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Title of the dissertation: **Legal aspects of institutional investor engagement in the corporate governance of listed companies**

This doctoral dissertation examines the legal aspects of institutional investor engagement in the corporate governance of listed companies. In its broadest sense, shareholder engagement – which in practice mostly concerns institutional investors – may be understood as shareholders adopting an active stance toward the company and its governing bodies, both by exercising corporate rights and exerting informal influence on the company. This issue is significant for two reasons.

First, shareholder engagement is an empirical phenomenon that is increasingly common on Western capital markets. As an ever larger proportion of shares has, over recent decades, become concentrated in the portfolios of institutional investors, the capacity of such investors to influence listed companies has grown accordingly. Institutional investors actively make use of this capacity, inter alia by publishing voting policies for specific categories of matters, voting actively in accordance with those policies, and engaging in dialogue with company management. The practices of so-called activist hedge funds, for which influencing company management – sometimes in aggressive forms – constitutes a core investment strategy go even further in this regard.

At the same time, the strengthening of shareholder engagement is regarded by the EU legislator – and, following it, also by the Polish legislator – as one of the key mechanisms of good corporate governance. Already the preamble to the so-called Shareholders’ Rights Directive adopted in 2007 (Directive 2007/36/EC) emphasized that “effective shareholder control is a prerequisite for sound corporate governance and should therefore be facilitated and encouraged.” A further expression of this legislative trend was the adoption in 2017 of Directive (EU) 2017/828 amending Directive 2007/36/EC with regard to the encouragement of long-term shareholder engagement. This act seeks to further facilitate the exercise of shareholders’ rights and imposes specific engagement-related obligations on institutional investors with a view to increasing their level of activity.

Despite the practical importance of this phenomenon and its elevation to the status of one of the axiological pillars of EU corporate governance regulation, shareholder engagement gives rise to a number of legal problems under company law and capital markets law. These problems justify undertaking the subject addressed in this dissertation. The research objectives of the dissertation include identifying the principal forms of shareholder engagement, outlining the key legal problems arising in connection with those forms of engagement and proposing solutions to them. The dissertation also aims to assess the extent to which relevant institutions of Polish company law and capital markets law support, or unjustifiably hinder, investor engagement.

Chapter 1 introduces the subject matter of the dissertation, explaining the conceptual framework employed, outlining the market context of the phenomenon under examination, and identifying the main forms of investor engagement. Institutional investor engagement is also analyzed from the perspective of economic agency theory, which is commonly used in the literature to explain corporate governance mechanisms. In Chapter 1, the following principal forms of investor

engagement are identified: direct dialogue with the company, cooperation with other shareholders, influencing the composition of the supervisory board, and the exercise of corporate rights in connection with the general meeting. The identified forms of engagement define the scope of analysis in the subsequent chapters of the dissertation.

Chapter 2 addresses the legal framework governing direct dialogue between a listed company and institutional investors. The chapter first analyzes the potential conflict between the selective disclosure of information to investors in the course of dialogue with the company and the provisions of the Polish Commercial Companies Code (KSH) requiring equal treatment of shareholders. In addition to the general principle of equal treatment of shareholders (Article 20 KSH), particular importance in this context attaches to the limitations set out in Article 428 § 7 KSH, which requires that information selectively disclosed to a shareholder outside the general meeting be made public – without delay, in the case of a listed company, by way of an ad hoc report.

The chapter then examines the impact of the Market Abuse Regulation (MAR) rules regarding the handling of inside information on the dialogue between listed companies and their shareholders. On the one hand, the legal consequences of coming into possession of inside information create risks for investors engaging in dialogue with the company; as argued in the dissertation, however, several elements of the MAR regime mitigate those risks. On the other hand, investors may in exceptional circumstances wish, or agree, to receive inside information in the course of dialogue with the company, which necessitates an analysis of the permissibility of disclosing inside information to them in such situations.

The final institution discussed in Chapter 2 is the right of a listed company to identify its shareholders, which is intended as a mechanism for strengthening dialogue between the company and investors.

Chapter 3 analyzes the constraints on shareholder cooperation arising from the provisions of the Act on Public Offering governing the institution of acting in concert. The chapter offers a detailed and critical analysis of Polish acting in concert rules against the background of their counterparts in the EU law, as well as a comparative overview of methods for accommodating investor engagement within this framework, including solutions based on safe harbour mechanisms. It then considers the issue of whether a company itself may enforce the sanction of suspension of voting rights in connection with a (presumed) breach of obligations relating to the acquisition of significant shareholdings by a shareholder, in particular by excluding the shareholder from voting at the general meeting.

Chapter 4 focuses on interactions between investors and the supervisory board. It first examines the legal mechanisms that enable minority shareholders to influence the composition of the supervisory board. In this context, the institution of electing supervisory board members in groups (Article 385 § 3 et seq. KSH) is critically assessed against more modern functional equivalents adopted in selected foreign legal systems. Second, the chapter reconstructs the legal framework governing communication between the supervisory board, its individual members, and shareholders, primarily from the perspective of supervisory board members' duties of loyalty and confidentiality.

Chapter 5 concerns the exercise of shareholders' corporate rights in connection with the general meeting. It analyzes several issues relating to this form of engagement. The first concerns the permissibility of a joint-stock company's general meeting adopting resolutions on matters not expressly reserved to the competence of that body. The second issue involves an assessment of the extent to which provisions governing shareholders' corporate rights allow the agenda of the general meeting to function effectively as a forum for dialogue among shareholders prior to the general meeting.

Third, the chapter assesses the effectiveness of the forms of remote (*in absentia*) exercise of voting rights provided for in the KSH. The provisions on voting by proxy, postal voting, and electronic voting are subjected to critical analysis, with particular emphasis on the innovation allowing votes to be cast through financial intermediaries, introduced as a result of the implementation of Directive 2017/828. This analysis leads to the conclusion that these provisions do not effectively ensure the possibility of participating in the general meeting and voting in absentia, and that the model of the general meeting adopted in the KSH remains premised on the physical presence of shareholders at the meeting. This model is criticized as limiting the participation of external investors in corporate governance, and proposals for reform are advanced.

The chapter concludes with an analysis of the shareholder duty of loyalty as a potential instrument both for increasing and for constraining shareholder influence over the company.

Chapter 6 examines legal instruments designed to strengthen institutional investor engagement. It presents a comparative analysis of regulatory techniques aimed at enhancing investor engagement in U.S. and English law, as well as the extent to which these regulatory initiatives are anchored in investors' private-law fiduciary obligations toward their beneficiaries or clients. This analysis provides the background for a detailed examination of engagement-related disclosure obligations introduced into Polish law as a result of the implementation of Directive 2017/828. It includes an assessment of the effectiveness of these measures in strengthening investor engagement. Beyond the provisions implementing Directive 2017/828, engagement is also considered in the context of the general obligation of institutional investors to act in the best interests of their beneficiaries. In addition, the potential civil liability of investors toward beneficiaries or clients is examined as a mechanism capable of incentivizing engagement.

The dissertation concludes with a **Summary**.

The research conducted in the dissertation results in the identification of legal problems related to engagement that arise in various contexts, and in the proposal of solutions to those problems, both through legal interpretation and through reform-oriented recommendations grounded in extensive comparative legal research. Owing to the cross-sectional nature of the analysis, the dissertation does not seek to verify a single overarching thesis – for example, whether Polish company law and capital markets law generally promote shareholder engagement – but instead advances and defends partial theses within the context of the particular legal institutions examined.