

# **BRE Bank SA Corporate Governance Compliance Report**

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### **1) BRE Bank SA's Compliance with Corporate Governance Principles**

BRE Bank has always used best efforts to ensure equal access to company information for all shareholders and full respect of shareholders' rights irrespective of the size of their stake. The pursuit of full transparency of operation and compliance with business ethics has been reflected in compliance with the principles of good practice for listed companies.

BRE Bank has declared compliance with corporate governance rules since the original version of the document, i.e., the "Best Practices in Public Companies 2002". In 2007, BRE Bank complied with the corporate governance principles as defined in the Warsaw Stock Exchange standards set in the document "Best Practices in Public Companies 2005" attached to Resolution No. 445/2004 of the Warsaw Stock Exchange Management Board dated 15 December 2004 and Resolution No. 44/1062/2004 of the Warsaw Stock Exchange Supervisory Board dated 15 December 2004.

The BRE Bank authorities adopted resolutions concerning compliance with the principles of the "Best Practices in Public Companies 2005": the Management Board on 3 March 2005, the Supervisory Board on 15 March, and the Ordinary General Meeting on 22 March 2005. In 2005, BRE Bank declared compliance with 52 out of 53 principles of the Best Practices. In 2007, according to the statement published in current report no. 42/2007 dated 28 February, the Bank confirmed compliance with 52 principles. The compliance declaration did not include one provision of principle 20 concerning the independence of Supervisory Board members.

Principle 20 provides as follows:

- At least half the members of the Supervisory Board should be independent members without any relations with the company and its shareholders or employees which could significantly affect the independent member's ability to make impartial decisions;
- Without the consent of the majority of independent Supervisory Board members, no resolutions should be adopted on issues enumerated in the Principle;
- In companies where one shareholder holds a block of shares carrying over 50% of all voting rights, the Supervisory Board should consist of at least two independent members, including an independent Chairman of the Audit Committee.

Pursuant to the BRE Bank By-laws, at least half of the Supervisory Board members shall be independent members, unless the General Meeting decides otherwise. If a Bank's shareholder holds a package of shares representing over 50% of the total number of votes at the General Meeting, the Supervisory Board should include at least two independent members. The Bank's By-laws define the criteria of independence of Supervisory Board members, list the types of resolutions which cannot be adopted without the consent of the majority of the independent members, and provides that two Audit Committee members should be independent members. However, there is no requirement that the Chairman of the Audit Committee should be an independent member of the Supervisory Board. BRE Bank's Audit Committee, which consists of four members including two members who fulfil the independence criteria, is chaired by

Achim Kassow who represents the strategic shareholder Commerzbank. This means that the Bank did not respect principle 20 only to this extent.

As of 1 January 2008, the "Best Practices in Public Companies 2005" were replaced by the "Best Practice for WSE Listed Companies" adopted in a resolution of the WSE Supervisory Board on 4 July 2007. The form of communication of compliance with the corporate governance principles was changed: companies should comply with the corporate governance principles and notify any case of permanent non-compliance with a principle or its incidental breach. The new principles do not include a requirement that the Chairman of the Audit Committee should fulfil the independence criteria.

Having reviewed the "Best Practice for WSE Listed Companies", the BRE Bank Management Board at the first meeting in 2008 held on 7 January adopted a resolution declaring the will of application of the recommendations and principles contained in the document and committed itself to immediately notifying any case of permanent non-compliance with a principle or its incidental breach pursuant to § 29 of the Warsaw Stock Exchange Rules. A resolution of the same kind was adopted by the Supervisory Board at its first meeting in 2008 held on 24 January.

BRE Bank's corporate governance compliance extends to the work of all of the company's authorities: the General Meeting, the Supervisory Board, and the Management Board. The principles of functioning of these authorities are described in greater detail in sections 2 and 3 hereof.

## **2) Procedures and competences of the General Meeting, shareholders' rights and their execution**

The General Meeting convened by the Management Board by way of an ordinary procedure is held on an annual basis, not later than in June. In 2007, the 20<sup>th</sup> Ordinary General Meeting of BRE Bank was held on 16 March.

The Extraordinary General Meeting is convened in the case of need, either at the discretion of the Management Board or the Supervisory Board, or upon a request of shareholders representing jointly at least one-tenth of the share capital. Shareholders can participate in the General Meeting and cast their votes either in person or by proxies. In order to be valid, the powers of attorney for participation in the General Meeting should be made out in writing and attached to the minutes. Each share of the Bank represents one vote. With the reservation of cases determined in the Code of Commercial Partnerships and Companies, the General Meeting is valid regardless of the number of shares represented at the General Meeting.

Under the BRE Bank By-laws, the following matters require a resolution of the General Meeting in addition to other matters set out in the Code of Commercial Partnerships and Companies:

- a) examination and approval of the report of the Management Board on the Bank's operations and financial statements for the past financial year;
- b) adoption of resolutions on the distribution of profit or coverage of losses;
- c) vote of discharge of duties to the members of the Bank's authorities;
- d) election and dismissal of members of the Supervisory Board;
- e) amendment of the By-laws;
- f) increase or reduction of the Bank's share capital;
- g) adoption of resolutions concerning the cancellation of shares and resolution to cancel shares, in particular setting the policy of share cancellation not regulated in the By-laws;
- h) creation and winding up of special purpose funds;
- i) issuance of convertible bonds or preferred bonds;
- j) determination of remuneration for members of the Supervisory Board;
- k) liquidation of the Bank or its merger with another bank;
- l) appointment of liquidators;
- ł) matters submitted by the Supervisory Board;
- m) matters submitted by shareholders in accordance with the provisions of the By-laws,

n) election of an entity qualified to audit financial statements as auditor of the Bank.

All matters submitted to the General Meeting should have been previously submitted to the Supervisory Board for consideration. The principles of participation in the General Meeting and of casting votes are governed by the Standing Rules of the BRE Bank General Meeting. The Standing Rules of the General Meeting include among others provisions concerning elections including elections to the Supervisory Board as well as provisions on voting procedures. Under the Standing Rules, votes are taken in an open ballot. A secret ballot is required in the case of elections and motions for dismissal of members of the authorities of the Bank or liquidators, motions to put members of the authorities of the Bank or liquidators before justice, and in personal issues. In addition, a secret ballot is required if requested by at least one shareholder present or represented at the General Meeting.

Resolutions of the General Meeting are passed by an simple majority of votes unless provisions of the Code of Commercial Partnerships and Companies or the By-laws of the Bank impose a stricter requirement for the passing of a resolution on a specific issue. Pursuant to the Rules of the Supervisory Board, draft resolutions of the General Meeting are tabled together with grounds (opinion) of the Supervisory Board.

The person opening the General Meeting (Chairman of the Supervisory Board of the Bank or Deputy Chairman, or – in the case of their absence – Member of the Supervisory Board) proceeds immediately with election of the Chairman of the General Meeting. The Chairman of the General Meeting presides over the proceedings, makes decisions relating to formal and procedural aspects of the Meeting, and has the right to interpret the Standing Rules. The Chairman's functions also include, among others: ensuring that the proceedings are efficient and in keeping with the agenda and the procedure as well as in respect of the rights and interests of all shareholders, giving the floor to speakers, accepting motions and draft resolutions, submitting them for discussion, opening and proceeding with voting, and confirming that the agenda has been exhausted. Pursuant to the Standing Rules of the General Meeting, Members of the Management Board and the Supervisory Board of the Bank should participate in the General Meeting, and so should the auditor if the General Meeting deliberates on financial issues of the Bank. During the meeting, the Management Board of the Bank should answer any questions of shareholders subject to the fact that the Bank complies with reporting obligations under the provisions of binding legislation including: the Code of Commercial Partnerships and Companies, the Financial Instruments Trading Law, and the Law on the Public Offer, Terms and Conditions of Introduction of Financial Instruments to an Organised Trading System, and Public Companies whereas some information may only be disclosed pursuant to the provisions of the law.

In summary, in 2007, BRE Bank complied with all principles of the best practices of General Meetings listed in points 1-10 of the "Best Practices in Public Companies 2005". In most cases, the principles were reflected in the provisions of the Bank's By-laws and/or Standing Rules of the General Meeting.

### **3) Personal composition and procedures of the managing and supervisory authorities of the company and their committees**

#### **3.1 Management Board**

According to the BRE Bank By-laws, the Management Board is composed of at least three members appointed for a joint term of office of 5 years. At least half of the members of the Management Board, including the President of the Management Board, should hold Polish citizenship. The members of the Management Board direct selected areas of the Bank's activities within the scope determined by the President of the Management Board. The detailed division of competences and the procedures of replacement in the case of absence or holiday of Management Board members are determined in resolutions of the Management Board.

In 2007, the composition of the Management Board was as follows:

1. Sławomir Lachowski – President of the Management Board and General Director of the Bank, until August 2007 also acting Managing Director for Retail Banking
2. Jerzy Józkowiak – Management Board Member, Managing Director for Finance
3. Bernd Loewen – Management Board Member, Managing Director for Investment Banking
4. Rainer Ottenstein – Management Board Member, Managing Director for Operations and IT
5. Wiesław Thor – Management Board Member, Managing Director for Risk

6. Janusz Wojtas – Management Board Member, Managing Director for Corporate Banking
7. Jarosław Mastalerz – Management Board Member, Managing Director for Retail Banking – appointed to the Management Board and appointed Managing Director for Retail Banking as of 1 August 2007 at the meeting of the Supervisory Board on 28 June 2007

The members of the Management Board are jointly liable for the overall operation of the Bank. They work as a collegiate body and inform each other about the most important matters concerning the Bank and subject to the competencies of particular members of the Management Board. The Management Board may appoint standing committees or teams to perform specific functions or to co-ordinate the work of organisational units of the Bank as well as teams for specific tasks.

BRE Bank has the following committees:

- BRE Bank Operational Management Committee (chaired by: Sławomir Lachowski)
- BRE Bank Group Operational Management Committee (chaired by: Sławomir Lachowski)
- BRE Bank Group Assets and Liabilities Management Committee (chaired by: Bernd Loewen)
- Bank's Investment Committee (chaired by: Bernd Loewen)
- Corporate Banking Offer Development Committee (chaired by: Janusz Wojtas)
- Bank's IT Committee (chaired by: Rainer Ottenstein)
- Capital Management Committee (chaired by: Jerzy Jóźkowiak)
- Credit Committee of the Bank's Management Board (chaired by: Wiesław Thor)
- BRE Bank Risk Committee (chaired by: Wiesław Thor).

The Management Board directs the Bank's business, represents the Bank, and defines the guidelines for the activity of the Bank, especially its activities subject to risks, such as the credit policy, the investment policy, the Bank's assets and liabilities management policy, and the guarantee policy. The Management Board tables regular and exhaustive reports to the Supervisory Board on all significant aspects of the activities of the Bank and risks related to its operations as well as risk management methods.

The Management Board operates pursuant to its Rules approved by the Supervisory Board. The Rules determine among others the issues which require consideration by the Management Board as a collegiate body and adoption of a resolution of the Management Board. The issues which require a resolution of the Management Board include among others decisions to assume obligations or to dispose of assets whose total value in relation to one entity exceeds 5% of the Bank's own funds (the Management Board by way of its resolution may authorise standing committees or relevant persons to make such decisions). A resolution of the Management Board following the approval of the Executive Committee of the Supervisory Board is also required for acquisition, encumbrance or disposal of real estate, perpetual usufruct, or interests in real estate, shares or equity interests in companies, and other fixed assets if the value of the transaction exceeds 1% of the Bank's own funds as at 31 December of the preceding year; this requirement does not apply if such acquisition results from execution, bankruptcy or negotiation proceedings or other settlements with the Bank's debtors, or in the case of disposal of assets so acquired.

All resolutions are adopted by a majority of votes of the Management Board members present at the meeting, and in the case of an equal number of opposing votes, the President of the Management Board has the casting vote. The members of the Management Board strive to adopt their resolutions by consensus. In compliance with a principle of the best practices, the Rules of the Management Board provide that a member of the Management Board should abstain from participating in decision-making on such matters where a conflict of interest arises or may potentially arise between the Bank and the member of the Management Board, his or her spouse, relatives or relations by affinity up to the second degree, as well as persons with whom he or she has a personal relationship.

The remuneration of the Management Board members consists of a fixed part and a variable part adjusted and tied to the financial performance of the Company. The amount of remuneration is verified by the Supervisory Board on an annual basis. The total amount of the remuneration of all Management Board members jointly and of each individual member, broken down into component parts, is published in the annual report.

It can be concluded with confidence that the Best Practices of Management Boards listed in points 32-40 of the "Best Practice in Public Companies 2005" were fully respected by the BRE Bank Management Board. Most principles were also regulated in the Rules of the Management Board and/or the By-laws of the Bank.

### 3.2 Supervisory Board

The BRE Bank By-laws provide that the Supervisory Board consists of not less than five members elected by the General Meeting for a joint term of office of three years. At least half of the members of the Supervisory Board, including the Chairman, should hold Polish citizenship. As mentioned in section 1 hereof, the By-laws determine the minimum number of independent members of the Supervisory Board and the independence criteria.

Until the end of February 2007, the Bank's Supervisory Board consisted of 9 members. Mr Krzysztof Szwarz resigned from the Supervisory Board as of 28 February 2007. Thereafter, the Supervisory Board had 8 members, including 4 independent members.

The composition of the Supervisory Board was as follows:

1. Maciej Leśny – Chairman of the Supervisory Board, Chairman of the Executive Committee
2. Martin Blessing – Deputy Chairman of the Supervisory Board, Deputy Chairman of the Executive Committee
3. Nicholas Teller – Member of the Supervisory Board, Member of the Executive Committee
4. Jan Szomburg – Member of the Supervisory Board, Member of the Executive Committee
5. Gromosław Czempiński – Member of the Supervisory Board
6. Achim Kassow – Member of the Supervisory Board
7. Teresa Mokrysz – Member of the Supervisory Board
8. Michael Schmid – Member of the Supervisory Board

The independent members of the Supervisory Board are: Maciej Leśny, Jan Szomburg, Gromosław Czempiński, and Teresa Mokrysz. The strategic shareholder Commerzbank is represented by: Martin Blessing, Nicolas Teller, Achim Kassow, and Michael Schmid.

The competences of the Supervisory Board mentioned in the Rules of the Supervisory Board include in particular:

- a) to advise and to supervise the Management Board in defining the guidelines for the activity of the Bank, especially its activities subject to risks, such as the credit policy, the investment policy and the guarantee policy and to approve the proposals of the Management Board concerning the Bank's essential organisational structure;
- b) to exercise supervision over compliance of the Bank's regulations concerning risk taking with the strategy and the financial plan of the Bank;
- c) to approve the principles of the information policy concerning risk management and capital adequacy as adopted by the Management Board;
- d) to approve strategies and procedures developed by the Management Board concerning the internal control system, the risk management system, the internal capital assessment process, capital management and capital planning;
- e) to assess the adequacy and effectiveness of the risk management system;
- f) to review regular and exhaustive reports of the Management Board pertaining to all significant aspects of the activities of the Bank and risks related to its operations as well as risk management methods;
- g) to draw up a concise report evaluating the position of the Bank to be tabled to the Ordinary General Meeting and appended to the annual report of the Bank for the previous financial year drafted pursuant to separate regulations;
- h) to approve the Bank's annual financial plans and multi-annual development plans as well as the Bank's business strategy and the principles of prudent and stable management of the Bank;
- i) to review any motions and matters which are subject to resolutions of the General Meeting, including draft resolutions of the General Meeting; the Supervisory Board draws up grounds (opinions) for draft resolutions to be tabled for approval of the General Meeting; such grounds (opinions) and draft resolutions are made available to the shareholders at the registration desk before the General Meeting;

- j) to issue or approve rules provided for in the By-laws of the Bank;
- k) to appoint and dismiss the President, the First Deputy President and Deputy Presidents and other members of the Bank's Management Board in keeping with the provisions of the Banking Law and in view of the relevant qualifications necessary to perform their functions;
- l) to determine the terms of management contracts and to set remuneration for the President, the First Deputy President and Deputy Presidents and other members of the Management Board;
- m) to authorise the Chairman of the Supervisory Board to represent the Bank in agreements with members of the Management Board including execution of management contracts with members of the Management Board;
- n) to receive advance information on formation, acquisition, closing and disposal of branches, permanent establishments and parts of a business as well as of initiation and termination of projects and areas of business;
- o) to approve the conclusion or amendment of each significant agreement or arrangement with the members of the Management Board or the Supervisory Board;
- p) to approve the conclusion, amendment or termination of any significant affiliation agreements or cooperation treaties;
- r) to receive information on expected deviations from the annual budget;
- s) to analyse the report of the Director of the Internal Audit Department, received at least on an annual basis, based on completed audits and reports on the monitoring of the effectiveness of internal control mechanisms, presenting information on detected irregularities, conclusions, and measures taken to eliminate the irregularities.

Meetings of the Supervisory Board are convened by the Chairman of the Supervisory Board by his or her own initiative or at the motion of the Bank's Management Board or at the motion a Supervisory Board member, at least three times a year. The Supervisory Board held 4 meetings in 2007. All Management Board members participate in meetings of the Supervisory Board except for those agenda items which concern directly the Management Board or its members.

The Supervisory Board passes resolutions by a simple majority of votes. In the case of an equal number of opposing votes, the Chairman of the Supervisory Board has the casting vote. A Supervisory Board member should notify all other Supervisory Board members of any conflict of interest which arose or may potentially arise, and should refrain from taking the floor in discussion and from voting on the resolution pertaining to the situation subject to the conflict of interest.

No resolution should be passed without the consent of the majority of the independent members of the Supervisory Board on the following matters:

- any benefits provided by the Bank or any entities associated with the Bank to the members of the Management Board;
- consent for the Bank to enter into a significant agreement with an entity associated with the Bank, a member of the Supervisory Board or the Management Board, or entities associated with them.

The Supervisory Board has 3 Committees: the Executive Committee, the Risk Committee, and the Audit Committee.

The competences of the Executive Committee include in particular to exercise regular supervision of the operations of the Bank between meetings of the Supervisory Board; to authorise the Board of Management to proceed with acquisition, encumbrance or disposal of real estate, perpetual usufruct, or interests in real estate, shares or equity interests in companies, and other fixed assets if the value of the transaction exceeds 1% of the Bank's own funds; to review principles and amounts of remuneration of members of the Management Board; to table opinions concerning approval for members of the Management Board of the Bank to engage in competitive activity. The Executive Committee is composed of: Maciej Leśny – Chairman, Martin Blessing – Deputy Chairman, Jan Szomburg and Nicholas Teller – Members.

The Audit Committee gives opinions about the election of the auditor by the General Meeting, recommends approval or rejection of financial statements by the Supervisory Board, and exercises regular supervision of the internal audit system at the Bank. The Audit Committee is composed of: Achim Kassow – Chairman, Martin Blessing, Maciej Leśny, Jan Szomburg. As mentioned in section 1 hereof, the fact that the Chairman of the Audit Committee is a Supervisory Board member who is not an independent member implies that the Bank could not declare compliance with principle 20 of the Best Practices of Supervisory Boards.

The tasks of the Risk Committee include among others exercising regular supervision of credit risks, market risks and operational risks as well as approving individual counterparty risk according to parameters defined by the Supervisory Board. In addition, the Risk Committee recommends approval or disapproval to the Supervisory Board for transactions between the Bank and members of the Bank's authorities as provided by the Banking Law. The Risk Committee is composed of: Michael Schmid – Chairman, Maciej Leśny – Member, Nicholas Teller – Member.

The Standing Committees of the Supervisory Board report to the Supervisory Board with annual reports. The Bank makes the reports available to the shareholders before the Ordinary General Meeting.

The amount of remuneration of the Supervisory Board members (jointly and individually for each member) is published in the annual report.

#### **4) Description of the main features of the Company's internal control and management systems in relation to the preparation of financial statements**

Pursuant to the provisions of the Banking Law, Resolutions of the Banking Supervision Commission (KNB), and Recommendation H of the General Inspectorate of Banking Supervision (GINB), in the bank management system BRE Bank has an Internal Control System (ICS) which comprises:

- 1/ functional internal control;
- 2/ institutional internal control.

BRE Bank's internal control is governed by the provisions of the Internal Control Rules introduced under a Regulation of the President of the Management Board pursuant to a Resolution of the Bank's Management Board.

Functional internal control is a system applicable to each organisational unit of BRE Bank. Each organisational unit of the Bank performs internal control under the guidance of the Head of the organisational unit. The functional internal control system is subject to regular evaluation and monitoring through institutional internal control.

Institutional internal control is performed by the Internal Audit Department (DAW). The Department operates pursuant to the provisions of the Banking Law, BRE Bank's internal regulations, the International Standards for the Professional Practice of Internal Auditing, and good business practice in this area.

The Internal Audit Department is under the administration of the President of the Management Board of the Bank and reports to the President of the Management Board and to the Audit Committee of the Supervisory Board of the Bank. The principle of operational independence of audit is respected as auditors are not involved in any operational activity. The mission, position, goals, scope of activity, and tasks of the Department are laid down in the Bank's internal legislation.

The main functions of the Internal Audit Department include:

- a) to develop the principles of the internal control system, the evaluation of risk management systems, and to provide advice;
- b) to monitor and assess the effectiveness of risk management systems;
- c) to analyse and assess the adequacy and effectiveness of control systems in the Bank's management systems, operational systems and IT systems;
- d) to carry out scheduled and ad hoc audits for banking and IT products, organisational units and business areas of the Bank (including its foreign branches);
- e) to exercise functional supervision over internal control units in organisational units of the Bank (including its foreign branches);
- f) to initiate and supervise preventive measures aimed at preventing irregularities in the operation of the Bank;
- g) to maintain contacts with the Banking Supervision Commission and the Supreme Chamber of Control on behalf of the Bank to the extent determined by the objective scope of the Department;
- h) to co-ordinate work related to audits carried out by external audit institutions and to co-operate with the external auditor.

In providing assurance and advisory services, the Department performs:

- audit tasks – audits scheduled under the Internal Audit Department Annual Work Plan, and ad hoc audits;

- non-audit tasks – opinions and advice.

This covers all organisational units of the Bank.

The internal audit processes is a planned process. The audit plan is prepared on an annual basis following an analysis of risks in all relevant business areas of the Bank, approved by the Management Board of the Bank and accepted by the Audit Committee of the Supervisory Board. Audit results are reported to the President of the Management Board and to the Supervisory Board of the Bank (Audit Committee).

The Internal Audit Department monitors the implementation of audit recommendations.

In its advisory role, the Department issues opinions on internal legislation, regulations, policies and procedures for the operational activity of the Bank from the perspective of internal control and risks. The Department also provides internal services in the organisation including auditor supervision over ongoing or prepared projects at the Bank.

The Internal Audit Department presents semi-annual activity reports which include important findings concerning the effectiveness of the internal control system and the related risk assessment. The reports are regularly tabled to the President of the Management Board and the Audit Committee. The quality of work of the internal audit services is evaluated in regular reviews of the performance of auditors by Department managers.

In particular, the Bank uses risk management and internal control in the process of preparing financial statements.

The process and organisation of the preparation of the Bank's financial statements are laid down in the Bank's internal legislation and approved in a Regulation of the President of the Management Board. The applicable Regulation provides for a clear and transparent division of responsibility of the persons participating in the preparation and verification of the quality of the prepared financial statements of the Bank.

Substantive and organisational supervision over the preparation of the financial statements is exercised by the Director of the Accounting Department.

The work on the preparation of the annual and semi-annual financial statements of the Bank is co-ordinated by the Deputy Director of the Accounting Department.

The prepared financial statements are tabled to the Management Board for verification.

In addition, the Audit Committee as a body supporting the Supervisory Board in its performance of obligations relating to the quality of the prepared financial statements receives reports on quarterly financial statements as well as profits or losses before publication. The Audit Committee recommends approval or rejection of annual financial statements by the Supervisory Board.

The annual and semi-annual financial statements of the Bank are respectively audited and reviewed by an independent external auditor.

The Bank manages the risks of the process of preparation of financial statements also by ongoing monitoring of changes in requirements under external legislation and regulations concerning reporting obligations of banks, and by preparing for their implementation well ahead of the deadline.

The Bank also updates on an ongoing basis its accounting principles used to prepare financial statements.