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Ministry of the Treasury
Poland

1. Ministry of the Treasury - main tasks and responsibility

As the Polish economy undergoes radical changes and the ownership transformation process continues its progress, issues connected with Treasury corporate governance increasingly come to prominence. The notion of corporate governance is defined as a set of activities in which the capital's owner supervises its subordinate entities, as well as his activities concerning those entities' corporate bodies.

Major objectives of corporate governance include:

a) increase of operational efficiency, management effectiveness and market value of Treasury companies,
b) rational management of state assets in order to secure proper functioning of the national economy,
c) effective exercising of Treasury ownership rights to implement economic policies of the state,
d) conducting effective privatisation in order to achieve the target model of the public sector in the economy, preparation of entities for the transformation process,
e) achievement of transparency in companies whose owner is the Treasury, comparable to information standards required for listed companies.

Those goals could be achieved through implementation of the following tasks:

a) implementation of corporate governance forms and procedures which would go beyond the existing legal regulations for companies in which the Treasury holds shares or stakes,
b) appointment of properly prepared supervisory board members in order to secure appropriate functioning of corporate governance,
c) verification and proper selection of management in companies in which the Treasury holds shares or stakes,
d) elaboration and implementation of new monitoring and evaluation standards and mechanisms which would secure supervision and assessment of economic and financial situation in companies in which the Treasury holds shares or stakes, allowing immediate response to all negative developments.

2. State owned assets in Poland

As of 31 March 2005 the State Treasury possessed shares/stakes in 1519 companies. The State treasury was a partial shareholder in 967 companies. In 552 companies the Treasury was the owner of a majority stake (out of which 453 companies were the Sole State Treasury Corporations).

The State Treasury was the owner of 366 operating state-owned enterprises – a specific legal form according to the Act on State Owned Enterprises of September 1981 (for 504 state-owned enterprises legal proceedings were in progress aimed at ending their activities).

According to the data as of June 30, 2004, the value of Treasury assets (together with the value of land in the Agricultural Property Stock of the Treasury and the net value of asset components of the Agricultural Property Agency) is estimated to be over PLN 110 billion, including a substantial portion of assets which will not be privatised.

The status and the condition of Treasury assets that could be privatised are varied. The Treasury has at its disposal a number of poorly performing enterprises and companies which, without capital for investment and technological / organisational modernisation, are threatened by liquidation or bankruptcy, which would consequently lead to a decrease in the value of Treasury assets scheduled for privatisation. Only a small portion of the total volume of assets could be privatised without investment outlays. That means a dilemma: either earlier capital injection and restructuring or shifting the costs of necessary modernisation and market adjustment to potential investors, resulting in a lower transaction price.

3. Institutional arrangements:

Organisation of the Ministry:

In the majority of SOEs and commercial companies with the Treasury share/stake holding the ownership rights are exercised by the Minister of the Treasury, staffed with approx. 800 civil servants. Within the Ministry there are several departments responsible for corporate governance (18 units, each of them consisting of 7-8 employees on average).

Their tasks refer to, i.a., exercising Treasury property rights in companies and entities of different sectors of the economy. They analyse, monitor and report to the Minister of the Treasury on the economic, legal and financial condition of the entities under their supervision. In practise, the employees of the aforementioned units have all the qualifications and experience needed to represent the Treasury in the entities.

Other institutions involved in the management of state owned assets:

Moreover, in a few commercial companies and SOEs, ownership rights are exercised by the Minister of National Defence, Minister of Infrastructure, Minister of the Economy and Minister of Justice, where the specialised units exercise state ownership tasks.

Most of the SOEs are under the supervision of voivods (heads of provinces representing the central government).

It is worth mentioning the operation of two holding companies, **the Industrial Development Agency** (Agencja Rozwoju Przemysłu S.A.) and **the Polish Oil Company** (Nafta Polska S.A.). Both of them are joint stock companies, 100% owned by the Treasury, acting in compliance with the Polish Commercial Companies Code.

The objective of the Industrial Development Agency is to support the process of transformation of Polish enterprises into competitive and efficient entities. The agency assists in corporate restructuring, also plays the role of an active investor, manages the state assets under its supervision.

The main objective of the Polish Oil Company holding is restructuring and privatisation of the oil sector, the heavy chemicals sector and ensuring sustainable growth of these sectors in free market environment. Until now the Polish Oil Company has fulfilled the government programme by the sale of shares/stakes of the four companies (PKN Orlen S.A., DEC LTD, refineries Jedlicze S.A. and Trzebinia S.A.) and creation of LOTOS Group (Gdańsk Refinery, and Southern refineries).

Separation between entities that are responsible for state ownership functions and those that are responsible for regulatory functions

Ownership and regulatory functions are separated in the case of postal, telecommunications services and energy sectors. The Minister of the Treasury is responsible for exercising the ownership functions and conducting privatisation. The Minister of Economy has an overall policy responsibility for the energy sector, whereas the Minister of Infrastructure is responsible for postal and telecommunication sectors. They are responsible for the preparation and implementation of legislation and strategy for the respective sectors. The regulatory functions are undertaken by the President of the Energy Regulatory Authority (URE) and the President of the Office of Telecommunications and Posts Regulation (URTiP).

4. Governance policies

The Treasury, represented by the Minister of the Treasury, acts on the one hand as a shareholder on the market and, on the other hand, it also takes some specific actions connected with management of companies where it holds 100% or over 50% shares or stakes. It means that the State has to reconcile the economic or business interests of companies with the overall state policy. Needless to say, those interests are often contradictory. The Treasury implements its tasks through application of international rules of corporate governance, which are reflected in the Polish law. In connection with Poland's active membership in OECD and development of the Polish capital market, the Ministry of the Treasury decided to prepare a document entitled "Corporate Governance rules in companies where the Treasury holds its shares and in other state legal entities". In that document, the rules for handling corporate governance issues in state-owned companies are specified.

The document is mandatory only for entities, which come under the Minister of the Treasury corporate supervision. Ministry of the Treasury expects that it will inspire other ministries and authorities to work out their own corporate governance rules, based upon biding separate regulations. As a result, provisions of the document will facilitate standardising rules of exercising corporate supervision.

Regulations presented in the document, verified and adjusted to be in compliance with the state economic policy goals, will be subject to changes aimed at effective exercising by the Treasury of all its ownership rights.

Corporate governance rules, proposed in the document, were formulated both on the basis of biding, proven solution in this field, as well as on the new proposals, which are to result in the increase of effectiveness of corporate supervision.

The main channels and means through which the state carries out its ownership functions

The Ministry of the Treasury, acting as any other shareholder according to the Commercial Companies Code, exercises its control and ownership functions over its companies through Supervisory Boards (SB). The SB exercises permanent supervision over the activity of the company in all branches of the enterprise. However, it has no right to issue binding decisions.

Special duties of the SB include examination of the financial statements and annual reports, reviewing profit distribution schemes, reporting to the General Meetings of Shareholders (GMS) on the results of those actions. SBs may inspect every field of the company's activity, demand reports and explanations from the Management Board (MB) and from the company's employees, conduct inspections, as well as examine books and documents. The SB has the right to suspend, for important reasons, members of the MB and to assign members of the SB to perform temporarily duties of suspended MB's members. In such a case, the SB shall immediately take due steps to make MB's composition complete.
In companies where the State is the sole owner, the Ministry of the Treasury performs the function of the General Meeting of Shareholders (GMS) and takes all decisions which, in accordance with the Commercial Companies Code, should be made by the GMS. Following the end of every financial year, the Ministry of Treasury organizes a meeting with members of SOEs boards where it presents the guidelines concerning the way of preparing the financial reports for that year.

State as a minority shareholder

In companies where the State is a minority shareholder, it participates in GMS as other shareholders, according to the rules stipulated in the Polish Commercial Companies Code. In this case the State is represented by the Ministries' officials, who act on the authority granted by the Minister. They receive detailed instructions concerning their vote on all matters, which are the subject of GMS.
In a vast majority of privatised companies (where the Treasury holds minority blocks of shares) the Ministry of the Treasury applies a "hands-off" strategy. It means that the Treasury does not interfere with the operational strategy of majority (strategic) investors unless that strategy violates the privatisation contract. The Ministry carefully scrutinises whether investors fulfil their commitments undertaken in privatisation contracts. This scrutiny is undertaken either through representatives of the Treasury in Supervisory Boards (if it has a sufficient number of shares to nominate its representative) or through reports of auditors. The Ministry enforces fulfilment of investors' commitments through fines or through legal actions.
In some cases the State Treasury has some additional special rights - a 'golden share' granting the Treasury certain privileges in the privatisation agreement, justified in specific conditions of a given project. Most frequently, it is to enable the Treasury to execute effective control over fulfilment of investors' commitments adopted in the privatisation agreement. In many cases it concerns entities whose privatisation requires substantial financial and other investment, ensuring guaranteed employment levels for a specific period, which imposes high expectations towards future strategic investors.
The special rights of the Treasury can, especially, consist in:

- appointment of Treasury representatives to Supervisory Board,
- approval of decisions connected with changes in capital, as well as approval for acquisition or disposal of assets by the company.

Actually, in connection with Poland's EU accession, the Ministry of the Treasury is taking steps aimed at elimination of those special rights of the State in all cases, which are not compliant with the EU legislation.

5. Communication

Communication between the Ministry and the state owned entities

State owned companies are obliged to prepare and submit to the Ministry special quarterly reports, which have to be elaborated in the form specified by the Ministry. Those reports contain the most important information about: the financial situation of the company, remuneration of employees, including members of the MB, financial credibility of the company, potential threats to further existence of the company. Those reports have to be approved by the SBs. The SBs have to include in those reports information on their disciplinary actions taken in relation to the actions of MBs. At the same time, sate owned companies are obliged to prepare and submit to the Ministry of Finance quarterly reports on sureties and guarantees granted. Above that, the companies are obliged to prepare and submit to the Ministry financial reports and other documents which are the subject of approval by GMS in accordance with the MoT's annual guidelines on that subject.

Communication between the Ministry and the public

The Ministry has no obligation to report to the government and the general public on the overall performance of state owned entities. However, each year it prepares an annual report on the condition of state assets which is the subject of parliamentary and government approvals.
State owned companies, like other entities, have to publish announcements required by law in the *Monitor Sądowy i Gospodarczy* (Court and Business Gazette). For example, they are obliged to publish the financial report and auditor's opinion on examination of this report for the last financial year, the resolutions of GMS, the changes in the statutes of the company and all announcements on convening the GMS.

6. Board Issues

Nomination process and composition of the Supervisory Board:

The composition of Supervisory Boards and Management Boards is the subject of some specific rules. First of all, according to the privatisation law, representatives of the Treasury on the SBs can be appointed from among individuals who have passed special examination. Fields of expertise for candidates for Treasury representatives in supervisory boards are as follows: rules of businesses' operation, state aid for enterprises, capital market, Civil code (elements), Commercial companies (establishment, functioning, mergers, splits, liquidation), commercialisation and privatisation, Labour code (elements), role of commercial company's boards (General Meeting of Shareholders, Supervisory Board, Management Board), bankruptcy Law and court conciliation procedures, management of the company, marketing in the company, business plan, accounting and corporate finance, valuation methods, restructuring of the enterprise. Assessment is held in two parts. Those who pass the exam receive a special certificate and are registered in the database of candidates for Treasury representatives in supervisory boards (today we have **44 223** entitled candidates and 4 952 positions in supervisory boards). The names of all current board members nominated by the State are published on the Ministry's webpages.

The State is represented on boards of publicly listed companies only in accordance with the rules specified in the Polish Commercial Companies Code. It means that it can appoint its representatives if it holds at least 20% of authorized capital, unless the statutes provide otherwise (the statutes can grant the right to appoint representatives of SBs also to those shareholders who hold less than 20% of shares). Members of MBs are usually appointed by SBs.
In Treasury companies, employees may designate two fifths of the SB's composition (in food-processing companies one fifth of the SB is designated by employees and one fifth by farmers and/or fishermen). Employees (and farmers/fishermen) retain the right to elect their representatives in the SB after privatisation. In addition, according to the privatisation law, if a company solely owned by the Treasury employs more than 500 employees, the employees are allowed to elect one member of the MB (this provision also relates to companies after privatisation). There are no exceptions to such rules.

In practice, the Treasury proposes to SBs of state owned companies 2 representatives of employees elected by the staff of the company and 3 representatives of the State. The representatives of the State must have an adequate job experience in the field of economy, law, and knowledge of running the day-to-day business of a company. The Ministry endeavours to nominate to every SB one lawyer, one economist and one person with practical experience in the field in which the company operates.
The Treasury does not have its representatives in Management Boards of its companies. MBs' members are appointed by SBs. Recently, a special regulation was passed by the Council of Ministers that obliges SBs to select MBs' members in Treasury companies through competition procedures.

The Ministry of the Treasury specifies the rules regarding the functioning of SBs in the Statutes of companies, which are exactly the same for all state owned companies. There are very precise provisions concerning all competencies of SBs, BMs and GMS. There is also a policy mandating a minimum number of meetings per year – at least one meeting per every 2 months. It’s worth emphasising that in the Polish Commercial Companies Code a minimum number of meetings amounts to 3 times in the course of the financial year.
It is also of note that the Ministry, at least once per year, provides specialist training for SBs’ members in the fields of economy, law and corporate governance issues.

Board members’ remuneration

The remuneration rules for Management Board members are stipulated in the “Law on Remuneration of Persons Managing Certain Legal Entities”. Provisions of that law define the fixed rate of the upper level of MBs' remuneration in state-owned enterprises and commercial companies if the Treasury stake exceeds 50%. In this case MBs' members remuneration shall not exceed 6-times the average wage in the enterprise sector. In the companies that are especially important for the Polish economy, the remuneration may be higher by about 50%. At the same time, remuneration of SBs' members is set at the level of one average wage in the enterprise sector.
In private companies, in fact, the level of remuneration of boards depends on the financial situation of the company and shareholders’ decision in that matter. However, in the largest companies, operating, for example, in the banking sector or in financial services, the level of

remuneration of boards is much higher (even ten times more) than in similar state owned companies.

Evaluation

The MoT carries out regular duty performance evaluation of SBs' members. This evaluation is at the individual level and is carried out quarterly. At the same time, after every financial year, the GMS (whose functions in companies owned in 100% by the State are exercised by the Minister of the Treasury) grants performance approval to members of corporate bodies governing the company. Refusal to grant the approval by GMS is a viable reason to dismiss members of the boards.