GETTING THE DEAL THROUGH

Corporate Governance

Board structures and directors' duties in 35 jurisdictions worldwide

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Sources of corporate governance rules and practices

1 Primary sources of law, regulation and practice

What are the primary sources of law, regulation and practice relating to corporate governance?

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

The LTC 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 LTC 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 LTC 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 most recent changes of the LTC, the protection of the shareholders is back in the focus. The shareholders' position is strengthened by granting them the right to challenge the related-party transaction in a court procedure if the arm's-length principle in entering such a transaction was not obeyed, as well as by stipulating the requirement for mandatory external auditor's opinion as one of the conditions for approving a related-party transaction for listed companies if certain thresholds are met.

The SL 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 law important for corporate governance in Macedonia is the Takeover Law passed in 2002, which applies only to reporting companies. It regulates 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.

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

In addition, the Corporate Governance Code for Companies listed on the Macedonian Stock Exchange (MSE) is based on the OECD Corporate Governance Principles and provides for the 'best-practice provisions' for the managers, directors and shareholders of the companies listed on the MSE. Though voluntary in nature, the 'comply-or-explain' principle imposes obligation for the companies to explain the level of compliance with the best-practice provisions and the reasons for non-compliance. It promotes investor confidence through its best practices on 'equitable treatment of shareholders, disclosure of information, integrity and accountability of managers and directors'.

The MSE has also prescribed the Listing Rules for the companies, which sets out the basic conditions that have to be met for the listing on the MSE official market, as well as the ongoing disclosure requirements for the listed companies. The SL changes passed in January 2013 reintroduced mandatory listing for joint-stock companies that fall under the criteria set with the MSE Listing Rules. With this step the number of the listed companies whose corporate governance is affected by the obligation to comply with the MSE Listing Rules and continuously disclose and notify the MSE for any changes thereof qualified by SL and MSE Listing Rules as price sensitive information is significantly increased.

2 Responsible entities

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

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

There is no central agency for enforcement of corporate governance rules in 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 SL has introduced another mechanism for protection or implementation of the shareholders' rights related to trade transactions on the MSE, by providing for arbitration. The MSE has adopted the Arbitration Rules for resolving these disputes. Arbitration in settlement of disputes in connection with the company's charter is also stipulated with the LTC.

The MSE acts as a watchdog for the listed companies. The MSE Listing Rules has vested certain authorisations with the MSE if the listed company does not comply with the disclosure requirements or has contravened the MSE Listing Rules, such as warning the listed company, publishing the fact that the listed company has been warned for contravening the MSE Listing Rules, suspending of the trading with a certain security as well as permanently excluding the securities from listing.

The rights and equitable treatment of shareholders

3 Shareholder powers

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

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 stipulated by 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 among the members of the board of directors.

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 dismiss all the members of the board of directors, the supervisory board, or a member thereof prior to the expiry of their term of office. The resolution for dismissal 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 adoption of the resolution.

An executive member of the board of directors may be dismissed 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 dismissed prior to the expiry of the term of office.

Shareholders representing at least one-tenth of the voting shares may request a meeting of the board of directors or supervisory board 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 or supervisory board may call the meeting in the manner further provided in the LTC, thus allowing for the shareholders to have initiative rather than actual power to convene the meeting.

4 Shareholder decisions

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

The LTC 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 LTC 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 LTC.

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;
- election and dismissal of members of the board of directors and of the supervisory board;
- approval of the operations and management of the company's business by the members of the management body and supervisory board;
- alteration of the rights attached to particular types and classes of shares;
- increase or decrease of the company's principal capital;
- issue of shares and other securities;
- appointment of the certified auditor to audit the annual accounts and other financial statements, if the company is obliged to prepare them; and
- transformation of the company into another form of company and reorganisation and termination of the company.

The shareholders' meeting approves related-party transactions and major transactions, if the thresholds for these corporate transactions as stipulated for in the LTC 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 differ 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.

5 Disproportionate voting rights

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 the Republic of Macedonia (state-owned shares), may grant specific rights under the condition of their issuance. By the entry into force of the LTC 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 cannot 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 LTC when the shareholders' meeting resolves to exempt a shareholder personally from a liability, payment of a receivable towards the company, or from obligations, or which grants the shareholder certain advantages or privileges by the company, or on a resolution to initiate court or other proceedings against the shareholder. In such 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, such 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 LTC 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 payment of a part of the remainder of the liquidation or bankruptcy estate of the company.

6 Shareholders' meetings and voting

Are there any special requirements for shareholders to participate in general meetings of shareholders or to vote?

Each shareholder who 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 at the latest.

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 (CSD) 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 chairman of the shareholders' meeting shall confirm that the meeting has an operating quorum.

The LTC 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 assembly 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.

The shareholders are entitled to exercise their voting rights either in person or to delegate them to an authorised proxy by written power of attorney. Unless otherwise stipulated by LTC, the proxy is given in 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 an obligation to verify by a notary. In such a case, the shareholder has to immediately notify the company for granting the proxy, default of which shall be considered that the proxy has not been granted.

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

7 Shareholders and the board

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

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 one-tenth 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 if 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 LTC, such as missing the deadline, or if the item does not fall under the competence of the shareholders' meeting.

The LTC 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 meeting of the assembly, and in particular how they can include points in the agenda of the assembly and propose resolutions, how the shareholders can raise questions to the company regarding the points of the agenda of the meeting of the assembly and information regarding the time period in which they can do so.

8 Controlling shareholders' duties

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

The controlling shareholders do not owe duties to the company or to the other shareholders.

However, the LTC prohibits the controlling shareholder as a parent company from using its influence in order to mislead the subsidiary 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 damages, 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 damages caused to them resulting from the damages caused to the company.

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

If the controlling shareholder misleads the company into undertaking a legal operation or action, or failing to undertake such an action or operation, 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.

9 Shareholder responsibility

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 LTC 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 in order 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 LTC, is not possible.

Corporate control

10 Anti-takeover devices

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 three-quarter 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 acquiring of its own shares or securities resulting in the right to exchange or acquire its own shares; and
- the performance activities whose sole purpose is to obstruct or aggravate the procedure and acceptance of the takeover bid.

11 Issuance of new shares

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

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 the issue of 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 register if such 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 charter capital was granted.

New shares may be issued only if the consent of the majority of the non-executive board of director's 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 LTC, however the implementation of these provisions is postponed until the Republic of Macedonia assumes full membership in the EU. Therefore, for the time being, the shareholders do not have a pre-emptive right to acquire newly issued shares.

12 Restrictions on the transfer of fully paid shares

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

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

There are certain regulatory requirements that have to be met in order to have a valid and legal transfer, such as that the trade transactions should be carried out on the MSE, or requested documents for execution of non-trading transfers to the CSD must be presented.

Any encumbrance on shares restricting ownership rights and changes in the shares ownership rights are recorded in the CSD 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 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 by a court decision, such securities may not be part of the procedure of clearance and settlement.

13 Compulsory repurchase rules

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

There are no compulsory share repurchase rules.

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 one-tenth 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 charter 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 such acquisition is necessary in order to prevent serious and imminent damage to the company. The management body is authorised to adopt the resolution on such acquisition and are 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' assembly, the withdrawal of the shares is carried out in connection with the procedure for reduction of 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 of a company's claim on the basis of a court decision;
- as a consequence of the universal succession of the assets;
- in the enforcement procedure for settling of a company's claim on the basis of a court decision;
- in the case of a merger, accession and division, and during 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 buy-back);
- 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 of reorganisation of the debtor 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 such 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 such 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 charter capital plus the reserves that may not be distributed to the shareholders under the LTC 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 LTC and the charter, except in the case of a decrease of the charter capital.

14 Dissenters' rights

Do shareholders have appraisal rights?

Under the LTC, shareholders have appraisal rights in certain situations – in the procedure for reorganisation of the company and the squeeze-out procedure.

In certain cases of company reorganisation (acquisitions, mergers or 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 general 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 transformation 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 in order 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.

The responsibilities of the board (supervisory)

15 Board structure

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

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

The predominant board structure for listed companies may be affected once the listing is carried out by the MSE as of 30 April 2013, by which time certain joint companies that fall under the MSE Listing Rules criteria for mandatory listing requirement should file a request for mandatory listing on the MSE.

16 Board's legal responsibilities

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 LTC 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 upon which the management board cannot resolve without obtaining 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.

17 Board obligees

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

The management board (ie, the executive members of the board of directors) represent 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. 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.

18 Enforcement action against directors

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

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 damages 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 LTC, shareholders may file for a claim for the damages 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 judgment rules).

19 Care and prudence

Do the board's duties 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 determines the responsibilities of persons in charge of the management and supervision of companies and the care which 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.

20 Board member duties

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 recommends making 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. Also, 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.

21 Delegation of board responsibilities

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

Members 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 the 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.

22 Non-executive and independent directors

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

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 for the supervisory board structure.

'Independent non-executive member' means a natural person who, and whose 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 a relative of 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 one-tenth 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.

23 Board composition

Are there criteria that individual directors or the board as a whole must fulfil? Are there any disclosure requirements relating to board composition?

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, working experience and how it was gained, in which companies 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 SEC 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 as well as 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 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 an activity, profession or duty, while the legal consequences of such a ban are still in force.

24 Board leadership

Do law, regulation, listing rules or practice require separation of the functions of board chairman and CEO? If flexibility on board leadership is allowed, what is generally recognised as best practice and what is the common practice?

Corporate governance rules in Macedonia require separation of the functions of board chairman and CEO. In companies with a one-tier management system, the president of the board of directors (board chairman) 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, or 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 its own president. The president of the management board is appointed by the supervisory board, coordinates the work of the management board and assumes certain representative functions.

The company charter may provide for additional rights and responsibilities of the presidents of the managing bodies and the supervisory board, such as a casting vote in the case of a tie.

25 Board committees

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

There are no mandatory board committees.

In accordance with the LTC, 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, the scope and the manner of operations of such 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.

26 Board meetings

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

The LTC 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.

27 Board practices

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, inter alia, how and to what extent it has supervised the activities of the management body during the financial 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 shall 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.

28 Remuneration of directors

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

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. 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 loan or 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.

The members of the management bodies 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.

Transactions between the company in which the members of the management bodies and the supervisory board members have an interest are considered related party transactions, for which a special 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 for the company.

29 Remuneration of senior management

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

There 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 related parties. Exceptions are stipulated obligations undertaken with the management contract by a resolution of the shareholders' assembly, with a two-thirds majority of the votes.

Transactions between the company and senior managers are subject to related party transactions provisions. General conflict of interest provisions apply.

30 D&O liability insurance

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.

31 Indemnification of directors and officers

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

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 damages if they fail to settle their claims against the company.

32 Exculpation of directors and officers

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

The LTC 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 damages 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 cause 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. Since members of the management bodies (executive members or the management board members) are usually employees of the company, these principles apply to them.

33 Employees

What role do employees play in corporate governance?

When determining the management systems of the joint-stock company, the LTC stipulates that the participation of the employees in the management of the company shall be stipulated by law.

However, there is no such law adopted as yet, therefore the employees' participation in the corporate governance is not yet regulated by Macedonian law.

There are provisions in the LTC that stipulate the possibility for the company in its charter to create a fund from which the employees can acquire shares in the company for free or at a discount price, up to one-tenth of the principal capital of the company. This option for the companies has been effective from 1 January 2012, and it was intended to have employees as active participants in the shareholding structure of the company through their participation in and voting at the shareholders' meeting. However, up to the present time, there is no relevant practice to show whether this provision has been implemented by companies.

Disclosure and transparency

34 Corporate charter and by-laws

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 the company's 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 of the Republic of Macedonia; however, there is no requirement to publicly disclose the by-laws of the companies.

Update and trends

The new amendments to the Securities Law in January 2013 (Official Gazette of the Republic of Macedonia No. 13/2013) reintroduced mandatory listing as an obligation to those joint-stock companies that are not listed on the stock exchange and that fall under the criteria determined by the Macedonian Stock Exchange Listing Rules, which entered into force on 15 March 2013 (MSE Listing Rules). The joint-stock companies, which on 31 December 2012, 31 December 2013, 31 December 2014, 31 December 2014, 31 December 2015 and 31 December 2016 fall under the criteria for mandatory listing, are obliged by 30 April of the following year at the latest to file at the Macedonian Stock Exchange (MSE) the request for listing on the trading tier 'mandatory listing'. The mandatory listing requirement shall apply until 30 April 2018. MSE Listing Rules stipulate that a mandatory listed joint stock company is a company:

- with principal capital of at least €1 million;
- with at least 50 shareholders, whose shares are owned by at least 1 per cent of the general public; and
- with audit financial statements for the last two years.

This definition of the mandatory listing criteria affects most of the joint-stock companies already registered with the Securities and Exchange Commission (SEC) as companies with a special reporting requirement.

From January 2013, the related parties transactions for the listed companies have been subject to additional criteria for their approval as per the recent changes to the Law on Trade Companies (Official Gazette of the Republic of Macedonia No. 166/2012). Namely, prior passing of a resolution for approval of the related-party transaction when the value of the transaction that is the subject of approval or the cumulative value of mutually related transaction during the past 12 months from the day of approval of the transaction exceeds 10 per cent of the value of the assets of the company determined on the basis of the last audited annual financial reports; the opinion of an authorised auditor that meets the requirements prescribed by the Law on Audit and the Law on Securities is necessary.

The new Takeover Law is in the process of adoption by the assembly of the Republic of Macedonia. The reason why a new Takeover Law is being proposed by the government, as stated in the official draft proposal, is the need for further harmonisation with Directive 2004/25/EC on takeover bids, strengthening the protection of holders of securities (primarily minority shareholders in target companies) and implementation of strict and transparent takeover rules. It is further elaborated that basic solutions of the new Takeover Law will stipulate:

- thresholds for mandatory takeover bid;
- exemptions from the mandatory takeover bid;
- a method of determining the takeover price and methods of payment;
- the procedure for conducting the takeover procedure (obtaining permission for a takeover offer, the publication of a prospectus detailing all information related to the takeover bid, a method of announcing the takeover bid to the public, publishing the opinion of the board of directors of the target company in connection with the takeover offer, which is taken into account, the opinion of the employees in the target company, announcing the results of the implementation of the takeover offer, etc);
- establishing the authority that the general meeting of shareholders of the target company has at the time period for acceptance of the offer; and
- the 'rule of neutrality', defined as the prohibition for the managing body of the target company to undertake certain activities without the shareholders' resolutions at the time of publication of the acquirer's intention for takeover until the announcement of the outcome of the takeover bid.

35 Company information

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 SL, whether it is a listed company, reporting company or joint-stock company that is not maintained in the Register of Joint-stock companies with special reporting obligations.

The information 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 related-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 which may have a significant influence on the share price if they become public information (ad hoc disclosure). Listed and specific other corporations must annually and permanently publish a statement on the company's website whether and to what extent the company complies with the recommendations of the Corporate Governance Code and give reasons in the case that recommendations were not applied (compliance statement). In addition, these companies must annually publish a formal statement on corporate governance, either in the financial report of the annual accounts or on the website of the company.

In general, the disclosure requirements of the listed companies depend on which trading tier on the official MSE market their shares are listed, as the MSE Listing Rules stipulate specific disclosure obligations for certain companies. For example, joint-stock companies that should be listed on the mandatory listing trading tier are obliged to continuously disclose without any delay any changes in their capital structure, issuance of new shares, changes of the rights attached to the issued shares, purchase and sale of the treasury shares, significant changes in the financial standing, publication of a dividend calendar, notifications regarding publicly held shares, etc. 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, as well as the new percentage of voting rights.

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

Hot topics

36 Say-on-pay

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

Under the LTC, 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. Such participation, as a general principal, consists of a share in the annual profit of the company (payment in cash, shares, royalties, and 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 assembly.

Further involvement of the shareholders in the executive remuneration may be stipulated in the managerial contract, by determining the situations when the financial condition of the company shall be deemed to be significantly deteriorated, due 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.

37 Proxy solicitation

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

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. In any case, proxy solicitation would allow exercise of the voting rights of the shareholders with prior notification of the SEC by stating the reasons for it and the method of gathering proxies, provided that at least 25 shareholders in the joint-stock company with voting shares participate in the proxy solicitation.

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