

Poland

Summary of Current Shareowner Rights

Percentages cited reflect information gathered by GMI about 14 companies in Poland as of 15 May 2008.

Shareowners in the Polish market have generally strong shareowner rights. For example, shareowner resolutions at general meetings have binding rather than mere advisory power. Also, Polish companies have dual board structures, with the functions of management and board members separated. Although the members of supervisory boards are usually elected for a term of longer than one year, in practice, boards seldom have a staggered structure, and their members can be removed at any time by majority of votes cast. Board members may be removed only by shareowners, not by the board; the board also is prevented from unilaterally altering the company's constituent documents (e.g., articles or bylaws).

Issue	Current Standard or Usual Practice	Level of Practice Adoption, Exceptions to Usual Practice, and Trends (if any)
What is the average percentage of independent board members on public company boards (% independent board members)?	40%	
What percentage of companies report significant related-party transactions (1% of revenue or more) within the last three years?	14%	
What percentage of publicly traded companies have a controlling shareowner (e.g., family, government, majority block holder)?	71%	
Is voting by proxy permitted?	Yes	Always allowed
Must shares be deposited or blocked from trading in order to vote?	Yes	7 days before the meeting (but following the 2007/36/EC Directive of the European Parliament, this requirement is expected to be abolished by August 2009)
Are there share ownership limitations in this market?	Mostly, no	Share ownership limitations are not common, but do apply in sensitive industries, such as aviation, media, and energy. Articles of association may also impose a limitation on shareowners representing more than 20% of votes.
Are there [other] common restrictions on the rights of shareowners to vote in person or by proxy?	No	Proxy voting is unrestricted.
Do companies adhere to a majority voting standard in the election of board members?	Yes	This practice is standard in Poland.

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Do companies allow for cumulative voting in the election of board members?	Yes	Shareowners controlling at least 20% of the company's shares may require the general meeting to elect all supervisory board members in groups. Also, when looking at the supervisory board, each director can be seen to represent a proportion of the supervisory board (e.g., if there are 10 supervisory board members, each represents 10% of the supervisory board). In Poland, if a shareowner holds a percentage of shares equivalent to that representative portion, that shareowner may elect the corresponding number of supervisory board members (in the example cited that would equal one seat for every 10%).
Are shareowners able to affect a company's remuneration policy through shareowner approval (binding or nonbinding) of the remuneration committee report, the proxy's Compensation Discussion and Analysis section, or otherwise?	Yes	Shareowners are required to vote annually on formal approval of management board actions, the management report, and annual financial statements. The requirement includes discussion of compensation and data in the management report. The bylaws may also specify if and to what extent the general meeting can be directly involved in remuneration policy.
Are shareowners able to affect remuneration policy through binding shareowner approval of specific equity-based incentive plans or otherwise?	Yes	This practice is standard in Poland.
Are shareowners permitted to introduce dissident resolutions (binding or nonbinding) at an annual meeting?	Yes	This right is standard.
Do shareowners have a right to convene a general meeting of shareowners outside the annual meeting process (e.g., an extraordinary general meeting or special meeting) if only 10% or less of the shares are represented in the group requesting the meeting?	Yes	A minimum of 10% is the general rule, but the articles of association may allow for a lower threshold.

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What percentage of companies include golden shares in their capital structure?	0%	Polish law gave the government special rights in 2005, although not strictly golden shares, to veto certain key management and shareowner decisions in a limited number of companies operating in the energy, mining, telecommunication, and transportation sectors. The key criteria are public security and market share. Each year, in September, the government publishes the list of companies affected. Among the 17 companies on the list first published in September 2007 are PGNiG, PKN Orlen, Grupa Lotos S.A., KGHM, and Telekomunikacja Polska.
Are shareholder rights plans (poison pills) allowed in this market?	Yes	Poison pills are not common, however, because of concentrated ownership in this market.
If shareholder rights plans are in use, do they have to be approved by shareowners?	Yes	
Do all shareowners have the right to approve significant company transactions, such as mergers and acquisitions?	Yes	This right is a legal requirement in Poland.
Do companies require a supermajority vote to approve a merger?	Yes	A 75% vote is required to change the articles of association, lower shareowners' equity, liquidate shares, sell an operational subsidiary, or liquidate the company.
Are companies subject to a fair price provision, either under applicable law or as stated in company documents (such as the charter or bylaws)?	Yes	
Are class action suits commonly used in this market?	No	Class action suits do not exist in Polish law.

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Are derivative suits commonly used in this market?	Yes	Derivative actions may be filed against controlling parties and management to protect the interests of the company and the shareowners. Shareowners may also initiate legal action to seek invalidation of company resolutions through the courts if a resolution violates the Commercial Company Code or the articles of association, is contrary to the commercial integrity of the company, is against its interests, or violates shareowner rights. Before initiating such legal action against a resolution, a shareowner (representing any portion of the company's share capital) must first vote against the resolution and then demand that the vote against the resolution be recorded in the minutes.

Current Engagement Practices and Shareowner Rights Developments

Poland, which began the transformation from a state-owned to a capital market economy in the 1990s, has a relatively young but well-organized and regulated capital market. Therefore, the conditions for shareowner engagement in Poland are reasonably mature for an emerging market. If a company's resolution violates the Commercial Company Code or the articles of association, is contrary to the commercial integrity of the company, is against its interests, or violates shareowner rights, the shareowners may initiate legal action to reverse the resolution. Shareowners must vote against the resolution in question and demand that it be recorded in the minutes in order to initiate legal action; there may be sanctions for filing frivolous claims. Derivative actions may also be filed against controlling parties and management to protect the interests of the company and the shareowners.

Although some lawsuits have been initiated by shareowners in Poland, the signs of broader shareowner activism are less noticeable than in most developed markets. So far, few significant shareowner actions have been initiated by organizations representing market participants. There may be several reasons for this: the lack of classic takeover prevention mechanisms in companies (such as poison pills, fair price provisions, stakeholder clauses); the general rule of majority election and recall of board members granted directly to shareowners; the moderate spread between the compensation of top managers and that of the rest of the company's employees; the significant state ownership position in some of the companies with the largest capitalization; and the two-tiered board structure, with separated management and supervisory board functions.

Board members may be removed without cause but only by shareowners in a general meeting. The board cannot remove a board member. The supervisory board members are elected or removed by majority vote. Although the formal term of the board of directors may be as long as five years, the supervisory boards are usually subject to election on a periodic basis. In companies with significant state ownership, because of recent political changes, supervisory board membership has tended to change more frequently than annually.

Polish companies are subject to continuous disclosure rules and, apart from regular one-on-one investor relations presentations, cannot make selective briefings to certain shareowners.

Polish companies generally do not implement voting rights limitations; such limitations are imposed on foreign investors, however, for some companies in strategically sensitive industries. Shareowners can set up voting limitations by amending bylaws and capping voting power for shareowners controlling 20 percent or more of the shares.

Legal and Regulatory Framework

Key shareowner rights in Poland are contained in four documents: the Commercial Company Code; the Civil Code, which embodies most corporate laws and takeover provisions affecting Polish companies and constitutes a broad legal framework; the Act of Trading in Financial Instruments (Trading Act); and the Act on Public Offering, Conditions Governing the Introduction of Financial Instruments to Organized Trading, and Public Companies (Public Offering Act). These laws define the rules, conditions, rights, and obligations of entities engaged in trading securities and other financial instruments, including obligations that accompany the acquisition of significant stakes in public companies. The Trading Act and Public Offering Act are administered by the *Komisja Nadzoru Finansowego* (Polish Financial Supervision Authority or PFSA), which has wide-ranging enforcement powers. The PFSA may also become involved in listing issues if criminal enforcement becomes a possibility in that arena. The rules of the *Giełda Papierów Wartościowych w Warszawie* (Warsaw Stock Exchange or WSE) contain disclosure and key market regulations. Furthermore, after broad consultations with companies, market participants, and the authors of the so-called Gdansk Code (corporate governance code), the WSE published a Polish corporate governance code, *Dobrych Praktyk Spółek Notowanych na GPW* (“The Best Practices of WSE Listed Companies”). Although adherence to most sections of the code is voluntary, Polish companies are required to report and explain noncompliance with particular articles in the code (i.e., a “comply or explain” system).

A number of mechanisms are in place in Poland to ensure that shareowners’ rights are secure, and Poland has endeavored to adhere to European Union directives in this area, both before and after becoming an EU member in 2004. The one share, one vote principle is fully implemented in all public companies in Poland. Shareowners also have strong rights when it comes to calling meetings outside the annual general meeting. An extraordinary general meeting of shareowners may be called, or a shareowner proposal may be filed, by shareowners representing a minimum of 10 percent of shares. A lower threshold may be allowed by a company’s articles of association. Amendments to the articles of association may be made only by a qualified majority of at least 75 percent of the votes cast. Finally, shareowners holding at least 5 percent of a listed company are entitled to appoint an ad hoc auditor to investigate when shareowners suspect company irregularities.

Shareowner proposals must be filed with the company’s management at least four weeks prior to a scheduled general meeting. Shareowners also must block shares for a minimum of seven days before the meeting.

Following the 2007/36/EC Directive of the European Parliament, Polish regulation concerning organization and participation in shareowner meetings is expected to change. Shareowners will no longer be required to deposit and block their shares in order to participate in a meeting, general meetings may be conducted online, and online or mailed submission of shareowner proposals may be permitted.

Key organizations with information relevant to shareowner rights in Poland include the following:

Komisja Nadzoru Finansowego (Polish Financial Supervision Authority) (www.kpwig.gov.pl)

Giełda Papierów Wartościowych w Warszawie (Warsaw Stock Exchange) (www.gpw.pl) and (www.corp-gov.gpw.pl)

Polish Association of Brokers and Investment Advisors (www.zmid.org.pl)

Polish Individual Investors Association (www.sii.org.pl)

Gdansk Institute for Market Economics (www.ibngr.edu.pl)
Polish Forum for Corporate Governance (www.pfcg.org.pl)
Centrum Analiz Społeczno-Ekonomicznych (Center for Social and Economic Research)
(www.case.com.pl)
Centrum Etyki Biznesu (Business Ethics Centre) (www.cebi.pl)
Forum Odpowiedzialnego Biznesu (Responsible Business Forum) (www.odpowiedzialnybiznes.pl)
Polski Instytut Dyrektorów (Polish Institute of Directors) (www.pid.org.pl)
Polish Bank Association (www.zbp.pl)
Krajowy Depozyt Papierów Wartościowych S.A. (National Depository for Securities)
(www.kdpw.com.pl)
Narodowy Bank Polski (National Bank of Poland) (www.nbp.pl)
Ministerstwo Finansów (Ministry of Finance) (www.mf.gov.pl)
Ministerstwo Skarbu Państwa (Ministry of Treasury) (www.mst.gov.pl)
Ministerstwo Spraw Zagranicznych (Ministry of Foreign Affairs) (www.msz.gov.pl)
Ministerstwo Gospodarki (Ministry of Economy) (www.mg.gov.pl)
Polska Agencja Informacji i Inwestycji Zagranicznych S.A. (Polish Information and Foreign
Investment Agency) (www.paiz.gov.pl)