

*Katarzyna Żak\**

## THE CODE OF GOOD PRACTICE AS AN INSTRUMENT OF IMPROVEMENT OF CORPORATE GOVERNANCE

**O u t l i n e:** Corporate governance is both a requirement and an expression of legal responsibility to the shareholder, market, society and state. Complying with its rules, an organisation protects the interests of the entities involved with it in complex interactions.

In the case of a weak normative approach, organisations use a code of good practice as an instrument of self-regulation.

The article presents the role of the code of good practice in exercising supervision over companies and, based on selected examples, identifies the difficulties in its practical implementation.

**K e y w o r d s:** corporate governance; code of good practice

### INTRODUCTION

In the times of the globalisation of business activity and the pursuit of profit, the management of a modern company faces a significant challenge posed by the necessity to address a wide range of expectations coming from different stakeholder groups. The concept of corporate governance, which has been the subject of research as well as public and scientific discussion for many years, attempts to account for the connections that shareholders, board members and supervisory board members form with the groups

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\* Adres do korespondencji: Katarzyna Żak, University of Economics in Katowice, Faculty of Management, Department of Enterprise Management, ul. 1 Maja 50, 40-287 Katowice, [katarzyna.zak@ue.katowice.pl](mailto:katarzyna.zak@ue.katowice.pl)

of entities that are economically involved with the company. These connections affect both the way in which the enterprise is managed and the rules which define the manner of exercising control and supervision.

One of the important instruments of corporate governance is the code of good practice. It is a document comprising a set of norms, procedures and behaviour models respected and followed by market participants.

The article aims to present the concept and significance of the code of practice as an instrument that allows for the improvement in management processes in a modern company.

The article uses critical analysis of literature and case studies, based on a number of different source materials. It also discusses partial research results obtained within the framework of the research potential 2014 of the Department of Enterprise Management, University of Economics in Katowice.

## 1. DEFINITION AND MECHANISMS OF CORPORATE GOVERNANCE

Governance refers to all actions of governing, imposing bans, commands and other rules aimed at regulating economic processes. It is a tool used to establish economic or corporate order [Klimczak, 2003, p. 117]. It attracts interest from a number of disciplines such as law, micro- and macroeconomics, finance, capital markets, organisational sociology and psychology, finally, management research [Jeżak, 2010, p. 11]. Polish literature offers a number of terms used to discuss processes involved in exercising supervision in commercial companies. Two terms are the most frequent, *nadzór właścicielski* and *nadzór korporacyjny*, yet they both have the same English equivalent, which is corporate governance. Other terms are *nadzór nad działalnością spółek* (eng. supervision of corporate activity), *kontrola nad spółką* (eng. control of the company), *kontrola nad zarządzaniem* (eng. control over management), *ład korporacyjny* (eng. corporate governance) [Zalega, 2000].

One of the most comprehensive approaches defines corporate governance as a network of relations between the management, the board, the supervisory board, shareholders and other interest groups, which forms a structure allowing for the setting of a company's goals, the allocation of funds necessary to fulfill the goals and the monitoring of the results. It can be stated that it is a system comprising the rules and procedures

that guarantee the proper management of a company as they ensure the appointment of suitable managers, who, in turn, have been equipped with the adequate set of rights and responsibilities and who act in compliance with the legislation in force and the interests of all the parties involved [Jarzemowska, 2002, p. 25].

In practice, corporate governance is implemented through a number of mechanisms and institutions that act for better cooperation between particular groups involved in the activities of a company, such as shareholders, managers, employees, suppliers, customers, or a local community, in order to serve the interest of an economic entity. This means that the prime goal of corporate governance is to achieve the effectiveness of a company’s operations by protecting its investors and stakeholders, while at the same time eliminating potential malpractices on the side of dominant shareholders or managers. The institutional framework and mechanisms are the result of economic, historical, social and political constraints, which together have an effect on the behaviour of capital companies and form an important subsystem in the socio-economic system of a given country (Chart 1).

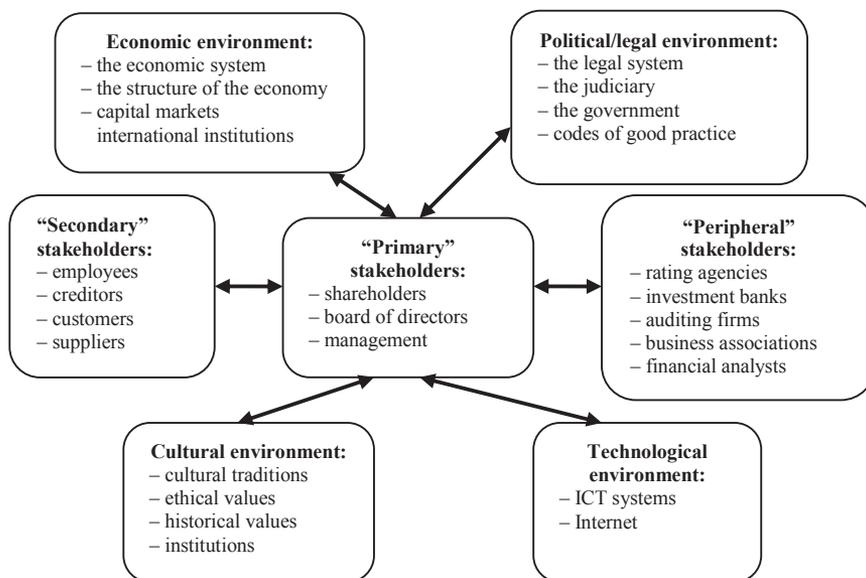


Chart 1. Corporate governance framework

Source: [McCarthy, S.M. Puffer:, 2004, p. 31]

Chart 1 shows a wider perspective of the following mechanisms and institutions of corporate governance: internal control mechanisms (e.g. ownership and voting rights, the board, the supervisory board, capital connections, creditors, internal monitoring, employees), external control mechanisms (e.g. the capital market, the market of corporate supervision, the debt market, the market for managerial talent, the regulatory role of the state, national culture) and motivational and loyalty-building mechanisms, such as remuneration, share options for managers, provisions concerning crediting [Aluchna, 2009, p. 100].

## 2. CODES OF GOOD PRACTICE

The concept of corporate governance is related to many theories, such as systems theory, the theory of the firm, the theory of incomplete contracts and the related theories – agency theory, stakeholders' enterprise, the division of powers in corporate governance, the political approach, the cultural approach, the approach aimed at preventing the abuse of control (supervision) [Mesjasz, 2004]. Many of these theoretical concepts have led to the development of the norms adopted for corporate governance. As a result, one more approach can be identified – a normative approach.

The normative approach in corporate governance can be divided into:

- a strong approach, using legal instruments,
- a weak approach, relying on non-legal methods of regulating stakeholder behaviour, for example codes of good practice.

The key issue in all normative approaches is the choice of criteria based on which the evaluation of corporate governance is conducted in joint-stock companies, which are the dominant form of ownership. In this area, the OECD Principles of Corporate Governance have become an international standard (Table 1) [OECD, 2004].

The principles developed in the OECD document are not obligatory and companies can even ignore either the entire document or its most inconvenient recommendations. A question arises whether the adoption of corporate governance principles (Table 1) makes any sense. Worldwide practice proves that in the long run companies that adopt the principles are better perceived by the markets and considered more reliable in terms of performance. Undoubtedly, reputation is of immense significance in the capital markets. As a result, such companies are rated higher as the ones that protect the interests of their investors, report lower risks and may create more value

for shareholders. According to research conducted in a number of countries (USA, European markets, South Korea), companies acting in compliance with good practices report better financial performance and increase value for shareholders [Aluchna, 2008].

Table 1. OECD Principles of Corporate Governance

Principle	Charakteristics
Preamble (introductory provision)	Shareholder value creation is a primary goal of a company, although a company should also take into account its stakeholders' rights (e.g. employees, creditors).
Ensuring shareholders' rights	Primarily, the right to information and participation in an annual general meeting (relevant notifications delivered in a timely manner, the convenient venue and time of the meeting), the right to influence the issues important for a company (to vote for the appointment of the board members), the right to dividend.
Equitable treatment of shareholders	It is agreed that a company cannot discriminate against the holders of the same series of shares, which in practice involves the protection of the rights of minority shareholders (dividend, information, a representative on the board). This issue also often refers to concept of "one share one vote", i.e. the elimination of preferred shares. However, neither codes of conduct in the countries of continental Europe, nor the OECD principles see the use of preferred shares as constituting a breach of good practice.
Shareholders' participation in corporate governance	It means the cooperation of a company with and respecting the rights of different groups (banks, suppliers, customers, local communities). The actual participation of these groups in decision-making processes or the presence of their representatives on the board is an exception and most actions in this area involve CSR initiatives and exhaustive reports on the company operations.
Transparency	It involves pursuing an open and wide-reaching information policy. In compliance with good practices, companies should disclose information about share ownership, financial performance (statements), the board members and top executives in a company (names, qualifications, experience), the remuneration policy for the management (structure and amounts), loans granted to the board members by a company, transactions of a company and its subsidiaries with its board members, the procedures involving the selection and change of an external financial auditor. All the information should be easily accessible on the investor relations webpage, preferably in a few languages, including English. Additionally, the corporate website should also make other documents available, such as the regulations concerning the annual general meeting, the board and the supervisory board, the prospectus, incentive programmes for managers and employees, a company's declaration on the compliance with good practices.

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Principle	Charakteristics
Recommendations for supervisory boards	They concern the formulation and disclosure of the regulations for the supervisory board, the preparation of voting procedures, the rules of co-operation, in particular the exchange of information with the board and the management and the decision-making process, the development of the procedures for the evaluation of the performance of the board and the supervisory board, the definition of the structure of the supervisory board, the procedure for selecting and changing the financial auditor who audits the company's financial statements.
Other recommendations of good practice	They concern the relations with third parties (e.g. media) and the rules governing mergers and acquisitions (protection of shareholders, share swap ratios).

Source: OECD Principles of Corporate Governance, 2004

Due to the fact that the existing legal systems cannot, in fact, comprise all the issues relating to corporate governance, in many countries the legal regulations have been supplemented with sets of rules, commonly referred to as Codes of Good Practice. They often draw on the OECD guidelines, while at the same time they account for problems specific for local markets [Aluchna, 2009].

Codes of good practice are not adopted as legal acts, but they are treated as “codes of good manners”. Their importance is the result of declarations made by companies operating in a given market and the supervision that is exercised by a relevant stock exchange. A public announcement made by a company that it ceases to comply with these guidelines usually tarnishes its reputation and, as a consequence, adversely affects its share price [Mesjasz, 2004].

The significance of codes of good practice rests with the fact that they are not the rules that are imposed as legislation or other binding regulations, but they are adopted by entrepreneurs themselves or their associations as part of the so-called self-regulatory system.

The presence of the code of good practice in Poland dates back to 2001, when the Good Practices Committee, part of the Warsaw Stock Exchange, initiated the introduction of the corporate governance rules to the Polish market and proposed the implementation of certain recommendations in order to improve the effectiveness of supervision and provide

the framework for the operations of companies, investors and other market participants. The aim was to launch a dialogue between companies, banks, funds, institutions, regulators, brokerage agencies and scientific circles, leading to the formulation of good practices of corporate governance, defining the standards for economic practice for WSE listed companies [Natuski, 2004].

According to Article 5 point 5 of the Act on the Prevention of Unfair Market Practices, the code of good practice is a set of rules of behaviour, in particular ethical and professional norms for entrepreneurs who undertake to act in compliance with them in relation to one or more market practices.

Codes of good practice can be created by the members of a particular industry and they are binding only for these member of a community who expressly accepted them. The control over the observance of the norms stipulated in the code is exercised by the internal body of an organisation that created them.

The act of law does not impose the obligation on entrepreneurs to act in compliance with the code, nor does it intervene in self-regulation exercised by a particular business community, it only provides the legal framework for the creation of codes by defining certain criteria or limitations. The provisions of this act of law promote codes of good practice by evaluating both their compliance with the legislation in force and their enforcement by the internal organs of professional associations [Journal of Laws, 2007; UOKIK].

The already existing codes of good practice reflect constant changes in the area of corporate governance and the emergence of new challenges for business practices of companies. In this respect, in Poland codes of good practice define two major goals:

- to achieve compromise by adopting the rules in cooperation with the companies that are to be bound by them,
- to respond to the most pressing needs of the market and its participants.

In 2012, “Best Practices of WSE Listed Companies” were adopted and the document remains in force until today.

Table 2. Main principles of “Best Practices of WSE Listed Companies”

Section	Characteristics
Preamble	It emphasizes the importance of the Polish capital market for other European capital markets, in particular in Central and Eastern Europe, and the role of corporate governance for initiatives taken by the WSE in this area.
Section I: Recommendations for Best Practices of Listed Companies	<p>They primarily concern the following issues:</p> <ul style="list-style-type: none"> <li>– pursuing an information policy with the use of modern technologies in communication with the market,</li> <li>– ensuring that corporate events related to the acquisition of securities of shareholders should take place on the same dates in all the countries where these securities are traded,</li> <li>– the remuneration of the board and supervisory board members should be determined by the scope of their responsibilities and remain in reasonable proportion to the financial performance of a company,</li> <li>– supervisory board members should act in the best interest of the company and form independent opinions and judgments,</li> <li>– no shareholder can be given preference over other shareholders with reference to transactions and agreements entered by the company with shareholders and their related entities,</li> <li>– a balance proportion of women and men in management and supervisory roles in the company.</li> </ul>
Section II: Best Practices of Management Boards of Listed Companies	They mainly concern the information policy pursued by the board of the listed company, which should operate a website (also in English), where it will publish the most important information affecting the perception of the company by investors, professional CVs of the members of the governing bodies, notices of the time and venue of the annual general meeting of shareholders and its cancellation or changes and breaks in the agenda, annual reports on the activity of the supervisory board, information about corporate events, information about relationships of the supervisory board members, the costs of incentive programmes, the report on the compliance with corporate governance rules.
Section III: Best Practices of Supervisory Board Members;	They require that the supervisory board should submit an assessment of the company’s standing together with the evaluation of the internal control system and the significant risk management system. The supervisory board members should disclose information on their relationships with any shareholder who holds no less than 5% of all votes in the general meeting. They should also attend the general meeting and inform about any conflict of interest that they encountered.

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<b>Section</b>	<b>Characteristics</b>
Section IV: Best Practices of Shareholders.	They concern the issues involved in the presence and participation of shareholders in the general meeting (including enabling shareholders' participation by using electronic communication means), the methods of adopting resolutions at the general meeting, the date of setting the dividend. Additionally, the presence of the media should be allowed at general meetings.

Source: Compiled based on the Appendix to Resolution No 19/1307/2012 of the WSE Supervisory Board dated 21 November 2012.

The recommendations included in the document draw on previous experiences and emerging challenges concerning the market and listed companies. The primary focus lies on increased transparency and improved information policy practices of listed companies, as they can contribute to the successful pursuit of the WSE strategy aimed at the creation of a competitive, innovative and attractive market, which will become the Central European centre of trade in financial instruments.

### 3. THE EVALUATION OF THE ADOPTION OF THE BEST PRACTICES IN WSE LISTED COMPANIES IN SELECTED COMPANIES OF THE CONSTRUCTION INDUSTRY

An attempt to assess the adoption of the codes of good practice in business practice was made based on six selected companies, which are constituents of the WIG BUD index (i.e. companies which were listed in the construction sector and constituted the WIG index on 22 August 2013). The selection criterion was the earning per share achieved by the companies in 2012. Three companies with highest return and three companies with lowest return were chosen: AWBUD S.A. (-64.37%), POLIMEX–MOSTOSTAL S.A. (-61.66%), TEGAS S.A. (-48.53%), ENERGOAPARATURA S.A. (43.08), INSTAL KRAKÓW S.A. (44%), MOSTOSTAL PŁOCK S.A. (44.83).<sup>1</sup>

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<sup>1</sup> The analysis and evaluation of the companies are part of the research project implemented at the University of Economics in Katowice in 2014: "The institutional

Due to the huge amount of information yielded by the thorough analysis of the documents coming from the selected companies, Table 3 shows the results for two chosen entities: AWBUD S.A. (lowest rate of earnings per share) and MOSTOSTAL PŁOCK S.A. (highest rate of earnings per share). The evaluation was made based on the rules of the Best Practices of WSE Listed Companies that were not pursued by the selected companies (Table 3).

Table 3. Best practices of WSE companies not pursued by selected companies, 2013

PROVISION	COMMENT
AWBUD SA	
Section I, Point 5: a remuneration policy for the members of management and supervisory bodies	The company follows the procedure of determining remuneration levels based on average remuneration figures from WSE-listed construction companies.
Section I, Point 12: enabling the shareholders to exercise their right to vote during a general meeting in person or through a plenipotentiary, outside the venue of the general meeting, using electronic communication means.	The Articles of Association of AWBUD S.A. do not permit shareholders to take part in a general meeting using electronic communication means.
Section II, Point 1, Suppoint 9A: a record of the general meeting in audio or video format	The Board of the Company considers the minutes of the general meeting compiled by a notary public in compliance with the provisions of the Code of Commercial Companies to be a document sufficiently conveying the proceeding of the meeting.
Section II, Point 2: the operation of the company website in English	On the website, the Company only posts the English versions of the Articles of Association, the Regulations of the Management Board, the Regulations of the Supervisory Board, the Regulations of the General Meeting. The company has not provided more extensive information in English due to the lack of interest from foreign investors.

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PROVISION	COMMENT
AWBUD SA	
Section III, Point 8: the roles of the committees of the supervisory boards	The Company's Supervisory Board doubles as an audit committee. Neither the Articles of Association nor the Regulations of the Supervisory Board allow for the establishment of other committees acting in the Supervisory Board.
Section IV, Point 10: enabling the shareholders to participate in the general meeting using electronic communication means.	The Articles of Association of AWBUD S.A. do not allow the participation in the general meeting using electronic communication means.
Additional information: Internal control and risk management in relation to the preparation of financial statements and consolidated financial statements.	The Company's financial statements are prepared by the finance and accounting staff under the supervision of the Senior Accountant, approved by the Board and verified by an independent financial auditor appointed by the Supervisory Board. The internal control and risk management systems in the Company are based on the Company's Organisational Regulations and the Accounting Policy drawing on IAS, IFRS and the Accounting Act.
MOSTOSTAL PŁOCK S.A.	
Section I, Point 12: enabling the shareholders to exercise their right to vote during a general meeting in person or through a plenipotentiary, outside the venue of the general meeting, using electronic communication means.	The Company is undertaking steps to adjust technological capabilities in order to implement this recommendation.
Section II, Point 1, Subpoint 5: the operation of the company website and publishing on it, in addition to information required by legal regulation: the basis for proposed candidates for the management board and supervisory board, together with their professional CVs within a timeframe enabling a review of the documents and an informed decision on a resolution.	Candidates for the Supervisory Board are usually announced and presented during the general meeting, which makes it impossible to publish this information prior to the meeting on the company website.

PROVISION	COMMENT
MOSTOSTAL PŁOCK S.A.	
Section II, Point 1, Subpoint 7: the operation of the company website and publishing on it, in addition to information required by legal regulation: shareholders' questions on issues on the agenda submitted before or during the general meeting together with answers to these questions.	The Company's Board does not publish the proceeding of the general meeting, but it publishes the resolutions adopted by the general meeting.
Section II, Point 1, Suppoint 9A: a record of the general meeting in audio or video format	This recommendation is not implemented due to technological capabilities and relatively high costs for the Company. The Company has taken steps to adopt this recommendation in the future.
Section III, Point 6: at least two members of the supervisory board should meet the criteria of being independent from the company and entities with significant connections to the company.	The General Meeting appoints the members of the Supervisory Board and its opinion is decisive in choosing particular candidates.
Section III, Point 8: the roles of the committees of the supervisory boards	The Supervisory Board considers that the Company has an adequate internal control system, which ensures the effectiveness of its operations, and the reliability, completeness and timeliness of financial and management information.
Section IV, Point 10: enabling the shareholders to participate in the general meeting using electronic communication means.	This recommendation is not implemented due to technological capabilities and relatively high costs for the Company. The Company has taken steps to adopt this recommendation in the future.

Source: compilation based on the declarations of the companies on their compliance with the Best Practices of WSE Listed Companies

Based on the detailed analysis of the companies conducted as part of the research project "The institutional analysis of corporate governance in listed companies – the analysis of informal institutions" – stage II and the information presented in Table 3, it should be concluded that:

1. Only one company – POLIMEX-MOSTOSTAL S.A. – declares the adherence to all the rules stipulated in the discussed document.
2. Most frequently, the remaining companies do not comply with the following rules:
  - The disclosure of the remuneration policy for the members of the supervisory and management bodies.
  - Enabling the shareholders to exercise their right to vote during a general meeting in person or through a plenipotentiary, outside the venue of the general meeting, using electronic communication means.
  - The operation of the English version of the company website.
  - The presentation of detailed Professional CVs of the members of the company’s main governing bodies.
  - The preparation and presentation of a brief assessment of the company’s standing, including an evaluation of the internal control system and the significant risk management system, to the annual general meeting by the supervisory board once a year.
  - The rule that at least two members of the supervisory board should meet the criteria of being independent from the company and entities with significant connections to the company.
  - Enabling the shareholders to participate in the general meeting using electronic communication means.
  - The facilitation of the presence of the media at general meetings.

## CONCLUSION

Numerous opinions and the companies’ documents indicate that the idea of good practices and recommendations for the Polish capital market has not been welcomed by many companies. Although, according to the underlying intentions of good practices, improved standards should benefit all market participants, many of them find the idea incomprehensible and treat it as instrumental or as a whim of the Warsaw Stock Exchange. This may be attributed to a number of causes, for example, poor awareness of the significance of corporate governance principles. Furthermore, the adoption and implementation of good practices involve considerable initial costs together with organizational and structural changes, which will enable the accountability concerning the compliance with good practices or the lack thereof.

Finally, it cannot be guaranteed in any way that the steps undertaken by companies in this area will be recognized and rewarded by investors.

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KODEKS DOBRYCH PRAKTYK  
JAKO INSTRUMENT DOSKONALENIA  
CORPORATE GOVERNANCE

**Abstrakt:** Ład korporacyjny jest jednoczesnym wymogiem i wyrazem odpowiedzialności prawnej przed właścicielem, rynkiem, społeczeństwem i państwem. Stosując jego zasady, organizacja zabezpiecza interesy podmiotów będących z organizacją w wielu skomplikowanych interakcjach. W ramach tzw. słabego podejścia normatywnego, wykorzystywany jest instrument w postaci kodeks dobrych praktyk. Artykuł prezentuje rolę kodeksu dobrych praktyk w sprawowaniu nadzoru nad korporacjami oraz na wybranych przykładach wskazuje trudności w jego praktycznym realizowaniu.

**S ł o w a k l u c z o w e:** nadzór korporacyjny; kodeks dobrych praktyk