

BEST PRACTICES IN PUBLIC COMPANIES 2005

Acting with integrity, by taking different interests into account in the right proportion, is beneficial to all stakeholders in a corporate environment.

This requires compromise and moderation, which are necessary prerequisites since a joint-stock company is by its very nature a playground for various business interests. Laying down good corporate customs leads to the creation of rules of conduct called, in modern parlance, best practices. These rules are usually general so as to avoid unnecessary restraints and to enable them to be flexibly applied in various situations and in companies of different profiles. Certain detailed rules may, however, be applied when company statutes and their authorities' by-laws are drawn up. Thus best practices constitute a set of detailed rules of conduct addressed not only to company authorities and the members of such authorities but also to majority and minority shareholders. This compilation of best practices, worked out for the needs of the Polish capital market, sets out the fundamentals of corporate governance standards in a public joint-stock company. It is not an exhaustive list. Drawn up on the basis of Polish experience, it should be constantly developed in line with changing market needs.

The implementation of corporate governance principles on the Polish market started in the autumn of 2002, with all listed companies declaring that they would observe most of the best practice rules. The rules laid down in *Best practices* became the subject of in-depth critical reflection for listed companies, which in their turn made an effort to put their corporate practices in order and to carry out internal dialogue on the subject.

Further to the above declaration relating to the preamble to the document *Best practices in public companies in 2002*, the Best Practices Committee decided to review and amend the set of rules presented to the market in 2002. This document, entitled *Best practices in public companies 2005*, is the result of extensive consultations within the industry. The changes and modifications that have been made are based on the practical experience, opinions and suggestions of market participants gathered over the last two years and recent European Commission recommendations in this field.

The Best Practices Committee at the Corporate Governance Forum:

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Warsaw, 29 October 2004

General Rules

I. Objective of the Company

The main objective of a company's authorities is to further the company's interests, i.e. to increase the value of the assets entrusted to them by the shareholders, taking into consideration the rights and interests of entities other than the shareholders that are involved in the functioning of the company, especially the company's creditors and employees.

II. Majority Rule and Protection of the Minority

A joint-stock company is a capital venture, therefore it must respect the principle of capital majority rule and the primacy of majority over minority. A shareholder who contributes more capital also bears a greater economic risk. It is, therefore, justified that his interests be considered in proportion to the capital he contributes. The minority must have a guarantee that their rights will be properly protected within the limits set by the law and commercial integrity. When exercising his rights, a majority shareholder should take into account the interests of the minority.

III. Honest Intentions and No-Abuse of Rights

The exercising of rights and reliance on legal institutions should be based on honest intentions (good faith) and cannot go beyond the purpose and economic reasons for which these institutions are established. No actions should be taken which, by exceeding the limits set, constitute an abuse of the law. The minority should be protected against any abuse of ownership rights by the majority and the interests of the majority should be protected against any abuse by the minority of its rights, thus ensuring the best possible protection of the equitable interests of the shareholders and other market participants.

IV. Court Control

The company's authorities and persons chairing the general meeting cannot decide on issues which should be resolved by a court judgment. This does not apply to activities which the company's authorities and persons chairing general meetings are authorised or obliged to undertake by force of law.

V. Independent Opinions Ordered by the Company

When choosing an entity to provide expert services, particularly an auditor, financial and tax advisors or legal advisors, the company should examine whether there are any circumstances that would limit the entity's independence when performing the tasks entrusted.

Best Practices of General Meetings

1. A general meeting should take place in a location and at a time that allows the participation of as many shareholders as possible.
2. A request made by parties entitled to do so for a general meeting to be convened and for certain issues to be put on its agenda should be justified. Draft resolutions proposed for adoption by the general meeting and other key documents should be presented to the shareholders together with justification and a supervisory board opinion before the general meeting to allow them time to review and evaluate the same.
3. A general meeting convened on the shareholders' request should be held on the date given in the request and, if this date cannot be kept, on the nearest date that would allow the general meeting to settle the issues on its agenda.
4. A general meeting whose agenda includes certain issues at the request of authorized entities or which has been convened on such a request can only be cancelled with the consent of the requesting parties. In all other instances, a general meeting can be cancelled if its holding is hindered (*force majeure*) or is obviously groundless. A meeting is called off in the same way as it is convened, limiting negative consequences for the company and its shareholders as far as possible and no later than three weeks before the original meeting date. A change in the date of a general meeting is made in the same way as a cancellation, even if the proposed agenda does not change.
5. Before a shareholder's representative can participate in a general meeting, his right to act on the shareholder's behalf should be duly documented. It should be presumed that a written document confirming the right to represent a shareholder at a general meeting conforms with the law and does not require any additional confirmations or acknowledgement unless the company's management board or the chairman of the general meeting has doubts about its authenticity or validity *prima facie* (when drawing up the list of attendance).
6. The general meeting should have regular by-laws setting out in detail the principles on which meetings are conducted and resolutions adopted. The by-laws should, in particular, contain provisions on elections, including elections to the supervisory board by voting in separate groups. The by-laws should not be subject to frequent change; it is advisable for any changes to enter into force as of the following general meeting.
7. The person opening the general meeting should immediately organise the election of the meeting chairman and should refrain from making any substantial or formal decisions.
8. The chairman of the general meeting ensures that the meeting is run efficiently and that the rights and interests of all the shareholders are observed. The chairman should, in particular, counteract any abuse of rights by meeting participants and should guarantee that the rights of minority shareholders are respected. The chairman should not, without good reason, resign from his function or delay signing the meeting minutes.

9. A general meeting should be attended by the members of both the supervisory board and the management board. The auditor should also be present at an annual general meeting and an extraordinary general meeting if the company's financial matters are to be discussed. The absence of a supervisory or management board member from the general meeting requires an explanation, which should be given at the meeting.
10. Supervisory and management board members and the company's auditor should, within their powers and to the extent needed to settle issues discussed at the general meeting, provide meeting participants with explanations and information about the company.
11. All answers provided by the management board to questions posed by the general meeting should take into account the fact that a public company carries out its reporting obligations in the way stipulated in the Law on the Public Trading in Securities; certain information cannot be provided in any other way.
12. Short breaks in the session which do not constitute an adjournment and are ordered by the chairman in justified cases cannot be aimed at hindering the exercising by the shareholders of their rights.
13. Voting on administrative issues may only concern issues related to the running of the meeting. Resolutions which may have an impact on the exercising by the shareholders of their rights cannot be voted on in this way.
14. A resolution not to consider an issue on the agenda may be adopted only if it is supported by sound reasons. Any motion in this respect should be accompanied by a detailed justification. A decision to remove an item from the agenda or not to consider an issue put on the agenda at a shareholder's request requires a general meeting resolution, once all the shareholders present who put the issue on the agenda have given their consent, supported by 75% of the votes present at the meeting.
15. Any party objecting to a resolution must be given the opportunity to put forward concise reasons for its objections.
16. As the Code of Commercial Companies does not provide for court control in the event of a resolution not being adopted by the general meeting, the management board or the meeting chairman should form resolutions in such a way that anyone who does not agree with the merits of a decision being the subject of the resolution has the possibility of challenging the same, provided that he is entitled to do so.
17. Written statements made by a participant at a general meeting are recorded in the minutes at the participant's request.

Best Practices of Supervisory Boards

18. The supervisory board submits a concise evaluation of the company's standing to the general meeting every year. The evaluation should be made available to all shareholders early enough to allow them to become acquainted with the contents before the annual general meeting.
19. A member of the supervisory board should have the relevant education, the appropriate professional and practical experience, be of high moral standing and be able to devote the time required to perform his supervisory board function properly. Supervisory board candidature should be announced and supported by reasons sufficiently detailed to enable an informed choice to be made
20. ¹ (a) At least half the members of the supervisory board should be independent members, subject to point (d) below. Independent members of the supervisory board should not have relations with the company and its shareholders or employees which could significantly affect the independent member's ability to make impartial decisions.
- (b) Detailed independence criteria should be laid down in the company's statutes².
- (c) Without the consent of the majority of independent supervisory board members, no resolutions should be adopted on the following issues:
- performances of any kind by the company and any entities associated with the company in favour of management board members;
 - consent to the execution by the company or a subsidiary of a key agreement with an entity associated with the company, a member of the supervisory board or management board, or with their associated entities; and
 - appointment of an auditor to audit the company's financial statements.
- (d) In companies where one shareholder holds a block of shares carrying over 50% of all voting rights, the supervisory board should consist of at least two independent members, including an independent chairman of the audit committee, should such a committee be set up.
21. A supervisory board member should, above all, keep the company's interests in mind.
22. Supervisory board members should take the relevant action to receive from the management board regular and complete information on any and all significant issues concerning the company's operations and on any risks related to the business and ways of managing such risks.

¹ Rule 20 may be implemented by the company on a date different from that on which the other rules in the set are implemented, though no later than by 30 June 2005.

² The Best Practices Committee hereby recommends rules based on European standards, i.e. the independence criteria set out in the Commission's Recommendation on strengthening the role of non-executive or supervisory directors http://eureopa.eu.int/comm/internal_market/company/independence/index_en.htm

23. A supervisory board member should inform the other members of the board of any conflict of interest that arises, and should refrain from participating in discussions and from voting on any resolution on the issue in respect of which the conflict of interest has arisen.
24. Information on a supervisory board member's personal, actual and organizational connections with a given shareholder, particularly with the majority shareholder, should be made publicly available. The company should have a procedure in place for obtaining such information from supervisory board members and for making it publicly available.
25. Supervisory board meetings should be accessible and open to management board members, save for issues which directly concern the management board or its members, especially the removal, liability and remuneration (of management board members).
26. A supervisory board member should make it possible for the management board to present publicly and in an appropriate manner information on the transfer or acquisition of shares in the company or in its dominant company or subsidiary and of transactions with such companies, provided that such information is relevant to his financial standing.
27. Supervisory board members' remuneration should be set on the basis of a set of transparent procedures and rules. The remuneration should be fair but should not constitute a significant cost item in the company's business or have a material impact on its financial results. It should also be in reasonable relation to the remuneration of members of the management board. The total amount of all supervisory board members' remuneration, as well as the remuneration of individual members, with a breakdown of its various elements should be disclosed in the annual report together with information on the procedures and rules applied to determine it.
28. The supervisory board should operate in accordance with its by-laws, which should be publicly available. The by-laws should stipulate that at least two committees should be set up:
 - audit, and
 - remuneration.

The remuneration committee should consist of at least two independent members and at least one person possessing the relevant qualifications and experience in accounting and finance. The committee's tasks should be specified in the board by-laws. The committees should present reports on their activities to the supervisory board every year. The company should then make these reports available to its shareholders.
29. The agenda of a supervisory board meeting should not be amended or supplemented during the meeting to which it relates. This requirement does not apply if all the supervisory board members are present and agree to the amendment or supplementation, and if certain actions have to be taken by the supervisory board to protect the company against damage and in the case of a resolution assessing whether there is a conflict of interests between a supervisory board member and the company.

30. A supervisory board member delegated by a group of shareholders to permanently exercise supervision should submit detailed reports on the performance of his task to the supervisory board.
31. A supervisory board member should not resign from his function during his term of office if this would make it impossible for the board to function, particularly if it could hinder the timely adoption of an important resolution.

Best Practices of Management Boards

32. With the company's interests in mind, the management board sets out the strategy and the main objects of the company's operations and submits them to the supervisory board. The management board is responsible for implementation and performance. The management board sees that the company's management system is transparent and effective and that its business is conducted in accordance with legal regulations and best practice.
33. When making decisions on corporate issues, management board members should act within the limits of justified business risk, i.e. after considering all information, analyses and opinions, which, in the reasonable opinion of the management board, should be taken into account in a given case in view of the company's interest. When determining the company's interests, the long-term interests of the company's shareholders, creditors and employees should be kept in mind, as well as those of other entities and persons cooperating with the company, also the interests of the local community.
34. In transactions with shareholders and other persons whose interests affect those of the company, the management board should act with the utmost care to ensure that the transactions are carried out at arm's length.
35. A management board member should always be loyal to the company and avoid actions which could lead to the advancement of his own material interests only. If a management board member receives information about the opportunity to make an investment or another advantageous transaction relating to the company's objects, he should put this information immediately before the management board to be reviewed in terms of the company taking advantage of it. Such information may only be used by a management board member or passed on to a third party with the consent of the management board and only if it does not infringe on the company's interests.
36. A management board member should treat his shares in the company and its dominant companies and subsidiaries as a long-term investment.
37. Management board members should inform the supervisory board whenever a conflict of interests arises, or if there is a risk of a conflict of interests arising in connection with the function performed.
38. The remuneration of management board members should be set on the basis of transparent procedures and principles, taking into account its incentive nature and ensuring effective and smooth management of the company. The remuneration should correspond to the size of the company's business enterprise, should be in reasonable relation to business results, and be related to the scope of liability in a given function, taking into account the level of remuneration of members of management boards in similar companies on a similar market.

39. The total amount of all management board members' remuneration, as well as the remuneration of individual members, with a breakdown of its various elements should be disclosed in the annual report together with information on the procedures and rules applied to determine it. If the amount of the remuneration of individual members of the management board significantly differs, it is recommended that a relevant explanation be published.
40. The management board should lay down in the by-laws principles and procedures for operating and allocating powers. These principles should be clear and generally available.

Best Practices in Relations with Third Parties and Third Party Institutions

41. When selecting an auditor, the company should ensure that he will perform the tasks entrusted to him impartially.
42. In order to ensure an impartial opinion, the company should change its auditor once every five years at the least. The change of auditor should also be understood as a change in the individual carrying out the audit. Additionally, over a long period of time the company should not use the services of the same auditing entity.
43. The auditor should be selected by the supervisory board on the recommendation of the audit committee, or by the general meeting on the recommendation of the supervisory board containing the audit committee recommendation. If an auditor other than the one recommended by the audit committee is chosen by either the board or the general meeting, detailed reasons should be given. Information on the selection of an auditing entity together with the relevant justification should be disclosed in the annual report.
44. The current auditor or the auditor auditing the annual accounts of the company or its subsidiaries in the period under examination cannot act as a special purpose auditor for the same company.
45. A company should acquire its own shares in such a way that no group of shareholders is privileged.
46. The company's statutes, its basic internal regulations, information and documents related to general meetings, and its financial statements should be made available in the company's registered office and on its website.
47. A company should have appropriate media relations procedures and regulations and an information policy ensuring coherent and reliable information about the company. The company should, in compliance with legal regulations and to safeguard its interests, make information on its current operations and business standing available to media representatives and allow them to attend general meetings.
48. In its annual report, a company should include a statement to the effect that corporate governance standards are applied. Any departure from these standards should also be publicly explained.