

The International Comparative Legal Guide to:
Corporate Governance 2009

A practical insight to cross-border corporate governance



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Romania

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1 Setting the Scene - Sources and Overview

1.1 What are the main corporate entities to be discussed?

The main entities to be discussed herein are joint-stock companies and limited liability companies.

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

The main legislative source is Law No. 31/1990 on companies ("Law No. 31/1990"), subsequently amended and supplemented. This law contains general provisions regarding the establishment, organisation, functioning and dissolution of Romanian companies. The provisions of Law No. 31/1990 are completed by the provisions of the Romanian Civil Code and by the provisions of the Romanian Commercial Code.

Some of the provisions of Law No. 31/1990 regarding joint stock companies and limited liability companies are mandatory, while others have only recommendation value. In the latter case shareholders are entitled to set different rules under the company by-laws.

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

Law No. 31/1990 entered into force on November 17, 1990 and was subsequently amended in order to harmonise it with European legislation.

Generally, companies' governance is performed by specific bodies such as the sole administrator/board of administrators, the executive directors or the directorate (*in case of joint stock companies*) or sole administrator board of administrators (*in case of limited liability companies*).

2 Shareholders

2.1 What rights and powers do shareholders have in the operation and management of the corporate entity/entities?

With regard to *both joint-stock companies and limited liability companies*, shareholders have the followings rights:

- to appoint the members of the management bodies;
- to convene a company shareholders general assembly under company by-laws and Law No. 31/1990 provisions;

- to approve the balance sheet and the profit and loss account of the company and to give to administrators release of their administration or to file a claim against them, in case of fraud;
- to vote and to make decisions with companies shareholders general assemblies;
- to approve the remuneration of the members of the board of administrators and of the supervisory board (*in case of joint stock companies*) and of the administrators (*in case of limited liability companies*); and
- to be informed by company management on company activities.

2.2 Can shareholders be liable for acts or omissions of the corporate entity/entities?

Under the provisions of the Romanian law, joint stock companies and limited liability companies have its own legal capacity, distinct of that of its shareholders. Consequently, shareholders cannot be held liable for acts or omissions of such corporate entities. However, shareholders are liable towards creditors of the company within the limits of their participation to the company share capital.

2.3 Can shareholders be disenfranchised?

In case of joint stock companies, shareholders voting rights are suspended in the following situations:

- if such shareholders didn't comply with their obligation to contribute to the registered capital of the company;
- if the voting rights are corresponding to shares owned by the company itself;
- if the voting rights pertain to a shareholder that has also the capacity of member of the management bodies of the company, in case of decisions regarding its release of liability; and/or
- if such shareholders have, in a matter, a different interest than the company interest.

In case of limited liability companies, one shareholder could not exercise his right to vote in the proceedings of the shareholders general meeting, regarding his contribution in kind or the legal documents concluded between him and the company.

2.4 Can shareholders seek enforcement action against members of the management body?

In case of joint stock companies and limited liability companies, the members of management body are liable towards the company for

fulfilment of their office duties as provided under Law No. 31/1990 or under the by-laws of the company.

Shareholders representing at least 5% of the company share capital may convene a shareholders general meeting seeking liability of company management body for non-fulfilment of their office duties.

Limited liability companies' shareholders representing a quarter of company share capital may convene a shareholders general meeting seeking liability of members of company management for non-fulfilment of its office duties. The Law No. 31/1990 does not stipulate for a specific way of enforcement against members of the management bodies, in case of non-fulfilment of their obligations. However, the company, through the shareholders general meeting, can file a claim against such members of management body according to the provisions of the Romanian Civil Code.

2.5 Are there any limitations on, and disclosures required, in relation to interests in securities by shareholders?

As a rule, the Romanian legislation does not provide for limitations with regard to the possibility of a person becoming a shareholder. However, some exceptions apply:

- Law no. 31/1990 prohibits the acquisition by a joint stock company of all of its shares;
- according to Law no. 31/1990, a limited liability company cannot have as sole shareholder another limited liability company with a sole shareholder; and
- according to the same law, a person having the shareholder capacity with a limited liability company can transfer its shares to a person who hasn't the shareholder capacity with the same company only with the prior approval of three quarters of the registered capital of such company.

2.6 What shareholder meetings are commonly held and what rights do shareholders have as regards them?

- In case of joint stock companies there are two main types of shareholder meetings: (A) ordinary general meetings and (B) extraordinary general meetings. In certain cases, special meetings may be convened by shareholders owners of preferred shares with dividend related priority.
- (A) Ordinary general meetings are held at least once a year. Besides the debate of other issues on the agenda, the ordinary general assembly must: (i) approve or amend the yearly financial statements of the company, after listening to the report of company management or company auditors; (ii) determine the dividends to be paid to shareholders; (iii) appoint the members of company management; (iv) approve the remuneration for the members of company management or company auditors; (v) assess the activity of the company management; (vi) determine the income and expenditure budget of the company; (vii) decide upon the mortgaging, renting or dissolving of one or several of company units; and (viii) discuss and adopt any others issues listed with company agenda.
- At first call, the ordinary general meeting makes valid decisions with the presence of shareholders representing at least one quarter of the total number of voting rights. Valid decisions are made with the majority of the expressed votes, in case the by-laws of the company do not stipulate a larger majority.
- (B) Extraordinary general meetings are held whenever is necessary to make a decision on any of the following aspects: (i) changing the legal form of the company; (ii) changing the location of the headquarters of the company; (iii) changing

the object of activity of the company; (iv) establishment or dissolution of secondary offices; (v) extending the company's duration; (vi) increase or decrease of the share capital of the company; (vii) merger and split of the company; (viii) early dissolution of the company; (ix) conversion of the shares of the company from one category into another; (x) conversion of one category of bonds into another or into shares; and/or (xi) bonds issuance.

To ensure the validity of the proceedings of the general extraordinary meeting, in case the by-laws of the company do not stipulate otherwise, the following are required: (i) at first call, the attendance of shareholders representing at least one quarter of the voting rights; decisions shall be made with the majority of the votes owned by the shareholders attending or being represented at the meeting; and (ii) at subsequent call, the attendance of shareholders representing at least one fifth of the voting rights; decisions shall be made with the majority of the votes owned by the shareholders attending or being represented at the meeting.

The company management must convene the general meeting or include new items on the meeting agenda upon the request of the shareholders representing 5% of the registered capital, unless company by-laws stipulates a lower threshold. If the company management does not comply with such demand, the shareholders may request the court to authorise such call. The shareholders representing 100% of the registered share capital of a joint stock company could hold a meeting and put a resolution absent any further formalities.

- *In case of limited liability companies*, Law No. 31/1990 provides for decisions to be made by shareholders general meeting.

For the amendment of the by-laws of a limited liability company, at first call, the unanimous vote of the shareholders is required, unless the law or the by-laws provide otherwise. At second call, the shareholders general meeting can validly decide irrespective of the number of shareholders and of the share capital quota represented with the meeting. Unless amended by company by-laws, the vote of both majority shareholders and majority shares is required for making a valid decision.

In case of limited liability companies, shareholders representing at least one quarter of the share capital of the company are entitled to demand to the administrators of the company to call the shareholders general meeting.

3 Management Body and Management

3.1 Who manages the corporate entity/entities and how?

Upon shareholders decision, *joint stock companies* may be managed based on alternative systems:

- A. the "unitary system" comprised of one or several administrators; or
 - B. the "dualist system including two bodies: (i) the directorate and (ii) the supervisory board.
- A. Under the unitary system, the management of the joint stock company is performed by one or several administrators. In case several administrators are appointed, they form a board of administrators and elect a chairman.

The board of administrators may delegate part of its powers to executive directors. The directors may be also appointed among the members of the board of administrators. In such case the majority of the members of the board of administrators must be non-executive administrators.

The board of administrators may establish advisory

committees formed by at least two members of the board in fields of interest for company business such as company audit, establishing administrators' remuneration, or submitting candidates for the management positions.

- B. The dualist system involves the existence of two corporate bodies: a directorate and a supervisory board.

The directorate consists of an even number of members appointed and revoked by supervisory board. The supervisory board includes three to 11 members elected by the company shareholders general meeting. Romanian legislation prohibits a member of the directorate to be also a member of the supervisory board. The directorate is the actual management body of the company. Its activity is overseen by the supervisory board. The supervisory board can form advisory committees authorised to instruct the directorate in various fields.

Limited liability companies are managed by one or several administrators. In case several administrators are appointed, they convene a board of administrators.

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

In case of joint stock companies, under the unitary system, the administrators are appointed and revoked by the shareholders general meeting. In case of newly set up companies administrators are directly appointed by shareholders under company by-laws. Administrators elect executive directors and establish their powers.

Under the dualist system, the members of the supervisory board are appointed and revoked by shareholders general meeting, while the members of the directorate body are appointed and revoked by the supervisory board. In case of newly set up companies the members of the supervisory board are appointed under such companies' by-laws.

In case of limited liability companies, administrators are appointed and revoked by the shareholders general meeting.

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

For the sake of understanding, under Law No. 31/1990 administrators are the actual managers of *either joint stock companies* (under the unitary system) or *limited liability companies*, while directors act as executives of either a *joint stock company* or *limited liability company*. *Joint stock companies* (dualist system) are managed by members of directorate body, which is overseen by a supervisory board.

In case of joint stock companies and limited liability companies, the remuneration framework of the members of company management bodies is decided under the shareholders general meeting or under the by-laws of the company.

In joint stock companies administrators and executive directors (unitary system) or members of the directorate (dualist system) shall be compensated based on a mandate contract as during their office they cannot act as employees.

With regard to the limited liability companies, the law does not provide for any limitation with regard the possibility of an administrator or director to be compensated based on a labour agreement.

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?

Romanian law allows that members of management bodies of either *joint stock companies* or *limited liability companies* have at the same time the capacity of shareholder of such companies.

In case of joint stock companies, such members of the management must refrain from voting their release of liability, when acting as shareholders with company shareholders general meeting.

In case a member of company management has, with regard to a specific operation, a different interest than the interests of the company, he must inform the other members of management and the auditors of the company and refrain from any decision made regarding such operation.

In case of limited liability companies, administrators cannot receive an administrator mandate in competing companies absent the authorisation of the shareholders general meeting, nor may they carry out same trading activity or another competitive activity on their own account or on the account of another person.

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

In case of joint stock companies managed under the unitary system, the meetings of the board of administrators are held at least once every three months. The meeting is convened by the chairman of the board, or by two of the members of the board or by the general executive director of the company. When invited, the executive directors and the auditors of the company must attend the meeting, as observers without voting rights. A minute shall be drafted and executed by meeting participants, evidencing the decisions made by management.

Under the dualist system, the supervisory board chairman, two of its members or the directorate, may validly convene the meeting of the supervisory board of the company. The supervisory board is convened at least once every three months. Meetings shall take place in 15 days as of the call date. A minute shall picture the results of the meeting. The members of the directorate may be also convened to the meetings of the supervisory board, without voting rights.

The decisions of the board of administrators/directorate/supervisory board are valid only if such were adopted in the presence of at least half of its members, unless the by-laws of the company provides otherwise. As a rule, the decisions with the board of administrators/directorate/supervisory board are made with the vote of half of the members which are participating to the meeting, except for the decision regarding the appointment or the removal of the chairman of such bodies which are made with the vote of the majority of the members of such bodies.

In case of limited liability companies, the board of administrators meetings are held in accordance with the rules stipulated with the by-laws of the company.

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

The principal general legal duties of the members of the management bodies are: to refrain from receiving an administrator mandate in other companies which are competitors or have the same object without the authorisation of the shareholders general meeting; to inform the shareholders general meeting about the relevant cases which may represent an impediment for complying

with its responsibilities; and to refrain from disclosing information regarding the company to third parties.

3.7 What are the main specific corporate governance responsibilities/functions of members of the management body?

In case of joint stock companies and limited liability companies the main responsibilities of the management (administrators of unitary system and limited liability companies' members of the directorate under dualist system) are:

- setting development and activity directions of the company;
- setting the accountancy directions and the accounting and financial system of the company;
- appointment and dismissing the executive directors of the company;
- surveying the activity of the executive directors of the company;
- calling and organising of the shareholders general meetings of the company; and
- implementing the resolutions made by shareholders meetings.

The executive directors of the company are responsible for implementing the decisions made by company management.

3.8 What public disclosures concerning management body practices are required?

In case of both joint stock companies and limited liability companies each year, the shareholders' ordinary general meetings shall assess the annual financial statements of the company, including the accounting balance sheet, the profit and loss account and the report of the administrators. By approving the accounting balance sheet and the profit and loss account, the shareholders general meeting confirms the company performances.

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

In case of joint stock companies and limited liability companies, indemnities are permitted in relation to the members of the management bodies. The amount of the remuneration of the administrators and of the members of the supervisory board (*in case of joint stock companies*) and of the administrators (*in case of limited liability companies*) is settled under shareholders general meetings. Remuneration of executive directors of *joint stock companies* or *limited liability companies* is set by management boards.

4 Corporate Social Responsibility

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

Currently there is no law or regulation concerning corporate social responsibility. However, there are Romanian corporate entities involved in programmes supporting various matters such as education; environment protection; disabled, displaced or aged persons; community work; or entrepreneurial development.

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

According to Law No. 67/2006 on the protection of the rights of employees, in case of transfer of the company, the managers of the companies totalling more than 20 employees shall inform company employees representative on evolution of economic status of the company, when dismissals are intended to be performed.

5 Transparency

5.1 Who is responsible for disclosure and transparency?

As a rule, management bodies of joint stock companies and limited liability companies should ensure disclosure and transparency towards shareholders.

5.2 What corporate governance related disclosures are required?

Following the shareholder general meeting, the management shall register the resolutions adopted with the shareholders general meeting and corresponding amended by-laws with the competent register of commerce in order to ensure its enforceability towards third parties. The annual financial statements of the company must also be registers with the register of commerce for enforceability purposes.

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

The activity of joint stock companies must be audited by at least three auditors and a deputy auditor. In all cases the number of the auditors must be even. Auditors are appointed by the shareholder general meeting for a mandate of three years. The auditors can be re-elected for an undetermined number of times. The auditors may be at the same time shareholders of the company.

The auditors must supervise the accounting books of the company, to verify if the financial statements of the company are legal and valid, if the accounting registers are kept in accordance with the legal provisions and if the evaluation of the patrimony of the company was correctly performed.

It is prohibited for auditors to disclose to shareholders or third parties any information regarding the company's operations.

With regard to limited liability companies, the appointment of auditors is mandatory only if such companies have more than 15 shareholders. In such case, auditors attribution are similar with those of the auditors of joint stock companies.

5.4 What corporate governance information should be published on websites?

The company's website shall publish the following information: company name, legal form, headquarters address, register of commerce registration number, sole identification code, and registered and paid share capital. For joint stock companies, annual financial statements, annual board reports, distribution of dividends proposals, and general meeting calls must also be posted on the company website.

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