

## UN Global Compact – Questionnaire on Sustainability

### Setting the legal landscape

- Briefly explain the broader legal landscape regarding the obligations that a company has to its stakeholders or with regard to its impact on stakeholders, and in particular whether its primary duty is or is not to shareholders over all other stakeholders.**

The primary duties of the directors are owed to the company as stipulated in Art. 201 §1 and Art. 368 §1 of the Commercial Companies Code (“KSH”). Although there is no dispute whether directors act in the interest of the company, there is much controversy whether this interest is or is not identical with the interest of shareholders. The first concept is that the company acts in its own interest, which is neither the interest of the shareholders nor stakeholders, since the doctrine of separate legal personality exists under Polish civil law. On the other hand, there are many recognized authorities who take the view that a company is merely a legal organization of the shareholders and that it is impossible to consider the company and the shareholders as independent beings. The Supreme Court has voiced an opinion that the interest of the company is a balance of interests of all the shareholder groups and economic goals specified in its articles of association (**I CSK 158/09**). Regardless of this dispute, there is no doubt that the primary duty of the company (of the directors) is to the shareholders above all other stakeholders.

Although the generally applicable provisions of law do not explicitly address the issue of duties of the company owed to stakeholders other than shareholders, the Polish Financial Supervision Authority (“KNF”) has introduced corporate governance rules with regard to the entities which are under supervision of the KNF, addressing the issue of stakeholders. These rules refer at several points (Chapters 5, 6, 7 and 10) to the duties of companies towards clients and employees.

Rules worth highlighting among others are those regarding transparent and adequate remuneration, communication policy based on facilitating access to information for clients, reliable and non-misleading advertising message concerning a service or product offered by a supervised institution, and efficient management of assets managed at client's risk.

The Warsaw Stock Exchange (“WSE”) has issued a Code of Best Practices for WSE Listed Companies, which is a set of corporate governance rules and standards governing relations between listed companies and their market environment. The Code aims to enhance transparency of listed companies, improve the quality of communication between companies and investors, and strengthen the protection of shareholders’ rights, including those not regulated by legislation. These rules are subject to “comply or explain” rules, 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. Some of the rules are recommendations which are not subject to this principle.

Please notice that this Code of Best Practice is not binding, which means that it is the company's own decision to apply all or some of these rules. But according to the "comply and or explain" principle, companies that deviate from the relevant corporate governance code are required to provide explanations in their corporate governance statement on compliance with the corporate governance rules and present reasons when these do not apply.

The Code refers to a company’s information policy, principles of management board composition and activity, remuneration policy, knowledge and experience of members of company boards, relations between a company and its shareholders, relations between a management board and company and shareholders (i.e. conflict of interests), duties of members of its supervisory body, principles of convocation for general meetings of shareholders and adopting resolutions.

#### Regulatory Framework

**2. To what legal tradition does the jurisdiction belong, i.e. civil/common law, mixed?**

The legal tradition of the Polish jurisdiction belongs to civil law.

**3. Are corporate/securities laws regulated federally/nationally, provincially or both?**

Polish corporate and securities law is regulated at national level.

**4. Who are the government corporate/securities regulators and what are their respective powers (in summary only)?**

Komisja Nadzoru Finansowego (“KNF”) (the Polish Financial Supervision Authority) supervises the financial services industry in Poland. This includes credit institutions, insurance firms, investment companies, exchanges, and pension schemes, as well as payment institutions and credit unions.

Urząd Ochrony Konkurencji i Konsumenta (“UOKiK”) (the Polish Office of Competition and Consumer Protection) approves acquisition of companies and supervises issues of abusive clauses in contracts, with the aim of protecting consumer interests.

**5. Does the jurisdiction have a stock exchange(s)?**

Yes, the main public market is the **Warsaw Stock Exchange**, which has been in operation since 1991. There are three other markets operating under the WSE brand:

1. **Catalyst** - public market for municipal and corporate bonds,
2. **Treasury BondSpot Poland** - wholesale trade in Treasury bonds,
3. **NewConnect** - an alternative market for equities and equity-related financial instruments of small and medium-sized enterprises, where the exchange is conducted outside the regulated market as a multilateral trading facility. NewConnect offers lower costs for floated companies, simplified entrance criteria and limited reporting requirements.

Incorporation and listing

**6. Do the concepts of “limited liability” and “separate legal personality” exist?**

Both “separate legal personality” and “limited liability” are concepts which exist in the Polish legal system. Under Polish civil law, there are three groups of entities capable of entering into civil relations, i.e. natural persons, legal persons and organizational units with no legal personality but which are granted legal capacity under the law to which the provisions on legal persons apply accordingly.

Legal persons are the State Treasury and other organizational units which are accorded legal personality by specific regulations. The second category is composed of other than State Treasury national legal persons (e.g. National Bank of Poland), local government entities and other organizational units which are accorded legal personality by specific regulations, e.g. capital companies (Art. 12 of the Commercial Companies Code), foundations (Art. 7 of the Foundations Act) and associations (Art. 17 of the Law on Associations).

Organizational units with no legal personality which are granted legal capacity are also an important type of entity, because all partnerships (*spółka osobowa*) are included in this category. Moreover, these kinds of unit include regular, unregistered associations (Art. 40 – 43 of the Law on Associations), housing cooperatives (Art. 6 of the Act on Ownership of Premises) and others.

In the above mentioned categories of entities there are various solutions to the issue of liability. Both capital company types that function in Poland – the limited liability company (*spółka z ograniczoną odpowiedzialnością*) and joint-stock company (*spółka akcyjna*) – operate on the principle of excluding the liability of shareholders for the

obligations of the company (Art. 151 §4, Art. 301 §5 of the Commercial Companies Code). When it comes to partnerships, the issue is much more nuanced. For instance, in a registered partnership (*spółka jawna*) each partner is liable for the obligations of the partnership without limitation with all his assets jointly and severally with the remaining partners and the partnership, however the liability of the partner is subsidiary to the partnership, which means that a creditor of the partnership may conduct execution from the partner's assets only after execution from the assets of the partnership proves ineffective. On the other hand, in a limited partnership (*spółka komandytowa*) the limited partner is liable for obligations of the partnership vis-à-vis its creditors only up to the commendam sum, whereas the liability of the general partner is unlimited.

**7. Did incorporation or listing historically, or does it today, require any recognition by the company or its directors of a duty to society, an obligation to take account of the company's social or environmental impacts, or to respect its stakeholders?**

Generally, incorporation itself does not (and has not in the past) required recognition of a duty to society or stakeholders. Rights of stakeholders are not protected by the relevant legislation and reciprocal contracts. It is rather an individual matter for each company, However, more often companies, especially those listed on the WSE, decide to voluntarily adopt a corporate social responsibility strategy.

**8. Do any stock exchanges have a responsible investment index, and is participation voluntary? (See e.g. FTSE4Good<sup>1</sup>, Dow Jones Sustainability Index<sup>2</sup>, the Johannesburg Stock Exchange's Socially Responsible Investment Index<sup>3</sup>.)**

The RESPECT Index series launched in Poland in December 2009. This includes socially responsible companies listed on the WSE Main List. The social responsibility is understood as a management strategy and approach to the concept of conducting business, which involves building a good and lasting relationship based on mutual understanding and respect for expectations of the wider business environment (i.e. with all stakeholders: employees, suppliers, customers, community, shareholders and envisaging care for natural environments).

This is an income-based index, and thus when calculated it accounts for both prices of underlying shares and dividend and pre-emptive rights' income.

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<sup>1</sup> <http://www.ftse.com/products/indices/FTSE4Good>

<sup>2</sup> <http://www.sustainability-indices.com/>

<sup>3</sup> <https://www.jse.co.za/services/market-data/indices/socially-responsible-investment-index>

## Directors' Duties

### **9. To who are directors' duties generally owed?**

The Commercial Companies Code explicitly states that directors owe duties to the company (Art. 201 §1 and Art. 368 §1). The main duty of each and every director is to manage the affairs of the company and represent the company. There are a number of detailed duties which are to be complied with, such as providing explanations to the shareholders (Art. 212 §1) or having a new list of shareholders signed by all the members of the management board filed with the registry court (Art. 188 §3).

The question of the interest of the company has been a topic of much controversy lately, especially when regarding the issue of groups of companies (holdings). In the light of legal regulations in force, it is impossible for directors in Poland to act in the interest of any other entity than the company, which has been defined in Supreme Court jurisprudence as *the interest of all the groups of shareholders, with consideration of the common strategic objective established in the articles of association* (I CSK 158/09). This state of affairs is criticized due to the lack of flexibility given to directors who may be held liable (in both civil and penal terms) for decisions which were detrimental for the company but profitable for the group. Despite these opinions, the law is highly unlikely to change in foreseeable future.

### **10. What are the duties owed by directors – please state briefly. Please indicate if there are express or implied duties to avoid damage to the company's reputation?**

The duties owed by directors originate from either legislation or articles of association. Although it is possible to create obligations in the articles of association, it is vital to remember that the right of a member of the management board to represent the company may not be restricted with a legal effect vis-a-vis third parties. Nevertheless, this kind of obligation may result in liability of the directors in breach.

The most important duties of the directors are managing the affairs of the company and representing it (Art. 201, art. 368 KSH). Although the Polish legislator did not introduce a list of duties owed by the directors to the company (as in Sections 171 – 177 of the Companies Act), it is easy to find a number of duties in multiple provisions of the Commercial Companies Code, such as:

- Specific changes of the data of the company shall be reported by the management board to the registry court (Art. 168 and Art. 321 KSH),
- Competition ban - members of the management board may not, without the consent of the company, engage in a competitor business or participate in a competitor company as a partner in a civil law partnership or in a partnership, or as a member of a governing body of a capital company, or participate in another

competing legal person as a member of its governing body (Art. 211 and Art. 380 KSH),

- Convocation of the general meeting by the management board in certain circumstances (Art. 235 KSH).
- Sending the summons to exercise the right of priority in subscribing to new shares (Art. 258 KSH),
- Filing a bankruptcy petition in appropriate time – failing to comply with this obligation means that the members of the management board are jointly and severally liable for the obligations of the company (Art. 299 KSH),
- Issuing of share certificates within one month of the date of registration of the company - the management board shall release the share certificates within one week of the date when a shareholder makes a claim (Art. 328 KSH),
- The management board keeps the register of registered shares and temporary certificates - “the share register” (Art. 341 KSH),
- Liquidation duties – the members of the management board act as liquidators, unless the statutes or a resolution of the general assembly provide otherwise (Art. 463). Liquidators shall close current business, collect receivables, perform obligations and liquidate the assets of the company - “liquidation actions” (Art. 468).

Regarding the second part of the question, we would like to indicate that there are no express duties so as to avoid damage to the company’s reputation. On the other hand, Art. 293 KSH provides that a member of the management board is liable to the company for damage caused by acts or omissions in breach of the law or the provisions of the articles of association, unless he is not at fault, and he is supposed to exercise diligence characteristic of the professional nature of his activity in the course of performing his duties. Moreover, the provisions of the Commercial Companies Code are without prejudice to the rights of the shareholders to seek redress of damage in accordance with general rules (Art. 300 KSH), which means that if the act or omission of the management board damaged the company’s reputation the directors will be liable under civil law.

- 11. More generally, are directors required or permitted to consider the company’s impacts on non-shareholders, including impacts on the individuals and communities affected by the company’s operations? Is the answer the same where the impacts occur outside the jurisdiction? Can or must directors consider such impacts by subsidiaries, suppliers and other business partners,**

**whether occurring inside or outside the jurisdiction? (See e.g. s. 172 UK Companies Act 2006, and in particular, ss.(1)4)?**

Under Polish law, directors are permitted to consider the company's impact on non-shareholders as long as they do not cause damage to the interest of the company – in other words, the board of directors is obliged to act only in the company's interest. This means that interests of the individuals and communities affected by the company's operations may be taken into consideration only when they are identical as the interest of the company or independent of it.

Needless to say, any actions of the company that influence the individuals and communities may be an object of penal and civil liability (both contractual and tortious). From this point of view, it is possible to state that the directors are required to consider the company's impacts on non-shareholders. Nevertheless, there are no provisions of company or commercial law which would impose such obligations.

When it comes to suppliers and other business partners, the company has no duty whatsoever to consider their impact on the individuals and communities affected by the company's operations. The situation is different when it comes to subsidiaries. Pursuant to Art. 7 of the Commercial Companies Code, if a dominant and dependent company enter into an agreement which provides for the management of the dependent company or a transfer of profits by such company, the dominant company may limit or exclude its liability to the dependent company or its creditors. Regardless of the unclear wording of this provision, Polish legal doctrine agrees that the rules of separate legal personality mean that the shareholders are not responsible for the obligations of the company (art. 151 § 4 KSH and art. 301 § 5 KSH). Polish company law does not allow for the possibility of applying the doctrine of piercing the corporate veil (*Durchgriffshaftung*) under any circumstances. This means that the dominant company may be liable only on a contractual basis, e.g. under a guarantee or a suretyship contract.

- 12. If directors are required or permitted to consider impacts on non-shareholders to what extent do they have discretion in determining how to balance different factors including such impacts? What, additional liabilities, if any, do the board or individual directors assume in exercising such discretion?**

Please refer to the answer to question 11 above; regarding liability – to the answer to question 13 below.

- 13. What are the legal consequences for failing to fulfil any duties described above; and who may take action to initiate them? What defenses are available? Can**

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<sup>4</sup> <http://www.legislation.gov.uk/ukpga/2006/46/section/172>



**these issues given rise to other causes of action or regulatory routes whereby a stakeholder can exert pressure on a company with regard to its actions?**

The question of civil liability in capital companies exceeds the topic of company law, as one always has to take into consideration general rules of both civil and penal liability. In relation to management boards, rules of contractual liability (liability for damage caused by breach of legal obligations of the company – Art. 471 of the Civil Code) and tortious liability (liability for willful acts causing harm on the part of a third party with which the company had no contractual relationship – Art. 415 of the Civil Code) apply. In case of contractual liability, it is possible for the director to absolve his/her responsibility by proving that he or she had applied due care in the course of running the company. When it comes to tortious liability, the situation is the reverse as it is the company or the third party which are responsible for proving the guilt of the alleged perpetrator (burden of proof). In both of the above mentioned cases, except for the question of guilt, two other elements of civil liability apply – the existence of damage and the causal link between the damage and actions of the company.

When it comes to the liability explicitly referred to in the Commercial Companies Code, it is as follows:

- Liability for providing false data filed in the register - if members of the management board have, willfully or out of negligence, provided false data when filing in the register, they are liable to the creditors of the company, jointly and severally with the company, for three years from the date of registration of the company,
- Liability for breach of rules on incorporation - a person who, while participating in the incorporation of a company, in breach of the law through his fault caused damage to the company is liable to redress it,
- Liability for fault of members of company governing bodies – a member of the management board, the supervisory board, the audit committee and a liquidator shall be liable to the company for damage caused by acts or omissions in breach of the law or the provisions of the articles of association, unless he is not at fault,
- Liability of members of management board - if enforcement against the company proves to be ineffective, the members of the management board are liable for its obligations jointly and severally. Nevertheless, they may release themselves from this liability by demonstrating that a petition for bankruptcy was filed in appropriate time or that composition proceedings were commenced, or that it is not due to his fault that the petition for bankruptcy was not filed or that composition proceedings were not commenced, or that the creditor did not sustain any damage despite the



fact that the petition for bankruptcy was not filed or that composition proceedings were not commenced,

- Liability in accordance with general rules – as highlighted above, the provisions of The Commercial Companies Code are without prejudice to the rights of the shareholders and third parties to seek redress of damage in accordance with general rules.

**14. Are there any other directors' duties which are relevant to the interests of stakeholders?**

Please refer to the answers above.

**15. For all of the above, if these exist in your jurisdiction, does the law provide guidance about the role of supervisory boards in cases of two tier board structures. What obligations are owed by senior management who are not board directors? Is this determined by law if no specific contractual provision applies?**

First of all, it is worth mentioning that Polish law distinguishes two types of capital companies – limited liability company and joint-stock company – and they differ when it comes to supervisory board rules. In the former, there is generally no statutory obligation for a supervisory board to exist (although the supervisory board or the audit committee shall be created in companies whose share capital exceeds PLN 500,000 and where there are more than twenty-five shareholders; art. 213 § 2 KSH). On the other hand, a supervisory board is mandatory in all joint-stock companies.

Polish company law takes the view of dualism in management and control, which is a consequence of the idea that decision-making and verification of these decisions have to be separated in order to provide more efficient possibilities of running the company. The control activities of the supervisory board focus on the acts of the management board, whereas the board is subordinated to the general assembly of shareholders. This subordination has two main characteristics – firstly, the general assembly elects the supervisory board members (art. 385 KSH), secondly, the board verifies the information passed by the management board to the general assembly.

Tasks of the supervisory board

The most important task of the supervisory board is permanent supervision over all areas of company activity (art. 382 KSH). The criteria of control are not only compliance with law, articles of association or internal organizational rules and regulations, but also economic effectiveness and diligence characteristic of the professional nature of company activity. The main object of control is of course the activity of the management board. Nevertheless, it does not set the limits of the control, which is supposed to cover every factual and legal situation which affects the company. This being the case, it is insufficient for the supervisory board to limit itself to hearing

the report of the directors; sometimes it is necessary to analyze the documents, contracts and minutes of negotiations.

A different aspect of supervision regarding governing bodies of companies in Poland is intervening in order to remedy irregularities found in the process of control. One of the most important aspects of activity of the supervisory board is to use its powers in order to protect the best possible management. Failure to comply with this obligation may result in liability of the members of a supervisory board.

Another duty of the supervising directors is evaluation of the company's financial statements, including the balance sheet and the profit and loss account, with regard to their conformity with the books and documents, as well as with the actual state of affairs, and proposals of the management board concerning the distribution of profits or the financing of losses, as well as submitting annual written reports to the general assembly on the results of such evaluation. In order to perform its duties, the supervisory board may review all documents of the company, request reports and explanations from the management board and employees, and review the state of the company's assets.

Other tasks of the supervisory board are:

1. Ensuring the proper functioning of the management board - the members of the management board are appointed and dismissed by the supervisory board (unless the statutes provide otherwise). A member of the management board may also be dismissed or suspended from his activities by the general assembly,
2. Determining the remuneration of management board members - the supervisory board determines the remuneration of management board members employed under an employment contract or another contract, unless the statutes provide otherwise,
3. Representation of the company - in contacts between the company and a member of the management board and in disputes with him, the company is represented by the supervisory board (or an attorney in fact, appointed under a resolution of the general assembly),
4. Right towards ordinary general assembly - the supervisory board may convene the ordinary general assembly if the management board fails to convene it within the time stipulated in the KSH or in the statutes, and the extraordinary general assembly, if it deems it desirable that it be convened,
5. Right to participate in general assembly - the members of the management board and of the supervisory board have the right to participate in the general assembly.

Other tasks of the supervisory board may be included in the articles of association, although the freedom of the founders of the company is limited not only by the

regulations of law in force, but also by the nature of a joint-stock company. The latter, less clear term refers to the general rules of dualism of the management and control in the company. In particular, the articles of association may not transfer the management of the company to the supervisory board. Moreover, it also may not be superior to the management board, although, as stipulated in Art. 384 § 1 KSH, the statutes may expand the powers of the supervisory board, and in particular provide that the management board is obliged to obtain the consent of the supervisory board prior to carrying out actions specified in the articles of association.

### Reporting

- 16. Are companies required or permitted to disclose the impacts of their operations (including stakeholder impacts) on non-shareholders, as well as any action taken or intended to address those impacts? Is this required as part of financial reporting obligations or pursuant to a separate reporting regime? Please specify for each reporting route whether it is mandatory or voluntary. Please describe any mandatory reporting requirement, major voluntary initiative or trend towards voluntary reporting with regard to transparency (for example, payments to government or state-owned entities, reports on government orders to undertake surveillance or interception, reports on tax payments etc.).**

Reporting obligations of companies

In general, there is no requirement to disclose the impact of company operations on non-shareholders.

The most important reporting obligation of companies is drawing up financial statements and management reports (Art. 2 Section 1 Item 1 in connection with Art. 45 of the Accounting Act).

The financial statement is prepared in order to present the financial result of the company in a said period and consists of a balance sheet, a profit and loss account and supplementary information, comprising an introduction to the financial statements as well as notes (Art. 45 Section 2 of the Accounting Act).

The management report, on the other hand, should cover material information on property and financial standing, including an assessment of performance, as well as identifying any risk factors and threats, including in particular information on:

1. events having a material influence on the undertaking's activity, which occurred both during the financial year and after its end, until the approval of the financial statements;
2. expected development of the undertaking;
3. major achievements in research and development;

4. current and anticipated financial standing;
5. acquisition of the undertaking's corporate shares, including, in particular, the purpose of their acquisition, their amount and nominal value, the percentage of the share capital they represent, and the acquisition price and selling price if they are disposed of;
6. branches possessed by the undertaking;
7. financial instruments, to the extent concerning:
  - i. the risk faced by the undertaking of: price changes, material disturbances in cash flows and loss of financial liquidity, as well as credit risk,
  - ii. the goals and methods of financial risk management adopted by the undertaking, including hedging methods in respect of significant planned transaction types to which hedge accounting is applied;
8. the application of corporate governance rules in the case of undertakings whose securities have been admitted to trading on one of the European Economic Area's regulated markets.

Moreover, companies are obliged to hold the ordinary general assembly (ordinary general meeting in limited liability companies) within six months of the end of each financial year (art. 231 § 1 - 2 and Art. 395 § 1 – 2 KSH). The agenda of the above mentioned meetings should consist of three main points: 1. consideration and approval of the management board report on the operations of the company and of the financial report for the previous financial year, 2. adoption of a resolution on distribution of profits or financing of losses, if such matters have not been excluded from the competence of the general meeting, 3. granting approval for the performance of duties by the members of the company governing bodies.

The approved reports, appropriate resolutions, and the auditor's opinion if the financial statements were subject to audit (Art. 69 Section 1 of the Accounting Act) are supposed to be registered at the competent district court within fifteen days after the date of the ordinary general assembly (ordinary general meeting), since the Register of Entrepreneurs entry includes information about registering the annual report on the operations of the company and the financial report and consolidated financial statement of the capital group, the auditor's opinion and resolution concerning approval of the financial statement and the management report (Art. 40 Item 2 – 5 of the Act on the National Court Register). Failure to comply with the above mentioned obligations results in compelling proceedings (Art. 24 of the Act on the National Court Register) and fine or restriction of liberty (Art. 79 of the Accounting Act).

Moreover, the above mentioned documents should also be submitted to the competent tax office.

*Reporting obligations of public companies*

Information obligations of companies traded on the Warsaw Stock Exchange (WSE) regulated market do not differ from the requirements imposed on companies on other developed capital markets in the European Union. Polish regulations regarding this matter are consistent with European Union law provisions, particularly with the Transparency Directive and the Market Abuse Directive. All the listed companies are supervised by the Polish Financial Supervision Authority; in the event of dual-listing, please see the answer in point 17.

*Warsaw Stock Exchange Main List – reporting obligations*

Listed companies are obliged to publish:

1. inside information – as defined in Article 154 Section 1 of the Act on Trading in Financial Instruments (generally speaking – information regarding, directly or indirectly, one or more issuers of financial instruments, one or more financial instruments or acquisition or sale of such instruments, which did not become a matter of public knowledge and which, after becoming public knowledge, might influence the price of such financial instruments or other connected instruments significantly, concluding a significant contract, acquisition, merger, transformation of company, appointment of members to company boards, motion for bankruptcy); A public company must disclose information immediately after the occurrence of events or circumstances which justify the disclosure of this information, or immediately after becoming aware of such events or circumstances, not later than within 24 hours; and this should be published on its Internet website.
2. current reports – information on events regarding the issuer or the issuer's subsidiaries, and other information required by law (e.g. acquisition and sale of a material block of shares, transactions of persons performing specific functions in the company) (price-forming information);
3. quarterly reports – unaudited, abridged quarterly financial statements;
4. semi-annual reports – audited, abridged semi-annual financial statements;
5. annual reports - audited annual financial statements prepared accordingly to the provisions referred to above.

The financial statements of listed issuers are usually prepared in accordance with the International Financial Reporting Standards (IFRS) and International Accounting Standards (IAS), albeit reports of entities which are not parts of capital groups may be prepared in accordance with the Polish Accounting Standards as described above (the Accounting Act).

*NewConnect*

NewConnect is operated by the WSE outside the regulated market as an alternative trading system. It is an offer for young, growing companies, especially in the high-tech sector (but companies from other sectors may naturally be eligible for trading).

Obligations of companies listed on NewConnect are less demanding in comparison with the WSE. Companies should provide:

1. current reports – not as detailed as on the WSE, including inside information;
2. quarterly reports containing selected balance-sheet items and selected items of the profit and loss account;
3. annual reports containing audited financial statements.

Obligations of significant shareholders and authorities of companies

Polish law requires investors who hold a material block of shares to comply with informational obligations, in particular to provide specific information on change of their stake.

1. A shareholder is required to notify the fact of achieving or exceeding the thresholds of 5%, 10%, 15%, 20%, 25%, 33%, 33 1/3%, 50%, 75%, 90% of the total vote at the general meeting.
2. A shareholder whose stake has exceeded 10% of the total vote at the general meeting is required to notify any change of the stake by at least 2% of the total vote at the general meeting; a shareholder whose stake has exceeded 33% is required to notify any change of the stake by at least 1%.
3. A shareholder or entity which acquired such shares indirectly, i.e. by obtaining the status of a parent undertaking in a company or another legal person that holds the shares of a public company, or in another company or legal person being its parent undertaking, as well as the acquisition or taking up of shares in a public company by a direct or indirect subsidiary.
4. Notification is imposed jointly on all entities that are parties to a written or oral agreement concerning the acquisition of shares in a public company, or voting in concert at a general meeting, or implementing a consistent policy in respect of that company, even if only one of those entities has taken or intended to take action which gave rise to those obligations.
5. Members of management boards and supervisory boards, as well as other persons who perform specific functions in the company, are required to notify transactions in shares of the issuer's companies and the issuer's other financial instruments, as well as derivative instruments underlying which are the issuer's instruments, made by them or by persons closely related to them.
6. Members of management boards and supervisory boards, as well as other persons who perform specific functions in the company, are not allowed to make

transactions in shares and other financial instruments of their company (as well as derivative instruments underlying which are such instruments) in “closed periods” (2 weeks before the publication of a quarterly report, one month before the publication of a semi-annual report, 2 months before the publication of an annual report, and in any case of having inside information until it is disclosed).

**17. Do legal reporting obligations extend to such impacts outside the jurisdiction; to the impacts of subsidiaries, suppliers and other business partners, whether occurring inside or outside the jurisdiction?**

The legal reporting may impact companies from the group, as it is necessary to prepare consolidated financial statements, but there is no requirement to disclose the impact of company operations on non-shareholders.

According to Art. 55 of the Accounting Act, a parent undertaking which has its head office or place of management in Poland should prepare the annual consolidated financial statements of its group of companies or partnerships, covering the data of the parent undertaking and subsidiary undertakings of all levels, irrespective of their head offices, presented in such a manner as if the group constituted a single undertaking. In other words, this provision imposes an obligation to report certain circumstances which occur outside the Polish jurisdiction as if the holding was a single enterprise operating in Poland.

Consolidated financial statements consist of:

1. a consolidated balance sheet;
2. a consolidated profit and loss account;
3. a consolidated statement of cash flows;
4. a statement of changes in consolidated equity;
5. supplementary information, comprising an introduction to the consolidated financial statements as well as notes.

In the case of a public company with its registered office in a member state and noted on the WSE for which Poland is the receiving state, the scope of the above provided information and the deadlines for its provision are specified by the regulations in the parent state.

Further, a company with its registered office in Poland and noted on the regulated market in an EU member state (on the WSE exclusively or in parallel) is also obliged to adhere to informational obligations in accordance with Polish regulations. In such case, the company might be obliged to apply the regulations of two or more member states with regard to its informational obligations.



**18. Who must verify these reports; who can access reports; and what are the legal or regulatory consequences of failing to report or misrepresentation? Is there a regulator tasked with investigating complaints of misreporting?**

The issue of failure to file annual financial statements to the National Court Register and the legal consequences of this omission are regulated by the Act on the National Court Register and the Accounting Act.

The financial statement should be approved within the time limit of six months from the balance sheet date. Pursuant to Art. 69 of the Accounting Act, the management board should submit the financial statement within 15 days of the date of approval of the annual financial statements. According to Art. 69 Section 2, if the financial statement has not been approved within the time limit specified in Article 53 Section 1 it should be submitted to the court register within 15 days of the expiry of that time limit, and also 15 days after its approval.

The sanction for failure to comply with the above mentioned obligations is, pursuant to Art. 79 of the Accounting Act, fine or restriction of liberty. Fines are imposed in terms of daily units, setting out the amount of a unit and the number of daily units to be charged; the lowest number of daily units is 10, and the highest is 540. The daily unit may not be lower than PLN 10, or higher than PLN 2,000, which indicates that the highest fine is PLN 1,080,000 and the lowest fine PLN 100. A penalty of restriction of liberty is imposed for at least one month, but not more than 12 months. For the duration of the penalty of restriction of liberty, the offender may not change his or her permanent place of residence without permission from the court, is obliged to perform unpaid, supervised work for community purposes and is obliged to provide explanations regarding the course of serving the penalty.

Regarding the sanctions stipulated in the Act on the National Court Register, pursuant to Art. 24 of this Act the Court may impose a fine stipulated by the Civil Procedure Code in the execution of benefits in kind. According to Art. 1052 of the Civil Procedure Code, the court may not impose a fine exceeding PLN 10,000 unless it had imposed it two times before and the fine was ineffective. The Register Court is not limited as to the total sum of the fines and cannot convert a fine into custody.

Moreover, the approved financial statement should be filed at the competent tax office. The sanction for failing to meet this obligation came into force on January 1, 2015. It is also a fine.

The Tax Office and the National Court register are tasked with investigating misreporting complaints.

*Company listed on the WSE – reporting obligations*

Failing to report or improper reporting is the subject of sanctions imposed by the Polish Financial Supervision Authority (“KNF”) through issue of an administrative decision. The KNF may remove the securities of such a company from trading on a regulated market, for a fixed or indefinite period, or impose a financial penalty up to PLN 1,000,000, taking into account, in particular, the financial position of the entity concerned, or impose both these sanctions at the same time.

It may additionally impose an obligation on the public company to publish the required information in two national daily newspapers, or to make it public otherwise, without delay, or to amend such information to the extent and within the time limit specified in the decision.

If the public company for which Poland is the host Member State does not perform the obligations referred to in point 17, or performs them improperly, the KNF should notify a competent supervisory authority of that company’s home Member State, as well as the European Securities and Markets Authority, of any such event.

If, despite the notification by the KNF, the competent authority of the public company’s home Member State does not take any measures to prevent further infringements of the law, or if such measures prove inadequate, the KNF, after informing that authority, may apply the sanction referred below in order to protect investors’ interests.

**19. What is the external assurance regime for reporting on a company’s impacts on stakeholders? Please specify any mandatory requirements and also where reporting is voluntary what the current market practice is as regards third party assurance. Please summarise any regulatory guidance on reporting that relates to impacts on non-shareholder stakeholders.**

There are no legal requirements regarding the external assurance regime for reporting on company impacts on its stakeholders.

Companies may voluntarily choose to be provided with an assessment of a third party. Certain rating agencies evaluate not only the company’s financial statements, debt ratio or credit risk, but also impacts on the stakeholders.

For instance, a rating agency may assess the compliance with the minimum principles of social responsibility and accuracy (law enforcement and major conventions in force in the world, e.g. the Convention on Human Rights). The assessment of this type may be based on compliance with the standard SA8000 (Social Accountability), published in 1997 by Social Accountability International. The provisions of this standard set ethical standards in the following areas: child labour, compulsory labour, health and safety at work, freedom of association and right to collective bargaining, discrimination of employees, disciplinary procedures, working time, the criteria for wages, social responsibility management systems.

In Poland such a rating may be provided by Agencja Ratingu Społecznego ARS sp. z o. o. which is a Polish partner of ECPI, a global provider of ESG ratings (environment, social responsibility, corporate governance ratings).

#### Stakeholder engagement

**20. Are there any restrictions on circulating shareholder proposals which deal with impacts on non-shareholders, including stakeholder impacts?**

No, there are no restrictions on circulating proposals for the general shareholders meeting.

**21. Are institutional investors, including pension funds, required or permitted to consider such impacts in their investment decisions? What is legal duty that pension funds owe with regard to investment decisions in this regard? How does the legal duty of the fund align with term and contractual performance criteria of fund managers – does this facilitate or deter consideration of such impacts?**

Generally, there is no particular regulation in this regard, albeit pursuant to article 139 of Act on the Organisation and Operation of Pension Funds of 28 August 1997, a pension fund should invest its assets for the benefit of its participants, seeking to maximize the security and rate of return. Fund assets may be invested in certain categories of instrument, with percentage limits.

**22. Can non-shareholders address companies' annual general meeting? What is the minimum shareholding required for a shareholder to raise a question at a company's AGM?**

The rules as to right to participate in an AGM differ for public and private companies. When it comes to non-public companies' shareholders entitled under registered shares and temporary certificates, as well as pledgees and usufructuaries with the right to vote, they have the right to participate in the general assembly of a company if they were registered in the share register at least one week prior to the holding of the general assembly. Bearer shares give the right to participate in the general assembly of a non-public company if the share certificates are deposited with the company at least one week prior to the date of the assembly and are not collected before its end (Art. 406 KSH).

Regarding a public company, only persons who are shareholders in the company sixteen days prior to the date of the general assembly have the right to participate in the general assembly of a public company (Art. 406<sup>1</sup> KSH).

Bearer shares that are incorporated in a share certificate give the right to participate in the general assembly of a public company if the share certificates are deposited with

the company not later than on the day of registration of participation in the general assembly and are not collected before the end of that date.

At the request of a person entitled under dematerialized bearer shares in a public company, made no earlier than after the announcement of the convocation of the general assembly and not later than on the first weekday following the day of registration of participation in the general assembly, the entity that operates a securities account shall issue a registered certificate confirming the right to participate in the general assembly.

The members of the management board and of the supervisory board have the right to participate in the general assembly (Art. 406<sup>6</sup> KSH).

Other categories of people who are entitled to attend the general assembly are proxies. The shareholder may participate in the general assembly and exercise the voting right in person or by proxy. A proxy may represent more than one shareholder and vote differently with the shares of each of the shareholders. The proxy to participate in the general assembly and exercise the voting right shall be made in writing, for otherwise it shall be invalid.

With regard to the second question, there are no requirements as to the minimum shareholding required for a shareholder to raise a question at a company's AGM. Demanding information during the general assembly is a right of every shareholder (even if he has no right to vote, e.g. a shareholder entitled under a non-voting share) and the management board shall provide a shareholder, at his request, with information concerning the company, wherever this is required so that a matter included on the agenda can be considered (Art. 428 § 1 KSH). According to this provision, one of the restrictions regarding the right to information from the management board is the agenda of the AGM. Other limitations are as follows:

1. refusal to provide information is possible where providing the information could bring damage to the company, an affiliated company or a dependent company or cooperative, in particular due to the disclosure of technical, commercial or organizational secrets relating to the enterprise,
2. a member of the management board may refuse to provide information where providing information could be a basis for his liability,
3. An answer is deemed to be provided where the appropriate information is available on the company's website in the space designated for questions to be put by shareholders and the provision of answers.

The management board may provide information in writing outside of the general assembly if there is an important reason to do so. The management board provides

information not later than within two weeks of the date when it was requested during the general assembly.

- 23. Are there any other laws, policies, codes or guidelines or standards applied in the context of particular contractual relationships (for example project finance) or through adherence to particular sustainability principles (for example the UN Global Compact, the OECD Guidelines for Multinational Enterprises etc.), related to corporate governance that might encourage companies to consider in a structured way their impacts upon and the interests of their wider stakeholders including through a stakeholder engagement process?**

As mentioned in the answer to question 1 above, the generally applicable provisions of law do not explicitly address the issue of duties of the company owed to stakeholders other than shareholders. Regarding entities which are under supervision of the Polish Financial Supervision Authority (“KNF”), the KNF has introduced corporate governance rules which address the issue of stakeholders. In several points (Chapters 5, 6, 7 and 10), these rules refer to the duties of companies towards clients and employees, which are transparent and adequate remuneration, a communication policy based on facilitating access to information for clients, reliable and non-misleading advertising message concerning a service or product offered by a supervised institution, and efficient management of assets managed at client's risk.

There are also several documents regarding public companies, among which the most important ones are the Code of Best Practice for WSE Listed Companies, European Commission recommendation 2014/208 of 9 April 2014 on the quality of corporate governance reporting (‘comply or explain’), European Commission Recommendation 2004/913/EC of 14 December 2004 fostering an appropriate regime for the remuneration of directors of listed companies , 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.

- 24. Are there any laws requiring representation of particular stakeholder constituencies (i.e. employees, representatives of affected communities) on company boards?**

In most popular vehicles for undertaking business activity – the limited liability and joint stock company - there are no requirements regarding representation of stakeholders on company boards.

Nevertheless, in a few types of companies, Polish labor law imposes certain legal solutions relating to representation of employees on the boards. Art 18<sup>2</sup> of the Labor Code stipulates a general rule that employees participate in the management of a work establishment *as far as and in accordance with the principles specified in separate*

*provisions.* According to this Article, there are no requirements as to the boards of the company but rather to the work establishment. Nevertheless, the Act on Self-Management of an Entrepreneurial Team in State Enterprises envisages appointment and granting of key competencies to the self-management authorities (works council and general meeting of the employees), however in the light of rapid economic and social changes of the early 90's the role of this act is negligible. It is even possible to say that the rule stipulated in Art. 18<sup>2</sup> is of no consequence whatsoever.

When it comes to weaker forms of employee participation, which are not strictly speaking 'management', it is possible to point out certain informational, consulting and negotiating rights of the employees when it comes to cross-border businesses and which are expressed in the Act on Informing and Conducting Negotiations with Employees (regarding Polish enterprises) and the Act on European Works Councils, Act on the European Economic Interest Grouping and European Company, Act on Participation of Employees in a Company Resulting from a Cross-Border Merger and Act on the European Cooperative.

Although until April 2013 there were only two European companies registered in Poland, it is to be expected that this enterprise vehicle will become more and more popular among Polish entrepreneurs. For this reason it seems valuable to summarize the rules regarding employee engagement in incorporation and management of European companies.

The first stage of the process of incorporation consists of appointment of the members of a special negotiating team, the objective of which is to reach a consensus regarding employee engagement in management of the company. In Poland, except for the employees of the companies incorporating European companies, the negotiating team may also consist of representatives of the union organizations referred to in the Act on the Tripartite Commission on Social and Economic Affairs and Provincial Commissions for Social Dialogue (Art. 65 Section 5 Act on the European Economic Interest Grouping and European Company).

The second stage of the process is the negotiations regarding employee engagement in management of the company, which last for 6 months (the parties may prolong this period to one year). As a rule, the parties are free to regulate the above mentioned engagement freely, in particular they are not bound by the provisions of standard rules stipulated in the Council Directive 2001/86/EC of 8 October 2001 supplementing the Statute for a European company with regard to the involvement of employees and the Polish Act on the European Economic Interest Grouping and European Company. Apart from the rules of engagement of employees in the company, the consensus should also cover the composition of the representative authority, procedure regarding

renegotiating the agreement, etc. Regardless of other provisions, the agreement should grant the employees rights to information and consultations.

According to the standard rules expressed by the directive and the Act on the European Economic Interest Grouping and European Company, the representative authority is appointed for a four-year term of office by the employees. The authority has the right to appoint or recommend the candidates to the supervisory board or administrative board of the European company, or the right to raise objections regarding the candidates.

No other rules as to the influence of particular stakeholder constituencies on company boards are present under Polish law.

**25. Are there any laws requiring gender, racial/ethnic, religious or other stakeholder representation; or non-discrimination generally, on company boards?**

There are no statutory laws in this matter. However, the WSE Code recommends to public companies and their shareholders that they ensure a balanced proportion of women and men in management and supervisory functions in companies.

According to the Green Paper on 'The European Union corporate governance framework' (Text with EEA relevance):

Gender diversity can contribute to tackling group-think. There is also evidence that women have different leadership styles, attend more board meetings and have a positive impact on the collective intelligence of a group. Studies suggest there is a positive correlation between the percentage of women in boards and corporate performance, though for certain the overall impact of women on firm performance is more nuanced. Although these studies do not prove any causality, the correlation highlights the business case for gender balance in management and corporate decision-making. Nonetheless, promoting women to boards has one indisputably positive effect: it contributes to increasing the pool of talent available for a company's highest management and oversight functions. This is why the Commission's "Strategy for equality between women and men" stresses that over the next five years, the Commission will "consider targeted initiatives to improve the gender balance in decision-making".

Similarly, on July 6, 2011 the European Parliament adopted a resolution on women and business leadership (2010/2115(INI)) in which it recommends the Member States to ensure that 30% of the board members would be women by 2015, and 40% by 2020.

The above mentioned documents represent so called 'soft law', which means that they cannot be enforced. Nevertheless, provisions of law which grant a certain percentage of places on boards for women are present in few jurisdictions in Europe (e.g. Norway). Certain issues regarding such stipulations are raised in Polish legal doctrine.



Firstly, it is indicated that such law would be contrary to the rule of autonomy of will which is the cornerstone of private law. Consequently, it is in conflict with the constitutional principles of economic freedom and protection of ownership and other property rights. Every restriction of the right due to important public interest should be based on facts and not speculations.

Moreover, even if the causal relation between the increased representation of women on boards and better financial results was undoubtedly proven, it still would not be a proportionate reason for imposing statutory gender parity, since private law does not impose any duties as to reasonability of the management but only obliges acting according to the law and good practice.

Thirdly, decisions as to the composition of boards are strictly business decisions which are made by a relevant authority of the company in the name of the shareholders who bear the economic risk of the enterprise. As long as neither the State nor the European Union bears that risk, they should not interfere with the decisions of the company.

Other laws requiring racial/ethnic, religious or other stakeholder constituencies (i.e. employees, representatives of affected communities) on company boards do not exist.

**26. In your jurisdiction is there any legal route whereby a parent company can incur liability with regard to the impacts that one of its subsidiaries has had on stakeholders groups? Are there any serious proposals to impose such responsibility?**

The issue of liability of a dominant company for the impacts that one of its subsidiaries has had on stakeholder groups is addressed in Art. 7 KSH. Pursuant to this provision, if the dominant and the dependent company enter into an agreement which provides for the management of the dependent company or a transfer of profits by such company, excerpts from the agreement with provisions on the liability of the dominant company for damage caused to the dependent company as a result of non-performance or improper performance of the agreement and on the liability of the dominant company for obligations of the dependent company towards its creditors shall be filed in the registration file of the dependent company.

Failure to report circumstances which require disclosure within three weeks of the date of agreement shall result in the invalidity of the provisions on the limitation or exclusion of liability of the dominant company to the dependent company or its creditors.

Nevertheless, the above mentioned rules do not mean that the dominant company is liable for the dependent company towards its creditors. As stipulated in Articles 151 §4 KSH and 301 §5 KSH, *the shareholders shall not be liable for the obligations of the company*. For this reason, the dominant company may be liable only on a contractual

basis, e.g. under a guarantee or a suretyship contract (vide: answer to Question 11 above).

**27. Are you aware of any incoming law or proposals that are relevant to the issues raised in this questionnaire? If so please describe, providing an indication of the anticipated date the legislation will come into force or be adopted.**

As of this date, there are no such incoming law change proposals.

A New Code of Good Practices is being prepared for the WSE.

The Polish Act on Public Offering will be changed in connection with European law: Transparency Directive 2013/50/EU, Market Abuse Regulation and Market Abuse Directive. Implementation of the Transparency Directive would introduce a requirement into Polish corporate law for annual reporting on payments to government for companies operating in the extractive or logging of primary forest industries.

Wardyński & Partners

Warsaw, 30 January 2015