Corporate Governance

Contributing editor
Holly J Gregory

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Corporate Governance 2016

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CONTENTS

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Sources of corporate governance rules and practices

1 Primary sources of law, regulation and practice

What are the primary sources of law, regulation and practice relating to corporate governance? Is it mandatory for listed companies to comply with listing rules or do they apply on a 'comply or explain' basis?

The law (referring here to the broad sense of the word and thus including laws, decrees, regulations, government decisions, etc) is the sole available option for regulating a specific matter in Romania. As opposed to common law jurisdictions, the Romanian legal system does not recognise precedents as a source of law. As such, the main legal framework covering corporate governance is provided by Companies Law No. 31/1990 (the Companies Law) and Trade Registry Law No. 26/1990.

In addition, there are special regulations applicable to listed companies and to state-owned enterprises.

Listed companies are subject to special corporate governance rules provided by Capital Markets Law No. 297/2004 and to the regulations issued by the specific regulatory authority in this field, namely the Financial Supervisory Authority (FSA). Among such specific regulations, FSA Regulation No. 1/2006 regarding issuers and securities operations (FSA Regulation No. 1/2006) and FSA Regulation No. 6/2009 regarding the exercise of certain shareholders' rights in connection to companies' general shareholders' meetings are the most important.

Moreover, the Bucharest Stock Exchange has issued a Corporate Governance Code, which establishes principles of corporate governance and provides recommendations. Even though the Code is not mandatory, listed companies are under the obligation to disclose, in their annual reports, whether the company complies with the provisions of the Code and, if not, the reasons for such non-compliance (the Corporate Governance Compliance Statement – the 'comply-or-explain' statement).

State-owned enterprises are subject to Corporate Governance Emergency Ordinance No. 109/2011 (GEO No. 109/2011).

2 Responsible entities

What are the primary government agencies or other entities responsible for making such rules and enforcing them? Are there any well-known shareholder groups or proxy advisory firms whose views are often considered?

Under the Romanian Constitution, the Parliament, following parliamentary or government initiative, is the primary authority in charge of the enactment of binding laws and regulations, including those regarding corporate governance. Also, the Romanian government may issue legislative acts such as decisions and emergency ordinances.

In addition, other authorities (the National Bank of Romania (NBR) and the FSA) are empowered to issue secondary norms and regulations enforceable in their supervisory field.

Regarding the proxy advisory firms, the tumultuous discussions on the EU context will not lead, at least in the short term, to significant changes in Romania, taking into consideration that, on our market, there are no proxy advisory firms.

The rights and equitable treatment of shareholders

3 Shareholder powers

What powers do shareholders have to appoint or remove directors or require the board to pursue a particular course of action? What shareholder vote is required to elect or remove directors?

As a matter of principle, shareholders enjoy exclusive competence to appoint and remove directors in all types of companies, by means of a secret ballot. There are two ways to appoint directors: through the statutory documents (particularly as regards the composition of the first board of directors) and by the shareholders' meetings.

The above is particularly true with regard to joint-stock companies. Directors under the one-tier system (board of directors) are appointed by the resolution of an ordinary shareholders' meeting, voting by simple majority, except for the first directors, who are appointed through the statutory documents of the company. Shareholders are entitled, by resolution of the shareholders' meeting, to remove the directors at any time, by means of resolution of an ordinary shareholders' meeting, voting by simple majority. Directors are not permitted to challenge the removal decision, but they may seek damages if the removal is made without proper cause.

As an exception to the general rule, in the two-tier system (directorate and supervisory board), the members of the directorate (who oversee the management of the company in a way that is similar to the executive officers in the one-tier system) are appointed and removed by the supervisory board (with the latter being appointed and revoked by the shareholders), the shareholders only being in charge of the appointment and removal of the members of the supervisory board. The constitutive act of one company can provide that the members of the directorate be revoked also by the ordinary shareholders' meeting.

Deriving from its subordination to the shareholders' meeting, the board must take all required action to implement the decisions of the shareholders' meeting.

In listed companies and in state-owned enterprises, shareholders may appoint the members of the board of directors (under the one-tier system) and members of the supervisory board (under the two-tier system) based on the cumulative voting rights system. According to this method, a shareholder is entitled to assign its cumulative votes (ie, votes resulting from multiplying the votes held by it in the company's share capital with the number of directors composing the company's board) to one or more persons nominated for a board position. The existing members of the board of directors or the members of the supervisory board are automatically recorded as candidates for election in the new board of directors and, if they are not re-elected, they are considered revoked.

Upon the request of a significant shareholder (holding at least 10 per cent of the share capital), appointment by this method is mandatory.

4 Shareholder decisions

What decisions must be reserved to the shareholders? What matters are required to be subject to a non-binding shareholder vote?

The shareholders' meeting decides on all major issues concerning the company such as:

- discussion, approval or amendment of the annual financial statements, including dividend distribution;
- appointment and revocation of directors, members of the supervisory board and auditors and establishment of their remuneration;
- the company budget and the business plan for the following financial year;
- change of the company's legal form;
- change of the headquarters of the company;
- change of the company's main business scope of activity;
- increase or decrease of the registered capital;
- setting up or dissolution of potential secondary offices;
- extension of the duration of the company's existence;
- approval of the voluntary dissolution of the company;
- merger or spin-off of the company;
- conversion of shares from one category to another (eg, nominative to bearer shares);
- conversion of bonds from one category to another or to shares; and
- issuance of bonds.

By means of statutory documents or decision of the extraordinary general meeting of the shareholders, certain powers may be delegated to the board of directors or directorate such as: change of the headquarters of the company; change of the business activities (except for the main business activity); and an increase of the share capital. According to the Companies Law, there are no matters subject to a non-binding (consultative) vote of the shareholders.

Any shareholder who did not participate in the shareholders' meeting or voted against is entitled to challenge the decisions that are contrary to the law or to the constitutive act of the company by filing a contestation action within 15 days as of the publication of the decisions in the Official Gazette of Romania.

5 Disproportionate voting rights

To what extent are disproportionate voting rights or limits on the exercise of voting rights allowed?

The main rule is 'one share, one vote'. However, joint-stock companies may issue preferred shares without voting rights, entitling the shareholders to a preferential distribution of dividends. Such shares are subject to specific limitations, for instance, they cannot exceed a quarter of the company's share capital. Also, members of the board, executive officers, members of the directorate or of the supervisory board cannot hold such preferred shares. Although the holders of preferred shares may participate in the shareholders' meetings, they do not have voting rights. If the company delays the paying of dividends, within specific conditions, preferred shares acquire voting rights.

Other exceptions are allowed through the statutory documents in respect of shareholders holding more than one share. There are no specific rules on the limits of such exceptions, to the extent where they do not amount to a disproportionate distribution of dividends. Typically, such exceptions take the form of extraordinary veto rights on specific matters and other specific mechanisms such as quorum conditions, supermajorities, limitation of the voting rights for shareholders exceeding a specific share stake.

6 Shareholders' meetings and voting

Are there any special requirements for shareholders to participate in general meetings of shareholders or to vote? Can shareholders act by written consent without a meeting? Are virtual meetings of shareholders permitted?

Shareholders may only vote within their general meetings; the shareholders registered as such at the reference date mentioned in the convening notice are entitled to attend the meeting and vote. Shareholders' meetings are convened by the board of directors or by the directorate, whenever necessary, the meeting being held no sooner than 30 days as of the publication of the convening notice in the Official Gazette and in a highly circulated newspaper.

Shareholders may participate in general meetings either personally or via a representative holding a power of attorney in this respect. There are limitations concerning the possibility of representing the shareholders, more precisely, the directors, members of the directorate or of the supervisory board or the employees of the company cannot represent the shareholders, the sanction being the nullity of the decision of the general meeting of the shareholders if, without their votes, it would not have been possible to achieve the required majority.

In the case of joint-stock companies, article 125(3) of the Companies Law provides that the powers of attorney must be submitted with the company at least 48 hours before the shareholders' meeting (or in another such term provided by the company's by-laws), under the sanction of losing the voting rights for that respective meeting. Shareholders holding preferred shares are not allowed to vote in general meetings; however, they are allowed to vote in the special meetings of such holders. Holders of bearer shares are allowed to vote only if they deposit such shares at the places provided by the statutory documents or by the convening notice at least five days before the general meeting. Voting rights in respect of unpaid shares are suspended until the full payment of such shares.

When a conflict of interest between the company and one of the shareholders arises, the latter is required to refrain from voting, otherwise such shareholder will be responsible for the damages caused to the company if a majority was not able to meet without him or her. The Companies Law also prohibits the shareholders who are directors, members of the directorate or of the supervisory board from voting with respect to their annual management discharge or, generally speaking, related to any other issue regarding their management.

The shareholders cannot generally act by written consent without a meeting; however, acting by written consent is usually practised in cases of non-listed companies, if the constitutive act provides this possibility and the written consent is signed by all shareholders.

Virtual meetings are expressly allowed for listed companies; they are possible for non-listed companies if the constitutive act expressly provides for it and with shareholders' consent.

7 Shareholders and the board

Are shareholders able to require meetings of shareholders to be convened, resolutions and director nominations to be put to a shareholder vote against the wishes of the board, or the board to circulate statements by dissident shareholders?

In this respect there is a rather official procedure, which joint-stock companies (at least) must observe. As such, the main rule is that convening notices must be published both in the Official Gazette and in a highly circulated newspaper in the city where the company has its main seat at least 30 days prior to the meeting.

Although meetings are generally convened by the board, in the case of joint-stock companies, shareholders owning a certain number of shares (at least 5 per cent of the share capital, but possibly less if so stipulated in the company's statutory documents) may require the board of directors, respectively the directorate, to convene the shareholders' meeting or to amend its agenda. Such meeting must be convened within a maximum of 30 days and held within a maximum of 60 days as of the shareholders' request. However, the convening procedures cannot be carried out directly by the shareholders.

Should the board of directors or directorate fail to comply with such request, the shareholders are entitled to request authorisation to convene a general meeting in court.

Also, shareholders owning at least 5 per cent of the share capital may request the board to include new items on the agenda within a maximum of 15 days as of the publication of the convening notice. The supplemented agenda completed with the requested items shall be published at least 10 days prior the day of the shareholders' meeting.

In limited liability companies, the board must convene the shareholders' meeting at the request of the shareholders representing at least a quarter of the share capital of the company.

Dissenting shareholders can request that their opinion be included in the minutes of the shareholders' meeting – minutes to which any of the shareholders may have access upon request.

8 Controlling shareholders' duties

Do controlling shareholders owe duties to the company or to non-controlling shareholders? If so, can an enforcement action be brought against controlling shareholders for breach of these duties?

Controlling shareholders do not owe specific duties to the company or to the non-controlling shareholders, apart from the general obligation to exercise their rights in good faith and by avoiding majority abuses. Controlling shareholders, like any other shareholders, are also obliged to avoid voting in situations where there is conflict of interest. If, despite this rule, they use their vote to force a decision in the shareholders' meeting, they may be held liable for the damages caused to the company as a result of such decision, as the case may be.

With regard to majority abuses, Romanian case law has frequently been confronted with situations in which majority shareholders exercised their voting right in discretionary ways, aiming to satisfy their individual interests, in a way that harmed the company's interest or that of the minority shareholders. Generally, majority abuses, especially if the majority shareholder is acting in bad faith, trigger the annulment of the general meetings' decisions.

In theory, a non-controlling shareholder may also check the validity of an apparently legal decision taken by the controlling shareholder on grounds of majority abuse. Such legal actions must usually be filed within a term of 15 days from the publication of the shareholders' resolution in the Official Gazette.

9 Shareholder responsibility

Can shareholders ever be held responsible for the acts or omissions of the company?

Shareholders in joint-stock and in limited liability companies (which are by far the most common forms of companies used in practice) may be held liable for the company's obligations only to the extent of their contribution to the registered capital, unless the shareholders expressly agreed otherwise.

Nevertheless, there are specific situations where shareholders' liability might be extended. As such, the founding shareholders are jointly and severally liable for the complete subscription and payment of the share capital or for providing true and complete data during the incorporation process.

Secondly, in the event of the company's insolvency, shareholders' liability may be extended if it is proven that the insolvency was caused by the shareholders, by way of activities such as using the assets or credit of the company in their own or a third-party's interest, performing commercial operations for their personal interest under the protection of the company or continuing an activity that obviously led to the cessation of payments.

In the case of dissolution or liquidation of the company, shareholders that have fraudulently abused the limited nature of their liability might be held liable for the unpaid debts of the company.

Corporate control

10 Anti-takeover devices

Are anti-takeover devices permitted?

There are no specific anti-takeover devices under the Companies Law, despite the fact that anti-takeover defences are not prohibited in Romanian law. Moreover, Romania did not transpose the prohibition from article 11 of the EU Directive on Takeover Bids preventing companies from using various devices in order to defend themselves from takeover bids. Yet, Romanian companies seem to still be reluctant to implement such clauses in their statutory documents.

However, Romania strengthened board neutrality through measures such as, for example, prohibiting the board of the company subject to takeover (after the receipt of the preliminary notice) from concluding any act or taking any measures that may affect its assets or the objectives of the takeover, except for current administrative acts (from the perspective of the Capital Markets Law, operations that are considered to affect the company's assets include, without limitation, share capital increases or securities issues granting the right to subscribe or convert into shares and encumbrance or transfer of certain assets representing at least one-third of the net asset according to the company's latest annual balance sheet). As an exception to this rule, only operations deriving from obligations assumed prior to the publication of the takeover notice and those operations expressly approved by the extraordinary general meeting called for that purpose after the preliminary notice may be performed.

In listed companies, the intention of an investor to take control over a company by acquiring more than 33 per cent of its voting rights is specifically conditioned. The investor has to submit a preliminary takeover announcement to FSA, whose approval is required. Subsequent to FSA approval, the announcement has to be submitted to the company, to the regulated market on which such securities shall be traded and shall be published in at least one central and one local newspaper within the administrative and territorial area of the issuer. The board of directors then has five days to inform FSA and the offeror about its opinion with respect to the takeover. The board may then convene a shareholders' meeting in order to inform the shareholders about the board's opinion with respect to the takeover. The convening of the shareholders' meeting is mandatory for the board if it is requested by shareholders holding at least 10 per cent of the share capital, the convening notice being published within five days as of the request and the shareholders' meeting being held within five days as of the publication of the convening notice in a national newspaper. From the date of the receipt of the preliminary notice and until the closing of the offer, the board of directors shall inform FSA and the regulated market of all operations performed by the members of the board of administration and of the executive management regarding such securities. The specific regulations are in line with the EU Directive on Takeover Bids, the sell-out and squeeze-out procedures being regulated even before the transposition of the Directive.

11 Issuance of new shares

May the board be permitted to issue new shares without shareholder approval? Do shareholders have pre-emptive rights to acquire newly issued shares?

The board of directors may be entitled by the statutory documents or by a resolution of the shareholders to increase the share capital up to a determined nominal value (authorised capital) by issuance of new shares. Such authorisation is limited to a certain period of time (which cannot exceed five years from the date of the company's registration or from the shareholders' resolution) and to a value that cannot exceed half of the subscribed share capital. In the case of listed companies, the board of directors may be entitled to increase the share capital within one year; this period of time can be renewed for subsequent periods of one year each time.

As a rule, newly issued shares have to be offered first to the existing shareholders, proportionally to the number of shares held in the share capital of the company, or to the number of pre-emptive rights held, in the case of listed companies in which the share capital increase is preceded by transfer of such rights. The term for exercising the pre-emptive right is at least one month from the publication in the Official Gazette of the shareholders' meeting resolution approving the share capital increase. For justified reasons, which the board of directors has to explain to the shareholders through a written report, the pre-emptive right may be limited or denied through a resolution of the extraordinary general meeting of shareholders, taken with the majority of the votes of the present shareholders (the Companies Law demands that the shareholders representing three-quarters of the subscribed share capital to be present for the validity of such resolutions).

12 Restrictions on the transfer of fully paid shares

Are restrictions on the transfer of fully paid shares permitted and, if so, what restrictions are commonly adopted?

In non-listed joint-stock companies, restrictions on the transfer of fully paid shares are permitted through the company's statutory documents, meaning that the only available restrictions for Romanian companies are conventional restrictions and not legal mechanisms. Most commonly used restrictions are provided in the statutory documents and include drag-along and tag-along rights, as well as the right of first refusal. These may be combined with specific lock-up periods (usually up to three to five years).

In limited liability companies, share transfers to third parties require the approval of the shareholders representing at least three-quarters of the share capital. The statutory documents may require higher majorities.

In listed joint-stock companies, no such restrictions are possible.

13 Compulsory repurchase rules

Are compulsory share repurchases allowed? Can they be made mandatory in certain circumstances?

Under the Companies Law, compulsory repurchase is stipulated with respect to dissenting shareholders who decide to withdraw from the company because they do not agree with the decisions of the shareholders' meetings changing the main business scope or the legal form of the company, relocating the registered offices abroad, or deciding on the merger or spin-off. In this case, the dissenting shareholders must exert their withdrawal right within 30 days from the publication of the corporate decision with the Official Gazette in all cases, except for that of a merger or spin-off, when the term elapses from the moment when the merger or spin-off operation is approved. The price that shall be paid by the company to the shareholder exercising his or her right to withdraw from the company in these conditions is computed by an independent authorised expert, the evaluation costs also being paid by the company.

In listed companies, the shareholder who, pursuant to carrying out a public offering addressed to all shareholders and for all their holdings holds shares representing at least 95 per cent of the total number of shares in the share capital granting the right to vote and at least 95 per cent of the voting rights that can actually be exercised; or has acquired, during the public offering, shares representing at least 90 per cent of the total number of shares in the share capital granting the right to vote and at least 90 per cent of the voting rights envisaged during the offering, is entitled, no later than three months from the public offer, to request shareholders who have not subscribed to the offering, to sell those shares at a fair price. Once this procedure is finalised, the company is delisted. The Capital Market Law also provides for a 'sell-out' mechanism for the minority shareholders, allowing them the right to request the majority shareholder that finds itself in any of the above-mentioned situations to acquire their shares.

Also, in listed companies, the shareholders who did not agree with the resolutions of the general meeting in connection to mergers or divisions (which implies the distribution of shares that are not admitted to trading on a regulated market) are entitled to withdraw from the company and to obtain payment from the latter for their shares.

There is an additional repurchase allowed, applicable only to limited liability companies: the shareholder who does not obtain the unanimous agreement of the rest of the shareholders is entitled to ask the court to issue a withdrawal judgment, provided that there are legitimate reasons justifying such request.

14 Dissenters' rights

Do shareholders have appraisal rights?

Dissenting shareholders (see question 13) have the right to sell their shares at a price computed by an independent authorised expert.

The responsibilities of the board (supervisory)

15 Board structure

Is the predominant board structure for listed companies best categorised as one-tier or two-tier?

The majority of the companies prefer the one-tier system, the management powers being usually delegated by the board to a general director.

16 Board's legal responsibilities

What are the board's primary legal responsibilities?

In the case of joint-stock companies, the board has the following main responsibilities that cannot be delegated to directors:

- to decide on the company's long-term or periodic business plan;
- to establish the accounting and financial control systems and to approve the annual financial planning;
- to appoint and remove the executive officers and establish their remuneration;
- to ensure the control of the executive officer's activity;
- to draft the annual financial statements, convene the shareholders' meeting and implement its resolutions; and
- to submit the request for opening the insolvency procedure.

The board of directors cannot delegate to the directors those responsibilities that have been delegated from the extraordinary shareholders' general meeting to the board of directors.

17 Board obligees

Whom does the board represent and to whom does it owe legal duties?

The board represents the company and not the shareholders, and owes legal duties to the company itself and not to the shareholders.

18 Enforcement action against directors

Can an enforcement action against directors be brought by, or on behalf of, those to whom duties are owed?

Enforcement actions can be brought against directors, members of the directorate and of the supervisory board who are in breach of their duties towards the company for the damages caused to the company.

The prerogative to decide on the initiation of legal action belongs to the ordinary shareholders' meeting. When taking such a decision, the shareholders' meeting shall also appoint the person representing the company in court against the director. When deciding on the annual financial statement, the ordinary shareholders' meeting may decide on the directors' responsibility even though this matter is not on the agenda. In the one-tier system, the mandate of the board members, and in the two-tier system, the mandate of the directorate, ceases automatically when the shareholders' meeting takes such a decision. As a result, the ordinary shareholders' meeting, respectively the supervisory board, will proceed with their replacement. If the action is held against the directors, their mandate is suspended until the judgement becomes irrevocable.

The ordinary shareholders' meeting can also decide to exercise the legal action against the supervisory board, their mandate ceasing automatically, furthermore the shareholders deciding on their replacement.

If the shareholders' meeting fails to make a decision, the shareholders representing, jointly or individually, at least 5 per cent of the company's share capital are entitled to bring legal action against the directors in breach, in their own name, but on behalf of the company.

19 Care and prudence

Do the board's duties include a care or prudence element?

The members of the board have to fulfil their duties with the prudence and diligence of a good manager. They also owe to the company a duty of loyalty, and their actions must be in the company's interest. The board will not be in breach of its duties if in taking the relevant decision and based on the available information, it could have reasonably believed that it was acting in the interests of the company ('the business judgment rule').

20 Board member duties

To what extent do the duties of individual members of the board differ?

There are no specific regulations in this respect, all board members have the same duties towards the company and act as a collegial body. It will be the board's internal decision to give specific duties to individual members by considering their experience and skills, but the decisions of the board will still be taken as a collective body and the responsibility will belong as such to the board members, regardless of the nature of the matter decided on.

Where the board elects to delegate its management responsibilities to executive officers, the latter may be entrusted with different operational attributions according to their experience or skills.

If the board sets up various board committees with consultative roles (as described in question 25), such as remuneration or audit committee, its members shall have the duties indicated by the board of directors.

21 Delegation of board responsibilities

To what extent can the board delegate responsibilities to management, a board committee or board members, or other persons?

Under the one-tier system, the board may delegate the management of the company to one or several executive officers from inside or outside the board. However, if such management powers are delegated, then the majority of the board must be composed of non-executive officers. As an exception, certain powers cannot be delegated to executives, such as those listed in question 16, along with those delegated to the board by the extraordinary general meeting of shareholders (eg, change of the company's headquarters, increase of the registered capital). Such delegation is mandatory for a joint-stock company whose financial statements are subject to compulsory financial audit obligations.

In the two-tier system, the management is entrusted to the directorate, while the supervisory board strictly controls the way the directorate manages the company.

For specific operations the board may also narrowly delegate some of its attributions to other persons, on a case-by-case basis.

22 Non-executive and independent directors

Is there a minimum number of 'non-executive' or 'independent' directors required by law, regulation or listing requirement? If so, what is the definition of 'non-executive' and 'independent' directors and how do their responsibilities differ from executive directors?

Where the management of the company is delegated by the board to executive officers (because it is required by the shareholders or by law) members of the board may also be appointed as executives. However, in such case, the majority of the board must be represented by non-executive directors. As regards their responsibilities, the executives may hold representation powers, while the non-executives hold only supervisory powers.

Moreover, based on the statutory documents or on the resolution of the shareholders' meeting, one or more members of the board of directors may be independent directors. In assessing directors' independence, the shareholders' meeting may consider, inter alia, the following criteria: he or she should neither be nor have been a director of the company or of one of its subsidiaries during the past five years; should not have maintained an employment relationship with the company or its subsidiaries during the past five years; must not be a significant shareholder of the company; should neither be nor have been an auditor of the company or of a subsidiary during the past three years; and there should be no potential conflict of interest. The independent directors have the same legal duties towards the company as the rest of the members of the board, but they play a significant role in aspects such as developing the company's strategy from an external perspective, monitoring the management, solving the conflicts of interest.

Under the Corporate Governance Code (applicable only to those listed companies that voluntarily adopted it), there is the recommendation that an adequate number of non-executive directors be independent, in the sense that they do not maintain, nor have they recently maintained, directly or indirectly, any business relationship with the listed company or persons linked to the listed company of such a significance as to influence their autonomous judgement. Renunciation to a term, by an independent director, shall be accompanied by an extensive, detailed statement regarding the reasons for such action.

23 Board size and composition

How is the size of the board determined? Are there minimum and maximum numbers of seats on the board? Who is authorised to make appointments to fill vacancies on the board or newly created directorships? Are there criteria that individual directors or the board as a whole must fulfil? Are there any disclosure requirements relating to board composition?

Generally speaking, there are no criteria related to age, nationality, diversity, expertise, insolvency or similar criteria, except for the cases mentioned below.

A person cannot be appointed as director if previously sentenced for any of the following criminal offences: fraudulent management, breach of trust, embezzlement, forgery, perjury, bribery, crimes relating to money laundering and terrorist acts. However, in the case of specialised entities, such as credit institutions, insurance companies and investment firms, the directors must have adequate experience in their corresponding field of activity (eg, banking, insurance, investments). In the case of insurance companies, at least one of the board members must speak Romanian.

There are no disclosure requirements relating to board composition, except for certain identification data of the directors that need to be included in the statutory documents and, as such, are subject to public disclosure by registration with the Trade Registry (eg, full name, citizenship, date and place of birth).

In the case of the one-tier system in joint-stock companies, the board is composed of an odd number of directors, determined by the shareholders' meeting. In the two-tier system, the directorate board is composed of an odd number of directors and the number of the members of the supervisory board is established by the constitutive act, and cannot be lower than three and higher than 11. If the financial statements of the company are audited, the board of directors (the directorate) will have at least three members. In the case of limited liability companies, there are no limits, the company being managed by one or more directors, as determined by the shareholders' meeting.

State-owned enterprises are managed by a board of directors composed of five to nine members who have to meet the following requirements:

- relevant experience within the management of a profitable state-owned enterprise engaged within the business scope of the company in question; and
- at least one of the board of directors should have undertaken economic studies and have five years' experience within the economic, accountancy or audit fields.

In the case of a vacancy of one or more director positions, unless otherwise provided by the company's by-laws, the board shall appoint temporary directors until the ordinary shareholders' meeting is held. If the vacancy causes a decrease in the number of directors below the minimum legal number, the remaining directors shall promptly convene the ordinary shareholders' meeting. Should the board of directors fail to comply with such request, the shareholders are entitled to request the court to appoint the person entitled to convene a ordinary shareholders' meeting that will rlrct the members of the board of directors.

24 Board leadership

Is there any law, regulation, listing requirement or practice that requires the separation of the functions of board chairman and CEO? If flexibility on board leadership is allowed, what is generally recognised as best practice and what is the common practice?

The Companies Law expressly allows the board chairman to function as CEO, but ultimately it is up to the shareholders or the board to decide how to deal with this isuse. The common practice is to join the two functions, so that the chairman also acts as CEO. This is generally seen as best practice in one-tier structures, particularly where the chairman's role is not merely decorative.

In the case of state-owned enterprises, the board chairman cannot also be appointed as CEO.

25 Board committees

What board committees are mandatory? What board committees are allowed? Are there mandatory requirements for committee composition?

The general framework provided by the Companies Law does not impose the obligation to establish specific committees. However, the board can set up consultative committees of at least two members of the board. The responsibilities of such committees include investigations and recommendation for the board with respect to different key areas of interest, such as financial audit, remuneration of directors, executive officers and employees or candidacy for different management positions. At least one of the members of such committees must be a non-executive independent director.

Furthermore, the audit and remuneration committees must only be composed of non-executive directors. The committees are compelled to regularly submit reports to the board concerning their activities. Similarly to the board of directors, in the two-tier system, the supervisory board may also establish consultative committees in order to carry out investigations and make recommendations to the directorate with respect to its activities.

In the case of specific entities, there is, however, the obligation to establish certain committees. For example, credit institutions have the obligation to establish an audit or remuneration committee, or both, as per NBR Regulation No. 18/2009; state-owned enterprises should establish a remuneration and nomination committee and an audit committee, as per GEO No. 109/2011.

The Corporate Governance Code (applicable only to those listed companies that voluntarily adopted it) makes the recommendation for the listed companies to create a nominalisation committee, a remuneration committee and an audit committee.

26 Board meetings

Is a minimum or set number of board meetings per year required by law, regulation or listing requirement?

In the one-tier system, the board of directors is required to organise board meetings at least once every three months. The board meetings are convened by the chairman, but can also be convened upon the justified request of at least two members of the board or the CEO. The convening notice shall be sent in due time; however, a specific term to be observed can be set by the board. In the two-tier system, the supervisory board is required to organise meetings at least once every three months; the directorate has a duty to present written reports regarding the company's management to the supervisory board every three months.

27 Board practices

Is disclosure of board practices required by law, regulation or listing requirement?

Disclosure of board practices is not expressly required. Nevertheless, information regarding the members of the board of directors and the executives holding representation powers has to be made available at the Trade Registry for any interested person.

28 Remuneration of directors

How is remuneration of directors determined? Is there any law, regulation, listing requirement or practice that affects the remuneration of directors, the length of directors' service contracts, loans to directors or other transactions between the company and any director?

As a general comment, the board members and the executive officers of joint-stock companies cannot perform their duties based on employment contracts, but only based on service or mandate contracts. In the case that such persons are appointed from among the company's employees, then their respective employment contracts shall be suspended for the duration of the mandate.

The basic (as well as any additional) remuneration of the board of directors and of the supervisory board is established by the statutory documents or by the shareholders' meeting. The remuneration of the executive officers and of the members of the directorate is established by the board of directors and the supervisory board, respectively. The remuneration package should normally be justified by the specific functions of the members and by the status of the company, but otherwise there are no specific legal limitations as to the value of the remuneration.

In joint-stock companies, the length of a director's mandate is stipulated in the statutory documents and it cannot exceed four years, with the possibility of being renewed. However, the duration of the mandate of the first members of the board is limited to two years. In limited liability companies the mandate of the director can be established for any duration, even for an indefinite period of time.

The company is not allowed:

- to grant loans to its directors;
- to grant financial advantages to the directors following the execution of agreements between the company and the directors for the sale or purchase of goods or for the execution of works or services;
- to guarantee, fully or partially, any loans granted to its directors;
- to guarantee, fully or partially, the execution by its directors of any obligations undertaken by the directors towards a third party; or
- to acquire a receivable, having as its subject matter a loan granted to its directors by a third party.

The prohibitions listed are also applicable to operations involving the spouses or relatives of the directors up to the fourth degree, as well as to those operations involving companies where the directors or the persons indicated above have at least 20 per cent of the share capital. Nevertheless, these limitations shall not be applicable if the value of the operation does not exceed €5,000, or the operation is part of the company's regular business activities and is concluded on an arm's-length basis.

29 Remuneration of senior management

How is the remuneration of the most senior management determined? Is there any law, regulation, listing requirement or practice that affects the remuneration of senior managers, loans to senior managers or other transactions between the company and senior managers?

There is no specific law or regulation with respect to senior management remuneration. The rules presented in question 28 are applicable to the senior management as well.

30 D&O liability insurance

Is directors' and officers' liability insurance permitted or common practice? Can the company pay the premiums?

In joint-stock companies, taking out professional liability insurance for the directors, the members of the directorate and the supervisory board is mandatory. The premiums are usually paid by the companies.

31 Indemnification of directors and officers

Are there any constraints on the company indemnifying directors and officers in respect of liabilities incurred in their professional capacity? If not, are such indemnities common?

The matter of whether directors and officers may be indemnified by the company in this respect is not covered specifically in the Companies Law. Generally, since the board members are liable only towards the company, and not to third parties, any indemnity from the company is practically excluded. There is also the possibility that the members of the board are liable towards third parties, but this would be an exceptional situation as it is not common for companies to indemnify such directors.

32 Exculpation of directors and officers

To what extent may companies or shareholders preclude or limit the liability of directors and officers?

There are no specific regulations as regards the possibility of companies or shareholders precluding or limiting the liability of directors and officers. As a matter of principle, there can be decisions of the shareholders or even provisions in the charter containing such limitations in various degrees and forms. Such exonerations are, however, debatable in the event of fraudulent or wilful conduct of directors.

33 Employees

What role do employees play in corporate governance?

Employees do not play a formal role in corporate governance, but they may enjoy various degrees of leverage through trade unions or employees' representatives with regard to their position and involvement in the decision-making process of the company; however, this is not a regulated legal matter.

34 Board and director evaluations

Is there any law, regulation, listing requirement or practice that requires evaluation of the board, its committees or directors? How regularly are such evaluations conducted and by whom? What do companies disclose in relation to such evaluations?

There is no legal provision regulating the evaluation of the board of directors.

Disclosure and transparency

35 Corporate charter and by-laws

Are the corporate charter and by-laws of companies publicly available? If so, where?

Corporate charters and by-laws are registered with the Trade Registry Office and are publicly available. In addition, most listed companies publish these documents on their website, along with other corporate documents.

36 Company information

What information must companies publicly disclose? How often must disclosure be made?

As a general rule, companies are compelled to submit to the Trade Registry all amendments brought to their corporate charter and by-laws. However, in the case of joint-stock companies, there are certain exceptions where such registrations are not mandatory, for example, when changes are made in the shareholding structure. Also, the submission of updated by-laws is not required when board members are replaced (in opposition to limited liability companies where the submission of the updated by-laws in this case is mandatory).

Listed companies have much broader disclosure obligations towards investors, FSA and stock exchange markets. According to FSA Regulation No. 1/2006, the following report categories have to be drafted and submitted by the companies:

- quarterly, biannual and annual reports, including, among others, accounting documents, certain economic and financial indicators, auditors' and board's reports;
- disclosure of privileged information – a listed company must disclose any privileged information concerning the company's activity that can influence the price of shares. Such disclosure must be made in a term of maximum 24 hours, and may refer to aspects such as:
  - board of directors' resolutions regarding the convening of shareholders' meetings or board meetings (in this case when the subject matter of the meeting refers to any of the powers delegated by the extraordinary meeting of shareholders to the board);
  - shareholders' resolutions or board resolutions (in this case when the subject matter of the meeting refers to any of the powers delegated by the extraordinary meeting of shareholders to the board);
  - changes in the direct or indirect control over the company;
  - changes in the management of the company;
  - change of the company's auditor, along with the reasons triggering this change;
  - termination or decrease of the company's contractual relations that generated at least 10 per cent of the company's turnover of the previous financial year;
  - publication of the merger or spin-off project with the Official Gazette;
  - changes of the characteristics or rights of the shares;
  - litigations involving the company;
  - suspension and resuming of activity;
  - initiation and closing of dissolution, judicial reorganisation or bankruptcy procedures; and
  - reports regarding the payment of dividends, regarding dividend value and payment term and arrangements.

State-owned enterprises are required to post the following information on their website:

- resolutions of the general meeting of shareholders;
- annual financial statements;
- quarterly accounting reports;
- an annual audit report;
- membership of the company's management bodies, directors' and executive officers' CVs or, as the case may be, CVs of members of the directorate and supervisory board; and
- reports of the board of directors or of the supervisory board.

Hot topics

37 Say-on-pay

Do shareholders have an advisory or other vote regarding executive remuneration? How frequently may they vote?

In a one-tier board structure, the shareholders' meeting establishes the remuneration of the board members. If the management is delegated to executive officers, their remuneration is established by the board. For the two-tier board structure, the remuneration of the members of the directorate is established by the supervisory board. Nevertheless, the shareholders' general meeting is entitled to set the general limits of all remuneration or financial advantages, including those regarding the company's executives. As regards the frequency under which the shareholders decide upon the remuneration of the board members, the law does not impose any specific frequency.

38 Shareholder-nominated directors

Do shareholders have the ability to nominate directors and have them included in shareholder meeting materials that are prepared and distributed at the company's expense?

Any shareholder has the ability to nominate directors within 15 days as of the publication of the convening notice in the Official Gazette and, further, to have their nominations included in the updated shareholder meeting materials. The final decision regarding the appointment belongs to the general meeting of shareholders.

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