

# **Corporate Governance Code for Companies Listed on the Macedonian Stock Exchange**

**Based on the OECD Corporate Governance Principles**

Draft January 2006

Macedonian Stock Exchange

TRANSLATION

## **Preamble**

On April 30, 2004, in effect from May 8, 2004, the Parliament passed a new Law on Trade Companies (“the company law”). The law is in compliance with the OECD White Paper on Corporate Governance in Southeastern Europe, the OECD Corporate Governance Principles and EU Company Law Directives. The new law makes substantial improvements to corporate governance standards and the legal climate for investors with the introduction of greater transparency and disclosure requirements. The new law also has significantly improved shareholders’ rights and their protection and has introduced accounting requirements in line with international financial reporting standards for medium and large businesses.

The Corporate Governance Code for Companies Listed on the Macedonian Stock Exchange is to be used with the new company law. Although it does not seek to replicate the standards set by the new company law, it does incorporate and build on corporate governance provisions provided by the law. The Code is based on the latest OECD Corporate Governance Guidelines, the OECD White Paper on Corporate Governance in Southeastern Europe, the EU Corporate Governance Action Plan, other countries’ corporate governance codes and the new Macedonian Business Code of Conduct (developed by the Macedonian Corporate Governance Council). A copy of the draft Corporate Governance Code for Companies Listed on the Macedonian Stock Exchange is available on the website of the Macedonian Stock Exchange: [www.mse.org.mk](http://www.mse.org.mk)

## **Application of the Code**

The Corporate Governance Code for Companies Listed on the Macedonian Stock Exchange is a set of best practice provisions for managers, directors and shareholders of joint stock companies listed on the Macedonian Stock Exchange. It introduces best practices to companies and shareholders with a focus on the equitable treatment of shareholders, the disclosure of information, integrity and accountability of managers and directors and other aspects of good corporate governance that encourage investor confidence. Non-listed Macedonian joint stock companies are also encouraged to comply with the Code.

## **Enforcement of the Code**

Listed companies may depart from the principles and best practice provisions. Due to its voluntary nature, non-compliance with some of the best practice provisions may be justified in certain circumstances. Whether all the provisions of the Code can be applied by Macedonian companies is dependent on the company and its shareholders. Shareholders and the boards of directors, management boards and supervisory boards should be prepared to explain why their company cannot or does not comply with certain best practice provisions.

The Corporate Governance Code for Companies Listed on the Macedonian Stock Exchange does not replace or modify Macedonian legislation, and companies are required to comply with the company law. The Code contains references to the company law to differentiate between statutory rules and voluntary best practice provisions.

## **Public Consultations**

The draft Corporate Governance Code for Companies Listed on the Macedonian Stock Exchange has been developed as a result of conferences, roundtables and public debates on the development of modern corporate governance standards in the Republic of Macedonia. These were organized in cooperation with USAID's Corporate Governance and Company Law Project, the OECD and the Dutch Embassy. The Macedonian Stock Exchange organized in 2003 a roundtable in Skopje on the Macedonian version of the OECD White Paper on Corporate Governance in Southeastern Europe. In 2004, the Macedonian Stock Exchange and other members and partners of the Macedonian Corporate Governance Council organized the OECD regional corporate governance roundtable in Ohrid in cooperation with USAID. Later that year, the Macedonian Stock Exchange launched its initiative to develop a modern and practical Corporate Governance Code for Companies Listed on the Macedonian Stock Exchange during its ninth annual meeting.

The draft version of the Code has been prepared to continue this debate on the development of modern and internationally accepted corporate governance standards in the Republic of Macedonia.

Yours sincerely,

Ivan Steriev

CEO Macedonian Stock Exchange  
Chairman Corporate Governance Committee

## Summary of Principles

Principle 1: The management body (the management board or the board of directors) and the supervisory board are responsible for the corporate governance structure of the company and compliance with this Code.

Principle 2: All shareholders possessing the same type and class of shares are treated equally.

Principle 3: Family members of the individuals who are authorized to represent the company and their representatives can not be appointed as proxies.

Principle 4: Procedures for the general meeting of shareholders allow for equitable treatment of all shareholders. The company's procedures do not make it unduly difficult or expensive for shareholders to cast votes.

Principle 5: Changes in the capital equity structure are made in a manner that ensures equitable treatment of shareholders, through the respect of pre-emptive rights in the case of new share issues.

Principle 6: The company takes into consideration the interests of the company's stakeholders and has a code of conduct that regulates the company's relationship with its stakeholders.

Principle 7: The company ensures the timely and accurate disclosure of all material matters regarding the corporation, including its financial situation, performance, ownership and corporate governance.

Principle 8: The board of directors or the supervisory board is responsible for the strategic guidance of the company, the effective monitoring of management, and the board's accountability to the company and the shareholders.

Principle 9: The management body or the supervisory board is composed in such a way that it provides independent, autonomous, and free expression of attitudes and opinions of the members.

Principle 10: The board of directors or the supervisory board has a chairman who ensures that the board of directors or the supervisory board functions properly.

Principle 11: The board of directors or the supervisory board is assisted by an internal legal counsel.

Principle 12: The board of directors or the supervisory board considers whether to appoint a selection and nomination committee, an audit committee and a remuneration committee. If the board of directors or the supervisory board decides not to appoint these committees, best practice provisions 12.4, 12.5, 12.8, 12.9, 12.10 and 12.12 apply to the entire board of directors or the supervisory board.

Principle 13: The executive members of the board of directors or members of the management board are responsible for achieving the company's aims, strategy, and results.

Principle 14: The executive members of the board of directors or members of the management board are responsible for complying with all laws and regulations, for managing the risks associated with the company activities and for financing the company.

Principle 15: Any conflict of interest or potential conflicts of interest between the company and members of the management body or supervisory board are avoided.

The members of the working group that drafted the Corporate Governance Code are:

- Mr. Ivan Steriev, CEO, Macedonian Stock Exchange and Chairman of the Committee of the Corporate Governance Code for Companies Listed on the Macedonian Stock Exchange;
- Mr. Milco Kupev, Legal Advisor, Macedonian Stock Exchange;
- Mr. Ilco Lazarevski, Senior Associate at Business Operation Department, Macedonian Stock Exchange;
- Mr. Zvonko Stankovski, President of Board of Directors of the Macedonian Stock Exchange;
- Mr. Gregory Maassen, Chief of Party, USAID Corporate Governance and Company Law Project;
- Mr. Samir Latif, Senior Legal Advisor, USAID Corporate Governance and Company Law Project;
- Ms. Margica Miova, Legal Advisor, USAID Corporate Governance and Company Law Project;
- Mr. Kristijan Polekak, Attorney at Law, Polenak Law Office;
- Mr. Gorgi Ninevski, Director Assistant for Quality Management System, Toplifikacija;
- Ms. Valentina Videvska, Lawyer, Alkaloid;
- Ms. Irena Zivkovic, Director, Management and Informing Directory, Komercijalna Banka;
- Mr. Zoran Kolev, Director of Directorate for Trading with Securities, Komercijalna Banka.

The working group met on a regularly basis once a week and held ten meetings between October and December 2005. Mr. Riens Abma of the Dutch Ministry of Finance served as an advisor to the committee during earlier drafting sessions of the committee. The Macedonian version of the code was translated by Margica Miova.

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## COMPLIANCE WITH AND ENFORCEMENT OF THE CODE

**Principle 1: The management body (the management board or the board of directors) and the supervisory board are responsible for the corporate governance structure of the company and compliance with this Code.**

Best practice provisions:

- 1.1 The broad outline of the system of rules according to which the company is managed and controlled is explained in a separate chapter of the annual report, partly by reference to the principles and best practice provisions of this Code. In this chapter, the company indicates expressly to what extent it applies the best practice provisions in this Corporate Governance Code and, if it does not do so, why and to what extent it does not apply them;
- 1.2 The company's compliance with the Code is submitted to the general meeting of shareholders for discussion as a separate agenda item;
- 1.3 The company's annual report and its chapter on compliance with this Code will be sent to the Macedonian Stock Exchange at least 21 days prior to the annual meeting of shareholders. The Macedonian Stock Exchange posts the annual report of the company on its website. The company is also encouraged to post the annual report on its website.

## THE GENERAL MEETING OF SHAREHOLDERS, SHAREHOLDERS' RIGHTS AND EQUITABLE TREATMENT

### **Principle 2: All shareholders possessing the same type and class of shares are treated equally.<sup>1</sup>**

Best practice provisions:

- 2.1: The annual report contains information about the rights attached to all types and classes of shares of the company;
- 2.2: A copy of the charter, its amendments and by-laws will be sent to the Macedonian Stock Exchange that will post these documents on its website. The company is encouraged to make these documents also available on the website of the company.

### **Principle 3: Family members of the individuals who are authorized to represent the company and their representatives can not be appointed as proxies.<sup>2</sup>**

Best practice provisions:

- 3.1: No spouse or partner in a civil partnership, adopted child and his/her parent or relative by blood up to the fourth degree or relative by marriage up to the second degree or representative of a member of the board of directors or the management board and the supervisory board can be appointed as a proxy for the shareholder;

*(The working group has reservations about this best practice and will solicit comments through public debates)*

- 3.2: Companies are encouraged to disclose in the annual report the existence of any agreement with its shareholders that limit the transferability of shares and/or any other rights attached to the type and class of shares.

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<sup>1</sup> According to the company law (articles 277 and 321), shareholders possessing the same type and class of shares of a joint stock company have identical rights. Article 320 of the company law provides a right to each shareholder to inspect the by-laws, regulations and the documents of the company. In order to attract investment, similar rights should also be available to new investors.

<sup>2</sup> Article 321 of the company law states that each agreement entered into and/or any other legal activity undertaken by any shareholder limiting the rights and interests of other shareholders, shall be null and void, unless all shareholders provide their consent to such agreement or legal activity. In addition, article 399 of the company law states that an agreement obliging the shareholder to exercise his voting right according to the instructions of the management body and/or the supervisory board shall be null and void. An agreement obliging the shareholder to vote for each proposal of the management body and/or the supervisory board shall also be deemed null and void. The best practice provisions in the Macedonian Corporate Governance Code are based on the assumption that a company and its representatives follow the spirit of the company law by refraining from legal constructs that would restrict the rights of minority shareholders.



**Principle 4: Procedures for the general meeting of shareholders allow for equitable treatment of all shareholders. The company's procedures do not make it unduly difficult or expensive for shareholders to cast votes.<sup>3</sup>**

Best practice provisions:

- 4.1: The notice and agenda of shareholder meetings are published on the website of the company and in at least one of the three daily newspaper with the largest circulations;
- 4.2: The general meeting of shareholders is held in a place accessible to all shareholders;
- 4.3: The general meeting of shareholders' agenda items are clearly defined and precisely formulated, leaving no room for multiple interpretations;
- 4.4: Information related to the items of the shareholders meeting is available on the website of the company 21 days prior to the general meeting of shareholders and within a period of one year after the general meeting of shareholders. The information is available on the website of the Macedonian Stock Exchange as well;
- 4.5: The general meeting of shareholders is conducted in a way that shareholders are encouraged to participate and are provided sufficient time to ask members of the board of directors or the supervisory board and management board and the external certified auditor questions during the general meeting of shareholders;
- 4.6: A detailed procedure on the registration of attendance at the general meeting of shareholders is explained on the website of the company at least 21 days prior to the meeting. Companies recommend that its shareholders register at least one day prior to the date of the meeting.

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<sup>3</sup> According to article 384 of the company law, the annual meeting of shareholders shall be called by the management body, no later than three months after the preparation of the annual accounts, the financial statements and the annual report on the operations of the company for the preceding business year, and no later than six months after the end of the calendar year and 14 months as of the last annual meeting. In addition, article 387 of the company law states that:

- The general meeting of shareholders may be called by invitation and/or by publication of a public notice to the shareholders;
- The general meeting of shareholders shall be called by sending invitations to all shareholders having shares that confer the right of participation in the general meeting of shareholders that is called. The invitation shall be sent according to the shareholders list which shall be issued not more three days prior to the date of sending the invitation;
- The public notice shall be published in at least one daily newspaper;
- The sending of the invitation shall be carried out in a manner which enables the date of dispatch as well as the date of receipt by each shareholder to be confirmed;
- The period between the publication of the public notice or the date of sending the invitation for participation at the meeting, and the convening of the meeting shall not be more than 50 days nor less than 21 days prior to the date of holding the meeting.

Although the company law contains requirements as to the content of the notice and the procedure for calling a general meeting of shareholders, companies may provide even more information to shareholders under this law.

**Principle 5: Changes in the capital equity structure are made in a manner that ensures equitable treatment of shareholders, through the respect of pre-emptive rights in the case of new share issues.<sup>4</sup>**

Best practice provisions:

- 5.1: Any decision of the board of directors or the management board on a major change of the identity or character of the company is subject to the approval of the general meeting of shareholders. These decisions cover, inter-alia:
  - Withdrawal/ delisting of shares from the regulated market;
  - Stock option plans.

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<sup>4</sup> Article 437 of the company law authorizes the board of directors or the supervisory board to waive pre-emptive rights when this is provided by the charter of the company. The resolution for the waiver of pre-emptive rights can only be adopted by a majority of the non-executive members of the board of directors or a majority of the members of the supervisory board. These members are also obliged to submit a written report to the next annual meeting of shareholders, stating the reasons for the waiver of preemptive rights. Although the limitation of pre-emptive rights may be useful to attract foreign investors, the OECD principles clearly support the equitable treatment of shareholders when new shares are issued and that pre-emptive rights have to be respected and enforced.

## THE ROLE OF STAKEHOLDERS

**Principle 6: The company takes into consideration the interests of the company's stakeholders and has a code of conduct that regulates the company's relationship with its stakeholders.<sup>5</sup>**

Best practice provisions:

- 6.1: The company may have an established policy for its relationships with stakeholders. This policy is published on the website of the company;
- 6.2: The stakeholders, in particularly the employees, may freely communicate with the management body and/or supervisory board about their concerns related to illegal or unethical practices and their rights are not compromised for doing this;
- 6.3: The management body and the supervisory board are informed about legal developments regarding stakeholder rights in all relevant laws and regulations.

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<sup>5</sup> The stakeholders of the company are groups and individuals who directly or indirectly are influenced by the company. Following the OECD principles, the Macedonian Corporate Governance Code contains best practice provisions that regulate the companies' policies and regulations towards stakeholders. The Macedonian Corporate Governance Council developed a Code of Conduct for Macedonian businesses in 2005. The Code of Conduct provides guidance to companies on the relationship with its stakeholders, including employees, governmental agencies, suppliers and customers. It is available on the websites of the Macedonian Stock Exchange: [www.mse.org.mk](http://www.mse.org.mk) and the USAID Macedonia Corporate Governance and Company Law Project: [www.maccorpgov.com.mk](http://www.maccorpgov.com.mk). In addition, the UNDP Global Compact and other internationally agreed instruments are available on a company's relationship with its stakeholders.

## TRANSPARENCY AND DISCLOSURE

**Principle 7: The company ensures the timely and accurate disclosure of all material matters regarding the corporation, including its financial situation, performance, ownership and corporate governance.<sup>6</sup>**

Best practice provisions:

- 7.1: The identity and the number shares of each class and type of a shareholder possessing at least 5 percent of the company's charter capital are disclosed in the annual report;
- 7.2: The company discloses immediately any material information, i.e. information on any new developments related to its activity that may have a significant impact on the pricing of its shares or otherwise may be material to an investor decision. This information is sent immediately to the Macedonian Stock Exchange and is published immediately on the websites of the Macedonian Stock Exchange and the company;
- 7.3: The company ensures the timely and accurate disclosure of all material information related to: a) overall company objectives and objectives for the upcoming period; b) information on certified auditors; c) material risk factors; d) related party transactions; e) major transactions; and f) changes in the charter capital and in the results of the company within the reporting period. This information is available in the annual report and is available on an ongoing basis on the websites of the Macedonian Stock Exchange and the company;
- 7.4: The annual report states the gender, the age, the profession, data on fees and salaries and other rights arising from employment agreements, citizenship, date of initial appointment and his/her current term of individual members of the management body or the supervisory board and data on his/her membership in other managerial bodies or supervisory bodies of other legal entities which are relevant to the performance of the individual members of the management body or the supervisory board. In addition, the annual report indicates the remuneration paid to current individual board members.<sup>7</sup>

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<sup>6</sup> The OECD White Paper on Corporate Governance in Southeastern Europe highlights the importance of transparency and disclosure as a "central pillar of effective corporate governance practices and the functioning of capital markets. Without access to regular, timely, reliable and comparable information, investors will not be able to evaluate corporate prospects and make informed investment and voting decisions. This will result in a higher cost of capital and a poorer allocation of resources. Disclosure and transparency is also a building block of a market-based monitoring of companies. It allows shareholders and the public at large to assess management performance, thus influencing its behavior. Moreover, efficient information systems provide managers with quantitative tools allowing them to manage more effectively. Finally, transparency and disclosure gives the public the opportunity to understand the company's structure, activities and policies as well as assessing its performance with regard to environmental and ethical standards" (OECD White Paper on Corporate Governance in Southeastern Europe, 2003: 28).

<sup>7</sup> The company law contains similar disclosure requirements. The candidates of the board of directors or the supervisory board, for example, are required by article 344, clauses 3-4 of the company law to disclose in writing to shareholders the following information: age, gender, education and other professional qualifications, working experience, in which companies he is and/or has been a member of the management body or the supervisory board, and other important positions held by him, the number of shares he owns in the company and in other companies, as well as loans and other

*(The working group has reservations about this best practice and will solicit comments through public debates)*

- 7.5: The company develops specific procedures ensuring a regular, timely and equitable dissemination of information to all shareholders and the public at large;
- 7.6: The management body actively supervises the process of collecting, compiling and verifying operational data in order to prepare the financial statements;
- 7.7: The management body or any other person authorized by the management body verifies all publicly disclosed information.

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liabilities towards the company. This information shall be provided to the shareholders no later than seven days prior to the election of board members at the general meeting and shall be made available to all shareholders.

According to Article 384, clause 7 of the company law, the annual report of the company shall disclose the earnings of each executive member of the board of directors and member of the management board (salary, allowances, bonuses, insurance and other rights) and the remuneration of the non-executive members of the board of directors and members of the supervisory board.

## THE BOARD OF DIRECTORS (NON-EXECUTIVE DIRECTORS) OR THE SUPERVISORY BOARD (SUPERVISORY DIRECTORS)

**Principle 8: The board of directors or the supervisory board is responsible for the strategic guidance of the company, the effective monitoring of management, and the board's accountability to the company and the shareholders.<sup>8</sup>**

Best practice provisions:

- 8.1: The division of duties within the management body or the supervisory board and the procedure of the management body or the supervisory board are described in the charter and other acts of the company. The board of directors or the supervisory board includes in the regulations a paragraph dealing with its relations with the management board or executive directors, the external certified auditor and the general meeting of shareholders. The charter and other acts are available on the website of the company;
- 8.2: The management body or the supervisory board acts on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the company;
- 8.3: The management body or the supervisory board treats all shareholders equally when decisions affect shareholder groups differently;
- 8.4: The management body or the supervisory board applies high ethical standards and takes into account the interests of stakeholders;
- 8.5: The management body or the supervisory board reviews corporate strategies, major plans of action, risk policies, annual budgets and business plans; sets performance objectives; monitors the implementation of business plans and corporate performance; and oversees and/or approves major capital expenditures, acquisitions and divestitures in accordance with the law;
- 8.6: The management body or the supervisory board selects, compensates, monitors and, when necessary, replaces key managers and oversees succession planning;

*(The working group has reservations about this best practice and will solicit comments through public debates)*

- 8.7: The management body or the supervisory board monitors and decides whether board members and shareholders have a conflict of interest, including misuse of corporate assets and abuse of major transactions and related party transactions;
- 8.8: The management body or the supervisory board ensures the integrity of the corporation's accounting and financial reporting systems, including that appropriate

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<sup>8</sup> The company provides companies a choice between a governance system with a board of directors (one-tier board) and a system with a supervisory board and a management board (two-tier board).

systems of control are in place, and in particular, that systems for risk management, financial and operational control are in compliance with the law and relevant standards;

- 8.9: The management body or the supervisory board ensures the integrity of the election process of the independent auditor as well as the integrity of the independent auditor's reporting process;
- 8.10: The management body or the supervisory board meets at least four times a year, at least once in three months. In order to provide access of shareholders to the manner of operation of the management body or supervisory board, the annual report reports on the attendance or non-attendance of members;<sup>9</sup>
- 8.11: At least once a year, the management body or the supervisory board meets without the executive board members or the management board to discuss its own performance, its relationship with the management board and the composition and performance of the management board, including issues regarding succession and remuneration;
- 8.12: The supervision of the executive directors by the management body or the management board by the supervisory board includes: (i) achievement of the company's objectives; (ii) the strategy and the risks inherent in the business activities; (iii) the structure and operation of the internal risk management and control systems; (iv) the financial reporting process; (v) compliance with laws and regulations;
- 8.13: The management body or the supervisory board reviews at least once a year the strategy and the risks of the business and discusses the assessment by the executive directors or the management board of the structure and operation of the internal risk management and control systems, as well as any significant changes thereto. A reference to these discussions is included in the report of the management body or the supervisory board, which is part of the annual report;
- 8.14: The management body, the supervisory board and its individual members are responsible for obtaining all information from the executive directors or the management board and the external certified auditor while performing their functions;
- 8.15: If the management body, the supervisory board and its individual members considers it necessary, information may be obtained from key officers and external advisers of the company. The company provides the necessary means for this purpose. The management body or the supervisory board may require that certain key officers and external advisers attend its meetings;
- 8.16: The annual report of the company includes a report of the management body or the supervisory board in which it describes its activities in the financial year and which includes the specific statements and information required by the provisions of this Code.

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<sup>9</sup> According to article 381 of the company law, the supervisory board shall be obliged to convene at least four regular meetings during the year, one every three months, provided that one of the meetings is convened within one month prior to convening the general meeting of shareholders. There is no similar provision in the company law for the board of directors.

**Principle 9: The management body or the supervisory board is composed in such a way that it provides independent, autonomous, and free expression of attitudes and opinions of the members.**

Best practice provisions:

- 9.1: The management body or the supervisory board defines and proposes a profile of its members and the size and composition of the management body or the supervisory board, taking into account the nature of the business, its activities and the desired expertise and background of members of the management body or the supervisory board. The required profile of the members is generally available and is posted on the website of the company. The management body or the supervisory board evaluate this profile periodically and draw conclusions regarding its own composition, size and duties;
- 9.2: At least one of the non-executive member of the management body or one member of the supervisory board is a financial expert. The annual report discloses the name of this member of the management body or the supervisory board;
- 9.3: To prevent two or more members of the management body or the supervisory leaving the body or the board at the same time, the management body or the supervisory board draws up a plan for the election and replacement of its members based on a principle of prior arranged rotation. The rotation plan and regulations on the election and replacement of members of the management body and the supervisory board are available in the annual report;
- 9.4: The management body or the supervisory board ensures that a formal and transparent board nomination and election process is in place.



## THE CHAIRMAN OF THE BOARD OF DIRECTORS OR THE SUPERVISORY BOARD

**Principle 10: The board of directors or the supervisory board has a chairman who ensures that the board of directors or the supervisory board functions properly.<sup>10</sup>**

Best practice provisions:

- 10.1: The Chairman of the board of directors or the supervisory board:
  - Determines the agenda, schedules meetings, chairs the board meetings<sup>11</sup> and monitors the functioning of the board and its committees;
  - Ensures that the materials for the meetings is available to the members of the board of directors or the supervisory board and provides comprehensive and timely information and ensures that there is sufficient time for the members of the board of directors or supervisory board to make decisions;
  - Represents the board of directors or the supervisory board;
  - Initiates the evaluation of the functioning of the board of directors or supervisory board and management board;
- 10.2: The chairman of the board of directors or the supervisory board assesses the need for an induction and training program for the members of the board of directors or the supervisory board;
- 10.3: The chairman of the supervisory board is not a former member of the management board of the company for at least two years after termination of his/her mandate in the management board;
- 10.4: The chairman of the board of directors is not and has not been an executive member of the board of directors of the company;

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<sup>10</sup> Articles 369 and 379 of the company law require joint stock companies to have a chairman of the supervisory board or the board of directors. The chairman shall be elected from board members and may be dismissed by the board at any time. By law, the chairman chairs board meetings and is responsible for the organization of the board. Article 395 of the company law states that the chairman of the general meeting of shareholders may not be a member of the management body and/or supervisory board.

<sup>11</sup> Article 360 of the company law states that minutes of meetings shall be prepared for each meeting of the board of directors or the supervisory board and its committees, regardless of how the meeting was convened. The minutes shall be signed by all members of the board of directors or the supervisory board attending the meeting and shall be signed by the chairman of the board of directors or the supervisory board, or in his absence, by a member who was authorized by the chairman to preside the meeting.

Article 372 of the company law states that the chairman of the board of directors, and/or any non-executive member, the certified auditor and/or another person stipulated by the charter, and/or the shareholders representing at least one-tenth of the voting shares, may request a meeting of the board of directors. The request shall be submitted to the president of the board of directors. Article 381 of the company law states that any member of the supervisory board and/or management board may request in writing that the chairman of the supervisory board call a meeting of the supervisory board.

- 10.5: The chairman of the supervisory board is assisted in his/her role by an internal legal counsel;
- 10.6: The duties and responsibilities of the chairman and the vice-chairman are defined by the internal regulations for the board of directors or the supervisory board and are available on the website of the company.

## THE INTERNAL LEGAL COUNSEL (COMPANY SECRETARY)<sup>12</sup>

**Principle 11: The board of directors or the supervisory board is assisted by an internal legal counsel.**

Best practice provisions:

- 11.1: The internal legal counsel, as an official with special authorities and responsibilities, ensures that legal procedures are correctly followed by the management body and supervisory board and that the management body or the supervisory board act in accordance with its statutory obligations and its obligations of the charter and internal regulations of the company;
- 11.2: The internal legal counsel assists the chairman of the management body or the supervisory board in the organization of the board of directors or supervisory board meetings (information, agenda, evaluation, training program, etc.);
- 11.3: The Chief Executive Officer upon consent from the board of directors appoints and dismisses the internal legal counsel;

The management board upon consent from the supervisory board appoints and dismisses the internal legal counsel;

If the company is a bank, the top two managers upon consent from the management board appoint and dismiss the internal legal counsel;

- 11.4: The duties and responsibilities of the internal legal counsel are defined by the internal regulations for the management body or the supervisory board and are available on the website of the company;
- 11.5: If the company does not have an investor relations department, the internal legal counsel acts as the contact person for investor relations of the company.

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<sup>12</sup> If the company is a bank, the terminology used in the Law on Banks shall apply to these best practices.

## COMMITTEES OF THE BOARD OF DIRECTORS OR THE SUPERVISORY BOARD

**Principle 12: The board of directors or the supervisory board considers whether to appoint a selection and nomination committee, an audit committee and a remuneration committee.<sup>13</sup> If the board of directors or the supervisory board decides not to appoint these committees, best practice provisions 12.4, 12.5, 12.8, 12.9, 12.10 and 12.12 apply to the entire board of directors or the supervisory board.**

*(The working group has reservations about this best principle and will solicit comments through public debates)*

Best practice provisions:

- 12.1: The members of the committees appointed by the board of directors or the supervisory board can not be executive members of the board of directors or management board members. Within the committees, at least one of the members is an independent member of the board of directors or supervisory board;
- 12.2: The board of directors or the supervisory board reports in the annual report on the existence of committees, their composition and activities, their number of meetings, the main items discussed in the committees and the remuneration of committee members;
- 12.3: The board of directors or the supervisory board adopts a set of operational rules for each committee. The operational rules indicate the tasks and functions of the committee concerned, its composition and the manner in which it discharges its tasks and functions. The operational rules of the committees are available on the website of the company;

*The Audit Committee*

- 12.4: The audit committee supervises the activities of the executive directors or the management board with respect to:
  - The operation of the internal risk management and control systems, including supervision of the enforcement of the relevant legislation and regulations, and supervising the implementation of codes of conduct;
  - The provision of financial information by the company (choice of accounting policies, application and assessment of the effects of new rules, information about the handling of estimated items in the annual accounts, forecasts, work of internal and external certified auditors, etc.);

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<sup>13</sup> Article 359 of the company law provides the board of directors and the supervisory board the authority to establish one or more committees from among its members and other persons. The committees shall not decide on issues falling under the competence of the board of directors. The composition, terms, scope and the manner of operations of committees shall be regulated in detail by the charter and the by-laws of the company that have been adopted in accordance with the charter. All activities of the committees shall be subject to approval by the board of directors or the supervisory board.

- Compliance with recommendations and observations of internal and external certified auditors;
  - The role and functioning of the internal audit department;
  - The policy of the company on tax planning;
  - Relations with the external certified auditor, including, in particular, his/her independence, remuneration and any non-audit services for the company;
  - The financing of the company;
  - The usage of information and communication technology (ICT).
- 12.5: The audit committee cooperates with the external certified auditor especially if he/she discovers irregularities in the content of the financial reports;
  - 12.6: The audit committee is not chaired by the chairman of the board of directors or the supervisory board or by a former executive director or former member of the management board of the company, at least two years after termination of his/her function;
  - 12.7 At least one member of the audit committee is a financial expert. The annual report discloses the name of this member of the committee;
  - 12.8: The audit committee decides when the chairman of the management board or chief executive officer, the chief financial officer, the external certified auditor and the internal certified auditor should attend its meetings;
  - 12.9: The audit committee meets with the external certified auditor if necessary, but at least once a year, without executive directors or management board members being present.

#### *The Remuneration Committee*

- 12.10: The remuneration committee:
  - Drafts a remuneration and incentive policy which refers to the members of the management body, supervisory board and company's management;
  - Drafts a proposal for the remuneration and incentives for executive directors or the individual members of the management board, for adoption by the board of directors or the supervisory board; such proposal, in any event, includes: (i) the remuneration structure and (ii) the amount of the fixed remuneration, the shares and/or options to be granted and/or other variable remuneration components, pension rights, severance pay and other forms of compensation to be awarded, as well as the performance criteria and their application;
  - Prepares a remuneration and incentives report which is part of the annual report;

- 12.11: The remuneration committee is not chaired by the chairman of the board of directors or the supervisory board or by a former executive director or former member of the management board of the company at least two years after termination of his/her function.

*The Selection and Appointment Committee*

- 12.12: The selection and appointment committee:
  - Draws up selection criteria for members of the board of directors or the supervisory board and management board and determines the selection procedures for executive members of the board of directors and the management board;
  - Periodically assesses the size, composition, structure and profile of the board of directors or the supervisory board and the management board, and makes a proposal for the size, composition, structure and profile of the board(s);
  - Periodically assesses the functioning of members of the board of directors or the supervisory board and the management board and reports on this to the board of directors or the supervisory board;
  - Makes proposals for appointments and reappointments;
  - Supervises the policy of the board of directors or the management board on the selection criteria and appointment procedures for senior management.

## THE BOARD OF DIRECTORS (EXECUTIVE DIRECTORS) AND THE MANAGEMENT BOARD (MANAGERS)<sup>14</sup>

Best practice provisions:

**Principle 13: The executive members of the board of directors or members of the management board are responsible for achieving the company's aims, strategy, and results.**

- 13.1: The executive members of the board of directors and members of the management board are accountable to the board of directors or the supervisory board and ultimately accountable to the general meeting of shareholders;
- 13.2: In executing their functions, executive members of the board of directors and members of the management board are guided by the interests of the company and its shareholders, taking into consideration the interests of the company's stakeholders;
- 13.3: The executive members of the board of directors and members of the management board provide the supervisory board or the board of directors all information necessary for the board of directors or the supervisory board to fulfill their rights and duties.

**Principle 14: The executive members of the board of directors or members of the management board are responsible for complying with all laws and regulations, for managing the risks associated with the company activities and for financing the company.**

Best practice provisions:

- 14.1: The company has an internal risk management and control system that is suitable to the company. The company will, in any event, employ as instruments of the internal risk management and control system: a) risk analyses of the operational and financial objectives of the company; b) guides for the layout of the annual and other financial reports and the procedures to be followed in drawing up the reports; and c) a system of monitoring and reporting;
- 14.2: The executive members of the board of directors or members of the management board report in writing to the board of directors or the supervisory board on the company's objectives, strategy and the associated risks and the mechanisms needed to control risks of a financial nature. The main points of these reports related to financial indicators should be given a permanent place in the annual report;
- 14.3: The executive members of the board of directors or members of the management board report in the annual report on the operation of the internal risk management and control system during the year under review. In doing so, they describe any significant changes that have been made in the internal risk management and control system and any major

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<sup>14</sup> If the company is a bank, the terminology used in the Law on Banks shall apply to these best practices.

improvements that are planned, and confirm that they have been discussed with the board of directors or the supervisory board and the audit committee if any;

- 14.4: The executive members of the board of directors or members of the management board declare in the annual report whether the internal risk management and control systems are adequate, effective and provides clear substantiation for this.



## CONFLICTS OF INTEREST

**Principle 15: Any conflict of interest or potential conflicts of interest between the company and members of the management body or supervisory board are avoided.**

Best practice provisions:

- 15.1: The rules of operation of the management body or supervisory board contain rules on dealing with conflicts of interest and potential conflicts of interest between the company and management board members, supervisory board members, shareholders and the external certified auditor. The rules of operation also stipulate which transactions require the approval of the management body, supervisory board, or the general meeting of shareholders;
- 15.2: A member of the management body or supervisory body reports a conflict of interest or potential conflict of interest that is of interest to the company and/or to him/her immediately to the chairman of the board of directors or the supervisory board;
- 15.3: A member of the board of directors, the management board or supervisory board does: (a) not enter into competition with the company; (b) not demand or accept (substantial) gifts from the company for himself/herself or his/her spouse, member of the illegitimate marriage, adopted child, adoptive parent or relative by blood up to the fourth degree or relative by marriage up to the second degree; (c) not provide unjustified advantages to third parties to the detriment of the company; (d) not take advantage of business opportunities to which the company is entitled for himself/herself or his/her spouse, member of the illegitimate marriage, adopted child, adoptive parent or relative by blood up to the fourth degree or relative by marriage up to the second degree;
- 15.4: A member of the management body or the supervisory board derives no form of personal gain from the company's activities other than through their remuneration as a member of the management body or the supervisory board and incomes resulting from shareholdings. To prevent every potential misuse, members of the board of directors or the supervisory board accept limitations on their freedom of action in regard to use of their shares in the company, and limitations on the acceptance of additional posts contrary to the interest of the company;
- 15.5: A member of the management body or the supervisory board resigns in the event of failure in achieving results during performance, continuous conflict of interests and in other instances in which this is deemed necessary by the management body or the supervisory board;
- 15.6: Major transactions and interested party transactions are disclosed in the annual report of the company.<sup>15</sup>

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<sup>15</sup> Article 457 of the company law defines a related party transaction as any transaction (including but not limited to a loan, credit, pledge and/or guarantee) in which a member of the management body and/or supervisory board or the manager is an interested party, including the officers and/or a shareholder who together with related parties own 20% or

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more of the company's voting shares, and/or a person who has the authorization to provide mandatory instructions to the company. Article 459 of the company law provides for the requirement that interested parties notify the Board of Directors and the Supervisory Board of any related party transaction.

Article 460 of the company law states that any interested party transaction shall be subject to prior approval by the board of directors or supervisory board and/or the general meeting of shareholders. The resolution to approve an interested party transaction shall be reached by a majority of votes of the members of the board of directors or the supervisory board who do not have an interest in the transaction. If all members of the board of directors, or the supervisory board are interested parties, and/or if the number of disinterested members of the board of directors or the supervisory board is less than the quorum requirement for a meeting of the board of directors or the supervisory board pursuant to the charter, a related party transaction can only be approved by the general meeting of shareholders.

Article 455 of the company law defines a major transaction as any transaction (including, but not limited to a loan, credit, pledge and/or guarantee) and/or interrelated transactions if such transaction or transactions involve direct and/or indirect acquisition, disposal and/or potential disposal of the company's assets with a value of more than 20% of the book value of the company's assets. Transaction concluded in the ordinary course of business of the company, transactions related to the subscription of common shares of the company and transactions related to the acquisition of convertible bonds are excluded from requirements related to the approval of major transactions. Article 456 of the company law states that a major transaction shall be approved by the board of directors, the supervisory board and/or the general meeting of shareholders. The resolution to approve a major transaction with a value of more than 20% and up to 50% of the book value of the company's assets shall be adopted with the consent of all members of the board of directors or supervisory board. In the event that the board cannot decide on the matter, the board of directors or the supervisory board may decide to submit the major transaction for approval to the general meeting of shareholders. A major transaction involving assets the value of more than 50% of the book value of the company's assets can only be adopted by a two-thirds majority vote at the general meeting of shareholders.