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## GOVERNMENT OFFICIALS AS A *QUASI*-BODY OF POLISH STATE-OWNED COMPANIES

### Abstract

**Background:** State-Owned Enterprises (SOEs), like other joint-stock companies, are determined by external and internal corporate governance mechanisms. In SOEs additionally operate a mechanism that is absent in private companies, i.e., supervision by government officials. The article analyses the impact that such supervision has on SOEs.

**Research purpose:** The article's purpose is to demonstrate government officials' impact on State-Owned Companies (SOCs) and identify its formal and informal determinants.

**Methods:** The research is multidisciplinary, comprising an analysis of legal regulations and a survey carried out among members of SOCs' management and supervisory boards and officials of the Ministry of the Treasury who supervise those companies. The research sample encompassed the entire population, i.e., all Polish SOCs where the rights derived from shares are exercised by the Minister of the Treasury and all officials that supervise those companies.

**Conclusions:** The government officials are a *quasi*-body of SOCs and a unique corporate governance mechanism that not only supervises companies directly but also influences other corporate governance mechanisms. The administrative nature and political influence on government officials are an obstacle to ensuring the business efficiency of companies that are supposed to respond timely and adequately to specific market situations.

**Keywords:** corporate governance, supervision, State-Owned Companies (SOCs), government officials, supervisory boards, management boards, Treasury, Ministry of the Treasury, Ministry of State Assets.

**JEL classification:** M10, H83, K20

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## 1. Introduction

The OECD defines State-Owned Enterprises (SOEs) as enterprises where the State has significant control through full, majority, or significant minority ownership.<sup>1</sup> The article focuses on Polish SOEs that are wholly owned by the State, and SOEs in which the State is the major stakeholder. In Poland, SOEs operate as joint-stock companies, that is, companies where the State's shareholding exceeds 50% (State-Owned Companies – SOC). SOCs were formed in Poland in the mid-1990s as a result of the commercialisation of former state-owned enterprises, a form which was characteristic of a centrally planned economy. Some Polish SOCs were subsequently privatised. However, companies under the decisive influence of the State are still numerous and play a significant role in the economy.

The functions of the State in the field of ownership rights in Poland are performed by the Treasury – an abstract legal person that does not conclude business transactions independently but is represented by the Minister of State Assets. As the Treasury is the SOCs' sole or majority shareholder, the minister takes fundamental decisions at the general meetings of shareholders. In this respect, the minister is supported by the ministry officials regarding decision contents and organisational matters. Therefore, officials have a significant influence on SOCs. They play the role of a *quasi*-body that acts alongside the management board, the supervisory board and the general meeting. What is important is that this *quasi*-body operates by the rules applicable not to joint-stock companies, i.e., entities pursuing business objectives, but to administration. In general, SOCs are (or should be) the same as other companies established to operate in commercial affairs except that they have a distinct legal form and may have public policy objectives. Since they operate in the commercial realm, they are different from other forms of government agencies or state entities established to pursue purely non-financial objectives and therefore have no need to maximise shareholders' return on their investments.

The objectives of SOCs, like those of other joint-stock companies, are determined by corporate governance mechanisms that subsequently monitor their achievement. Corporate governance “provides the structure through which the objectives of the company are set, and the means of attaining those

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<sup>1</sup> *OECD Guidelines on Corporate Governance of State-owned Enterprises*, 2005, <http://www.oecd.org/corporate/ca/corporategovernanceofstate-ownedenterprises/34803211.pdf>; accessed: 28.10.2014.

objectives and monitoring performance are determined” and “involves a set of relationships between a company’s management, its board, its shareholders and other stakeholders.”<sup>2</sup> Individual groups functioning within a joint-stock company may have different interests, which leads to conflict among them. Such conflicts may, in turn, be contrary to the interests of the companies themselves and hinder their management and attainment of their objectives. The role of corporate governance mechanisms should, therefore, be to prevent or mitigate conflicts among stakeholders of corporations and their impact on managers so that the latter can act in the interests of shareholders and other stakeholders.<sup>3</sup>

In terms of their source and nature of their impact, corporate governance mechanisms can be classified as internal and external. Proper use of corporate governance mechanisms by modern corporations should involve an appropriate combination of internal and external mechanisms.<sup>4</sup> External mechanisms are market mechanisms. They affect corporations by disciplining the influence of the market, which verifies corporate efficiency at various levels. Internal mechanisms are called legal instruments because they function based on the law and are embedded in the legal and organisational structure of the company. Internal mechanisms traditionally comprise supervisory boards, shareholders’ rights, the accountability of members of company bodies to companies and shareholders and external audit of financial reporting. In addition to such internal mechanisms, SOCs also have a mechanism which is absent in private companies, i.e., supervision by government officials. As indicated previously, officials, therefore, form a company *quasi*-body that performs supervisory functions.

This article aims to demonstrate government officials’ impact on SOCs and identify its formal and informal determinants.

## 2. Formal powers of officials vis-à-vis state-owned companies

SOCs in Poland are capital companies and, as such, are subject to universally binding laws on companies, i.e., the Code of Commercial Companies. Therefore, they operate based on the legal act concerning all capital companies, including

<sup>2</sup> *OECD Principles of Corporate Governance*, 2004, <http://www.oecd.org/daf/ca/corporategovernanceprinciples/31557724.pdf>; accessed: 28.10.2014.

<sup>3</sup> **K. Oplustil**, *Instrumenty nadzoru korporacyjnego (corporate governance) w spółce akcyjnej*, C.H. Beck, Warszawa 2010.

<sup>4</sup> **I. Filatotchev**, **C. Nakajima**, *Internal and External Corporate Governance: An Interface between an organization and its Environment*, *British Journal of Management* 2010/21, pp. 591–606.

private companies. However, since the sole or main shareholder of SOCs is the State, they are also subject to regulations that refer exclusively to this kind of company.

The organisational structure of the supervision of SOCs has changed in recent years. Until 2016, the Minister of the Treasury was responsible for supervising SOCs. According to the Supreme Audit Office (NIK), ownership supervision exercised by the Minister of the Treasury was ineffective, focusing primarily on the formal aspects of supervision, which involved appointing and dismissing members of company bodies and approving annual company reports.<sup>5</sup> Moreover, the possibility of skipping competitions when appointing employees of the Ministry of the Treasury<sup>6</sup> meant that a significant group among members of supervisory boards were state officials and especially those employed at the Ministry of the Treasury.<sup>7</sup> It resulted in the possibility of conflicts of interest by combining the same people working on companies' supervisory boards with functions related to the supervision of these entities within ministries.<sup>8</sup>

In 2017, there was a change in the supervision of SOCs aimed at improving the efficiency of their operations. Under the new system, the Ministry of the Treasury was abolished, and the ownership policy implemented concerning companies with the Treasury's share was taken over by the Prime Minister.<sup>9</sup> In this supervision model, the Prime Minister could delegate powers to other members of the Council of Ministers, a government plenipotentiary or a state legal entity. The new system meant that instead of one ruler who decided to fill the supervisory boards of companies, there were 16 principalities who could now decide whom to appoint to supervisory boards. However, the new model of supervising SOCs also proved to be ineffective.<sup>10</sup>

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<sup>5</sup> NIK, *Informacja o wynikach kontroli sprawowania nadzoru właścicielskiego w spółkach z większościovym udzialem Skarbu Państwa*, Warszawa 2009.

<sup>6</sup> Ordinance No. 45 of the Minister of the Treasury of 6 December 2007 on the principles and procedure of selecting candidates for the Supervisory Boards of commercial companies with the participation of the State Treasury and Supervisory Boards of other legal entities supervised by the Minister of the Treasury.

<sup>7</sup> Frank Bold, *Sposób doboru i kwalifikacji rad nadzorczych i zarządów oraz ocena ich pracy jako element nadzoru właścicielskiego w podmiotach z udziałem Skarbu Państwa*, Fundacja Frank Bold, 2014, p. 11.

<sup>8</sup> NIK, 2009, *Informacja o wynikach kontroli...*, p. 7.

<sup>9</sup> The Act of December 16, 2016 on the principles of state property management.

<sup>10</sup> NIK, *Informacja o wynikach kontroli. Nadzór nad spółkami z udziałem Skarbu Państwa*, Warszawa 2018, p. 14.

The consequence of the lack of improvement in ownership supervision was a return to the previous model of supervising SOCs based on entrusting ownership supervision over them to one minister – the Minister of State Assets<sup>11</sup>. The method of appointing members to supervisory boards in SOCs has not changed. Therefore the minister supervising the companies may still fill positions.

The method of supervising SOCs is regulated not only by generally applicable provisions of law but also by the non-binding Principles of Corporate Governance in Companies with Treasury Shareholding (the Principles), which are designed as a benchmark exclusively. These Principles are the so-called soft law, that is, a regulation which, though not binding, constitutes a reference point for the ministry officials' supervision. The real legal effect of the Principles is powerful, as they accurately describe the powers of the Ministry of State Assets officials that are defined in binding legislation. In exercising their functions, officials are often guided primarily by the Principles.

According to the Principles, the ministry officials are “a direct link that ensures communication between the entity exercising rights from shares and supervisory boards” [...] and they “fulfil organisational and control functions vis-à-vis supervisory boards of companies in terms of the correct and timely performance of their duties under articles of association and provisions of law”.<sup>12</sup>

Officials may request that specific members of supervisory boards control an indicated scope of companies' operations. It may negatively influence the very structure of the supervisory board as a collegial body since a member of the board acts in the relationship with other officials employed in the ministry rather than with the board as a whole. Moreover, such a state of affairs can adversely affect the mutual trust between its members, which is significant in their work.

Officials also have a significant influence on the appointment of specific people as supervisory board members. The minister takes the final decision on the appointment of a particular person after the officials' recommendation. Supervisory board members may be aware, therefore, that in order to have a chance to be appointed for another term of office, they should cooperate with officials without any conflicts. Thus, they are often guided primarily by officials' preference expressed explicitly as an instruction or opinion or by their

<sup>11</sup> Regulation of the Prime Minister of November 18, 2019 on the detailed scope of activities of the Minister of State Assets.

<sup>12</sup> Principles of Corporate Governance in Companies with Treasury, 2017, <https://bip.kprm.gov.pl/kpr/bip-kancelarii-prezesa/nadzor-wlascicielski/7525,Nadzor-wlascicielski.html>; accessed: 16.06.2020.

likely preference. It strongly enhances the real power of officials in relation to supervisory board members. Officials may also become supervisory board members who are appointed by the minister outside the procedure that covers other candidates. Their membership in supervisory boards causes a kind of dualism of powers as they perform two functions simultaneously, both of which are supervisory, but as board members, they act in companies, and as officials, they operate within the organisational structure of the ministry.

### 3. The SOE phenomenon – literature review

SOEs are a “special” kind of companies due to the uniqueness of their key stakeholder (i.e., the State), strong political and administrative influences exercised upon them, as well as their ambiguous goals and performance objectives.<sup>13</sup> SOE governance is a mixture of direct state control via ownership and indirect state control through multiple actors, such as line ministries, a supervisory board and the planning apparatus, and all run through the political ideology of the ruling party.<sup>14</sup> It can be argued that political impact on companies is justified by the fact that since a political party has won the election, its activities coincide with the objectively understood public interest, i.e., that political will has its source in social will through the election act and is then put into practice by the elected legislator.<sup>15</sup>

The influence of government agencies on SOEs applies to the method of appointing members of supervisory boards and management boards of these companies. While in private companies, managers are appointed by the owners mainly on merits, in SOEs, they are appointed by state officials and bureaucrats who may also take into account non-economic criteria, i.e., the candidate’s political connections.<sup>16</sup> It is in political parties’ interest to introduce managers associated with

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<sup>13</sup> **A. Wasowska, I. Postula**, *Formal and informal governance mechanisms in state-owned enterprises: Evidence from post-transitional Poland*, *Baltic Journal of Management* 2018/13/4, p. 413.

<sup>14</sup> **N.C. Phung et al.**, *Politics and institution of corporate governance in Vietnamese state-owned enterprises*, *Managerial Auditing Journal* 2020/35/5, p. 669.

<sup>15</sup> **I. Postula, A. Wasowska**, *Managerial discretion, firm performance, and CEOs’ support for privatisation of state-owned companies*, *Journal of East European Management Studies* 2018/23/1, p. 4.

<sup>16</sup> **A. Wasowska, I. Postula**, *Formal and informal governance mechanisms...*, p. 414.

them to the boards. In this way, a system of political and business ties is created, in which managers depend on their political principals, like the Chinese “Guanxi”.<sup>17</sup>

Moreover, the method of appointing SOE supervisory board members causes asymmetry of power within these boards. Board members’ power is related to the type of knowledge they have.<sup>18</sup> Government officials who are board members have better knowledge than other boards members of the political will of the owner, i.e., the Treasury, which is represented by the minister. Employee representatives on the boards have a better knowledge of what is going on inside the company. In the case of other board members, it is not easy to define the type of their knowledge clearly. If these people are politically selected, they do not necessarily have to be very knowledgeable. In SOEs, officials may have a disproportionate amount of power on boards because they are closest to the centre of power, i.e., the minister. This process is, therefore, an arena for political transactions and rent-seeking.<sup>19</sup>

According to Apriliyanti and Randoy,<sup>20</sup> the unbalanced power distribution between board members can also be the cause of a board member’s so-called self-sacrificing behaviour. The term “self-sacrificing decision” refers to a decision process where a less powerful board member withholds his or her opinion and lets the more influential board members attain their desired decision outcome.<sup>21</sup> The reason for this behaviour is limited knowledge or a fear of political punishment.

The choice of SOE board members is often political, which then affects these companies’ results. Fan et al.<sup>22</sup> proved that Chinese listed companies with politically related CEOs performed worse compared to companies where

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<sup>17</sup> **S. Zhang et. al.**, *The relationship between person–team fit with supervisor–subordinate guanxi and organizational justice in a Chinese state-owned enterprise*, International Journal of Selection and Assessment 2019/27, pp. 31–42.

<sup>18</sup> **I.D. Apriliyanti, S.O. Kristiansen**, *The logics of political business in state-owned enterprises: the case of Indonesia*, International Journal of Emerging Markets 2019/14/5, pp. 709–730.

<sup>19</sup> **I.D. Apriliyanti, T. Randoy**, *Between politics and business: Boardroom decision making in state-owned Indonesian enterprises*, Corporate Governance: An International Review 2019/27/ 3, p. 721.

<sup>20</sup> *Ibidem*, pp. 166–185.

<sup>21</sup> *Ibidem*, p. 180.

<sup>22</sup> **J. Fan et al.**, *Politically connected CEOs, corporate governance, and post-IPO performance of China’s newly partially privatised firms*, Journal of Financial Economics 2007/84/2, pp. 330–357.

the CEOs did not have such connections. Min<sup>23</sup> proved that CEOs who were legislators or bureaucrats gain more public subsidies than CEOs without such connections. By researching French listed companies, Bertrand et al.<sup>24</sup> noted that in companies where the CEO had political connections, there were disturbances in job creation. Menozzi et al.<sup>25</sup> showed that managers who are politically connected “manipulate” the demand for work in their companies to create jobs in those areas that are politically important and fill them with “their” people, regardless of how it may impact the results. Huang et al.<sup>26</sup> described how local governments re-nationalise previously privatised companies. They showed that politicians (this mainly applies to those politicians who do not have strong support from senior officials) do so to maintain their status.

In general, the results of most published studies indicate that SOEs perform worse than private companies. The most common explanation for this phenomenon is the political influence exerted on SOEs, which include risks associated with potential changes in the political regime, constraints on strategic choices, disclosure of sensitive information to the government, weak monitoring of managers and inadequate control over the companies, and lower motivation of managers with political affiliations.<sup>27</sup>

Some authors point out the advantages of SOEs over private companies. Zhang et al.<sup>28</sup> showed that SOEs take less risk than private companies because the goal of the central and local government bureaucrats who manage SOEs is to maximise social stability, employment rates and wages. Moreover, SOEs have easier access to both government and market resources compared to private

<sup>23</sup> **H. Min**, *Former officials and subsidies to state-owned enterprises*, *Journal of Economic Development* 2011/36/2, pp. 1–13.

<sup>24</sup> **M. Bertrand et al.**, *Politically connected CEOs and corporate outcomes: evidence from France*, Working paper, University of Chicago, 2004.

<sup>25</sup> **A. Menozzi et al.**, *Board composition, political connections and performance in state-owned enterprises*, *Industrial and Corporate Change* 2012/21/3, pp. 671–698.

<sup>26</sup> **Z. Huang et al.**, *The political economy of corporate finance: evidence from ‘re-nationalization’ in China*, 2014, [https://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=2475733](https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2475733); accessed: 25.05.2020.

<sup>27</sup> **N. Boubakri et al.**, *Political connections of newly privatised firms*, *Journal of Corporate Finance* 2008/14/5, pp. 654–673; **I. Okhmatovskiy**, *Performance implications of ties to the government and SOEs: a political embeddedness perspective*, *Journal of Management Studies* 2010/47/6, pp. 1020–1047; **M. Faccio**, *Politically connected firms*, *American Economic Review* 2006/96/1, pp. 369–386; **A. Muravyev**, *Federal State shareholdings in Russian companies*, *Problems of Economic Transition* 2003/46/8, pp. 66–95.

<sup>28</sup> **Ch. Zhang et al.**, *Board independence, state ownership and stock return volatility during Chinese state enterprise reform*, *Corporate Governance* 2018/18/2, pp. 220–232.

companies, which also reduces the risk. Quer et al.<sup>29</sup> showed, by the example of Chinese companies, that government aid means that SOEs have less risk aversion when it comes to entering a new host country. Lopes Júnior et al.<sup>30</sup> proved that in environments with low effectiveness, SOEs with the government as the majority shareholder invest more than private companies.

#### 4. Research methodology

The research conducted by the authors is multidisciplinary, comprising an analysis of legal regulations and a survey carried out among members of management and supervisory boards of state-owned companies and officials of the Ministry of the Treasury (currently Ministry of State Assets) supervising these companies. The analysis of legal regulations aimed to determine officials' powers in respect of corporate governance, while the survey investigated the practice of officials influencing companies.

The survey was conducted in 2012 among members of management and supervisory boards of all Polish companies in which the Treasury holds 100% of shares (269 companies), i.e., Sole-Shareholder Companies of the Treasury (SSCT), and companies in which the Treasury holds the majority shareholding (Companies with the Treasury's Majority Shareholding – CTMS – 39 companies), except companies in bankruptcy or liquidation, and among officials of the Ministry of the Treasury who supervise companies. Although the study was conducted eight years ago, the conclusions drawn from it are still valid because the SOE corporate governance model is now basically the same. The research sample included all members of company bodies as at the date on which the research commenced and officials supervising companies. The questionnaire response rate, calculated as the quotient of the number of completed questionnaires and the number of members of company bodies left on the list, was 42% for management board members of SSCTs, 26% for members of supervisory boards of these companies, 43% for management board members of CTMSs, 46% for supervisory board members of

<sup>29</sup> **D. Quer et al.**, *The influence of political risk, inertia and imitative behavior on the location choice of Chinese multinational enterprises Does state ownership matter?*, *International Journal of Emerging Markets* 2018/13/2, pp. 518–535.

<sup>30</sup> **E.P. Lopes Júnior et al.**, *Influence of corruption on state-owned enterprise expenditures*, *Brazilian Journal of Public Administration* 2018/52/4, pp. 695–711; **E.P. Lopes Júnior et al.**, *Governmental Effectiveness: Analysis of State-Owned Enterprises Investments*, *Journal of Accounting, Management and Governance* 2019/22/3, pp. 443–462.

these companies and 46% for officials who supervise companies. The research sample encompassed the entire population, i.e., all state-owned companies where the rights derived from shares are exercised by the Minister of the Treasury<sup>31</sup> and all officials that supervise those companies. The high questionnaire response rate made it possible to make a reliable statistical inference.

## 5. Officials' supervision in practice

The survey was intended to indicate how officials affect companies in practice, what the grounds for their actions are and what problems occur in the practical functioning of the ministry as such problems determine the actions of officials, influencing the efficiency of supervision exercised by them.

In order to determine what actions officials take as regards companies, the respondents, that is, the supervisory and management board members and the officials themselves, assessed whether officials take actions indicated in survey questions concerning SOCs. In the questionnaire, the respondents could confirm that officials take appropriate action in question, deny that a specific action is taken, indicate that officials partly do and partly do not take a specific action or choose the "Do not know" answer. Table 1 presents the survey results.

TABLE 1: *Influence of the Ministry of the Treasury officials on SOCs*

Indicate if officials take the following actions as regards SOCs	SSCT SBM	CTMS SBM	SSCT MBM	CTMS MBM	MTO
1	2	3	4	5	6
Taking decisions on day-to-day company operations	32.7%	35.4%	39.2%	25.7%	60.8%
	24.7%	25.0%	18.1%	28.6%	7.8%
	41.7%	38.5%	41.6%	42.9%	7.8%
	0.9%	1.0%	1.2%	2.9%	23.5%
Supervising company bodies' activities	81.1%	80.4%	80.1%	76.5%	88.2%
	14.9%	14.1%	13.9%	17.6%	5.9%
	3.5%	4.3%	5.4%	5.9%	2.0%
	0.4%	1.1%	0.6%	0.0%	3.9%

<sup>31</sup> In the years in which the survey was conducted, the SOE supervisory ministry was called the Ministry of the Treasury and is now called the Ministry of State Assets.

Staffing company bodies	67.4%	68.8%	76.5%	65.7%	87.5%
	17.6%	20.4%	12.7%	11.4%	6.3%
	13.2%	8.6%	8.4%	17.1%	2.1%
	1.8%	2.2%	2.4%	5.7%	4.2%
Giving instructions to company supervisory boards	50.9%	48.3%	62.7%	50.0%	82.0%
	21.9%	29.2%	16.9%	8.8%	4.0%
	25.4%	19.1%	9.6%	35.3%	10.0%
	1.8%	3.4%	10.8%	5.9%	4.0%
Giving instructions to company management boards	38.2%	33.3%	47.9%	31.4%	84.3%
	24.4%	36.5%	25.2%	22.9%	7.8%
	32.9%	27.1%	23.9%	45.7%	5.9%
	4.4%	3.1%	3.1%	0.0%	2.0%
Preparing the contents of the Minister of the Treasury's decisions on companies	79.1%	76.6%	75.4%	78.1%	84.0%
	10.7%	16.0%	9.0%	9.4%	8.0%
	4.9%	4.3%	4.8%	0.0%	2.0%
	5.3%	3.2%	10.8%	12.5%	6.0%
Defining company strategies	24.8%	29.5%	24.7%	26.5%	79.6%
	31.0%	34.7%	25.3%	20.6%	8.2%
	42.5%	35.8%	48.2%	52.9%	4.1%
	1.8%	0.0%	1.8%	0.0%	8.2%
Supervising the pursuit and safeguarding of the Treasury's interest by companies	66.1%	63.0%	68.9%	61.8%	87.2%
	23.3%	30.4%	17.4%	29.4%	4.3%
	8.4%	5.4%	10.2%	8.8%	0.0%
	2.2%	1.1%	3.6%	0.0%	8.5%
Supervising the safeguarding of public interest by companies	42.0%	40.4%	50.3%	47.1%	80.0%
	28.6%	37.2%	21.0%	17.6%	12.0%
	22.3%	17.0%	16.8%	35.3%	0.0%
	7.1%	5.3%	12.0%	0.0%	8.0%
Supervising companies from the point of view of their achievement of the government's economic policy objectives	44.9%	43.2%	44.3%	50.0%	84.0%
	28.9%	30.5%	25.7%	35.3%	8.0%
	20.4%	22.1%	22.8%	14.7%	2.0%
	5.8%	4.2%	7.2%	0.0%	6.0%

TABLE 1 (cont.)

1	2	3	4	5	6
Supervising companies pursuit of the interests of their various stakeholders	17.0%	12.8%	31.7%	17.1%	72.0%
	33.5%	37.2%	29.3%	51.4%	14.0%
	46.4%	41.5%	35.9%	28.6%	6.0%
	3.1%	8.5%	3.0%	2.9%	8.0%
Verifying information provided by company supervisory boards	70.5%	63.0%	64.5%	73.5%	81.3%
	16.1%	28.3%	13.9%	11.8%	12.5%
	9.4%	6.5%	8.4%	5.9%	0.0%
	4.0%	2.2%	13.3%	8.8%	6.3%
Verifying information provided by company management boards	69.6%	60.2%	70.9%	73.5%	87.8%
	16.3%	29.0%	17.6%	8.8%	6.1%
	8.8%	8.6%	3.6%	11.8%	0.0%
	5.3%	2.2%	7.9%	5.9%	6.1%
Ensuring information flow between company bodies and the Minister of the Treasury	72.1%	73.7%	68.9%	73.5%	83.7%
	12.8%	15.8%	15.6%	17.6%	8.2%
	9.3%	7.4%	6.6%	5.9%	0.0%
	5.8%	3.2%	9.0%	2.9%	8.2%

Legend: SSCT SBM – supervisory board members of Sole-Shareholder Companies of the Treasury, CTMS SBM – supervisory board members of Companies with the Treasury’s Majority Shareholding, SSCT MBM – management board members of Sole-Shareholder Companies of the Treasury, CTMS MBM – management board members of Companies with the Treasury’s Majority Shareholding, MTO – the Ministry of the Treasury officials supervising companies.

Answers: Yes, Partly yes, Partly no, No, Do not know.

Source: own study.

Officials confirmed that they take all actions listed in the questionnaire as regards companies. The unambiguity of officials’ responses may prove that not only do they exert an actual influence over companies, but they are also convinced of their role in this respect.

By an absolute majority, all groups of respondents confirmed clearly that officials:

- supervise company bodies’ activities,
- have an impact on staffing company bodies,
- give instructions to supervisory boards,
- prepare the contents of the Minister of the Treasury’s decisions on companies,

- supervise the pursuit of the Treasury's interest by companies,
- supervise the pursuit of public interest by companies,
- verify the information provided by company supervisory and management boards,
- ensure information flow between companies and the minister.

Such unambiguous responses lead to the conclusion that officials take such actions in practice.

A majority, although not an absolute majority, of respondents in each group also confirmed that officials supervise company operations regarding the achievement of the government's economic policy objectives. In this case, officials gave more definite answers than members of company bodies, which may be indicative of political grounds for their actions. It is because officials report to the minister, who, as a member of the government, may try to use companies to achieve the government's economic policy objectives.

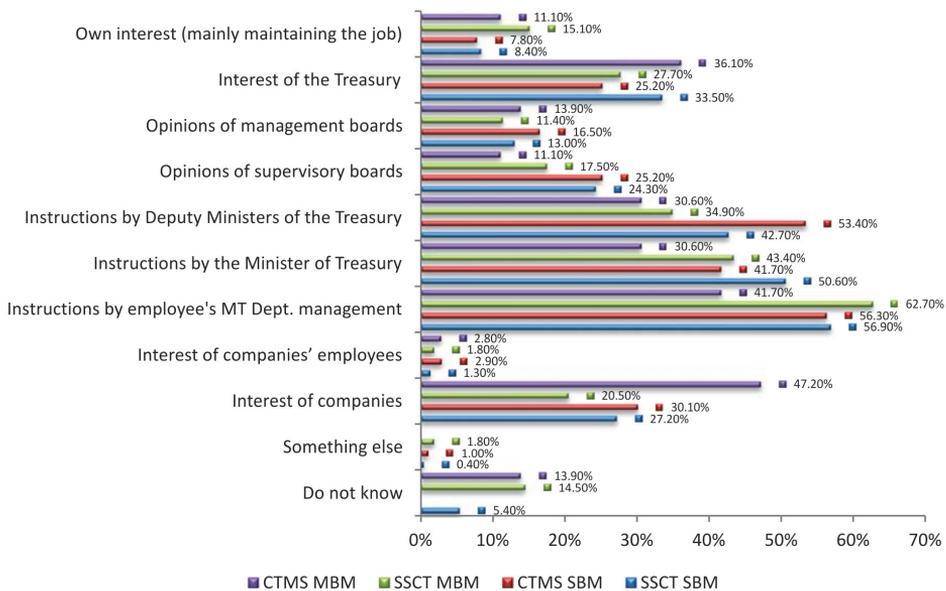
Members of company bodies are not clear in their responses on officials giving instructions to management boards. At the same time, the officials themselves strongly affirm that they take such actions. Importantly, the formal powers of officials do not include giving instructions to management boards and may be merely supervisory. As shown by the results of the survey, officials may take actions beyond their formal powers. This problem also concerns other actions that officials consider themselves to be empowered to undertake and which do not fall within the scope of their formal powers. They are decisions on the day-to-day operations of companies, defining company strategies and supervising companies' pursuit of the interests of their various stakeholders, although company body members did not confirm that officials exercised such powers. It should be emphasised, however, that a relatively large number of companies' bodies members also stated that officials do partly affect the decisions on the day-to-day operations of companies. Hence, their influence over such decisions may be indirect.

Summing up the results of the research on the scope of actions undertaken by officials, it can be concluded that they affect the functioning of companies very strongly. Additionally, they also take actions that do not fall within their formal powers. As previously stated, officials form a *quasi*-body of companies that supervises them directly and indirectly through its impact on their supervisory and management boards.

To further ascertain whether officials' actions contribute to companies efficiently achieving their business objectives, the factors that determine officials' actions concerning companies should be identified. The question of

what determines officials' actions regarding companies was addressed to the companies' supervisory and management board members. The officials were not asked this question because answering it, they would have had to evaluate their work indirectly, which would have made their answers too subjective. The respondents who answered this question could indicate no more than three determinants of officials' actions proposed in the question. Figure 1 presents the result of the survey in this regard.

FIGURE 1: *Determinants of actions undertaken by the Ministry of the Treasury's staff*



Source: own study.

As shown by the research results, officials' actions are affected most strongly by instructions given by their bosses, i.e., people in managerial positions in the ministry departments where they work.

Governmental bodies, i.e., the minister and deputy ministers, also strongly affect officials' actions. Formally, it is the minister who exercises the rights derived from shares on behalf of the Treasury. In practice, due to the large number of companies, this right is also exercised by deputy ministers acting by a delegation of the minister. In this regard, these entities can give instructions to officials.

A major dilemma concerning the joint-stock companies' objective is whether a company has its autonomous interest or its interest is identical to that of its shareholders. Both types of interest may be a determinant of actions taken by officials vis-à-vis companies. Due to the statistically insignificant difference in the number of responses, the respondents' answers do not reveal whether the Treasury's interest or the companies' interest is a stronger determinant of officials' actions. Since officials report to the minister, who represents the Treasury, they might seem to prioritise the interest of that shareholder over the companies' interest. The research results showed that this is not clear. However, officials may equate the interest of companies with that of the shareholder.

Although it is the supervisory and management boards that are formally the primary source of information for officials regarding the situation in companies, respondents relatively rarely indicated their opinions as determinants of officials' actions. It should be surprising since it is these bodies that have reliable and up-to-date information about the situation in the companies.

As demonstrated by the research results, actions taken by officials are not determined by self-interest, in particular, maintaining their jobs. The least important determinant of officials' actions proved to be the interest of the company employees.

Summing up, it should be noted that the actors who operate outside companies – in the Ministry of the Treasury – are stronger determinants than the supervisory and management boards within the companies. Officials are ministry employees and report both to their bosses in the ministry departments and the minister or deputy ministers. However, in carrying out supervisory functions in companies, they should consider the situations in the companies and the markets where they operate. Therefore, officials should be largely driven by the opinions of the company body members.

## 6. Conclusions

The research results confirmed that officials are a *quasi*-body of SOCs. This *quasi*-body is also a corporate governance mechanism which is unique to this type of company, and it not only supervises companies directly but also influences other corporate governance mechanisms, i.e., supervisory boards and the supervisory rights of the shareholder – the Treasury. Furthermore, the fact that officials constitute a *quasi*-body of SOCs distorts the company structure, which, according to the regulation, comprises only three bodies, i.e., the management board, the supervisory board and the general meeting of shareholders.

Officials' supervision is a mechanism that is superior to supervisory boards. Officials influence the composition of supervisory boards, can give instructions to supervisory boards and their members and sit on supervisory boards themselves. This primacy of officials over the boards may lead to a lack of supervisory board members' sense of responsibility for their decisions which are only formally taken by the boards. Such decisions are actually made by officials. Supervisory boards are thus virtual bodies which do not do anything that would be unacceptable to the officials. Additionally, supervisory boards' dependence on officials may overly reinforce the power of management boards. Management board members may realise that "the supervisory board will not punish the management board for the consequences of a decision which it accepted; a ministry official will not punish the supervisory board for the consequences of decisions which were consulted with him or her."<sup>32</sup> The fact that the ministry officials may sit on supervisory boards should also be assessed negatively as such people may be motivated by their work in ministry conditions rather than the real situation and companies' needs. These conclusions are consistent with the study conducted by Apriliyanti and Randoy.<sup>33</sup> They also demonstrated the "self-sacrificing decision" among SOE supervisory board members who feared political consequences. Many studies conducted in developing countries<sup>34</sup> show how officials who sit on supervisory boards influence firms' decision-making processes. It turns out that the problems generated by the corporate governance model in Polish SOEs are almost identical to those in developing countries. It is a paradox because Poland, according to the OECD,<sup>35</sup> is currently classified as a developed country.

<sup>32</sup> **M. Jarosz**, *Manowce polskiej prywatyzacji*, Wydawnictwo Naukowe PWN, Warszawa 2001.

<sup>33</sup> **I.D. Apriliyanti, T. Randoy**, *Between politics and business...*

<sup>34</sup> **C. Tan**, *Najib's corruption charges taint Malaysian political dynasty*, Nikkei Asian Review, 2018, <https://asia.nikkei.com/Politics/Malaysia-in-transition/Najib-s-corruption-charges-taint-Malaysian-political-dynasty>; accessed: 2.06.2020; **M. Miller**, *China's massive corruption crackdown is even going after state-owned firms Reuters*, 2015, <https://www.businessinsider.com/r-chinas-graft-busters-target-state-owned-firms-ahead-of-reform-2015-1?IR=T>; accessed: 2.06.2020; **K.E. Brødsgaard**, *Can China keep controlling its SOEs? The Diplomat*, 2018, <https://thediplomat.com/2018/03/can-china-keep-controlling-its-soes/>; accessed: 2.06.2020; **S. Srinivasan**, *Budget 2018: What India needs is privatization, not mere disinvestments*, Business Today, 2018, <https://www.businesstoday.in/union-budget-2018-19/decoding-the-budget/budget-2018-privatization-disinvestments-business/story/269113.html>; accessed: 2.06.2020.

<sup>35</sup> **World Bank Group**, *Doing business 2019. Training for reform. Regional Profile OECD High Income*, 16th edition, 2019.

Officials report to the minister, who, as the representative of the Treasury at general meetings of shareholders, is supported by them in terms of decision contents and organisation. This means that officials and the minister are mutually dependent. On the one hand, this may create a political background for officials' actions, and, on the other hand, it reinforces their power because the minister takes the companies' opinions into account when making decisions that concern them. Importantly, officials' actions concerning companies are influenced more by their bosses in the ministry than by the companies' supervisory and management board members. Therefore, officials' actions may not be aligned with the real business challenges; rather, they depend on political factors and relationships among actors in the ministry. Companies may not be able to respond timely and adequately to specific market situations because officials depend on the ministry. Decisions there are taken too slowly, and they are not aligned with the companies' needs in particular situations, either in terms of timing or contents.

To summarise the above considerations, it can be concluded that officials' supervision is an administrative mechanism. This general finding leads to a somewhat paradoxical conclusion concerning the structure of the whole system of supervision of Polish SOCs that the administrative mechanism aims to ensure the business efficiency of companies operating in market conditions. This conclusion raises the very issue of corporate governance of companies with the State's shareholding, i.e., the relationship between the autonomy of companies and the control exercised by the State.<sup>36</sup> The autonomy of companies, hence their business efficiency, is limited by the administrative nature of supervision exercised by officials, which is characterised by:

- the desire to move decisions up to higher structures,
- the non-transparent allocation of responsibilities,
- the consolidation of structures,
- the minimisation of restructuring activities,
- deformed power relationships.<sup>37</sup>

The administrative features of officials' supervision render the companies' supervision system non-transparent, and they limit the companies' autonomy at the operational level.<sup>38</sup> The flexibility which is necessary in business may be

<sup>36</sup> L. Bernier, *The future of public enterprises: perspective from the Canadian experience*, *Annals of Public and Cooperative Economics* 2011/82/4, pp. 399–419.

<sup>37</sup> M. Jarosz, *Manowce polskiej prywatyzacji*, Wydawnictwo Naukowe PWN, Warszawa 2001.

<sup>38</sup> C. Kirkpatrick, *The UK Privatization Model: Is It Transferable to Developing Countries*, in: V.V. Ramanadham (ed.), *Privatization in the UK*, Routledge, London 1988, pp. 235–243.

further limited by the pressure exerted by officials to maintain the status quo. The literature considers such pressure to be characteristic of SOEs in transition countries. The pressure manifests itself as a reluctance to privatisation and restructuring activities.<sup>39</sup>

The findings presented in the article on the corporate governance model of companies with the State's shareholding in Poland will be an essential reference point for research concerning this model in other countries. Because of increased state ownership in many countries in recent years, the problem of corporate governance in companies with the State's shareholding has significantly grown in importance.

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## URZĘDNIICY PAŃSTWOWI JAKO QUASI-ORGAN POLSKICH SPÓŁEK PAŃSTWOWYCH

### Abstrakt

**Przedmiot badań:** Funkcjonowanie spółek z udziałem państwa, podobnie jak innych spółek kapitałowych, jest determinowane przez zewnętrzne i wewnętrzne mechanizmy ładu korporacyjnego. W spółkach państwowych występuje ponadto mechanizm, którego nie ma w spółkach prywatnych, czyli nadzór urzędników państwowych. Z tego powodu warto przeanalizować wpływ tego mechanizmu na spółki państwowe.

**Cel badawczy:** Celem artykułu jest wykazanie wpływu urzędników państwowych na przedsiębiorstwa państwowe oraz określenie jego formalnych i nieformalnych uwarunkowań.

**Metoda badawcza:** Badanie ma charakter interdyscyplinarny i obejmuje analizę przepisów prawa oraz ankietę przeprowadzoną wśród członków zarządów i rad nadzorczych spółek Skarbu

Państwa oraz nadzorujących je urzędników Ministerstwa Skarbu Państwa. Próba badawcza objęła całą populację, czyli wszystkie polskie spółki Skarbu Państwa, w których prawa z akcji wykonuje Minister Skarbu Państwa oraz wszyscy urzędnicy sprawujący nad nimi nadzór.

**Wyniki:** Urzędnicy państwowi są *quasi*-organem spółek państwowych i specyficznym mechanizmem ładu korporacyjnego, który nie tylko bezpośrednio nadzoruje spółki, ale także wpływa na inne mechanizmy ładu korporacyjnego. Administracyjny charakter i wpływ polityczny na urzędników państwowych stanowią przeszkodę w zapewnieniu efektywności biznesowej przedsiębiorstw, które mają odpowiednio i terminowo reagować na określone sytuacje rynkowe.

**Słowa kluczowe:** ład korporacyjny, nadzór, spółki państwowe, urzędnicy państwowi, rady nadzorcze, zarząd, Skarb Państwa, Ministerstwo Skarbu Państwa, Ministerstwo Aktywów Państwowych.