

AIDA Questionnaire on the Corporate Governance of Insurers World Congress, Rio, 2018

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I. General

- 1. In your jurisdiction, what corporate governance models are available to insurance companies? In case multiple models are available, describe the main differences and the allocation of management and monitoring powers among the relevant bodies/committees and which model is generally or ideally adopted by insurance companies.**

At the level of binding legal provisions there is no common corporate governance model available for all types of companies – there are only particular provisions referring to some issues of corporate governance (e.g. some basic rules on relation among board of directors and the company are in the Code of Commercial Companies and Partnerships).

As regards insurance companies the Act of Insurance and Reinsurance Activity (the “**AIRA**”) implements requirements of the EU Solvency II Directive, that includes requirements with respect to the system of governance. Those requirements are specified in more detailed way in the AIRA (e.g. some conditions to be met by members of bodies of insurance companies as well as by other key personnel). Such model is to be adopted by all the insurance companies - the principle of proportionality applies - and is monitored by the Polish Financial Supervisory Authority (the “**PFSA**”) that may take supervisory measures in case of non-compliance.

There is also additional model adopted by the PFSA by means of general recommendation, which applies to all supervised entities (within the whole financial market). Some of those rules are similar to provisions of the AIRA (requirement to introduce organizational structure) while others are completely new (introduction of whistle-blowers or a relation between a company and its shareholders). Those recommendations apply on “comply or explain” basis.

Those insurance companies that are listed at the stock exchange (actually a few only) are also subject to good practices of corporate governance adopted by the Warsaw Stock Exchange. The “comply or explain” rule applies.

There are also separate internal standards in some capital groups, but these constitute internal regulations.

- 2. What are the main sources of regulation addressing corporate governance of companies (and in particular of insurance companies)? e.g., statutes, regulations, other rules/recommendations issued by national and supranational supervisors/regulators, self-regulation, codes of best practice, codes of ethics.**

As explained above there are a few levels of sources of corporate governance

rules:

- 1) Legal provisions,
- 2) General recommendation of the PFSA,
- 3) Resolution of the Board of the Warsaw Stock Exchange,
- 4) Articles of association and internal rules in companies,
- 5) Internal rules applicable in a capital group of certain companies.

3. In your jurisdiction, are you aware of any insolvency or distress of an insurer directly attributable to poor corporate governance standards or practices or failure to adequately implement and apply such principles? If so, please identify the main triggers of the insolvency.

We are not aware of such cases. There have been no cases of insolvency of insurance companies in Poland for about 20 years.

4. In your jurisdiction, is corporate governance regulation applied according to the nature, scale and complexity of an insurer's business? If yes, please describe any significant differences and rationale for the differences.

Yes, the principle of proportionality applies. Such principle is based on the nature, scale and complexity of activity of an insurance company and risks connected with activity of such a company. It allows companies with e.g. small portfolios and consequently with smaller risk attached to bear smaller costs of the implementation of system of governance.

5. Please provide specific examples of corporate governance structures and practices that are better implemented through self-regulation rather than through legal or supervisory requirements.

We cannot provide such examples. Relations between the company and its main shareholders may be seen as better to be left to self-regulation. It is enough to have only basic rules at regulatory level (e.g. the power of supervisory authority to react in case of conflicts).

6. In case your jurisdiction was recently requested to implement domestically certain corporate governance principles set forth by supranational regulations, describe the main obstacles and problems (if any) that resulted from such process.

From the beginning of 2016 insurance companies are obliged to have system of governance introduced as required by EU Solvency II Directive. Most problems are the result of qualitative nature of those requirements (they refer to adequate solution adopted by insurance companies) as well as the application of principle of proportionality in particular cases (what is the extent of possible non-compliance, in particular in case of smaller companies).

7. Are there any significant differences between general corporate governance rules and the specific rules governing insurance companies?

No, basic rules are common in the whole financial market.

II. Fitness and Propriety of Board Directors

1. Are there any laws or regulations already adopted or any proposals in your jurisdiction, relating to the qualification and composition of board directors in an insurance company? If so, please explain.

There is quite a complex system of requirements with long history of development. Such requirements in relation to the members of the Management Board of the insurance company include: (i) clean criminal record, (ii) higher education, (iii) relevant experience related to managing functions in relation to the half of the members of the management board) and (iv) good repute (fit and proper). Similar requirements apply to the members of the Supervisory Board of an insurance company, except for that the higher education requirement does not apply.

Also, in relation to the Management Board members of the insurance company: (i) at least half of the members of the Management Board including the President of the Management Board and member of the management board responsible for risk management has a confirmed knowledge of Polish language, (ii) at least of half of the members of the Management Board including the President of the Management Board and member of the management board responsible for the risk management has relevant experience in management of the insurance company, (ii) appointment of two members of the Management Board including the President of the Management Board and member of the management board for the risk management has been appointed upon a consent of the PFSA.

It is possible that the PFSA waives some of the above requirements in certain situations. Also, most of the above requirements apply to the persons performing key functions in the insurance companies.

2. In your opinion, what factors, conditions, or incentives might weaken the independence of the board of directors or individual members of the board?

Expectations of main shareholders, in particular if they are expectations within a short period of time and profit concentrated only.

3. How does an insurance company ensure that individual board members and the board collectively have enough knowledge to monitor and oversee the activities of the insurer appropriately, particularly where specific expertise is needed?

The system of governance introduced in accordance with EU Solvency II Directive is quite complex and includes not only requirements addressed to members of board of directors but also other key personnel as well as internal regulations on reporting. Those measures support members of board of directors in performing their duties. Even if due to limited number of the members of board of directors they may not have all the expertise needed, they may refer to knowledge and experience of other key persons that are also subject to verification by the supervisory

authority.

Information on the changes in the composition of the Management Board or a Supervisory Board as well as the persons performing Key Functions is provided to the PFSA together with documents and information confirming the legal requirements. It is the PFSA that also monitors whether the members of the above bodies meet the relevant requirements.

4. Are there significant differences in terms of requirements and duties between executive and non-executive members of the board of directors of an insurer?

The members of board of directors are not divided into executive and non-executive. Instead, the Polish law requires insurance companies to have a Management Board (executive functions) and a supervisory board (non-executive functions). There are some differences in requirements, in particular members of supervisory board are not obliged to possess experience in management nor a higher education but on the other hand at least one member of the supervisory board must be independent.

5. In your jurisdiction are there any black letter rules or general principles that enable directors to rely upon external opinions when addressing issues or aspects where specific expertise is needed?

There are no general rules and such situations shall be assessed on individual basis.

6. Describe the extent and scope of supervisors'/regulators' intervention with reference to the qualifications and to the activities of the board of an insurer.

All changes within key personnel must be reported to PFSA. The PFSA can require additional information or documents if it considers it necessary.

In case of the President of the Management Board chairman and the member of the Management Board responsible for risk management the a priori approval of PFSA for appointment is required. PFSA has the right to remove any member from the board if the legal conditions are not met.

Moreover, general powers of the PFSA may apply (e.g. individual recommendations, fines, withdrawal of an insurance license).

Please also see point II.1 of this Questionnaire.

7. Are there any special rules and regimes applicable to the governance of subsidiaries belonging to an insurance group, also in terms of information flows?

Generally the legal provisions require that the capital group to have no obstacles within the group for the need of information flow necessary for the proper supervision. This includes system of governance at the level of the group. There shall be relevant internal regulations concerning that issue.

III. Risk Management

- 1. In your opinion, what is the biggest risk challenge (e.g. regulation, capital standard, pricing, interest rate, cyber, terrorism, etc.) facing the insurance industry today in your jurisdiction?**

In our opinion the biggest challenge that the insurance industry is facing is the regulations that define effect only (or almost only) and leave the applicable measures mostly to insurance companies.

- 2. What specific laws or regulations, actual or pending in your jurisdiction, will present significant implementation risk challenge toward the insurance industry?**

We are of the opinion that the European regulations concerning data protection (GDPR) and the insurance distribution directive (including specific domestic effect of the latter one like using the provisions requiring insurance distributors to act in the best interest of customers as a legal tool in cases when customers are not satisfied with insurance cover conditions in case of insurance event) are a real challenge towards the insurance industry.

IV. Ethics and Corporate Social Responsibility

- 1. Please provide any concrete examples where business ethical standards and/or corporate social responsibility standards have been applied and have changed the behaviors of the insurance company.**

We are not sure if our understanding of the question is correct (whether it applies to a particular case of a singular insurance company or shall it be addressed widely).

We would like to point out the following case: large number of life insurance companies (in cooperation with the Polish Chamber of Insurance – insurance companies economic self-government) agreed with the President of the Competition and Consumer Protection Office to solve the problem of exit charges related to insurance investment products which allowed to avoid many individual cases in courts (only existing contracts were covered, contract withdrawn before were not covered). Under the agreement the previous amount of charges was significantly decreased.

- 2. In your jurisdiction, are there any specific laws or regulations already adopted or any proposals, or any arrangements in place in the governance system, relating to the protection of policyholders' and/or financial consumers' interests?**

Generally the PFSA has the power to issue individual recommendations not only in the case of breach of law but also in the case when interest of clients is jeopardized in different way than violation of the law. Thereby insurance companies shall generally act with respect for such interest. Moreover, under general recommendation of the PFSA the insurance companies shall introduce the system of management of insurance product in order to fit those products to needs of target groups. Upcoming regulations concerning insurance distribution are to require insurance distributors (including insurance companies) to act with respect for the best interest of clients and to propose insurance product fitting

the demands and needs of clients.

- 3. In your jurisdiction, is an insurance company required to produce an annual Corporate Social Responsibility (CSR) report or a Global Sustainability Initiative (GSI) report? If so, what context needed to be disclosed in these reports?**

Poland has implemented the EU Directive 2014/95 on non-financial disclosure by large entities and groups (by means of amending the Act on accountancy). Such regulation requires entities to produce statement on activity including non-financial issues (if it is important for the assessment of development, results and situation of those entities). In case of large entities (generally over 500 employees and 85.000.000 Polish zlotys = 20.000.000 euro of balance sheet) separate non-financial statement shall be produced, including short description of business model, key non-financial effectiveness indicators, description of policy applied with respect to social, labor, environment human rights and corruption counteraction issues (or statement of lack of such policy) and description of procedures for appropriate accuracy in business if applied.

V. Disclosure

- 1. In your opinion, what mechanisms shall be in place or considered in an insurance company to ensure the transparency of its governance structure? (e.g., the articles of association, the organization chart, any existing committees, the major shareholders, the ethical standard, corporate social responsibility, etc.)**

In our opinion, in order to ensure the transparency of the government structure, not only the Articles of Association should be in place (as they are required by virtue of law) but also ethical standards adopted by the insurance company.

- 2. Are there any governance practices that, in your opinion, can best be achieved through disclosure rather than through specific supervisory requirements? Which governance practices should be mandatory for an insurance company?**

First question – at the present moment CSR standards (social, labor, human rights etc.) seems to be better dealt with by disclosure than by a supervisory requirement as they are not of utmost importance for the sound and prudent management of a company.

Second question – we believe the system of governance of the insurance product is presently necessary to make activity meeting the highest standards and thereby shall be mandatory.

- 3. What is the interplay between market abuse regulations and other disclosure/transparency rules applicable to listed insurers and industry specific rules applicable only to insurance companies?**

We do not have practical observations – only a few insurance companies are listed in Poland and as far as we know they had no problems on the basis of market abuse regulations.

VI. Outlook

In respect of the corporate governance of insurers, please describe your criticisms on the system in your jurisdiction, any recommendations for the future, and/or the main challenges which insurance undertakings encountered.

We believe it is too early to provide reasonable assessment as we are only two years after introduction of solvency system based significantly on the grounds of quality of management and risk assessment (many rules are quite new for insurance companies and it is hard to point out strengths and weaknesses).