



nestoradvisors




Nestor Nestor Diculescu Kingston Petersen
ATTORNEYS & COUNSELORS

Consultanta Economica
si de Afaceri

S.C. CONCEPT S.R.L.

Economic and Business
Consulting



Compendium of corporate governance practices

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Introduction

This Compendium¹ explains the principles and provisions of the Bucharest Stock Exchange Code of Corporate Governance (the “Code”) and provides information about international best practices.

This document should be read in conjunction with the Manual for Reporting Corporate Governance (the “Manual”), which helps companies disclose corporate governance information and explain deviations from the Code.

The Compendium reflects the structure of the Code and is divided into four sections: (A) Responsibilities [of the Board]; (B) Risk management and internal control system; (C) Fair rewards and motivation; and (D) Building value through investor relations.

Each section recalls the Code principles and provisions, and provides a commentary on the rationale and best practices. The explanations of the principles and provisions should help companies implement the new BSE Code, whilst the best practices can inspire companies to go beyond Romanian legislation and the Code.

The appendix includes best practice templates of terms of reference for the Board, the Audit Committee and the Nomination Committee, and a sample job description for the Board Secretary.

For convenience, key overlaps between Romanian law² and best practices are generally briefly addressed in footnotes throughout the Compendium.

In this document, the term “Board” refers to the Board of Directors in a unitary system and to the Supervisory Board in a two-tier system. The terms “executive” and “non-executive” are defined in the Board composition section.

¹ The Compendium, developed for the Bucharest Stock Exchange by Nestor Advisors, Nestor Nestor Diculescu Kingston Petersen and SC Concept, is designed to provide concise information about the BVB Corporate Governance Code and governance best practice. It is not meant to provide legal advice on the Code and its compliance.

² In this document, reference to “Romanian law” means general primary and secondary legislation applicable to all companies from a corporate and securities law perspective, and excludes any industry-specific legislation (including but not limited to specific legislation applicable to banks, investment firms, investment funds, state-owned enterprises).

Section A Responsibilities [of the Board]

1. Governance formalisation

1.1. General principle

The role of the Board of Directors in a one-tier board system and the role of the Supervisory Board/Management Board in a two-tier board system should be clearly defined and documented in the company's articles of association, internal regulations and/or other similar documents. The Board should ensure that company's articles of association, the resolutions of the general meeting of shareholders, and the internal regulations of the company include a clear distinction of powers and competencies between the general meeting of shareholders, the Board and the executive management.

There should be a clear division of responsibilities between the Board and the executive management.

Board members must strictly observe the secrecy of the proceedings, debates and decisions taken, unless otherwise decided by the Board or unless regulations in force require the appropriate disclosure.

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1.2. Comply or explain provisions

A.1. All companies should have internal regulation of the Board which includes terms of reference/responsibilities for Board and key management functions of the company, applying, among others, the General Principles of Section A.

A.2. Provisions for the management of conflict of interest should be included in Board regulation. In any event, members of the Board should notify the Board of any conflicts of interest which have arisen or may arise, and should refrain from taking part in the discussion (including by not being present where this does not render the meeting non-quorate) and from voting on the adoption of a resolution on the issue which gives rise to such conflict of interest.

1.3. Commentary

Role of the Board

Two types of Board structures³, the unitary and two-tier Board structures, are expressly permitted by Romanian law:

- ▶ *Unitary or single-tier Board structure*, where the governing body is composed of a single Board including executive and non-executive directors.

³ The OECD Principles of Corporate Governance provide an overview of the unitary and two-tier Board structures. See OECD Principles of Corporate Governance, available via <http://www.oecd.org/daf/ca/corporategovernanceprinciples/31557724.pdf>, p.13.

- ▶ *Two-tier Board structure*, where the governing body is composed of two separate Boards: a Supervisory Board and a Management Board. The Supervisory Board is composed exclusively of non-executive directors and the Management Board is composed entirely of executive officers.

In a unitary system, the Board's role is to provide entrepreneurial leadership of the company within a framework of prudent and effective controls which enables risk to be assessed and managed. The Board should set the company's strategic aims, ensure that the necessary financial and human resources (e.g. Board succession planning and executive remuneration) are in place for the company to meet its objectives, and review management performance. The Board should set the company's values and standards, and ensure that its obligations to its shareholders and others are understood and met.⁴ The leadership of the Chairman of the Board is key to achieving these endeavours.

More information about the Board's structure, activities, and responsibilities is available in Appendix 1: Sample Board of Directors charter.

In a two-tier system, the role of the Supervisory Board is usually to appoint, supervise, and advise the members of the Management Board. The Chairman of the Supervisory Board coordinates the work of the Supervisory Board. The Management Board is responsible for the day-to-day running of the company and its members are jointly accountable to the Supervisory Board for the management of the company.

Division of responsibilities between the Board and management

Separation of the Chairman and CEO roles⁵

Since one of the Board's main duties is to monitor and challenge management, the CEO may not be in the best position to lead the Board as Chairman, given his/her executive role in the day-to-day management of the business.

The separation of these roles is mandatory in two-tier systems (e.g. in Germany and Austria) and established best practice in most unitary Board jurisdictions (e.g. the UK, Spain, and Italy). It allows more checks and balances of the decision-making process and increases the non-executive directors' capacity to oversee management. Romanian law⁶ does not allow any member of the directorate in two-tier managed companies to simultaneously be a member of the Supervisory Board. However, if the governing body operates under a unitary system, the Chairman can exercise an executive role, whether the CEO or another executive function.

The separation of the two roles may not always be feasible or appropriate; for example, in firms facing a crisis that need to undergo a severe, swift turnaround driven by new leadership.

The Chairman's role is to allow the CEO to lead while ensuring there is adequate challenge from the Board. The Chairman should regularly maintain contact with the Executive

⁴ The UK Corporate Governance Code

⁵ Further reading on the split of the Chairman and CEO roles in other jurisdictions can be found at the Institute of Directors. See Institute of Directors, available via <http://www.iod.com/guidance/publications/the-effective-board>, p. 55

⁶ Art. 153² (3) of Law No. 31/1990 on companies

Committee/Management Board and, in particular, with the CEO. The Chairman should consult the executive officers on issues of strategy, planning, business development, risk situation, risk management, and compliance. He should also promote a culture of openness and debate by facilitating the effective contribution of non-executive directors in particular and ensuring constructive relations between executive officers/the Management Board and non-executive directors/the Supervisory Board. His/her job is highly sensitive, requiring the ability to compromise and to synthesise others' views.⁷

Governance policies⁸

▶ The terms of reference

Provision A.1 recommends companies to have internal regulation by having, among other documents, terms of reference for the Board and the key management functions.

The Board terms of reference are intended for its members, the executive team, and any person assisting to Board meetings of the company. Board committees and executive committees have also their own terms of reference (named also "charter").

Terms of reference detail the roles, responsibilities, authorities, composition, relationships, and functioning of different governance bodies and how they relate to one another.

In addition, the Board terms of reference usually include provisions for the management of conflict of interest⁹ (as per Provision A.2.).

Appendices 1, 2 and 3 provide examples of terms of reference of a board of directors and of audit and nomination committees.

▶ Director charter

Although not explicitly referred to in the Code, a director charter is usually also made available to shareholders as part of the internal regulations of governing bodies. This would usually include principles such as the principle on confidentiality referred to in Section A: "The Board members must strictly observe the secrecy of the proceedings, debates and decisions taken, unless otherwise decided by the Board or unless regulations in force require the appropriate disclosure."

⁷ Further information on the role of the Chairman can be found at the Institute of Directors and the Financial Reporting Council. See Institute of Directors, available via <http://www.iod.com/guidance/publications/the-effective-board>, pp. 56-57. Financial Reporting Council, available via <https://www.frc.org.uk/getattachment/c9ce2814-2806-4bca-a179-e390ecbed841/Guidance-on-Board-Effectiveness.aspx>. p3

⁸ For some guidance on other jurisdictions, see Institute of Directors, available via <http://www.iod.com/guidance/publications/the-effective-board>, p.3

⁹ A conflict of interest refers to a situation in which a senior manager, director, employee, shareholder, or any stakeholder has a direct or indirect competing commercial, professional or personal interest which actually or potentially conflicts with his duties to the company. It extends to instances when the interests of such a person may be reasonably perceived to conflict with his duties to the company. Potential conflicts of interest may result from the use of corporate property, association with competitors of the company, use of information received in the context of director duties, or related-party transactions.

▶ Articles of association

Provision D.1.1 also recommends that companies disclose their articles of association.

A company's articles of association are its internal constitution. The articles are chosen by the members and form a contract between the company and its members. They help to ensure the company's business runs as smoothly and efficiently as possible and will set out how the company will make decisions and include various matters connected with the shares. Every company is required to have articles by law and the articles are legally binding on the company and all of its members.¹⁰

▶ Delegation of authorities¹¹

The principles of Section A specify that “The Board should ensure that company’s articles of association, the resolutions of the general meeting of shareholders, and the internal regulations of the company include a clear distinction of powers and competencies between the general meeting of shareholders, the Board and the executive management.”

Appropriate delegation of authority is fundamental to corporate governance arrangements i.e. the way in which organisations are directed and controlled. Authority should however be defined clearly such that decisions are made and actions taken by the appropriate people. This is the purpose of a policy defining delegated authorities. In general, authority should be delegated to the point where decisions can be taken most efficiently.

In practice, delegated authorities are often managed thanks to a chart of authorities. This chart defines for all areas where important decisions are to be made (e.g. strategy, budget, organisation, remuneration, procurement, sales, etc) who makes proposals, who reviews them, who decides and who is informed.

Formalising delegations of authorities:

- ▶ Introduces clarification on the Board’s retained authorities and provide guidance to the Chairman on the shape of the Board’s agenda; and
- ▶ Provides members of the Board with a transparent view of executive decision making; and
- ▶ Is used as an instrument in evaluating management’s performance on the basis of responsibility;
- ▶ Limits Board members’ and management’s potential liability by ensuring diligence in delegating and exercising authority.

This policy is approved by the Board and should be used by the Board and senior management. This policy is not widely disclosed to stakeholders.

¹⁰ See <https://ewf.companieshouse.gov.uk/help/en/stdwf/webIncHelp.html>

¹¹ An example of delegation of authorities is provided here: <https://www.credit-suisse.com/media/cc/docs/governance/organizational-guidelines-and-regulations-en.pdf>

2. Board composition¹²

2.1. General principles

The Board and its committees should have the appropriate balance of skills, experience, gender diversity, knowledge and independence to enable them to effectively perform their respective duties and responsibilities. It is recommended for the majority of non-executive members of the Board of Directors or Supervisory Board to be independent.

BVB Corporate Governance Code, page 3

2.2. Comply or explain provisions

A.3. The Board of Directors or the Supervisory Board should have at least five members.

A.4. The majority of the members of the Board of Directors should be non-executive. At least one member of the Board of Directors or Supervisory Board should be independent, in the case of Standard Tier companies. Not less than two non-executive members of the Board of Directors or Supervisory Board should be independent, in the case of Premium Tier Companies. Each member of the Board of Directors or Supervisory Board, as the case may be, should submit a declaration that he/she is independent at the moment of his/her nomination for election or re-election as well as when any change in his/her status arises, by demonstrating the ground on which he/she is considered independent in character and judgment in practice and according to the following criteria:

A.4.1. Not to be the CEO/executive officer of the company or of a company controlled by it and not have been in such position for the previous five years.

A.4.2. Not to be an employee of the company or of a company controlled by it and not have been in such position for the previous five (5) years.

A.4.3. Not to receive and not have received additional remuneration or other advantages from the company or from a company controlled by it, apart from those corresponding to the quality of non-executive director.

A.4.4. Is not or has not been an employee of, or has not or had not any contractual relationship, during the previous year, with a significant shareholder of the company, controlling more than 10% of voting rights or with a company controlled by it.

A.4.5. Not to have and not have had during the previous year a business or professional relationship with the company or with a company controlled by it, either directly or as a customer, partner, shareholder, member of the Board/Director, CEO/executive officer or

¹²Further reading on the split of the Chairman and CEO roles can be found at the Institute of Directors and the OECD. See Institute of Directors, available via <http://www.iod.com/guidance/publications/the-effective-board>, pp. 3-4. See OECD, available via <http://www.oecd.org/corporate/ca/corporategovernanceprinciples/43653645.pdf>; Practical Guide to Corporate Governance (2011); Chap. 4

employee of a company having such a relationship if, by its substantial character, this relationship could affect his/her objectivity.

A.4.6. Not to be and not have been in the last three years the external or internal auditor or a partner or salaried associate of the current external financial or internal auditor of the company or a company controlled by it.

A.4.7. Not to be a CEO/executive officer in another company where another CEO/executive officer of the company is a non-executive director.

A.4.8. Not to have been a non-executive director of the company for more than twelve years.

A.4.9. Not to have family ties with a person in the situations referred to at points A.4.1. and A.4.4.

A.5. A Board member's other relatively permanent professional commitments and engagements, including executive and non-executive Board positions in companies and not-for-profit institutions, should be disclosed to shareholders and to potential investors before appointment and during his/her mandate.

A.6. Any member of the Board should submit to the Board, information on any relationship with a shareholder who holds directly or indirectly, shares representing more than 5% of all voting rights. This obligation concerns any kind of relationship which may affect the position of the member on issues decided by the Board.

A.10 The corporate governance statement should contain information on the precise number of the independent members of the Board of Directors or of the Supervisory Board.

2.3. Commentary

Balanced Board composition¹³

An effective Board both directs and ensures proper control of the company and its management. As per 1.3. Commentary, the Board takes the big picture perspective, leading, monitoring, and supervising the management. It should gain the confidence of management and act as a sounding board and advisor, but must also have the collective courage to challenge management when necessary.

A Board can discharge its direction and control functions only if its members have the appropriate knowledge, skills and experience. The latter are often related to the business of the company but must also include a variety of other skills such as accounting, legal, organisational.

There is also an appreciation that Boards need to contain a range of personalities, characters, skills and backgrounds if they are to function successfully. Inclusive and diverse Boards are more likely to be effective Boards, better able to understand their customers and stakeholders and to benefit from fresh perspectives, new ideas, vigorous challenge and broad experience. This in

¹³For further reading, please see Institute of Directors, available via <http://www.iod.com/guidance/publications/the-effective-board>, pp. 3-4. Association of British Insurers, <https://www.ivis.co.uk/media/5920/ABI-Report-on-Board-Effectiveness-2012-Final.pdf>. p18

turn leads to better decision making.¹⁴ The Board Chairman plays a key role in creating an inclusive Board that welcomes diversity and promotes challenge. These criteria should be considered in the nomination of directors (addressed in 4. Nomination) and in the evaluation of the Board (addressed in 3.3. Commentary).

Gender equality in particular has gained a lot of attention recently with business initiatives such as the 30% Club and the introduction of quotas or target in France, Norway, Spain, Belgium, the Netherlands, the United Kingdom and Italy. A European Commission proposal for a directive¹⁵ sets a quantitative objective of at least 40% representation for each gender among non-executive directors (supervisory board members in a dual board system) by 2020 (or 2018 for State-owned undertakings).

Executive and non-executive directors

Executive directors¹⁶

Executive directors are members of one-tiered Boards who, in their executive capacity, are responsible for the day-to-day running and management of the company. They have the same duties as other members of the Board. When engaged in Board business, these duties and responsibilities extend to the entire business, not just the part that is covered by their individual executive roles¹⁷. As Board members, they are directly accountable to shareholders and their contribution to the Board's work should be frequently evaluated (see 3.3. Commentary).

Non-executive directors (NEDs)

A non-executive director is a member of the Board who does not engage in the day-to-day management of the organisation. This means the non-executive director can bring a creative contribution to the Board by providing objective criticism and play a valuable role in monitoring management.

Independence of non-executive directors¹⁸

¹⁴ For further reading, please see Egon Zehnder. (2015). *2014 Egon Zehnder European Board Diversity Analysis*, available at

http://www.egonzehnder.com/files/2014_egon_zehnder_european_board_diversity_analysis.pdf

¹⁵ The proposed Directive is being discussed among Member States in the Council. Under this new framework, companies would have to disclose the qualification criteria applied in case of a challenge to an appointment. The Commission's proposal applies to companies listed on stock exchanges in the EU Member States, but excludes all small and medium-sized companies (SMEs), even if they are listed on stock exchanges. For more information, please see http://ec.europa.eu/justice/newsroom/gender-equality/news/121114_en.htm and http://ec.europa.eu/justice/gender-equality/files/womenonboards/wob-factsheet_2015-04_en.pdf

¹⁶ Further information on the role of the Chairman can be found at the OECD and the Financial Reporting Council. See OECD Principles of Corporate Governance, available via

<http://www.oecd.org/daf/ca/corporategovernanceprinciples/31557724.pdf>, pp. 24-25. Financial Reporting Council, available via <https://www.frc.org.uk/getattachment/c9ce2814-2806-4bca-a179-e390ecbed841/Guidance-on-Board-Effectiveness.aspx>. p4

¹⁷ This principle is captured by Romanian law (various provisions are relevant, including Art. 142 and 144² (1) of Law No. 31/1990 on companies)

¹⁸ See International Finance Corporation, available via

<http://www.ifc.org/wps/wcm/connect/9d10d4804091a9a7b3f4b3cdd0ee9c33/Independent+Director+I+FC+Definition+2012.pdf?MOD=AJPERES>

The Board effectively represents the interests of the company as a whole. The NEDs' independence (as per the Code provision A.4¹⁹) allows them to be objective and evaluate the performance and economic interests of the company without any conflict of interest or undue influence of interested parties.

Relationships with shareholders can be defined as any relationship as per the IAS24 standard (see section C.3 on related-party transactions).

The Code contains detailed criteria for vetting a director's independence. Only non-executive directors can be considered independent. According to the Code, they should not receive additional remuneration or other advantages such as benefits in kind.

The composition of the Board should be refreshed from time to time. This often leads to independent and innovative thinking. Best practice Boards aim at balancing experience and knowledge of the company with a fresh perspective. In some jurisdictions a director is not considered independent once he/she has been on the Board of a company for a number of years (nine years in the UK and no more than three mandates in Romania).

However, the grounds for independence stem not only from compliance with provisions A.4.1-A.4.9 but through the directors' independence of character and judgement. A reputation for integrity and the respect of the marketplace is often read as an additional signal of independence. Significant reliance on income derived by one's Board seat might also put a limitation on independence. Therefore, the submission of a declaration of independence and any changes in his/her status, as per provision A.4, is essential. This declaration should specify whether there are relationships or circumstances which are likely to affect, or could appear to affect, the director's judgement. If the director still considers himself as independent notwithstanding the existence of these relationships or circumstances, he should explain why.

3. Board functioning²⁰

¹⁹ Criteria for assessing independence of directors are also provided by Art.138² (2) of Law No.31/1990 on companies. The criteria in the Code provision A.4.4 is stricter than the corresponding criteria in the law, while the Code provision A.4.8 is less strict than the corresponding legal provision limiting independence to three mandates of maximum four years (see lett.h) of Art. 138² (2) of Law No. 31/1990 on companies).

²⁰Further information on Board functioning in other jurisdictions can be found at the Institute of Directors and the Financial Reporting Council. See Institute of Directors, available via <http://www.iod.com/guidance/publications/the-effective-board>, pp. 5-11. Financial Reporting Council, available via <https://www.frc.org.uk/getattachment/c9ce2814-2806-4bca-a179-e390ecbed841/Guidance-on-Board-Effectiveness.aspx>.

3.1. General principles

The Board should ensure that a formal, rigorous and transparent procedure is put into place regarding the appointment of new members to the Board. All members of the Board should be able to allocate sufficient time to the company to discharge their responsibilities effectively. The Board should ensure that it is appropriately informed to enable it to discharge its duties.

BVB Corporate Governance Code, page 3

3.2. Comply or explain provisions

A.7. The company should appoint a Board secretary responsible for supporting the work of the Board.

A.8. The corporate governance statement should inform on whether an evaluation of the Board has taken place under the leadership of the Chairman or the nomination committee and, if it has, summarize key action points and changes resulting from it. The company should have a policy/guidance regarding the evaluation of the Board containing the purpose, criteria and frequency of the evaluation process.

A.9. The corporate governance statement should contain information on the number of meetings of the Board and the committees during the past year, attendance by directors (in person and in absentia) and a report of the Board and committees on their activities.

3.3. Commentary

Board Secretary²¹

The Chairman creates the conditions for overall Board and individual director effectiveness by:

- ▶ Demonstrating the highest standards of integrity and probity;
- ▶ Setting clear expectations concerning the company's culture, values and behaviours;
- ▶ Setting a Board agenda²² with the help of the Board Secretary²³;
- ▶ Ensuring a timely flow of high-quality supporting information²⁴;

²¹A guidance on the role of the Board Secretary in UK is provided by the Institute of Chartered Secretaries and Administrators, available via <https://www.icsa.org.uk/assets/files/pdfs/081020%20-%20Corp%20Gov%20role%20of%20co%20sec.pdf>

²² The duty of the Chairman to establish the Board agenda is expressly provided by Romanian law. (see Art. 141(2) of Law No. 31/1990 on companies).

²³ See A.7 of the Code

²⁴ The duty of the Chairman to ensure that Board members are adequately informed about the points on the agenda is also a legal requirement (see Art. 141(2) of Law No. 31/1990 on companies)

- ▶ Ensuring that the Board has effective decision-making processes and applies sufficient challenge to major proposals;
- ▶ Ensuring that the Board determines the nature and extent of significant risks the company is willing to accept in the implementation of its strategy; and
- ▶ Ensuring effective communication with shareholders²⁵ and other stakeholders.

He should be assisted by a competent, suitably qualified, and experienced Board Secretary, who attends Board meetings. All Board members should have access to the services of the Board Secretary (a senior employee or attorney), whose role is to provide practical support to the Chairman and other Board members, both as a group and individually, and to ensure that the Board complies with internal rules as well as relevant laws and regulations.

Under the direction of the Chairman, the Board Secretary's responsibilities include ensuring good information flow between the Board and its committees, as well as between senior management and the Board. Consequently, although not expressly provided for in the Code, it is good practice for the Board Secretary (or his/her nominee) to act as Secretary to the Board committees. It is not good practice for the internal auditor or an independent NED to provide the service of Secretary. The Secretary's responsibilities include facilitating induction and assisting with professional development of Board members as required, in addition to ensuring the effective organisation of shareholder meetings, facilitating good communication between the shareholders and the Board, and ensuring that statutory and regulatory requirements are met. More information about the role of the Company Secretary is disclosed in Appendix 4.

Minutes of every meeting record the proceedings as well as the decisions of the Board and its committees.²⁶ These minutes are circulated and approved at the next Board or committee meeting and kept by the Board Secretary.

Board evaluation²⁷

Boards continually need to assess their balance of skills, monitor and improve their effectiveness, maximising strengths, and highlight areas for further development. This generally takes the form of an annual self-evaluation of the effectiveness of the Board and its committees. The evaluation often consists of a questionnaire and one-to-one discussions, led by the Chairman of the Board and is usually assisted by the Board Secretary. Many best-practice Boards explicitly evaluate the performance of their Chairmen, and in some countries the evaluation also covers the performance and contribution of individual Board members.

Many EU Codes provide for externally facilitated Board evaluations every three years. This allows the Board to get an unbiased view of its performance and effectiveness. Regular Board evaluations are now a standard feature of governance in the majority of EU-listed companies and are expected by investors. On average, 70% of Boards of listed companies undertake a

²⁵ The duty of the Chairman to coordinate the activity of the Board and to report to the general meeting of shareholders is also a legal requirement (see Art. 140¹(4) of Law No. 31/1990 on companies).

²⁶ Recording the order of deliberations and the adopted decisions in minutes is a legal requirement.

²⁷ See Institute of Chartered Secretaries and Administrators, available via <https://www.icsa.org.uk/products-and-services/icsa-board-evaluation>

formal review annually – this figure is higher in the United Kingdom (100%), Sweden (87%) and Finland (81%)²⁸.

It is considered good practice to disclose a summary of the key action points resulting from the Board evaluation. These are often part of the Chairman’s narrative report. An example of disclosure is available in the Manual, Section A.

Number of meetings and Director time commitments²⁹

The frequency of Board meetings depends on such elements as the complexity of the organisation and on the number of Board committees established to discuss specific issues and report to the Board on their discussions and proposals. In the usual course of business, a Board should meet every quarter, as a minimum,³⁰ in order to discharge its recurrent responsibilities and deal with exceptional events. In a comparative study of 376 European companies³¹, Board had on average 8 meetings a year; Audit Committees met on average 5 times a year and Nomination Committees 4 times a year.

For relatively simple organisations where Boards meet on a quarterly basis, a director should expect to dedicate at least ten days per year to the Board. Membership in a Board committee can easily add four/six days to a director’s workload.

For more complex organisations, such as banks, the time requirement can be much higher. Banks like HSBC report workloads of 30-36 days a year.³²

It is best practice for Boards adopt a schedule of meetings and a 12-month agenda at the beginning of every calendar year, in order to make sure Board members pencil in the meeting in their agenda and to make sure management knows that they have to report at a certain time. This schedule may be reviewed according to the company’s needs to ensure that the Board fulfils its responsibilities and adequately considers all matters submitted to it for consideration.

Board and committee reporting activities

Provision A.9 states that the annual Corporate Governance statement should contain a report on the Board and the committees’ activities during the year under review. This implies that the Board should report on how it exercised its responsibilities during the year. A detailed list of the information to disclose is available in the Manual (see Appendix 2) for corporate governance reporting.

²⁸ Heidrick & Struggles, *Towards Dynamic Governance*, 2014, p 31

²⁹ See Institute of Directors (2008), *The Effective Board - Building Individual and Board Success*, p. 68, available via <http://www.iod.com/guidance/publications/the-effective-board>

³⁰ Romanian law requires the Board of Directors to meet at least every quarter (See art. 141 (1) of Law No. 31/1990 on companies).

³¹ HayGroup (2014), *Non-executive directors in Europe: Painting a picture of pay practices, structures and diversity of leading European companies*, p.1, available at <http://www.haygroup.com/~media/files/resources/documents/hg%20ned%20report%202014.ashx>

³² HSBC Holding (2013), *2012 Annual Report*, p. 309

4. Nomination³³

4.1. General principle

The Board should ensure that a formal, rigorous and transparent procedure is put into place regarding the appointment of new members to the Board.

BVB Corporate Governance Code, page 3

4.2. Comply or explain provisions

A.11. The Board of Premium Tier companies should set up a nomination committee formed of non-executives, which will lead the process for Board appointments and make recommendations to the Board. The majority of the members of the nomination committee should be independent.

4.3. Commentary

Appointment of new members of the Board

A critical task of the Board is succession planning at Board level and maintaining the right balance of required attributes, according to Board composition principles.

In best practice companies, the Board adopts a nomination policy, implemented by the Nomination Committee, in order to ensure an effective and transparent procedure for the nomination of Board members. The nomination policy refers to:

- ▶ Selection criteria. In this respect, many best-practice companies maintain a “matrix” of skills required and periodically review this to determine if there are gaps in current Board composition;
- ▶ Appointment procedures for Board members;
- ▶ Diversity policy of the Board including gender balance (to fulfil the need for diversity as mentioned in 2.3 Commentary);
- ▶ Periodic review of the size and the composition of the Board;
- ▶ Evaluation of the balance of skills, views, competences, knowledge, qualifications and experience relevant to business objectives, and a description of the role and capabilities required for a particular appointment (a per 3.3 Commentary);
- ▶ Process for nominee identification and selection.

In Romania, the term of each mandate is limited to four years. Most best-practice companies adopt Board mandates of no more than three years in order to ensure accountability of Board

³³Further reading is available at Institute of Directors, available via <http://www.iod.com/guidance/publications/the-effective-board>, pp. 78 – 83. Institute of Chartered Secretaries, available via <http://hb.betterregulation.com/external/ICSA%20guidance%20on%20joining%20the%20right%20board.pdf>; and the note published by the Singapore Institute of Directors on the process for appointing new directors, http://www.sid.org.sg/system/application/views/pdf/SGP_No_2.pdf

members to shareholders and provide the possibility of periodic renewal of the Board. Terms can be staggered to avoid replacement of the entire body at one general meeting and thus ensure orderly succession of Board members over time.

Nomination Committee

The Nomination Committee is a Board committee that supports and advises the Board in matters related to Board effectiveness and the appointment of Board members. Given their focus on Board composition, stand-alone Nomination Committees are often chaired by the Chairman of the Board.

The Nomination Committee assists the Board by establishing the principles for the selection of candidates to the Board of Directors, selecting candidates for the election or re-election to the Board of Directors and preparing proposals for the Board of Directors' decision.

More information about the Nomination Committee's purpose, composition, powers, responsibilities, and functioning is disclosed in Appendix 3: Nomination committee terms of reference.

Section B Risk management and internal control system

1. Establishment of a framework for risk management and internal controls³⁴

1.1. General principles

The company should have in place an efficient risk management and internal control system. The Board should determine the principles of and approaches to the risk management and internal control system in the company.

BVB Corporate Governance Code, page 7

1.2. Comply or explain provisions

B.1 The Board should set up an audit committee and at least one member should be an independent non-executive. The majority of members, including the chairman, should have proven an adequate qualification relevant to the functions and responsibilities of the committee. At least one member of the audit committee should have proven and adequate auditing or accounting experience. In the case of Premium Tier companies, the audit committee should be composed of at least three members and the majority of the audit committee should be independent.

B.2. The audit committee should be chaired by an independent non-executive member.

1.3. Commentary

Risk management and internal control system

The Board is ultimately responsible for overseeing all risks related to the financial and operational performance of the company. In discharging this role, the Board should ensure that the company establishes an effective risk management framework for the identification, monitoring, and management of risks. Such a framework would usually require that management:

- ▶ Identify key risks, assessing and tracking these by potential impact and likelihood of occurrence (e.g. through a risk register);
- ▶ Establish organisational structures which provide clear ownership of risks within the company;

³⁴ See COSO, Guidance on Internal Control, available via <http://www.coso.org/IC.htm> and the OECD, Risk Management and Corporate Governance, available at http://www.keepeek.com/Digital-Asset-Management/oecd/governance/risk-management-and-corporate-governance_9789264208636-en#page1

- ▶ Establish key risk indicators to monitor the company's performance against risk types (e.g. operational risk, human resources risk, legal risk etc.); and
- ▶ Report periodically to the Board on the status of material risks, including responses taken by the company to manage these risks.

The Board should ensure that this risk management framework is complemented by an internal control system which provides an adequate level of policies, procedures, and processes for the mitigation of the risks and the achievement of company objectives. The Board of a listed company may consider adopting the *three lines of defence* in their internal controls system (See commentary on "system of internal controls" in 2.3 below).

In all this, a key responsibility of the Board is to set sufficient controls to protect against financial reporting risks, ensuring that all financial reports prepared by management fairly represent the company's financial position.

Audit Committee

The Audit Committee should support the Board in overseeing the internal control system, particularly the efficacy of financial reporting. In the EU³⁵, the existence of an Audit Committee is a requirement for all listed companies and other public interest entities³⁶.

The Code meets the EU minimum requirements by requiring the appointment of at least one accounting or auditing expert on the Audit Committee.³⁷ The experts' participation ensures that the committee has the skill to be the leading control body within the firm. This expert should have the following attributes:

- ▶ An understanding of generally accepted accounting principles and financial statements;
- ▶ The ability to assess the general application of such principles in connection with the accounting for estimates, accruals, and reserves;
- ▶ Experience in preparing, auditing, analysing, and evaluating financial statements that present a breadth and level of complexity of accounting issues;
- ▶ An understanding of internal controls and procedures for financial reporting; and

³⁵ Article 39, Directive 2014/56/EU amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts.

³⁶ Establishment of an Audit Committee is also a mandatory legal requirement for Romanian companies listed on the regulated market (see Art. 47 of the Government Emergency Ordinance no. 90/2008 on the statutory audit of annual financial statements and the consolidated annual financial statements and public interest surveillance of the accounting profession., in conjunction with art. 34 of the Accounting Law no. 82/1991);

³⁷ Romanian law requires that at least one member of the Audit Committee have auditing and/or accounting expertise (see Art. 140²(2) of Law No. 31/1990 on companies, as well as art. 47 (1) of the Government Emergency Ordinance no. 90/2008 on the statutory audit of annual financial statements and the consolidated annual financial statements and public interest surveillance of the accounting profession).

- ▶ An understanding of Audit Committee functions.³⁸

Nevertheless, the Audit Committee as a whole should display a mix of skills which correspond to the scope of responsibilities for the committee. Such skills may include industry expertise, understanding of the company's specific value drivers, risk management knowledge, regulatory knowledge, and compliance experience.

Having an appropriate collective skillset should be supported by the presence of a majority of independent directors on the committee. This will allow the committee to sufficiently probe and challenge management across various matters and provide reasonable assurance to shareholders (especially minority shareholders) that financial accounts, company's assets or related-party transactions are overseen independently. In most best-practice large listed firms, Audit Committees are composed exclusively of independent directors: Out of the 376 European companies analysed by HayGroup³⁹, the median had a fully independent Audit Committee. While the Code does not require this, it should be noted that independence of the Audit Committee is often a key investor requirement and, in some important trend-setting jurisdictions (e.g. the US, UK etc.), it is mandatory or highly expected.

More information about the Audit Committee's responsibilities, composition and functioning is available in Appendix 2: Audit Committee terms of reference.

2. Enforcing accountability for internal control⁴⁰

2.1 General principle

The company should arrange for internal audits to independently evaluate, on a regular basis, the reliability and efficiency of the risk management and internal control system and the corporate governance practices. The Board of Directors or Supervisory Board, as the case may be, should set up an independent audit committee capable of ensuring the integrity of financial reporting and of the internal control system, including the internal and external audit processes.

BVB Corporate Governance Code, page 7

2.2. Comply or explain provisions

B.3. Among its responsibilities, the audit committee should undertake an annual assessment of the system of internal control.

B.4. The assessment should consider the effectiveness and scope of the internal audit function, the adequacy of risk management and internal control reports to the audit committee of the Board, management's responsiveness and effectiveness in dealing with identified internal control failings or weaknesses and their submission of relevant reports to the Board.

³⁸ Based on the Sarbanes-Oxley requirements of Audit Committee members' financial expertise

³⁹ HayGroup (2014), Non-executive directors in Europe: Painting a picture of pay practices, structures and diversity of leading European companies, p.11, available at <http://www.haygroup.com/~media/files/resources/documents/hg%20ned%20report%202014.ashx>

⁴⁰ Further information can be found at the Institute of Directors, available via <http://www.iod.com/guidance/publications/the-effective-board>, p. 91

B.5. The audit committee should review conflicts of interests in transactions of the company and its subsidiaries with related parties.

B.6. The audit committee should evaluate the efficiency of the internal control system and risk management system.

B.7. The audit committee should monitor the application of statutory and generally accepted standards of internal auditing. The audit committee should receive and evaluate the reports of the internal audit team.

B.8. Whenever the Code mentions reviews or analysis to be exercised by the Audit Committee, these should be followed by cyclical (at least annual), or ad-hoc reports to be submitted to the Board afterwards.

B.11. The internal audits should be carried out by a separate structural division (internal audit department) within the company or by retaining an independent third-party entity.

B.12. To ensure the fulfilment of the core functions of the internal audit department, it should report functionally to the Board via the audit committee. For administrative purposes and in the scope related to the obligations of the management to monitor and mitigate risks, it should report directly to the chief executive officer.

2.3. Commentary

System of internal controls

Internal control is defined as a *“process, effected by an entity's Board [...], management and other personnel, designed to provide reasonable assurance regarding the achievement of objectives in the following categories:*

- ▶ *Effectiveness and efficiency of operations.*
- ▶ *Reliability of financial reporting.*
- ▶ *Compliance with applicable laws and regulations.”⁴¹*

In other words, a control is any action taken by the Board, management, and staff to manage risks which deter the company from meeting its established objectives and goals. The company's management is directly responsible for developing, operating, and monitoring the system of internal controls. The Board, via its Audit Committee, should seek assurance that management is meeting these responsibilities.

To provide further assurance, the Board may find it useful to adopt the *three lines of defence* approach when structuring the functioning of the internal control system:

- ▶ *1st line of defence – business operations:* General business, frontline, and sales staff are responsible for responding to and dealing with risks that emerge as part of day-to-day operations in accordance with the company's policies;

⁴¹ Definition from Committee of Sponsoring Organizations of the Treadway Commission (COSO)
<http://www.coso.org/documents/Internal%20Control-Integrated%20Framework.pdf>

- ▶ *2nd line of defence – oversight functions*: Risk and other support staff provide guidance, as required, to frontline staff on the implementation of policies regarding the management of risks and actively monitor the execution of policies by frontline staff;
- ▶ *3rd line of defence – internal audit*: The internal audit function responsible for providing independent, systematic, and disciplined audits of the company’s approach to managing risks to the company’s objectives (See “internal audit function” below).

In line with this, the Audit Committee should consider assessing the adequacy of roles, responsibilities, accountabilities, authorities, competencies, and organizational arrangements along the three lines of defence in order to determine whether the internal control system remains fit-for-purpose.

Internal audit function

In keeping with best practice, the Code requires the existence of an internal audit function in listed companies.

An internal audit function provides objective and independent reasonable assurance to the governing bodies that the company’s organisation, policies, and processes are working effectively and as expected. In this regard, internal audit also provides assurances regarding the effective implementation of the risk management framework and the internal control system⁴². Objectivity requires that internal auditors are not influenced by and do not subordinate their judgment on audit matters to others. For this reason, the effectiveness of internal audit depends on its operational independence from other business functions and the company’s management. Nevertheless, the Head of Internal Audit works with the organisation’s management and other assurance providers to develop and deliver risk-based plans. Internal auditors identify, analyse, evaluate, and document evidence, on which to base their conclusions.

The internal audit should report functionally to the Board (usually via its Audit Committee) and administratively to CEO. This essentially gives the function the required “teeth” to the Board to perform its control functions.

Functional reporting to the Board (via its Audit Committee) means that the Board:

- ▶ Approves the internal audit function's charter;
- ▶ Approves the internal audit risk assessment and related audit plan;
- ▶ Receives communications from the Head of Internal Audit on the results of internal audit activities and other matters that he/she determines are necessary;
- ▶ Approves all decisions regarding the appointment or removal of the Head of Internal Audit;
- ▶ Approves the annual remuneration of the Head of Internal Audit;

⁴² See <https://iaa.org.uk/about-us/what-is-internal-audit/#members> and <https://iaa.org.uk/resources/global-guidance/international-standards/>

- ▶ Makes appropriate inquiries to determine whether the internal audit function has sufficient scope and budget to execute its responsibilities.

Administrative reporting to the CEO means that the CEO:

- ▶ Oversees budgeting matters regarding the internal audit function;
- ▶ Ensures an adequate human resources administration system for the function, including personnel evaluations;
- ▶ Ensures appropriate internal communications and flow of information;
- ▶ Oversees the administration of the organization's internal policies and procedures.

In spite of this, it is good practice for the Head of Internal Audit to keep the CEO informed of key audit findings particularly in relation to the adequacy of the company's approach to implementing the risk management framework so that key issues are adequately addressed by the CEO and management. However, reports from the Head of Internal Audit to the CEO should be at the discretion of the Head of Internal Audit and the information in such reports should also be shared with the Audit Committee.

It is noteworthy that some companies in Europe choose to outsource internal audit to specialised providers partly or fully. This usually applies to organisations of a small size for which it may not make economic sense to have an in-house internal audit function. It may also apply when particular audits require specific skills which cannot easily be developed internally (e.g. IT, business continuity).

Where the internal audit function is outsourced, the Audit Committee should annually consider whether there is a need to establish an in-house function and make a recommendation of this nature to the Board.

Audit Committees should always ensure that there is coordination between the internal and external auditors.

3. Ensure sound management of related party transactions

3.1 General principle

The company will ensure that all related party transactions are considered on their merits in a manner that ensures independence and the protection of the interests of the company, compliant with the restrictions set out in related legislation and fairly disclosed to shareholders and potential investors. The definition of related parties follows that of International Accounting Standard 24.

BVB Corporate Governance Code, page 7

3.2. Comply or explain provisions

B.5. The Audit Committee should review conflicts of interests in transactions of the company and its subsidiaries with related parties.

B.9. No shareholder may be given undue preference over other shareholders with regard to transactions and agreements made by the company with shareholders and their related parties.

B.10. The Board should adopt a policy ensuring that any transaction of the company with any of the companies with which it has close relations, that is equal to or more than 5% of the net assets of the company (as stated in the latest financial report), should be approved by the Board following an obligatory opinion of the Board's Audit Committee, and fairly disclosed to the shareholders and potential investors, to the extent that such transactions fall under the category of events subject to disclosure requirements.

3.3. Commentary⁴³

A related party transaction is essentially a transaction that yields a financial benefit to a related party. Financial benefits can arise through various transactions such as investments, provision of credit, asset purchases, or service contracts. A related party is a person or entity that, by virtue of its position, authority, ownership, or relationship, has scope for direct or indirect influence on the company's decision making.

The International Financial Reporting Standards provides, in the International Accounting Standard 24 (IAS24), a widely-accepted definition for the term "related party":

"A related party is a person or entity that is related to the entity that is preparing its financial statements (in this Standard referred to as the 'reporting entity').

(a) A person or a close member of that person's family is related to a reporting entity if that person:

- ▶ (i) has control or joint control over the reporting entity;
- ▶ (ii) has significant influence over the reporting entity; or
- ▶ (iii) is a member of the key management personnel of the reporting entity or of a parent of the reporting entity.

(b) An entity is related to a reporting entity if any of the following conditions apply:

- ▶ (i) The entity and the reporting entity are members of the same group (which means that each parent, subsidiary and fellow subsidiary is related to the others).
- ▶ (ii) One entity is an associate or joint venture of the other entity (or an associate or joint venture of a member of a group of which the other entity is a member).
- ▶ (iii) Both entities are joint ventures of the same third party.
- ▶ (iv) One entity is a joint venture of a third entity and the other entity is an associate of the third entity.
- ▶ (v) The entity is a post-employment benefit plan for the benefit of employees of either the reporting entity or an entity related to the reporting entity. If the reporting entity is itself such a plan, the sponsoring employers are also related to the reporting entity.
- ▶ (vi) The entity is controlled or jointly controlled by a person identified in (a).
- ▶ (vii) A person identified in (a)(i) has significant influence over the entity or is a member of the key management personnel of the entity (or of a parent of the entity).

Where:

⁴³ OECD, (2004), Principles of Corporate Governance, available via <http://www.oecd.org/daf/ca/corporategovernanceprinciples/31557724.pdf>, p.25

- ▶ *Close members of the family of a person* are those family members who may be expected to influence, or be influenced by, that person in their dealings with the entity and include:
 - (a) that person's children and spouse or domestic partner;
 - (b) children of that person's spouse or domestic partner; and
 - (c) dependants of that person or that person's spouse or domestic partner.
- ▶ *Key management personnel* are those persons having authority and responsibility for planning, directing and controlling the activities of the entity, directly or indirectly, including any director (whether executive or otherwise) of that entity.
- ▶ *Significant influence* is the power to participate in the financial and operating policy decisions of an entity, but is not control over those policies. Significant influence may be gained by share ownership, statute or agreement.

In the context of this Standard, the following are not related parties:

- (a) two entities simply because they have a director or other member of key management personnel in common or because a member of the key management personnel of one entity has significant influence over the other entity.
- (b) two venturers simply because they share joint control over a joint venture.
- (c)
 - (i) providers of finance,
 - (ii) trade unions,
 - (iii) public utilities, and
 - (iv) departments and agencies of a government that does not control, jointly control or significantly influence the reporting entity, simply by virtue of their normal dealings with an entity (even though they may affect the freedom of action of an entity or participate in its decision-making process).
- (d) a customer, supplier, franchisor, distributor or general agent with whom an entity transacts a significant volume of business, simply by virtue of the resulting economic dependence."

Regarding related parties and related party transactions, best practice companies do the following:

- ▶ *Establish a publicly available related party transaction policy:* Best practice companies develop and make publicly available on their website a related party transactions policy which outlines the company's approach to identifying, reviewing, approving, monitoring, and reporting related party transaction.
- ▶ *Develop clear definitions for related parties and related party transactions:* Best practice companies adopt definitions for related parties, which align with the International Accounting Standard 24, and appropriately cover:
 - (i) Directors;
 - (ii) Senior management;
 - (iii) Related corporations (e.g. parent companies, holding companies of parent company, subsidiaries etc.);
 - (iv) Substantial shareholders (usually defined at a 5% ownership threshold); and
 - (v) Family members of (i), (ii) and (iv).
- ▶ *Clearly outline certain definitions connected to the "related party" definition:* For "senior management", best practice companies explicitly define relevant individuals to include those who
 - Report to the Board or the CEO;
 - Are part of the Executive Committee;

- Report to the Executive Committee;
- Have significant authority to approve transactions.

For “family members”, best practice companies include all family relationships up to the 3rd degree. Family degrees are depicted below:

1st degree	Spouse, sibling, parents, children
2nd degree	Cousins, in-laws, uncles, aunties, nephews, nieces
3rd degree	Grandparents, grandchildren

- ▶ *Create frameworks for recording interests, and identifying and notifying conflicts:* Best practice companies maintain a register of all related parties and their interests. These registers are updated at least once a year and as soon as new information arises. Directors and management would be required to make prompt declarations to the company when they themselves or their family members have material interest in a transaction with the company.
- ▶ *Establish clear delegation of authorities regarding the approval of related party transactions:* Best practice companies set materiality thresholds above which transactions with related parties require prior approval from the Audit Committee, the Board, and shareholders.
- ▶ *Restrict the ability of related parties to participate in decision making:* In best practice companies, related parties with an interest in the transaction under consideration do not participate in any discussions, deliberations, or decision-making on the transaction other than to provide necessary information directly requested to facilitate a decision.
- ▶ *Require Board super-majority approval for related party transactions:* Best practice companies usually require the consent of at least three-quarters of eligible independent directors for related party transactions to be approved.
- ▶ *Seek independent advice where necessary:* Best practice companies develop processes for seeking independent external advice where appropriate to facilitate the review of related-party transactions. Such advice may, for example, be connected to the evaluation of the interest of the related party in the transaction or the market valuation of assets involved in the transaction.
- ▶ *Ensure adequate reporting and disclosures on related parties:* Best practice companies frame when, how, and to whom related-party transactions should be reported and disclosed⁴⁴. While the Code provides for a 5% net assets threshold over which related party transactions should be disclosed, some Romanian companies might chose to lower this threshold and disclose lower value transactions.

⁴⁴ There are various Romanian legal provisions regulating the definition, approval and disclosure of related party transactions (See Art. 2 pt. 22 and Art. 225 of Law no. 297/2004 on capital market, art. 113 letter G para. (3-6) of the CNVM Regulation No. 1/2006 on issuers and operations with negotiable securities).

Section C Fair rewards and motivation

1. General principles

The level of remuneration should be sufficient to attract, retain and motivate skillful and experienced people as members of the Board and the management. The Board should ensure transparency related to remuneration matters. The shareholders should be provided with relevant information in order to understand the principles applied by the company regarding the remuneration policy, which is based on fair rewards and motivation for Board members, and for the CEO or Management Board.

A company should have a remuneration policy and rules defining that policy. It should determine the form, structure and level of remuneration of members of the Board, the CEO and when applicable, members of the Management Board.

BVB Corporate Governance Code, page 10

2. Comply or explain provisions

C.1. The company should publish a remuneration policy on its website and include in its annual report a remuneration statement on the implementation of this policy during the annual period under review.

The remuneration policy should be formulated in such a way that allows stakeholders to understand the principles and rationale behind the remuneration of the members of the Board and the CEO, as well as of the members of the Management Board in two-tier board systems. It should describe the remuneration governance and decision-making process, detail the components of executive remuneration (i.e. salaries, annual bonus, long term stock-linked incentives, benefits in kind, pensions, and others) and describe each component's purpose, principles and assumptions (including the general performance criteria related to any form of variable remuneration). In addition, the remuneration policy should disclose the duration of the executive's contract and their notice period and eventual compensation for revocation without cause.

The remuneration report should present the implementation of the remuneration policy vis-à-vis the persons identified in the remuneration policy during the annual period under review.

Any essential change of the remuneration policy should be published on the corporate website in a timely fashion.

3. Commentary⁴⁵

Remuneration policy

A remuneration policy outlines how the Board and executive officers are paid for working for the organisation. The remuneration provision of the Code (C1) states that the remuneration policy should be formulated in a way that allows stakeholders to understand the principles and rationale behind the remuneration of:

- ▶ The members of the Board;
- ▶ The CEO; and
- ▶ The members of the Management Board in two-tier board systems.

It is best practice to distinguish between the Board fee structure and executive officers' remuneration structure to avoid confusion.

Executive remuneration in Romania is still predominantly based on cash, encouraged by the flat income tax rate⁴⁶. However, companies, driven by multinational companies, have started to include other components in executive officers' remuneration such as non-cash remuneration, short or long term awards.

The components can be explained as follows:

- ▶ The base salary is the annual fixed cash salary that executives receive for performing their duties;
- ▶ Non-cash remuneration typically takes the forms of shares or nil cost share options;
- ▶ Variable remuneration can be paid in cash or in non-cash awards. It can be short-term, such as an annual bonus based on the executive's performance during the year under review, or longer-term (i.e. typically paid over 3 to 5 years). Longer-term awards can be for example the deferred part of a bonus but can also include awards that vest according to indicators measured in the future (e.g. the EPS in year 3, 4 and 5 after the award of shares). The description of the scheme usually includes their maximum award and performance criteria.

The remuneration policy should include the following:

- ▶ A description of the fees received by each Board member and additional fees for the Chairman, Vice-Chairman, and committees;

⁴⁵ Further reading is provided by the International Corporate Governance Network, available via https://www.icgn.org/images/ICGN/files/icgn_main/Publications/best_practice/REM/ICGN_Exec_Rem_Guidance_2012_printJun2013_FULL.pdf, NAPF and Hermes EOS available via http://www.napf.co.uk/PolicyandResearch/DocumentLibrary/0351_remuneration_principles_for_building_and_reinforcing%20longterm_business_success_nov2013.aspx and Institute of Directors, available via <http://www.iod.com/guidance/publications/the-effective-board>, pp. 71-78.

⁴⁶ Tower Watson (2013), One Size Doesn't Fit All: Understanding Compensation and Reward Drivers in Central & Eastern Europe, p. 5

- ▶ The components of executive officers' remuneration described above and how variable remuneration is allocated to executive officers, including the cap of the remuneration scheme, and the qualitative and quantitative performance criteria used;
- ▶ The main provisions of the executive officers' service contracts, including their duration and company liabilities on termination (including in the case of a takeover).

The Code also underlines the importance of reporting essential changes to the remuneration policy. This includes any changes to the variable remuneration schemes, including their performance criteria or targets, and service contracts. This also includes changes in NEDs' fee structure (e.g. adding fees per meeting or changing additional fees for the Chairman).

Remuneration report

On the other hand, the remuneration report, as per Provision C.1, "should present the implementation of the remuneration policy vis-à-vis the persons identified in the remuneration policy during the annual period under review."

It presents the actual remuneration of Board members and executive officers during the year under review and will typically include:

- ▶ The amount and changes to the total NED remuneration envelope;
- ▶ An overview of the evolution of executive officers' total remuneration and an explanation for any exceptional awards;
- ▶ The total remuneration paid to each executive officer during the year, broken down into base salary, benefits, bonus, share or options awards, and eventual severance payments; and
- ▶ The shares and stock options granted to each executive over the previous years and their vesting, exercise and expiry dates, options price, as well as how many rights have been exercised.

More information about disclosures in the remuneration report is available in the Manual, Part I. Section C.

Remuneration committee

Another key task of the Board is ensuring that executive officers' remuneration is set at the right level and that the company has appropriately balanced incentives in place to attract and keep the talent it requires for its operations. Whilst the Code does not require the creation of a Remuneration Committee, the establishment of a Remuneration Committee was recommended by the European Commission in 2009 and is a prominent best practice in Europe: out of 376 European companies analysed by a study of HayGroup⁴⁷, 97% had a Remuneration Committee.⁴⁸

⁴⁷ HayGroup (2014), Non-executive directors in Europe: Painting a picture of pay practices, structures and diversity of leading European companies, p.1, available at <http://www.haygroup.com/~media/files/resources/documents/hg%20ned%20report%202014.ashx>

⁴⁸ Commission Recommendation of 30 April 2009 complementing the Recommendations 2004/913/EC and 2005/162/EC as regards the regime for the Remuneration of Directors of listed companies – 2009/385/EC

Some companies still operate combined Nomination and Remuneration Committees, which could be envisaged under the Romanian framework. However, in companies with larger Boards, a separate Remuneration Committee would ensure that Board members with experience in managing people and structuring incentives in large organisations contribute the maximum value possible to the Board. Although both the Nomination and Remuneration Committees focus on HR issues, the Nomination Committee will usually focus on Non-Executive Directors (see Appendix 3) whilst the Remuneration Committee will mainly focus on Executive Officers' remuneration.

The Remuneration Committee is usually responsible for:

- ▶ Proposing the remuneration of individual executive directors, including bonuses, incentive payments, and share options to the Board;
- ▶ Reviewing and making proposals to the Board on the total annual package of variable remuneration in the company;
- ▶ Reviewing and making proposals to the Board (and, via the Board, to the general meeting of shareholders when required) on the stock option and/or share award programmes;
- ▶ Proposing targets for performance-related monetary remuneration or targets related to stock-options or the granting of shares;
- ▶ Regularly reviewing the salary of executive directors and other remuneration elements, including severance payments and pension arrangements; and
- ▶ Making proposals to the Board on any business policy related to remuneration; and
- ▶ Reviewing the annual remuneration report.

Section D Building value through investor relations

1. General principles

The company should disseminate the most important information both in Romanian and English, to enable Romanian and foreign investors to have access to the same information at the same time.

A company should do its best to enable its shareholders to participate in general meetings, aiming at using electronic communication means through (a) live broadcast of general meetings and/or (b) live bilateral communication where shareholders may express themselves during a general meeting from a location other than that of the general meeting, as long as this is in line with legislation regarding data processing.

A company should aim to provide for an electronic voting system at general meetings, including remote electronic voting.

BVB Corporate Governance Code, page 11-12

2. Comply or explain provisions

D.1. The company should have an Investor Relations function - indicated, by person (s) responsible or an organizational unit, to the general public. In addition to information required by legal provisions, the company should include on its corporate website a dedicated Investor Relations section, both in Romanian and English, with all relevant information of interest for investors, including:

D.1.1. Principal corporate regulations: the articles of association, general shareholders' meeting procedures.

D.1.2. Professional CVs of the members of its governing bodies, a Board member's other professional commitments, including executive and non-executive Board positions in companies and not-for-profit institutions;

D.1.3. Current reports and periodic reports (quarterly, semi-annual and annual reports) – at least as provided at item D.8 – including current reports with detailed information related to non-compliance with the present Code;

D.1.4. Information related to general meetings of shareholders: the agenda and supporting materials; the procedure approved for the election of Board members; the rationale for the proposal of candidates for the election to the Board, together with their professional CVs; shareholders' questions related to the agenda and the company's answers, including the decisions taken;

D.1.5. Information on corporate events, such as payment of dividends and other distributions to shareholders, or other events leading to the acquisition or limitation of rights of a shareholder, including the deadlines and principles applied to such operations. Such information should be published within a timeframe that enables investors to make investment decisions;

D.1.6. The name and contact data of a person who should be able to provide knowledgeable information on request;

D.1.7. Corporate presentations (e.g. IR presentations, quarterly results presentations, etc.), financial statements (quarterly, semi-annual, annual), auditor reports and annual reports.

D.2. A company should have an annual cash distribution or dividend policy, proposed by the CEO or the Management Board and adopted by the Board, as a set of directions the company intends to follow regarding the distribution of net profit. The annual cash distribution or dividend policy principles should be published on the corporate website.

D.3. A company should have adopted a policy with respect to forecasts, whether they are distributed or not. Forecasts means the quantified conclusions of studies aimed at determining the total impact of a list of factors related to a future period (so called assumptions): by nature such a task is based upon a high level of uncertainty, with results sometimes significantly differing from forecasts initially presented. The policy should provide for the frequency, period envisaged, and content of forecasts. Forecasts, if published, may only be part of annual, semi-annual or quarterly reports. The forecast policy should be published on the corporate website.

D.4. The rules of general meetings of shareholders should not restrict the participation of shareholders in general meetings and the exercising of their rights. Amendments of the rules should take effect, at the earliest, as of the next general meeting of shareholders.

D.5. The external auditors should attend the shareholders' meetings when their reports are presented there.

D.6. The Board should present to the annual general meeting of shareholders a brief assessment of the internal controls and significant risk management system, as well as opinions on issues subject to resolution at the general meeting.

D.7. Any professional, consultant, expert or financial analyst may participate in the shareholders' meeting upon prior invitation from the Chairman of the Board. Accredited journalists may also participate in the general meeting of shareholders, unless the Chairman of the Board decides otherwise.

D.8. The quarterly and semi-annual financial reports should include information in both Romanian and English regarding the key drivers influencing the change in sales, operating profit, net profit and other relevant financial indicators, both on quarter-on-quarter and year-on-year terms.

D.9. A company should organize at least two meetings/conference calls with analysts and investors each year. The information presented on these occasions should be published in the IR section of the company website at the time of the meetings/conference calls.

D.10. If a company supports various forms of artistic and cultural expression, sport activities, educational or scientific activities, and considers the resulting impact on the innovativeness and competitiveness of the company part of its business mission and development strategy, it should publish the policy guiding its activity in this area.

3. Commentary

Investor relations

For listed companies, good corporate governance cannot exist without regular information on company performance, risks, and governance, as well as the communication of this information from the company to the shareholders. To this effect the Code recommends the existence of

two channels of communication: an informative website⁴⁹ and an investor relations (IR) department with the exclusive responsibility to communicate with the market.

Many companies use their websites to keep in contact with their shareholders on a continuous basis and, more specifically, in order to facilitate and inform their participation in upcoming general meetings. To this effect, they provide for a special shareholder/investor relations page on their website. Information to be disclosed on the website is detailed in the Manual (see II. Disclosure on the corporate governance and investor relations pages of the website). This includes internal regulations such as Board and Board committee terms of reference.

The website also includes current and periodic reports. The periodic reports refer to the quarterly reports and annual report. Current reports include reports on corporate governance changes for the purposes of informing the market about any deviation from compliance with the CG Code.

Investor relations is the *“communication of information and insight between a company and the investment community. This process enables a full appreciation of the company’s business activities, strategy and prospects and allows the market to make an informed judgement about the fair value and appropriate ownership of a company”*⁵⁰.

Many larger publicly traded companies now have a dedicated IR department or person to oversee most aspects of shareholder meetings, press conferences, private meetings with investors, investor relations sections of company websites, and company annual reports. They usually report to the Chief Financial Officer (CFO) or Treasurer and liaise with the Board. It is fundamentally important that the IR department is responsive and efficient if the company wants to attract and retain capital. The IR should be able to provide convincing information to investors.

Provision D.9 specifies that companies should organize at least two meetings/conference calls with analysts and investors each year. Whilst investor relations are the responsibility of the investor relation department, it is considered best practice for the Chairman to be involved in meeting with significant shareholders.

In larger best-practice companies, shareholders may meet with the Board Chairman to discuss governance concerns as they arise, in addition to meeting with the CEO and Chief Financial Officer on matters of company performance. The Chairman ensures that the views of the shareholders are communicated to the entire Board.

General Shareholder Meeting rules

Provision D.4-D.7 should be reflected in the Company’s rules of the GSM. A good practice example thereof is disclosed in the Manual, Exhibit 9.

Provision D.4 refers to restriction of the exercise of shareholder rights⁵¹. It is considered best practice for each share to carry one vote. There should not be shares with multiple voting rights, preferential voting rights, or maximum voting rights.

⁴⁹ Listed companies are required by law to publish and maintain a website (the requirement results from various provisions, including Art. 5.10, 6(1) 6(2), 19(2) and others of Regulation No. 6/2009 regarding the exercise of certain shareholders rights during shareholders meetings of the companies or Art. 107(2) and 112¹ (3) of Regulation 1/2006 on issuers and operations with securities.

⁵⁰ <http://www.irs.org.uk/about/definition-of-investor-relations>

⁵¹ See OECD Principles of Corporate Governance, available via <http://www.oecd.org/daf/ca/corporategovernanceprinciples/31557724.pdf>, 32 on shareholders’ rights

In order to give shareholders the opportunity to attend the general meeting of shareholders (GMS), the company should arrange for the Notice of the GMS and related papers to be sent to shareholders at least 20 working days before the meeting⁵². -

General meeting material^{53,54}

All Board members, the Board Secretary, and the internal and the external auditor attend the GMS⁵⁵ and are available to answer shareholders' questions relevant to their responsibilities.

Facilitating shareholder participation in the general meetings of shareholders is important as shareholders vary in geographic location. Best-practice companies often publish the date and time of their next GMS a year in advance. Proxy forms provided by companies should always offer a "vote withheld" or abstain option in case shareholders want to demonstrate concerns without opposing a resolution⁵⁶. The company should ensure that all valid proxy appointments received for general meetings are properly recorded and counted⁵⁷. Shareholders are usually allowed to vote electronically. All voting should be conducted by poll⁵⁸ and the level of proxy votes should be disclosed.

Dividend policy

A dividend distribution policy is fundamental both to the income requirements of investors and to a company's investment and financial planning. It should be consistent with the company's strategy and the Board's assessment of its prospects.

⁵² It is a legal requirement for the GMS (any GMS) to be convened and related information to be provided at least 30 days in advance of the meeting, in accordance with Art. 4 and 6 of the CNVM Regulation 6/2009 regarding the exercise of certain shareholders rights during shareholders meetings of the companies.

⁵³ Information to be disclosed in relation to the general meeting is provided by the Directive 2007/36/EC, available via <http://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32007L0036&rid=2>

⁵⁴ Further information on general meetings can be found at the OECD and the Financial Reporting Council. OECD Principles of Corporate Governance, available via <http://www.oecd.org/daf/ca/corporategovernanceprinciples/31557724.pdf>, p.23 and <https://www.frc.org.uk/getattachment/c9ce2814-2806-4bca-a179-e390ecbed841/Guidance-on-Board-Effectiveness.aspx.p13>

⁵⁵ Board members are required by law to participate in the general meeting of shareholders (see Art. 153²³ of Law No. 31/1990 on companies).

⁵⁶ Romanian law requires proxy forms to include the "abstain option" (see Art. 15(1)5. of Regulation No 6/2009 regarding the exercise of certain shareholders rights during shareholders meetings of the companies).

⁵⁷ Proper recording of proxies and counting of votes casted thereunder is also required by Romanian law (see Art. 19(1) of Regulation 6/2009 regarding the exercise of certain shareholders rights during shareholders meetings of the companies).

⁵⁸ The voting by poll system is a Romanian legal requirement (see Art. 101 and 120 of Law No. 31/1990 on companies)

The total dividend is submitted to the general meeting of shareholders⁵⁹. As a best practice, companies should provide a clear statement on distribution policy⁶⁰, setting the proportionate split between dividends and investments, and providing the dividend cover. A company should also provide an explanation when the profits available for distribution are different from those disclosed in the accounts. This should be submitted to shareholders for approval.

It is best practice for the dividend policy to clearly state:

- ▶ The percentage of net profits for dividend payments;
- ▶ The terms and conditions for dividend payments;
- ▶ The amount of dividends payable for shares of a specific type and class;
- ▶ The minimum amount of dividends payable for shares of each type and class;
- ▶ The procedure for the payment of dividends, including the schedule, place, and methods; and
- ▶ Circumstances when dividends will not be declared, or when dividends may be partially declared on preferred shares if any.

Forecast policy

It is also common practice among listed companies to publish a forecast statement⁶¹. This is a forward-looking statement that provides data relating to trends and factors likely to affect the company's revenues, margins, capital spending, and earnings. Due to inherent uncertainty, results sometimes significantly differing from forecasts initially presented.

The forecast policy should provide for the frequency of forecasts, period envisaged, and content of forecasts. Forecast statements should be provided to all shareholders and not just a select group of analysts. Therefore, forecasts are often part of annual, half-yearly, or quarterly reports. In addition, it is good practice to publish the forecast policy on the corporate website.

⁵⁹ It is a Romanian legal requirement that distribution of dividends be approved by the general meeting of shareholders (see Art. 111 (2) (a) of Law No. 31/1990 on companies)

⁶⁰ Listed companies are required to include information about their dividend policy in the annual report (See Art. 224, para.3 (b) of Law no. 297/2004 on the Capital Market, and Annex 32, pt. 3.2 of Regulation no. 1/2006 on issuers and operations with securities).

⁶¹ Romanian law requires companies to include, in the annual report, an indication of the company's likely future development (See Annex 32, pt. 1.1.9 of Regulation no. 1/2006 on issuers and operations with securities)..

Appendices

Appendices 1 to 3 present models of charters for the Board of Directors and the Board committees recommended by the BSE Code of Corporate Governance. The main responsibilities of the Company Secretary are presented in Appendix 4.

These models are based on the Principles of the BSE Code of Corporate Governance and best practice observed in Europe. They however remain purely informative.

Appendix 1: Model Board of Directors terms of reference⁶²

1. PREAMBLE

These Board terms of reference ("the ToR") sets out the corporate governance practices and rules that shall be adopted by the Board of "the Company" in relation to its operations. The Terms of reference elaborate on the structure, activities, and responsibilities of the Board, setting out to distinguish between the role of the Board and that of senior management. It also specifies the rights and duties of each Board Director ("Director").

The intention of these terms of reference is to introduce transparency, clarity and effectiveness in the way the Board functions, without adding any unnecessary bureaucracy. The Terms of reference reflect the view of the Board that abiding by high standards of corporate governance is fundamental to managing the Company in the interests of key stakeholders, enhancing its attractiveness to potential investors and achieving the Company's long term aspirations.

2. COMPOSITION OF THE BOARD

- 1.1 The Board shall be composed of a minimum of X and a maximum of Y members, each of whom shall be appointed in accordance with the Shareholders' Agreement.
- 1.2 The majority of the Board shall be Non-Executive Directors, defined as any member of the Board who is not a full-time employee of the Company, does not draw any fixed monthly or annual salary from the Company and is not involved in the Company's day-to-day operations.
- 1.3 At least 1 Director shall be an **independent** Non-Executive Director who has not formed any relationship that could interfere with the exercise of his independent judgment. An independent Non-Executive Director shall meet all of the following criteria:
 - 1.3.1 Not to be the CEO/executive officer of the company or of a company controlled by it and not have been in such position for the previous five years.
 - 1.3.2 Not to be an employee of the company or of a company controlled by it and not have been in such position for the previous five years.
 - 1.3.3 Not to receive and not have received additional remuneration or other advantages from the company or from a company controlled by it, apart from those corresponding to the quality of non-executive director.
 - 1.3.4 Is not or does not represent a controlling or otherwise a significant shareholder of the company, controlling more than 10% of voting rights.
 - 1.3.5 Not to have and not have had during the previous year a business or professional relationship with the company or with a company controlled by it,

⁶² This model applies to the Board of Directors in Companies managed under the unitary system.

either directly or as a customer, partner, shareholder, member of the Board/Director, CEO/executive officer or employee of a company having such a relationship if, by its substantial character, this relationship could affect his/hers objectivity.

- 1.3.6 Not to be and not have been in the last three years the external or internal auditor or a partner or salaried associate of the current external financial or internal auditor of the company or of a company controlled by it.
- 1.3.7 Not to be a CEO/executive officer in another company where another CEO/executive officer of the company is a non-executive director.
- 1.3.8 Not to have been a non-executive director of the company for more than three tenures.
- 1.3.9 Not to have family ties with a person in the situations referred to at points 2.3.1. and 2.3.4.

3. NOMINATION GUIDELINES FOR THE BOARD

- 1.1. After prior consultation with [the Nomination Committee (*if exists*) and] Directors and a careful consideration of a shortlist of candidates, the Board Chairman shall recommend a candidate to serve on the Board based on the guidelines set out within this article. If the Board accepts the recommendation, the name of the nominated candidate shall be forwarded to the General Meeting of Shareholders for approval.
- 1.2. **Collective Skills and Expertise of the Board:** Nominated candidates shall enable the Board as a collective body to display skills and expertise that are aligned to the strategic needs of the Company. At the minimum, the Board shall exhibit the following:
 - 1.2.1. *Industry expertise:* having deep knowledge of the sector. At least X Directors shall possess this expertise;
 - 1.2.2. *Business acumen:* having significant business and professional experience which brings to bear a strategic mind-set and a thorough understanding of how organisations work;
 - 1.2.3. *Accounting, auditing and risk expertise:* at least one Director shall possess an understanding of accounting and auditing. Additionally, at least one Director shall have a sound knowledge and experience of risk management and internal controls, with the capability of leading the Board discussions on risk;
 - 1.2.4. *Understanding of markets where the Company operates:* having an understanding of the Company's geographic markets and customers.
- 1.3. **Individual Qualifying Criteria for Nominated Candidates:** Each individual nominated candidate must also meet the following criteria:
 - 1.3.1. the candidate shows a strong commitment to the Company's vision and strategic goals;
 - 1.3.2. the candidate's past record indicates that he is consistently committed to the highest ethical standards and is of good conduct and reputation, without any criminal offence, fraud or financial misconduct;
 - 1.3.3. the candidate demonstrates the will, moral and intellectual stature to challenge management when necessary while at the same time working constructively and in a spirit of trust and team effort;
 - 1.3.4. the candidate has previous directorship experience, ensuring some understanding of good corporate governance and the typical duties of directors;
 - 1.3.5. the candidate is less than X years old.

- 1.4. Directors shall be elected by the General Meeting of Shareholders for a period of three years, which may be renewed for three-year terms without limit on the number of renewals.
- 1.5. Directors shall receive short and concise formal letters of appointment reflecting their responsibilities, rights and obligations.

4. ROLE OF THE BOARD

- 1.6. The Board is the decision making body for all matters that are significant to the Company as a whole because of their strategic, financial or reputational implications. The Board may delegate some of this authority to Board Committees, individual Directors, senior management or below as appropriate.
- 1.7. **Matters Reserved for the Board:** The Board reserves the authority to deal with the following matters:

Strategy and Organisation Structure

- 1.7.1. Approval of the Company's overall strategic direction, recommendation of the annual and multi-year business plans to the GSM and approval of annual and multi-year targets, and any decisions outside of the approved business plan;
- 1.7.2. Approval of significant changes in business model and the extension of the Company into any areas of commercial activity not previously being pursued;
- 1.7.3. Approval of material changes to Company's organisational structure, on recommendation of the CEO, ensuring structure can deliver prudent risk management, effective controls, operational efficiency and sustainable profitability;
- 1.7.4. Approval of key policies to be applied across the Company in order to enhance operational effectiveness.

Acquisitions, Capital Expenditure and Capital Structure

- 1.7.5. Recommendation of the establishment and liquidation of subsidiaries or the commencement and cessation of operations in any country to the GSM, on advice of the CEO;
- 1.7.6. Approval of acquisition of shareholdings in other companies, the issuance of equity and debt securities for any subsidiaries and material capital expenditure. Submission of material expenditures exceeding 50% of the accounting value of company's assets to the approval of the GSM
- 1.7.7. Proposing to the Annual General Meeting of Shareholders ("AGM") significant shifts in capital structure and sources of funding.

Risk management, Internal Audit and Controls

- 1.7.8. Receiving periodic reports from the Audit [& Risk] Committee on the adequacy of the Company's internal control systems and overall risk management framework;
- 1.7.9. Recommending to the AGM the selection or removal of the external auditor, after a proposal by the Audit [& Risk] Committee.

Appointments

- 1.7.10. Nomination of Board Directors to be forwarded to the AGM, based on nomination guidelines and on advice of the Board Chairman and CEO;

- 1.7.11. Election of the Chairman of the Board from amongst its members;
- 1.7.12. Appointment of the Company Secretary (whether role is outsourced or not) on recommendation of the Board Chairman;
- 1.7.13. Appointment of the CEO and other key positions within senior management including the CFO;
- 1.7.14. Appointment and dismissal of Internal Auditor on recommendation of Audit Committee;
- 1.7.15. Ensuring the development of induction program for new Board Directors;
- 1.7.16. Conducting adequate succession planning for the Board, CEO and senior management.

Evaluation and Remuneration

- 1.7.17. Evaluation of the effectiveness of the Board on an annual basis;
- 1.7.18. Evaluation of the performance of the CEO and CFO. The Board shall approve their remuneration based on meeting pre-set performance criteria;
- 1.7.19. Proposing to the General Meeting of Shareholders remuneration levels and allowances for the Board.

Shareholder Relations

- 1.7.20. Approval of all financial reports and management accounts of the Company, before disclosing to shareholders, on recommendation of the Audit Committee and after presentation by the CEO;
- 1.7.21. Approval of Agenda of General Meeting of shareholders, on proposal by Board Chairman.

Other

- 1.7.22. Approval of the Board Committees' Terms of Reference;
- 1.7.23. Ensuring adequate development and training for Board Directors takes place on a regular basis as required;
- 1.7.24. Approval, at the end of each calendar year, of an annual rolling agenda of the Board's work for the following year.

5. ROLE OF THE CHAIRMAN AND THE CEO

- 1.8. The Board shall elect from among its members a Chairman who shall serve for a term of one year (without exceeding, however, the duration of his/her mandate as Board member), which may be renewable subject to the approval of the Board. If the Chairman is unable to attend a Board meeting, the Board shall elect from the Directors present a Director to execute the role of the Chairman for that particular meeting.
- 1.9. The Chairman of the Board shall be responsible for the overall leadership of the Board. His responsibilities shall include:
 - 1.9.1. the leadership of the Board, ensuring that the Board functions effectively in its oversight of the Company's performance;
 - 1.9.2. maintaining a close, informal and constructive relationship with the CEO, thereby contributing to the development of the Company's strategy and ensuring management strategies, plans and performance are appropriately presented to the Board;

- 1.9.3. propose the appointment of the Company Secretary (whether role is outsourced or not), to be approved by the Board;
 - 1.9.4. ensuring the Board and its Committees meet regularly and that meetings are conducted efficiently and effectively in adherence to the Terms of reference and the Committee ToRs;
 - 1.9.5. setting the Board meeting agenda, balancing key strategic and operational issues affecting the Company, with full consideration of the views of the CEO and other Board Directors;
 - 1.9.6. ensuring the Board operates as a team, allowing informed, critical and robust challenge but preventing unnecessary or acrimonious conflict;
 - 1.9.7. ensuring the quality, clarity and timeliness of the information that is provided to the Board is sufficient to enable the Board to take sound decisions on all material issues and effectively monitor the Company's performance;
 - 1.9.8. recommending to the Board based on the nomination guidelines [and the Nomination Committee recommendation], candidates to serve as Directors on the Board;
 - 1.9.9. oversight of a proper induction for all new Directors;
 - 1.9.10. leading the evaluation of Board effectiveness and implementation of improvements;
 - 1.9.11. chairing the AGM, and ensuring effective communications with shareholders and other key stakeholders;
 - 1.9.12. any other responsibility delegated to him/her by the Board.
- 1.10. The CEO shall be responsible for the overall management and day-to-day operations of the Company in line with the approved strategy. His responsibilities shall include:
- 1.10.1. overseeing business performance of the Company, ensuring that the Company is aligned with the approved strategy;
 - 1.10.2. overseeing the preparation of Company strategy, multi-year business plans and annual budget, presenting to the Board for review and approval;
 - 1.10.3. leading an effective and motivated management team across the Company, and delegating as appropriate his authority and duties to key members of the management team;
 - 1.10.4. recommending to the Board any material changes to Company 's organisation structure;
 - 1.10.5. setting up, in consultation with the Board, Company management committees should he consider it necessary to enhance the efficacy of operations and in the business interest of the Company;
 - 1.10.6. approval of capital and revenue expenditure on approved projects and initiatives within financial limits determined by the Board;
 - 1.10.7. ensuring effective risk management and internal control systems are operated across the Company;
 - 1.10.8. proposing policies to the Board, evolving and adopting implementation strategies in respect of policies;
 - 1.10.9. any other responsibility delegated to him/her by the Board.

6. THE COMMITTEES OF THE BOARD

- 1.11. The Board may establish permanent or ad hoc Committees to assist it in its work, and will be responsible for constituting membership of all its Committees.
- 1.12. All permanent Committees shall have terms of reference setting out in detail their respective responsibilities and rules on the functioning and composition of the Committees. These terms of reference shall be approved by the Board. Minutes of Committee meetings shall be fully accessible to all members of the Board.
- 1.13. The Board shall have the following permanent Committees:
 - 1.13.1. **Audit [& Risk Committee]:** This Committee shall assist the Board in ensuring that the Company maintains adequate and fit-for-purpose financial reporting, audit, internal controls, compliance and risk management systems. The maximum size of the Committee shall be 5 with the majority of its members, including the Committee Chair, being independent Non-Executive Director. It shall meet at least 4 times per year.
 - 1.13.2. **Nomination Committee:** This Committee shall assist the Board in fulfilling its responsibilities on matters relating to the composition, structure, and operations of the Board. The maximum size of the Committee shall be 5 with the majority of its members being [independent] Non-Executive Directors. It shall meet at least 2 times per year.
- 1.14. Each Committee shall review and evaluate its performance and its terms of reference on an annual basis, submitting recommendations for changes to the Board.

7. FUNCTIONING OF THE BOARD

Board meetings

- 1.15. The Board shall formally convene as many times as is necessary to discharge its duties but not less than 4 times a year, provided that intervals between every two Board meetings are not more than four months.
- 1.16. Board meetings shall normally be convened at the Chairman's discretion or if formally requested by a Director or by the Company's CEO. The Chairman is obliged to convene a meeting within 21 days of such request.
- 1.17. The Chairman may invite specific individuals to participate, without voting rights, in Board meetings as appropriate. The Chairman may excuse at any point a non-member from the Board meeting.
- 1.18. The agenda of each Board meeting shall be set by the Chairman, after appropriate consultation with the CEO and Directors.
- 1.19. The agenda, accompanied by any relevant Board papers or presentations to be discussed during the meeting, shall be forwarded to each Director and any other person required to attend at least 7 days in advance of a Board meeting. A shorter period of notice may be given if the Chairman decides this is necessary on consultation with Directors.
- 1.20. The quorum for Board meetings shall be the majority of Board members.
- 1.21. Participation in a meeting can take place by tele-conference or video-conference or other communication facilities and through representation by proxy;
- 1.22. Decisions of the Board shall be taken by consensus. In case consensus cannot be achieved, resolutions of the Board shall be passed by a simple majority of Directors present with each

Director having one vote, save for the cases in which the law provides for an absolute majority.

- 1.23. A resolution in writing signed or approved by letter, email, telegram, or fax by all Directors shall be as valid and effectual as a resolution passed at a meeting of the Board.
- 1.24. The proceedings and decisions of the Board shall be recorded in its minutes by the Board Secretary. Minutes should be clear, concise and clearly set out the decisions reached. Dissenting views shall be properly recorded. The minutes shall be distributed to all Board members in short time after the meeting and approved at the subsequent meeting.

Annual Strategy Meeting

- 1.25. Once a year, the Board shall devote an entire day to reviewing and discussing the Company's strategy and multi-year business plans. Senior management shall be invited to attend all or part of the Strategy Meeting and outside experts on specific issues may also be invited to give presentations. The Chairman, in consultation with the CEO and Directors, is responsible for convening and setting the agenda for the Meeting.

Induction of Directors

- 1.26. The Company requires that its Directors become effective in their role as expeditiously as possible. To achieve this, the Board Chairman shall propose an induction program to be approved by the Board and shall ensure that all newly appointed Directors receive an induction enabling them to acquire first-hand knowledge of the key elements of the Company's business and operations.
- 1.27. The Board Chairman, supported by the CEO, shall be responsible for the induction of Board Directors.
- 1.28. Completion of the induction programme must be achieved within 2 months of appointment.

Board Secretary

- 1.29. The Board Secretary is responsible for the effective functioning and support of the Board and its Committees, for ensuring efficient communication and information flows between the Board, its Committees, the Company and its shareholders as well as ensuring compliance with current corporate governance rules and regulations;
- 1.30. The Board Secretary is appointed by the Board following recommendation by the Chairman;
- 1.31. The Board Secretary shall report directly to the Board Chairman;
- 1.32. The Secretarial function may be outsourced to an external provider of high calibre if the Company considers this arrangement appropriate for its needs.

Evaluation of the Board's performance

- 1.33. The Board, with all Directors present, shall annually devote part of a Board meeting to conducting a self-evaluation of the performance and effectiveness of the Board and its Committees during the year.
- 1.34. This process shall be led by the Chairman who shall seek the opinion of each Director on how the operations of the Board could be improved to ensure it delivers on its responsibilities. Directors shall provide constructive feedback on what the Board does well and what the Board needs to improve on.
- 1.35. The evaluation will be carried out at least once every three years by an external consultant whose selection and management is the responsibility of the Board.

Board Training and Development

- 1.36. The Board Chairman shall periodically ensure the organisation of up to date training, development and workshops for Directors, as appropriate, focusing on areas of importance to the Company.

8. RIGHTS AND OBLIGATIONS OF DIRECTORS

Rights of Directors

- 1.1. ***The Right to Information:*** Directors shall be able to receive timely and accurate information in an understandable format for each Board meeting and necessary updates in between meetings. Directors shall have access to any member of management, generally through the Board Chairman and CEO.
- 1.2. ***The Right to Request Board Meeting:*** Any Director may request a Board meeting to be held and the Chairman is obliged to convene the meeting within 21 days following the submission of the formal request.
- 1.3. ***The Right to include items on the Agenda:*** Any Director may require the Chairman to include one or more items on the Agenda of the next Board meeting, provided that the request is made not less than 10 working days before the meeting and all Directors are informed.
- 1.4. ***The Right to Adequate Costs and Insurance Cover:*** At the expense of the Company, Directors are to be reimbursed for all the costs associated with attending Board and Committee meetings and be provided with coverage for Directors' indemnity insurance.
- 1.5. ***The Right to Data Privacy:*** Directors are entitled to confidentiality of all their disclosures of personal data to the Board, its Committees and the Company.

Obligations of Directors

- 1.6. ***Ethics and Moral Integrity:*** Directors shall maintain and uphold the highest ethical standards and moral integrity. Any event that may adversely impact on the Director's reputation and credibility shall be reported immediately to the Chairman.
- 1.7. ***Regular Attendance of Board meetings:*** The attendance of each Director, whether in person or via teleconference, shall be recorded in the minutes.
- 1.8. ***Active Participation:*** Directors shall contribute to constructive debate in the boardroom. More specifically, Directors shall develop strategy, constructively challenge, scrutinise performance of senior management and satisfy themselves regarding the attainment of corporate goals.
- 1.9. ***Acting in Good Faith:*** Directors shall exercise authority in good faith for the benefit of the Company and not to promote their own perceived interests or that of any third parties.
- 1.10. ***Duty of Loyalty:*** Directors shall not become Board members or executives of any of the Company's competitors or other institutions whose interests might conflict with or often oppose the interests of the Company.
- 1.11. ***Confidentiality:*** Each Director owes a strict duty of confidentiality in relation to all information he/she receives during the performance of his/her duties as a Director. After stepping down from the Board, Directors should maintain strict confidentiality of all such information insofar as such information has not otherwise entered the public domain.
- 1.12. ***Other Appointments:*** Directors should not sit on more company Boards than is compatible with proper performance and discharge of duties and obligations to the Company.

9. CONFLICTS OF INTEREST

- 1.13. Directors have a duty of loyalty to the Company and shall strive to avoid conflicts of interests, defined as situations in which their personal or other professional interests make it difficult to act impartially in the best interests of the Company and its shareholders and perform their role as a Director.
- 1.14. Directors shall disclose annually to the Audit Committee, their main professional positions and activities, including their duties in non-profit organisations, and any relevant legal entities in which they themselves or those whom they represent are significant shareholders. The Audit Committee shall satisfy itself that there have been no actual conflicts of interests.
- 1.15. It is a Director's responsibility to declare any actual or perceived conflict of interest at the beginning of all Board meetings and not to take part in any Board deliberations relating to the operations in connection to which such conflict of interest exists.
- 1.16. If a transaction for which a Director has an actual or potential conflict of interest is unavoidable, the transaction or business relationship with the Company shall be approached with appropriate caution and full transparency.

10. REMOVAL OF DIRECTORS

- 1.17. A Director shall vacate his/her office if:
 - 1.17.1. he/she becomes prohibited from being a Director by law or statute;
 - 1.17.2. he/she becomes of unsound mind or incapacitated or is otherwise unable to carry out his/her duties for a consecutive period of 6 months;
 - 1.17.3. he/she resigns from his/her office by tendering written notice of resignation;
 - 1.17.4. He/she is subject to a resolution of the AGM, resolving that he/she be dismissed as a Director.

11. RELATIONS WITH SHAREHOLDERS

- 1.18. **Agenda of AGM:** The Board shall decide the issues that will be put on the agenda of the AGM. The Company shall ensure that shareholders receive in a timely fashion all relevant documentation and other information required regarding the items on the agenda.
- 1.19. **Shareholders' Participation at AGM:** The Board shall facilitate the participation of shareholders and ensure informed shareholder decision-making at the AGM.
- 1.20. **Presiding over AGM:** The AGM shall be presided over by the Board Chairman. In his absence, the meeting shall be chaired by the Director ensuring his/her replacement.
- 1.21. **Communication with Investors:** The spokespersons for the Company to investors shall be the Board Chairman and the CEO. They may however delegate the authority to disclose information on behalf of the Company to other Directors or members of senior management.
- 1.22. **Disclosure to Shareholders:** The Company is committed to providing timely, consistent and accurate information to its shareholders. Shareholders shall have access to key business information, subject to the approval of the Board.

12. APPROVAL AND REVIEW OF TERMS OF REFERENCE

- 1.23. The Board Terms of reference shall come into force upon approval by the Board of Directors and may be amended by resolution thereof at any time.

- 1.24. Any issue concerning interpretation of these Terms of reference shall be referred to the Board.
- 1.25. In the event of conflict between the Terms of reference and any national laws or regulations, the latter shall prevail.

Approved by the Board of Directors on

Appendix 2: Model Audit Committee terms of reference

1. PREAMBLE

The present Terms of Reference (“ToR”) are the rule book of the Board Audit Committee (the “Committee”). They set out the corporate governance principles, rules and practices adopted by the Committee in relation to its role, composition and functioning. The ToR aspire to promote transparency, continuity, consistency and effectiveness in the way the Committee functions and reflect the belief that transparent, clearly-written policies and processes are an indispensable component of good long-term governance.

The ToR are meant to be a live and dynamic document, being constantly adapted to the needs and aspirations of the Board. The Committee is therefore strongly encouraged to perform periodic reviews of the ToR in order to make sure that their content reflects the latest needs and developments.

The ToR are divided into five sections. They set out the Committee purpose (section 2), Committee size and composition (section 3), Committee powers and responsibilities (section 4) and they also provide details regarding the Committee functioning (section 5). The ToR final section (section 6) is about the approval and review process.

2. PURPOSE OF THE COMMITTEE

The purpose of the Audit Committee is:

- 2.1. To oversee all audit-related and risk-related matters across the Company.
- 2.2. To review and control the independence, adequacy and effectiveness of the Internal Audit function.
- 2.3. To examine and review the integrity of the financial statements of the Company as well as other important disclosures.
- 2.4. To monitor and review the independence, objectivity and efficiency of the external auditor.
- 2.5. To review and control the independence, adequacy and effectiveness of the Risk Officer and the Risk management function.
- 2.6. To closely monitor the Company’s risk profile and major exposures and to provide relevant reporting to the Board on a regular basis.

3. COMPOSITION OF THE COMMITTEE

Size of the Committee

- 3.1. The Committee shall be composed of at least two Board members. Committee members are elected by the Board.

Composition of the Committee

- 3.2. The following rules shall apply regarding the composition of the Committee:
 - 3.1.1 The majority of the Committee members shall be independent non-executive directors;
 - 3.1.2 The Committee Chairman shall be an **independent** non-executive director. He shall possess the skills and experience required to supervise auditing and risk management issues reviewed by the Committee;
 - 3.1.3 The Board Chairman shall not be the Chairman of the Committee;
 - 3.1.4 At least one Committee member shall have background in audit / accounting and relevant expertise;

- 3.1.5 At least one Committee member shall have adequate knowledge and experience in risk management and internal controls.
- 3.2 Committee members shall be provided with appropriate briefing on appointment and training on a continuous basis.
- 3.3 Committee members shall not, during their term of office, hold posts or have capacities or carry out transactions that could be deemed incompatible with the Committee's mission. Participation in the Audit Committee does not preclude its members from participating in other Board Committees.

4. POWERS AND RESPONSIBILITIES OF THE COMMITTEE

Audit

Financial reporting

The Committee shall:

- 4.1 Examine and review the integrity of the annual and interim consolidated financial statements of the Company, and any other financial disclosures, before their submission to the Board for approval. In doing so, the Committee shall pay particular attention to:
 - 4.1.1 compliance with current accounting standards, legal and regulatory requirements;
 - 4.1.2 the extent to which the financial statements are affected by any significant or unusual transactions during the course of the year and how these transactions are disclosed;
 - 4.1.3 the methods used to account for significant or unusual transactions where different approaches are possible;
 - 4.1.4 the clarity, fullness and accuracy of disclosures;
 - 4.1.5 any significant adjustments proposed by the external auditor;
 - 4.1.6 the consistency of, and any changes to, accounting policies.

External audit

The Committee shall:

- 4.2 Consider and make recommendations to the Board on the appointment, re-appointment and removal of external auditors, to be approved by the shareholders.
- 4.3 Assess regularly the external auditor's effectiveness, independence and objectivity.
- 4.4 Oversee the relationship with the external auditors including (but not limited to):
 - 4.4.1 recommending their remuneration, whether fees for audit or non-audit services and ensuring that the level of fees is appropriate to enable an adequate audit to be conducted;
 - 4.4.2 approving their terms of engagement.
- 4.5 Meet with the external auditor on a regular basis and especially at the planning, execution and reporting stages of the audit.
- 4.6 Submit proposals to the Board regarding the specific areas where additional controls by the external auditors may be required.
- 4.7 Review the findings of the audit with the external auditor and discuss any major issues that arose.
- 4.8 Develop and implement a policy on the supply of non-audit services by the external auditor, taking into account any relevant ethical guidance on the matter.

Internal audit and internal controls

The Committee shall:

- 4.9 Approve the Internal Audit charter.
- 4.10 Consider and approve the remit of the Internal Audit function and ensure it has adequate resources and appropriate access to information to enable it to perform effectively and in accordance with the relevant professional standards.
- 4.11 Monitor and review the work of the Internal Audit function, ensuring that it is effective, independent of management and performs its tasks with impartiality, proficiency and due professional care.
- 4.12 Receive, in advance of every Committee meeting, a report from the Internal Auditor containing all the latest findings and recommendations and their status of implementation.
- 4.13 Recommend to the Board the appointment and dismissal of the Internal Auditor.
- 4.14 Approve key performance indicators for the Chief Audit Executive, assess and discuss his/her performance with the CEO.
- 4.15 Review the budget of the Internal Audit function.
- 4.16 Monitor staff changes (hiring, transfer, resignation, dismissal) within the Internal Audit function.
- 4.17 Monitor and review the adequacy and effectiveness of the internal control systems of the Company and discuss relevant reports submitted by management.

Compliance, conduct and conflicts of interest

The Committee shall:

- 4.18 Ensure the policies and practices of the Company are compliant with local and international laws and regulations, regulators' recommendations and best practice.
- 4.19 Take all necessary steps to ensure the Company puts in place a Code of Conduct. Following the Code's adoption, the Committee shall review at least once per year its implementation and effectiveness.
- 4.20 Review the implementation of the Conflict of Interest Policy (or the equivalent provisions).

Risk management

The Committee shall:

- 4.21 Receive and assess the Head of Risk's regular (at least half-yearly) reports on the Company's risk profile and the status and effectiveness of the risk management system.
- 4.22 Brief the Board on the major risks assumed by the Company, monitor the said risks and ensure that they are managed effectively.
- 4.23 Adopt a systematic approach to overseeing all major key risk categories.
- 4.24 Propose to the Board the appointment of the Head of Risk as well as replacement in those cases where the Committee deems that the appropriate requirements for the effective performance of the Head of Risk duties are not met.
- 4.25 The Committee shall approve and review the budget and headcount allocated to it.

Other

The Committee shall:

- 4.26 Review, on a yearly basis, its own performance and terms of reference in order to ensure it is operating at maximum effectiveness. Following this review, it shall recommend any changes it considers necessary to the Board for approval.

- 4.27 Prepare, at the end of each calendar year, an annual rolling agenda of its work for the following year and submit it to the Board for approval.

5. FUNCTIONING OF THE COMMITTEE

Committee meetings

- 5.1 The Committee shall meet on a regular basis, at least four times per year, and on an extraordinary basis if required.
- 5.2 Meetings of the Committee shall be called by the Secretary of the Committee at the request of the Committee Chairman.
- 5.3 The Committee Chairman shall specify the agenda and the length of meetings, and will ensure the Committee's effectiveness in discharging its duties.
- 5.4 The Committee shall meet if two Committee members request that a meeting be called.
- 5.5 The Committee meetings shall take place prior to the scheduled Board meeting of the respective month in order to allow for timely reporting to the Board.
- 5.6 Notice of each Committee meeting confirming the venue, time and date, together with an agenda of items to be discussed, shall be forwarded to each member of the Committee and any other person required to attend no later than five working days before the date of the meeting. Supporting papers shall be sent to Committee members and to other attendees as appropriate, at the same time. Circulation of documents may be effected by e-mail.
- 5.7 The Committee can meet by video or conference call if its Chairman so decides. The Chairman may also ask the Committee to take decisions regarding certain documents through the exchange of e-mails, faxes or letters.
- 5.8 The Committee may invite to its meetings any director, officer or any other person (employee, associate etc.) as it deems appropriate to assist it in performing its tasks. The Internal Auditor shall participate in all meetings without voting right, unless the Committee Chairman deems his/her presence unnecessary.

Committee Secretary

- 5.9 The Committee Secretary shall keep minutes of the proceedings and resolutions, including the names of those in attendance. The minutes should be forwarded by the Secretary to all Committee members in short time after the meeting, and approved at the subsequent Committee meeting. The minutes shall also be fully accessible to all members of the Board via the company's intranet.
- 5.10 The Secretary of the Committee is appointed by the Chairman of the Board and is usually the Board Secretary, or his nominee. The Committee Chairman may request the Chairman of the Board to replace the Committee Secretary in the event of his/her inability.

Quorum and decisions

- 5.11 The Committee shall have quorum and convene validly when at least two members are present (including its Chairman). A member's participation in a meeting by video link or audio link shall be regarded as valid for these purposes.
- 5.12 Decisions of the Committee shall be taken by consensus. In case consensus cannot be achieved, decisions shall be taken by simple majority of the members present.
- 5.13 A resolution in writing signed or approved by letter, e-mail, telegram, or fax by all Committee members shall be as valid and effectual as a resolution passed at a meeting of the Committee.

6. APPROVAL AND REVIEW OF COMMITTEE ToR

- 6.1 These ToR shall come into force upon approval by the Board of Directors and may be amended by resolution thereof at any time.
- 6.2 In the event of conflict between the ToR and any national laws or regulations, the latter shall prevail.

Approved by the Board of Directors on

Appendix 3: Model Nomination Committee terms of reference

1. PREAMBLE

The present Terms of Reference (“ToR”) are the rule book of the Nomination Committee (the “Committee”). They set out the corporate governance principles, rules and practices adopted by the Committee in relation to its role, composition and functioning. The ToR aspire to promote transparency, continuity, consistency and effectiveness in the way the Committee functions and reflect the belief that transparent, clearly-written policies and processes are an indispensable component of good long-term governance.

The ToR are meant to be a live and dynamic document, being constantly adapted to the needs and aspirations of the Board. The Committee is therefore strongly encouraged to perform periodic reviews of the ToR in order to make sure that their content reflects the latest needs and developments.

The ToR are divided into five sections. They set out the Committee purpose (section 2), Committee size and composition (section 3), Committee powers and responsibilities (section 4) and they also provide details regarding the Committee functioning (section 5). The ToR final section (section 6) is about the approval and review process.

2. PURPOSE OF THE COMMITTEE

The purpose of the Nomination Committee is to assist the Board of Directors (“the Board”) in by establishing the principles for the selection of candidates to the Board of Directors, selecting candidates for the election or re-election to the Board of Directors and preparing proposals for the Board of Directors' decision.

3. COMPOSITION OF THE COMMITTEE

Size of the Committee

3.3. The Committee shall be composed of at least two Board members. Committee members are elected by the Board.

Composition of the Committee

3.4. The following rules shall apply regarding the composition of the Committee:

3.1.1 The majority of the Committee members shall be independent non-executive directors;

3.1.2 The Committee Chairman shall be an independent non-executive director;

3.1.3 The Chairman of the Board of Directors shall be a member.

3.2 Committee members shall be provided with appropriate briefing on appointment and training on a continuous basis.

3.3 Committee members shall not, during their term of office, hold posts or have capacities or carry out transactions that could be deemed incompatible with the

Committee's mission. Participation in the Nomination Committee does not preclude its members from participating in other Board Committees.

4. POWERS AND RESPONSIBILITIES OF THE COMMITTEE

General

The Committee shall:

- 4.1 Prepare and recommend its working guidelines for the selection of members of the Board of Directors including criteria for the independence evaluation of the Board of Directors;
- 4.2 Periodically prepare the evaluation of the performance of the Board of Directors through a self-assessment process;
- 4.3 Review, at least once a year, the independence of the members of the Board of Directors;
- 4.4 Review, at least once a year, the number of mandates in other companies held by the members of the Board of Directors and of the Executive Committee;
- 4.5 Perform other tasks in relation to the nomination or removal of members of the Board of Directors, as may be delegated by the latter.

Nomination

The Committee shall:

- 4.6 Establish criteria for Board membership;
- 4.7 Evaluate and propose to the Board of Directors candidates for elections , re-election or removal. The Committee may dismiss candidates who do not meet the criteria for Board membership;
- 4.8 Ensure that the candidates to the Board of Directors shall possess the necessary qualifications and experience to discharge their duties. Newly appointed members of the Board of Directors shall receive an appropriate introduction into the business and affairs of the Company and the Group. If appropriate, the Committee shall arrange for further training.

5. FUNCTIONING OF THE COMMITTEE

Committee meetings

- 5.1 The Committee shall meet on a regular basis, at least two times per year, and on an extraordinary basis if required.
- 5.2 Meetings of the Committee shall be called by the Secretary of the Committee at the request of the Committee Chairman.
- 5.3 The Committee Chairman shall specify the agenda and the length of meetings, and will ensure the Committee's effectiveness in discharging its duties.

- 5.4 The Committee shall meet if two Committee members request that a meeting be called.
- 5.5 The Committee meetings shall take place prior to the scheduled Board meeting of the respective month in order to allow for timely reporting to the Board.
- 5.6 Notice of each Committee meeting confirming the venue, time and date, together with an agenda of items to be discussed, shall be forwarded to each member of the Committee and any other person required to attend no later than five working days before the date of the meeting. Supporting papers shall be sent to Committee members and to other attendees as appropriate, at the same time. Circulation of documents may be effected by e-mail.
- 5.7 The Committee can meet by video or conference call if its Chairman so decides. The Chairman may also ask the Committee to take decisions regarding certain documents through the exchange of e-mails, faxes or letters.
- 5.8 The Committee may invite to its meetings any director, officer or any other person (employee, associate etc.) as it deems appropriate to assist it in performing its tasks. The Internal Auditor shall participate in all meetings without voting right, unless the Committee Chairman deems his/her presence unnecessary.

Committee Secretary

- 5.9 The Committee Secretary shall keep minutes of the proceedings and resolutions, including the names of those in attendance. The minutes should be forwarded by the Secretary to all Committee members in short time after the meeting, and approved at the subsequent Committee meeting. The minutes shall also be fully accessible to all members of the Board via the company's intranet.
- 5.10 The Secretary of the Committee is appointed by the Chairman of the Board and is usually the Board Secretary, or his nominee. The Committee Chairman may request the Chairman of the Board to replace the Committee Secretary in the event of his/her inability.

Quorum and decisions

- 5.11 The Committee shall have quorum and convene validly when at least two members are present (including its Chairman). A member's participation in a meeting by video link or audio link shall be regarded as valid for these purposes.
- 5.12 Decisions of the Committee shall be taken by consensus. In case consensus cannot be achieved, decisions shall be taken by simple majority of the members present.
- 5.13 A resolution in writing signed or approved by letter, e-mail, telegram, or fax by all Committee members shall be as valid and effectual as a resolution passed at a meeting of the Committee.

6. APPROVAL AND REVIEW OF COMMITTEE ToR

- 6.1 These ToR shall come into force upon approval by the Board of Directors and may be amended by resolution thereof at any time.
- 6.2 In the event of conflict between the ToR and any national laws or regulations, the latter shall prevail.

Approved by the Board of Directors on

Appendix 4: Role of the Company Secretary

The main responsibilities below are derived from the Institute of Chartered Secretaries & Administrators International notes on the company Secretary⁶³, the IFC Corporate Governance Manual (2007).

1. Objectives

- 1.1. The Corporate Secretary ensures that the governing bodies follow existing internal corporate rules and policies, and changes them, or institutes new ones, when appropriate.
- 1.2. The Corporate Secretary can also assist in establishing and maintaining clear communication between the various governing bodies of the company in compliance with the company's charter, by-laws, and other internal regulations.
- 1.3. In addition, the Corporate Secretary helps to ensure that the governing bodies adhere to all relevant regulatory requirements, both domestic and possibly foreign. Accordingly, the Corporate Secretary often acts as an adviser to directors and senior executives on regulatory requirements, listing rules, and legislation related to corporate governance. The Corporate Secretary may also identify gaps in corporate governance matters and propose ways to address such weaknesses.

2. Responsibilities

- 2.1. The core duties of the Corporate Secretariat are as follows:
 - 2.1.1. Advising the Board on governance matters;
 - 1.1.1. Scheduling meetings, assisting with the preparation of agendas, providing guidance on Board paper content, ensuring timely delivery of papers; recording Board decisions clearly and accurately, pursuing follow up actions and reporting on matters arising;
 - 1.1.2. Producing papers and minutes of meetings of the Board and committees;
 - 1.1.3. Facilitating good information flows between Board members and fostering effective working between executives and directors;
 - 1.1.4. Supporting Board succession planning;
 - 1.1.5. Assisting the Chairman with providing induction and training for directors;
 - 1.1.6. Helping develop and support Board performance evaluations;
 - 1.1.7. Ensuring compliance with all rules concerning the listing of the shares;
 - 1.1.8. Ensuring compliance with corporate law and regulations and the company's constitution;
 - 1.1.1. Ensuring the Board keeps in touch with shareholder opinion;

⁶³ Presentation made by the ICSA Chief Executive on the role of the Company Secretary, available at www.ebrd.com/%2Fdownloads/%2Flegal/%2Fcorporate/%2Ficsa.pdf&ei=4obPVI-aFMLyaKvugcAC&usg=AFQjCNH7YW25vOY2fqmNIOyiTsjF8FfUmA&bvm=bv.85076809,d.d2s and the ICSA Note 081020 on the role of the Company Secretary, 2008

- 1.1.2. Managing the convening and conduct of the AGM in line with statutory and regulatory requirements and using it as an opportunity to communicate with retail investors;
- 1.1.3. Managing relations with institutional investors on corporate governance issues and Board procedures;
- 1.1.4. Coordinating the drafting, preparation, printing and distribution of the company's annual report and ensuring that it includes the necessary disclosures on corporate governance;
- 1.1.5. Playing a key role in any acquisition or merger;
- 1.1.6. Maintaining the statutory registers;
- 1.1.7. The Company Secretary is responsible for governance, through the Chairman;
- 1.1.8. He/she ensures that the principles of the Corporate Governance Code are considered carefully and applied as appropriate. The Company states whether or not it has applied these principles – and, if not, why.

2. Accountability

- 1.1. The Company Secretary is a senior management officer; accordingly, his professional duties require him to act independently. He must be available to give advice to the Board generally, and the Non-Executive Directors in particular, on corporate governance- related matters. He must enjoy the trust of all directors and the Chairman in particular.
- 1.2. The Company Secretary is appointed and dismissed by the Board on the proposal of its Chairman.
- 1.3. The Company Secretary is accountable to the Board and reports directly to its Chairman in discharging his/her responsibilities.
- 1.4. Following a recommendation by the Chairman, the Board approves his/her terms of reference and any subsequent amendments thereof.

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