

THE ACTIVITY OF THE PARENT COMPANY SUPERVISORY BOARD CHAIRMAN IN TERMS OF TRUTH, TIME AND COOPERATION*

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Abstract. The aim of the article is to present the mission of the parent company, the capital group, the supervisory board of the parent company and its chairman. In the author's opinion, chairman of the supervisory board of the parent company is one of the most important part of the chain of corporate governance that is responsible for the appropriate functioning of the capital group with the main business target – the maximization the long-term company's value. The authors have attempt to assess the potential of the chairman of the supervisory board of the parent company in the following areas – truth, time and cooperation.

Keywords: compliance, corporate governance, corporate law, capital group, supervisory board

INTRODUCTION

Issues related to the functioning and organization of the work of the Supervisory Board are a constant inspiration for research [Skuza and Lizak 2018, 51–63; Skuza and Lizak 2020, 549–65]. In this publication our attention is focused on the area of activity of the chairman of the supervisory board in the parent company. There are several reasons for us to address this issue. First of all, we point to the need to supplement the existing knowledge contained in the literature on the subject [Dobija 2011; Postuła 2013; Koładkiewicz 2013; Bilewska 2018]. This publication is another part of our research in the area of compliance and corporate governance. The above-mentioned issues in Poland should be considered as areas under development. Moreover, in the future, the competitive advantage of an organization will depend, to a large extent, on its ability to adapt and use compliance and corporate governance in a dynamically changing environment. Secondly, the chairman of the supervisory board of the parent company seems to be a key link in the corporate governance chain, responsible for keeping the parent company and the entire capital group in compliance with the mission, vision, values, strategy,

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business challenges, risk management and internal control system. Thirdly, we attempted to assess the capacity of the parent company supervisory board chairman in the following areas: 1) making factual findings about the situation in the parent company, its subsidiaries and the capital group; 2) temporary involvement in the function of chairman of the supervisory board of the parent company; 3) cooperation of the chairman of the supervisory board of the parent company with the corporate environment. From our standpoint, it is important to present the chairman of the supervisory board of the parent company in three terms – truth, time and cooperation.

1. THE ESSENCE AND PURPOSE OF FUNCTIONING OF THE PARENT COMPANY AND THE CAPITAL GROUP

The essence of business activity is based on maximizing the long-term shareholder value. The above is the basis for the structure and corporate governance, which together form an integral part of the whole system forming the organization. The achievement of the above-mentioned goal is possible only on the basis of true and reliable information, because fundamentally reliable information used in good time determines the right management decision.

From the literal wording of the definition of the parent company contained in Article 4(1)(4) of the 2000 Commercial Companies Code,¹ it can be concluded that the parent company is a superior company to the subsidiary and has grounds to exert influence on its activity. Therefore, apart from the main purpose of the dominant company's operation, which is to maximize its value, i.e. such as in the case of each company, the dominant company performs an additional task, consisting of conducting the policy of the capital group, *inter alia*, by exerting influence on the activity of subsidiaries.

It should be noted that the CCC not only lacks a definition of a capital group and the legislator has not even used such a notion, but also does not regulate issues related to the operation of holdings in the generally applicable law. In the Best Practice for GPW Listed Companies 2016,² although the concept of a capital group was used three times, it is not sufficient to state that the document recognizes the essence and purpose of the functioning of the capital group. The literature review shows that the essence of the capital group seems to be a formal or informal association of at least two companies in order to exercise control of one company over another in all areas of activity, enabling more effective implementation of a jointly defined economic objective.

¹ Act of 15 September 2000, the Commercial Companies Code, Journal of Laws of 2019, item 505 as amended [hereinafter: CCC].

² See https://www.gpw.pl/pub/GPW/files/PDF/GPW_1015_17_DOBRE_PRAKTYKI_v2.pdf [hereinafter: Best Practice] [accessed: 05.05.2021].

2. THE NATURE AND PURPOSE OF THE OPERATION OF THE SUPERVISORY BOARD OF THE PARENT COMPANY AND ITS CHAIRMAN

In the CCC, solutions have been adopted in the capital company system, to separate the management from the supervision. In view of the above, the management board and the supervisory board are separate bodies of the company with separate competences, and the members of these bodies may not perform functions in them simultaneously. The basic task of the management board is to manage the company and the supervisory board to exercise permanent supervision over the company's operations in all areas of its activity.

The institution of supervision includes two elements, i.e. control as an examination of the compliance of a given proceeding with a given pattern and the possibility to interfere in the decision-making process. Control can be considered as a process which consists of examining the actual state of affairs and its comparison with a given standard or a specific standard of conduct (execution vs. designation), analysis of possible differences and formulation of conclusions. Surveillance should take place on a continuous basis and cover activities already completed, ongoing or planned.

The review of the CCC shows that the provisions concerning the chairman of the supervisory board are not very extensive, as his or her duties include convening a meeting, resolving in the case of equality of votes and opening a general meeting. The Best Practice makes no reference to the function of the chairman of the supervisory board, unlike best corporate practices in other countries such as Belgium, the UK, Austria and Germany. The literature most often indicates that the role of the chairman of the supervisory board boils down to being an administrator, organizer, leader, arbitrator, etc. This cannot be argued against, but we believe that the essence and purpose of the chairman of the board should be identified with similar values in the area of the board. Therefore, the constitutive task of the board of supervisory directors and its chairman is to make factual findings. Therefore, the fundamental task of the supervisory board of the parent company and its chairman is to seek information on the actual state of affairs of the parent company and its subsidiaries, and ultimately to present this information to the general meeting. The sum of summaries, the essence of the functioning of the supervisory board of each capital company and its chairman is to obtain reliable information as soon as possible. From our standpoint, the natural areas which can support the activities of the supervisory board and its chairman are audit, compliance and internal control, which are elements of the three-line defense model. The common feature linking the above-mentioned bodies and units is the essence and purpose of their functioning, i.e. making factual findings.

3. ANALYSIS OF THE ACTIVITIES OF THE CHAIRMAN OF THE SUPERVISORY BOARD OF THE PARENT COMPANY FROM THE PERSPECTIVE OF THE RESPONDENTS – THE QUESTIONNAIRE SURVEY METHODOLOGY

The survey carried out for the purposes of this publication was conducted in two stages. In the first stage, the CCC was reviewed and a set of best corporate governance practices in Poland and worldwide, as well as the literature on the subject. The aim of the above review was to determine the essence of the functioning of a company, a capital group, a supervisory board of both – a company and the capital group, and finally the role of a chairman of the supervisory board in a parent company and in the whole group. The findings of the first stage, important for this publication, were included in the previous part, i.e. the introductory issues. In the second stage, on the other hand, a questionnaire survey was conducted among twelve so-called full-time members of supervisory boards of parent companies, who were given numbers from one to twelve, according to the chronology of filling in the questionnaire. The survey was aimed at gaining knowledge, especially concerning practical aspects.

Due to the subject matter of the study (the activity of the chairman of the supervisory board of the parent company), we decided that in the case of this publication it is appropriate to select a research sample on the basis of their own knowledge of the studied population and the research objectives. Therefore, they decided to use the non-probability sampling. Although we are aware that such selection of the research sample reduces the representativeness of the sample for the entire population of persons acting as chairpersons of supervisory boards of parent companies in Poland, such selection of the sample was justified because it enabled access to the most valuable information, as it comes from outstanding experts operating in the area of corporate governance.

The questionnaire consisted of three parts and successively concerned the chairman of the supervisory board of the parent company, the practice of his activities in the structure of the company and the capital group, as well as collecting opinions on its current state and proposed changes in the scope of exercising permanent supervision in the company and the capital group. The survey was conducted from May to October 2019. Due to the anonymity of the survey participants, the names of companies will not be disclosed. Twelve current or former members of the supervisory boards of the parent companies, although operating in the area of corporate governance, with different education, knowledge and professional experience and representing different business environments and areas, participated in the survey. Below we present information characterizing the respondents: 1) the respondents performed an average function: 2.2 times chairman of the supervisory board, 1.75 times the chairman of the supervisory board of the parent company, 6 times a supervisory board member, 3.6 times a supervisory board member in the parent company; 2) the respondents performed an average function

in years: 5.3 times a supervisory board chairman, 3.8 the chairman of the supervisory board in the parent company, 7.8 member of the supervisory board, 5.9 member of the supervisory board of the parent company; 3) the respondents served as the chairman of the supervisory board of the parent company in the capital group of which it was part: 1 to 10 subsidiaries – in the case of seven surveyed companies, from 31 to 40 subsidiaries – in the case of two surveyed companies, from 41 to 50 subsidiaries – in the case of one surveyed companies, over 51 subsidiaries – in the case of the two surveyed companies.

Although the number of respondents participating in the survey is not large, they had considerable experience. The respondents have a total of 72 supervisory boards and a total of 93.6 years of experience in this function.

4. THE PRACTICAL ASPECTS OF THE CHAIRMAN OF THE SUPERVISORY BOARD OF THE PARENT COMPANY IN TERMS OF TRUTH

There is no doubt that knowledge about the company is of key importance to the essence of the functioning of the supervisory board. Therefore, it seems reasonable to ask the question about the sources of such knowledge available to the chairman of the parent company's supervisory board.

Permanent supervision is not possible without access to information on the company and the activities of the management board. Although the chairman of the supervisory board of the parent company does not have his own administrative apparatus, he can request the company's management board at any time and in any case to submit specific reports or provide explanations. An exception is made for management reports on the company's activities and financial statements for the previous financial year, which are submitted annually. It follows from the review of the CCC regulations that the legislator has made it optional for the chairman of the supervisory board of the parent company to have access to all information in the company, but only at his request, and the above-mentioned annual reports are an exception. This means that the chairman of the supervisory board is obliged to request each time information he is interested in. At this point, it seems appropriate to draw attention to the principle III.Z.4 of the Best Practice, which states that at least once a year the person responsible for internal audit and the management board shall present their own assessment of the effective functioning of systems and functions to the supervisory board, including internal control, risk management, compliance and internal audit, together with an appropriate report. Therefore, the authors of the Best Practice saw the need to extend the supervisory board's mandatory access to information other than that specified in Article 219(3) and Article 382(3) of the CCC.

When asked whether an explanation was ever received from members of the management board of the parent and the subsidiary when acting as chairman of the supervisory board of the parent company at the request of the respondent, res-

pondents replied that in the case of the parent company, all members submitted such a request and in the case of the subsidiary eight respondents replied positively; in the case of two negative answers, respondents added that members of the management board of the parent company provided information on the activities of subsidiaries.

When asked whether an explanation was ever received from representatives of the parent company other than management board members at the request of the respondent, eleven respondents responded, including ten positive and one negative answer. The respondent who answered negatively added a comment that there was no such need. For the same question, but with regard to a subsidiary, eleven respondents replied, of which four were positive and seven were negative.

When asked whether documents from the parent and the subsidiary were ever made available at the request of the respondent, all respondents replied. In the case of the parent company, eleven answers were positive and one negative, and in the case of the subsidiary, eleven respondents replied, of which six were positive and five were negative.

In response to the question whether in his or her function as chairman of the supervisory board of the parent company, the respondent undertook other activities related to gaining knowledge about the parent company and the capital group, in addition to familiarizing himself or herself with the documents submitted by the management board of the parent company, all respondents answered, including ten positive and two negative answers, and indicated as examples: 1) commissioning an opinion to an auditor, and external advisor; 2) receiving explanations from middle management responsible for a given area of the company's operations, e.g. finance, legal, audit, strategy, corporate governance; 3) receiving explanations from employees responsible for a given area of the company; 4) receiving explanations from supervisory staff, i.e. those responsible for internal control, risk management, compliance and internal audit; 5) interviews with employees of the Chancellery of the Prime Minister responsible for exercising ownership supervision over companies with Treasury shareholding; 6) becoming familiar with the key performance indicators; 7) receiving explanations from the Workers' Council and Trade Union Chairmen; 8) evaluation of the Investment Committee documentation and procurement procedures; 9) review of concession rounds documentation and applications; 10) participating in risk mapping; 11) participation in the creation of internal regulations and amendments to the statute(s) and by-laws for the parent company and the group (e.g. concerning silent and managerial shares, remuneration of the managerial group); 12) open source review; 13) to get acquainted with information from the company's customers.

The last question in this section concerned the participation of the chairman of the supervisory board of the parent company in the meetings of the management board of the parent and subsidiary. All respondents replied. In the case of the parent company, nine answers were negative and three positive, and in the case of the subsidiary, eleven were negative with one positive. In this question, six

respondents added a comment that there was no such need, and another pointed out that it had not been delegated to the individual supervision of the parent joint stock company, so there was no legal basis for a representative of the parent company's supervisory board to participate in a meeting of the subsidiary's management board.

Although the chairman of the supervisory board of the parent company has access to all information in the company, but only at his request, with the exception of the annual accounts, it appears from the replies given that they are quite active in the case of the parent company, in particular as far as they are concerned: 1) receiving explanations from representatives of the parent company other than the board members; 2) undertaking other activities related to gaining knowledge about the parent company and the capital group, apart from getting acquainted with the documents submitted by the management board of the parent company; 3) participation of the chairman of the supervisory board of the parent company in meetings of the management board of the parent company. Particular attention is drawn to a wide range of other activities related to acquiring knowledge in the parent company.

The situation is slightly different in the case of activity of the chairman of the supervisory board of the parent company in the field of acquiring knowledge in subsidiaries. The survey shows that the majority of the respondents did not receive explanations from the representatives of the subsidiaries, only half of them got acquainted with the documents from the subsidiaries, and finally only one of the respondents took part in a meeting of the subsidiary's management board. The chairman of the supervisory board of the parent company focuses his attention mainly on acquiring knowledge from the parent company, although it is not so that the acquisition of knowledge from subsidiaries by the chairman of the supervisory board of the parent company is completely ignored.

5. PRACTICAL ASPECTS OF THE ACTIVITIES OF THE CHAIRMAN OF THE SUPERVISORY BOARD OF THE PARENT COMPANY ON A TEMPORARY BASIS

Companies often operate in complex legal, business or geopolitical circumstances, which requires significant time commitment on the part of all participants in corporate governance, especially the chairman of the supervisory board of the parent company. This has been recognized by the creators of the UK Corporate Governance Code,³ which includes substantive criteria for the election of the chairman of the supervisory board, in particular that the candidate has sufficient time to perform his or her duties on an ongoing basis, as well as to recognize his or her availability in the event of a crisis situation. It cannot be ruled out that many board chairpersons hold other, often time-consuming functions simultaneously.

³ The UK Corporate Governance Code, Financial Reporting Council, United Kingdom.

For example, the board of a parent company operating in the financial market should ensure that its operations comply with corporate law, generally applicable national and international law, as well as the law of other countries (e.g. FCPA, Bribery Act, FATCA). In addition, the company should operate in accordance with the guidelines of at least eighteen market regulators at home and abroad, for example, the FSA, ESMA, FCA, SEC. The supervisory board of the parent company is obliged to assess the company's activity in all areas of its activity, and the above example actually refers to only one of them, namely the legal one.

In the Anglo-Saxon model, the chairman of the board of directors, as CEO, is much more capable of influencing and supervising the company than the chairman of the supervisory board in the continental model, which is due to one of the fundamental differences between the Anglo-Saxon and continental models. Research carried out by T. McNulty, A. Pettigrew, G. Jobome and C. Morris shows that factors such as time commitment, greater experience and knowledge of the company are crucial here [McNulty, Pettigrew, Jobome, and Morris 2011, 91–121].

According to the survey, seven out of nine of the respondents, while holding the position of chairman of the supervisory board of the parent company, were also members of at least one of the above-mentioned committees. The respondents served on the following committees: the respondent No. 1 – audit; the respondent No. 2 – nomination, strategy; the respondent No. 3 – audit, nomination, risk, remuneration, corporate social responsibility (Corporate Social Responsibility, CSR), corporate governance and strategy; the respondent No. 4 – risk, audit, nomination, remuneration and strategy; the respondent No. 5 – audit; the respondent No. 6 – audit and strategy; the respondent No. 7 – audit and strategy; the respondent No. 11 – strategy, risk and remuneration; the respondent No. 12 – audit.

Respondents, in addition to holding the position of chairman of the supervisory board of the parent company, including nine of them as a member of at least one of the committees, also held other functions or were professionally involved: the respondent No. 1 – member of the supervisory board; the respondent No. 2 – President of the Management Board or member of the Management Board; the respondent No. 3 – academic employee, president or member of the management board, own business; the respondent No. 4 – academic employee; the respondent No. 5 – academic worker; the respondent No. 6 – own business activity; the respondent No. 7 – President of the Management Board or member of the Management Board; the respondent No. 8 – person holding a managerial position in the state; the respondent No. 9 – employee of the company with State Treasury shareholding; the respondent No. 10 – a state administration employee, President of the Management Board or member of the Management Board and a researcher; the respondent No. 11 – a state administration employee and the President of the Management Board or a member; the respondent No. 12 – academic employee.

In the questionnaire, we formulated a question to the respondents whether the time they spent as a member of the supervisory board of the company was sufficient to exercise permanent supervision over the activity of the parent company and the capital group in all areas of their activity. Eleven respondents answered this question, including the following: a) two of the respondents that they definitely did; b) six of the respondents, that they probably did; c) two of the respondents, that's hard to say.

Eleven respondents answered the question whether the chairman of the supervisory board of the parent company should perform such a function only: a) five, that they'd rather not; b) three, that's hard to say; c) two that they definitely should; d) one that they would rather do so.

The respondent No. 1 stated that exercising effective supervision requires independence from the company and its management. The full-time function of the chairman of the supervisory board would be contradictory to this requirement. He added that a possible exception could apply to very large and complex companies/structures. A similar position was taken by the researcher No. 9, according to whom the full-time remuneration could be applicable and depend on the size of the capital group and the scale of its operations.

According to respondents 2, 8, 9 and 12, full-time remuneration is a good solution. The former stated that the amount of remuneration should depend on the size of the capital group measured by turnover, employment or market share or a combination of these factors, the latter proposed that the remuneration of the chairman of the supervisory board of the parent company could range between 50–75% of the remuneration of the members of the management board of the parent company, the third considered the regulations contained in the Act of 9 June 2016 on the principles of shaping the remuneration of persons managing certain companies as appropriate, and the latter proposed that the remuneration should be determined by the general meeting and its amount should be 10% of the remuneration of the member of the management board.

Actually, all the respondents considered that they spend a sufficient amount of time as a member of the supervisory board of the parent company. Moreover, it has been established that they are persons who simultaneously perform other functions than just the chairman of the supervisory board of the parent company. Many of them seem to perform more time-consuming tasks simultaneously. This means that holding the position of chairman of the supervisory board of the parent company is, for those surveyed, an additional job among many others, which may affect the effectiveness of their work. Although the respondents believe that they perform their functions properly, the effectiveness of their work can still be questioned, as only a smaller half of them have stated that the chairman of the supervisory board of the parent company can also perform other functions.

6. PRACTICAL ASPECTS OF THE ACTIVITIES OF THE CHAIRMAN OF THE SUPERVISORY BOARD OF THE PARENT COMPANY IN TERMS OF COOPERATION

Despite the separation of the management and supervisory functions in capital companies, the activities of the management board and the supervisory board are closely related, and harmonious cooperation determines the good condition of the company, hence the importance of maintaining partnership and cooperation. There is no doubt that the chairman of the supervisory board of the parent company is largely responsible for this harmonious cooperation. Based on a review of his or her tasks, such as: a) creating interaction between the management board and the supervisory board; b) setting the schedule and agenda of meetings; c) time management and discussion at board meetings; d) to mediate communication with the corporate environment, as well as the need for contact with the bodies and entities that constitute the corporate environment, such as: a) the supervisory board; b) the board; c) the shareholders; d) subsidiaries; e) employees of the parent company and its subsidiaries; f) external auditors, advisors, experts, etc., it can be concluded that the chairman of the supervisory board of the parent company acts as a kind of coordinator of group supervision.

In our opinion, there is still a postulate gap in the CCC preventing cooperation between the parent companies and their subsidiaries, supervisory boards of the parent companies with the supervisory boards of the subsidiaries and respectively the chairmen of the supervisory boards of such entities. To some extent, the reporting and accounting area of the company is an exception, which is regulated by Articles 4a, 55 and 63c of the 1994 Accounting Act.⁴

To sum up the above considerations, the supervisory board of the parent company has a mandate to supervise only the activities of the parent company and the supervisory board of the subsidiary only the activities of the subsidiary. Therefore, the supervisory board of the parent company may not interfere at any time and in any activity of the subsidiary and its supervisory board. The supervisory board of the parent company shall also not be able to exercise permanent supervision over the activities of companies in the capital group, including: a) reviewing the books and documents of subsidiaries; b) request information from subsidiaries, including their supervisory boards; c) to receive explanations from representatives of subsidiaries; d) concluding agreements with supervisory boards of companies in a group of companies, as in the case of management boards, which makes it impossible to create corporate governance mechanisms to exercise permanent supervision.

⁴ Act of 29 September 1994, the Accounting, Journal of Laws of 2019, item 351 as amended.

7. THE ASSESSMENT OF THE CURRENT LEGAL STATUS AND CORPORATE PRACTICES AND PROPOSALS FOR CHANGES

The research in this part began with an attempt to determine the percentage of time, in three dimensions, i.e. past – present – future, devoted to exercising permanent supervision over the activity of the parent company. The answers given by ten respondents indicate that the average time spent was as follows: past – 24.5%; present – 40%; future – 27.5%.

The respondents were also asked whether the current powers and pragmatics of corporate governance allow for efficient and effective exercise of constant supervision over the activities of the parent company and the capital group. All respondents provided answers, including the following: nine that they probably do; two that they definitely do; one that it's hard to say.

The respondents were given the opportunity to submit their own proposals for changes or to add comments which in their opinion could strengthen the efficiency and effectiveness of permanent supervision in the parent company. The respondents presented the following proposals: 1) to start work on the introduction of the holding company law; 2) allowing information to be requested from subsidiaries. This request was made by three respondents. One of them added that currently the management boards of the subsidiaries refuse to provide information on the grounds of the company's secrecy or inability to issue binding instructions to the management board regarding the company's affairs. In response, the chairman and members of the company's supervisory board emphasize the performance of the function of members of the subsidiaries' management boards being dependent on providing the requested information, arguing that it is impossible to exercise permanent supervision within the capital group; 3) raising the knowledge of chairmen and members of supervisory boards. This demand was made by two respondents; 4) increase the remuneration of chairmen and members of supervisory boards; 5) strengthen the position of the internal auditor and intensify his or her contacts with the chairman of the supervisory board; 6) to regulate the issue of independence in the selection of members and the verification of their qualifications; 7) introduction of an obligation to submit an individual report on the performance of the function of chairman or member of the supervisory board upon termination of the function; 8) introducing criteria to account for the responsibilities of chairmen and members of the supervisory board; 9) enabling the chairs and members of the supervisory boards of the parent company to participate in the general meeting of shareholders of the subsidiaries.

8. DISCUSSION

The survey led to the conclusion that the chairman of the supervisory board's access to information on the company is limited only by his will, willingness and involvement. However, it should be noted that due to the collegiality of the super-

visory board of a joint stock company, information can only be requested by the supervisory board as a body. In practice, this would mean that the information provided to the chairman of the supervisory board would be received simultaneously by all members of the supervisory board. The situation is different in the case of a limited liability company, where each member of the supervisory board, including the chairman of the board, may independently exercise supervisory rights, unless the articles of association state otherwise.

The study also shows that it is reasonable to consider the introduction of a full-time remuneration for chairmen of supervisory boards of parent companies, but only for large and complex structures.

The survey also allowed us to conclude that the actions taken by the supervisory boards of the parent companies are not only of a retrospective nature, but also include an examination of current operations, as well as plans and intentions of the management board.

Moreover, we concluded that the effectiveness and efficiency of cooperation between the chairman of the supervisory board of the parent company and the corporate environment of the capital group largely depends on the individual predispositions of the chairman himself or herself.

No less important is also the understanding by the chairman of the supervisory board of the parent company of the essence and role of the functioning of the supervisory board and its functions, including the important role played by the chairman himself or herself, which can no less be described as the coordinator of supervision over the activities of the capital group, especially in the area of risk, compliance and corporate governance.

CONCLUSIONS

The above findings lead to the conclusion that under the current circumstances the chairman of the supervisory board of the parent company has a fairly broad scope of activities and in practice can use these opportunities to exercise permanent supervision of the parent company. The exception to this is the lack of holding law, which makes it impossible to properly reach knowledge about the subsidiaries and thus a holistic assessment of the entire capital group. This makes it impossible to achieve the essence and purpose of the functioning of the supervisory board, i.e. to make factual findings. Therefore, our proposal is to introduce to the CCC the wording of the normative definition of a group of companies contained in the draft amendment to the CCC and the 1997 National Court Register Act.⁵ According to the aforementioned definition, a group of companies is “a parent company and its company or companies or its subsidiaries, which are in an actual or contractual permanent organizational relationship and have a common economic interest.”

⁵ Draft amendment to the CCC and the 1997 National Court Register Act, 22 March 2010.

The survey made it possible to present a number of *de lege ferenda* conclusions, of which the following deserve special attention: the introduction of holding law, the continuous improvement of knowledge of supervisory board members and the strengthening of cooperation between the chairman of the supervisory board of the parent company and the entire supervisory board within the areas of companies responsible for audit, internal control and compliance. As M. Romanowski pointed out aptly, “[...] a Supervisory Board member should act in accordance with his standard of due diligence if he undertakes in good faith – using the best market practices and his knowledge – to act in the interest of the company in a manner appropriate to the profile and size of the company.”⁶ The greater the supervisory board members’ knowledge, the higher the level of protection of the company’s interest will be.

In conclusion, it is worth quoting the comment of one of the respondents, who stated that efficient and effective supervision requires high competences and the introduction of a motivation system for the management board that eliminates conflicts of interest and ensures building the company’s value in a long-term perspective. He added that if the motivation system is based on the adoption of a short-term perspective (short-termism), then moral gambling is created, and then constant supervision is justified. In our opinion, this commentary refers to the fundamental problem of exercising permanent supervision over the company’s activities in all its fields of activity. If the compliance and corporate governance mechanisms are properly applied, the supervisory board and its chairman may focus their activities only on prevention, and thus not on retrospective action, which in turn facilitates the achievement of the objective of running a business, i.e. maximizing the value of the company in the long-term.

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⁶ Ibid. See Romanowski 2012.

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