

## **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 and latest communication tools ensuring fast, secure and effective access to information.  
Using such methods to the broadest extent possible, a company should in particular:
  - maintain a company website whose scope and method of presentation should be based on the model investor relations service available at <http://naszmodel.gpw.pl/>;
  - ensure adequate communication with investors and analysts, and use to this purpose also modern methods of Internet communication;
  - enable on-line broadcasts of General Meetings over the Internet, record General Meetings, and publish the recordings on the company website.
2. *[deleted]*
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. A company should have a remuneration policy and rules of defining the policy. The remuneration policy should in particular determine the form, structure, and level of remuneration of members of supervisory and management bodies. Commission Recommendation of 14 December 2004 fostering an appropriate regime for the remuneration of directors of listed companies (2004/913/EC) and Commission Recommendation of 30 April 2009 complementing that Recommendation (2009/385/EC) should apply in defining the remuneration policy for members of supervisory and management bodies of the company.
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.

9. The WSE recommends to public companies and their shareholders that they ensure a balanced proportion of women and men in management and supervisory functions in companies, thus reinforcing the creativity and innovation of the companies' economic business.

10. If a company supports different forms or artistic and cultural expression, sport activities, educational or scientific activities, and considers its activity in this area to be a part of its business mission and development strategy, impacting the innovativeness and competitiveness of the enterprise, it is good practice to publish, in a mode adopted by the company, the rules of its activity in this area.

11. As part of a listed company's due care for the adequate quality of reporting practice, the company should take a position, expressed in a communication published on its website, unless the company considers other measures to be more adequate, wherever with regard to the company:

- published information is untrue or partly untrue from the beginning or at a later time;

- publicly expressed opinions are not based on material objective grounds from the beginning or as a result of later circumstances.

This rule concerns opinions and information expressed publicly by company representatives in the broad sense or by other persons whose statements may have an opinion-making effect, whether such information or opinions contain suggestions advantageous or disadvantageous to the company.

12. A company should enable its shareholders to participate in a General Meeting using electronic communication means through:

1) real-life broadcast of General Meetings;

2) real-time bilateral communication where shareholders may take the floor during a General Meeting from a location other than the General Meeting;

3) exercise their right to vote during a General Meeting either in person or through a plenipotentiary.

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

1. A company should operate a corporate website and publish on it, in addition to information required by legal regulations:
  - 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;
  - 2a) on an annual basis, in the fourth quarter – information about the participation of women and men respectively in the Management Board and in the Supervisory Board of the company in the last two years;
  - 3) current and periodic reports;
  - 4) *[deleted]*
  - 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 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 statement on compliance with the corporate governance rules contained in the last published annual report, as well as the report referred to in § 29.5 of the Exchange Rules, if published;
  - 14) information about the content of the company's internal rule of changing the company authorised to audit financial statements or information about the absence of such rule.
2. A company should ensure that its website is also available in English, at least to the extent described in section II.1.
  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, related entity shall be understood within the meaning of the Regulation of the Minister of Finance issued pursuant to Article 60.2 of the Act on Public Offering, Conditions Governing the Introduction of Financial Instruments to Organised Trading, and Public Companies (Dz.U. No. 184, item 1539, as amended).
  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. *[deleted]*
  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.
  8. If a company's Management Board is informed that a General Meeting has been summoned pursuant to Article 399 § 2–4 of the Code of Commercial Partnerships and Companies, the company's Management Board shall immediately perform the actions it is required to take in connection with organising and conducting a

General Meeting. This rule shall also apply if a General Meeting is summoned on the basis of authorisation given by the registration court pursuant to Article 400 § 3 of the Code of Commercial Partnerships and Companies.

### 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) *[deleted]*
  - 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. *[deleted]*

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. *[deleted]*
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. *[deleted]*
9. A resolution of the General Meeting to split the nominal value of shares should not set the new nominal value of the shares at a level which could result in a very low unit market value of the shares, which could consequently pose a threat to the correct and reliable valuation of the company listed on the Exchange.
10. A company should enable its shareholders to participate in a General Meeting using electronic communication means through:
  - 1) real-life broadcast of General Meetings;
  - 2) real-time bilateral communication where shareholders may take the floor during a General Meeting from a location other than the General Meeting;
  - 3) exercise their right to vote during a General Meeting either in person or through a plenipotentiary.

*This rule should be applied not later than 1 January 2013.*