

DLB-DLBZ4.701.62.2023.PP

Warsaw, 4 April 2023

**Boards of banks in the form of a joint-stock company, including associating banks**

(according to the distribution)

*Dear Madams and Sirs,*

In view of the different approaches of banks observed by the Polish Financial Supervision Authority (hereinafter: "PFSA Office") to the manner of implementation by their general assemblies of the obligations arising from Recommendation 8.9 in *Recommendation Z of the PFSA concerning the principles of internal governance in banks* (hereinafter: "Recommendation Z") with regard to the assessment of the adequacy of internal regulations concerning the functioning of the supervisory board and the effectiveness of its operation, as well as the inquiries received regarding the proper manner of implementation of the above-mentioned obligations, enclosed, the PFSA Office states its position on how to properly fulfill the requirements indicated in Recommendation 8.9 in Recommendation Z. The banks' boards of directors are responsible for communicating this position to the general assemblies. The position in question applies accordingly to the assessments of the adequacy of internal regulations concerning the functioning of the supervisory board and the effectiveness of its operation carried out in cooperative banks, therefore the PFSA Office kindly requests that the aforementioned position be forwarded by the banks affiliated with cooperative banks.

*Best regards,*

**Marcin Mikołajczyk**  
Deputy Chairman of  
the Polish Financial Supervision Authority  
*/signed by qualified electronic signature/.*

31 March 2023

**Position of the PFSA Office addressed to banks in the form of a joint stock company on compliance with the requirements for assessing the adequacy of internal regulations on the functioning and effectiveness of the supervisory board resulting from *Recommendation Z of the PFSA on the principles of internal governance in banks***

In accordance with Recommendation 8.9 in the Polish Financial Supervisory Commission's Recommendation Z *on internal governance principles in banks* (hereinafter: "Recommendation Z"): *"The adequacy of internal regulations for the functioning of the supervisory board and the management board and the effectiveness of these bodies should be regularly subjected to self-assessment and evaluation by the supervisory board - with respect to the management board, and with respect to the supervisory board - by the general assembly (...). The evaluation may be carried out with the support of external advisors"*.

Considering:

- 1) the different approaches of banks, observed by the Polish Financial Supervisory Authority (hereinafter: "PFSA Office"), to the way their general assemblies implement the obligations under Recommendation 8.9 in Recommendation Z with regard to assessing the adequacy of internal regulations on the functioning of the supervisory board and its effectiveness,
- 2) inquiries received by the PFSA Office regarding the proper way to carry out the aforementioned duties, particularly in light of the fact that bank shareholders may not have access to all internal regulations regarding the functioning of the supervisory board and the effectiveness of its operations due to corporate secrecy under Article 428 § 2 of the Commercial Companies Code,

The PFSA Office provides the following opinion on the manner, in which the requirements indicated in Recommendation 8.9 in Recommendation Z are implemented.

In accordance with this recommendation:

- 1) first, the supervisory board of the bank should self-assess the adequacy of internal regulations concerning its functioning and its effectiveness,
- 2) the general assembly of the bank should then assess the adequacy of internal regulations concerning the functioning of the supervisory board and the effectiveness of its operation.

The self-assessment by the supervisory board shall not replace the assessment carried out by the general assembly and the assessment carried out by the general assembly shall not relieve the supervisory board of its self-assessment.

The self-assessment by the supervisory board and the assessment by the general assembly should take the form of appropriate resolutions of those bodies on the self-assessment by the supervisory board and the assessment by the general assembly.

The general assembly's consideration or approval of the report on the supervisory board's activities (even if relevant resolutions are adopted in this regard), as well as the general assembly's acknowledgment (even in the form of a resolution) of information on the results of the supervisory board's self-assessment, does not fulfill the requirement of Recommendation Z, as it does not demonstrate the general assembly's assessment of the adequacy of internal regulations regarding the functioning of the supervisory board and the effectiveness of its operations.

The PFSA Office is aware that bank shareholders may not have access to all internal regulations and documents regarding the functioning of the supervisory board and its effectiveness, due, for example, to restrictions on access to these documents due to corporate secrecy under Article 428 § 2 of the Commercial Companies Code. However, this does not justify the general assembly's refraining from assessing the adequacy of internal regulations regarding the functioning of the supervisory board and the effectiveness of its operations. That assessment should be made on the basis and to the extent of all the information and documents available to the general assembly, referring in particular to:

- 1) resolutions of the supervisory board on self-assessment of the adequacy of internal regulations concerning the functioning of the supervisory board and the effectiveness of its operation;
- 2) the list of internal regulations of the bank concerning the functioning of the supervisory board;
- 3) the content of the bank's internal regulations concerning the functioning of the supervisory board, which, in the opinion of the management board of the bank, may be made available to the general assembly;
- 4) prepared by external advisors - at the request of the bank, with the necessary confidentiality rules and for the purpose of evaluation by the general assembly - expert reports, audit reports or opinions relating to the bank's internal regulations on the functioning of the supervisory board and the effectiveness of its operations.

It should be the responsibility of the bank's management board to gather the documents necessary for the evaluation and make them available to the general assembly. The use of expert reports, audit reports or opinions referred to in item 4) above should be standard good practice in cases where the bank does not make available the entirety of internal regulations or other documents relating to the functioning of the supervisory board to the general assembly.

The resolution of the general assembly on the assessment of the adequacy of internal regulations relating to the functioning of the supervisory board and its effectiveness should clearly indicate, on the basis of which information the general assembly has made that assessment.

This position applies mutatis mutandis to assessments of the adequacy of internal regulations relating to the functioning of the supervisory board and the effectiveness of its operation in cooperative banks. The PFSA Office kindly requests that the affiliated banks communicate this position to the affiliated cooperative banks.