of the company (rather than the business) moving the UK procedures closer to the ‘debtor-in-possession’ concept of US Chapter 11.

timing the payment well or by signing new contracts with substantial severance payments even when the firm is very close to insolvency.

10 Bibliography

Aggarwal, R. K., and A. A. Samwick, 1999, The other side of the trade-off: The impact of risk on executive compensation, *Journal of Political Economy* **107**, 65-105.

Amemiya, T. 1984, Tobit models: A survey, *Journal of Econometrics* **24**, 3-63.

Aseff, J. G. and M. Santos, 2001, Stock Options and Managerial Optimal Contracts, Unpublished Working Paper, Arizona State University.

Baker, G. P. and K. H. Wruck, 1989, Organizational Changes and Value Creation in Leveraged Buyouts: the case of the O.M. Scott & Sons Company, *Journal of Financial Economics* **25**, 163-190.

Bebchuk, L. A., and J. M. Fried 2003, Executive compensation as an agency problem, *Journal of Economic Perspectives* **17**, forthcoming.

Bebchuk, L. A., J. M. Fried and D. I. Walker, 2002, Managerial Power and Rent Extraction in the Design of Executive Compensation, *University of Chicago Law Review* **69**, 751-846.

Berkovitch, E., R. Israel and Y. Spiegel, 2000, Managerial Compensation and Capital Structure, *Journal of Economics and Management Strategy*, **9**, 549-584.

Conyon, M., and G. Sadler, 2001, CEO compensation, option incentives, and information disclosure, *Review of Financial Economics* **10**, 251-277.

Conyon, M. 1994, Corporate governance changes in UK companies between 1988 and 1993, in: *Corporate Governance: An International Review* **2**, 77-99.

Conyon, M., P. Gregg, and S. Machin, 1995, Taking care of business: Executive compensation in the United Kingdom, *Economic Journal* **105**, 704-714.

Conyon, M. J., and K. J. Murphy, 2000, The prince and the pauper? CEO pay in the United States and United Kingdom, *Economic Journal* **110**, 640-671.

Copeland, T., T. Koller, and J. Murrin 1995, *Valuation: Measuring and Managing the Value of Companies*, New York: Wiley.

Dahya, J., J. J. McConnell, and N. G. Travlos, 2002, The Cadbury committee, corporate performance, and top management turnover, *Journal of Finance*, **57**, 461-484.

Denis, D. J., 1994, Organizational form and the consequences of highly leveraged transactions Kroger's recapitalization and Safeway's LBO, *Journal of Financial Economics* **36**, 193-224.

Dewatripont, M. and J. Tirole, 1994, A Theory of Debt and Equity: Diversity of Securities and Manager-Shareholder Congruence, *Quarterly Journal of Economics*, 1027-1054.

Dessi, R., 2001, Implicit Contracts, Managerial Incentives and Financial Structure, *Journal of Economics and Management Strategy*, **10** (3), 359-90.

Dessi, R. and D. Robertson, 2003, Debt, Incentives and Performance: Evidence from UK Panel Data, *Economic Journal*, **113**, 1-17.

Dial, J. and K. J. Murphy, 1995, Incentives, Downsizing, and Value Creation at General Dynamics, *Journal of Financial Economics*, **37** (3), 261-314.

Dimson, E. 1979, Risk measurement when shares are subject to infrequent trading, *Journal of Financial Economics* **7**, 197-226.

- Duru, A. and D. M. Reeb, 2001, Cash Bonus Compensation and the Agency Cost of Debt, Unpublished Working Paper, Kogod School of Business, American University.
- Franks, J., C. Mayer, and L. Renneboog, 2001, Who disciplines the management of poorly performing companies?, *Journal of Financial Intermediation*, **10**, 209-248.
- Franks, J. and K. Nyborg, 1996, Control rights, debt structure and the loss of private benefits: the case of the UK insolvency code, *Review of Financial Studies* **9**, 1165-1210.
- Franks, J. and W. Torous, 2002, *A comparison of English and American bankruptcy procedures*, in: J. McCahery, P. Moerland, T. Raaijmakers and L. Renneboog (eds.), *Corporate Governance Regimes: Convergence and Diversity*, Oxford: Oxford University Press, 457-469.
- Gilson, S. and M. Vetsuypens, 1993, CEO Compensation in Financially Distressed Firms: An Empirical Analysis, *Journal of Finance*, **48**(2), 425-58.
- Greene, W. H., 2000, *Econometric Analysis*, Upper Saddle River: Prentice Hall.
- Grossman, S. J. and O. D. Hart, 1983, An Analysis of the Principal-Agent Problem, *Econometrica* **51**, 7-45.
- Hart, O. and J. Moore, 1995, Debt and Seniority: an Analysis of the Role of Hard Claims in Constraining Management, *The American Economic Review*, **85**, 567-585.
- Heckman J., 1979, Sample selection bias as a specification error, *Econometrica* **47** , 153-161.
- Holmstrom, B., 1979, Moral Hazard and Observability, *Bell Journal of Economics*, **10**, 74-91.
- Innes, R. D., 1990, Limited Liability and Incentive Contracting with ex-ante Action Choices, *Journal of Economic Theory* **52**, 45-67.
- Jensen, M. C. and W. H. Meckling, 1976, Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure, *Journal of Financial Economics*, **3**, 305-360.
- Jensen, M. C. and K. J. Murphy, 1990, Performance Pay and Top-Management Incentives, *Journal of Political Economy*, **98**, 225-264.
- Jin L., 2002, CEO compensation, diversification, and incentives, *Journal of Financial Economics* **66**, 29-63.
- John T. A. and K. John, 1993, Top-Management Compensation and Capital Structure, *Journal of Finance* **48**, 949-975.
- Laffont, J. J. and D. Martimort, 1999, *Theory of Incentives*, Princeton University Press:
- Murphy, K. J., 1999, Executive Compensation, in Orley Ashenfelter and David Card (eds.), *Handbook of Labor Economics*, Vol. **3**, North Holland.
- Ortiz-Molina, H., 2002, Does Capital Structure Matter in Setting CEO Pay?, Mimeo, University of Maryland.
- Perotti, E. C. and K. E. Spier, 1993, Capital Structure as a Bargaining Tool: The Role of Leverage in Contract Renegotiation, *The American Economic Review* **83**, 1131-1141.
- Robe, M. A., 1999, Optimal vs. Traditional Securities under Moral Hazard *Journal of Financial and Quantitative Analysis* **34**, 161-189.
- Robe, M. A., 2001, What Can We Learn From Simulating a Standard Agency Model *Economic Letters* **73**, 136-147.
- Smith, C. W. Jr. and R. L. Watts, 1992, The investment opportunity set and corporate financing, dividend, and compensation policies, *Journal of Financial Economics* **32**, 263-292.
- StataCorp, 2001, *Stata Statistical Software: Release 7.0*. (College Station: Stata Corporation, 2001).

Vasicek, O., 1973, A note on using cross-sectional information in Bayesian estimation of security betas, *Journal of Finance*, **28**, 1233-39.

Table I. Data description.

This table presents summary statistics for CEO compensation (salary, bonus, other cash payment, options and long term incentive plans). Capital gearing is the ratio of debt to total assets (in %). Interest coverage is EBIT over interest payments. The CEOs' ownership stakes and other equity related holdings are shown. The pre-Greenbury sample consists of a random sample of firms listed on the London Stock Exchange and covers the years 1988-93. The post-Greenbury sample consists of the 510 largest UK firms and covers the years for 1997-98.

	Mean	Median	Std. deviation
Panel A: pre-Greenbury sample (250 firms, 1453 observations)			
<i>CEO compensation and ownership</i>			
Salary and Bonus (GBP 000)	144	149	46.57
CEO stake (%)	2.98	0.00	8.10
<i>Leverage</i>			
Capital gearing	32.65	29.72	24.78
Interest coverage	12.38	9.43	8.84
Panel B : Post-Greenbury sample (510 firms and observations)			
<i>CEO compensation (GBP 000)</i>			
Salary	271	240	62.70
Bonus	118	69	47.36
Other cash	25	14	26.91
Total cash	414	340	74.11
Option grants	96	0	39.84
Long term incentive plan grants	82	0	33.79
Total pay	591	414	110.15
<i>Leverage (%)</i>			
Capital gearing	47.32	40.16	20.78
Interest coverage	14.52	13.72	7.83
<i>CEO ownership</i>			
Share stake (%)	2.13	0.05	1.97
Option holdings (% of equity x option delta)	0.18	0.06	0.14
Long term incentive holdings (% x delta)	0.02	0.00	0.01
Total equity related holdings (%)	2.33	0.25	1.21

Table II. Sample selection models: CEO replacement and industry-adjusted monetary compensation.

The table presents the estimates of the sample selection models for top executive replacement (selection equation of Panel A) and CEO industry-adjusted compensation (regression equation of Panel B). Standard errors are adjusted for clustering of observations on each firm. The dependent binary variable of Panel A equals one for CEOs that were not replaced in a given year and zero otherwise. Capital gearing is expressed in percentage terms and is lagged by one year. The industry-adjusted ROA is defined as industry-year median adjusted return on equity (in percentage terms) lagged by one year. Likewise, abnormal stock return is lagged one year. Board size is defined as a natural logarithm of the total number of directors. Fraction of outside directors is expressed as a percentage of outsiders on the board. The last of the board characteristics is a dummy variable that equals one for CEOs serving at the same time the function of board chairmen. Firm size is proxied by a natural logarithm of the total book value of assets. Company risk is measured as an annual volatility of stock returns. The blockholding variables consist of insider stakes (the amalgamation of the shareholdings of the CEO, executive and non-executive directors). The outsider blockholdings are the amalgamation of the stakes held by financial institutions, families and individuals, the government and corporations, respectively, provided the individual stakes are 5% or above. In the regression equations (Panel B) the dependent variable is an industry-adjusted CEO cash compensation in the subsequent year. The explanatory variables are here time-varying regressors are lagged one year less compared to those from Panel A. The remuneration committee presence is a dummy variable that equals one for firm-years, when remuneration committee was in place. ***, **, * stand for statistical significance at the 1%, 5% and 10% level, respectively.

	(1) All firms		(2) Average and Well performing firms		(3) Poorly performing firms		(4) Poorly performing firms in financial distress	
Panel A: Selection equations	Dependent variable equals 0 if the CEO is replaced and 1 otherwise.							
	Estimate	p-value	Estimate	p-value	Estimate	p-value	Estimate	p-value
Intercept	3.7292***	0.000	0.8363*	0.094	7.9987***	0.006	10.3180**	0.012
<i>Leverage</i>								
Capital gearing	-0.0005	0.626	0.00032	0.722	-0.0062	0.121	-0.0025*	0.076
Capital gearing. * insider stake	-0.0013	0.811	0.00037	0.721	0.0044	0.725	---	
Capital gearing* outsider stake	0.0008	0.526	0.00040	0.351	0.0048	0.361	---	
<i>Performance indicators</i>								
Industry-adjusted ROA in year $t-1$	0.0122*	0.052	0.0241	0.351	0.0211**	0.047	0.0452**	0.048
Abnormal stock returns in year $t-1$	0.0053**	0.034	0.0073	0.251	0.0039*	0.062	0.0083**	0.050
<i>Board composition</i>								
Board size	-0.9892***	0.000	-0.8311**	0.021	-0.6110	0.219	-0.2316	0.516
Fraction of non-executive directors	-0.0089**	0.044	-0.0121*	0.068	-0.0201	0.078	-0.0161	0.155
CEO is also the chairman	0.4261***	0.005	0.5161***	0.001	0.2810*	0.077	0.5191*	0.053
<i>Firm size, and risk</i>								
Firm size	0.0617	0.142	0.0373*	0.089	0.0351	0.361	0.0311	0.365
Risk	-0.0072	0.461	-0.0015	0.372	0.0079	0.360	-0.0072	0.425
<i>Ownership concentration</i>								
Insiders' blockholdings	0.0132**	0.041	0.0627*	0.077	0.0566**	0.041	0.0788	0.200
Accounting perform. * insider stake	-0.0001	0.648	0.0215	0.256	---		---	
Stock Price perform. * insider stake	-0.0003	0.220	0.0259**	0.050	---		---	
Outside block holdings	-0.0052	0.291	-0.0025	0.566	-0.0351*	0.082	-0.0673	0.182
Account. perform. * outsider stake	-0.00002	0.811	0.0067	0.368	---		---	
Stock Price perf. * outsider stake	0.00001	0.942	0.0028	0.210	---		---	
<i>Year and industry control variables</i>								
Year dummies	Yes		Yes		Yes		Yes	
Industry dummies	Yes		Yes		Yes		Yes	
Wald χ^2	$\chi^2(31) = 105.63$		$\chi^2(31) = 79.22$		$\chi^2(27) = 47.25$		$\chi^2(25) = 29.88$	
P-value for χ^2	< 0.01		< 0.01		< 0.01		< 0.01	

Table 2 - continued.

	(1) All firms		(2) Average and well performing firms		(3) Poorly performing firms		(4) Poorly performing firms in financial distress	
Panel B: Regression equations								
	Dependent variable is the industry-adjusted CEO cash remuneration							
	Estimate	p-value	Estimate	p-value	Estimate	p-value	Estimate	p-value
Intercept	-3.2517***	0.000	1.4627***	0.000	-1.356***	0.008	-3.5265**	0.014
<i>Leverage</i>	0.0010	0.356	0.0156	0.176	0.0327	0.126	0.0236**	0.046
<i>Performance indicators</i>								
Industry-adjusted ROA in year <i>t</i> -1	0.0032*	0.059	0.0083**	0.022	0.00627*	0.067	0.0256**	0.011
Abnormal stock returns in year <i>t</i> -1	0.0018***	0.001	0.0145***	0.001	0.0316*	0.062	0.0036	0.256
<i>Board composition</i>								
Board size	0.1892**	0.015	0.0527*	0.062	0.0526	0.256	0.0354	0.873
Fraction of non-executive directors	0.0019	0.271	0.0025	0.738	0.0131	0.346	0.0132	0.236
CEO is the board chairman	0.0302	0.525	0.0389	0.121	0.0556	0.512	0.0265	0.379
Remuneration committee presence	-0.0192	0.659	0.0168	0.572	0.0483	0.361	-0.0215	0.251
<i>Firm size, leverage, and risk</i>								
Firm size	0.2085***	0.000	0.1455*	0.073	0.1839*	0.062	0.4636*	0.072
Risk	0.0077***	0.009	0.0132**	0.032	0.0085	0.579	0.0423	0.289
<i>Ownership concentration</i>								
Insiders' blockholdings	-0.0045***	0.007	0.0084	0.157	0.0077*	0.075	0.0115*	0.083
Accounting perform. * insider stakes	0.0001	0.329	0.0035	0.236	---		---	
Stock Price perform. * insider stakes	-0.0001**	0.024	0.0028**	0.044	---		---	
Outside block holdings	-0.0031**	0.046	-0.0073	0.258	-0.0067*	0.093	-0.0055	0.112
Account. perform. * outsider stakes	-0.00004	0.506	-0.0001	0.258	---		---	
Stock Price perf. * outsider stakes	0.00001	0.942	0.0004*	0.062	---		---	
<i>Year control variables</i>								
Year dummies	Yes		Yes		Yes		Yes	
Wald χ^2	$\chi^2(19) = 467.12$		$\chi^2(19) = 165.63$		$\chi^2(15) = 44.64$		$\chi^2(15) = 34.61$	
P-value for χ^2	< 0.01		< 0.01		< 0.01		< 0.01	
Panel C: Model statistics and tests								
Total no. of observations	847		677		208		114	
No. of censored observations	101		74		69		54	
No. of uncensored observations	746		603		139		60	
Log-likelihood	-623.95		-257.99		-94.33		-63.01	
Wald χ^2 (joint signific. of equations)	$\chi^2(50) = 801.73$		$\chi^2(50) = 256.12$		$\chi^2(42) = 68.74$		$\chi^2(42) = 55.23$	
P-value for χ^2	< 0.01		< 0.01		< 0.01		< 0.01	
Estimate of ρ	-0.549		-0.166		-0.206		-0.298	
Wald χ^2 test of $\rho = 0$: equations' independ.	$\chi^2(1) = 8.030$		$\chi^2(1) = 7.371$		$\chi^2(1) = 6.382$		$\chi^2(1) = 5.909$	
P-value for χ^2	< 0.01		< 0.01		< 0.01		< 0.01	

Table III: The relation between leverage and remuneration

The sample of poorly performing firms consist of the firms within the lowest quintile of abnormal returns. Poorly performing companies in financial distress are within that lowest quintile of performance but also have interest coverage below 2. Panels A-C use data of the post-Greenbury period (1997) whereas panel D is based on pre-Greenbury data (1988-1993). ***, **, * stand for statistical significance at the 1%, 5% and 10% level, respectively.

Poorly performing companies						Poorly performing companies in financial distress					
Panel A: Fixed salary by leverage quartile (Post-Greenbury sample)											
Leverage	Sample size	Mean (GBP 000)	STD	Difference in means (t-test)		Sample size	Mean (GBP 000)	STD	Difference in means (t-test)		
Quartile 1 (highest)	41	241	92.7	Q1 vs Q2	0.703	20	231	84.7	Q1 vs Q2	0.255	
Quartile 2	41	227	87.4	Q1 vs Q3	1.007	20	224	88.5	Q1 vs Q3	1.896	*
Quartile 3	40	222	76.4	Q1 vs Q4	1.371	20	182	78.6	Q1 vs Q4	1.963	**
Quartile 4 (lowest)	40	214	84.4	Q2 vs Q3	0.274	19	181	74.2	Q2 vs Q3	1.586	
				Q2 vs Q4	0.681				Q2 vs Q4	1.647	*
				Q3 vs Q4	0.444				Q3 vs Q4	0.040	
Panel B: Bonus by leverage quartile (Post-Greenbury sample)											
Quartile 1 (highest)	32	78	39.4	Q1 vs Q2	0.096	15	70	34.2	Q1 vs Q2	-2.288	**
Quartile 2	32	77	43.8	Q1 vs Q3	-1.373	15	98	32.8	Q1 vs Q3	-1.457	
Quartile 3	32	92	42.1	Q1 vs Q4	-1.794	14	90	39.3	Q1 vs Q4	-2.406	***
Quartile 4 (lowest)	31	96	40.2	Q2 vs Q3	-1.396	14	102	37.2	Q2 vs Q3	0.592	
				Q2 vs Q4	-1.794				Q2 vs Q4	-0.306	
				Q3 vs Q4	-0.385				Q3 vs Q4	-0.829	
Panel C: Option and long term incentive grants by leverage quartile (Post-Greenbury sample)											
Quartile 1 (highest)	30	35	30.7	Q1 vs Q2	-0.727	18	33	23.7	Q1 vs Q2	-0.641	
Quartile 2	30	41	33.1	Q1 vs Q3	0.835	18	40	39.8	Q1 vs Q3	1.295	
Quartile 3	30	29	24.6	Q1 vs Q4	-0.918	18	23	22.6	Q1 vs Q4	-1.115	
Quartile 4 (lowest)	30	42	28.3	Q2 vs Q3	1.593	17	44	33.5	Q2 vs Q3	1.575	
				Q2 vs Q4	-0.125				Q2 vs Q4	-0.322	
				Q3 vs Q4	-1.898				Q3 vs Q4	-2.161	
Panel D: Total cash remuneration (Pre-Greenbury sample)											
Quartile 1 (highest)	23	141	49.9	Q1 vs Q2	1.423	14	118	43.6	Q1 vs Q2	0.659	
Quartile 2	23	122	40.1	Q1 vs Q3	0.757	13	108	33.8	Q1 vs Q3	0.714	
Quartile 3	23	130	48.6	Q1 vs Q4	1.562	13	107	35.1	Q1 vs Q4	1.664	*
Quartile 4 (lowest)	22	120	39.9	Q2 vs Q3	-0.608	13	95	26.8	Q2 vs Q3	0.073	
				Q2 vs Q4	0.167				Q2 vs Q4	1.086	
				Q3 vs Q4	0.755				Q3 vs Q4	0.979	