GETTING THE DEAL THROUGH

Corporate Governance

Board structures and directors' duties in 34 jurisdictions worldwide

2011

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Slovenia

Sources of corporate governance rules and practices

1 Primary sources of law, regulation and practice

What are the primary sources of law, regulation and practice relating to corporate governance?

Corporate governance is regulated by the Companies Act (Official Gazette No. 42/2006, as amended), which provides for the specific rules on corporate governance for each corporate type. For the purposes of this chapter our assessment is limited to corporate governance of the joint-stock company.

In addition, the Worker Participation in Management Act (Official Gazette No. 42/1993, as amended, the WPMA) determines how the employees are involved with the corporate governance of the company.

The Financial Operations, Insolvency Proceedings and Compulsory Dissolution Act (Official Gazette No. 126/2007, as amended, hereinafter the FOIPCDA) envisages further responsibilities of the management and supervisory bodies with respect to the financial operations of the companies and provides for the joint and several liability of the bodies in case of damage caused to the creditors.

The Takeover Act (Official Gazette No. 79/2006) lays down the method, conditions and procedures relating to the takeover bid.

Finally, the Court Register Act (Official Gazette No. 13/1994, as amended, the CRA) and the Decree on Entry of Companies and Other Legal Entities in the Court Register (Official Gazette No. 43/2007, as amended) include the requirements to be satisfied for registration of the company (such as the registration of members of managing and supervisory bodies).

2 Responsible entities

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

The main actors in enforcing the rules are the competent ministries (especially the Ministry of Commerce) that also draft the proposals for applicable legislation. There are also associations representing the interests of shareholders, managers and supervisors (eg, the Association of Supervisors in Slovenia, the Association of Managers, various associations of shareholders, the Association of Stock Exchange Members (GIZ), etc) who pass their own internal rules and guidelines, which can be regarded as soft law.

The rights and equitable treatment of shareholders

3 Shareholder powers

What powers do shareholders have to appoint or remove directors or require the board to pursue a particular course of action?

The general meeting has the power to appoint and recall the supervisory board in a two-tier system and the management board in a one-tier system. Such competence shall not be transferred to other bodies in the company. The shareholders' meeting is hierarchically the highest body and it passes decisions concerning the core issues of the company (eg, organisational, development and statutory issues), without running the day-to-day business. Moreover, the Companies Act expressly prohibits the shareholders' meeting to decide issues concerning the business conduct of the company, except where so requested by the management. Nevertheless, certain derogations from the above-mentioned prohibition exist, eg, the management board may decide upon issues concerning business conduct, if so requested by the management itself. Since the shareholders' meeting may not appoint or remove the board of directors in the two-tier system, it may exercise the influence over the latter only indirectly, through appointing the members of the supervisory board which afterwards appoint the board of directors. On the other hand, in a one-tier system the members of the board of directors are appointed by the shareholders' meeting.

4 Shareholder decisions

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

The matters falling within the exclusive competence of the shareholders' meeting are as follows:

- the adoption of the annual report;
- the use of profits for appropriation;
- the appointment and recall of members of the supervisory board in a two-tier system and the management board in a one-tier system;
- the issuing of a discharge for members of the management or supervisory bodies;
- amendments to the articles of association;
- measures to increase and reduce capital;
- the dissolution of the company and its restructuring;
- the appointment of an auditor; and
- matters where so provided by the articles of association in accordance with the law or other matters determined by law.

It should be noted that the Companies Act does not provide for any matters subject to a non-binding shareholder vote.

5 Disproportionate voting rights

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

As a general rule, each share incorporates a voting right (except those that do not include voting rights, eg, preference shares); one share has one vote (first paragraph of article 308 of Companies Act), shares with multiple votes are prohibited. However, voting rights may be limited in a way that the individual's number of votes is restricted to a certain number or percentage of votes, irrespective of the number of votes the individual would otherwise have. In this respect, the articles of association may provide that the shares of one shareholder are afforded to the account of another shareholder (ie, if the shareholder is a company, shares of its affiliated companies are added to the account of the parent company). Only restricting individual shareholders, however, is banned; any limitation shall be general and applicable to all shareholders or shares, or to shares in a certain share class.

6 Shareholders' meetings and voting

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

The requirements for shareholders to participate and vote must be incorporated in the convening notice. The cut-off date is determined and must be expressly listed in the convening notice together with the explanatory note that only those shareholders that hold the shares on that specific cut-off date may be present at the meeting and exercise their voting rights (those shareholders that are registered as shareholders in the central register of immaterialised securities at the end of the fourth day prior to the general meeting).

Due to the high number of shareholders and different classes of shares, the general meeting can be relatively complicated with respect to technical organisation. For that reason, the Companies Act allows companies to condition the participation of shareholders with the registration of the shareholder in advance (they must apply to participate before the end of the fourth day before general meeting).

7 Shareholders and the board

Are shareholders able to require meetings of shareholders to be convened, resolutions to be put to shareholders against the wishes of the board or the board to circulate statements by dissident shareholders?

The shareholders' meeting can be convened by the board of directors, the supervisory board or minority shareholders. Primarily, the competence to call the general meeting lies with the board of directors (or the management board in a one-tier system). On the other hand, the supervisory board as a general rule does not call for the general meeting. In addition to these bodies, the general meeting can be called by the minority shareholders, if the management does not call for the general meeting, provided that the sum of their shares amounts to one-twentieth (ie, 5 per cent) of the share capital and they obtain the prior authorisation of the court (the latter only if the general meeting is not convened within two months from the request of the minority shareholders). Such provision of the Companies Act shall not be altered by the provisions of the articles of association, unless the latter affords the minority shareholders higher protection (eg, the minority shareholders may call the general meeting without prior authorisation of the court).

8 Controlling shareholders' duties

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

There are no provisions of the Companies Act from which it may derive that the controlling shareholders owe duties to the company or to non-controlling shareholders. However, the controlling shareholder may be held liable for damage caused to the company or shareholders. Article 264 of the Companies Act stipulates that persons using their influence on a company to induce a member of the management or supervisory body, the procurator or a proxy to act in a manner that causes damage to the company or its shareholders must reimburse the company for the resulting damage. In addition to the members of the management or supervisory body, anyone who derived benefits from the damaging action, if such action was committed intentionally, shall also be jointly and severally liable. Although the provision is not expressly referring to shareholders, in practice the person that has a decisive influence on the company is the (controlling) shareholder. Thus, the commentaries of the Companies Act are of the opinion that the (controlling) shareholder may be held liable for damage caused.

9 Shareholder responsibility

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

As a general rule, shareholders shall not be held liable for the acts or omissions of the company. Nevertheless, the concept of piercing the corporate veil is incorporated in the Companies Act. Article 8 therefore envisages that shareholders shall be held liable for the liabilities of the company if:

- they abused the company as a legal entity in order to attain an aim which is forbidden for them to attain as individuals;
- they abused the company as a legal person thereby causing damage to their creditors;
- they used the assets of the company as their own personal assets in violation of the law; or
- they reduced the assets of the company for their own benefit or for the benefit of a third party even if they knew or should have known that the company would not be capable of meeting its liabilities to third parties.

As derives from the provisions of article 8, the liability of the shareholder is assessed in terms of abusing the position of a shareholder in the company and damage caused to creditors.

Corporate control

10 Anti-takeover devices

Are anti-takeover devices permitted?

The Takeovers Act does not prevent companies from defending themselves against takeovers, whether the takeover is hostile or not. Nonetheless, the respective Act bans anti-takeover devices undertaken by the management without the consent of the shareholders' meeting after the intention of the takeover has been notified and before the results of the takeover bid have been published due to the protection afforded to minority shareholders.

11 Issuance of new shares

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

The Companies Act is containing very strict rules with respect to the issuance of the new shares since the issuance of new shares has a decisive impact on the 'ownership' relations within the company. To pass the resolution, a majority of at least three-quarters of the subscribed capital represented in the voting is necessary, unless the articles of association stipulate a different majority of the capital, but not less than a majority of the subscribed capital represented in the voting. Where there is more than one share class the approval of each share class shall be required in order for a general meeting resolution to be valid. The shareholders in each share class must adopt an extraordinary resolution to give their approval.

Shareholders have the right to maintain their proportional ownership interest in the company, thus the Companies Act envisages their pre-emptive right to acquire newly issued shares. The existing shareholders may exercise their pre-emptive right proportionally to their share in the capital of the company. The pre-emptive right is nevertheless relative, since the Companies Act allows the pre-emptive right to be excluded or restricted. The resolution on the restriction or exclusion of the pre-emptive right shall be passed together with the resolution on issuance of new shares and in such case the majority of at least three-quarters of the subscribed capital represented in the voting is required. The articles of association may stipulate a larger majority of the capital and lay down other requirements.

12 Restrictions on the transfer of fully paid shares

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

The articles of association may limit the transferability of registered shares by determining that such transfer requires the permission of the company which shall be made by the company's management (or by the supervisory board or the general meeting).

When registered shares are not traded on the regulated market and the articles of association stipulate that the company's permission is required, the reasons for the refusal shall be stated. The reasons must justify the refusal in cases when such transfer could jeopardise the achievement of the company's goals or its economic independence, while taking into account the company's shareholder structure. In addition, the company may require that the acquirer state whether it intends to acquire the shares in its own name and for its own account.

When registered shares are traded on the regulated market and the articles of association stipulate that the company's permission is required, the only substantiated reason for refusal to give permission for their transfer is that with the acquisition of these shares together with the shares already held by the acquirer prior to the acquisition the acquirer would exceed a certain proportion of the voting rights or a certain proportion in the capital of the company.

13 Compulsory repurchase rules

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

The applicable relevant legislation does not regulate the compulsory repurchase rules, except with respect to the mandatory takeover bid that shall be given when the acquiring company reaches the takeover threshold. Nevertheless, special laws regulating specific activities (such as banking, insurance, etc) may entail provisions for mandatory repurchase rules.

14 Dissenters' rights

Do shareholders have appraisal rights?

The Companies Act generally prohibits the original and derivative acquisition of its own shares by the company. The prohibition of the original acquisition is absolute, while the prohibition of the derivative acquisition of its own shares by the company is relative in nature; the Companies Act exhaustively provides for several exemptions. However, appraisal rights are not included in the respective exhaustive list and are thus not afforded to the shareholders.

The responsibilities of the board (supervisory)

15 Board structure

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

The Companies Act separately regulates one-tier and two-tier board structures, thus, it is up to the company to decide whether it will be managed by the management board and supervisory board or will choose the one-tier system with only a board of directors and shareholders' meeting. Nevertheless, in practice the predominant board structure is two-tiered. Due to the ownership transformation of enterprises with social capital in favour of the internal distribution of shares and the cross-buying of shares by employees, these are mainly large public limited companies with more than 500 employees or more than 100 shareholders, for which the preceding Companies Act imposed a compulsory two-tier system of governance.

16 Board's legal responsibilities

What are the board's primary legal responsibilities?

The board of directors coalesces two functions; the function of management (the relations inside of a company which focuses on the management of business) and the function of representation (relations of a company towards third parties). The board of directors manages business independently and on its own account and may make all the decisions, except those that are in the competence of the shareholders' meeting or supervisory board. Towards third parties, members of the board of directors jointly represent the company. This provision is dispositive in nature; the articles of association may provide differently, however, representation shall be clearly evident from the excerpt from the Court Register.

The primary legal responsibility of the supervisory board is supervision over the business activities of the company. In this capacity it may examine and verify business books and other documentation, its register, securities, stocks of goods, etc. In its supervisory capacity, it may demand regular reporting from the management board on all questions; those specifically listed by the Companies Act and others which the supervisory board deems important. The most important competence of the supervisory board is the appointment and recall of the management board, which is compulsory; however, the supervisory board may not take up the duties of the management board.

In addition, the supervisory board has certain responsibilities with respect to the process of adopting the yearly report of the company, where it has an obligation to produce a special report for a shareholder meeting, review the assembled yearly report and review the proposal on the use of distributable profits.

17 Board obligees

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

The board of directors may be an individual or collective body with one or more members. This specialised provision derogates from article 254 of the Companies Act, which envisages that the

management or supervisory body shall consist of at least three members. Members of the board of directors are not necessarily shareholders; such provision highlights the professionalism of the function. A member of a board of directors may also be the work director who represents the interests of the employees with respect to personnel and social issues. Primarily, the board of directors must be loyal to the company – such principle is realised through the non-compete clause and competition clause. The board of directors further owes a legal duty to the supervisory board which appoints and recalls members in a two-tier system; in this capacity the board of directors has a reporting duty towards the supervisory board. In addition, the board of directors has certain responsibilities towards the shareholders' meeting, such as the preparation of measures within the competence of the general meeting at the request of the general meeting, the preparation of contracts and other acts that require the consent of the general meeting and carrying out resolutions adopted by the general meeting. In a one-tier system, the duties towards the shareholders' meeting are emphasised as they appoint and recall members of the board of directors.

The supervisory board is a collective body and shall consist of at least three members. These members are divided into the members representing the interests of the shareholders and members through whom the employees' participation in the management of the company is enforced in accordance with the WPMA. The articles of association shall determine the number of the latter, nevertheless it shall not be lower than one-third or higher than half of all members of the supervisory board. The chairman of the supervisory board shall always be a representative of the shareholders. The legal duties of the board members are owed to the bodies who appointed them; the members representing the interests of the shareholders are appointed by the shareholders' meeting, while the members representing the interests of employees are appointed by the work council.

18 Enforcement action against directors

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

The members of the management or supervisory body shall be jointly and severally liable to the company for damage arising as a consequence of a violation of their tasks, unless they demonstrate that they fulfilled their duties fairly and conscientiously. For liability for damages to be enforced, the injured party must prove that the conditions for liability are fulfilled. The injured party may only be the company and not the shareholders, since the limit of the members' liability for damage caused to the company may be clearly derived from the wording of the Companies Act. The company is represented by the board of directors, which, generally, has the right to initiate judicial proceedings for recovering the damage; however, if the damage was caused by the board of directors, the chairman of the supervisory board is authorised for such action. In addition, direct enforcement action may be taken by the shareholders (see question 31 below).

19 Care and prudence

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

The members of the board of directors and the supervisory board are professionals who must act with higher diligence than normal persons and must, in performing their tasks on behalf of the company, act with the diligence of a conscientious and fair manager and protect the business secrets of the company. In addition, board members can be held liable for damage, unless they demonstrate that they fulfilled their duties fairly and conscientiously.

20 Board member duties

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

The members of the board of directors and the supervisory board in a two-tier system have equal rights, the duties of the individual members of the board do not differ. Each member of the board has one vote and the articles of association may not stipulate differently. In the event of an equal number of votes, the chairman of the management or supervisory body shall have the casting vote. The company may determine different duties for individual members in its articles of association as long it respects that each member has one vote. In a one-tier system, the duties of the executive and non-executive directors may differ (see question 22 below).

21 Delegation of board responsibilities

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

The Companies Act does not provide for the delegation of the board of directors' responsibilities to other bodies or persons, it merely stipulates that the board of directors manages business independently and of its own accord. Such provision indicates that the board of directors is competent to make all decisions (except those decisions in the competence of other bodies) and that decision-making cannot be delegated. Nevertheless, specific measures and decisions necessary for individual legal transactions can be divided between individual members of the board; even so, the responsibilities assigned to the board of directors by the Companies Act must be carried out by the latter as a collective (or individual) body.

22 Non-executive and independent directors

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

The distinction between executive and non-executive is applicable only in a one-tier system. The Companies Act stipulates that the board of directors in a one-tier system may appoint one or more executive directors who may or may not be selected from the members of the board of directors. If executive directors are appointed, then all other members become non-executive directors. The board of directors may transfer certain duties to the executive directors, such as management of current affairs, applications for registration and submission of documents to the registry, responsibility for keeping the books of account and compilation of the annual report. The transfer of respective duties is optional, not mandatory, and must be determined by the articles of association. The consequence of such transfer is that other members of the board of directors no longer have the competence to perform such duties and they acquire the position of non-executive directors whose main responsibility is to carry out a supervisory function over the executive directors.

23 Board composition

Are there criteria that individual directors or the board as a whole must fulfil? Are there any disclosure requirements relating to board composition?

Any natural person with legal capacity may be a member of a board of directors, except a person:

- who is a member of the management or supervisory body of such company;

- who has been convicted of a criminal offence against the economy, labour relations and social security, legal transactions, property, environment, space and natural resources;
  - against whom a security measure has been passed prohibiting the pursuit of a profession, for the duration of the prohibition; or
  - who, acting as a member of the management board of a company against which bankruptcy proceedings were instituted, has been declared liable to repay damages to the creditors.

There are no disclosure requirements. However, new members of the management or supervisory bodies shall – together with the application for registration – submit a written statement about the non-existence of circumstances that would contradict their appointment.

24 Board leadership

Do law, regulation, listing rules or practice require separation of the functions of board chairman and CEO? If flexibility on board leadership is allowed, what is generally recognised as best practice and what is the common practice?

The chairman of the board of directors may not be an executive director of the company as expressly provided by the Companies Act.

25 Board committees

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

The applicable legislation does not provide for any mandatory committees. With respect to the supervisory board, the Companies Act envisage that the supervisory board may appoint one or more committees (eg, audit committee, appointment committee, remunerations committee) who shall review the proposed resolutions of the supervisory board and take care of their implementation, as well as perform other expert tasks; however, they cannot decide on the questions that are within the competence of the supervisory board. The only mandatory requirements for committee composition is the number of members; the committee shall consist of the chairman (which is appointed out of members of the supervisory board by the supervisory board) and of at least two more members.

26 Board meetings

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

The Companies Act provides that the meeting of a management or supervisory body shall be called at least once per quarter, while the articles of association may determine a shorter period. Hence, the minimum number of board meetings per year is four.

27 Board practices

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

Certain board practices are public, especially if board practices are determined by the articles of association (the articles of association are publicly available, see question 34 below). On the other hand, meetings of the boards are, generally, not public and the persons that are not members of the board cannot attend such meetings due to the fact that the agenda of such meetings usually include business secrets, the disclosure of which may cause damage to the company. If necessary, the adopted decisions may be communicated to the public by the chairman or other selected person.

28 Remuneration of directors

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

Due to current issues regarding the high remuneration of directors and members of supervisory boards, the amendment of the Companies Act (ZGD-1C) essentially altered the applicable provisions. The general meeting has the option to determine remuneration policy and all payments to members of boards must be in accordance with determined policy. The general meeting is bound by principles stipulated in the Companies Act, in other words, the remuneration policy shall encourage the long-term sustainability of the company and ensure that payments are in accordance with the achieved results and financial situation of the company; the remuneration may be composed of fixed and variable parts and the general meeting shall determine the maximum of the variable part based on determined and measurable criteria. Severance payments shall only be paid if the service contract was terminated early.

The supervisory board determines the remuneration (salary and recovery of costs, bonuses, business performance awards, profit sharing, etc) of individual members of the board of directors. The total remuneration amount shall be proportional to the duties of the members and financial situation of the company and in accordance with the remuneration policy. If the latter is not determined, then the supervisory board shall respect the above-mentioned principles which otherwise apply to determination of the remuneration policy.

A company may only approve loans to members of the management or supervisory body and the procurators on the basis of a resolution passed by the management or supervisory body. A separate resolution shall be passed for each loan or for each type of loan and must state the manner in which interest is charged and the time limit for repayment of the loan. Other legal acts that correspond to a loan in a business sense shall also be deemed to be loans.

The Employment Relationship Act stipulates that, if concluding the contract with management, the employment contract may determine the rights, obligations and responsibilities arising from such contract differently (ie, conditions and limitations of the short-term contract, working hours, breaks and rests, payments, disciplinary responsibility and termination of the employment contract). In addition, the rights and obligations of a member of the management or supervisory body not stipulated in the Companies Act shall be defined in a contract concluded with the company

29 Remuneration of senior management

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

It should be noted that the Companies Act does not apply specific rules for determining remuneration of the most senior management; hence, the same rules (described in question 28) are applicable. Nevertheless, it should be mentioned that the Companies Act entails specific rules for determining the remuneration of the supervisory board. What is especially important is the provision which prohibits the remuneration of members of the supervisory board in the form of profit-sharing. In addition, the soft law (Code of Ethics, recommendations for supervisory board remuneration, criteria for membership, work and remuneration of the supervisory board,

recommendations issued by European Commission, OECD guidelines, etc) strongly discourages other types of payments that are bound to the business performance of the company.

The remuneration of members can already be determined by the articles of association (if not, by the shareholders' meeting). It is useful for the company to determine at least some types of benefits in the articles of association, such as recovery of costs (travelling expenses, hotels, subsistence costs), awards, meeting fees, etc.

30 D&O liability insurance

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

Liability insurance for members of the board of directors and supervisory board is permitted. The insurance contract may be individual insurance, which is concluded by the individual who also pays the premiums, or corporate insurance which is concluded between the insurance company and the respective company and covers the liabilities of the management and the company. In the latter case, the premiums are paid by the company.

31 Indemnification of directors and officers

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

Although such indemnities are not very common, the Companies Act envisages the possibility of indemnifying the damage caused by members of the board of directors or the supervisory board (in violation of their obligation, see above under questions 8 and 18) within six months of the general meeting of shareholders, if so decided by the general meeting by simple majority. If the proposal for filing a lawsuit has not been adopted by the general meeting, such lawsuit can be filed by minority shareholders in the name and for the account of the company (the minority shareholders shall hold at least 10 per cent of the share capital).

32 Exculpation of directors and officers

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

Members of the supervisory board are liable for damage on the basis of the applicable legislation. The company and shareholders may not preclude or limit their liability for damage caused to the company, however, they may choose not to recover the damage (eg, the shareholders' meeting may decide not to file the lawsuit). Liability shall never be limited if the damage is suffered by a third party; the FOIPCDA expressly stipulates that the liability for damage caused to the creditors may not be precluded.

33 Employees

What role do employees play in corporate governance?

The WPMA regulates employees' participation in the management of the company, which entails the following rights: to petition, to be informed, to give opinions and proposals and demand a reply to such proposals and opinions, co-consultations with the employer, co-decision and veto rights. Employees may participate through the election of a work council or a representative of employees or by a representative of their interests being a member of the supervisory board in the two-tier system or a member of the management board in the one-tier system (see question 17).

Disclosure and transparency

34 Corporate charter and by-laws

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

The latest version of articles of association (incorporation) is publicly available on the relevant webpage of the Agency of the Republic of Slovenia for Public Legal Records and Related Services (www.ajpes.si), as are also certain by-laws of the companies (eg, shareholders' agreements).

35 Company information

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

The information that must be publicly disclosed is anything that must be registered with the court register: basic information on the company (name, seat, business address, registration number, VAT number, etc), members of the board of directors and the representation type and members of the supervisory board. In addition, the company must publish an audited annual business report. Other information, such as the blockages of bank accounts, is also publicly available.

Hot topics

36 Say-on-pay

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

The general meeting of shareholders has the possibility to determine the remuneration policy and all payments to members of boards must be in accordance with determined policy (for a more detailed explanation see question 28 above).

37 Proxy solicitation

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

In the two-tier system, the shareholders do not appoint the members of the board of directors directly; they may only influence the appointment of directors by appointing the supervisory board which appoints members of the board of directors. The situation is different in the one-tier system where the shareholders' meeting appoints members of the board of directors.

With respect to proxy solicitation, the Companies Act expressly sets out that voting rights may (but not must) be exercised through financial and other organisations and persons who intend to collect authorisations from more than 50 shareholders with voting rights through the legal and natural persons listed in the Act. Such authorisation shall be given for only one general meeting. Provided that the other requirements stipulated by the Companies Act are fulfilled, the organised collection will not trigger the obligation of making a mandatory takeover bid if the threshold envisaged by the Takeovers Act is reached. In any case, such modified proxy collection is only optional and not mandatory.

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