NEW EDITION OF THE BEST PRACTICE FOR GPW LISTED COMPANIES. EVOLUTION OR REVOLUTION?

The Best Practice for GPW Listed Companies is the code of corporate governance rules which all companies listed on the Warsaw Stock Exchange (*Giełda Papierów Wartościowych w Warszawie*; the "Exchange") Main Market are subject to since 2002 (as soft law). The current edition of the Best Practice, adopted in 2016, was replaced by the Exchange Supervisory Board in its Resolution No. 13/1834/2021 of 29 March 2021, by a new edition (i.e. the Best Practice for GPW Listed Companies 2021) which came into force on 1 July 2021.

Why now?

The adoption of the new edition of the Best Practice was guided, among other things, by a desire to reflect recent corporate governance trends and address proposals made by companies over the past several years. This has resulted in a simplification and condensation of the rules, while maintaining the rule that the Best Practice be applied according to the principles of proportionality and adequacy. The latter principle is well known to, so-called, regulated financial market participants, and is reflected, for example, in the method for assessing the suitability of members of regulated entities' corporate bodies and the Polish Financial Supervision Authority's recommendations on the need to introduce adequate and effective risk management and internal compliance systems. The inclusion of ESG matters in the Best Practice may indirectly result from the EU's action plan for a sustainable EU economy (the European Green Deal) and the challenges faced by all of the Member States (climate neutrality). The new practices introduce a range of changes, the most important of which are described in this Alert.

Overall changes

The first and most visible change concerns the structure and presentation of the Best Practice, which differs significantly in that respect from the 2016 edition of the Best Practice – the division of clauses as either – typically "soft" – recommendations and specific principles subject to ongoing supervision has been eliminated. Almost all provisions concerning corporate governance have been classified as principles, presented separately in several thematic sections carried over from the previous edition of the Best Practice from 2016 (disclosure policy, investor communications; management board, supervisory board; internal systems and functions; general meeting, shareholder relations; conflict of interest, related party transactions; and remuneration). The Best Practice is supplemented by Guidelines on their application issued by the Exchange in a Q&A format.

New corporate governance standards

Several new key corporate governance principles have been added to the Exchange's Best Practice, which include:

> **A duty to integrate ESG (environmental, social and governance) factors in their business strategy**: the business strategy should include, in particular, environmental factors (including measures and risks related to climate change and sustainable development) as well as social and employment factors, including among others actions taken and planned to ensure the equal treatment of women and men, respect for workers' rights and dialogue with local communities. Furthermore, companies are required (in order to ensure appropriate communication with stakeholders) to publish information on their website concerning their ESG strategy, which should, among

others, explain how ESG factors are taken into account during the decision making process and present the equal pay index for its employees (being the percentage difference between the average monthly pay of women and men in the last year).

> **A duty to implement a diversity policy**: the duty to implement a diversity policy within companies has been clarified and extended in the new edition of the Best Practice by adding a new requirement to ensure the gender diversity of the management board and supervisory board by ensuring the participation of the gender minority group in each body be at least 30%. Persons making decisions on the election of members of the management board and supervisory board should aim to achieve the abovementioned minimum participation of the gender minority group.

> **Enhanced communication with investors**: companies (other than those being components of the WIG20, mWIG40 or sWIG80 indices) should hold, at least on an annual basis, meetings with investors at which the management board will present the financial results, situation and outlook, as well as publicly answer questions raised. Analysts, industry experts and the media should be invited to such meetings. Companies being components of the WIG20, mWIG40 or sWIG80 indices are required to hold such meetings for investors at least on a quarterly basis. Furthermore, the company's general duty to provide investors responses to their questions within 14 days has been clarified. It is enough that an "investor" raises a question. The use of this word indicates that the authors of the Best Practice did not intend to limit this only to shareholders.

> **Communication of information regarding capital groups**: the new edition of the Best Practice extends the scope of information which companies are required to disclose about their capital groups. The new principles provide for the duty to disclose information on, for example, expenditures by the company and its group in support of culture, sports, charities, the media, social organizations, trade unions, etc., and the manner in which the company's and its group's decision-making processes integrate climate change matters. Furthermore, during the meeting referred to in the point above held for investors, the company's management board will also be required to provide information on the group's financial results and on key events impacting the group.

> **Regulation of dividend policies**: according to the new principles, companies are under an obligation to aim to pay out dividends. Companies may only retain all of their earnings in specific enumerated circumstances (for example, where the retention of the company's earnings follows the recommendations of the authority which supervises the company by virtue of its business activity).

> **Conditioning the issue of new shares to a select group of entities** (for example, the issue of shares with the exclusion of subscription rights while simultaneously granting pre-emptive rights to select shareholders or other entities) **on the fulfilment of specific criteria.**

> **Improved organization of general meetings**: according to the new Best Practice, companies are required to provide a public real-time broadcast of the general meeting's deliberations (this duty previously depended on the shareholding structure). Additionally, draft resolutions, other than those concerning points of order, should include a justification, unless it follows from the documentation tabled to the general meeting (this duty previously only applied to resolutions concerning important matters or matters giving rise to doubts, while with respect to other resolutions, the company was only required to "strive to ensure" that draft resolutions include a justification). Furthermore, the new Best Practice provides a deadline of 3 days prior to the general meeting for shareholders to table draft resolutions on matters put on the agenda of the general meeting and to nominate candidates for members of the supervisory board.

> **A duty to record dissenting votes in the minutes**: the Best Practice clarifies the duty of members of the management board and supervisory board to notify their dissenting opinions if they conclude that a given decision conflicts with the interests of the company – the previous Best Practice did not expressly state such a duty.

The new principles, like the previous ones, are to be applied according to a comply-or-explain approach. Notwithstanding the adoption of new corporate governance principles, the Exchange has amended the Exchange Rules with respect to provisions laying down rules on disclosing compliance with the Best Practice and has made a new visualisation tool available.

The Exchange has also announced that it will monitor explanations regarding non-compliance with these principles in more detail. These actions, together with the changes implementing new corporate governance principles, should be viewed as a positive step aimed at increasing confidence in Polish capital markets, while also supporting with long-term goals (sustainable development).

We invite you to contact the lawyers of our company law and corporate governance practice and our capital markets practice if you have any questions.

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