

Poland
The Law on the Public Trading of Securities
Extracts relating to 88/627/EEC
July 2001

Article 4

Whenever this Act mentions:

[...]

16) parent company (literally, dominant entity) - this term shall be understood to mean that entity which in a given set of circumstances:

- a) holds the majority of voting rights in the governing bodies of another entity (subsidiary) directly or indirectly through other entities (subsidiaries) or by virtue of agreements with other persons, or
- b) is authorised to appoint and dismiss the majority of the members in the governing bodies of another entity (subsidiary), or
- c) more than one-half of the members of the other entity's (subsidiary's) management board are simultaneously members of the management board, proxy or are executive managers in the first entity or in some other entity which is a subsidiary of the first entity,

Article 147

1. An entity, which

1) obtains or exceeds 5% or 10% of the total number of votes at the general meeting of shareholders by buying shares in a public company, or

2) prior to the sale held shares in public company ensuring at least 5% or at least 10% of the total number of votes at the general meeting of shareholders and after the sale holds shares ensuring no more than 5% or no more than 10% of the total number of votes, respectively

- is obliged to notify the Commission, the company and the Office for Competition and Consumer Protection within 4 days after the shares are registered on the securities account, upon the purchase or sale of stock as the case may be.

2. The obligation stated in section 1 applies also to cases of acquisition and disposal of shares resulting in a change in the portion of the vote held by shareholders who originally held more than 10% of the vote, by at least:

1) 2% of the total vote in the general meeting of shareholders - in the case of a public company whose shares have been approved for trade in a regulated stock exchange market,

2) 5% of the total vote in the general meeting of shareholders - in the case of other public companies.

The said obligation will result from the conclusion of both single and multiple combined transactions.

3. The notification shall contain information about the number of shares currently held, their percentage share in the initial capital and the voting rights derived from such shares and their percentage share in the total number of votes at the general meeting of shareholders.

4. The notification requirement specified in Section 1 applies also to entities which:

1) as a result of acquiring the shares of a public company, reached or exceeded, or

2) as a result of a disposal, became owners of shares providing them with no more than

_ 25%, 50% or 75%, respectively, of the total vote in the general meeting of shareholders.

5. The notice regarding the reaching or exceeding of 10% of the total vote in the general meeting of shareholders will additionally include information on any intent to continue to increase the share held in a public company in the period of 12 months following the date of its submission and the purpose for which such an increase will be sought. Each time such intent or the purpose thereof changes, within 12 months of the submission of the notice or later, the shareholder is obliged immediately to notify accordingly the Commission, the concerned company and the President of the Office for Competition and Consumer Protection.

Article 148

A public company is obliged:

- 1) To provide information forthwith and simultaneously to the extent defined in Art. 147, to an information agency, the company running the stock exchange or the over-the-counter market - if the given shares are traded on a regulated market,
- 2) To deliver to the Commission, no later than the day before the day indicated as the day for a general meeting of shareholders, the list of shareholders entitled to participate in the said meeting, specifying the number of shares and votes to which each one of them is entitled by virtue of the shares held,
- 3) To deliver, at the same time, to the Commission and the information agency, within 14 days after general meeting of a shareholders, a list of all shareholders holding at least 5% of the total number of votes thereon, specifying the number of votes to which each of them is entitled.

Article 149

1. The acquisition of shares in a public company or of depository receipts issued in connection with such shares in a number causing the buyer to reach or exceed, in total, respectively 25%, 33% or 50% of the total vote in the general meeting of shareholders, is subject to the Commission's approval to be issued at the request of the buyer.
2. The approval specified in Section 1 will not be required in cases where the acquired shares are shares of a public company traded exclusively in an unofficial over-the-counter market.
3. Within 14 days of the filing of a request, the Commission will issue its approval and furnish, to the information agency, information regarding the approval granted or the denial to grant an approval, in cases where such an acquisition may result in a violation of the law or would compromise vital interests of the state or the national economy. The Commission may deny the approval in cases where, within 24 months prior to the filing of the request specified in Section 1, the requesting party failed to perform or inadequately performed obligations set out in Art. 147 and 150.
4. The Council of Ministers will determine, by decree, the scope of information to be included in the request specified in Section 1. The manner in which the regulation should specify the scope of information should allow for an accurate evaluation of the source of funds to be utilised in the planned acquisition, the purpose of the acquisition of shares or depository receipts lending its holder rights to a specified proportion of the vote in the general meeting of shareholders and the effect the planned acquisition may have on the interests of the state and of the national economy.
5. The approval may be granted subject to a condition, to be stipulated therein, under which the decision to grant the approval will become invalid if a specified proportion of the vote in the general meeting of shareholders is not reached or exceeded by the date specified in the approval.
6. In the case of an entity that, in accordance with an approval granted by the Commission, has reached or exceeded no less than one of the vote percentage thresholds specified in Section 1 and that subsequently disposed of or, in effect of another legal event, came into the ownership of a number of shares or depository receipts that provided it with a number of votes lower than the number for which it had received an approval, then the Commission's approval will be required to reach or exceed the threshold again, unless the date specified in Section 5 has not elapsed.

Article 150

The obligation defined in Art. 147 shall apply as appropriate to the acquisition or sale of bonds convertible into shares approved for public trading, depository receipts as well as other securities which bear the right or obligation to buy shares approved for public trading.

Article 156

1. Exercising voting rights on shares acquired in violation of the obligations specified in Art. 147, 149, 151 and 155 is null and void.
2. A failure to perform on the obligation specified in Art. 154 will void the right to exercise voting rights on all shares held.

Article 158a

1. For the purposes of this Chapter:

1) the acquisition, disposal or holding, by a direct or indirect subsidiary, of shares in a public company or depository receipts issued in connection with such shares, will be construed as the acquisition, disposal or holding of such shares or depository receipts by the parent company,

2) depository receipts issued in connection with shares of a public company will be construed to be securities carrying voting rights on such a number of the company's shares as the holders of the depository receipts may obtain by trading their depository receipts for such shares.

2. The performance of a legal act by a subsidiary or the occurrence of any other legal event in relation to such an entity will lead to obligations, as specified in this Chapter, also on the part of its parent company, provided that the change in the proportion of the vote held that results from such actions or events is subject to such obligations.

3. The obligations specified in this Chapter will:

1) also be binding jointly upon all entities bound by a written or oral understanding regarding:

a) the joint acquisition of shares of the public company or the depository receipts issued in connection with such shares, or

b) the concerted voting of the company's shareholders in the general meeting of shareholders on matters of significance for the company, or

c) the pursuit of a long-term joint policy regarding the company's management

- even if only one such entity has performed or has intended to perform activities resulting in the creation of such obligations; such obligations are performed by one of the parties to such an understanding, such a party to be indicated by the parties thereto,

2) be binding upon an investment fund also in cases where the reaching or exceeding of a vote percentage threshold specified in such regulations will be the result of a joint acquisition, disposal or holding of shares or depository receipts by:

a) other investment funds managed by the same investment funds society,

b) other investment funds established outside of the Republic of Poland and managed by the same entity,

3) binding also upon entities whose reaching or exceeding of the number of votes specified in such regulations is the result of an acquisition, disposal or holding of shares or depository receipts:

a) by a third party in its own name but for and to the order of the said entity, with the exception of shares acquired in the process of performing acts specified in Art. 3 section 2 item 2,

b) in the process of performing acts specified in Art. 30 section 2 item 4 - with respect to shares comprised in managed securities portfolios on which the said entity, as portfolio manager, may, on behalf of its clients, exercise voting rights in the general meeting of shareholders.

Article 167

Whosoever fails to file in a timely manner the notification referred to in Art. 147 section 1 or 2 and in Art. 148 shall be subject to a fine of up to 1,000,000 PLN.

Article 168a

Whosoever fails to meet the requirement referred to in Art. 149 shall be subject to a fine of up to 1,000,000 PLN.

Article 173

Whosoever commits an act specified in Art. 165-171 acting on behalf of, or in the interest of, a legal person or organisational unit without legal person status shall be subject to a fine of up to 1,000,000 PLN.