

## **Code of Best Practice for WSE Listed Companies**

### **Preamble**

The Polish stock exchange market is in the process of dynamic growth and is steadily building its regional position among other European capital markets, especially in Central and Eastern Europe.

This growth requires that the competitiveness of the Polish exchange market be strengthened and deepened, a task made even more important by the increased competition among capital markets striving to attract investments and capital. Another condition necessary to build and expand a regional position is to take an innovative approach to capital market problems, thus making it attractive to investors and issuers, and helping it stand out among the many other capital trading venues.

As a set of corporate governance rules and standards governing relations between listed companies and their market environment, the Code of Best Practice is an important instrument that strengthens the competitiveness of the market and a tool that promotes an innovative approach to the exchange market, building its international attractiveness.

The relevance of corporate governance rules is a consequence of developments in the capital markets. The importance of a set of corporate governance rules depends on the proper definition of the expectations of exchange market participants and on an effective application in the form of best practice guidelines serving as a benchmark for corporate behaviour of listed companies.

In order to strengthen corporate governance rules that may be used as a means to enhance the competitiveness of the market, the Warsaw Stock Exchange co-ordinates the process of defining corporate governance rules arising from a broad consensus, including in general the opinions and expectations of WSE investors and listed issuers.

In order to create conditions of universal and full compliance with the Best Practice principles the Warsaw Stock Exchange will ensure that the Code of Best Practice address issues of significant interest to the participants of the capital market to enable a voluntary application of the Code of Best Practice as opposed to a coerced or fictitious approach.

The Warsaw Stock Exchange provides a mechanism based on the “comply or explain” principle which gives the market clear and unequivocal information about compliance by listed companies with corporate governance rules.

The Warsaw Stock Exchange commits itself to promoting corporate governance through solutions based on awarding companies which fully comply with the Best Practices.

“The Code of Best Practice for WSE Listed Companies” draws upon and embodies the tradition of Polish corporate governance, whose first formal paper was the set of rules known as “The Best Practices of Public Companies 2002” developed by a range of individuals and institutions in the financial market with a significant expert and practical contribution by the Best Practices Committee and in the course of discussions with the Institute for Market Economy Research. As a result, a set of corporate governance rules was submitted for implementation by the WSE, which enabled the dynamic dissemination of the practical application of the rules.

“The Code of Best Practice for WSE Listed Companies” aims at enhancing transparency of listed companies, improving quality of communication between companies and investors, and strengthening protection of shareholders’ rights, including those not regulated by legislation, while refraining from imposing a burden on listed companies that may outweigh the benefits resulting from market needs. The Code of Best Practice therefore only addresses those areas where its application may have a positive impact on the market valuation of companies, thus reducing the cost of capital.

The Best Practices defined in sections II, III and IV of this document introduce rules subject to the “comply or explain” principle, where companies provide the market with direct information about any non-compliance with best practices and where companies ensuring full compliance with the Code of Best Practice are awarded. The rules defined in section I of this document are recommendations which are not subject to this principle; instead, they embody trends concerning adequate levels of internal relations within listed companies, as well as their relations with the business environment; as a result like the rules in sections II, III and IV, they are covered by annual reports on compliance with the corporate governance rules prepared by listed companies.

## **I. Recommendations for Best Practice for Listed Companies**

1. A company should pursue a transparent and effective information policy using both traditional methods and modern technologies ensuring fast, secure and broad access to information. Using such communication methods to the broadest extent possible, a company should ensure adequate communication with investors and analysts, enable on-line broadcasts of General Meetings over the Internet, record General Meetings, and publish the recordings on the company website.
2. A company should ensure effective access to information necessary to assess the company's situation and outlook as well as its operations.
3. A company should make every effort to ensure that any cancellation of a General Meeting or change of its date should not prevent or restrict the exercise of the shareholders' right to participate in a General Meeting.
4. Where securities issued by a company are traded in different countries (or in different markets) and in different legal systems, the company should strive to ensure that corporate events related to the acquisition of rights by shareholders take place on the same dates in all the countries where such securities are traded.
5. Remuneration of members of the company's governing bodies should correspond to the scope of tasks and responsibilities of the exercised function and be proportionate to the size of the company's business and reasonable in relation to its financial results.
6. A member of the Supervisory Board should have appropriate expertise and experience and be able to devote the time necessary to perform his or her duties. A member of the Supervisory Board should take relevant action to ensure that the Supervisory Board is informed about issues significant to the company.

7. Each member of the Supervisory Board should act in the interests of the company and form independent decisions and judgments, and in particular:
  - refuse to accept unreasonable benefits which could have a negative impact on the independence of his or her opinions and judgments;
  - raise explicit objections and separate opinions in any case when he or she deems that the decision of the Supervisory Board is contrary to the interest the company.
  
8. No shareholder may be given undue preference over other shareholders with regard to transactions and agreements made by the company with shareholders and their related entities.

## **II. Best Practice for Management Boards of Listed Companies**

1. A company should operate a corporate website and publish:
  - 1) basic corporate regulations, in particular the statutes and internal regulations of its governing bodies;
  - 2) professional CVs of the members of its governing bodies;
  - 3) current and periodic reports;
  - 4) the date and place of a General Meeting, its agenda and draft resolutions together with their legal basis as well as other available materials related to the company's General Meetings, at least 14 days before the set date of the General Meeting;
  - 5) where members of the company's governing body are elected by the General Meeting – the basis for proposed candidates for the company's Management Board and Supervisory Board available to the company, together with the professional CVs of the candidates within a timeframe enabling a review of the documents and an informed decision on a resolution;
  - 6) annual reports on the activity of the Supervisory Board taking account of the work of its committees together with the evaluation of the work of the Supervisory Board and of the internal control system and the significant risk management system submitted by the Supervisory Board;
  - 7) shareholders' questions on issues on the agenda submitted before and during a General Meeting together with answers to those questions;
  - 8) information about the reasons for cancellation of a General Meeting, change of its date or agenda together with grounds;
  - 9) information about breaks in a General Meetings and the grounds of those breaks;
  - 10) information on corporate events such as payment of the dividend, or other events leading to the acquisition or limitation of rights of a shareholder, including the deadlines and principles of such operations. Such information should be published within a timeframe enabling investors to make investment decisions;

- 11) information known to the Management Board based on a statement by a member of the Supervisory Board on any relationship of a member of the Supervisory Board with a shareholder who holds shares representing not less than 5% of all votes at the company's General Meeting;
  - 12) where the company has introduced an employee incentive scheme based on shares or similar instruments – information about the projected cost to be incurred by the company from to its introduction;
  - 13) a report on compliance with the corporate governance rules contained in this document.
2. A company should publish its website in English, at least to the extent described in section II.1. *This rule should be applied not later than 1 January 2009.*
  3. Before a company executes a significant agreement with a related entity, its Management Board shall request the approval of the transaction/agreement by the Supervisory Board. This condition does not apply to typical transactions made on market terms within the operating business by the company with a subsidiary where the company holds a majority stake. For the purpose of this document, the linked entity shall be understood within the meaning of the Regulation of the Minister of Finance dated 19 October 2005 concerning current and periodic reports submitted by issuers of securities.
  4. A member of the Management Board should provide notification of any conflicts of interest which have arisen or may arise, to the Management Board and should refrain from taking part in the discussion and from voting on the adoption of a resolution on the issue which gives rise to such a conflict of interest.
  5. Draft resolutions of a General Meeting should have grounds attached, with the exception of resolutions on points of order and typical resolutions adopted in the course of an Ordinary General Meeting. In view of the foregoing, the Management Board should present grounds or request the person motioning for the inclusion of an issue on the agenda of a General Meeting to provide grounds.

6. A General Meeting should be attended by members of the Management Board who can answer questions submitted at the General Meeting.
  
7. A company shall set the place and date of a General Meeting so as to enable the participation of the highest possible number of shareholders.

### **III. Best Practice for Supervisory Board Members**

1. In addition to its responsibilities laid down in legal provisions the Supervisory Board should:
  - 1) once a year prepare and present to the Ordinary General Meeting a brief assessment of the company's standing including an evaluation of the internal control system and the significant risk management system;
  - 2) once a year prepare and present to the Ordinary General Meeting an evaluation of its work;
  - 3) review and present opinions on issues subject to resolutions of the General Meeting.
2. A member of the Supervisory Board should submit to the company's Management Board information on any relationship with a shareholder who holds shares representing not less than 5% of all votes at the General Meeting. This obligation concerns financial, family, and other relationships which may affect the position of the member of the Supervisory Board on issues decided by the Supervisory Board.
3. A General Meeting should be attended by members of the Supervisory Board who can answer questions submitted at the General Meeting.
4. A member of the Supervisory Board should notify any conflicts of interest which have arisen or may arise to the Supervisory Board and should refrain from taking part in the discussion and from voting on the adoption of a resolution on the issue which gives rise to such a conflict of interest.
5. A member of the Supervisory Board should not resign from this function if this action could have a negative impact on the Supervisory Board's capacity to act, including the adoption of resolutions by the Supervisory Board.
6. At least two members of the Supervisory Board should meet the criteria of being independent from the company and entities with significant connections with the

company. The independence criteria should be applied under Annex II to the *Commission Recommendation of 15 February 2005 on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board*. Irrespective of the provisions of point (b) of the said Annex, a person who is an employee of the company or an associated company cannot be deemed to meet the independence criteria described in the Annex. In addition, a relationship with a shareholder precluding the independence of a member of the Supervisory Board as understood in this rule is an actual and significant relationship with any shareholder who has the right to exercise at least 5% of all votes at the General Meeting.

7. The Supervisory Board should establish at least an audit committee. The committee should include at least one member independent of the company and entities with significant connections with the company, who has qualifications in accounting and finance. In companies where the Supervisory Board consists of the minimum number of members required by law, the tasks of the committee may be performed by the Supervisory Board.
8. Annex I to the *Commission Recommendation of 15 February 2005 on the role of non-executive or supervisory directors...* should apply to the tasks and the operation of the committees of the Supervisory Board.
9. Execution by the company of an agreement/transaction with a related entity which meets the conditions of section II.3 requires the approval of the Supervisory Board.

#### **IV. Best Practices of Shareholders**

1. Presence of representatives of the media should be allowed at General Meetings.
2. The rules of General Meetings should not restrict the participation of shareholders in General Meetings and the exercising of their rights. Amendments of the rules should take effect at the earliest as of the next General Meeting.
3. Any shareholder who motions for the inclusion of an issue on the agenda of the General Meeting, including a motion to take an issue off the agenda, should provide grounds enabling an informed decision on the resolution.
4. A resolution of the General Meeting concerning an issue of shares with subscription rights should specify the issue price or the mechanism of setting it or obligate the competent body to set it before the date of subscription rights within a timeframe enabling an investment decision.
5. Resolutions of the General Meeting should allow for a sufficient period of time between decisions causing specific corporate events and the date of setting the rights of shareholders pursuant to such events.
6. The date of setting the right to dividend and the date of dividend payment should be set so to ensure the shortest possible period between them, in each case not longer than 15 business days. A longer period between these dates requires detailed grounds.
7. A resolution of the General Meeting concerning a conditional dividend payment may only contain such conditions whose potential fulfilment must take place before the date of setting the right to dividend.
8. The General Meeting or the Supervisory Board should ensure that the company authorised to audit financial statements changes at least once every seven financial years.