GLASS LEWIS

2019

PROXY PAPER™

GUIDELINES

AN OVERVIEW OF THE GLASS LEWIS APPROACH TO PROXY ADVICE

POLAND

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Guidelines Introduction

These guidelines are intended to supplement Glass Lewis' Continental Europe Policy Guidelines by highlighting the key policies that we apply specifically to companies listed in Poland and the relevant regulatory background to which Polish companies are subject, where they differ from Europe as a whole. Given the growing convergence of governance regulations and practices across companies subject to European Union rules and directives, Glass Lewis combined our general approach to Continental European companies in a single set of guidelines, the Continental Europe Policy Guidelines, which set forth the underlying principles, definitions and global policies that Glass Lewis uses when analysing Continental European companies.

While our approach to issues addressed in the Continental Europe Policy Guidelines is not repeated here, we will clearly indicate in these guidelines when our policy for Polish companies deviates from the Continental Europe Policy Guidelines.

CORPORATE GOVERNANCE BACKGROUND

The Polish Code of Commercial Partnerships and Companies ("the Polish Commercial Code"), first introduced on September 15, 2000, provides the legislative framework for corporate governance in Poland. Best practices are delineated in the Code of Best Practice for WSE Listed Companies ("the Code"), a comply or explain code, first issued by the Warsaw Stock Exchange ("WSE") in 2007 and updated in 2010, 2012 and most recently in 2015. The Code is divided into a series of recommendations and detailed principles, the latter falling under the "Comply-or-Explain" rule. Companies listed on the WSE are required to disclose the extent to which they comply with these principles. The Code is predated by a set of recommendations for Best Practices in Public Companies 2005, published by an independent committee of experts appointed by the WSE. Companies are not required to disclose the extent to which they comply with these earlier non-binding recommendations.

A Board of Directors that Serves the Interests of Shareholders

ELECTION OF SUPERVISORY BOARD MEMBERS

Under Polish law, public companies are governed by a two-tier board system[1], with the supervisory board presiding over the management board. The supervisory board consists of non-executive directors (and may include employee representatives), while the management board is composed entirely of executive directors. The management board is responsible for the day-to-day running of the company, whereas the supervisory board is responsible for monitoring the management board.

In Poland, shareholders may be asked to elect supervisory board members, or to more generally approve the overall changes to the composition of the supervisory board. However, new supervisory board members are often nominated directly by shareholders, not the board, during the general meeting.[2] As a result, most companies do not provide information regarding the proposed composition of the board in advance of the meeting, leaving shareholders voting by proxy with insufficient information to make an informed decision. We recommend that shareholders abstain from voting on this proposal unless a company provides either of the following in sufficient time before the meeting date: (i) information regarding the proposed nominees to the board; or (ii) the names of which, if any, members of the supervisory board intend to resign at the general meeting and which members intend to stand for re-election.

INDEPENDENCE

In Poland, we put directors into three categories based on an examination of the type of relationship they have with the company:

Independent Supervisory Board Member — An independent supervisory board member has no material, financial, familial[3] or other current relationships with the company, its executives, or other board members, except for board service and standard fees paid for that service. An individual who has been employed by the company within the past five years is not considered to be independent. We use a three year look back for all other relationships.

Affiliated Supervisory Board Member — An affiliated supervisory board member has a material financial, familial or other relationship with the company or its executives, but is not an employee of the company.[4] We will normally consider board members affiliated if they:

- Have been employed by the company within the past five years;
- Have — or have had within the past three years — a material business relationship with the company;

1 Articles 368 and 381 of the Polish Commercial Code, a legally-binding document introduced September 15, 2000.

2 Articles 385.1 and 385.2 of the Polish Commercial Code give companies the flexibility to determine the procedure for nominating and electing supervisory board members through their articles of association.

3 Per Glass Lewis' Continental Europe Policy Guidelines, familial relationships include a person's spouse, parents, children, siblings, grandparents, uncles, aunts, cousins, nieces, nephews, in-laws, and anyone (other than domestic employees) who shares such person's home. A supervisory board member is an affiliate if the individual has a family member who is employed by the company.

4 If a company classifies a supervisory board member as non-independent, Glass Lewis will classify that board member as an affiliate, unless there is a more suitable classification (i.e. employee representative). However, Polish law does not require companies to disclose details of affiliation.

- Own or control 5% or more of the company's share capital or voting rights;[5]
- Have served on the supervisory board for more than 12 years or more than three terms, whichever is longer;[6]
- Have close family ties with any of the company's advisers, board members or employees.

Employee Representatives — Polish law stipulates that employees be represented on the supervisory boards of state-owned and partially privatised companies.[7] Glass Lewis does not take employee representatives into account when analysing the independence of Polish supervisory boards. Employee representatives are not elected by shareholders.

Definition of "Material"

A material relationship is one in which the value exceeds:

- PLN 200,000 (or 50% of the total remuneration paid to a board member, or where no amount is disclosed) for board members who personally receive remuneration for a professional or other service they have agreed to perform for the company, outside of their service as a board member. This limit would also apply to cases in which a consulting firm that is owned by or appears to be owned by a board member receives fees directly;
- PLN 450,000 (or where no amount is disclosed) for those board members employed by a professional services firm such as a law firm, investment bank or large consulting firm where the firm is paid for services but the individual is not directly compensated. This limit would also apply to charitable contributions to schools where a board member is a professor, or charities where a board member serves on the board or is an executive, or any other commercial dealings between the company and the board member or the board member's firm;
- 1% of the company's consolidated gross revenue for other business relationships (e.g., where the board member is an executive officer of a company that provides services or products to or receives services or products from the company);
- 10% of shareholders' equity and 5% of total assets for financing transactions; or
- the total annual fees paid to a board member for a personal loan not granted on normal market terms, or where no information regarding the terms of a loan have been provided.

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5 Principle II.Z.4. of the Code of Best Practice for WSE Listed Companies 2016 ("the Code").

6 EU 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. Annex II. Article 1(h). While Glass Lewis makes every effort to obtain relevant information regarding supervisory board members' terms of office, this information is not often provided by Polish companies. As such, we will only affiliate supervisory board members for this reason when the information is provided. Otherwise, we will note that the company has not provided the relevant information. In line with our Continental Europe Policy Guidelines, we refrain from recommending to vote against any directors on the basis of lengthy tenure alone. However,we may recommend voting against certain long-tenured directors when lack of board refreshment may have contributed to poor financial performance, lax risk oversight, misaligned remuneration practices, lack of shareholder responsiveness, diminution of shareholder rights or other concerns. In conducting such analysis, we will consider lengthy average board tenure (more than 12 years), evidence of planned or recent board refreshment, and other concerns with the board's independence or structure.

7 Articles 12.1 and 14.1 of the Act on Commercialization and Privatization of State Enterprises, introduced on August 30, 1996, stipulate that, if the state holds 50% or more of the company's share capital, employee representatives are entitled to constitute two-fifths of the supervisory board seats. Further, if the state's stake is less than 50% of the company's share capital, employee representatives are entitled to: (i) two seats on boards consisting of up to six members; (ii) three seats on boards consisting of between seven and ten members; and (iii) four seats on boards consisting of eleven or more members.

Voting Recommendations on the Basis of Board Independence

Glass Lewis believes a supervisory board will be most effective in protecting shareholders' interests when at least half of the shareholder-elected supervisory board members are independent of the company[8], and when at least two members are independent of shareholders owning 5% or more of the company's total voting shares.[9] Where the board's composition does not meet these independence thresholds, we will typically recommend voting against some of the affiliated members. However, we accept the presence of representatives of significant shareholders in proportion to their equity or voting stake in the company.

Voting Recommendations on the Basis of Committee Independence

We believe that the majority of shareholder-elected supervisory board members serving on a company's audit and remuneration committees should be independent of the company and its significant shareholders.[10] Further, in line with best practice recommendations, we believe the chairman of the audit committee should be independent.[11]

We believe a majority of the shareholder-elected members of the nominating committee should be independent of company management and other related parties. We accept the presence of representatives of significant shareholders on this committee in proportion to their equity or voting stake in the company.

OTHER CONSIDERATIONS FOR INDIVIDUAL BOARD MEMBERS

Our policies with regard to performance, experience and conflict-of-interest issues are not materially different from our Continental Europe Policy Guidelines.

BOARD STRUCTURE AND COMPOSITION

Our policies with regard to board structure and composition are not materially different from our Continental Europe Policy Guidelines. The following are clarifications regarding best practice recommendations and law in Poland.

BOARD DIVERSITY

The Code recommends that details pertaining to a company's diversity policy should be published on its website and cover the following subjects: gender, education, age, professional experience. The company should also specify the goals of the diversity policy and the implementation of such goals under the reporting period. Where the company has not drafted and implemented a diversity policy, it should publish an explanation for its decision on its website.[12]

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8 Section 20 of the Best Practices of Public Companies, 2005. While the 2005 Code recommends that at least half of the supervisory board members be independent of the Company, more recent versions favour a less stringent recommendation of at least two independent members. Nevertheless, we continue to consider this 50% independence threshold in our analysis of the board.

9 Principle II.Z.3. of the Code.

10 EU 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). Annex I. Articles 3.1 and 4.1. Other than recommending that the chairman of the audit committee be independent, the Code does not offer specific guidance on this issue. Article 129.3 of the Act on Statutory Auditors, Audit Firms and Public Oversight of May 11, 2017 requires the majority of members on the audit committee to be independent including the chair. We believe a majority of remuneration committee members should be independent of the company and shareholders owning at least 50% of the share capital or voting rights. Given the importance of the audit committee's work, we believe that a higher level of independence from major shareholders is necessary. As such, we believe a majority of audit committee members should always be independent of the company and shareholders holding more than 20% or more of the company's share capital or voting rights. While we generally believe that a majority of the members of the audit and remuneration committees should also be independent of shareholders owning 10% or more of the company's share capital or voting rights, we will take into account the company's ownership structure when evaluating the composition of these committees.

11 Principle II.Z.8. of the Code.

12 Principle I.Z.1.15 of the Code.

SUPERVISORY BOARD COMMITTEES

Under Polish law, public companies are required to set up an audit committee which is composed of at least three members, majority of which are independent, including chair. At least one member of this committee must have audit and accounting expertise.[13] Although the audit committee is the only board committee required by law, the Code also recommends the creation of a nominating and remuneration committee.[14] In line with our Continental Europe Policy Guidelines, in the absence of a remuneration and/or a nominating committee, we may recommend voting against the chairman of the board on this basis; provided, however, that this will generally not apply to small-cap companies with boards composed of less than five members.[15]

Our policies with regard to committee performance are not materially different from our Continental Europe Policy Guidelines.

ELECTION PROCEDURES

Our policies with regard to election procedures are not materially different from our Continental Europe Policy Guidelines. The following are clarifications regarding best practice recommendations and law in Poland.

CLASSIFIED SUPERVISORY BOARDS AND TERM LENGTHS

Polish law requires that supervisory board members either resign or stand for re-election at least every five years.[16] Given market practice in Poland, we will generally accept the presence of staggered boards and lengthy terms of office.

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13 The Act on Statutory Auditors, Audit Firms and Public Oversight of May 11, 2017, established a legal requirement that supervisory boards of public companies form an audit committee.

14 Principle II.Z.7 of the Code recommends that Annex I to the *Commission Recommendation of 15 February 2005 on the role of non-executive or supervisory directors of listed companies and on the committees of the supervisory board* ("Commission Recommendation") apply to the supervisory board committees of Polish companies. Annex I, Sections 2.1.1 and 3.1.1 of the Commission Recommendation recommend the establishment of nominating and remuneration committees.

15 At small companies, the functions assigned to the committee may be performed by the board as a whole, provided that it meets the composition requirements advocated for the committee and that adequate information is provided in this respect. 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, Section II, Article 7.2.

16 Article 386.1 of the Polish Commercial Code.

Transparency and Integrity in Financial Reporting

In Poland, shareholders are routinely asked to vote on a number of proposals regarding the audited financial statements, the appointment of auditor and dividends. While we have outlined the principle characteristics of these types of proposals that we encounter in Poland below, our policies regarding these issues are not materially different from our Continental Europe Policy Guidelines.

ACCOUNTS AND REPORTS/CONSOLIDATED ACCOUNTS AND REPORTS

As a routine matter, Polish company law requires that shareholders approve a company's audited annual financial statements, within the six months following the close of the fiscal year in order for them to be valid.[17]

ALLOCATION OF PROFITS/DIVIDENDS

Polish company law requires public companies to submit the allocation of income or the coverage of losses for shareholder approval.[18] In accordance with Polish company law, prior to the distribution of dividends, companies are required to allocate at least 8% of their profits to a legal reserve, until this reserve amounts to at least one-third of the company's share capital (i.e., the nominal value of all company issued shares).[19]

APPOINTMENT OF AUDITOR

Under Polish law, public companies must rotate their auditor every five years.[20] The auditor must be approved by shareholders upon rotation.

17 Article 395.2.1 of the Polish Commercial Code.

18 Article 395.2.2 of the Polish Commercial Code.

19 Article 396.1 of the Polish Commercial Code.

20 Article 134.2 of the Act on Statutory Auditors, Audit Firms and Public Oversight of May 11, 2017. An entity that has served as a company's external auditor for five years in a row may again serve as the company's auditor after a hiatus of three years.

The Link Between Pay and Performance

In Poland, a company's bylaws may specify to what extent the general meeting can be directly involved in setting, or approving, remuneration policy. In practice, however, shareholders of the vast majority of Polish companies are not entitled to a binding or an advisory vote on executive remuneration. Shareholders may be asked to approve equity incentive plans for employees, although these proposals still appear quite infrequently. Our policy regarding these matters do not differ materially from our Continental Europe Policy Guidelines. Furthermore, we note that the level of disclosure of remuneration policies is poor among Polish companies relative to other European markets.

SUPERVISORY BOARD REMUNERATION

Shareholders of Polish companies are often asked to approve changes to supervisory board fees.[21] The Code recommends that these fees should not be linked to company performance or any other variable components.[22] In line with these recommendations, Glass Lewis does not believe that performance-based variable remuneration serves shareholders' interests as non-executive board members may be forced to weigh their own interests against the interests of shareholders and the company. As such, we will generally recommend against any performance-based fees for supervisory board members. Otherwise, we will generally support these proposals if the proposed fees are reasonable and in line with those paid by the company's peers.

STATE-OWNED COMPANIES

On July 26, 2016, the President of the Republic of Poland signed the Act on Rules of Remunerating Persons Who Manage Certain Companies of June 9th, 2016 ("the Act"), which came into force 30 days after its announcement. The Act governs the exercise by the State Treasury of its rights attached to shares held in commercial companies, with respect to determining remuneration of members of management and supervisory bodies. It stipulates that entities entitled to exercise rights attached to shares in state-owned companies are obligated to ensure that the company's remuneration policy is shaped and implemented in accordance with the provisions set forth in the Act. In particular, performance of this obligation involves ensuring that draft resolutions on rules of remunerating members of the supervisory body are voted on by the general meeting in accordance with the Act.

We will analyse such proposals on a case-by-case basis taking into account the company's current policies, together with the rationale provided by the State. In most cases, however, we note that full details on the proposed policies are not disclosed until the day of the meeting.

21 Article 392.1 of the Polish Commercial Code states that supervisory board fees may be determined in the company's articles of association or by resolution at the general meeting.

22 Section VI.Z.3 of the Code.

Governance Structure and the Shareholder Franchise

In Poland, shareholders are asked to approve proposals regarding a company's governance structure, as well as the ratification of management and supervisory board acts and amendments to the articles of association. While we have outlined the principal characteristics of these types of proposals that we encounter in Poland below, our policies regarding these issues are not materially different from our Continental Europe Policy Guidelines.

RATIFICATION OF SUPERVISORY BOARD AND MANAGEMENT ACTS

Polish companies must submit the actions of the management board and supervisory board during the year for shareholder approval.[23] While discharging the board may limit shareholders' rights to take legal action against the board and/or its members, it does not release directors from their fiduciary duties owed to the company and its shareholders.

Because shareholders are not given the opportunity to vote on the election of individual board members often, the ratification can be the best way to voice concerns about the performance of an individual board member. As such, we may recommend voting against the ratification of an individual board member when we have serious concerns regarding the board member's performance.

APPROVAL OF UNIFORM TEXT OF ARTICLES

Polish companies, when proposing amendments to the articles of association at the meeting, will often submit a separate proposal to update the uniform text of its articles of association. While we generally regard this additional proposal as largely routine in nature, we may recommend that shareholders vote against such a proposal should it implement amendments to the articles of association which we do not believe to be in shareholders' interests.

SUPERMAJORITY VOTE REQUIREMENTS

Polish law requires a supermajority vote to change the articles of association, lower shareholders' equity, liquidate shares, sell an operational subsidiary or liquidate the company;[24] however, we will recommend voting against any proposal that extends this supermajority requirement to decisions not stipulated by law. In line with our Continental Europe Policy Guidelines, in cases where a company seeks to abolish supermajority voting requirements we will evaluate such proposals on a case-by-case basis. In certain instances, amendments to voting requirements may have a deleterious effect on shareholders rights where a company has a large or controlling shareholder. We will consider a broad range of factors including the company's shareholder structure; quorum requirements; impending transactions — involving the company or a major shareholder — and any internal conflicts within the company.

23 Article 395.2 of the Polish Commercial Code.

24 Article 415.1 of the Polish Commercial Code.

SHAREHOLDERS' RIGHTS

Under Polish law, shareholders holding at least 5% of a company's share capital may submit the following requests: (i) convocation of an extraordinary meeting; (ii) addition of items to the agenda of the general meeting already convened; or (iii) submission of draft resolutions concerning items on the agenda, or to be put on the agenda, of a general meeting already convened.[25] A company's articles may provide for a lower threshold than stipulated under the law. In line with our Continental Europe Policy Guidelines, we generally do not support lowering these ownership thresholds below 5%. However, we will take into account a company's shareholder structure when analysing proposals to change or lower this threshold.

25 Articles 400 and 401 of the Polish Commercial Code.

Capital Management

Polish companies may seek shareholder approval of a variety of capital-management related proposals. Our policies on these issues do not deviate materially from our Continental Europe Policy Guidelines.

PURCHASE AND SALE OF ASSETS

Polish companies must either submit all asset-related transactions for shareholder approval or provide an alternate transaction approval process in their articles of association.[26] Typically, companies present thresholds and other provisions in their articles of association that govern these transactions. In the event that a company proposes to amend these thresholds, we will evaluate the change by taking into account the size and scope of the company and its operations.

When a company proposes a specific asset sale or purchase in an all-cash transaction for shareholder approval, we will generally recommend voting for the proposal as long as there is sufficient disclosure regarding the proposed sale or purchase. When the proposal involves a transfer of equity, we will evaluate it on a case-by-case basis. In general, we believe that management and the supervisory board are in the best position to determine these types of transactions.

AUTHORITY TO REPURCHASE SHARES

Though not common in Poland, a company may seek shareholder approval to repurchase its own shares. Under Polish law, a company may repurchase its own shares provided: (i) the shares are fully paid up; (ii) the total amount of treasury shares held by the company at any given time does not exceed 20% of the company's share capital; and (iii) the total purchase price does not exceed the company's reserve capital. Should the shares acquired by the company not meet these conditions, the shares must be cancelled within one year from the date of acquisition. Further, the acquisition of shares in excess of 10% of the company's share capital must be cancelled within two years of their acquisition in the following situations: (i) the acquisition of shares by universal succession; (ii) the acquisition of fully paid-up shares by a financial institution for another's account for resale; or (iii) the acquisition of fully paid-up shares under enforcement proceedings, to satisfy such claims which cannot be satisfied from the shareholder's estate.[27]

26 Article 393.1 of the Polish Commercial Code.

27 Articles 362 and 363 of the Polish Commercial Code.

DISCLAIMER

This document is intended to provide an overview of Glass Lewis' proxy voting policies and guidelines. It is not intended to be exhaustive and does not address all potential voting issues. Additionally, none of the information contained herein should be relied upon as investment advice. The content of this document has been developed based on Glass Lewis' experience with proxy voting and corporate governance issues, engagement with clients and issuers and review of relevant studies and surveys, and has not been tailored to any specific person.

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