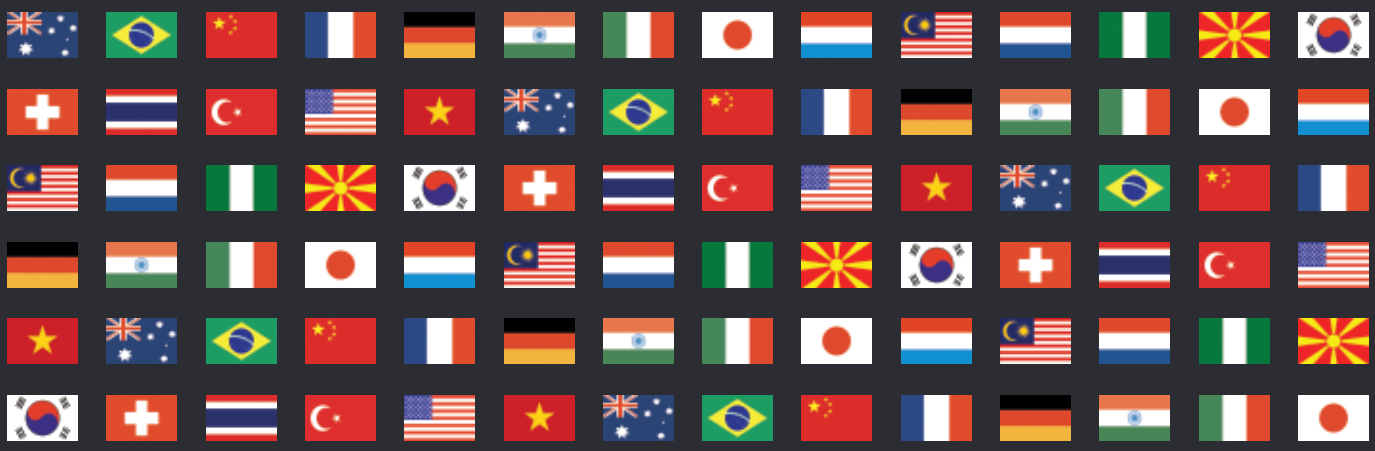
Corporate Governance 2021

Contributing editor
Holly J Gregory



LEXOLOGY
Getting The Deal Through

Publisher
Tom Barnes
tom.barnes@lbresearch.com

Subscriptions
Claire Bagnall
claire.bagnall@lbresearch.com

Senior business development manager
Adam Sargent
adam.sargent@gettingthedealthrough.com

Published by
Law Business Research Ltd
Meridian House, 34-35 Farringdon Street
London, EC4A 4HL, UK

First published 2002
Twentieth edition
ISBN 978-1-83862-640-2

Printed and distributed by
Encompass Print Solutions
Tel: 0844 2480 112

Corporate Governance 2021

Contributing editor
Holly J Gregory
Sidley Austin LLP

Lexology Getting The Deal Through is delighted to publish the twentieth edition of *Corporate Governance*, which is available in print and online at www.lexology.com/gtdt.

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes a new chapter on Australia.

Lexology Getting The Deal Through titles are published annually in print. Please ensure you are referring to the latest edition or to the online version at www.lexology.com/gtdt.

Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editor, Holly J Gregory, for her continued assistance with this volume.

LEXOLOGY
Getting The Deal Through

London
May 2021

Reproduced with permission from Law Business Research Ltd
This article was first published in June 2021
For further information please contact editorial@gettingthedealthrough.com

Contents

North Macedonia

Kristijan Polenak and Tatjana Shishkovska

Polenak Law Firm

SOURCES OF CORPORATE GOVERNANCE RULES AND PRACTICES

Primary sources of law, regulation and practice

1 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 on Trade Companies, published in 2004, and the Securities Law, published in 2005, are recognised as the primary sources of law relating to corporate governance.

The Law on Trade Companies allows for an adjustable structure in trade companies' management by letting the company opt between a one-tier or two-tier management structure, subject to the application of mandatory rules for certain joint-stock companies. The Law on Trade Companies is the general law that stipulates the manner of establishment, structure and functioning of the management bodies of the companies. The subsequent changes in the Law on Trade Companies have strengthened the position of the shareholders' meeting, introduced independent directors and imposed the internal audit, as a separate organisational unit in the companies. With the frequent changes of the Law on Trade Companies, the protection of the shareholders remains the focus. The shareholders' position is strengthened by granting them the right to challenge the interested-party transaction in a court procedure if, inter alia, the arm's-length principle in entering such a transaction was not obeyed, as well as by stipulating the requirement for a mandatory external auditor's opinion as one of the conditions for approving an interested-party transaction for listed companies if certain thresholds are met.

The Securities Law regulates the manner and conditions for the issuance and trading with shares and sets the general legal framework of the capital market and of the licensed market participants, disclosure obligations of joint-stock companies with special reporting obligations and other issues with regard to shares.

Another important law for corporate governance in North Macedonia was the Takeover Law passed in 2002, which applied only to reporting companies. It regulated the manner and conditions for the purchase of shares by a person that has acquired or intends to acquire participation ensuring over 25 per cent of the voting rights deriving from the shares of a reporting company.

In May 2013, the new Takeover Law was passed regulating the manner, the conditions and the procedure for the takeover of shares issued by listed joint-stock companies and reporting companies, extending its application for a year after the companies delist or no longer meet the requirements for a reporting company. The new Takeover Law introduced thresholds of acquired voting shares of the target company for a mandatory bid. The trigger for a mandatory takeover bid still has the acquisition of more than 25 per cent of the voting shares as the control takeover threshold. The additional takeover threshold is set as the acquisition of an additional 5 per cent of the voting shares within a period of two years of the successful takeover, and the final takeover threshold is at least 75 per cent of the voting shares of the target company acquired in the takeover procedure, after which the obligation for submission of a takeover bid terminates.

Further changes were made in 2018, aiming to: specify the criteria for determining when persons act in concert and introduce a notification requirement to the Securities and Exchange Commission (SEC) for the protection of minority shareholders; encourage trading in securities by allowing the acquisition of 25 per cent or more from the target company and only afterwards to file a mandatory bid, and facilitate the procedure for a takeover by foreign investors by simplifying the terms for obtaining the required documents by those investors. The amendments took effect at the beginning of 2019 and apply to any takeover procedure that occurs from January 2019. The amendments introduced a definition of 'acquisition' under the Takeover Law, a term that had up until that moment been left undefined. Furthermore, the definition also includes explicitly 'the indirect acquisition of securities' that by SEC interpretation will be considered and checked before confirming the persons who hold control; that is, those who directly exercise their rights in the target company.

Established as an autonomous and independent regulatory body with public authorisations prescribed by the Securities Law, the Law on Investment Funds and the Takeover Law, the SEC passed a number of secondary legislation deriving from the laws mentioned above, further regulating the corporate governance.

The 2006 Corporate Governance Code for Companies listed on the Macedonian Stock Exchange is based on the Organisation for Economic Co-operation and Development's Corporate Governance Principles and provides for the 'best-practice provisions' for the managers, directors and shareholders of the companies listed on the Macedonian Stock Exchange. Though voluntary in nature, the 'comply or explain' principle imposes an obligation for the listed companies to explain the level of compliance with the best-practice provisions and the reasons for non-compliance. In the light of the recent changes to the Law on Trade Companies and the aim of harmonising Macedonian corporate law practice with current developments, the Corporate Governance Code will soon be revised.

The Macedonian Stock Exchange has also prescribed the Listing Rules for the companies, which sets out the basic conditions that must be met for the listing on the Macedonian Stock Exchange official market, as well as the ongoing disclosure requirements for the listed companies. The Securities Law changes passed in January 2013 reintroduced mandatory listing for joint-stock companies that fall under the criteria set with the Macedonian Stock Exchange Listing Rules. With this step, the number of the listed companies, whose corporate governance is affected by the obligation to comply with the Macedonian Stock Exchange Listing Rules and that continuously disclose and notify the

Macedonian Stock Exchange for any changes thereof qualified by the Securities Law and Macedonian Stock Exchange Listing Rules as price-sensitive information, is significantly increased.

Mandatory listing was introduced as an interim measure to boost the capital market in 2013. It applies until April 2022 (the term was extended for four years since the originally planned expiration date of mandatory listing on 30 April 2018). Until then, all the companies that fulfil the criteria for mandatory listing determined by the Macedonian Stock Exchange Listing Rules on 31 December are obliged by 30 April in the following year to file for a request for listing on the mandatory trading tier to the Macedonian Stock Exchange. Furthermore, these companies cannot be excluded from the mandatory listing except in the case of liquidation or bankruptcy.

The Macedonian Stock Exchange Listing Rules are mandatory for all listed companies, and any default in complying with the Rules is sanctioned. The Macedonian Stock Exchange can render measures in the case of non-compliance, such as a warning and publication of the warning, suspension of the trading of the securities issued by the non-compliant company, transfer of the listed shares from one tier into another lower-trading tier and finally excluding the securities from listing. The last two measures cannot be rendered to listed companies on the mandatory trading tier.

The Macedonian Stock Exchange Listing Rules were changed in November 2020 and reformed the watch list introduced in September 2020. Now the Macedonian Stock Exchange publishes the measures imposed on listed companies as well as red flags in order to draw investors' attention to certain circumstances related to the listed companies.

Responsible entities

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

The assembly of North Macedonia adopts the statutory rules on corporate governance by passing laws on the basis of proposals by the government.

There is no central agency responsible for the enforcement of corporate governance rules in North Macedonia. Instead, most of the mandatory corporate governance rules are enforced through private litigation in civil courts.

The SEC has certain powers of enforcement in the context of securities trading and the disclosure obligations of reporting companies, taking into consideration its authorisation to monitor the legality and the efficiency of the capital market and the protection of investors' rights. The SEC acts ex officio or upon reports filed by shareholders or companies. The Securities Law has introduced another mechanism for protection or implementation of the shareholders' rights related to trade transactions on the Macedonian Stock Exchange, by providing for arbitration. The Macedonian Stock Exchange has adopted the Arbitration Rules for resolving these disputes. Arbitration in the settlement of disputes in connection with the company's charter is also stipulated with the Law on Trade Companies.

The Macedonian Stock Exchange acts as a watchdog for listed companies. The Macedonian Stock Exchange Listing Rules have vested certain powers with the Macedonian Stock Exchange if the listed company does not comply with the disclosure requirements or has contravened the Rules.

THE RIGHTS AND EQUITABLE TREATMENT OF SHAREHOLDERS AND EMPLOYEES

Shareholder powers

3 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?

The members of the board of directors in the one-tier system, and the members of the supervisory board in the two-tier system, are elected at the shareholders' meeting by a majority of the voting shares from the quorum of the meeting unless a greater majority is stipulated by the charter, in the manner and pursuant to the terms of the charter. If stipulated by the charter, the election of the members of the board of directors or the supervisory board may be carried out by cumulative voting, thus allowing the minority shareholders to have their nominee elected.

Executive members of the company are elected from among the members of the board of directors. The manner of election of the executive members of the board of directors is determined by the company's charter. The resolution for an election of the executive members of the board of directors may be adopted unanimously by all the members of this board. One of the executive members of the board of directors may be appointed as executive director, chief executive or with another title that will be compatible with the performance of the function that the executive member of the board of directors has. If the board of directors has more than one executive member, a majority vote of the members of the board of directors determines which one of the executive members shall be responsible for employee-related matters and relations with the employees.

If the company opts for a two-tier management system, the management board members are elected by the supervisory board in a procedure stipulated by the company's charter.

The shareholders' meeting may remove all the members of the board of directors or the supervisory board or a member thereof prior to the expiry of their term of office. The resolution for removal requires the same majority of the voting shares as in the case of electing these members unless the company charter stipulates a greater majority. The charter may also stipulate additional terms for the adoption of the resolution.

An executive member of the board of directors may be removed at any time by the board of directors, with or without an explanation, in which case the member shall be suspended until the next general meeting at which it shall be decided whether that member will be removed prior to the expiry of their term of office.

Shareholders representing at least 10 per cent of the voting shares may request a meeting of the board of directors to be called. The request shall be submitted to the president of the board. If the president fails to call the meeting within 15 days after the filing of the written request, the members of the board of directors may call the meeting in the manner further provided in the Law on Trade Companies, thus allowing for the shareholders to have initiative rather than actual power to convene the meeting.

Shareholder decisions

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

The Law on Trade Companies makes a clear distinction of the corporate governance roles by vesting the powers of the shareholders' meeting to only pass resolutions upon issues expressly set out by the Law on Trade Companies or the charter, and excluding matters related to the

operational governance or the management of the company's operations, which are under the competence of the management bodies, unless otherwise determined by the Law on Trade Companies.

The shareholders decide, in particular, about:

- the amendment of the charter;
- the approval of the annual accounts, financial statements and the annual report on the operations of the company for the preceding business year, and on the distribution of the profits and covering the losses;
- the election and removal of members of the board of directors and of the supervisory board;
- the approval of the operations and management of the company's business by the members of the management body and supervisory board;
- the alteration of the rights attached to particular types and classes of shares;
- an increase or decrease of the company's principal capital;
- issuing shares and other securities;
- the appointment of the certified auditor to audit the financial statements, if the company is obliged to prepare them; and
- the transformation of the company into another form of company and reorganisation and termination of the company.

The shareholders' meeting approves interested-party transactions and major transactions if the thresholds for these corporate transactions as stipulated for in the Law on Trade Companies or in the company's charter are met.

There are no matters that are subject to a non-binding shareholder vote; however, the management board (ie, executive members of the board of directors) may defer resolving certain issues relating to corporate governance, which is subject to obtaining prior approval by the board of directors or the supervisory board to the shareholders' meeting, when the board of directors or the supervisory board fails to grant its consent.

Disproportionate voting rights

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

The 'one share, one vote' principle applies to Macedonian joint-stock companies.

Preferred shares with disproportionate voting rights owned by North Macedonia (state-owned shares) may grant specific rights under the condition of their issuance. By the entry into force of the Law on Trade Companies, they cannot be transferred to third parties, unless they are converted into common shares.

The company may issue preferred shares as voting shares or as non-voting shares, provided that the total nominal value of the preferred non-voting shares does not exceed 30 per cent of the principal capital of the company. The total nominal value of the preferred shares, including both voting and non-voting shares, cannot exceed the total nominal value of the common shares in the principal capital of the company.

Issuance of shares of the same type that confer different voting rights for an identical nominal value is prohibited.

Limits on the exercise of voting rights are determined within the Law on Trade Companies when the shareholders' meeting resolves to exempt a shareholder personally from a liability, payment of a receivable towards the company or obligations. The shareholders' meeting may also resolve to grant the shareholder certain advantages or privileges by the company, or initiate court or other proceedings against the shareholder. In these cases, the shareholder cannot exercise its voting right personally or through a proxy representative.

If the shareholders' meeting is altering or restricting any right deriving from a certain type of shares, this resolution shall be considered valid if the shareholders holding that respective type of share give their consent through the adoption of a resolution for consent, passed with a majority determined by the Law on Trade Companies or the charter. These shareholders may vote or consent at a separate meeting or at the same shareholders' meeting with other shareholders present, but through a separate vote.

Consent by the owners of preferred shares shall be required for a resolution that cancels a preferential right as well as for the issue of preferred shares that have priority in the distribution of profit or when making the payment of a part of the remainder of the liquidation or bankruptcy estate of the company.

Shareholders' meetings and voting

6 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?

Each shareholder that intends to participate in a shareholders' meeting is obliged to report its attendance at the meeting (registration for attendance) prior to the commencement of the scheduled meeting, which can occur, at the latest, moments before the meeting is due to start.

A list of registered shareholders is prepared by the management body and it is compared with the excerpt of the book of shares obtained from the Central Securities Depository not later than 48 hours prior to the scheduled general meeting. This list is then signed by each present shareholder or his or her proxy representative, and it certifies his or her presence at the meeting (certified participant). Following the certification of the list, the chair of the shareholders' meeting shall confirm that the meeting has an operating quorum.

The Law on Trade Companies stipulates the possibility for the reporting companies and listed companies to offer their shareholders at least one of the following means for participation in the shareholders' meeting:

- direct transmission of the meeting;
- two-way live audio and video communication, which allows shareholders to address the shareholders' meeting from any remote location; and
- electronic means for voting, before or during the meeting, without the necessity to authorise a proxy who would attend the session.

It can be stipulated in the company's charter that the voting of the shareholders at the shareholders' meeting may be performed by phone or another electronic device that is a part of the public communication network. To vote in such a way, the following must be determined with absolute certainty: the identity of each shareholder, the voting right, the communication network that will be used between the company and its shareholders that will make the voting available to each shareholder and the means to record this voting. A shareholder who votes by phone or another electronic device is considered as present at the shareholders' meeting (ie, he or she will be considered as part of the quorum of the shareholders' meeting). The vote of a shareholder who voted by phone or another type of electronic device will be considered null if the identity of the shareholder cannot be determined.

Voting by way of correspondence prior to the day of the shareholders' meeting may be made available to the shareholders. Before allowing the shareholders to vote by correspondence, the company may first ask the shareholders to confirm their identity by submitting original or copied personal identity documentation (copies do not have to be certified by a notary public or a domestic or foreign state authority). The company may use its own system of registration of shareholders as a substitute for the procedure of identification of shareholders described above.

The shareholders are entitled to exercise their voting rights either in person or to delegate them to an authorised proxy by a written power of attorney. Unless otherwise stipulated by the Law on Trade Companies, the proxy is given in the written form, verified by a notary public. This requirement does not apply in reporting companies and listed companies where shareholders may appoint a proxy in writing without any obligation for the appointment to be verified by a notary. In such cases, the shareholder must immediately notify the company for the proxy to be granted, the default being that the proxy has not been granted.

The 2018 amendments to the Takeover Law imposed a further obligation to the proxies of the shareholders in joint-stock companies that fall under the scope of the Takeover Law. These amendments were made to cover other circumstances of persons acting in concert who have not been covered and make it easier for the Securities and Exchange Commission (SEC) to determine the connection that represents acting in concert in practice. As a result, a proxy who has power of attorney for voting at the shareholders' meeting from more than one shareholder has an obligation to notify the SEC within five working days prior to the holding of the meeting. The introduction of this provision also aims to prevent hidden ways of negotiation when adopting important decisions of the shareholders' meeting, which may affect the management of the company; that is, they represent indirect control of the joint-stock company, in accordance with the explanation of this particular amendment by the SEC.

In certain cases, the right to vote may not be exercised if the respective decision would lead to a conflict of interest for a particular shareholder or if the decision concerns a possible claim against that shareholder.

Shareholders and the board

7 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?

The management body of the company is entitled to convene a shareholders' meeting if the interests of the company so require. Though not directly entitled, the shareholders may submit a request to the management body for convening a meeting, if they hold at least 10 per cent of the voting shares. The management body decides on the convening of the meeting within eight days of the receipt of such a request. If the request is submitted by shareholders who own a majority of the voting shares, then the failure of the management body or the supervisory board to convene a meeting within 24 hours of the request entitles the shareholders to file a request to the court. The right to convene the shareholders' meeting by the court is granted to the shareholders if the management body has not decided to commence the meeting within the term of eight days.

Shareholders who individually or jointly own at least 5 per cent of the total number of voting shares may request an amendment to the agenda by adding new agenda items for the convened shareholders' meeting, while simultaneously providing an explanation for the proposed item or proposing a draft resolution on the proposed item, within eight days from the date of publication of the agenda for the meeting. Such a request cannot be refused, except in certain cases strictly determined by the Law on Trade Companies, such as missing the deadline, or if the item does not fall under the competence of the shareholders' meeting.

In exercising this right, the shareholders may propose, inter alia, agenda items, resolutions and director nominations to be put to a shareholder vote.

A contract obliging the shareholders to exercise the voting right according to the directions of the management body or the supervisory board is null and void. A contract obliging a shareholder to vote for each proposal of the management body or the supervisory board is also null and void.

The corporate body that convened the shareholders' meeting is obliged to send the request for the amendment of the agenda by adding new agenda items for the convened shareholders' meeting to all shareholders (ie, to publish it in the same manner in which the invitations for convening the shareholders' meeting were sent).

The body that convened the shareholders' meeting – that is, the person determined by the court to convene the shareholders' meeting – shall send the request for including one or more points to the agenda of the convened shareholders' meeting to all shareholders and shall publish it in the same manner in which the invitations were sent, no later than eight days prior to the date of the shareholders' meeting.

The Law on Trade Companies provisions governing the convening and holding of shareholders' meetings in reporting companies and listed companies require for the company to publish, without delay, the agenda and materials for the meeting, including draft resolutions proposed by the shareholders, on its website. The public announcement for convening shareholders' meetings in reporting companies and listed companies should contain a description of the procedures in accordance with which the shareholders participate and vote at the shareholders' meeting, and, in particular, how they can include points in the agenda of the shareholders' meeting and propose resolutions, how the shareholders can raise questions to the company regarding the points of the agenda of the shareholders' meeting and information regarding the time period in which they can do so.

A shareholder or a group of shareholders holding at least 10 per cent of the principal capital of the company, based on suspicion of possible irregularities in the keeping of the trade books and the activities of the company (ie, suspicion that the company acts contrary to the provisions of the Law on Trade Companies), has the right to request the management body to convene a shareholders' meeting of the company. At this meeting, an authorised auditor shall be appointed for performing an audit, an inspection, a certification or related services within the scope of activities of the company regarding which the suspicion has been addressed in the request about the existence of possible irregularities. The shareholders may request the competent court to adopt a decision to appoint an authorised auditor if:

- the shareholders' meeting is not convened within a period of eight days of the submission of the request referred to above;
- the shareholders' meeting refuses to appoint an authorised auditor; or
- the shareholders' meeting fails to adopt a decision for appointing an authorised auditor within a period of 60 days of the submission of the request referred to above.

Controlling shareholders' duties

8 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?

The Law on Trade Companies prohibits the controlling shareholder as a parent company from using its influence to mislead the subsidiary as a controlled company into undertaking harmful legal affairs, or undertake or fail to undertake actions, unless the parent company assumes the obligation to compensate the controlled company for any damages. If it fails to compensate the company for damage, then the controlling shareholder shall be jointly and severally liable with the controlled company with regard to the third party.

Enforcement action in such a case may be initiated in the name and on behalf of the controlled company or individually by the shareholders, regardless of the damage caused to them resulting from the damage caused to the controlled company.

If the parent company misleads the subsidiary as a controlled company to undertake legal operations or actions, thereby causing irreparable damage or bankruptcy, the parent will be jointly and severally liable for the claims that cannot be collected from the controlled company.

If the controlling shareholder misleads the company into undertaking a legal operation or action, or failing to undertake such actions or operations, thereby causing damage to shareholders of a controlled company, the controlling shareholder and the company shall be jointly and severally liable for the shareholder's claims.

However, no liability for compensation shall arise if the management of the company has acted with due care and diligence, thus undertaking the legal transaction as any management of an independent company would have undertaken or failed to undertake an equivalent legal transaction or operation without being misled by the controlling shareholder.

Shareholder responsibility

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

Shareholders cannot generally be held responsible for the acts or omissions of the company. The company itself is only liable to third parties for the obligation it has incurred with all of its assets. Only in a few exceptional cases, which the Law on Trade Companies singles out as special liability of the shareholders for the obligations of the company, may they be held jointly and severally liable: if there is a major violation of good faith principles or the company's legal form has been used to carry out transactions and pursue objectives prohibited to them as individuals, or in an abusive manner to harm creditors, or the company's assets were used as if they were their own, contrary to the law, or the company's assets were decreased for their own benefit or for the benefit of a third party when they were aware or should have been aware that the company was not capable of settling its liabilities to third parties.

Piercing the corporate veil, except in these exceptional cases determined by the Law on Trade Companies, is not possible.

Employees

10 | What role do employees have in corporate governance?

Shareholders cannot generally be held responsible for the acts or omissions of the company. The company itself is only liable to third parties for the obligation it has incurred with all its assets. Only in a few exceptional cases, which the Law on Trade Companies singles out as special liability of the shareholders for the obligations of the company, may they be held jointly and severally liable under the following circumstances:

- if there is a major violation of good faith principles;
- the company's legal form was used to carry out transactions and pursue objectives prohibited to them as individuals, or in an abusive manner to harm creditors;
- the company's assets were used as if they were their own, contrary to the law; or
- the company's assets were decreased for their own benefit or for the benefit of a third party when they were aware or should have been aware that the company was not capable of settling its liabilities to third parties.

Piercing the corporate veil, except in these exceptional cases determined by the Law on Trade Companies, is not possible.

CORPORATE CONTROL

Anti-takeover devices

11 | Are anti-takeover devices permitted?

Anti-takeover devices are generally not permitted within the scope of the Takeover Law. Before a takeover bid is published, the management may implement a number of measures based on shareholders' resolutions. These measures are designed to protect the company in the event of a hostile takeover and may include:

- converting ordinary shares into preference shares without voting rights (up to 50 per cent of the registered share capital);
- issuing new preference shares or convertible bonds; and
- providing for increased majority requirements for the removal of members of the management and supervisory boards.

The management body of the target company, in the course of conducting the takeover bid procedure, must act in the interests of the company as a whole and must not dissuade the holders of securities from the possibility of deciding on the advantages of the takeover bid. It should prepare a document expressing its opinion about the effect of the implementation of the bid over the employment and business operations of the company as stated in the takeover bid and the reasons on the basis of which it is adopted.

Once a takeover bid is published, and the management receives notification from the bidder, the Takeover Law imposes restrictions on the actions of the management body of the target company by prohibiting, without a resolution passed by at least a 75 per cent majority of the shareholders' votes that represent the principal capital of the company at the time of the adoption of the resolution:

- an increase in its principal capital;
- the undertaking of activities other than the company's regular operations;
- the undertaking of activities that might jeopardise the company's future operations;
- the acquisition of treasury shares or securities resulting in the right to exchange or acquire treasury shares; and
- performance activities that have the sole purpose of obstructing or aggravating the procedure and acceptance of the takeover bid.

The resolutions of the management on the matters stipulated above adopted before the announcement of the intention to execute a takeover but are not completely implemented require additional approval by the shareholders' meeting of the target company before their implementation by at least a 75 per cent majority of the shareholders' votes representing the registered principal capital, except in the case of resolutions that fall under the ordinary course of business of the company and whose implementation does not obstruct or aggravate the takeover bid.

Issuance of new shares

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

If provided in the company's charter, the management body may be authorised to increase the principal capital up to a certain nominal value (authorised capital) by issuing new shares, for a maximum period of five years following the registration of the company's foundation or five years following the entry of the resolution to amend the charter in the trade registry if this possibility was not stipulated by the charter.

The nominal value of the authorised capital may not exceed half of the principal capital at the time when the authorisation for the conditional increase of the principal capital was granted.

New shares may be issued only if the consent of the majority of the non-executive board of directors' members or the majority of the supervisory board members is provided. In such a case, it is the provision in the company's charter that has the legal effect of a resolution to increase the capital.

A pre-emptive right to subscribe for new shares exists in the Law on Trade Companies; however, the implementation of these provisions has been postponed until North Macedonia assumes full membership in the European Union. Therefore, for the time being, in general, the shareholders do not have a pre-emptive right to acquire newly issued shares. This right is granted in a limited number of cases, for example, when the shares are issued as a private offer if the assumptions stipulated in the law are met.

Restrictions on the transfer of fully paid shares

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

The Law on Trade Companies stipulates that shares are unlimitedly transferable and free to be traded with at the secondary securities market.

There are no statutory restrictions on the possibility to transfer shares, provided that encumbrances registered in the account of the shareholder maintained by the Central Securities Depository may contain this restriction.

There are certain regulatory requirements that have to be met to have a valid and legal transfer, such as that the trade transactions should be carried out on the Macedonian Stock Exchange or requested documents for execution of non-trading transfers to the Central Securities Depository must be presented.

Any encumbrance on shares restricting ownership rights and changes in the ownership of the share rights are recorded in the Central Securities Depository in the account of the shareholder and may arise only from the act of issuance, a pledge, an effective court decision, an act of the Securities and Exchange Commission (SEC) or an act issued by the Public Revenue Office.

Only shares that are free of any liens and restrictions may be the subject of settlement of transactions, except when the restriction applies to voting rights or dividends or another restriction that is not related to disposition and that is limited by a decision of a competent authority or an authorised person. If any right arising from the ownership of securities is restricted and evidenced in the shareholders' book maintained by the Central Securities Depository, these securities may not be part of the procedure of clearance and settlement.

Compulsory repurchase rules

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

There are no compulsory share repurchase rules, except in the case of exercising dissenters' shareholder rights in the case of a merger, accession and division, and during the transformation of the company, when the company is obliged to repurchase the shares of the shareholders who have not accepted the offer to receive shares, as a mandatory buyback.

The company may acquire treasury shares by way of repurchase, either itself or through a third party acting in its name but on behalf of the company, the validity of which is subject to the following conditions:

- a resolution for the acquisition of shares by repurchase should be granted by the shareholders' meeting, determining the manner of repurchase, the maximum number of shares to be acquired, the time period in which the repurchase shall be executed, which shall not be longer than a year from the date of adopting the resolution on the acquisition of the company's treasury shares, and the minimum and maximum value that may be paid for the shares;
- the nominal value of the acquired shares, including the shares the company has previously acquired or which are in possession of the company, shall not exceed 1/10th of the principal capital;
- the acquisition of the company's treasury shares shall not lead to the decrease of the assets of the company below the amount of the principal capital and the reserves, which, pursuant to the law or the charter, the company is obliged to maintain, and which shall not be used for payments to the shareholders; and
- only shares fully paid may be acquired via repurchase.

As an exemption, the company may acquire treasury shares when this acquisition is necessary to prevent serious and imminent damage to the company. The management body is authorised to adopt the resolution on this acquisition and is obliged to inform the shareholders' meeting at its next meeting of the reasons and the objectives of the implemented acquisition of treasury shares.

The share repurchase shall be carried out without application of the requirements determined above:

- if, on the basis of a resolution of the shareholders' meeting, the withdrawal of the shares is carried out in connection with the procedure for decreasing the principal capital;
- free of charge or when a bank, investment fund or other financial institution purchases shares in its own name out of the commission obtained from the purchase of the shares;
- as a consequence of the universal succession of the assets;
- in the enforcement procedure for settling a company's claim on the basis of a court decision;
- in the case of a merger, accession and division, and during the transformation of the company, if the company is obliged to repurchase the shares of the shareholders who have not accepted the offer to receive shares (mandatory buyback);
- in the case of exclusion of a shareholder;
- on the basis of an obligation stipulated in law or on the basis of a court decision; and
- as compensation for a debt, or in a procedure reorganising the debt in accordance with the Law on Bankruptcy.

The company may be authorised by its charter to issue shares with the right of the company to repurchase these issued shares within a certain time period. The repurchase shall be valid if the following conditions are met:

- the terms and the manner of repurchase must be stipulated by the company charter;
- the shareholders' meeting shall adopt a resolution on the repurchase of these shares prior to their subscription;
- the shares should be paid up in full;
- the repurchase shall only be effected by funds that exceed the amount of the principal capital plus the reserves that may not be distributed to the shareholders under the Law on Trade Companies and the charter; and
- an amount that is not less than the nominal value of the issued shares shall be set aside into a reserve that shall not be distributed, under the Law on Trade Companies and the charter, except in the case of a decrease of the principal capital.

Dissenters' rights

15 | Do shareholders have appraisal rights?

Under the Law on Trade Companies, shareholders have appraisal rights in certain situations – in the procedure for the reorganisation of the company and the transformation of the company.

In certain cases of company reorganisation (acquisitions and mergers) and changes of legal form, a shareholder can sell his or her

shares to the reorganised company for an appropriate cash compensation if the shareholder has formally objected to the reorganisation in the shareholders' meeting. A company shall buy back the shares at a price based on the adopted balance sheet as determined in the resolution for the transformation of a company (offered price) from a shareholder who, by way of a written statement, objected to the reorganisation of the company.

In a case of reorganisation, the shareholders are entitled to a court examination of the exchange ratio if the ratio has been determined to be too low, in which an additional payment may be requested that shall not exceed 10 per cent of the nominal value of the exchanged shares.

The adequacy of the cash compensation must be reviewed by the official auditor of the reorganisation.

Any dissenting shareholder can file an application with the court to assess the appropriate sum.

In squeeze-out proceedings, the minority shareholders must be granted appropriate compensation for their shares, under the same conditions under which the takeover was carried out.

RESPONSIBILITIES OF THE BOARD (SUPERVISORY)

Board structure

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

The predominant board structure for listed companies is the one-tier structure.

Out of 100 companies listed on the Macedonian Stock Exchange, 64 have one-tier management systems and the other 36 have two-tier management systems.

Board's legal responsibilities

17 | What are the board's primary legal responsibilities?

The board of directors manages the company within the scope of the authorisations provided for by the law and the charter and the authorisations expressly granted by the shareholders' meeting. The board of directors has the broadest authorisations in managing the company within its scope of operations and acts, in all circumstances, on behalf of the company, except for matters falling within the authorisations explicitly granted to its non-executive members.

With the exception of the authorisations explicitly granted to the board of directors pursuant to the law, the executive members manage the company's operations and have the broadest authorisations to undertake all matters related to the management, implementation of the board of directors' resolutions and execution of the day-to-day activities of the company, as well as to act on behalf of the company in all circumstances. The board of directors entrusts the representation of the company in relations with third parties to its executive members. The non-executive members, in addition to the authorisations provided for by the Law on Trade Companies concerning the exercise of the right of supervision over the executive members' management, is entitled to inspect and verify the books and documents of the company as well as its assets and, in particular, the petty cash of the company and its securities and goods.

In the two-tier management system, the management board undertakes all matters related to the management, the implementation of resolutions and the execution of the day-to-day activities of the company, as well as acting on behalf of the company in all circumstances, while the supervisory function is vested in the supervisory board.

There are certain issues that the executive members (ie, the management board) cannot resolve without obtaining the prior consent of the board of directors or supervisory board, respectively. These concern the registered scope of activities or the establishment or termination of long-term cooperation or capital investments that involve more than 10 per cent of the income of the company, as well as essential internal organisational changes in the company, the establishment and termination of branch offices, the decrease or expansion of the scope of business operations and the establishment and termination of a trading company participating in the principal capital of the company with more than 10 per cent in the principal capital of the company.

Board obligees

18 | Whom does the board represent and to whom do directors owe legal duties?

The management board (ie, the executive members of the board of directors) represents the company in relation to third parties, while the supervisory board (ie, the non-executive members of the board of directors) represents the company in relation to its management board (the executive members). All members of the management board (ie, the board of directors) are under a general duty to manage the company with the due care of a prudent and diligent manager and in the best interests of the company and all the shareholders. The supervisory board is also under a general duty to control the management, which it owes to the company and its shareholders.

The duties of the management board and of the supervisory board (ie, the board of directors) are primarily owed to the company and are carried out in the interests of all shareholders.

Enforcement action against directors

19 | Can an enforcement action against directors be brought by, or on behalf of, those to whom duties are owed? Is there a business judgement rule?

Members of the management body who violate their legal duties by failing to apply the care of a prudent and diligent manager are jointly and severally liable to the company for damage caused, unless the respective action was based on a legal and valid resolution of the general meeting, or the member of the management body has opposed such a resolution and voted against the course of action. Under specific conditions stipulated in the Law on Trade Companies, shareholders may file for a claim for the damage suffered by the company by the management bodies. The non-executive members of the board of directors, or the members of the supervisory board, shall be jointly and severally liable with the executive members of the board of directors or the members of the management board for the damage caused, if they failed to act with due care and diligence when giving their prior consent.

Neither the management body nor the supervisory board, however, can be held liable for the poor performance of the company based on entrepreneurial business decisions taken with the due care of responsible managers, even if these decisions subsequently turn out to be failures (business judgement rules).

Care and prudence

20 | Do the duties of directors include a care or prudence element?

All members of the management bodies are under a general duty to fulfil their duties pursuant to the authorisations granted to them by the law or charter, in the interests of the company and all the shareholders with the due care of a prudent and diligent manager.

Set as a legal standard, due care and diligence determine the responsibilities of persons in charge of the management and supervision of companies, the care that these persons should apply while executing entrusted tasks in the company and the requirement that they

act in a diligent manner (in the operations of the company) as skilled (professional) persons, pursuant to which they shall be liable for negligent behaviour while executing operations with which they have been entrusted, unless another law specifies that they shall only be liable for gross negligence.

Board member duties

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

Formally, all members of the management bodies represent and manage the company collectively and are jointly responsible for all business areas, irrespective of individual skills and experience. Internally, however, the members of the management bodies are, in most cases, entrusted with different operational responsibilities.

The Corporate Governance Code for Companies listed on the Macedonian Stock Exchange recommends making a provision for the division of duties within the management body or the supervisory board and describing the procedure of the management body or the supervisory board in the charter and other acts of the company. In addition, it is recommended that the board of directors or the supervisory board should include in its regulations a paragraph dealing with its relations with the management board or executive directors, the external certified auditor and the shareholders' meeting.

It further recommends that the management body or the supervisory board defines and proposes a profile of its members and the size and composition of the management body or the supervisory board, taking into account the nature of the business, its activities and the desired expertise and background of members of the management body or the supervisory board. At least one of the non-executive members of the board of directors or one member of the supervisory board must be a financial expert. The annual report should disclose the name of this member of the management body or supervisory board.

Delegation of board responsibilities

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

A member of the management body or supervisory board may not transfer his or her authorisations to another member of the management body or supervisory board.

When performing duties granted pursuant to the law and the company's charter, the member of the management body or the supervisory board may rely on information, opinions or reports prepared by independent legal advisers, independent authorised accountants and certified auditors and other persons, believed to be trustworthy and competent for the matters they perform, but this shall not exempt the member from the obligation to act with due care and diligence.

The executive members of the board of directors manage the operations of the company and have the broadest authorisations to undertake all matters related to the management, implementation of the decisions of the board of directors and realisation of the day-to-day activities of the company (except for the authorisations explicitly awarded to the board of directors in accordance with the LTC) and act on behalf of the company in all circumstances. For the purpose of exercising these authorisations, the executive members can appoint managerial persons who shall run the daily management of the activities of the company, in accordance with the decisions, directions and orders of the executive members of the board of directors.

In a two-tier management system, the members of the management board jointly represent the company in its relations with third parties, unless otherwise determined by the company's charter. The management board, with the approval of the supervisory board, can authorise one or more members of the management board to represent the company. In that case, the other members of the management board shall be excluded from the representation. The supervisory board can at any time revoke the representation authorisation.

Non-executive and independent directors

23 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?

A board of directors may have a minimum of three and a maximum of 15 members. The general rule is for non-executive members to outnumber executive members. If the board of directors has up to four non-executive members, at least one of them shall be an independent member. If the board of directors has more than four non-executive members, at least a quarter of them shall be independent members of the board of directors. The same ratio applies to the supervisory board structure.

'Independent non-executive member' means a natural person who, along with their family members:

- has not had any material interest or business relation with the company directly as a business partner, a member of the management body, supervisory body or an officer of the company within the five preceding years;
- has not, within the five preceding years, received and does not receive from the company any additional income to his or her salary;
- is not related to any of the members of the management body, supervisory board or the officers of the company; and
- is not a shareholder who owns more than 1/10th of the shares in the company or who represents such a shareholder.

The definition of the 'non-executive member of the board of directors' stipulates that such a member is a natural person, a member of the board of directors who has no executive function in the company and whose powers refer primarily to the general governance and supervision over the management of the company.

General governance and supervision over the management of the company is the distinction with the responsibilities of the executive directors.

Board size and composition

24 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?

A board of directors may have a minimum of three and a maximum of 15 members, while in the one-tier management system, the number of the members of the management board and the supervisory board is at least three and at most 11 members in each board. Notwithstanding the above, companies that have principal capital lower than €150,000 may appoint a manager instead of a management board. The structure of the board of directors (ie, the management board and the supervisory board) is determined by the company's charter.

Prior to the election of a member of the board of directors or the supervisory board, certain disclosure requirements should be met by publishing, in writing, data regarding the age, gender, education and other professional qualifications, work experience and how it was

gained, the companies in which he or she is or has been a member of the management body or the supervisory board and other important positions held by him or her, the number of shares he or she owns in the company and in other companies, as well as loans and other liabilities owed towards the company.

Members of the management bodies of the reporting companies have an obligation to disclose to the Securities and Exchange Commission any shareholding they have in the company, as well as any further changes by submitting an ownership report.

Listed companies have further disclosure requirements for their members of the management bodies, related to the number of shares with voting rights and the percentage of the total number of shares issued by the company that they represent, within 14 days of their election, as well as ongoing disclosure requirements for the sale of company shares by the members of the management bodies of the value of €10,000 or higher during one trading day, the cumulative value of all purchases (or sales) of shares of the value of €10,000 or more within 30 calendar days and every purchase or sale of shares representing 0.5 per cent of the total voting shares of the company.

The Central Registry of the Republic of North Macedonia maintains a register on persons who cannot be members of management bodies. The negative criteria imposed by the LTC, which are the basis for entry in this registry, are related to previous managing functions in insolvent companies until bankruptcy proceedings have been initiated, as well as anyone who has been found guilty with enforceable court decisions of false bankruptcy or damaging creditors and who have been punished with a ban on performing such activity, profession or duty, while the legal consequences of such a ban are still in force.

If certain members of the board of directors, that is the supervisory board, stop to perform their duties during their mandate, or there is an obstacle to their performing their duties, the other members continue with the work of the relevant board until the fulfilment of the empty spot by the shareholders' meeting. If the number of members of the board of directors that is the supervisory board is decreased under the minimum determined with the charter, but no lower than the minimum required by the law, the board of directors that is the supervisory board may, in the period of 90 days from the day of termination of the function of the relevant member, fill the empty spot by the appointment of an acting director – a member of the board of directors that is the supervisory board until the following shareholders' meeting. The resolutions passed by the board of directors (the supervisory board) during this period shall remain valid. If the number of members of the board of directors (supervisory board) decreases below the minimum required by law, the remaining members must, within a period of three days, convene a shareholders' meeting for the number of members of the board of directors (supervisory board) to be in accordance with the law. If the shareholders' meeting is not convened in this three-day period, then the meeting shall be convened by the non-executive members of the board of directors (that is the management board) within a period of three days from the expiry of the previously given period. If the number of the members of the board of directors (supervisory board) is not filled in the manner described above and within the deadlines provided by law, then any person with a legal interest may request the court to appoint an individual who will convene the shareholders' meeting for appointment of a member of the board of directors (supervisory board).

Board leadership

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

Corporate governance rules in North Macedonia require the separation of the functions of board chair and chief executive. In companies with a one-tier management system, the president of the board of directors (board chair) is elected from the non-executive members of the board of directors. One of the executive members of the board of directors may bear the title that is typically associated with the performance of his or her duties (general director, chief executive director or other appropriate titles), and the other executive members may bear the title that is typically associated with the performance of their duties, entrusted to them as executive members of the board of directors.

In the two-tier management system, the management board and the supervisory board have their own presidents. The president of the management board, appointed by the supervisory board, coordinates the work of the management board and assumes certain representative functions and has a casting vote in the case of a tie, unless otherwise stipulated in the company's charter.

The company's charter may provide for additional rights and responsibilities of the presidents of the managing bodies and the supervisory board.

There is no flexibility on board leadership, as the structure and the functions of the board chair and CEO are determined by the Law on Trade Companies.

Board committees

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

In accordance with the Law on Trade Companies, the management body or the supervisory board may establish one or more committees from among its members and other persons. The committees shall neither decide on issues falling under the competence of the management body or the supervisory board nor shall their rights and liabilities be transferable. The composition, terms, scope and manner of operations of these committees shall be regulated in detail by the charter and the by-laws of the company adopted in accordance with the charter. All activities of the committees shall be subject to approval by the management body or the supervisory board.

The Corporate Governance Code entitles the board of directors or the supervisory board to consider whether to appoint a selection and nomination committee, an audit committee and a remuneration committee. Its best-practice provisions stipulate that the members of the committees appointed by the board of directors or the supervisory board cannot be executive members of the board of directors or management board members. Within the committees, at least one of the members is an independent member of the board of directors or the supervisory board.

Board meetings

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

The Law on Trade Companies obliges the board of directors and the supervisory board to convene at least four regular meetings during the year, one every three months, provided that one of the meetings is convened within one month prior to convening the annual general meeting of shareholders.

Board practices

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

The board of directors and the supervisory board must present a written report to the annual general meeting of the shareholders setting forth, among other things, how and to what extent it has supervised the activities of the management body during the business year.

The executive members of the board of directors and the members of the management board submit a written report on the operations of the company to the board of directors or the supervisory board at least once every three months and they must also submit annual accounts, annual financial statements and an annual report on the company's operations following the expiry of the business year.

Upon request by the non-executive members of the board of directors or the supervisory board, the executive members of the board of directors and the members of the management board shall prepare a special report on the state of affairs of the company or on particular issues related to its operations.

Board and director evaluations

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

The Corporate Governance Code for Companies listed on the Macedonian Stock Exchange through its best-practice provisions encourage periodical self-evaluation of the members of the management and supervisory board (ie, the board of directors) in listed companies.

There is no requirement to publicly disclose anything in relation to these evaluations.

In any case, the shareholders have the final say in the evaluation of the members of the management body as a whole and for each member individually. The annual shareholders' meeting is obliged to decide on approving the work and the management of the company by the members of the management body and the work of the members of the supervisory board. Voting on the approval of the work of members of the company's management bodies is done separately for each member of the management bodies.

If the annual shareholders' meeting does not approve the work of the management body or supervisory board or the work of the members thereof, it can decide to elect all the members of the management body or elect new members of these bodies to replace those whose work was not approved. This decision must be made at the same annual meeting.

Listed companies are obliged to publish the decisions on the approval or non-approval of the work of the management body adopted at the shareholders' meeting on the Macedonian Stock Exchange.

REMUNERATION

Remuneration of directors

30 | 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 or compensatory arrangements between the company and any director?

The statutory provisions determine that the shareholders' meeting must pass a resolution specifying the monthly lump sum or lump sum per meeting of the non-executive members of the board of directors or the supervisory board members. The non-executive members of the board of directors or the supervisory board members have the right to reimbursement of all their expenses incurred (travel and other expenses), a right to life insurance and other types of insurance, as well as other rights related to the performance of their function (usage of the business premises, necessary assets for operation, etc).

The executive members of the board of directors and the members of the management board are entitled to a salary, or a monthly remuneration, a right to life insurance and other types of insurance, compensation of travel and other expenses and other rights. The executive members of the board of directors and the members of the management board may enter into a managerial agreement with the company, determining in more detail their rights and obligations. Regarding specially entrusted matters, performed for the company by a member of the management body or a member of the board of directors, an additional bonus may be granted to that member and paid out of the operating costs.

The company may not grant a credit to a member of the management body or the supervisory board, their close family members, or to a member of the management body or the supervisory board of a controlled company or to their close family members. The prohibition shall not apply to the obligations assumed by the company pursuant to the managerial agreement if a resolution has been approved by the shareholders' meeting to this effect with a two-thirds majority of the voting shares represented at the general meeting.

Members of the management bodies and supervisory board members are elected for a term as stipulated in the company charter, which cannot be longer than six years. If the company charter does not stipulate the term of office, then it is a legal assumption that they are elected for a term of four years. Each of the members may be re-elected, regardless of the number of terms of office they have been previously elected for, unless otherwise determined by the company's charter.

Transactions between the company in which the members of the management bodies and the supervisory board members have an interest are considered interested-party transactions, for which a special corporate approval procedure applies. A default in the procedure for approving the transaction may lead to its nullity and exposes the interested parties to liability for damages if the transaction is proved to be harmful to the company.

Remuneration of senior management

31 | 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 or compensatory arrangements between the company and senior managers?

There are no requirements regarding the remuneration of senior management. The company cannot grant credit to members of the board of directors, the supervisory or management board or their close family members. Exceptions are stipulated obligations undertaken with the managerial agreement, confirmed by a resolution of the shareholders' meeting, with a two-thirds majority of the votes.

Transactions between the company and senior managers are subject to interested-party transaction provisions. General conflict-of-interest provisions apply.

Say-on-pay

32 Do shareholders have an advisory or other vote regarding remuneration of directors and senior management? How frequently may they vote?

Under the Law on Trade Companies, the shareholders generally do not have a say in the determination of executive remuneration, the only exception being when deciding on the executive members or the manager's right to participate in the profit. This participation, as a general principle, consists of a share in the annual profit of the company (payment in cash, shares, royalties, bonuses or in another manner).

The approved participation in the annual profit of the company shall be calculated on the basis of the portion of the annual profit of the company that remains after the reduction of the realised profit for the amount of the total losses transferred from the previous years, and the amounts are set aside as legal and statutory reserves. A resolution contrary to this provision shall be null and void. Though not explicitly stipulated, from the manner in which the approved participation is determined, it is evident that the shareholders may resolve upon on the annual meeting of the shareholders.

Further involvement of the shareholders in the executive remuneration may be stipulated in the managerial agreement, by determining the situations when the financial condition of the company shall be deemed to be significantly deteriorated, owing to which the earnings of the executives present a burden to the company and on the basis of which the shareholders' meeting, the non-executive members of the board of directors or the supervisory board may reduce the total earnings and other rights of the member of the management body.

The remuneration of the members of the board of directors and supervisory board is subject to regulation in the charter or a shareholders' resolution. There is no explicit provision determining the frequency of voting when resolving on the remuneration of the members of the board of directors and supervisory board.

DIRECTOR PROTECTIONS

D&O liability insurance

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

The company may agree to pay insurance premiums as part of its contractual arrangements with the directors or officers. Liability insurance is not restricted but is rare in practice. It is also subject to the availability of products by the local insurance companies.

Under the Law on Trade Companies, the non-executive members of the board of directors (ie, the members of the supervisory board) are entitled to reimbursement of all other expenses (travel and other expenses), right of life insurance and other types of insurance, as well as other rights related to the performance of their office (usage of the business premises and needed equipment for work, etc).

The executive members of the board of directors (ie, the members of the management board) are entitled to a salary, including monthly compensation, the right of life insurance and other types of insurance, reimbursement of travel, and other expenses and rights.

Indemnification of directors and officers

34 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?

Generally, only the company can be held liable by third parties for the actions of its management on behalf of the company. Personal liability of management body members in relation to third parties is very rare and mainly limited to damages from tort and breach of certain statutory management duties with gross negligence.

If a member of the management body grossly violates his or her obligation to act with due care and diligence, the creditors of the company may request compensation for damage if they fail to settle their claims against the company.

Advancement of expenses to directors and officers

35 To what extent may companies advance expenses to directors and officers in connection with litigation or other proceedings against them or in which they will be a witness?

In general, there is no prohibition for the companies to advance expenses to their directors and officers in connection with litigation or other proceedings against them or in which they will be a witness. The advancement of expenses may be agreed upon in the managerial contracts that are entered into between the directors and officers and the companies as a part of the general indemnification clause that the parties will agree upon. It can also be determined with a corporate resolution, as companies' charters and by-laws do not address this question in detail. Although there is no prohibition for companies to advance the expenses, the minimum standard of conduct must be stipulated that will require the directors and officers to act in accordance with the stipulated standard of due care and diligence. The general provisions on indemnification that entitle the company to ask for the compensation of damage from the person who caused the damage wilfully or with gross negligence may also be applied here by analogy.

Exculpation of directors and officers

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

The Law on Trade Companies stipulates joint and several liability of the management body members for the damage caused as joint debtors towards the company if they violate their obligations and fail to operate and act with due care and diligence. If a member of the management body grossly violates his or her obligation to act with due care and diligence, the creditors of the company may request compensation for damage if they fail to settle their claims against the company. The non-executive members of the board of directors or the members of the supervisory board shall be jointly and severally liable with the executive members of the board of directors or the members of the management board for the damage caused if they failed to act with due care and diligence when giving their prior consent.

Liability in relation to the company cannot be precluded or limited, either in the charter or in a private agreement.

However, the member of the management body who acted on the basis of a resolution adopted by the shareholders' meeting, although he or she had pointed out that the resolution was contrary to the law, as well as the member of the management body who objected to the resolution by setting out his or her opinion in the minutes of the meeting of the management body in a separate manner and voting against the resolution, shall not be held liable.

Under the Law on Obligations, the company is liable towards third parties for the damage caused by its management bodies in the performance of their functions in the management of the company. If the damage is caused by wilful action or gross negligence, the company is entitled to compensation from the member of the management bodies who caused the damage to the third party.

Further, the liability of employees in relation to their company can be limited as long as the employee acts within his or her professional capacity. If these conditions are met, an employee can also be entitled to be discharged from third-party liability by the company. If the damage is

caused by wilful action or gross negligence, the company is entitled to compensation from the employee who caused the damage to the third party. As members of the management bodies (executive members or management board members) are usually employees of the company, these principles apply to them.

DISCLOSURE AND TRANSPARENCY

Corporate charter and by-laws

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

The company is obliged to keep the charter and the other by-laws and all amendments thereto along with the consolidated texts at its premises, and each shareholder is entitled to inspect the corporate documents of the company, in a manner set forth in the company charter.

A copy of the company charter may be obtained from the trade registry maintained by the Central Registry; however, there is no requirement to publicly disclose the by-laws of the companies.

Company information

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

The disclosure requirements of a company depend on the status the company has in accordance with the Securities Law, whether it is a listed company, reporting company or joint-stock company that is not registered in the register of joint-stock companies with special reporting obligations maintained by the Securities and Exchange Commission (SEC).

The information that reporting companies disclose includes:

- the annual financial statements, the management reports and interim reports;
- the issuance of a new shares and dividends policy;
- information on certain shareholding thresholds being exceeded by a single shareholder (5 per cent of the voting shares), and information regarding the members of the management bodies, including their respective percentage ownership in the principal capital; and
- information about interested-party transactions entered into by members of the management board or the supervisory board and the affiliated entities of the company.

Reporting companies comply with the disclosure requirements by submitting to the SEC annual and semi-annual reports. Such a company must also immediately disclose any price-sensitive information, that is, all circumstances that are not yet public knowledge, but that may have a significant influence on the share price if they become public information (ad hoc disclosure). Listed companies must annually deliver to the Macedonian Stock Exchange a comprehensive report outlining whether and to what extent the company complies with the recommendations of the Corporate Governance Code for Companies listed on the Macedonian Stock Exchange and give reasons in the case that recommendations were not applied (compliance statement).

In general, listed companies are obliged to immediately publish:

- certain information on business operations (eg, signing or cancelling a significant contract that has a value of 10 per cent or more of the capital of the company, determined on the basis of the last audited annual financial statements);
- certain information related to the capital (increase or decrease of the principal capital and change of the rights deriving from the issued shares, etc);
- important changes in their financial situation (acquisition or disposal of 5 per cent or more of the assets of the company determined on the basis of the last audited annual financial statements, adopted decisions regarding interested parties transactions and the opinion of the auditor and transactions if the value of the transaction or the cumulative value of interconnected transactions over the past 12 months is or exceeds 10 per cent of the assets of the company, etc);
- their dividend calendar;
- notifications regarding publicly held shares; and
- notifications regarding the shareholders' meeting.

These companies should further publish a notification regarding all changes in ownership in which certain owners have acquired 5 per cent of the voting shares. This notification must state the identity of the new owners, the number of shares and the new percentage of voting rights. The Law on Trade Companies further stipulates that listed companies must publish a notification on every performed interested-party transaction, in at least one daily newspaper, on the company's website and on the Macedonian Stock Exchange website, immediately or the next business day, at the latest.

Further to this, the Macedonian Stock Exchange Listing Rules stipulate specific disclosure obligations for certain companies depending on which trading tier on the official Macedonian Stock Exchange market their shares are listed.

Joint-stock companies that are not listed on the Macedonian Stock Exchange and are not registered as reporting companies are obliged to publish data concerning total revenues, before tax, profit for the business year, net cash flow, profit per share for the business year and dividend per share, changes in the ownership structure over 10 per cent, the reorganisation of the company, changes in management and governance and the new issuance of shares as well as price-sensitive information on the web page of the Macedonian Stock Exchange.

HOT TOPICS

Shareholder-nominated directors

39 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 may nominate directors in the joint-stock company. Considering the majority for election of the members of the board of directors in the one-tier system, and the members of the supervisory board in the two-tier system as a majority of the voting shares from the quorum of the meeting, it is most unlikely that without the required majority-owned by the nominating shareholder the nominee would be elected. If stipulated by the charter, the election of the members of the board of directors or the supervisory board may be carried out by cumulative voting, thus allowing the minority shareholders to have their nominee elected.

The listed and reporting companies are required to publish and make available all resolutions that are proposed under each of the items of the agenda, as well as all the materials for the convened shareholders' meeting on their official websites, including the proposed resolutions regarding the appointment or revocation of directors (ie, members of the board of directors in the one-tier system and the members of the supervisory board in the two-tier system).

For the companies that are neither listed on the Macedonian Stock Exchange nor have reporting obligations, the requirement is to provide information on how the materials and documents for the convened shareholders' meeting will be made available to the shareholders in the invitation (ie, the public announcement for convening the shareholders' meeting).

Shareholder engagement

40 Do companies engage with shareholders? If so, who typically participates in the company's engagement efforts and when does engagement typically occur?

Shareholder engagement occurs in shareholders' meeting sessions.

In accordance with the Law on Trade Companies, each shareholder has the right to raise questions on each of the points on the agenda, and the company is obliged to respond to questions raised by the shareholders, through its management bodies or a senior officer who covers the particular matter to which the question is addressed. The right of shareholders to raise questions and the obligation of the company to answer these questions can be preconditioned by the need to verify the personal identity of the shareholders raising the questions, maintain the order in the chairing and operation of the shareholders' meeting session or undertake actions to preserve the confidentiality of the work and the business interests of the company. The company can give a collective response to questions with the same content. Questions raised by shareholders are considered to be answered if the answers are available on the web page of the company in the questions and answers form.

The Law on Trade Companies provisions governing convening and holding shareholders' meetings in reporting companies and listed companies require the public announcement convening shareholders' meetings to contain a description of the procedures in accordance with which the shareholders participate and vote at the shareholders' meeting and, in particular, how they can include points in the agenda of the shareholders' meeting and propose resolutions, how the shareholders can raise questions to the company regarding the points of the agenda of the shareholders' meeting and information regarding the time period in which they can do so.

Sustainability disclosure

41 Are companies required to provide disclosure with respect to corporate social responsibility matters?

Companies are not required to provide disclosure with respect to corporate social responsibility matters. Corporate social responsibility matters may fall under the broader category of price-sensitive information, and a listed company may disclose it following the general disclosure requirements under the Listing Rules. However, there is no sanction for default of disclosure with respect to corporate social responsibility matters.

CEO pay ratio disclosure

42 Are companies required to disclose the 'pay ratio' between the CEO's annual total compensation and the annual total compensation of other workers?

Companies are not required to disclose this information.

Gender pay gap disclosure

43 Are companies required to disclose 'gender pay gap' information? If so, how is the gender pay gap measured?

Companies are not required to disclose gender pay gap information.

UPDATE AND TRENDS

Recent developments

44 Identify any new developments in corporate governance over the past year. Identify any significant trends in the issues that have been the focus of shareholder interest or activism over the past year.

The proposed amendments to the Law on Trade Companies that were proposed in January 2020 with the aim of harmonising Macedonian law with Directive 2013/34/EU of the European Parliament and Council dated 26 June 2013 (which itself amends Directive 2006/43/EC of the European Parliament and Council) in relation to corporate governance statements, were passed later that year.

The Directive's amendments, which were adopted in December 2020, oblige supervisory boards (ie, the non-executive members of the board of directors of the listed companies) to ensure management board members (ie, executive members of the board of directors) give statements on the application of their company's Corporate Governance Code for Companies Listed on the Macedonian Stock Exchange in the company's annual reports. Such statements should contain information on how the company applies the Corporate Governance Code and where the company deviated (with explanations) from the Code. Failure to comply with this provision is sanctioned as a misdemeanour. Listed companies' internal audit departments are obliged to monitor the harmonisation of their companies' activities and operation within the Corporate Governance Code.

In February 2021, the Securities and Exchange Commission of the Republic of North Macedonia (SEC) published its 2021 work plan in which 'Investors' protection and market integrity' is stated as one of its top 2021 priorities. In the section titled 'New Corporate Governance Code', the SEC says the Law on Trade Companies amendments marks an important step in local legislation. At the same time, the SEC referred to the ongoing joint project by the SEC and the Macedonian Stock Exchange, which is supported by the European Bank for Reconstruction and Development, to prepare a new corporate governance code that:

> *. . . will not represent [a] mere replica of the standards predominantly stipulated in the Law on Trade Companies and the Securities Law. On the contrary, the new Code will incorporate best European practices and relevant instructions for implementation of good corporate governance emphasising the importance of unbiased (equal) treatment of all the shareholders, information disclosure, integrity and liability of the managers and directors, as well as other aspects of the good corporate governance that will increase investors' trust in the companies.*

Coronavirus

45 What emergency legislation, relief programmes and other initiatives specific to your practice area has your state implemented to address the pandemic? Have any existing government programmes, laws or regulations been amended to address these concerns? What best practices are advisable for clients?

During 2020 we witnessed several attempts to modify the application of the Law on Trade Companies in terms of shareholders assemblies and dividend rights due to the state of emergency that was imposed in North Macedonia. Namely, in just 10 days during March and April 2020, the government imposed several restrictive measures, restricting shareholders' rights to convene and hold the annual shareholders' meetings and then restricting the dividend payment to foreign shareholders for the duration of the state of emergency. These measures were set aside

with a new decree that terminated the validity of the decrees related to the Law on Trade Companies. Companies were then allowed to proceed with shareholders' meetings, profit distribution and dividend payments.

This year, the National Bank of the Republic of North Macedonia imposed a temporary measure on commercial banks – suspension of profit distribution and dividend payments up until 30 September 2021.

As an early measure in tackling the risks of the pandemic, the Securities Exchange Commission (SEC) published recommendations on 16 March 2020 that should be taken into consideration by joint-stock companies when modifying their usual plans for holding annual meetings of shareholders to prevent the spread of the coronavirus. In the case of already scheduled assemblies, if technically possible, the SEC asked for companies to consider holding virtual assemblies or to vote by way of written correspondence. If holding meetings with a physical presence is necessary, the SEC urged companies to take measures to limit risks to attendees (ie, by limiting attendance and voting to as few people as possible (bearing in mind the relevant quorum and decision-making quorums) through powers of attorney).

In accordance with the Law on Trade Companies, shareholders' assemblies may be carried out by attendance in person or through electronic means. For the latter, it is necessary for the company to have in place a system for the registration and identification of the shareholders. The company may allow its shareholders to vote by way of correspondence up until the date of the assembly. Since the SEC published the recommendations, several companies announced, as price-sensitive information, that they will ask their shareholders to vote by way of written correspondence. Few of them have the technical capability to hold shareholders' assembly meetings through electronic means.

2021 carries the same weight in terms of physical distancing and protocols regulating public gatherings. So, in a lack of clear legal provisions on convening and holding virtual meetings, the usual precaution is advised. In any case, it remains to be seen whether the outcome of this will be more companies opting to hold shareholders' meetings through electronic means in the future and electronic shareholders' meetings becoming the new standard.

Kristijan Polenak
kristijan@polenak.com

Tatjana Shishkovska
tsiskovska@polenak.com

98 Orce Nikolov
1000 Skopje
North Macedonia
Tel: +389 2 3114 737
Fax: +389 2 3120 420
www.polenak.com

Other titles available in this series

Acquisition Finance
Advertising & Marketing
Agribusiness
Air Transport
Anti-Corruption Regulation
Anti-Money Laundering
Appeals
Arbitration
Art Law
Asset Recovery
Automotive
Aviation Finance & Leasing
Aviation Liability
Banking Regulation
Business & Human Rights
Cartel Regulation
Class Actions
Cloud Computing
Commercial Contracts
Competition Compliance
Complex Commercial Litigation
Construction
Copyright
Corporate Governance
Corporate Immigration
Corporate Reorganisations
Cybersecurity
Data Protection & Privacy
Debt Capital Markets
Defence & Security Procurement
Dispute Resolution
Distribution & Agency
Domains & Domain Names
Dominance
Drone Regulation
e-Commerce
Electricity Regulation
Energy Disputes
Enforcement of Foreign Judgments
Environment & Climate Regulation
Equity Derivatives
Executive Compensation & Employee Benefits
Financial Services Compliance
Financial Services Litigation
Fintech
Foreign Investment Review
Franchise
Fund Management
Gaming
Gas Regulation
Government Investigations
Government Relations
Healthcare Enforcement & Litigation
Healthcare M&A
High-Yield Debt
Initial Public Offerings
Insurance & Reinsurance
Insurance Litigation
Intellectual Property & Antitrust
Investment Treaty Arbitration
Islamic Finance & Markets
Joint Ventures
Labour & Employment
Legal Privilege & Professional Secrecy
Licensing
Life Sciences
Litigation Funding
Loans & Secured Financing
Luxury & Fashion
M&A Litigation
Mediation
Merger Control
Mining
Oil Regulation
Partnerships
Patents
Pensions & Retirement Plans
Pharma & Medical Device Regulation
Pharmaceutical Antitrust
Ports & Terminals
Private Antitrust Litigation
Private Banking & Wealth Management
Private Client
Private Equity
Private M&A
Product Liability
Product Recall
Project Finance
Public M&A
Public Procurement
Public-Private Partnerships
Rail Transport
Real Estate
Real Estate M&A
Renewable Energy
Restructuring & Insolvency
Right of Publicity
Risk & Compliance Management
Securities Finance
Securities Litigation
Shareholder Activism & Engagement
Ship Finance
Shipbuilding
Shipping
Sovereign Immunity
Sports Law
State Aid
Structured Finance & Securitisation
Tax Controversy
Tax on Inbound Investment
Technology M&A
Telecoms & Media
Trade & Customs
Trademarks
Transfer Pricing
Vertical Agreements

Also available digitally

lexology.com/gtdt

an LBR business

ISBN 978-1-83862-640-2