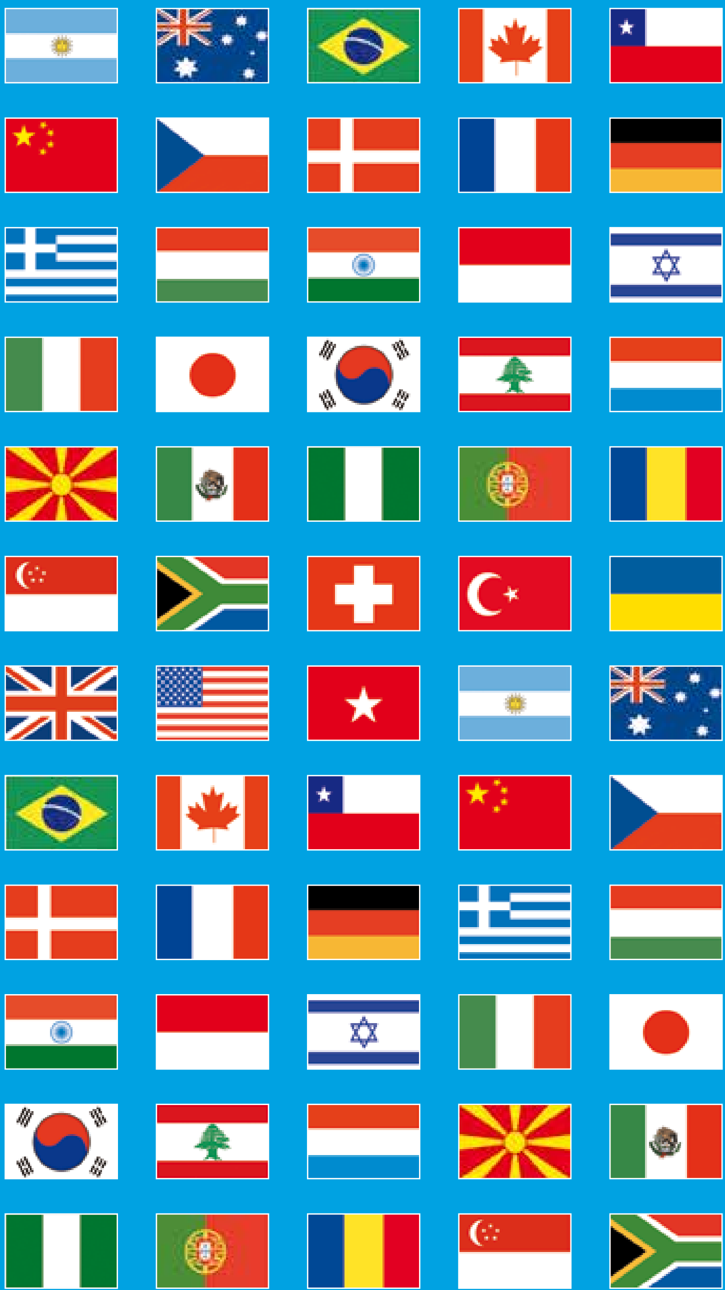
GETTING THE DEAL THROUGH

Corporate Governance

Board structures and directors' duties in 33 jurisdictions worldwide

2014



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Corporate Governance 2014

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Getting the Deal Through is delighted to publish the fully revised and updated thirteenth edition of *Corporate Governance*, a volume in our series of annual special reports providing comparative international analysis in key areas of law and policy for corporate counsel, cross-border legal practitioners and business people.

Corporate Governance 2014 addresses the most important issues facing corporations in relation to all their stakeholders. This publication examines various issues, including the rights of shareholders, corporate disclosure and transparency, responsibilities of the board and corporate control.

In the format adopted throughout the series, the same key questions are answered by leading practitioners in 33 jurisdictions worldwide. New jurisdictions this year include Argentina, China, Indonesia, Korea and South Africa.

Every effort has been made to ensure that matters of concern to readers are covered. However, specific legal advice should always be sought from experienced local advisers. *Getting the Deal Through* publications are updated annually. Please ensure you are referring to the latest print edition or to the online version at www.GettingTheDealThrough.com.

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Romania

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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?

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 in Romania is provided by Companies Law No. 31/1990 (the Companies Law) and Trade Registry Law No. 26/1990.

In addition to the regulations mentioned above, there are special regulations applicable to listed companies and to state-owned enterprises (ie, companies controlled by the state).

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, implementing a set of rules in accordance with the relevant European legislation. The Code is not of a compulsory nature, it rather 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 activist 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.

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 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 in a shareholders' meeting.

The above is particularly true with regard to joint-stock companies. Directors under the one-tier system are appointed by the resolution of a shareholders' meeting, 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. 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, 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.

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 directorate (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.

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 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.

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.

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.

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 and supermajorities.

As mentioned above, in listed companies and in state-owned enterprises, shareholders may appoint the members of the board of directors based on the cumulative voting rights system.

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?

Shareholders may decide only 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 may participate in general meetings either personally or via a representative holding a power of attorney in this respect.

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 from being directors, members of the directorate or of the supervisory board from voting, in respect of their annual management discharge or, generally speaking, in the case of any other issue regarding their management.

7 Shareholders and the board

Are shareholders able to require meetings of shareholders to be convened, resolutions to be put to shareholders against the wishes of the board or the board to circulate statements by dissident shareholders?

As a general comment, we underline that convening notices, at least in joint-stock companies, must observe a rather official procedure. 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 having 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. 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. Moreover, the shareholders representing the entire share capital are entitled to hold a general meeting and take any decision under its competence, without applicable convening rules.

Before the shareholders' meeting, the shareholders also have the right to ask questions to the board with respect to the company's activity. The board is obligated to answer them during the shareholders' meeting or on the company's website.

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 against controlling shareholders for breach of these duties be brought?

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.

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.

Moreover, 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. However, as regards limited liability companies, a similar effect may be obtained by the fact that a higher majority in the shareholders' meeting is required in order to transfer shares to a third party. Such devices may also be included in the statutory documents of the company, by way of specific shareholder approval in respect of a change of control event and other quorum and majority conditions. These aspects may be included in shareholder agreements as well, but their effectiveness is very much reduced if not mentioned primarily in the statutory documents.

In listed companies, the intention of an investor to take over the control of a listed 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. 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. 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.

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.

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, 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. 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, moving 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.

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 two board structures, respectively one-tier and two-tier, were only introduced in 2006 with respect to joint-stock companies. The companies are allowed to choose freely between the two systems. Taking into consideration the novelty of the two-tier system, the vast majority of companies have a one-tier board structure. This structure best characterises listed companies as well.

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.

17 Board obligees

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

The board represents the company before third parties and courts of law. Where board management responsibilities are delegated to executive officers, the board represents the company towards such executives. The board 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 who are in breach of their duties towards the company.

The prerogative to decide on the initiation of legal action belongs to the shareholders' meeting. When taking such a decision, the shareholders' meeting shall also appoint the person representing the company in court against the director. The mandate of such director shall cease automatically. 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.

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. 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 by it 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 different duties in carrying out their mandate.

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.

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 look, inter alia, at 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, and should not be or 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, etc.

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 relationships with the listed company or persons linked to the listed company of such a significance as to influence their autonomous judgment. Renunciation to a term, by an independent director, shall be accompanied by an extensive, detailed statement regarding the reasons for such action.

23 Board composition

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

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, 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 the Romanian language.

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 joint-stock companies, the board is composed of an odd number of directors, determined by the shareholders' meeting; if the financial statements of the company are audited, there will be minimum of three directors on the board. 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 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 shareholders' meeting. Should the board of directors fail to comply with such request, the shareholders are entitled to request authorisation to convene a general meeting in court.

24 Board leadership

Do law, regulation, listing rules or practice require 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. 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 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.

26 Board meetings

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

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 of the CEO. The convening notice shall be sent in due time; however, a specific term to be observed can be set by the board.

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. The board must also keep internal records of its meetings and resolutions, which may be consulted by the shareholders.

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, respectively by the supervisory board. 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 above-mentioned prohibitions 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 above 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 companies are not forbidden to pay the premiums, but there might be certain tax implications regarding the deductibility of such costs.

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 or not directors and officers may be indemnified by the company in this respect is not covered specifically in the Companies Law. Even if such practice is uncommon, the companies may give such indemnities, but usually as part of the remuneration package of the director or officer.

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 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. Employees can also participate in corporate governance as shareholders, if stock option plans are available in the company.

Disclosure and transparency

34 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. The main purpose of the Trade Registry is publicity, thus making companies' information available to all interested persons.

35 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

36 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.

37 Proxy solicitation

Do shareholders have the ability to nominate directors without incurring the expense of proxy solicitation?

Not applicable.

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