Sample Independence Verification Form for Supervisory Board Members

Dear Madam/Sir,

We are handing over to you a form prepared by the Association of Independent Non-Executive Directors (the "**Association**") to facilitate the verification of independence of Supervisory Board Members (Non-Executive Directors) of public companies that are public interest entities within the meaning of the *Law on Statutory Auditors, Audit Firms and Public Supervision*. In the Association's view, the participation of independent Supervisory Board Members is one of the key conditions for effective supervision of a company. Therefore, ensuring effective independence is in the interest of all companies, their shareholders and other stakeholders.

Members of the Supervisory Board who have declared that they meet the independence criteria referred to in the *Law on Certified Public Accountants, Audit Firms and Public Supervision,* as well as in the *Best Practice for WSE Listed Companies 2021* and in the *Best Practices for Public Interest Entities on the Principles of Appointment, Composition and Operation of the Audit Committee*, should be subject to annual verification in this regard. This form may be helpful in conducting this assessment. We recommend that the Supervisory Board perform the aforementioned verification before submitting the Supervisory Board's statement on the appointment, composition and functioning of the audit committee, including the fulfilment of the independence criteria by its members, for the purposes of the annual reports referred to in §70(1)(8) and §71(1)(8) *of the Regulation of the Minister of Finance on current and periodic information provided by issuers of securities and the conditions for recognising as equivalent the information required by the laws of a non-member state*. Ideally, this verification should take place in the form of a debate during a Supervisory Board meeting, based on

the annually completed forms. We also recommend that the completion of the verification process materialise in the form of a resolution adopted by the Supervisory Board, which will include an assessment of the fulfilment of the independence criteria by individual independent Supervisory Board Members. This form can also be used by shareholders to verify their proposed candidates for independent Supervisory Board Members.

We draw attention to the *European Commission Recommendation of 15 February 2005 on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board* (2005/162/EC)[1] , according to which *"The determination of what constitutes independence is fundamentally an issue for the (supervisory) board itself to determine.* ***The (supervisory) board may consider that, although a particular director meets all of the criteria laid down at national level for assessment of the independence of directors, he cannot be considered independent owing to the specific circumstances of the person or the company****; and the converse also applies."*

In situations where there is any doubt about the independence of a person, we recommend that such a person be considered as not meeting the independence criteria.

The form shown below is divided into two parts:

- Part I contains basic information about a particular Supervisory Board Member;
- Part II refers to circumstances that may affect independence. Items 1-10 indicate the criteria that derive from *the Act on Auditors, Audit Firms and Public Oversight*. Item 11 cites the independence criterion from *Best Practice for WSE Listed Companies 2021*. The following paragraphs include other circumstances which, in the opinion of the Association, should be considered in the context of assessing the independence of a Supervisory Board Member; the mere fact of a confirmatory answer to the criteria indicated in this section does not determine the status of independence of a Supervisory Board Member. If you provide a confirmatory answer to any of the questions indicated in the form, please describe these circumstances.

I. Data of the Supervisory Board Member

1. Name	
2. Employment[2]	
3. Currently held positions in the bodies of other companies	
4. Related parties of the Supervisory Board Member according to IAS24[3]	
5. Shares held in the Company or its affiliates	

II. Verification of independence

No.	Circumstances that affect the independence of the Supervisory Board Member	YES/NO	Comment
(a) Criteria that derive from the Law on Auditors, Audit Firms and Public Supervision			
1	I am not, nor have been within the last 5 years prior to the date of appointment, a member of senior management, including being or having been a Management Board Member or other governing body of the relevant public interest entity or a related entity[4]	YES/NO	

2	I am not, nor have been within the last 3 years prior to the date of appointment, an employee of the relevant public interest entity or a related entity (except when an Audit Committee Member is a non-senior management employee who has been appointed to the Supervisory Board or other supervisory or control body of the relevant public interest entity as an employee representative)	YES/NO	
3	I do not exercise control within the meaning of Article 3(1)(37)(a-e) of the Act of 29 September 1994 on accounting[5] nor do I represent persons or entities exercising control over a given public interest entity	YES/NO	
4	I do not receive nor have received additional remuneration[6], in a significant amount, from the public interest entity concerned or a related entity, except for the remuneration I receive as a Member of the Supervisory Board or other supervisory or controlling body, including the Audit Committee	YES/NO	
5	I do not have nor have had within the last year prior to the date of my appointment, any material business relationship with the public interest entity concerned or any related entity, either directly or as an owner, partner, shareholder, Member of the Supervisory Board or other supervisory or controlling body, or as a member of senior management, including a Member of the Management Board or other governing body of an entity having such a relationship	YES/NO	
6	I am not and within the last 2 years prior to the date of appointment I have not been: 1) An owner, partner (including a general partner) or shareholder of a current or previous audit firm conducting an audit of the financial statements of the relevant public interest entity or a related entity, or 2) A member of the Supervisory Board or other supervisory or controlling body of the current or previous audit firm auditing the financial statements of the relevant public interest entity, or 3) An employee or senior management person, including a Member of the Management Board or other governing body of the current or previous audit firm auditing the financial statements of the relevant public interest entity or a related entity, or 4) Another individual whose services were used or supervised by the current or previous audit firm or an auditor acting on its behalf	YES/NO	
7	I am not a Member of the Management Board or other management body of an entity where a Member of the Supervisory Board or other supervisory or controlling body is a Member of the Management Board or other management body of the relevant public interest entity	YES/NO	

8	I have not been a Member of the Supervisory Board or other supervisory or controlling body of the relevant public interest entity for more than 12 years	YES/NO	
9	I am not a spouse, cohabitant, relative or affinity in the direct line, and in the collateral line to the fourth degree – of a Member of the Management Board or other governing body of the relevant public interest entity or a person referred to in items 1-8	YES/NO	
10	I am not in a relationship of adoption, custody or guardianship with a Member of the Management Board or other governing body of the relevant public interest entity or a person referred to in items 1-8	YES/NO	
b) Independence criterion from the Best Practice for WSE Listed Companies 2021			
11	I have no real and material relationship with a shareholder holding at least 5% of the total number of votes in the Company	YES/NO	
(c) Other circumstances that should be taken into account in the context of assessing the independence of a Supervisory Board Member			
12	To the best of your knowledge, are there any circumstances that could, even potentially, adversely affect your actual fulfilment of the independence criteria referred to in items 1-11 of this form?	YES/NO	
13	Do you have a real and material relationship with an affiliate of a shareholder holding at least 5% of the total number of votes in the Company?	YES/NO	
14	To the best of your knowledge, do your affiliates have any actual and material relationship with the Company, its affiliates or a shareholder holding at least 5% of the total number of votes in the Company?	YES/NO	
15	To the best of your knowledge, do close members of your family[7] have real and material ties to the Company, its affiliates, or a shareholder holding at least 5% of the total number of votes in the Company?	YES/NO	

16	Are you aware of any conflicts of interest, including potential conflicts of interest, in connection with your position as a Supervisory Board Member?	YES/NO	
17	Do you derive any revenue (including under an employment relationship, civil law contract or business activity) from a shareholder holding at least 5% of the total number of votes in the Company or such shareholder's affiliates?	YES/NO	
18	Prior to your appointment to the Company's Supervisory Board, did you have a personal or professional relationship with any Member of the Company's Management Board or a related entity?	YES/NO	
19	During the last 3 years prior to your appointment or while serving on the Company's Supervisory Board, did you have any significant personal or professional relationship with a shareholder holding at least 5% of the total number of votes in the Company or any related entities?	YES/NO	
20	Are there any other circumstances that may result in the lack of independence of the Supervisory Board Member?	YES/NO	

_____

(signature of the Supervisory Board Member)

Footnotes

[1] https://eur-lex.europa.eu/legal-content/PL/TXT/?uri=CELEX%3A32005H0162.

[2] Employment understood as the main professional activity of a Supervisory Board Member, regardless of the legal form of this activity, including, in particular, an employment contract, managerial contract, contract of mandate or own business or participation in a partnership.

[3] IAS24 - Commission Regulation (EU) No. 632/2010 of 19 July 2010 amending Regulation (EC) No. 1126/2008 adopting certain international accounting standards in accordance with Regulation (EC) No. 1606/2002 of the European Parliament and of the Council as regards International Accounting Standard (IAS) 24; link: https://eur-lex.europa.eu/legal-content/PL/TXT/HTML/?uri=CELEX:32010R0632 for convenience purposes, the definition of related party is provided on the last page of the form. Whenever this form refers to a related party, it should be understood to mean a related party within the meaning of IAS24.

[4] According to the Good Practices on the Principles of Appointment, Composition and Functioning of the Audit Committee, PFSA, 24 December 2019 – for the interpretation of the term "related party", Article 3, paragraph 1, item 43 of the Accounting Act should be applied: **related entities** – means two or more entities that are part of a given capital group; capital group – means a parent company together with its subsidiaries. Whenever this form refers to a related entity, it shall be understood to mean a related entity within the meaning of Article 3, paragraph 1, item 43 of the Accounting Act.

[5] Article 3(1)(37)(a-e) of the Accounting Act

parent company – means an entity that is a commercial company or state-owned enterprise, exercising control over a subsidiary, in particular:

a) holding directly or indirectly a majority of the total number of votes in the subsidiary's governing body, including through agreements with other voting rights holders exercising voting rights in accordance with the will of the parent company, or
b) being a shareholder of a subsidiary and entitled to direct the financial and operating policies of that subsidiary on its own or through persons or entities designated by it under an agreement concluded with other voting rights holders who, under the articles of association or memorandum of association, together with the parent company, hold a majority of the total number of votes in the decision-making body, or
c) being a shareholder of a subsidiary and having the power to appoint and remove a majority of the members of the management, supervisory or administrative bodies of that subsidiary, or
d) being a shareholder of a subsidiary, of which more than half of the composition of the management, supervisory or administrative bodies in the previous fiscal year, during the current fiscal year and until the preparation of the financial statements for the current fiscal year are persons appointed to perform those functions as a result of the parent company's exercise of voting rights in the bodies of that subsidiary, unless another entity or person has the rights referred to in points a, c or e with respect to that subsidiary, or
e) being a shareholder of a subsidiary and authorized to direct the financial and operating policies of that subsidiary, based on an agreement with that subsidiary or the subsidiary's charter or agreement.

[6] Article 129(4) of the Law on Auditors, Audit Firms and Public Supervision

Additional compensation in particular:

1) Includes participation in a stock option allocation scheme or other performance reward system;
2) Does not include the receipt of fixed remuneration amounts under a pension plan, including deferred remuneration, for prior service with a public interest entity in the event that the condition for payment of such remuneration is not continued employment with the public interest entity.

[7] As defined in IAS 24 indicated below

Excerpt from IAS 24 - Definition of a related party

A **related party** is a person or entity related to the entity that is preparing its financial statements (referred to as the 'reporting entity') .

a) **A person or a close member of that person's family is related to a reporting entity if that person:**
(i) has control or joint control over the reporting entity;
(ii) has significant influence over the reporting entity; or
(iii) is a member of the key management personnel of the reporting entity or of a parent of the reporting entity.

b) **An entity is related to a reporting entity if any of the following conditions applies**:
(i) The entity and the reporting entity are members of the same group (which means that each parent, subsidiary and fellow subsidiary is related to the others).
(ii) One entity is an associate or joint venture of the other entity (or an associate or joint venture of a member of a group of which the other entity is a member).
(iii) Both entities are joint ventures of the same third party.
(iv) One entity is a joint venture of a third entity and the other entity is an associate of the third entity.
(v) The entity is a post-employment defined benefit plan for the benefit of employees of either the reporting entity or an entity related to the reporting entity. If the reporting entity is itself such a plan, the sponsoring employers are also related to the reporting entity.
(vi) The entity is controlled or jointly controlled by a person identified in (a).
(vii) A person identified in (a)(i) has significant influence over the entity or is a member of the key management personnel of the entity (or of a parent of the entity).
(viii) The entity, or any member of a group of which it is a part, provides key management personnel services to the reporting entity or to the parent of the reporting entity.

Close members of the family of a person are those family members who may be expected to influence, or be influenced by, that person in their dealings with the entity and include:
(a) that person’s children and spouse or domestic partner;
(b) children of that person's spouse or domestic partner; and
(c) dependants of that person or that person's spouse or domestic partner.

Compensation includes all employee benefits (as defined in IAS 19 Employee Benefits) including employee benefits to which IFRS 2 Share-based Payment applies. Employee benefits are all forms of consideration paid, payable or provided by the entity, or on behalf of the entity, in exchange for services rendered to the entity. It also includes such consideration paid on behalf of a parent of the entity in respect of the entity. Compensation includes:
(a) short-term employee benefits, such as wages, salaries and social security contributions, paid annual leave and paid sick leave, profit-sharing and bonuses (if payable within twelve months of the end of the period) and non-monetary benefits (such as medical care, housing, cars and free or subsidised goods or services) for current employees;
(b) post-employment benefits such as pensions, other retirement benefits, post-employment life insurance and post-employment medical care;
(c) other long-term employee benefits, including long-service leave or sabbatical leave, jubilee or other long-service benefits, long-term disability benefits and, if they are not payable wholly within twelve months after the end of the period, profit-sharing, bonuses and deferred compensation;
(d) termination benefits; and
(e) share-based payment.

Control is the power to govern the financial and operating policies of an entity so as to obtain benefits from its activities.