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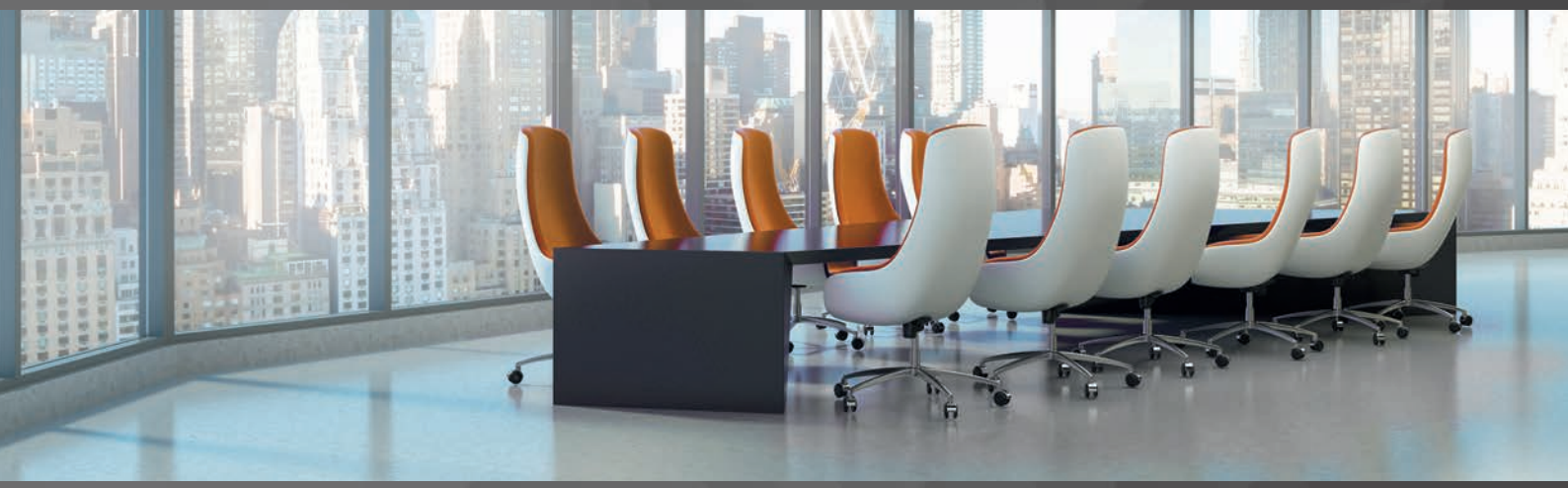

Corporate Governance 2020

A practical cross-border insight into corporate governance law

13th Edition

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1 Setting the Scene – Sources and Overview

1.1 What are the main corporate entities to be discussed?

In Romania, the most common legal forms for companies are the limited liability company (in Romanian "*societate cu raspundere limitata*" and herein referred to as "**LLC**") and the joint stock company (in Romanian "*societate pe actiuni*" and herein referred to as "**JSC**"). Only the shares of a JSC may be listed and publicly traded on a regulated market (most companies being listed either on the main market or the AeRO market of the Bucharest Stock Exchange). As of the date of drafting this chapter, there were 83 companies listed on the main market of the Bucharest Stock Exchange and 294 companies listed on the AeRO market.

Corporate governance rules have been enacted only for listed JSC and public entities.

The Bucharest Stock Exchange maintains a mechanism based on the "comply or explain" principle.

1.2 What are the main legislative, regulatory and other sources regulating corporate governance practices?

Romanian companies are mainly regulated by:

- Law No. 31/1990 on commercial companies, republished, as subsequently amended and supplemented (the "**Company Law**"); and
- The Civil Code.

Additionally, listed companies are also regulated by:

- Law no. 24/2017 on issuers of financial instruments and market operations;
- Financial Supervisory Authority Regulation no. 5/2018 on issuers of financial instruments and market operations;
- Corporate Governance Code of the Bucharest Stock Exchange (the "**Corporate Governance Code**"); and
- Principles of Corporate Governance for companies traded on the AeRO.

1.3 What are the current topical issues, developments, trends and challenges in corporate governance?

Except as regards public entities, corporate governance does not appear to be a "hot topic" which could potentially be included on the agenda of regulators and the legislative body in the near future, especially given the current COVID-19 outbreak and the challenges that this unprecedented situation has brought to the market.

1.4 What are the current perspectives in this jurisdiction regarding the risks of short-termism and the importance of promoting sustainable value creation over the long-term?

As of July 2019, Romania has implemented Directive 2007/36/EC on the exercise of certain rights of shareholders in listed companies, as well as further amendments introduced through Directive 2017/828/EC.

There have been no additional steps taken to prevent short-termism or to ensure the promotion of sustainable value creation over the long-term.

2 Shareholders

2.1 What rights and powers do shareholders have in the strategic direction, operation or management of the corporate entity/entities in which they are invested?

The general meeting of shareholders is the corporate body that appoints, re-elects and revokes the directors, as well as the censors and the financial auditors. Also, the general meeting is the body entitled to decide whether to pursue liability claims against directors.

For the JSCs, the law provides that the general meeting of shareholders approves the income and expenditure budget and the activity plan. However, the board of directors is responsible for establishing the main course of activity and business development of the company, within the limits set by the shareholders.

In the case of LLCs, there are no specific rules concerning the body entitled to establish the strategic direction, operation or management of the company. Therefore, the director(s) will be in charge of preparing and implementing the overall business strategy, unless the shareholders have decided otherwise. Please also refer to question 3.9 below.

Furthermore, there are other aspects that are subject to the approval of the general meeting of shareholders, which directly or indirectly steer the strategic direction, operation or management of the company. For an overview of the rights and powers of the general meeting of shareholders, please refer to questions 2.3 and 2.8 below.

2.2 What responsibilities, if any, do shareholders have with regard to the corporate governance of the corporate entity/entities in which they are invested?

The general meeting of the shareholders of JSCs:

(i) elects, recalls and approves the members of the board of directors or supervisory board, as well as the censors or the financial auditors; and

(ii) approves the remuneration for the members of the board of directors, the supervisory board and censors, if such has not been decided in the Articles of Association of the company.

In case of listed companies, in accordance with the Corporate Governance Code, the role of the board of directors or supervisory board/management board, as well as the distinction of the powers and competencies, should be clearly defined and documented in the Articles of Association of the company. The approval of the Articles of Association and any further amendments thereof fall within the ambit of the extraordinary general meeting of shareholders.

General meetings of LLCs also appoint and recall the directors and the censors or the financial auditors. Although there is no specific mention regarding the remuneration of these corporate bodies, in practice, such is also decided by the general meeting.

2.3 What kinds of shareholder meetings are commonly held and what rights do shareholders have with regard to such meetings?

A. Joint stock company

General meetings of shareholders may be ordinary or extraordinary. The distinction between the two types of meetings depends upon the matters to be discussed and approved through the respective meetings.

Ordinary general meetings

Ordinary general meetings are held at least once a year, not later than five months after the end of the financial year, being convened by the board of directors or, as the case may be, by the management board. The powers of the ordinary general meeting include, for example:

(i) the discussion, approval and amendment of the annual financial statements, and establishment of any dividends;

(ii) appointment of the members of the board of directors/supervisory board, the censors and their remuneration, if not provided by the Articles of Association;

(iii) appointment or revocation of the financial auditor;

(iv) passing decisions on the liability of the members of the board of directors or management board;

(v) establishing the income and expenses budget and the activity plan for the next financial exercise; and

(vi) approving the pledging, leasing or deregistration of the company's units.

For the valid deliberation and passing of resolutions in the ordinary general meeting:

- upon first convening, shareholders representing at least one quarter of the company's share capital must attend the meeting, decisions being passed with the majority of the expressed votes, unless a higher quorum or majority is required under the Articles of Association; and
- upon second convening, there is no specific quorum requirement and decisions will be passed with the majority of the expressed votes. For the second convening, the Articles of Association may not provide a minimum quorum or a higher majority.

In the case of listed companies, the appointment of the members of the board of directors or supervisory board can be done through a cumulative vote method. At the request of the significant shareholders, establishing the method of cumulative vote for such appointment is mandatory.

Extraordinary general meetings

Extraordinary general meetings are convened whenever deemed necessary in order to pass resolutions on matters like:

(i) amendment of the Articles of Association (e.g., change of headquarters, change of legal form, share capital increase or decrease, change of object of activity);

(ii) approval of mergers, spin-offs and dissolution of the company;

(iii) approval of the conversion of bearer shares into nominative shares or *vice versa*;

(iv) approval of any operation whereby a director acquires or alienates, in its own name, assets from or to the company, having a value of over 10% of the subscribed share capital;

(v) approval of any operation whereby the board of directors or the management board, in the name and on behalf of the company, acquires assets for the company or sells, leases, exchanges or establishes guarantees over the assets of the company, whose value exceeds half of the accounting value of the respective assets. For listed companies, the approval is required if the individual or cumulative value during a financial year exceeds 20% of the total fixed assets (less receivables); and

(vi) any other resolution requiring the approval of the extraordinary general meeting, according to the law or the Articles of Association.

For the valid deliberation and passing of resolutions in the extraordinary general meeting:

(i) upon first convening, the meeting is duly held if shareholders representing one quarter of the entire number of voting rights attend and decisions are passed by the majority of votes of the shareholders attending or represented;

(ii) upon subsequent convening, the meeting is duly held if the shareholders representing one fifth of the entire number of voting rights attend and decisions are passed with the vote of shareholders representing the majority of the voting rights of the shareholders attending or represented;

(iii) resolutions concerning the change of the main object of activity, decreases or increases of the share capital, the change of the legal form of the company, merger, split-off or dissolution of the company shall be passed with a majority of at least two thirds of the voting rights of the shareholders attending or represented.

(iv) the Articles of Association can provide higher quora and majority requirements; and

(v) by exception, for listed companies:

  (a) lifting the preference right for the subscription of new shares in case of a share capital increase by contribution in cash will be passed in the presence of shareholders representing 85% of the share capital and with the vote of shareholders representing three quarters of the voting rights of the shareholders attending or represented; and

  (b) an increase of the share capital by contribution in kind will be passed in the presence of shareholders representing 85% of the share capital and with the vote of shareholders representing three quarters of the voting rights of the shareholders attending or represented.

Shareholders voting in the general meeting on the change of the company's main object of activity, the relocation of headquarters abroad, change of legal form or the merger or split-off of the company have the right to withdraw from the company and to request the company to purchase their shares at an average value determined by an expert's report, using at least two evaluation methods recognised by the legislation in effect at the time when the evaluation is conducted.

B. Limited liability company

For an LLC, there is only one general meeting of shareholders (meaning that there is no distinction under the law between ordinary and extraordinary meetings).

The general meeting of shareholders is convened at least once per year and shall pass resolutions by absolute majority of shareholders **and** shares, unless otherwise set out under the Articles of Association, on:

(i) approval of the annual financial statements and the distribution of net profit;
(ii) appointment and removal of the directors and censors and discharging them of liability;
(iii) approval of the performance of financial audit, when such is not mandatory under the law;
(iv) passing decisions on the liability of the directors; and
(v) approval of amendments to the Articles of Association, for which, by exception, unanimity is required in case the Articles of Association do not provide otherwise.

Shareholders in disagreement with amendments to the Articles of Association can withdraw from the company only if such right has been expressly provided for in the Articles of Association.

2.4 Do shareholders owe any duties to the corporate entity/entities or to other shareholders in the corporate entity/entities and can shareholders be liable for acts or omissions of the corporate entity/entities? Are there any stewardship principles or laws regulating the conduct of shareholders with respect to the corporate entities in which they are invested?

Under Romanian law, there are two basic obligations with which shareholders must comply, respectively: (i) the payment of the subscribed shares; and (ii) the exercise in good faith of their rights.

Shareholders are obliged to pay the subscribed shares under the sanction that they will be liable for any damages caused to the company resulting from a failure to do so, together with payment of interest as of the due date.

Shareholders must exercise their rights in good faith, in observance of the rights and legitimate interest of the company and of the other shareholders.

The shareholder who, in a specific matter, on its/his/her behalf or on behalf of somebody else, has a contrary interest to the interest of the company cannot take part in meetings discussing and deciding on that specific matter. In case of acting to the contrary, the respective shareholder will be liable towards the company for the damages produced to the company if, without its/his/her vote, the necessary majority for passing the resolution would have not been met.

As a rule, shareholders of a JSC and LLC are liable only up to the limit of their participation in the share capital, meaning that they are not liable for the obligations of the company except within the limits of participation at the share capital. In case of listed companies, the shareholders must refrain from using their position by resorting to unfair or fraudulent acts which harm rights over the shares and prejudice their participations.

However, there are certain cases where the liability veil can be pierced, such as (i) in case the shareholders use the assets of the company for their own interests, or (ii) the shareholders diminish the company's assets, in their interest or in the interest of a third party, knowing that this may leave the company unable to pay its debts.

2.5 Can shareholders seek enforcement action against the corporate entity/entities and/or members of the management body?

If resolutions of the general meetings are contrary to the law or to the company's Articles of Association, shareholders that have not participated in the meeting or who have voted against such resolutions and such was accordingly recorded in the minutes of the meeting, can request in court the annulment of the respective resolutions.

A liability claim against directors for damages caused to the company for breach of their duties can be brought forth at the shareholders' meeting, which can approve such action with the majority provided by law. In case the general meeting does not proceed with debating the liability claim and does not pursue the proposal of one or more shareholders to bring such action against the directors, the shareholders representing, individually or jointly, at least 5% of the share capital have the right to proceed with a direct action for damages, in their own name but on behalf of the company, against the directors.

2.6 Are there any limitations on, or disclosures required, in relation to the interests in securities held by shareholders in the corporate entity/entities?

A shareholder acquiring or disposing of the shares of an issuer listed on a regulated market is required to notify to the issuer and the Financial Supervisory Authority ("**FSA**") on the voting quota it holds following such acquisition or disposal whenever this reaches, exceeds or falls below one of the following thresholds: 5%, 10%, 15%, 20%, 25%, 33%, 50% and 75%.

The thresholds cannot be modified through the Articles of Association of the company.

A similar reporting obligation exists whenever:

(i) a person holds (i) directly or indirectly, financial instruments which at maturity create an unconditional right to acquire or the possibility to exercise the right to acquire shares having incorporated voting rights of a listed issuer, or (ii) financial instruments having a similar economic effect as those mentioned under point (i), irrespective of whether they grant the right to a physical settlement. Voting rights related to financial instruments which have already been notified as mentioned earlier will again be subject to notification if the person acquired shares having attached voting rights and such acquisition results in a total number of voting rights of the same issuer reaching or exceeding the above indicated thresholds;
(ii) the number of voting rights held directly or indirectly, aggregated with the number of voting rights attached to the financial instruments held directly or indirectly, exceeds or falls below the earlier mentioned thresholds; and
(iii) the number of voting rights reaches the mentioned thresholds or exceed or fall below those thresholds following certain events through which the allocation of voting rights was amended.

The issuer of shares listed on a regulated market acquiring or disposing, directly or indirectly, of its own shares, must publicly announce the percentage of its own shares held as soon as possible, but not later than four business days from such acquisition or disposal, if the percentage reaches, exceeds or falls under the threshold of 5% or 10% of the total voting rights.

The notification must be made to the issuer and FSA, in Romanian or in a language of wide international financial circulation (e.g. English), within four business days. The issuer must make the notification public in its entirety within three business days of its receipt.

Additionally, all companies are required to disclose the beneficial owner(s), respectively the person(s) holding at least 25% of the shares plus one share, or holding an interest of over 25% in the equity of the legal person, as follows:

(iv) annually, within 15 days as of the approval date of the year-end financial statements; and
(v) within 15 days as of the date there is a change of the beneficial owner information mentioned in the statement.

For companies active in certain fields (such as radio or television broadcasters, holders of environmental authorisations, gambling companies, insurance companies and other types of companies regulated by FSA, etc.), special legislation provides further disclosure obligations.

2.7 Are there any disclosures required with respect to the intentions, plans or proposals of shareholders with respect to the corporate entity/entities in which they are invested?

Disclosures have to be made in case of mandatory and voluntary takeovers.

Voluntary takeover offers

Any person who is not obliged to proceed with a mandatory takeover offer can make a voluntary takeover offer to all shareholders, for their entire participations, in order to exceed 33% of the voting rights in the respective company.

Such person must send to FSA for approval a preliminary announcement of the voluntary takeover offer. Within a maximum of five business days from FSA approval, the preliminary announcement must be published in at least one national newspaper and one local newspaper, either in hard copy or online, and will also be sent to the issuer and the regulated market operator.

Mandatory takeover offers

Any person who, following his/her/its acquisitions or those of the persons with whom it acts in concert, holds, directly or indirectly, securities which, added to his/her/its previous holdings or those of the person with whom it acts in concert, exceeds 33% of the voting rights, is compelled to conduct a mandatory takeover of all the target's shares within two months from such acquisition.

The mandatory takeover is not required for exempted transactions, respectively for acquisitions:

(i) during a privatisation process;
(ii) from the Ministry of Public Finance or any other authorised entities within the foreclosure of budgetary receivables;
(iii) between the parent company and its subsidiaries or between subsidiaries of the same parent company; or
(iv) under a voluntary takeover offer addressed to all shareholders for all their shareholdings.

Moreover, an additional rule applies where the 33% threshold was exceeded by unintentional operations, in case such results from:

(i) a share capital reduction through the buy-back by the company of its own shares, followed by their cancellation;
(ii) exercising a preference right, subscription or conversion of rights originally granted, as well as the conversion of preference shares into ordinary shares; or
(iii) merger/spin-off or inheritance.

In case of such unintentional transactions, shareholders may choose between conducting a mandatory takeover or selling the shares in excess of the 33% threshold.

2.8 What is the role of shareholder activism in this jurisdiction and is shareholder activism regulated?

Shareholder activism is not *per se* regulated under Romanian law. However, the legislation in force provides various rights through which minority shareholders can reach or pursue a certain goal such as, for example:

(i) filing legal actions against the resolutions of the general meeting or against the directors (please see questions 2.5 above) through which the delay or annulment of the implementation of the approved aspects can be attained or to put pressure on directors to act in a certain manner;
(ii) calling shareholders' meetings or including new items on the agenda of shareholders' meetings to discuss and approve the aspects of interest for the respective shareholder(s), provided that the respective shareholder(s) holds/hold more than 5% of the share capital of the company;
(iii) putting additional pressure on directors by:
  (a) requesting the court of law to appoint one or more experts to analyse certain management operations and to draft a report to be provided to: (i) the shareholder(s) requesting such report; (ii) the management board; (iii) the supervisory board; and/or (iv) censors or internal auditors. This request may be filed by the shareholders holding, individually or jointly, at least 10% of the share capital; or
  (b) filing a complaint with the censors and internal auditors for actions that a specific shareholder considers should be verified. In case the request is made by shareholders representing, individually or jointly, at least 5% of the share capital of the company, the censors/internal auditors are required to make the necessary verifications. The matters thus verified may lead to the calling of a general meeting for a decision to be taken with respect to the flagged and analysed aspects.

Although shareholder activism is not very common in practice in Romania, we are starting to witness a rise of such tactics by minority shareholders.

3 Management Body and Management

3.1 Who manages the corporate entity/entities and how?

Joint stock company

Romanian law provides the possibility for a JSC to choose between two management systems: the one-tier management system (the classical system); or the two-tier management system.

In case the one-tier management system is chosen, the company is managed by one or several directors, always having an uneven number, organised as a board of directors. Companies that are legally obliged to have their financial

statements audited must have at least three directors. The board of directors may delegate its powers to one or more executive managers, appointing one of them as the general manager. The executive managers may be appointed from the members of the board of directors or from outside the board. Those companies that are under the obligation of having their financial statements audited are compelled to delegate the management of the company as aforementioned. The chairman of the board of directors may be the general manager if such possibility is provided by the Articles of Association of the company or by a resolution of the general meeting of shareholders. In case the management of the company has been delegated, the company is represented before third parties and before the court by the general manager.

Under the two-tier management system, the company has a management board (directorate) and a supervisory board. The management board exclusively exercises the management of the company, performing useful and necessary deeds for the accomplishment of the company's object of activity, except those within the competence of the general shareholders' meeting and the supervisory board. The supervisory board is responsible for the permanent control and supervision of the activity performed by the management board.

Limited liability company

A Romanian LLC is managed by one or more directors, shareholders of the company or, if not appointed through the Articles of Association, by the general meeting of shareholders.

3.2 How are members of the management body appointed and removed?

Joint stock company

The members of the board of directors in companies under a one-tier management system and the members of the supervisory board in companies under a two-tier management system are appointed and revoked exclusively by the general meeting of shareholders, except for the first members, who are appointed through the Articles of Association.

In companies holding a one-tier management system, where the board of directors has delegated the operation and management of the company, the executive managers are appointed by the board of directors.

The members of the management board in companies under a two-tier management system are appointed and revoked by the supervisory board. However, the Articles of Association of the company may provide that the members of the management board may also be revoked by the general meeting of shareholders.

The members of the board of directors, the management board and of the supervisory board, including the executive managers, can be revoked at any time by the corporate body that appointed them.

Limited liability company

Directors may be appointed for any period and can have their directorship revoked at any time by the general meeting of shareholders.

3.3 What are the main legislative, regulatory and other sources impacting on compensation and remuneration of members of the management body?

The main sources are the Company Law, the Civil Code and, where applicable, the Corporate Governance Code or Emergency Ordinance no. 109/2011 regarding the corporate governance of public companies.

According to the Company Law, the remuneration of the members of the board of directors (in the one-tier management system) and the remuneration of the members of the supervisory board (in the two-tier management system) is established either through the Articles of Association or by resolution of the general meeting of shareholders.

The additional remuneration of the members of the board of directors and of the supervisory board entrusted with specific duties within such management body, as well as the remuneration of the executive managers (in companies under the one-tier management system where the management activity has been delegated to managers), and the remuneration of the members of the management board (in the two-tier management system), is established by the board of directors, or respectively by the supervisory board, within the limits provided by the shareholders either through the Articles of Association or through a resolution of the general meeting. The relevant body approving the remuneration and any other granted benefits must ensure that the compensation package is commensurate with the specific duties of such person and aligned with the overall financial status of the company.

The Corporate Governance Code contains significantly more requirements. In this respect, listed companies should have in place a remuneration policy providing information in relation to the form, structure and level of remuneration of the members of the board of directors, of the executive managers and of the members of the management board (in the two-tier management system). The remuneration policy should describe the remuneration governance and the decision-making process and should provide details regarding the compensation package (e.g., fixed salaries, annual bonuses, long-term stock incentives, benefits in kind, pensions).

The compensation package for the members of the board of directors and of the executive managers (under the one-tier management system) and for the members of the supervisory board and of the management board (under the two-tier management system) in public companies (i.e., state-owned companies) must contain a fixed and variable component. The fixed part of the compensation package is capped based upon the average gross monthly salary paid in the business area of the company, whilst the variable component is determined based upon certain financial and non-financial indicators that are reviewed and adjusted regularly.

3.4 What are the limitations on, and what disclosure is required in relation to, interests in securities held by members of the management body in the corporate entity/entities?

Joint stock company

Generally, there are no restrictions in relation to the number and value of securities that may be held by the members of the board of directors, members of the management board or supervisory board and the executive managers. Furthermore, especially in multinational companies, it is a common practice for the executive members to be granted, through stock option plans, shares and other special rights within the group, as part of their remuneration package.

In the case of listed companies, any transaction through which a member of the management body acquires shares must be notified to the company and to the FSA. The notification must be made as soon as possible but not later than three days after the date on which the threshold of EUR 5,000 is reached within a given financial year.

Limited liability company
There are no restrictions or limitations in relation to the number and value of shares that may be held by directors. Nevertheless, even though there are no legal restrictions, the transfer of shares to directors which are not shareholders of the company must be approved by the general meeting of shareholders with the votes of shareholders representing at least ¾ of the share capital.

3.5 What is the process for meetings of members of the management body?

Joint stock company
The meetings of the board of directors in case of companies under a one-tier management system, and the respective meetings of the supervisory board and management board in companies under the two-tier management system, take place at the headquarters of the company or in any other place specified in the convocation notice. The Articles of Association may provide that the meetings may take place by correspondence, e-mail, audio-video communication means or any other means of remote communication.

The meetings of the board of directors or the supervisory board must be held at least every three months. As regards the meetings of the management board in case of companies under the two-tier management system, there is no statutory rule on the frequency of these meetings. Nevertheless, the management board must submit to the supervisory board a written report with respect to the management of the company, its activity and possible evolution at least once every three months.

Generally, the meetings are convened by the chairman of the relevant management body. The convening formalities are not necessary when all members of the management body are present at the meeting, in person or by representative, and expressly waive such convening formalities. Notwithstanding the above, in exceptional situations, when the urgency of the matter and the company's interests justify such an alternative, the decisions of the board of directors and of the management board can also be taken by circular written resolutions, with the vote of all members without an actual physical or remote meeting being required.

Limited liability company
The directors of a Romanian LLC are not organised as a collective management body, unless the Articles of Association provide otherwise. Thus, in principle, the decision-making process, to a certain extent informal, does not have any special convening and gathering requirements.

3.6 What are the principal general legal duties and liabilities of members of the management body?

Joint stock company
In companies under a one-tier management system, the board of directors is in charge of the management of the company and has as its main competence and responsibility the company's day-to-day business and the determination of the company's business policy, in line with the Articles of Association of the company and with the resolutions of the general meeting of shareholders. The company is represented by the members of the board of directors in all matters, except in matters that belong to the general meeting of shareholders.

In general, Romanian law empowers the board of directors to manage the company under its own discretion and responsibility and obliges the members of the board of directors to act primarily in the best interest of the company.

There is a "warranty liability" to which members of the board of directors are held. Namely, in their capacity as warrantors and controllers of the executive managers and the personnel, in case any of the latter should cause a loss for the company in the exercise of their activity, the members of the board of directors are held responsible if the loss would not have otherwise occurred had they duly pursued their monitoring and control tasks.

In companies under the two-tier management system, the management board is the competent body that exclusively carries out the management of the company and represents the company before third parties and courts.

The supervisory board is in charge of the permanent control of the activity of the management board and its main duties are connected with its supervision role.

Irrespective of the type of management system that has been chosen, members of the board of directors or supervisory board and management board, are subject to a duty of loyalty and confidentiality towards the company since they manage and exercise power over the company's capital and, therefore, act as fiduciaries. In general, members of such management bodies must avoid conflicts between the company's interests and their own, and if a conflict arises, they must disclose it to the other members and to the auditors and to not take any decisions in relation to any operation that may give rise to a conflict of interest.

All members of the management bodies must apply the care of a diligent and cautious business leader when managing the company with respect to both their relationship to the company and their relationship towards third parties. Violation of this duty makes them jointly liable towards the company for any damages caused to the company. Nevertheless, this business judgment rule provides for a safe harbour from liability for business decisions that have been taken by the members of the management bodies. If a business decision is made free of conflicts of interest, based on adequately available information and is justifiably assumed to be in the best interest of the company, then members are considered to have acted with the duty of care and diligence of a prudent business leader.

Limited liability company
Company director(s) is/are responsible for running the day-to-day business activities of the company and to take decisions on any matter which are not expressly reserved for the shareholders. The directors of a limited liability company have an obligation to act with diligence and loyalty towards the company based upon the general provisions applicable to mandate agreements under the Civil Code. The director will be liable for any breach of the obligations caused both by its intentional or negligent actions or omissions. If the mandate is remunerated, the director will be liable both for minor (*culpa levis*) and gross (*culpa lata*) negligence, while if the mandate is not remunerated, the director will be liable only for gross negligence (*culpa lata*).

3.7 What are the main specific corporate governance responsibilities/functions of members of the management body and what are perceived to be the key, current challenges for the management body?

If the relevant management body of a company discovers that, due to losses established in the annual financial statements, the company's net assets value, has diminished to less than half of the subscribed share capital, the management is compelled to convene a general meeting of shareholders in order to decide if the company should be dissolved or not.

In listed companies, the board of directors or the supervisory board, must make sure that appropriate controls are in place; in

particular, systems for monitoring risk, financial control, and compliance with the law in general.

Additionally, the management bodies have specific responsibilities in relation to the company's insolvency. In this respect, according to Romanian law, the management bodies must observe certain legal deadlines for declaring the company's insolvency.

The current COVID-19 outbreak represents a challenge that has impacted almost all companies in Romania. In case of a crisis, the duties of the management bodies are generally increased and intensified. The members of the management bodies are obliged to constantly monitor the economic situation and financial condition of the company. They are required to implement appropriate reorganisation measures such as internal cost saving measures, establishment of various assessment groups/committees, evaluating the possibility of equity injections, restructuring of third-party debts (payment deferrals, postponement of priority, debt waiver, etc.), in order to achieve the financial turnaround of the company in the latter's best interest. The reorganisation measures need to be tailored to the relevant financial situation of the company, its size and specificity and thus must be assessed on a case-by-case basis.

3.8 Are indemnities, or insurance, permitted in relation to members of the management body and others?

Joint stock company

Under Romanian law, it is mandatory for members of the board of directors, or the management board and the supervisory board, to have in place professional liability insurance. The professional liability insurance policy must be purchased and paid for by the insured person in case the company does not pay the insurance premium as part of the financial benefits granted to the member of the management body. Furthermore, it is customary in global companies with a local presence to have a directors' and officers' ("**D&O**") umbrella that covers both the risks of the company itself and those risks associated with the activities performed by the executive bodies.

Limited liability company

It is not compulsory for the directors of an LLC to have in place a professional liability insurance policy. Nevertheless, as mentioned above, it is common practice for local subsidiaries of multinational companies to have in place D&O insurance policies that cover both the local entity and its local directors.

3.9 What is the role of the management body with respect to setting and changing the strategy of the corporate entity/entities?

Joint stock company

In companies under a one-tier management system, the board of directors is responsible for establishing the main course of activity and business development of the company.

In companies under the two-tier management system, even though the management board is in charge of the company's day-to-day business and the determination of the company's business strategy, in the end, the supervisory board is the management body that assesses and approves the overall strategy of the company in order to ensure its wellbeing.

In both cases mentioned above, the strategies and business development policies must have as their main purpose the accomplishment of the business scope of the company and must be set and implemented within the limits set by the shareholders either through a resolution of the general meeting of shareholders or through the Articles of Association of the company or through any other guidelines or rules of procedure.

Limited liability company

Directors of an LLC are responsible for running the day-to-day activities of the company and take decisions on any matter which is not expressly (by the law or the Articles of Association) reserved to the shareholders. Therefore, the director(s) will be in charge of preparing and implementing the overall business strategy, unless the shareholders have decided otherwise through the Articles of Association or by means of a resolution of the general meeting in relation to the business strategy of the company, which should otherwise be observed by the directors.

4 Other Stakeholders

4.1 May the board/management body consider the interests of stakeholders other than shareholders in making decisions? Are there any mandated disclosures or required actions in this regard?

Typically, the board/management board (in a two-tier system) should first consider its fiduciary duties which reflect a relationship of trust and loyalty between the directors, the company, its board members, and its stakeholders. The expectation is that a director will act in good faith, and in the best interests of the company.

Nevertheless, when making decisions, directors should consider other stakeholders or elements involving their decision-making process, including, without limitation, the company creditors or the company employees with extensive knowledge that would enable the directors to ultimately take an informed business decision.

4.2 What, if any, is the role of employees in corporate governance?

There are no legal provisions regulating the role of employees in corporate governance.

In some instances and depending upon the nature of the business, board members can ask employees/employees' representatives/trade unions to attend certain board or shareholders' meetings where their presence is required in order to clarify various points on the meeting agenda, either due to a higher exposure or otherwise when the employees' expertise brings added value to the decision-making process, if such concerns professional, economic or social matters.

Employees' representatives, trade unions and employees in general are also periodically informed or consulted in relation to business decisions which have/will have a major impact on the business.

4.3 What, if any, is the role of other stakeholders in corporate governance?

There are no express provisions of law regulating an active role of other stakeholders in the company corporate governance.

Nevertheless, creditors for instance may intervene in the corporate governance process and oppose shareholder meeting decisions and request underlying damages. Even the personal liability of directors may be triggered by the creditors if the company has entered into bankruptcy proceedings and no actions were taken by such directors to prevent it. There are further informational rights based upon which such creditors may be informed by the company directors.

Board members or shareholders are also obliged to inform the company auditor of any irregularities performed concerning the company.

4.4 What, if any, is the law, regulation and practice concerning corporate social responsibility?

Order no. 3456/2018 of the Ministry of Public Finances implemented EU Directive 2014/95 as regards disclosure of non-financial and diversity information by certain large undertakings and groups, whereby legal entities which can be qualified as a parent entity of a group of entities which, at the end of the financial exercise (and on a consolidated basis) exceed on average 500 employees, must include in the directors' report a consolidated non-financial information statement.

Such statement should contain information, to the extent such information is required in understanding the development, performance and position of the group and the impact of its activities, related to at least the following aspects: environment, social and personnel; observance of human rights; and countering bribery and corruption.

5 Transparency and Reporting

5.1 Who is responsible for disclosure and transparency?

The company directors are responsible for disclosure and transparency.

5.2 What corporate governance-related disclosures are required and are there some disclosures that should be published on websites?

Other than the corporate governance provisions included in the company's Articles of Association and which can be obtained by any third party from the Trade Registry, the directors prepare a directors' report to be shared (at its headquarters or on its website, if the company has one) with the shareholders prior to the approval of the annual financial statements. Such report includes, among other provisions, those related to recent corporate governance changes, details regarding the company management and a summary of their work during the last financial year, economic development of the company, etc.

We also note that the remuneration of the board members or supervisory board members in joint stock companies is approved by the shareholders' meeting, unless such remuneration is set forth by the Articles of Association.

5.3 What is the role of audits and auditors in such disclosures?

If the company meets the mandatory criteria to have its financial statements audited, an auditor must be appointed in order to verify the company's annual financial statements. The auditor's report will be prepared based upon information obtained from the prepared annual financial statements, the company and its shareholders. Furthermore, such report should ensure that the financial statements are accurate and true and do not present any significant irregularities.

Board members or shareholders are also obliged to inform the auditor of any irregularities concerning the company.

Ileana Glodeanu is a Partner at Wolf Theiss Bucharest and the coordinator of the Corporate/M&A team. As a talented and professional lawyer, who enjoys high positive name recognition on the M&A market, including being ranked by international legal directories, Ileana is extremely active and has advised on some of the largest transactions concluded in the past few years in Romania. Ileana has a high profile as a leading expert with a particular focus on TMT, energy, and pharma. She also excels in employment and insolvency restructurings. In 2019, Ileana led three of the top five deals signed in Romania. Ileana is a commercially minded lawyer, well-known in the corporate M&A practice with extensive experience not just in Romania, but throughout the CEE region. Ileana is one of the few business-focused lawyers who understands the commercial drivers in a transaction and translates them into effective legal documentation.

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