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**INDEPENDENT SUPERVISORY BOARD MEMBERS IN POLISH PUBLICLY
TRADED BANKS: PRESENCE AND CRITERIA USED IN CORPORATE CHARTERS
BETWEEN 2006 AND 2017**

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Abstract. The concept of independent board members is an important part of the corporate governance landscape. Existing of this kind of directors should protect a company from being exploited by managers or a majority shareholder. Regardless of the truth or false of this hypothesis it's interesting to investigate what „the independent director” actually means in the terms of real companies. This article presents requirements concerning the status of independent directors in Polish banking sector between 2006 and 2017.

Key words: corporate governance, supervisory board, independent directors, publicly traded banks in Poland, corporate charters

Polish commerce code defines a typical structure of authority in joined-stock companies encompassing three levels of governing bodies with different types of powers. Such a structure in literature is called German model [6, 7]. In this model unlike in others (eg. Anglo-Saxon, Latin or Japanese) [6, 7] there is additional body between shareholders and board of directors

called supervisory board. The rationale behind the introduction of the supervisory board into the corporate governance system points the need to monitor the directors who shouldn't be effectively controlled by shareholders having no time and knowledge to investigate and evaluate firm's performances and activities. The supervisory board groups (or more precisely – should group) a number of professionals who act in behalf of and relieves shareholders in supervision task and constitutes a connection between shareholders and managing body.

Polish system thus encompasses:

1. Shareholders meeting that meets normally yearly to make some key decisions concerning dividends, changing the charter, issuing shares, electing supervisory board members and – if the charter states so – electing board of directors.

2. Supervisory board – body monitoring the way a company is managed by the board of directors elected by shareholders

3. Board of directors – nominated by shareholders or the supervisory board managing team that performs everyday activity of a company.

Both general solutions: one-tier board characteristic to the Anglo-Saxon model and two-tier board existing in the German model suffer from the same mechanism – possible breach of duties by persons managing and monitoring the company. Because in two-tier board both boards' members are elected – directly or indirectly – by the same persons (shareholders), the key question emerges: why the supervisory board members should be more trustworthy than directors or managers? This question can be extended to another one: Who will monitor the monitor? As Gilson noted: „hiring yet another team merely recreates the problem one level removed” [5]. The problem with managers breaking duty of loyalty and duty of care can not be effectively solved by another and another level of monitoring team while they would be connected by source of power and election mode with controlled entity.

This leads us to the concept of independent director – the term widely used in corporate governance literature and encountered in all models of corporate governance. Although there could be many terms assigned to someone generally called an independent director (the independent director, the outside director, the disinterested director) and even made the distinction between different types of directors [3], for the purpose of this paper we will not distinguish different types of „independent” directors. According to the rules published by KNF [8], independent board member's key feature is „lack of direct and indirect links with the supervised institution, members of management and supervisory bodies, significant shareholders and their related entities”. Of course within this general definition many different types of requirements can be formulated. Typically we can expect independent director or supervisory board member can not have any personal or business relations to: (1) managing team members, (2) shareholders (especially big ones), and (3) cooperants.

In banking sector the role of independent directors is exceptional: any none-ethical behaviour of bank officers can harm not only owners of a bank but also its clients and economy's stability. Efficient monitoring performed by skilled and really independent board members can prevent a bank from being exploited by listed above entities and positively affect firms' performances; although *should* doesn't mean *do* [1, 2, 4].

Some Polish publicly traded banks list requirements concerning independent board members in their charters and establish the number of independent board members. Between 2006 and percentage of public banks having regulations assigned to independent board members in their charters increased from 28% to 75% (see table 1). Some of charters have regulation empowering a supervisory board or shareholders meeting to determine independence criteria for board members. Sometimes the charter invokes requirements given by other institutions.

Table 1 – Regulations concerning independent board members in the Polish public banks' charters and bylaws

Year	Number of banks having requirements concerning independent board members in their charters	Number of banks having requirements concerning independent board members in other documents	Number of banks having no requirements concerning independent board members
2006	4	0	10
2009	5	2	8
2017	5	4	3

Six publicly traded Polish banks regulate area of independent board members in different ways, but they use the compositions of similar elements:

1. The number (or percentage) of independent board members (eg. „at least 30 %”, or „at least 2 board members”)
2. The party board members should be independent of (eg. Key managers, shareholders controlling specific share of votes)
3. Forbidden relations to the party (eg. family relations, ownership,
4. Time since the relations are forbidden (eg. 3 years prior to nomination to the board).

Table 2 shows summarize of regulations concerning independent board members in Polish publicly traded banks in 2017.

Table 2 – Characteristics of independence requirements in banks' charters in 2017

Relation with	Type of forbidden relation	Years prior to nomination (typically)
Bank management board	being a top-manager or employee of the bank or its affiliated entity	3-5 years
	earns any form of salary	
	being subordinated to the member of bank's management board in any other company	
	having business relations to management board member	
	being in close personal relations with someone who is subordinated to the member of bank's management board	3 years
Bank shareholders	being a shareholder or a representative of a dominant entity	
	having important relations to the bank's shareholder having specific share in votes	
Bank cooperants	having business relations to bank or its affiliated entity (including being the statutory auditor)	1 -3 years
Other	Being a supervisory board member for 12 years	

Within the last 11 years the average number of requirements concerning independent board members in Polish publicly traded banks increased by about 50%. In 2006 there was 4 to 8 requirements mainly from the group describing relations with shareholders and management

board members. In 2017 a range of requirements hesitates from 8 to 10 and the scope of concerns has been completed by relations with business partners.

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