

## **BEST PRACTICES IN PUBLIC COMPANIES IN 2002**

Acting with integrity, and respecting different interests in the right proportion, is beneficial to stakeholders in a corporate environment.

This requires compromise and moderation which are necessary since a joint-stock company as such is the playground for various economic interests. Best corporate practices are strengthened by laying down customary rules of conduct, called nowadays best practices. These rules are usually general so as to avoid unnecessary restraints and to enable their flexible application in various situations and in companies of different profiles. However, some detailed rules may be used when drawing up statutes of companies and by-laws of their authorities. Thus, best practices constitute a set of detailed rules of conduct addressed both to authorities of companies and members of such authorities, as well as to majority and minority shareholders. This set of best practices, established for the needs of the Polish capital market, presents the core of corporate governance standards in a public joint-stock company. This is not a complete list. Built based on the Polish experience, it should be constantly developed in line with the changing market needs.

### **The Best Practices Committee at Corporate Governance Forum:**

**Professor Grzegorz Domański** – Domański, Zakrzewski, Palinka

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**Jacek Socha** – Chairman of the Securities and Exchange Commission

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## **General Rules**

### **I. Objective of the Company**

The basic objective of operations of a company's authorities is to further the interest of the company, i.e. to increase the value of the assets entrusted by its shareholders, with consideration to the rights and interests of entities other than shareholders, involved in the functioning of the company, including, in particular, the company's creditors and employees.

### **II. Majority Rule and Protection of Minority**

A joint-stock company is a capital venture, and, therefore, it must respect the principle of capital majority rule, and the primacy of majority over minority. A shareholder who contributed bigger capital also bears a higher economic risk. It is, therefore, justified that his interest be taken into consideration in proportion to the contributed capital. The minority must have a guarantee of proper protection of their rights, within limits set by the law and commercial integrity. While exercising its rights, the majority shareholder should take into account the interests of the minority.

### **III. Honest Intentions and No-Abuse of Rights**

The exercise of rights and the reliance on legal institutions should be based on honest intentions (good faith) and cannot reach beyond the purpose and economic reasons for which these institutions have been established. No activities should be taken which exceed the limits so set and, thus, constitute an abuse of the law. The minority should be protected against abuse of ownership rights by the majority and the interests of the majority should be protected against abuse by the minority of its rights, thus, ensuring the best protection of equitable interests of the shareholders and other market participants.

### **IV. Court Control**

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

### **V. Independent Opinions Ordered by the Company**

When choosing an entity which is to provide expert services, including, in particular, the services of an expert auditor, financial and tax advisory services, as well as legal services, the company should consider whether there exist circumstances limiting the independence of this entity when performing the entrusted tasks.

### **Best Practices of General Meetings**

1. A general meeting should take place in a location and at a time to allow the participation of as many shareholders as possible.
2. A request for convening a general meeting and placing certain issues on its agenda, made by parties entitled to do that, should be justified. Draft resolutions proposed to be adopted by the general meeting and other key documents should be presented to the shareholders along with a justification and an opinion of the supervisory board prior to the general meeting, in advance so as to allow them to review and evaluate the same.
3. The general meeting convened at the request of shareholders should be held on a date given in the request, and if this date cannot be kept, on the closest date which will allow the general meeting to settle the issues placed on its agenda.
4. A general meeting whose agenda includes certain issues at the request of authorized entities or which has been convened at such request may be cancelled only upon consent of the requesting parties. In all other instances, a general meeting may be cancelled if its holding is hindered (*force majeure*) or is obviously groundless. The meeting is called off in the same manner as it has been convened, ensuring as little negative consequences for the company and its shareholders as possible, and in any case no later than three weeks prior to the original date of the meeting. A change in the date of the general meeting is made in the same manner as the cancellation, even if the proposed agenda does not change.
5. In order for a representative of a shareholder to participate in a general meeting, his right to act on behalf of the shareholder should be duly documented. It should be presumed that a written document confirming the right to represent a shareholder at a general meeting is in conformity with the law and does not require any additional confirmations and acknowledgement unless its authenticity or validity *prima facie* raises doubts of the company's management board (upon drawing-up the attendance list) or the chairman of the general meeting.
6. The general meeting should have regular by-laws setting forth the detailed principles of conducting the meetings and adopting resolutions. The by-laws should contain, in particular, provisions concerning elections, including elections to the supervisory board by voting in separate groups. The by-laws should not be subject to frequent changes; it is advisable that the changes enter into force as of the subsequent general meeting.
7. A person opening the general meeting should procure an immediate election of the chairman of the meeting, and should refrain from any substantial or formal decisions.
8. The chairman of the general meeting ensures an efficient conduct of the meeting and observance of the rights and interests of all shareholders. The chairman should counteract, in particular, the abuse of rights by the participants of the meeting and should

- guarantee that the rights of minority shareholders are respected. The chairman should not, without sound reason, resign from his function, or put off the signing of the minutes of the meeting.
9. A general meeting should be attended by members of the supervisory board and the management board. An expert auditor should be present at an annual general meeting and at an extraordinary general meeting if financial matters of the company are to be discussed thereat.
  10. Members of the supervisory board and the management board and the expert auditor of the company should, within their powers and to the extent necessary for the settlement of issues discussed by the general meeting, provide the participants of the meeting with explanations and information concerning the company.
  11. All answers provided by the management board to the questions posed by the general meeting should take into account the fact that the reporting obligations are performed by a public company in a manner which follows from the Law on Public Trading in Securities, and certain information cannot be provided otherwise.
  12. Short breaks in the session which do not defer the session, ordered by the chairman in justified cases, cannot be aimed at hindering the exercise of the rights by the shareholders.
  13. Voting on issues placed on the agenda may be carried out only on issues related to the conduct of the meeting. This voting procedure cannot apply to resolutions which may have impact on the exercise by the shareholders of their rights.
  14. A resolution not to consider an issue placed on the agenda may be adopted only if it is supported by sound reasons. A motion in this respect should be accompanied by a detailed justification. The general meeting cannot adopt resolutions to remove an item from the agenda or not to consider an issue placed on the agenda at the request of the shareholders.
  15. A party objecting to a resolution must have an opportunity to concisely present the reasons for its objection.
  16. Due to the fact that the Code of Commercial Companies does not provide for court control in the event where a resolution is not adopted by the general meeting, the management board or the chairman of the meeting should form the resolutions in such a way that each person who does not agree with a decision being the subject of the resolution, have the possibility of challenging the same; provided that he is entitled to do so.
  17. At the request of a participant in the general meeting, his written statement is recorded in the minutes.

### **Best Practices of Supervisory Boards**

18. The supervisory board submits to the general meeting an annual concise evaluation of the company's standing. The evaluation should be part of the annual report of the company, made available to all shareholders early enough to allow them to become acquainted with the same before the annual general meeting.
19. A member of the supervisory board should have relevant education, professional and practical experience, be of high morale and be able to devote all time required to properly perform the function on the supervisory board. Candidates for members of the supervisory board should be presented and supported by reasons in sufficient detail to allow an educated choice.
20. (a) At least one-half of members of the supervisory board should be independent members. Independent members of the supervisory board should not have any relations with the company and its shareholders or employees, which relations could have significant impact on the ability of the independent member to make impartial decisions.  
  
(b) Detailed criteria of independence should be laid down in the statutes of the company.  
  
(c) Without consent of at least one independent member of the supervisory board, no resolutions should be adopted on the following issues:
  - performances of any kind by the company and any entities associated with the company in favor of members of the management board;
  - consent to the execution by the company or its subsidiary of a key agreement with an entity associated with the company, member of the supervisory board or the management board, and with their associated entities; and
  - appointment of an expert auditor to audit the financial statements of the company.

*The above rule may be implemented by the company on a date different than that for the remaining rules of the set, but no later than by the end of 2004.*

21. A supervisory board member should, most of all, bear in mind the interests of the company.
22. Members of the supervisory board should take relevant actions in order to receive from the management board regular and complete information on any and all significant issues concerning the company's operations and on the risk related to the carried out business and ways of managing such risk.
23. A supervisory board member should inform the remaining members of the board of any conflict of interest that arises, and should refrain from participating in discussions and from voting on passing a resolution on the issue in which the conflict of interest has arisen.

24. Information on personal, actual, and organizational connections of a supervisory board member with a given shareholder, and, in particular, with the majority shareholder, should be available to public. The company should have a procedure in place for obtaining information from members of the supervisory board and for making it available to the public.
25. Supervisory board meetings, save for issues which directly concern the management board or its members, and, in particular, removal, liability, and setting remuneration, should be accessible and open to members of the management board.
26. A supervisory board member should enable the management board to present publicly and in an appropriate manner information on the transfer or acquisition of the shares of the company or of its dominant company or a subsidiary, and of transactions with such companies, provided that such information is relevant for his financial standing.
27. Remuneration of members of the supervisory board should be fair, but should not constitute a significant cost item in the company's business or have material impact on its financial results. The remuneration should be in reasonable relation to the remuneration of members of the management board. The aggregate remuneration of all members of the supervisory board should be disclosed in the annual report.
28. The supervisory board should operate in accordance with its by-laws which should be available to the public.
29. The agenda of a supervisory board meeting should not be amended or supplemented during the meeting which it concerns. This requirement does not apply if all members of the supervisory board are present and agree to the amendment or supplementation of the agenda, and in instances where the adoption of certain activities by the supervisory board is necessary in order to protect the company against damage and in the case of a resolution which concerns the determination whether there exists a conflict of interest 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 to the supervisory board detailed reports on the performance of his task.
31. A supervisory board member should not resign from his function during a term of office if this could render the functioning of the board impossible, and, in particular, if it could hinder the timely adoption of an important resolution.

**Best Practices of Management Boards**

32. Bearing in mind the interest of the company, the management board sets forth the strategy and the main objects of the company's operations, and submits them to the supervisory board. The management board is liable for the implementation and performance of the same. The management board cares for transparency and effectiveness of the company management system and the conduct of its business in accordance with the legal regulations and best practice.
33. While making decisions on corporate issues, members of the management board should act within the limits of justified economic risk, i.e. after consideration of 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. While determining the interest of the company, one should keep in mind the justified in long-term perspective interests of the shareholders, creditors, employees of the company and other entities and persons cooperating with the company, as well as the interests of local community.
34. In transactions with shareholders and other persons whose interests have impact on the interest of the company, the management board should act with utmost care to ensure that the transactions are at arms' length.
35. A management board member should display full loyalty towards the company and avoid actions which could lead to implementing exclusively own material interest. If a management board member receives information on the possibility of making an investment or another advantageous transaction concerning the objects of the company, he should present such information immediately to the management board for the purpose of considering the possibility of the company taking advantage of it. Such information may be used by a management board member or be passed over to a third party only upon consent of the management board and only when this does not infringe the company's interest.
36. A management board member should treat his shares in the company and in its dominant companies and subsidiaries as a long-term investment.
37. Management board members should inform the supervisory board of each conflict of interest in connection with the performed function or of the risk of such conflict.
38. The remuneration of management board members should be set based on 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 the economic results, and be related to the scope of liability resulting from a given function, taking into account the level of remuneration of members of management boards in similar companies in a similar market.

39. The aggregate remuneration of all members of the management board should be disclosed and itemized in the annual report. If the amount of 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 the principles and procedure of operations and allocation of powers in the by-laws which should be open and generally available.

**Best Practices in Relations with Third Parties and Third Party Institutions**

41. The selection of an expert auditor for a company should guarantee impartiality of performance of the entrusted tasks.
42. In order to ensure proper impartiality of opinion, the company should change the expert auditor at least once every five years.
43. The expert auditor should be selected by the supervisory board or general meeting of the company, upon receiving recommendations from the supervisory board.
44. An auditor auditing annual accounts of a company or its subsidiaries 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 be privileged.
46. The statutes of the company, its basic internal regulations, information and documents related to general meetings, and the financial statements should be made available in the registered office of the company and on its website.
47. The Company should have proper media relations procedures and regulations and an information policy, ensuring coherent and reliable information about the company. The company should, in compliance with the legal regulations and taking into account its interests, make available to mass media representatives information on its current operation and business, standing, and enable their presence at general meetings.
48. In its annual report, a company should make public its statement on the application of corporate governance standards. If the standards are not applied to any extent, the company should also publicly explain this fact.