GETTING THE DEAL THROUGH

Corporate Governance

Board structures and directors' duties in 34 jurisdictions worldwide

2011

Published by
Getting the Deal Through
in association with:

Amarchand & Mangaldas & Suresh A Shroff & Company
Anderson Mōri & Tomotsune
Araújo e Policastro Advogados
Arzinger
Badri and Salim El Meouchi Law Firm
Bofill Mir & Alvarez Jana
Bonn Schmitt Steichen
Davies Ward Phillips & Vineberg LLP
Davis Polk & Wardwell LLP
Deacons
De Brauw Blackstone Westbroek NV
Duane Morris & Selvam LLP
Edward Nathan Sonnenbergs Inc
Hausmaninger Kletter Rechtsanwälte – Gesellschaft mbH
KK Legal
Kluge Advokatfirma DA
Mah-Kamariyah & Philip Koh
Mamić Perić Reberski Rimac
METIS Rechtsanwälte LLP
Migallos & Luna Law Offices
Navarro Castex Abogados
Nomos Law Firm
Polenak Law Firm
Popovici Nițu & Asociații
S A Evangelou & Co LLC
Sanchez DeVanny Eseverri, SC
Schellenberg Wittmer
Šelih & partnerji o.p., d.o.o.
Slaughter and May
Somay Hukuk Bürosu
Streamsowers & Köhn
Ughi e Nunziante
Vivien & Associés
Weil, Gotshal & Manges LLP
Yukov, Khrenov & Partners

GETTING THE DEAL THROUGH®

Corporate Governance 2011

Contributing editors:
Ira Millstein and Holly Gregory
Weil Gotshal & Manges LLP

Business development managers
Alan Lee
George Ingledew
Robyn Hetherington
Dan White

Marketing managers
Ellie Notley
Sarah Walsh
Alice Hazard

Marketing assistants
William Bentley
Sarah Savage

Subscriptions manager
Nadine Radcliffe
Subscriptions@gettingthedealthrough.com

Assistant editor
Adam Myers
Editorial assistant
Lydia Gerges

Senior production editor
Jonathan Cowie
Chief subeditor
Jonathan Allen

Subeditors
Davet Hyland
Sarah Morgan
Caroline Rawson
Joanne Morley

Editor-in-chief
Callum Campbell
Publisher
Richard Davey

Corporate Governance 2011
Published by
Law Business Research Ltd
87 Lancaster Road
London, W11 1QQ, UK
Tel: +44 20 7908 1188
Fax: +44 20 7229 6910

ISSN 1476-8127

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

Law Business Research

CONTENTS

Romania

Florian Nițu and Alexandru Ambrozie

Popovici Nițu & Asociații

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?

Rules on corporate governance are primarily provided by law. The main enactments are the Company Law No. 31/1990 and the Commercial Code. Rules regarding corporate governance may also be found in the Trade Registry Law No. 26/1990.

Listed companies are also subject to the provisions of the Capital Market Law No. 297/2004. Also, the Bucharest Stock Exchange (BVB) issued a Corporate Governance Code, last amended in 2008, implementing a set of rules in accordance with the relevant European legislation. Even though the Code is not mandatory, listed companies are bound to disclose, in their annual reports, starting in fiscal year 2009, whether the company complies with the provisions of the Code and, if not, the reasons for such non-compliance (the Corporate Governance Compliance Statement – the 'comply-or-explain' statement).

2 Responsible entities

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

Under the Romanian Constitution, the parliament, following parliamentary or governmental initiative, is in charge of the enactment of binding laws and regulations, including those regarding corporate governance.

With regard to listed companies, the National Securities Commission (CNVM) is the institution entitled to enforce the provisions of the Capital Market Law; it also has regulatory powers and is in charge of the implementation of binding statutes in this respect.

Non-binding regulations applicable to listed companies are also proposed, as mentioned in question 1, by the BVB.

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?

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

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

As an exception to the general rule, in the two-tier system, the members of the directorate (who oversee the management of the company in a way that is similar to the executive officers in the one-tier system) are appointed and removed by the supervisory board, the shareholders only being in charge of the appointment and removal of the members of the supervisory board.

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

4 Shareholder decisions

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

The shareholders' meeting decides on all major issues concerning the company. The following decisions are reserved, inter alia, for the shareholders' meeting:

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

There are other matters falling under shareholders' powers that can be delegated to the directors: change of the headquarters of the company; change of the business activities (except for the main business activity); and increase of the share capital, under certain conditions.

According to the Company Law, there are no matters subject to a non-binding (consultative) vote of the shareholders.

5 Disproportionate voting rights

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

In joint-stock companies the underlying principle in the shareholders' meetings is 'one share, one vote'. Exceptions are allowed through the statutory documents in respect of shareholders holding more than one share. There are no specific rules on the limits of such exceptions, to the extent where they do not amount to a disproportionate distribution of dividends. Typically, such exceptions take the form of extraordinary veto rights on specific matters and other specific mechanisms such as quorum conditions and supermajorities.

A joint-stock company may also issue preferred shares without voting rights, which are subject to specific limitations: the preferred shares cannot exceed one-quarter of the share capital of the company and the members of the board, the executive officers (the board of directors and the supervisory board) cannot hold preferred shares. The holders of preferred shares may participate in the shareholders' meeting, but they do not have voting rights.

In listed companies, a specific institution is that regarding the use of cumulative votes in order to appoint the board of directors. According to this method, a shareholder is entitled to assign its cumulative votes (votes resulting from multiplying the votes held by it in the company's share capital with the number of directors composing the company's board) to one or more persons proposed to be appointed as members of the board.

6 Shareholders' meetings and voting

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

As a general rule, the shareholders registered as such at the reference date mentioned in the convening notice are entitled to attend the meeting and vote. Shareholders may participate in the general meetings either personally or via a representative holding a power of attorney in this respect.

Shareholders holding preferred shares are not allowed to vote in the general meetings, however, they are allowed to vote in the special meetings of such holders. Holders of bearer shares are allowed to vote only if they deposit such shares at the places provided by the statutory documents or by the convening notice at least five days prior to the general meeting.

Voting rights in respect of unpaid shares are suspended until the full payment of such shares.

In the case of a conflict of interest between the company and the shareholder, the latter is required to abstain from voting, otherwise such shareholder will be responsible for the damages caused to the company if a majority would not have been able to form without him or her. The Company Law also prohibits the directors, members of the directorate and of the supervisory board from voting proportionally to their shares, in respect of the annual management discharge or any other issue regarding their management activity.

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?

In joint-stock companies, shareholders representing a certain number of shares (generally at least 5 per cent of the share capital, but possibly less if so stipulated in the company's statutory documents) may require the board of directors, respectively the directorate, to convene the shareholders' meeting or to amend its agenda. The convening procedures cannot be carried out directly by the shareholders. Should the board of directors or directorate fail to comply with such request, the shareholders are entitled to request authorisation to convene a general meeting in court.

Moreover, the shareholders representing the entire share capital are entitled to hold a general meeting and take any decision under its competence, without applicable convening rules.

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

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

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

8 Controlling shareholders' duties

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

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

In theory, a non-controlling shareholder may also check the validity of an apparently legal decision taken by the controlling shareholder on grounds of majority abuse.

9 Shareholder responsibility

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

Shareholders in SAs and in limited liability companies (which are by far the most common forms of companies used in practice) may be held liable for the company's obligations only to the extent of their contribution to the registered capital.

There are specific situations where shareholders' liability might be extended. The Company Law provides certain liabilities of the founding shareholders in connection to the company's incorporation. The founding shareholders are jointly and severally liable for the complete subscription and payment of the capital or for true and complete data provided by them in the incorporation process.

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

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

Corporate control

10 Anti-takeover devices

Are anti-takeover devices permitted?

Under the Company Law, there are no specific anti-takeover devices. However, a similar effect may be obtained by, as regards limited liability companies, the fact that a higher majority in the shareholders' meeting is required in order to transfer shares to a third party. Such devices may also be included in the statutory documents of the company, by way of specific shareholder approval in respect of a change of control event and other quorum and majority conditions. These may be included in shareholder agreements as well, but their effectiveness is very much reduced if not mentioned primarily in the statutory documents.

In listed companies, the intention of an investor to take over the control of a listed company by acquiring more than 33 per cent of its voting rights is specifically conditioned. The investor has to submit a takeover preliminary announcement to CNVM, whose approval is required. Subsequent to CNVM approval, the announcement has to be submitted to the company. The board of directors then has five days to inform CNVM and the offeror about its opinion with respect to the takeover. The board may then convene a shareholders' meeting. The convening of the shareholders' meeting is mandatory for the board if it is requested by shareholders holding at least 10 per cent of the share capital.

11 Issuance of new shares

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

The board of directors, respectively the directorate, may be entitled by the statutory document or by a resolution of the shareholders' meeting to increase the share capital up to a determined nominal value (authorised capital) by issuance of new shares. Such authorisation is limited to a certain period of time (which cannot exceed five years from the date of company registration, respectively from the shareholders' resolution) and to a value that cannot exceed half of the subscribed share capital.

As a rule, newly issued shares have to be offered first to the existing shareholders, proportionally to the number of shares held in the share capital of the company. The term for exerting the pre-emptive right is at least one month from the publication in the Official Gazette of the shareholders' meeting resolution approving the share increase. Under certain extraordinary conditions and for justified reasons, the pre-emptive right may be limited by the statutory documents or by a resolution of the extraordinary general meeting of shareholders.

12 Restrictions on the transfer of fully paid shares

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

In joint-stock companies, restrictions on the transfer of fully paid shares are permitted through the company's statutory documents or by resolution of the shareholders' meeting for certain periods of time and for justified reasons. Most commonly used restrictions are provided in the statutory documents or in shareholder agreements and include drag-along and tag-along rights, as well as the right of first refusal. These may be combined with specific lock-up periods (usually up to three to five years).

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

13 Compulsory repurchase rules

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

Under the Company Law, compulsory repurchase is stipulated with respect to dissenting shareholders who decide to withdraw from the company because they do not agree with the decisions of the shareholders' meetings changing the main business scope or the legal form of the company, moving the registered offices abroad, or deciding on the merger or split-off.

14 Dissenters' rights

Do shareholders have appraisal rights?

Dissenting shareholders (see question 13) have the right to sell their shares at a price estimated from an average rate established by an independent authorised expert.

The responsibilities of the board (supervisory)

15 Board structure

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

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

16 Board's legal responsibilities

What are the board's primary legal responsibilities?

Under the Company Law, the board of directors' primary legal responsibilities are:

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

17 Board obligees

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

The board represents the company in front of third parties and the courts of law. Where board management responsibilities are delegated to executive officers (as members of the senior management), the board represents the company to such executives.

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

18 Enforcement action against directors

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

Enforcement actions can be brought against directors who are in breach of their duties towards the company. The prerogative to decide the initiation of legal action belongs to the shareholders'

meeting. When taking such a decision, the shareholders' meeting shall also appoint the person representing the company in court against the director. The mandate of the sued director shall also cease automatically.

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

19 Care and prudence

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

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

20 Board member duties

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

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

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

If the board sets up various board committees with consultative roles (such as a remuneration committee or audit committee), its members shall have different duties in executing their mandate. For example, the audit committee shall have at least one member experienced in accounting or financial auditing.

21 Delegation of board responsibilities

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

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

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

22 Non-executive and independent directors

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

Where the management of the company is delegated by the board to executive officers (because it is required by the shareholders or by law) members of the board may also be appointed as executives. As such, they will be executive directors. However, in such case, the majority of the board must be represented by non-executive directors, meaning those who are not appointed as executives of the company. As regards their responsibilities, the executives hold representation powers, while the non-executives hold supervisory powers.

Moreover, based on the statutory documents or on the resolution of the shareholders' meeting, one or more members of the board of directors may be independent directors. In assessing directors' independence, the shareholders' meeting may look, inter alia, at the following criteria: he or she should not be nor have been a director of the company or of one of its subsidiaries during the past five years, should not have maintained an employment relationship with the company or its subsidiaries during the past five years, must not be a significant shareholder of the company, should not be or have been an auditor of the company or of a subsidiary during the past three years, there should be no potential conflict of interest situations, etc.

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?

There are no criteria related to age, nationality, diversity, expertise, insolvency or similar criteria. However, a person cannot be appointed as director if previously condemned for any of the following criminal offences: fraudulent management, breach of trust, embezzlement, forgery, perjury, bribery, crimes relating to money laundering and terrorist acts.

Under the Company Law, there are no disclosure requirements relating to board composition, except for certain identification data of the directors that need to be included in the statutory documents and, as such, are subject to public disclosure by registration with the trade registry: full name, citizenship, date and place of birth.

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?

There is no imperative legal requirement to join or separate the two functions. The Company Law expressly allows the board chairman to function as CEO, but ultimately it is up to the shareholders or the board to decide how to deal with this. The common practice is to join the two functions, so that the chairman also acts as CEO. This is generally seen as best practice in one-tier structures, particularly where the chairman's role is not merely decorative.

25 Board committees

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

The board can set up consultative committees of at least two members of the board. The responsibilities of such committees include investigations and recommendation for the board with respect to different areas of interest, such as financial audit, remuneration of directors, executive officers and employees or candidacy for different management positions. At least one of the members of such committees must be a non-executive independent director. Furthermore, the audit and remuneration committee must only be composed of non-executive directors. The committees are compelled to regularly submit reports to the board concerning their activities.

Similarly to the board of directors, in the two-tier system, the supervisory board may also establish consultative committees in order to carry out investigations and make recommendations to the directorate with respect to its activities.

26 Board meetings

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

The board of directors is required to organise board meetings at least once every three months. The board meetings are convened by the chairman, but can also be convened upon the justified request of at least two members of the board or of the CEO.

27 Board practices

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

Disclosure of board practices is not expressly required. Nevertheless, information regarding the members of the board of directors and the executives holding representation powers has to be made available at the Trade Registry for any interested person. The board must also keep internal records of its meetings and resolutions, which may be consulted by the shareholders.

28 Remuneration of directors

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

The basic remuneration of the board of directors and of the supervisory board is established by the statutory documents or by the shareholders' meeting. The supplementary remuneration of the latter for specific activities, as well as the executive officers' and directorates' members remuneration is established by the board of directors, or by the supervisory board.

The remuneration package normally has to be justified by the specific functions of the members and by the status of the company, but otherwise there are no specific legal limitations as to the value of the remuneration.

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

In addition, the company is not allowed:

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

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

Update and trends

A legislative package enacted in 2010 by the government to combat the crisis included modifications to the Company Law. The most important modifications concern the transfer of shares to third parties in limited liability companies, which strangely enough has become subject to a 30-day opposition term, during which any creditor may virtually oppose the transfer. This, naturally, may generate considerable delays in the completion of share transfers, until the settlement of the opposition.

Another modification is with regards to the corporate reorganisation procedure (spin-offs and mergers), which has been facilitated by limiting the possibilities for creditors to block or delay the process.

29 Remuneration of senior management

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

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

30 D&O liability insurance

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

In joint-stock companies, taking out professional liability insurance for the directors, the members of the directorate and the supervisory board is mandatory. The companies are allowed to pay the premiums, but this is normally done as part of the remuneration package offered to such persons.

31 Indemnification of directors and officers

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

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

32 Exculpation of directors and officers

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

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

33 Employees

What role do employees play in corporate governance?

The employees may enjoy various degrees of leverage through trade unions or the employees' representatives with regard to their position and involvement in the decision-making process of the company. The employees can also participate in corporate governance as shareholders, if stock acquisition programmes are available in the company.

Disclosure and transparency

34 Corporate charter and by-laws

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

The corporate charters and by-laws are registered with the Trade Registry Office. The main purpose of the Trade Registry is publicity, thus making companies' information available to all interested persons.

35 Company information

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

All companies are compelled to submit to the Trade Registry all amendments brought to the company's corporate charter and by-laws. Companies also must keep up-to-date information regarding board membership, the resolutions of the shareholders' meeting, acts concerning insolvency and bankruptcy procedures.

Listed companies have much broader disclosure obligations towards investors, the CNVM and stock exchange markets. The companies have to submit certain reports that are uploaded to their website to the CNVM and the stock exchanges. According to the CNVM regulations, the following report categories have to be drafted and submitted by the companies:

- quarterly, biannual and annual reports, including accounting status, certain economic and financial indicators, the auditors and board of directors reports;
- reports regarding private information that directly concerns the issuer, such as board of directors' resolutions regarding the convening of shareholders' meetings, changes in the company's management, changes of the company's financial auditor and any litigation involving the company;
- reports regarding new events concerning the company's activity that can lead to changes in the prices of shares, such as changes in the company's obligations that may significantly affect the activity or the financial status of the company, important acquisitions, or sales of assets or contracts concluded by the company valued at more than 10 per cent of the revenue for the previous financial year;
- reports regarding the payment of dividends, regarding dividend value and payment term and arrangements; and
- reports in respect of the issuance of new shares.

Hot topics

36 Say-on-pay

Do shareholders have an advisory or other vote regarding executive remuneration?

In a one-tier board structure, the shareholders' meeting establishes the remuneration of the board members. If the management is delegated to executive officers, their remuneration is established by the board. For the two-tier board structure the remuneration of the members of the directorate is established by the supervisory board. Nevertheless, the shareholders' general meeting is entitled to fix the general limits of all remuneration or financial advantages, including those regarding the company's executives.

37 Proxy solicitation

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

Not applicable.

POPOVICI NIȚU & ASOCIAȚII
Attorneys at Law

Florian Nițu florian.nitu@pnpartners.ro
Alexandru Ambrozie alexandru.ambrozie@pnpartners.ro

239 Calea Dorobanti St, 6th Floor
Bucharest, 1st District, 010567
Romania

Tel: +40 21 317 79 19
Fax: +40 21 317 85 00 / 75 05
www.pnpartners.ro

CORPORATE GOVERNANCE 2011 ISSN 1476-8127