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**The European Corporate Governance Network
A Survey on Polish Corporate Governance Rules, Statistics and
Institutions¹**

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This survey is based on a questionnaire prepared by the European Corporate Governance Network. Its goal is to describe basic elements of corporate governance system existing in Poland. The paper presents basic forms of business conduct (personal partnership - spółka cywilna, joint stock company spółka akcyjna, limited liability company – spółka z o.o., limited partnership – spółka komandytowa) and their internal characteristics (position of shareholders, managers, supervisors), disclosure rules referring to ownership structure, shareholdings and other important information.

In preparing this survey we have reviewed all relevant laws including Commercial Code, Accounting Law, Security and Exchange Law, Banking, and Insurance Law, Law on Court Register and many others. We included in our survey information on new Company Law - debated currently in Parliament and planned to be in force since 2001. Statistical tables are based on information compiled by the Central Statistic Office.

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A. Legal forms

a) Company Types and Groups

1. Legal forms

See table 1 in the appendix

2. Groups

A capital group is defined by Polish Accounting Law as a situation when a particular company (stock corporation or limited liability company):

- a) has a majority of votes in the bodies of another entity (subsidiary), including a situation when this ownership is based on agreements with other entities entitled to vote,
- b) is authorised to make financial policy decisions and decisions concerning current business activities of the other entity (subsidiary) on the basis of law, charter (statute) or contractual agreement,
- c) as a shareholder or partner is authorised to nominate or dismiss most of the members of managing or supervisory bodies of subsidiary,
- d) executive managers or members of the supervisory board or managers in the dependent entity (subsidiary) constitute together more than half of the members of the governing board of the other dependent entity,
- e) has not less than 20% and not more than 50% of votes in another (affiliated) entity,
- f) exerts meaningful influence on financial policies and current business activities of another entity (affiliate) in a way other than the one described under item e),

to define the relationship between different entities quite often a definition of dominance is applied (formulated in the Law on Public Trading in Securities); a dominant entity (parent company) is one that:

- 1. has a majority of votes in the bodies of another entity (subsidiary), including a situation when this majority is achieved on the basis of agreements with other authorised entities, or
- 2. is authorised to nominate and dismiss the majority of members of governing bodies of another (dependent) subject, or
- 3. in a situation when more than a half of the members of the other (dependent) entity are at the same time members of the board or executives of the first entity or another entity remaining with the latter in a relationship of dependency.

bank capital group is defined in the Banking Law as: a group of banks organised in such a way that the dominant bank owns shares of another bank (or banks) - considered as dependent ones - giving it over 50% of votes of each dependent bank; a dependent bank is not allowed to be a shareholder of the dominant bank; a bank capital group has to be established for the period of at least five years.

the Tax Law defines a tax capital group as a group established by joint stock or limited liability companies with an equity amounting to at least zloty 1 million while the dominant company owns directly 100% of the equity of the remaining (dependent) companies.

b) Basic population statistics

1. Number of active companies

See table 3, 4, 5, 6 in the appendix

2. Distribution by sectors

See table 3, 4, 5, 6 in the appendix

3. Distribution by size (assets, sale and employment)

See table 7 in the appendix

4. Age

not available

C. Ownership Structure and Voting Rights

a) Ownership Disclosure Rules

(1) Manufacturing and non-financial service companies

1. Non listed companies with the same legal form as listed (Spółka akcyjna)

1.1. Company Law²

list of founders (shareholders) – has to be deposited at the registration court; the list contains the names of shareholders establishing the company and the number and type of shares owned by them.

all entries in the court register (establishment of the company, changes in its statute) as well as announcements required by law (i.e. convocation of the general assembly) have to be published in the Monitor Sądowy i Gospodarczy (Court and Business Monitor - a bulletin published by the Ministry of Justice and being distributed all over Poland); copies of the Monitor can be purchased at any court, or consulted there free of charge. The Court Monitor is published only in a printed version.

information available from the court register is in a printed form and for a fee covering cost of photo copying. It is planned that the court register will also have an electronic form since year 2001³. The cost of acquiring information is also likely to increase.

joint stock company may issue registered or bearer shares, preferred or ordinary shares (see table 1 and 2); bearer shares are tradeable without any constraints; some constraints may only be imposed on registered shares.

the statute of a company may make the sale of registered shares subject to the company approval or may limit it in another way (e.g. indicating the features of a potential purchaser, making the sale conditional on the expression of consent by a third person, establishment of the pre-emption right).

the approval to the sale of registered shares, is issued on behalf of the company, by the managing board; the statute of a company may also assign this right to the supervisory board or to the assembly of shareholders. The company, while denying the right to sale should indicate the new purchaser. The way how to do it should be stipulated in the statute – when there are no such provisions the registered shares may be sold without any constraints.

managing board of a joint stock company is obliged to run a ledger of registered shares. The ledger should contain the names and address of the shareholder, the amount of paid in

² The government drafts a new Company Law which is supposed to replace the Commercial Code (Kodeks Handlowy) adopted some 70 years ago. New regulation is likely to come into force since January 2001. Some new solutions are likely to emerge in it, e.g. tacit shares (without voting rights); the comparison of new and old regulations in matters that are of interest to us is presented in Table 2.

³ In January 2001 the Law on Domestic Court Register is to be adopted, upgrading the efficiency and extending the availability of information about companies.

capital and information about sale of shares to other persons. Only the shareholders and the bodies of the company have the right to access the ledger of shares. Third persons may only access the ledger upon the approval of the managing board.

members of the managing board, supervisory board and employees have the right to purchase (as natural persons) shares issued by the company; they may not, however, purchase the stock on behalf of the company (the company is prohibited by law to buy own shares) unless with the intention to redeem them or in order to exchange them into shares of another company being taken over (up to 10% of the share capital).

a company is not obliged to notify the register about purchase of shares/stocks in another company (ownership of over 20% in any entity is, however, disclosed in the annual financial report deposited at the court register).

basic information about companies – including the owners – may be obtained from commercial data bases e.g. from Dun & Bradstreet or Hoppenstedt & Bonnier; it is available both in a printed (book) and electronic form (CD-ROM).

1.2 Accounting rules

a company is obliged to disclose in annual financial report the information about ownership structure as well as about the amount and the nominal value of subscribed shares, including preferred ones. The information revealed here usually refers to the largest shareholders only.

a company should attach to the annual financial report a list of companies in which it owns at least 20% of ownership; the list should reveal share in ownership in a given entity and the degree of participation in management.

companies are obliged to deposit annual financial reports at the court register; the management failing to do so is subject to a fine amounting up to 3 to 15 thousand zloty; reports which are found in the court register are available in the paper form only.

apart from filing annual financial reports to the court register all joint stock companies are obliged to publish their balance sheet, profit and loss accounts and cash flow report in the bulletin distributed all over Poland (Monitor Polski B); information concerning the ownership structure (contained in annex to financial reports) is, unfortunately, not published.

annual reports published by some larger companies in printed and electronic form (CD-ROM, Internet) usually have an abbreviated form and do not contain appendices (e.g. with information about shares owned in other entities or the structure of ownership).

Accounting Standards Directives were transposed by Accounting Law (ustawa o rachunkowości) in force since 1995.

1.3 Competition rules

the provisions of the Antimonopoly Law do not impose the obligation to disclose the involvement in other entities on a current basis; but the information about the portfolio is disclosed when it is necessary to get the consent of the anti-monopoly authority (Urząd Ochrony Konkurencji i Konsumentów – The Consumers’ and Competition Protection Authority) to exceed the stipulated thresholds of involvement.

law requires to notify the anti-monopoly authority (UOKiK) about the intention to purchase the shares in another company if the buyer reaches or exceeds 25%, 33% or 50% of votes at the general assembly; the duty to notify concerns exclusively the situation when the total value of sales of both entities (the buyer and the one, whose stock/shares are purchased) exceeds EURO 25 million⁴.

law requires to notify the anti-monopoly authority about the intention to purchase shares in newly established company resulting in achieving or exceeding 25% of votes; the duty to notify concerns exclusively the situation when the total value of sales of both entities (buyer and the one, whose stock/shares are purchased) exceeds EURO 25 million.

the decisions of the anti-monopoly authority concerning the consent or failure to give consent are published in the Official Journal of the Anti-monopoly Authority.

2. Listed companies

2.1 Company Law

Public companies are in general obliged to comply with the same disclosure rules concerning court register as non-public companies.

additionally, listed companies will have to notify court register (starting from the year 2001) with the information about shareholders who acquired the share blocks subject to the notification to the Securities and Exchange Commission (Komisja Papierów Wartościowych i Giełd (KPWiG)).

shares that are subject to public trading have an electronic form; transfer of ownership is accomplished at the moment of settling the transaction (3 days after its conclusion at the regulated market).

generally speaking transactions in shares allowed for public trading (secondary trading) should be carried out at the regulated market (i.e. at the stock exchange or at the over-the-counter market). The exception to this rule may concern i.a the transfer of shares in justified cases and upon the consent of the KPWiG as well as in the case of direct transfer between natural persons (brokerage house intermediation is excluded). The shares of a listed company not allowed for public trading can also be subject to a public tender carried out via brokerage house or a bank.

⁴ The total value of annual sales includes both the sales made by the dominant and the dependent subjects (according to the definition in the Law on Public Trading in Securities).

registered and preferred shares as far as voting rights are concerned may be introduced to public trading, but cannot be traded because of limited transferebility.

2.2 Accounting rules

The same as for non - listed companies with additional requirements:

In case of public companies the annual reports are subject to publication – in an abbreviated form via the “Emitent” electronic system, from which the information can be derived directly i.a. at the website of the Polish Press Agency (Polska Agencja Prasowa). Full versions of reports are available in a printed form at the Information Centre of the Securities and Exchange Commission. Companies listed at the stock exchange are additionally obliged to prepare and publish semi-annual financial reports.

besides that, annual and semi-annual reports of listed companies contain a wider spectrum of information on ownership involvement in other subjects. Namely, for non-financial companies a detailed information about stock and shares owned in other entities in case of involvement exceeding 5% of equity and votes and considering them as part of a fixed financial assets; providing information about involvement at the level of less than 5% is not obligatory.

apart from information on shareholders who own at least 5% of capital or votes contained in annual and semi-annual financial reports, listed companies are also obliged to disclose data concerning shares owned by managers and members of the supervisory board (in quarterly and annual reports).

annual and semi-annual financial reports of listed companies contain information about the number of own shares owned by the issuer and the number of issuer’s shares owned by dependent entities.

2.3 Competition rules

The same as for non-listed companies, whereas in case of an intention to acquire shares of listed companies the anti monopoly authority has 2 weeks for notification objections to merger.

2.4 Transparency Directive

the provisions of the *Transparency Directive* have been taken under consideration while Polish Law on Public Trading in Securities was launched in 1991; domestic law goes, however, substantially further than the *Transparency Directive*. The adopted requirements

concern both the companies listed at the stock exchange (Warsaw Stock Exchange), and the over-the-counter market (Central Table of Offers - Centralna Tabela Ofert).

the first threshold to disclose information on involvement in a listed company is 5% of votes at the general assembly; the next one is 10%. The thresholds are applicable also for disclosing information on decreasing involvement in a listed company.

shareholders having over 5% of votes have also to be disclosed (together with detailed information about shares owned directly and through the subsidiaries) in the prospectus or information memorandum).

after exceeding the threshold of 10% the shareholder is obliged to inform about each change in the level of ownership of over 2% both in case of concluding a single transaction or several transactions at a time.

because the above there are no separate requirements concerning the notification of exceeding thresholds of 20%, 30% (or 25%), 50% and 66% (or 75%). It has to be noticed, however, that the investor is obliged to notify the KPWiG about intention to buy shares resulting in exceeding the thresholds of 25%, 33% and 50% and to receive the approval of KPWiG for such a purchase. The Commission, while giving the approval, reveals this information to general public.

the obligation to notify about exceeding thresholds appears as well in the case of buying or selling convertible bonds of a listed company, depository receipts and other securities, from which the right or obligation to buy shares of a listed company is derived.

shares held by a subsidiary shall be deemed held by the parent company; it is worth to point out there is no unequivocal indication that shares owned by the dominant entity are deemed to be owned by the dependent entity, what could delay the process of disclosing information about the involvement of a given group of shareholders.

the investor is obliged to notify, the Securities and Exchange Commission, the company and anti monopoly authority within 7 following buy or sell transaction. The company is then obliged to immediately pass this information simultaneously to the information agency and the Stock Exchange or to the company running the OTC market. If this information could substantially affect the issuer business interest the law provides for the right to make such information secret – i.e. to inform exclusively the Securities and Exchange Commission (a general rule concerning the information obligations).

Information about the change in the composition of shareholders is reported by the companies in the form of the so-called current report, via an electronic system called “Emitent” (Issuer), and then it is published by press and electronic media. These reports are

also available at the Information Centre of the Securities and Exchange Commission; the Information Centre makes available the collective data about the ownership of listed companies (updated every two weeks, made available for a fee – equal to a cost of a photo copy, in a printed form only); the provision of this data by the Commission is purely voluntary and does not result from any detailed regulations.

According to our knowledge the Securities and Exchange Commission has at its disposal current and historical data concerning the composition of share ownership of listed companies in an electronic form. Anti monopoly authority is likely to run a similar database, too. Information from those databases is, however, not publicly available.

a listed company is also obliged to:

1. pass to the KPWiG the list of shareholders authorised to take part in the general assembly, and information about the number of shares and votes assigned to each of them,
2. pass to the KPWiG and the information agency a list of shareholders having at least 5 percent of total votes at the general assembly, specifying the number of shares and votes to which each of them is entitled,
3. pass information about buying or selling of its own shares by itself or by the dependent entity (as it is understood in the Law on Accounting); in case when the dependent entity is a listed company the obligation to inform about such transaction rests exclusively on it,
4. report upon receiving information about buying or selling shares or the rights to buy shares by the associated entity if the value of the transaction (single or taken together during the past 12 months) exceeds the zloty equivalent of Euro 5.000.

an associated entity is understood as:

- a) a dominant entity in relation to the issuer, an entity from a capital group of the dominant entity or a spouse, siblings, ascendant, descendant, or another close relative of the dominant entity, as well as an entity, where one of those persons is a dominant entity or a managing person,
- b) another shareholder (partner) having at the moment of passing the information or within 12 months prior to it at least 10% of votes, as well as an entity dependent on it, or a person, who was or had been performing managerial functions at that time,
- c) an entity from the capital group of the issuer (as it is understood in the Law on Accounting),
- d) a person managing or supervising the issuer at the moment of passing the information or within 12 months prior to it, his/her spouse, siblings, ascendant, descendant or another close relative, as well as an entity, where one of those persons is a dominant subject or performs managerial functions,

failure to report the passing the threshold of 5%, 10 % and then each subsequent 2% is subject to the following sanctions:

1. execution of the voting right from shares acquired in this way is ineffective;

2. a fine of up to 1.000.000 zloty imposed by the KPWiG.

a fine of up to zloty 1.000.000 is also imposed on a listed company, which has not immediately published the received information about the passing the respective thresholds by a shareholder and does not inform about relevant shareholders connected with the general assembly. Besides that, a listed company, which has not properly fulfilled its information disclosures may be punished by the KPWiG in the following manner: revocation of the decision of introducing the shares into public trading or/and a fine up to zloty 500.000.

2.5 Other regulatory rules

none

2.5 Stock Exchange Regulation

none

3. Single Owner Companies

the Commercial Code presently in force, and the new Company Law (in preparation) are in conformity with the *12th Company Law Directive* on single owner companies.

a limited liability company having only one stockholder, a joint stock company having only one shareholder, as well as a state-owned company (where the state treasury is the only owner) must fulfil all the information obligations concerning the above mentioned non-public entities.

4. Other non-listed companies with limited liability (limited liability company)

4.1 Company Law

a list of partners – founders should be deposited at the court of registration. Such a list contains names of partners, amount of stocks owned; the list of partners in the court register should be updated on a regular basis; when there are more than 50 partners the register reveals only those, who own over 2% of stocks (this obligation will be in force from the year 2001 only).

the company statute may subject the sale of stocks to approval of the managing board, supervisory board or the general assembly; if a partner is denied the approval to sell he/she may appeal to the court, which will issue an approval if selling is justified by important reasons.

a company should run a ledger of stocks, where the names of partners, their addresses, amount of stocks and any changes in this respect are logged; changes in the ledger have to be reported to the court register. The ledger of stocks is available to the partners only.

failure to report the current list of stockholders to the court and failure to run the ledger of stocks is subject to a fine of up to zloty 10000.

members of the managing board, supervisory board and employees are allowed to buy stocks issued by the company.

a company is not obliged to report register the purchase of stocks/shares in another company (but the fact of owning 20% share in ownership of an entity is revealed in the annual financial report deposited at the court).

information available from the court is in a printed form and is sold at a fee (photocopying costs).

4.2 Accounting rules

a company is obliged to reveal the information about the composition of the equity capital as well as about the amount and nominal value of subscribed stocks in the appendices to annual financial reports.

a company which bought shares/stocks in another company should reveal this information in the annual financial report if the portfolio gives at least a 20% share in the ownership of a given entity.

companies are obliged to send annual reports to the court register; reports kept at the court are in a printed form only.

4.3 Competition rules

provisions of the Antimonopoly Law do not impose obligation to currently report the involvement in other entities, but only in connection with the procedure of getting the approval of the antimonopoly authority for exceeding particular thresholds:

the law requires reporting to the antimonopoly authority the intention to buy shares/stocks in another company if the buyer exceeds the threshold of 25%, 33% or 50% of votes; the obligation arises only when the total value of annual sales of both entities (the buyer and the one, whose shares are being bought) exceeds Euro 25 million.

the law also requires to report the intention to purchase shares/stocks of a newly established company that would result in achieving or exceeding 25% of votes; the obligation arises only when the total value of annual sales of both entities (the buyer and the one, whose shares are being bought) exceeds Euro 25 million.

decisions of the antimonopoly authority are published in the official bulletin of the authority.

5. State owned enterprise - Przedsiębiorstwo państwowe

5.1 Company Law

a state owned enterprise (SOE) has only one founder-owner i.e. State Treasury or branch ministry; the name of the founding body (owner) has to be revealed in the court register.

the legal form of a state owned enterprise has no tradeable claims; to make any transfer of ownership SOE has to be converted into a stock corporation; then rules for stock companies apply to the transfer of shares.

the register with information about state owned enterprises is available for the public.

when a SOE is transformed into a corporation for the purpose of privatisation (with the State Treasury being the sole owner) the principles of disclosing information about the enterprise become the same as in the case of other corporations (joint stock or limited liability companies).

employees (including managers) of a SOE transformed into a corporation have the right to acquire up to 15% of shares (stocks) for free; those shares are registered, their trading is not subject to any relevant limitations.

5.2 Accounting rules

The same as in the case of non - listed corporations:

an enterprise is obliged to disclose information about ownership (the amount and the nominal value of subscribed shares/stocks, including preferred ones) in appendices to annual reports; an enterprise which acquired shares in another enterprise is obliged to disclose that in annual report if the acquired portfolio exceeds 20%; enterprises are obliged to send annual reports to the register; they are available exclusively in printed form.

5.3 Competition rules

The same as in the case of non- listed corporations

6. Co-operatives (spółdzielnie)

6.1 Company Law

the founders of the co-operative are revealed in the court register only; the minimum number of founders is 10 natural persons or three legal persons.

entries in the register are freely accessible and are subject to publication in the Court and Business Monitor (Monitor Sądowy i Gospodarczy).

managing board of the co-operative should run a register of members containing their data and information about contributions made; the register is freely accessible to the authorities and members of the co-operative.

6.2 Accounting rules

The same as in the case of non - listed corporations

6.3 Competition rules

The same as in the case of non - listed corporations

7. Companies with unlimited liability

Personal partnership and general partnership

a personal partnership is a partnership set up by natural (or legal) persons on the basis of Civil Law for common conduct of business. This partnership does not have a status of a legal entity and partners are liable for its debts with all their personal property. Basic data about partners in a personal partnership from the year 2001 onward are going to be revealed in the court register (at present this data is filed in a register of business activity run by municipalities).

a personal partnership with annual sales exceeding EURO 400 thousand is subject to accounting principles which are applicable to corporations (such as joint stock companies, limited liability companies). It means the obligation to prepare an annual financial report (with an appendix and data about partners); in case of larger personal partnerships those reports are subject to auditing and publishing in the Monitor B. Annual financial report will also have to be deposited at the court register (at present they are deposited at the register run by municipalities).

a general partnership is a deviation of a personal partnership; it differs from the personal partnership in that way that it has to be entered into a court register; both in the case of a personal partnership and a general partnership there is neither a managing board nor a supervisory board; each partner has the right to manage the partnership and control its operations.

Limited partnership - spółka komandytowa

in a limited partnership at least one partner (the unlimited partner - komplementariusz) is liable for the debts of the partnership to an unlimited extent, while the liability of at least one partner (the limited partner - komandytariusz) is limited; basic data about the limited partnership (designation of partners, the limited sum) are revealed in the court register; limited partnerships are obliged to prepare annual financial report and deposit them at the court, large limited partnerships have to also publish their reports in Monitor B.

7. Other companies

(2) Holdings

Polish law does not provide for holdings

(3) Banks

1. Non-Listed Banks

1.1. Company Law

bank shares are only in the form of registered ones (except for shares admitted for public trading). Within a year from the foundation of the bank sale of registered shares is subject to approval of the Bank Supervision Commission (Komisja Nadzoru Bankowego - KNB).

investor, who acquire shares of a bank that entitle him to over 5% votes has to notify this to the bank, which subsequently has to report it to the KNB.

buying shares (or rights derived therefrom) entitling to over 10, 20, 25, 33, 50, 66, 75% of votes is subject to approval of the KNB; the investor who failed to inform the bank and/or did not get the approval of the KNB has the right to only 5% of votes at the general assembly (or to a number of votes, specified in approval received earlier).

intention to sell shares (or rights derived therefrom) entitling to execute over 10% of votes as well as if after sale the remaining portfolios would authorise to execute less than 20, 33 and 50% votes must also be reported to the KNB.

changes in the ownership of respective banks are made available to the public by the GINB⁵ in quarterly reports published in a paper and electronic form (via internet).

a dependent bank may not buy or accept as a pledge the shares of the dominant bank, except of buying shares in execution proceedings intended to cover claims of the dependent bank. The dependent bank is then obliged to resell the shares of the dominant bank within 6 months from the date of their purchase.

1.2. Accounting Rules

financial reporting of banks is adapted to the International Accounting Standards and compatible with the IV BIS directive of 8.12.1986 on the annual balance sheet and consolidated balance sheet of banks and other financial institutions (86/635/EEC).

an appendix to the annual financial report should contain data on shareholders; in relation to equity capital the following information is given: information about the ownership of equity capital – amount, type and nominal value of shares with enumeration of preferred shares, shareholders of 5% or more votes.

⁵ Main Inspectorate of Banking Supervision (Główny Inspektorat Nadzoru Bankowego - GINB) – executive body of the Bank Supervision Commission (KNB)

additional information to the annual financial report should also contain data concerning the shares owned in other entities, including:

- a. name, address and purpose of their activities,
- b. share percentage in the equity capital of the entity and its share in the total number of votes at the general assembly.

the annual financial report should be deposited at the court register and published in Monitor Polski B (appendixes where ownership is disclosed are not published, however).

banks are obliged to send to the Commission of Banking Supervision the audited and consolidated annual financial report with an opinion and report of a chartered accountant.

1.3. Competition Rules

the provisions of the Antimonopoly Law do not impose obligation of current reporting of banks' involvement in other entities; disclosures are however needed to get the approval of the antimonopoly authority for exceeding certain thresholds.

the law requires to report to the antimonopoly authority the intention to buy shares in another company if the buyer would achieve or exceed 25%, 33% or 50% votes; the obligation to report applies only when the combined value of sales of both entities (buyer and the one, whose shares are being bought) exceed EURO 25 million.

the law requires as well to report to the antimonopoly authority the intention to buy shares in a newly established company resulting in achieving or exceeding 25% of votes; the obligation to report applies only when the combined value of sales of both entities (buyer as well as one, whose shares are bought) exceeds EURO 25 million.

a bank does not need to report to the antimonopoly authority the buying (or acquiring) shares resulting in achieving or exceeding 25%, 33% or 50% votes at the general assembly if the transaction was made with the intention to sell the securities within one year without exercising the voting rights, apart from the right to dividend and the right to sell the shares.

an intention of merging banks should be reported to the antimonopoly authority if the total value of equity capital of those banks exceeds EURO 50 million.

1.4. Prudential Regulation and the BCCI-Directive

banks may buy shares (and rights derived therefrom) of another legal entity not being a bank or participation units in trust funds, provided that their combined value in relation to one entity should not exceed 15% of the equity capital of the bank. These limitations do not refer to:

1. buying banks' shares and rights derived therefrom,
2. buying shares and rights derived therefrom of company providing the following services to the bank:
 - a. issuing of payment cards and executing operations with their use,
 - b. education of banking personnel,
 - c. consulting and advising in financial issues,
 - d. settlement institutions,
 - e. interbank telecommunication company, in which banks hold at least a 75% share,

3. buying shares in common pension societies, employee pension societies and companies running a brokerage house, if 75% of shares are owned by a bank or banks.

the BCCI directive is recognised in Polish law to a limited extent only. It will be included to a wider extent in the new Polish banking law which is under preparation.

banks are obliged to prepare monthly reports for the Central Bank, where they have to disclose the list of shareholders of 5% or more votes (legal form and name of the shareholder, amount of capital paid in, number of shares owned and votes). The above mentioned information is sent to the Central Bank in printed and electronic form, it is not available to the public.

the KNB is allowed to pass to other authorities information on banks provided it is indispensable for execution of their tasks.

2. Listed Banks

2.1. Company Law

The same as for non-listed banks

2.2. Accounting Rules

The same as for non-listed banks (as far as accounting is concerned) and listed companies (as far as reporting to the public is concerned) with the following exception:

annual and semi-annual reports of listed banks contain list of investments in other entities if involvement exceeds 5% of equity and votes (and the investment is considered as locational (long term); the disclosure of investments below 5% of equity is not obligatory.

2.3. Competition Rules

The same as for non-listed banks

2.4. Transparency Directive

The same as for listed companies

2.5. Market Regulation

none

2.6. Stock Market Rules

none

(4) Insurance companies

1. Non listed companies

1.1 Company Law

Non listed insurance companies can operate only in the form of stock corporations, and are covered by the same disclosure rules as other non listed stock companies.

detailed important information is disclosed in court register or listed in the application for the insurance licence from the Ministry of Finance (equity, founders, names of top managers and members of supervisory board and person responsible for insurance mathematics, finance and statistics); this data is, however, not publicly available.

a buyer of shares in an insurance company is obliged to:

- 1) inform the Ministry of Finance about any transaction that entitle to more than 10% of votes,
- 2) obtain the approval of the Ministry of Finance to buy shares (or rights derived therefrom) that entitle to more than 25%, 33%, 50%, 66%, 75% of votes correspondingly (as of year 2001 - 25%, 50%, 75% correspondingly).

buying or possession of shares of an insurance company (or rights derived therefrom) by a dependent entity (subsidiary) is deemed to be the buying or possession by the dominant entity, according to the Law on Public Trading in Securities.

1.2 Accounting rules

General regulations apply. Additionally the annual financial report contains i.a.:

- information about percentage of share and possible participation in management of companies, where the insurer holds at least 20% of shares
- data about financial deposits in companies that have an equity links with the insurer

1.3 Competition rules

general rules apply with the same exceptions as for banks

1.4 Prudential regulation

insurance companies submit financial reports to the State Authority of Insurance Supervision (Państwowy Urząd Nadzoru Ubezpieczeń - PUNU⁶) every quarter and at the end of each year. Financial report appendix contains a list of shareholders with more than 2% of votes - name of the shareholder, number of preferred, ordinary, or registered shares, votes, number of shares in the former accounting period, country of capital origin). Annual reports contain also a list of shares allowed for public trading, list of shares not allowed for public trading, equity capital links of the insurance company (list of dominant entities, list of dependent and associated entities).

a bulletin with basic information on shareholders of insurance companies (name, % share in equity) is published by PUNU every half a year. The principles of publication of those bulletins are not legally regulated. Bulletins are available in a printed form at PUNU, there is also a technical possibility of making them available in an electronic form. A detailed bulletin, containing all data about shareholders, is prepared for the state administration as well.

an insurance company notifies PUNU:

- about buying shares in other businesses, if they exceed 10% of equity of target company
- about term deposits (investments) in companies subordinated to the insurer or in companies the insurer depends upon.

investments in other listed companies may not exceed altogether 30% of the insurer's insurance fund. The investments in unlisted companies must not exceed 15% of insurance fund, provided that the share in one entity or group of entities will not exceed 10% of the insurance fund. These restrictions do not apply to life insurance, if they are linked to an investment fund (policy with investment fund option).

2. Listed insurance companies

2.1 Company Law

the same as for non listed insurance companies

2.2 Accounting rules

The same as for non listed insurance companies (as far as accounting is concerned) and listed companies (as far as disclosure regulations are concerned) with the following additional requirements:

Annual and semi-annual reports of public insurance companies contain a list of shares in other entities exceeding 5% of equity (and votes) considered as long-term investment and not constituting investment deposits in life insurance funds; disclosure of involvement below 5% is not obligatory.

2.3 Competition rules

⁶ It is a government agency regulating the insurance market.

the same as for non listed insurance companies

2.4 Prudential regulation

the same as for non listed insurance companies

2.5 Transparency directive

the same as for all listed companies

2.6 Market regulation

none

2.7 stock market rules

none

(5) Investment and pension funds

1. Investment funds

1.1 Company Law

investment funds in Poland operate in a special legal structure provided by the Law on Investment Funds: a fund is a separate legal entity managed by a society of investment funds being a separate joint-stock company. One society may manage several funds of different types.

units or certificates holders do not have any corporate rights; control over fund is based on transactions (via redemption of units and sale or redemption of certificates) or via the so-called investors' council provided for certain types of funds; an investors' council may only control the investment goal and policies, as well as undertake decisions on the liquidation of a fund; an investors' council is composed of unit/certificates holders who hold at least 5% of units or certificates (a unit/certificate holder is informed about exceeding the limit by the fund).

general supervision over funds is carried out by the KPWiG and the depository bank.

in case of investment funds one can also speak about the ownership and control of the society of investment funds (fund management company); this structure is relatively stable – societies usually have one or two shareholders - financial institutions; the prospectus of an open-ended fund and a specialist fund, as well as a prospectus of a closed-ended fund and mixed fund should contain information about shareholders who directly or indirectly (via dependent entities) hold at least 5% of shares and votes in a society of investment funds.

if a shareholder is going to exceed the threshold of 20%, 33% and 50% of shares in a society (fund management company) a prior permission of the KPWiG is required; activities undertaken without the approval are invalid.

the prospectus (prospekt emisyjny) is published prior to sale of investment certificates. It should be updated once a year, and each change that may have an impact on the assessment of investment risk should be disclosed.

1.2 Accounting rules

open-ended funds are obliged to publish semi-annual and annual financial reports containing i.a. a list of investment portfolio (name of company and number of shares); in case of closed-ended funds and mixed funds an investment portfolio is disclosed on a quarterly basis.

1.3 Competition rules

intention to merge societies or take over the management of an investment fund is subject to notification to the antimonopoly authority; it informs about the lack of objections or prohibit the merger if it could lead to the strengthening of dominant position in the market.

1.4 Prudential regulation

open-ended funds are not allowed to buy shares/stocks that entitle to more than 10% of votes; at the same time all funds managed by one society are not allowed to execute together more than 10% of votes; the involvement of a fund in a single business entity in no case should exceed 10% of the value of the fund's assets.

2. National Investment Funds set up within the Mass Privatisation Programme

apart from the pure investment funds there are also 14 National Investment Funds established within the framework of the Polish mass privatisation programme, functioning as public joint-stock companies and regulated by the Law on National Investment Funds and their privatisation. All those funds are managed by external management companies.

ownership disclosure rules in case of NIF are the same as those applied to other listed companies; there are also some requirements concerning disclosure of ownership and control of management companies: the prospectus is required to inform on shareholders (partners) of the managing company (and dominant subjects) holding at least 5% of capital.

a list of investment portfolio (divided into leading and minority shares, shares in subsidiaries, associate entities and the remaining entities) indicating the number of shares owned as well as the share in capital and votes is attached to quarterly report of NIF. An annual report of a NIF should also contain description of principal changes in the investment portfolio, investments made during recent accounting year and changes in the composition of the portfolio.

involvement of a NIF in a single business should not exceed 25% of the assets (of the NIF). At the same time a fund may own up to 100% of votes in any company (even though buying of shares over the 33% threshold was partly limited in the past).

3. Pension Funds

1. Company Law

pension funds operate in the same legal structure as investment funds – open-ended funds within the framework of the so-called 2nd pillar of the Polish pension system (that has an obligatory character) and employee funds within the so-called 3rd pillar (of a voluntary character). Each fund is a separate legal entity managed by a pension society established as a separate joint-stock company (also with a single owner). One pension society (open-ended or employee) may manage one fund (with some exceptions).

the participants of open-ended pension funds do not have any control over the fund's activities – they may only move to another fund; a regulatory control is performed by the Pension Fund Supervision Authority (Urząd Nadzoru nad Funduszami Emerytalnymi - UNFE), to which the funds send (even daily) reports, and the depositary bank (which holds the assets of the fund); in case of an employee pension fund the control may be performed via the supervisory board of the pension society. At least half of it is made by people elected by the members of the employee fund.

each purchase of shares of the pension society requires prior approval of the UNFE; if the buyer of the shares is an actual shareholder, approval is needed only to exceed 20%, 25%, 33%, 50%, 66%, 75% or 80% votes correspondingly; UNFE makes available the structure of shareholders of pension funds at its website.

data on the shareholders of a pension fund should be disclosed in the charter of the fund attached to the prospectus; each change in this data should be disclosed in the press; in case of

an employee fund the change in the charter should be announced in a written to all members of the pension society.

2. Accounting and Prudential Rules

data on assets of an open-ended pension fund is disclosed every 6 months; full information about the assets of an open-ended fund and employee fund, including information about investment portfolio of less than 1% of the fund's assets is provided at the end of each year; an employee pension fund provides only annual report – exclusively to the UNFE and to the shareholders of employee pension society.

an annual report (sent to the UNFE and published in the prospectus) and a semi-annual report (sent to the UNFE and to a shareholder on his/her request) should contain a list of investment portfolio (indication of the issuer and the number of shares owned); open-ended pension funds are also obliged to send daily investment portfolio reports to the UNFE.

open-ended pension funds are not allowed to buy shares providing them with more than 10% of votes; one may, however, expect that they will be able to execute more than 10% of votes at a given assembly. The involvement of all types of pension funds in a single business in no case should exceed jointly (all types of investments) 5% of fund's assets.

3. Competition rules

any merger or take over of societies (fund management company) is subject to prior approval of the anti monopoly authority, in case if the total value of net assets of funds managed as a result of intended merger or take over would have exceeded 33% of the total value of net assets of all open-ended funds (in any month of a year preceding the year of potential deal).

(6) Other entities

1. Stock Exchanges

the secondary trading in securities in Poland may be carried out on the stock exchange or on the OTC market. Both markets may only be run by joint stock companies, subject to approval by the Prime Minister (in case of the stock exchange) or the KPWiG (in case of the OTC market). These companies may only issue registered shares.

only brokerage houses, banks, investment fund societies, insurance companies as well as issuers of securities allowed for public trading are allowed to be shareholders of the stock exchange and the OTC market (in case of the stock exchange only issuers listed on it may be shareholders). The State Treasury may also be a shareholder of the stock exchange.

there are two organised secondary markets in securities in Poland: the Warsaw Stock Exchange Co. Ltd. (Gie³da Papierów Wartościowych w Warszawie S.A. - GPW) and the OTC market – Centralna Tabela Ofert S.A. (CeTO S.A.). The dominant shareholder of the GPW is the State Treasury with about 98% of equity. The other shareholders are 54 banks and brokerage houses (as per October 1998). In March 2000 CeTO had 48 shareholders, mostly banks and brokerage houses. The ownership has slightly changed recently due to the merger of CeTO with the Polish Financial Exchange (Polska Gie³da Finansowa -PGF) established by domestic banks to run non-public inter-bank trade in financial instruments.

2. Foundations

foundations are established by founders (natural or legal entities); all founders comprise a founders' council performing supervisory functions; a foundation is managed by a managing board nominated by the founders' council.

information about the founders, management board and charter is disclosed in a register run by a court, the register is freely available to the public.

foundations may own shares or stock in other entities.

obligation to prepare annual financial reports is imposed by Accounting Law only on foundations that conduct business activities (and fulfil two of three criteria – employment > 50 people, sum of assets > ECU 1 million, or sales revenue ECU > 3 million). Such report must contain information about the founders and shares in other entities; it should be audited and deposited together with the report on activities at the court of registration and published in bulletin Monitor Polski B (but only balance sheet and the profit and loss statement only, without appendices).

all foundations (those which carry out and those that do not carry out business activities) are obliged to make a report on their activities (information about statutory goals, founders, managing board, financial information also about shares or stock owned in other entities); the report on activities is sent to the supervising ministry; documents deposited there are not available to the public.

foundations are obliged to disclose annual reports to the public however law does not precisely stipulate how it should be done.

3. Shareholder associations

there are no special regulations for creating shareholders' associations in the Polish law. Establishing organisations with purpose to consolidate the votes of small shareholders and to represent their interests at general assemblies is anyway possible on the basis of the Law on Associations (such an organisation has recently been established in Wroc³aw – Association of Individual Investors).

D. Inside Supervision

a) Boards

MANAGERS

(a) legal and institutional description

two-tier board structure is available in Poland.

board of managers is usually elected by the shareholders' meeting or the supervisory board (as decided in the company statute) – most frequently it is a supervisory board; in a state owned enterprise director is elected by an employee council.

the titles in the original language are: prezes zarz¹du (president of the managing board), wiceprezes (vice-president of the board), cz³onek zarz¹du (member of the board), dyrektor przeds^{ie} biorstwa (director of the enterprise).

in case of a limited liability company the board term of office is determined in the statute; the managing board may then be nominated for a limited or an unlimited period of time; in case of a joint stock company the managing board is nominated for no more than three years; in case of a co-operative the number of members of the board and their term of office is determined in the statute.

board of managers is responsible for day-to-day running of a company; board of managers can hire and fire senior management.

usually the managing board makes resolutions according to a simple majority rule; new Company Law provides, however, that in the case of a joint stock company its statute may grant the president of the board the right to a captive vote.

managers' remuneration principles are usually set by the body nominating the board, i.e. the general assembly or the supervisory board; usually the remuneration and the content of the whole contracts is secret and is not disclosed to third parties (unless the interested parties agree to do so); however the Law on Accounting requires to disclose in appendices to financial reports the information on remuneration (jointly), together with remuneration based on profit paid to the board members and supervisory bodies, as well as loans granted to managing and supervisory board members.

voting on nomination or dismissal of the managing board members is anonymous and is performed according to a simple majority rule.

only in case of a state owned enterprise the director is nominated from among candidates selected by a competition (the principles of arranging such a competition was determined by the Council of Ministers).

composition of the managing board and its changes should be disclosed in the court register

the obligation to disclose the number of shares owned by the managing board concerns the listed companies only (prospectus and annual report); in case of non-public companies shares owned by managers would only be disclosed when this is required by law (ownership of registered shares), and in case of a limited liability company the possession of stocks by the managing board is always disclosed in the court register.

2. Manager's independence

managers may be dismissed by the body, which nominated them (e.g. the general assembly, supervisory board, employee council) at any time; in case of a limited liability company the statute may limit the right to dismiss the managing board to the so-called "important reasons" only; in case of a joint stock company the new Company Law provides for the introduction of the same rule (dismissal due to "important reasons" only).

usually the statute of a company determines the kinds of decisions that managers may make up independently, the decisions that have to be approved by the supervisory board or general assembly.

in case of a joint stock company such decisions as: selling or letting out the enterprise, sale of real property, issue of bonds require the approval of the general assembly.

resolutions of the supervisory board are usually made up according to a simple majority rule, unless the statute stipulates otherwise.

managers do not have the right to buy shares of a company on its behalf, unless with the intention to redeem them.

a manager in a joint stock company may not be a plenipotentiary representative of another shareholder during the general assembly.

(b) Quantitative description

not available

b) Shareholders' meeting

the general assembly of shareholders is the highest authority in a joint stock and limited liability companies.

general assemblies are convoked by the managing board at the motion of the supervisory board; shareholders holding at least 1/10 of share capital may demand to convoke an extraordinary general assembly or to put defined matters on the next assembly agenda.

the general assemblies in joint stock and limited liability companies are valid regardless of the number of shares/stocks represented at them, unless their statutes stipulate otherwise.

resolutions of the general assembly of limited liability companies are adopted according to a simple majority of votes cast rule unless the legal regulations or the statute of the company stipulates otherwise. The resolutions concerning:

- i) change in the company statute including the change in the area of activities of the company,
- ii) merger of companies,
- iii) dissolution of the company,
- iv) selling part of the business,

are adopted with a majority of $\frac{2}{3}$ of votes cast but the statute of a company may establish stricter conditions. Resolutions concerning changes in the statute of the company that increase the duties of the partners or reducing the rights granted personally to the partners are subject to the approval of all the partners concerned.

the general assembly of a joint stock company is valid regardless of the number of shares represented, unless law or its statute stipulates otherwise.

resolutions of the general assembly of a joint stock company are adopted with a unconditional majority of votes cast unless law or its statute stipulates otherwise. Resolutions concerning:

- i) issue of bonds,
- ii) changes in the statute,
- iii) selling the enterprise,
- iv) merger or dissolution

are adopted with a majority of $\frac{3}{4}$ votes cast but the statute may establish stricter conditions.

in a joint stock company a resolution to change the range of company activities requires approval of the two thirds of votes cast. In this case each share has one vote without privileges or limitations. Company has to redeem shares from shareholders who opposed to resolution.

to abolish pre-emption rights to new share issue a majority of $\frac{4}{5}$ of votes cast is needed.

in case of a limited liability company partners may delegate to persons not being stockholders the right to take part in the general assembly unless the statute does not limit this right.

in a joint stock company shareholders may take part in the general assembly by plenipotentiary agents; neither members of the managing board nor the employees of the company may be plenipotentiary agents at the general assembly.

in a joint stock and in a limited liability company the minutes of meeting of the general assembly is made; resolutions adopted and the number of votes for each resolution should be recorded there; the minutes of meeting should be accompanied by a list of those present at the meeting. The copy of the minutes should be filed by the managing board in the book of the minutes. Shareholders may consult the book of the minutes. Minutes of the session of general assembly together with the record of adopted resolutions (and the numbers of votes cast for each of them) are filed at the court register. Persons who are not shareholders may consult the minutes of the sessions of general assembly.

E. Outside supervision

1. Market supervision

a) legal and institutional description

(1) stock market institutions and rules

1. Stock Markets

in Poland there are two organised secondary markets in securities: Gie³da Papierów Wartościowych w Warszawie SA (The Warsaw Stock Exchange) and the over the counter market run by Centralna Tabela Ofert SA (Central Table of Offers).

both the Warsaw Stock Exchange and the Central Table of Offers are supervised by a special government agency - Komisja Papierów Wartościowych i Gie³d (Security and Exchange Commission). The Commission has the right to:

- a) call an extraordinary general assembly and put extra issues on its agenda,
- b) order the supervisory councils to adopt a resolution in a defined matter without delay,
- c) to appeal in certain cases against a resolution of the general assembly or the supervisory council of a company running the stock exchange or the OTC market.

2. Public Offerings

public offering requires disclosure of prospectus containing information about a company and the public offering being made (including audited financial data). Introduction of a company to public trading is also possible based on information memorandum which is characterised with a smaller scope of disclosures (a company introduced this way may only be traded on the OTC market).

the Stock Exchange allows to list a company on three different markets: primary, parallel and free, each of them of different admission criteria. One of them is the dispersion of the shareholders:

a company with at least 500 shareholders may be introduced to the primary market. Value of shares that are to be introduced owned by small shareholders (less than 5% of votes) should amount to at least zloty 32 million. These shares should at the same time constitute at least 25% of the total number of shares of the company. The above condition is met if at least 500 thousand shares valued at least at zloty 70 million are owned by small shareholders.

a company, with at least 300 shareholders may be introduced to the parallel market. The value of shares, which may be introduced and remain in the hands of small shareholders (less than 5% votes) should amount to at least zloty 11 million. These shares should at least amount to 10% of all shares of the company. The above condition is met if at least 200 thousand shares valued at least zloty 35 million are in the hands of small shareholders.

introduction to listings on free market of the Warsaw Stock Exchange or at the OTC market is not conditional to any requirements of dispersion.

introduction of a company, which has made a public offering to listing at the CeTO market is conditional upon the requirement, that small shareholders (less than 5% of votes) hold together at least 20% of shares introduced to public trading.

3. Insider Trading

confidential information is defined in the Law on Public Trading in Securities as information concerning the issuer or security, which has not been disclosed to public, and which following disclosure could significantly influence the share price. *Insider* is anybody who has got confidential information.

since the prospectus or memorandum of information was made available to the public a company is subject to strict information disclosure requirements. Prior to public disclosure the information may be revealed exclusively:

- a) to persons or entities providing financial, economic, tax or legal advisory services to the issuer or those, with whom the company conducts negotiations,
- b) to persons or entities authorised according to appropriate regulations.

the indicated person or entities are obliged to guard confidentiality of acquired information.

together with the prospectus the KPWiG receives covert information concerning the planned circulation of confidential information at the issuer, including:

- a) description of principles of circulation and principles of protecting confidential information against unauthorised access,
- b) list of people authorised or having access to confidential information.

the law determines the cases when an investor may claim the listed company for damage incurred as a result of giving false information or failure to transmit information, which should be made publicly available. Whoever being responsible gives or fails to disclose true data, which may influence the content of information made available to the public is subject to imprisonment of 6 months up to 5 years and a fine of up to zloty 5,000,000. A person

exploring confidential information in trading in securities is subject to the same penalty. A person who disclose confidential information is subject to imprisonment of up to 3 years and a fine of up to zloty 1,000,000.

the enforcement of *insider trading* regulations rests on the Securities Commission, which co-operates in this respect with the GPW, CeTO and KDPW. So far there have been a few reported to the public prosecutor, however non of them have been brought to the court.

4. Takeover Rules

take over of listed company is in Poland subject to relatively modest regulations – basic rules are stipulated in the Law on Public Trading in Securities. They are the same for both markets – i.e. the stock exchange and the OTC market.

a shareholder who would exceed the threshold of 50% votes has to call public tender to sell or change all the remaining shares (until 1997 that threshold was 33%) or sell the excess of shares over the threshold of 50%. The law provides as well that the stake of shares giving more than 10% of votes may be bought within a period shorter than 3 months in the way of a tender only.

at the same time the investor is obliged to notify the KPWiG and get the approval to buy shares exceeding the thresholds of 25%, 33% and 50%. The Commission may refuse to grant the approval if the deal could result in breaking law or endanger an important interest of the state or national economy. In practice the Commission often persuades investors to oblige themselves to buy shares only up to 75% votes and not to withdraw the company from public trading.

the law determines the minimum price in a public tender (announced when 50% threshold is exceeded) in relation to average market price for a set period of time (there is no requirement that it may not be lower than the price paid in earlier transaction by investor who called the tender).

exercise of the votes on shares bought with break of the above mentioned requirements is ineffective. Such an offence is subject to a fine of up to zloty 1,000,000.

4. Auditors

auditors revising financial reports of a company and breaking law are subject to penalty (up to 2 years of imprisonment), as well as civil and disciplinary responsibility.

annual financial reports of listed companies are subject to an obligatory audit carried out by an external auditor. Attaching of an auditor opinion and a report from the audit is also obligatory.

in case of companies listed at the stock exchange semi-annual reports should also be audited by a chartered accountant and have to contain a report from such an audit.

apart from an annual financial report, a semi-annual report of an investment fund is also subject to a full audit of a chartered accountant.

the chartered accountant auditing financial reports of a bank is obliged to immediately inform the Commission of Banking Supervision about any facts indicating that:

- 1) law and banking rules were broken
- 2) the principles of good banking practice were infringed or other interests of the bank clients were endangered,
- 3) there exist reasons for a negative opinion of the financial report or for refusing any opinion at all.

until now there has been no widely publicised cases of vindication of damages from an auditor by the shareholders or participants of investment funds.

(2) Market transfers

generally transactions in shares allowed for public trading should be carried out on the regulated market (i.e. at the stock exchange or on the OTC market). An exception to this rule may constitute i.a. the transfer of shares in justified cases and upon the approval of the KPWiG and transfer of shares directly between natural persons (in the latter case obligatory intermediation of an entity providing brokerage services is also excluded). The shares of a listed company which are not allowed for public trading may also be subject to public tender carried out via the intermediary.

Appendix

Table 1. Characteristics of basic legal forms of conducting business activities in Poland

Name of the entity in original language (English translation)	Limited liability	Minimum capital in Polish zloty; in brackets value in Euro as at end of 1999.	Smallest number of founders/owners	Smallest number of managers	Supervising organ	Smallest number of members of supervisory board	Type of tradeable claims
Spółka akcyjna (Joint stock company)	Yes	100 thousand zloty (4)	3 founders (2) 1 owner if shares bought from other founders or owners	1	Supervisory board and/or audit board (5)	5	Registered shares, bearer shares, preferred shares, ordinary shares, maximum level of preferences in voting rights 1:5
Spółka z ograniczona odpowiedzialności ¹ (Limited liability company)	Yes	4 thousand zloty (3)	1 founder	1	Supervisory board and/or audit board (1)	3	Shares preferred as far as voting is concerned max 1:5
Spółka jawna (General partnership)	No	Not applicable	2	Not applicable	Not applicable	Not applicable	Not applicable
Spółka komandytowa (limited partnership)	General partner No Shareholders Yes	Not applicable	2	1	Not applicable	Not applicable	Not applicable
Przedsiębiorstwo państwowe (State owned enterprise)	Yes	Not applicable	1 (State Treasury)	Director of SOE	Board of employees	15 but employees may decide on smaller or larger board	Not applicable
Spółdzielnia (Co-operative)	Yes	Not stated	10 natural persons or 3 legal persons	1	Supervisory board	3	Share
Spółka cywilna (personal partnership)	No	not applicable	2	1	Not applicable	Not applicable	Not applicable
Fundacja (Foundation)	Not applicable	Not applicable	1	1	Board of funders	All founders	Not applicable
Spółka partnerska (*) (Partners' company)	Yes	Not applicable	2	1	Partners not being members of management board have power to monitor	Not applicable	Not applicable

					managers as supervisory board in spółka z o.o.		
Spółka komandytowo-akcyjna (*) (Mixed limited and joint stock company)	General partner No Shareholders Yes	100 thousand zloty	2	1	Supervisory board	-	share

(1) – in a spółka z o.o. the supervisory board and/or audit board may (but not necessarily has to) be nominated; if the spółka has more than 50 partners and the share capital exceeds zloty 25 thousand, a supervisory board has to be established. In the new draft of the Code of Companies those thresholds are changed – 25 partners and zloty 1 million of capital.

(2) in case when the founder is the state or the commune, the brokerage house, investment fund society etc. spółka akcyjna may have one founder (shareholder). In the new draft Code of Companies the regulations will have a more liberal character – a company will be able to have only one founder without regard to the nature of that person.

(3) The New Code of Companies assumes an increase of that amount to zloty 50 thousand.

(4) The New Code of Companies assumes an increase of that amount to zloty 250 thousand.

(5) A joint stock company must have a supervisory board (in contrast to a spółka z o.o. which may have a supervisory board) or an audit board. A company with a capital higher than zloty 500 thousand should have a supervisory board (and not e.g. an audit board). The New Code of Companies assumes the existence of the supervisory boards in all joint stock companies.

Source: Authors' own analysis

Table 2. Comparison of the existing and proposed new regulations stipulated in the Company Law

Spółka z o.o. (limited liability company)

<i>Commercial Code of 1934 (Kodeks Handlowy)</i>	<i>Draft Company Law (Kodeks spółek handlowych)</i>
General Structure of a Company	
Limited liability companies may be established in business purposes only.	Spółka z o.o. (limited liability company) may be established in any legally accepted purpose
Minimum equity capital should amount to PLN 4 thousand. The minimum face value of a share should be PLN 50.-	The minimum share capital is going to amount to PLN 50 thousand. The minimum face value of a share is PLN 500.-
Types of shares and their transfer	
Special benefits may be assigned to shares; they may consist in establishment	

<p>of a more favourable relation than one resulting from proportional assignment of</p> <ul style="list-style-type: none"> - profit, - number of votes max. 1:5, - pre-emption rights, 	<p>Privilege concerning the votes should not exceed three votes per one share The preferred share may be assigned a dividend, which would exceed the dividend assigned to an ordinary share by not more than a half.</p>
Supervision	
<p>If the company has more than 50 partners, and the equity capital exceeds PLN 25 thousand, then a supervisory or an audit board should be established.</p> <p>The resolutions of the supervisory board and the audit board may be adopted if all members were invited at the meeting. Resolutions are adopted with a majority of votes of the members present, unless the charter of the company stipulates otherwise.</p>	<p>The thresholds have been raised: The supervisory board or an audit board have to be nominated in a company with a capital > PLN 1 million and there are more than 25 partners (shareholders).</p> <p>Resolutions of supervisory board are adopted with a simple majority of votes cast if at least half of its members is present at a session (and all members have been invited). The charter of the company may stipulate stricter conditions concerning the quorum.</p>
Assembly of Partners	
<p>The resolution of the general assembly is needed in the following matters:</p> <ul style="list-style-type: none"> - approval of the balance sheet and profit and loss statement - any proceedings concerning claims for settlement of damage that emerged in connection with the establishment of the company - sale and letting out the company - buying or selling real estate (unless the charter of the company stipulates otherwise) <p>Resolutions concerning the change in the charter of the company, including change in the range of company activities, merger, dissolution or sale of the company are adopted with a majority of 2/3 of the votes cast. The charter of the company may establish stricter conditions of adopting resolutions.</p>	<p>The resolution of the assembly of partners is required in case of selling the company, buying and selling real property, and in a case of sale of part of a company (e.g. a production plant).</p> <p>The issuing a debt that exceeds twice the value of equity capital requires a resolution of the assembly.</p> <p>Resolutions on changes in the range of company activities are adopted with a majority of ¾ of votes cast.</p>
Joint stock company (Spółka akcyjna)	
<i>Kodeks Handlowy (Commercial Code of 1934)</i>	<i>Kodeks spółek handlowych (draft Company Law)</i>
General Construction	
<p>A joint stock company may be established by at least three founders, unless it is established by the state or a municipality.</p>	<p>A joint stock companies may be established by a any single person</p>

The equity capital should amount to at least PLN 100 thousand.	The equity capital should amount to PLN 250 thousand. If this regulation is adopted the companies will have three years to adjust to the new rules.
Types of Shares	
<p>Voting privilege may be assigned to a registered share only. The Code limits the privilege to max. 5 votes to 1 share, a privilege in dividend may not exceed two units above average discount rate of the National Bank of Poland.</p> <p>Bearer (ordinary) shares are tradeable without any restrictions. Restrictions may be imposed, however, on registered shares only. The statute of the company may subject the sale of registered shares to the approval of the company or limit it in another way: e.g. by indicating features of the potential buyer, making the sale conditional upon the approval of the third person, establishment of pre emption right.</p> <p>On behalf of the company the managing board gives approval to sale, the statute may grant this right to the supervisory board or the assembly of shareholders. If the company refuses to issue the approval for sale of a registered share it should indicate the buyer.</p>	<p>It will not be possible to assign more than two votes to one registered share, the state treasury would be able to have not more than 5 votes.</p> <p>Preferred shares with privileges concerning the dividend (to which the voting right is assigned) cannot grant the owner a dividend, which exceeds by more than a half the dividend due to ordinary shareholders.</p> <p>The new code introduces a new type of share: preferred share without a voting right (tacit share)</p> <p>The voting right may be denied only in case of a registered share with a dividend privilege.</p> <p>No changes</p>
Managing Board	
<p>Unless the statute stipulates otherwise, the members of the managing board are elected by the general assembly.</p> <p>Members of the managing board may be dismissed at any time.</p>	<p>Unless the statute stipulates otherwise, the members of the managing board are nominated and dismissed by the supervisory board.</p> <p>The right to dismiss may be limited in a statute only to dismissal due to important reasons</p> <p>If the supervisory board does not accept the decision of managing board (and</p>

	<p>this decision needs acceptance to be valid), the latter may appeal to the general assembly to get the approval .</p> <p>Resolutions of the managing board are adopted with a simple majority of votes, unless statute stipulates otherwise. The statute may give the President a captive vote.</p>
Supervisory Board	
<p>The company should have a supervisory board or an audit board, or both.</p> <p>The supervisory board is made of at least 5 members elected by the general assembly of shareholders</p>	<p>The institution of the audit board is abolished – every joint stock company should have a supervisory board.</p> <p>The supervisory board is composed of at least 3 members elected by the general assembly. The member of the supervisory board may be dismissed at any time. The right do dismiss member of supervisory board may be limited in the statute to dismissal due to important reasons only.</p>

Source: Authors' own analysis

Table 3. Business entities registered in Poland according to principal types and branches of activity (data as per 31.12.1999)

Sector	Total	State owned enterprise	Commercial Law companies	Partnerships	Cooperatives	Foundations	Associations and organisations
Total	621714	2599	146859	288956	19328	4906	33943
Agriculture, hunting and forestry	15114	42	3052	3319	3526	-	2434
Fishing and fishing grounds management	495	3	125	350	11		
Mining and quarrying	886	46	562	271	7		
Manufacturing	79504	1077	31723	43825	2312	1	2
Construction	45385	494	17464	25935	920	-	7
Retail and wholesale trade	194489	327	52682	137126	3544	-	-
Hotels and restaurants	16669	15	2635	13609	41	1	
Transport, storage and communications	19620	344	6533	12106	276	1	1
Financial intermediation	6988	1	2363	2987	1361		3
Real estate management	97528	221	23298	31685	7037	2	11
Education	29001	-	1009	2451	38	1	26
Health and social care services	20767	1	1216	6254	69	2	11
Other communal, social and individual services	78851	5	3198	8757	176	4898	27864
Public administration and national defence	14460	-	25	12	-	-	3584

Source: GUS

Table 4. Business entities registered in Poland according to principal types and branches of activity – composition (data as per 31.12.1999)

Sector	Total %	State owned enterprises	Commercial law companies	Partnerships	Co-operatives	Foundations	Associations and social organisations
Total	100	0,4%	24%	46%	3%	1%	5%
Agriculture, hunting and forestry	100	0,3%	20%	22%	23%	-	16%
Fishing and fishing grounds management	100	1%	25%	71%	2%	0,00%	0,00%
Mining and quarrying	100	5%	63%	31%	1%	0,00%	0,00%
Manufacturing activities	100	1%	40%	55%	3%	0,00%	0,00%
Construction	100	1%	38%	57%	2%	-	0,0%
Retail and Wholesale Trading	100	0,2%	27%	71%	2%	-	-
Hotels and Restaurants	100	0,1%	16%	82%	0,2%	0,0%	0,0%
Transport, storage and telecommunications	100	2%	33%	62%	1%	0,01%	0,01%
Financial intermediation	100	0,01%	34%	43%	19%	0,00%	0,04%
Real estate management	100	0,2%	24%	32%	7%	0,00%	0,01%
Education	100	-	3%	8%	0,1%	0,00%	0,1%
Health services and social care	100	0,00%	6%	30%	0,3%	0,01%	0,1%
Other communal, social and individual services	100	0,01%	4%	11%	0%	6%	35%
Public administration and national defence	100	-	0,2%	0,1%	-	-	25%

Source: GUS

Table 5. Business entities registered in Poland according to principal types and branches of activity – breakdown (data as per 31.12.1999)

Sector	Total %	State owned enterprises	Commercial law companies	Partnerships	Co-operatives	Foundations	Associations and social organisations
Total	100	100	100	100	100	100	100
Agriculture, hunting and forestry	2%	2%	2%	1%	18%	-	7%
Fishing and fishing grounds management	0,1%	0,1%	0,1%	0,1%	0,1%	0,0%	0,0%
Mining and quarrying	0,1%	2%	0,4%	0,1%	0,0%	0,0%	0,0%
Manufacturing	13%	41%	22%	15%	12%	0%	0%
Construction	7%	19%	12%	9%	5%	-	0%
Wholesale and retail trade	31%	13%	36%	47%	18%	-	-
Hotels and restaurants	3%	1%	2%	5%	0%	0,02%	0,00%
Transport, storage and telecommunications	3%	13%	4%	4%	1%	0,02%	0,00%
Financial intermediation	1%	0%	2%	1%	7%	0,00%	0,01%
Real estate management	16%	9%	16%	11%	36%	0,04%	0,03%
Education	5%	-	1%	1%	0%	0,02%	0,08%
Health service and social care	3%	0,04%	1%	2%	0%	0,04%	0,03%
Other communal, social and individual services	13%	0,19%	2%	3%	1%	99,84%	82%
Public administration and national defence	2%	-	0,02%	0,00%	-	-	11%

Source: GUS – Structural changes in groups of entities of national economy in 1999. p. 20

Table 6. Commercial law companies according to legal status and activity (as per 31.12.1999)

Sector	total	joint stock	limited liability	general partner- ships	limited partnerships
Total	146859	7566	138109	837	347
Agriculture, hunting and forestry	3052	55	2981	13	3
Fishing and fishing grounds management	125	3	121	1	-
Mining and quarrying	562	72	488	2	-
Manufacturing	31723	2402	29135	150	36
including					
<i>production of food and beverages</i>	4325	430	3868	22	5
<i>garment industry</i>	2066	82	1973	9	2
<i>wood and wood products</i>	2398	90	2295	9	4
<i>Editing and publishing activities</i>	3318	163	3113	30	12
<i>Production of raw materials from other non-metallic raw materials</i>	2454	205	2239	9	1
<i>Production of metal finished products</i>	3023	158	2852	11	2
<i>Production of machinery and equipment</i>	2743	253	2478	9	3
<i>Furniture</i>	1942	104	1824	13	1
Construction	17464	1012	16317	114	21
Wholesale and retail trade	52682	1660	50569	337	116
Hotels and restaurants	2635	64	2559	8	4
Transport, storage and telecommunications	6533	257	6238	33	5
Financial intermediation	2363	644	1709	6	4

Real estate management	23298	1043	21956	149	150
Education	1009	32	974	2	1
Health service and social care	1216	37	1170	8	1
Other communal, social and individual services	3198	148	3031	13	6
Public administration and national defence	25	6	19	-	-

Source: GUS

Table 7. Share of various legal forms in the group of 500 largest Polish companies

Legal form	No. of entities among "500"	Percentage share in revenue of all activities of the whole "500"	Share in employment of the whole "500"	Median of total revenue	Mediana zatrudnienia
Joint-stock companies	361	77,9	60,5	427,2	1015
Limited liability companies	104	12,4	6,8	281	508
State owned enterprises	18	8,7	31,7	580,5	2475
Partnerships	4	0,3	-	-	-
Co-operatives	4	0,2	0,3	242	858
Total (*)	491	100	100	-	-

Source: Lista 500 najwęższych przedsiębiorstw (List of 500 largest enterprises), Rzeczpospolita, 21 April 2000.

(*) nine enterprises were of unknown legal status