

Romania

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CORPORATE ENTITIES

The most commonly used corporate entities in Romania are:

- **Private and public joint stock companies.** These must have a minimum share capital of RON90,000 (about US\$34,388) and a minimum of two shareholders. State-owned joint stock companies can have a single shareholder. Shareholders are not liable for the obligations of the company. Shares are issued in a material form or kept as records only (dematerialised).
- **Private limited liability companies.** These must have from one to 50 shareholders, and a minimum share capital of RON200 (about US\$76). Shareholders are not liable for the obligations of the company. The company cannot issue negotiable instruments.

LEGAL FRAMEWORK

1. What is the regulatory framework for corporate governance and directors' duties?

Corporate Governance and directors' duties are regulated by:

- Company Law No. 31/1990 (Company Law).
- Securities Law No. 297/2004.
- Other laws and regulations for specific industries (for example, banking and insurance), which regulate the structure and operations of the company.

BOARD COMPOSITION AND REMUNERATION OF DIRECTORS

2. What is the management/board structure of a company? In particular:

- **Is there a unitary or two-tiered board structure?**
- **Who manages a company and what name is given to these managers?**
- **Who sits on the board(s)?**

- **Do employees have a right to board representation?**

- **Is there a minimum or maximum number of directors or members of the managerial and supervisory bodies?**

- **Structure.** Companies can choose either a unitary or dual structure:

- **Unitary.** A board of directors (board) manages the company.
- **Dual.** The members of the directorship manage the company under the supervision of the members of the supervisory board.

- **Management.** In a unitary structure, the board manages the company. Even when delegating certain powers to executives, the board still controls its overall strategy (see *Question 12*).

In the dual system, the directorship manages the company under the supervision of a supervisory board.

- **Board members.** Members of the board and supervisory board can be individuals or legal entities. Only individuals can sit on the directorship.

Legal entities have to appoint an individual representing their interests.

- **Employees' representation.** Directors, members of the directorship and of the supervisory board cannot be employees of the company.

- **Number of directors or members.** There must always be an odd number of directors and of members of the directorship.

Joint stock companies who are obliged to have their accounts audited by financial auditors (see *Question 27*) must have at least three directors (under both the unitary or dual system).

A supervisory board must have between three and 11 members.

3. Are there any age or nationality restrictions on the identity of directors?

Age restrictions

Directors, members of the directorship and supervisory board members must be at least 18 years old.

Nationality restrictions

There are no nationality restrictions on directors, members of the directorship and supervisory board members.

4. In relation to non-executive, supervisory or independent directors:

- Are they recognised?
 - Does a part of the board have to consist of them? If so, what proportion?
 - Do non-executive or supervisory directors have to be independent of the company? If so, what is the test for independence or what makes a director not independent?
 - What is the scope of their duties and potential liability to the company, shareholders and third parties?
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- **Recognition.** Non-executive, supervisory and independent directors have been regulated under company law since December 2006.
 - **Board composition.** If the board delegates some of its powers to executives, a majority of its members must be non-executive directors.
 - **Independence.** The bye-laws of the company or the shareholders may require that one or more directors must be independent. A director is not independent if he, among other things:
 - is an executive or an employee of the company or a controlled company, or has been in the last five years;
 - receives or has received remuneration or other advantages from the company or from a controlled company;
 - is or represents a significant shareholder of the company;
 - has or has had in the last year, business relations with the company or with a controlled company (either personally or as a shareholder, director, executive or employee of a company having such relations with the company);
 - is or has been in the last three years, a shareholder or employee of the current financial auditor of the company or of a controlled company;

- is an executive of another company where an executive of the company is a non-executive director;
- was a non-executive director of the company for more than three mandates;
- is a spouse or relative up to the fourth degree inclusively, with an executive of the company or with a person identified in the bullet points above.

- **Duties and liabilities.** Non-executive directors are subject to the same duties and liabilities as ordinary directors.

The members of the supervisory board have supervisory duties in relation to the members of the directorship.

5. Are the roles of individual board members restricted? For example, can one person be the chairman and chief executive?

The board can appoint a director as chief executive if it has delegated part of its powers to one or more executives (*see Question 2*).

The chairman can only be appointed as chief executive if permitted by the company's bye-laws or if the shareholders so decide.

In the dual system, the members of the supervisory board cannot be appointed to the directorship.

6. How are directors appointed and removed? Is shareholder approval required?

Appointment of directors

Directors and the members of the supervisory board are appointed by shareholders, following nominations by existing directors and/or shareholders. If a vacancy arises, interim directors, appointed by the board, fill the vacancy until the next general meeting of shareholders (general meeting).

Members of the directorship are appointed by the supervisory board, which also appoints its president.

Removal of directors

Directors and the members of the supervisory board are removed by the shareholders. The board may remove its president if it was appointed by it.

Members of the directorship are removed by the supervisory board.

7. Are there any restrictions on a director's term of appointment?

The directors and members of the directorship and of the supervisory board are appointed for a maximum of four years. The first

directors and members of the supervisory board are appointed for a maximum of two years. They can be re-elected unless the bye-laws provide otherwise.

8. Do directors have to be employees of the company? Can shareholders view directors' service contracts?

Directors employed by the company

Directors and members of the directorship cannot be employed by the company under an individual employment contract.

Shareholders' inspection

Shareholders set the main terms and conditions of the service contracts when making the appointment and so have full access.

Shareholders also have full access to the service contracts of the members of the directorship.

9. Are directors allowed or required to own shares in the company?

There is no requirement for the directors or members of the directorship or supervisory directors to own shares.

There are no restrictions, except for an independent director who cannot be a significant shareholder of the company.

10. How is directors' remuneration determined? Does it need to be disclosed? Is shareholder approval required?

Determination of directors' remuneration

Remuneration must be relevant to the specific powers of each director or member of the directorship and in line with the financial standing of the company.

Directors' pay is determined by the general meeting. Remuneration of members of the directorship (as individual salaries) is set by the supervisory board, provided the amounts are within the overall limits determined by the shareholders.

For directors holding specific powers, the board determines the exact remuneration, provided it is within the limits decided by shareholders.

Remuneration of the members of the supervisory board is determined by the shareholders.

Disclosure

Remuneration has to be disclosed as the decision belongs to shareholders.

The supervisory board can choose whether to disclose remuneration of the directorship to shareholders as part of their regular reporting. Alternatively, shareholders are entitled to obtain this information from the supervisory board.

Shareholder approval

See above, *Determination of directors' remuneration*.

MANAGEMENT RULES AND AUTHORITY

11. How is a company's internal management regulated? For example, what is the length of notice and quorum for board meetings, and the voting requirements to pass resolutions at them?

Timing

The board of directors or the supervisory board must meet at least once every three months, either at the:

- Convening notice of its chairman.
- Request of at least two directors, or of either the chief executive or the directorship.

There are no specific requirements for the directorship.

Length of notice

The Company Law stipulates that the notice for calling a meeting of the board must be sufficient, without providing for any further clarity. However, the bye-laws can set out clearer terms.

For the supervisory board, the length of notice is a maximum of 15 days. Bye-laws can provide for exceptional cases (of urgency) when a decision in writing can be taken by all directors, without a requirement to meet, provided that such cases do not refer to annual financial statements or the authorised share capital.

In addition, bye-laws may provide that a meeting of the board, the directorship and the supervisory board can take place "at distance", provided that the means to hold the meeting allow for their identification, effective participation and continuing connection.

Quorum

For a meeting of a board, directorship or supervisory board to be valid at least half its members must be present. The majority vote of those present make the decision, except for appointments or revocation of the chairman, where a majority of all members is required. Bye-laws may increase the quorum and voting requirements.

Directors, members of the directorship and of the supervisory board can be only represented at meetings by other directors or member. One director or member can represent only one other director or member.

12. Can directors exercise all the powers of the company or are some powers reserved to the supervisory board (if any) or a general meeting? Can the powers of directors be restricted and are such restrictions enforceable against third parties?

Directors' powers

Directors and members of the directorship manage the company and, in general, take all required decisions, except where provided otherwise by applicable laws or the company's bye-laws.

Restrictions

The following decisions are in the exclusive powers of the shareholders:

- Approving financial statements.
- Appointing financial auditors or *cenzori* (see Question 27).
- Deciding on the management responsibilities of directors.
- Approving the yearly budget and business plan.
- Deciding on the pledging, lease or closure of units.
- Decreasing the share capital.
- Changing the form, duration and principal activity of the company, as well as on any proposed merger or dissolution.
- Issuing bonds or swapping bonds into shares.

Directors cannot acquire assets in the name and on behalf of the company, or sell, lease, encumber or otherwise transfer assets whose value is higher than the total book value of the company, unless they have received approval of shareholders. Bye-laws may, however, provide for a lower approval threshold.

Under the dual system, while the supervisory board cannot have management powers, bye-laws may provide that certain decisions cannot be taken by the directorship without approval of the supervisory board.

13. Can the board delegate responsibility for specific issues to individual directors or a committee of directors? Is the board required to delegate some responsibilities, for example for audit, appointment or directors' remuneration?

Directors can delegate responsibility to run the company to executives and appoint the chief executive. Executives can be selected from existing directors or third parties.

The board is required to delegate the responsibility to run the company to executives if the company has a legal obligation to be audited by financial auditors.

The following powers cannot be delegated to executives:

- The general strategy for operating and developing of the company.

- Decisions regarding the financial audit and financial planning.
- Drafting the annual activity report, preparation of general meetings and implementation of shareholders decisions.
- Submission of the request for voluntary bankruptcy.

In the dual system, the directorship has full powers of management and this cannot be delegated, while the supervisory board has supervisory powers.

DUTIES AND LIABILITIES OF DIRECTORS

14. What is the scope of a director's duties and personal liability to the company, shareholders and third parties? Please distinguish between civil and criminal liability under each of the following (if relevant):

- **General duties.**
- **Theft and fraud.**
- **Securities law.**
- **Insolvency law.**
- **Health and safety.**
- **Environment.**
- **Anti-trust.**
- **Other.**

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- **General duties.** Directors and members of the directorship have a general duty to:

- manage the company with due care;
- supervise the activity of the executives and employees of the company;
- maintain properly, all registers and evidence required by law;
- perform the required filings with the Trade Registry; and
- implement all decision taken by shareholders.

Directors and members of the directorship are jointly liable to the company and shareholders for damages caused by their activities and decisions.

- **Theft and fraud.** Directors and members of the directorship are civilly or criminally liable for various decisions, including for:
 - deceiving the public or shareholders regarding data and information on the company's status;

- using the company's assets for personal interest;
 - acquiring, on behalf of the company, a participation in another company at a price he is aware is higher than its actual value, or disposing of a participation in another company at a price lower than its actual value.
- **Securities law.** If found liable, directors and members of the directorship can be fined and made to pay compensation for damages they caused to the company or investors for various reasons, including for:
 - not fulfilling reporting obligations;
 - failing to comply with the prudential rules and the rules of conduct;
 - not providing shareholders with accurate information.
 - **Insolvency law.** Directors and members of the directorship are criminally liable if they:
 - do not file (or delay filing) a request for voluntary bankruptcy when required to do so; or
 - do not provide the court or the judicial administrator/liquidator with the company's financial statements or information regarding the company's assets, bank accounts or debts during a bankruptcy.
 - **Health and safety.** Directors and members of the directorship are criminally liable for failure to follow health and safety regulation, where this leads to serious and imminent danger for health or safety within the company.
 - **Environment.** Directors and members of the directorship are criminally liable for various breaches of the environmental laws, including contamination.
 - **Anti-trust.** Directors and members of the directorship may be criminally liable if they breach anti-trust law.
 - **Other.** Directors and members of the directorship must maintain confidentiality over their company's information and business secrets, which they have access to. This obligation survives termination of their mandate and its length is provided in an agreement with the company.

15. Can a director's liability be restricted or limited? Is it possible for the company to indemnify a director against liabilities?

Civil liability can be limited but not excluded. Criminal liability cannot be limited or excluded.

16. Can a director obtain insurance against personal liability? If so, can the company pay the insurance premium?

A director and members of the directorship and of the supervisory board must have insurance for professional liability. The company can pay the insurance premium as part of their remuneration.

17. Can a third party (such as a parent company or controlling shareholder) be liable as a director (even though such person has not been formally appointed as a director)?

A third party cannot be held liable as a director, or a member of the directorship or of the supervisory board.

TRANSACTIONS WITH DIRECTORS AND CONFLICTS

18. Are there general rules relating to conflicts of interest between a director and the company?

For operations where directors or members of the directorship (or their spouse and relatives up to the fourth degree, inclusively) have an interest (whether directly or otherwise) contrary to the company's interests, they must inform the other directors and the auditors and not participate in any deliberation with respect to such operation, except for the following operations expressly allowed by the Company Law:

- Offering shares or bonds of the company for subscription to a director (or his spouse or relatives up to the fourth degree, inclusively).
- Granting a loan or setting-up a guarantee in favour of the company by a director (or by his spouse or relatives up to the fourth degree, inclusively).

19. Are there restrictions on particular transactions between a company and its directors?

Directors or members of the directorship or of the supervisory board (or their spouse and relatives up to the fourth degree, inclusively, either directly or through companies where they are directors or hold at least 20% of the authorised share capital) cannot receive credit from the company irrespective of whether it is by:

- Loans.
- Financial advantages.
- Creating securities for a loan received from third parties.
- Guaranteeing other personal obligations of directors and acquiring receivables held by third parties against directors.

20. Are there restrictions on the purchase or sale by a director of the shares and other securities of the company he is a director of?

There are no mandatory restrictions on the sale or purchase of shares (*see Question 9*), other than those regarding insider trading for public (listed) companies.

DISCLOSURE OF INFORMATION

21. Do directors have to disclose information about the company to shareholders, the public or regulatory bodies?

One or more shareholders, holding at least 10% of the share capital, can request a report on certain identified operations of the company. The directors or members of the directorship must disclose the report to all shareholders during the next general meeting.

Certain disclosures to the public, investors and regulatory bodies are required when the company offers securities to the public, as well as for other significant events as detailed below.

When offering shares to the public, the company must include in the offer prospectus certain information to allow investors to assess:

- The assets, liabilities, financial position, profit and loss and the financial perspectives of the issuer.
- Any rights attached to the securities.

For public (listed) companies, directors and members of the directorship must disclose information to the public regarding:

- The company's activities and its profit and loss, and anything that had an influence on the company's activity.
- Any major developments which are not public knowledge and which may lead to a substantial movements in the prices of the shares.
- Any convening of a general meeting.
- Changes in the company's control and management.
- Changes of the financial auditor.
- Litigations involving the company.

COMPANY MEETINGS

22. Does a company have to hold an annual shareholders' meeting? If so, when? What issues must be discussed and approved?

There should be at least one general meeting within a calendar year, not later than five months from the end of the financial year (corresponding to the calendar year). Among other issues, the shareholders must discuss:

- The yearly financial statements.
- The directors' yearly activity report.
- The budget and business plan for the next year.

For private companies that have issued par value shares, a meeting can take place by correspondence if the bye-laws so provide.

23. Can shareholders call a meeting or propose a specific resolution for a meeting? If so, what level of shareholding is required to do this?

Only the board or the directorship are empowered to call a general meeting.

Shareholders can ask the board to call a meeting and propose a specific resolution if they hold at least 5% of the issued share capital. If the board or directorship refuse, they can ask the court to empower them to call the meeting. For limited liability companies, the level is of 25% of the issued share capital.

MINORITY SHAREHOLDER ACTION

24. What action, if any, can a minority shareholder take if it believes the company is being mismanaged and what level of shareholding is required to do this?

Any shareholder can request the initiation of legal proceedings against directors or the members of the directorship or supervisory board for mismanagement, by proposing a new item for the agenda of a general meeting, as such a decision falls within the powers of the general meeting.

To the extent the general meeting does not follow the request, one or more shareholders, holding at least 5% of the share capital, can initiate proceedings against the directors for damages. These proceedings are made in their own name, but on behalf of the company.

INTERNAL CONTROLS, ACCOUNTS AND AUDIT

25. Are there any formal requirements or guidelines relating to the internal control of business risks?

While certain industries (such as banking and insurance) have their own rules for internal control, most companies usually have systems to:

- Supervise the company's funds administration.
- Verify the accuracy of the accounts.
- Supervise the manner in which accounting and cash records are kept.
- Supervise the manner in which the company's movable and immovable assets are managed.

26. What are the responsibilities and potential liabilities of directors in relation to the company's accounts?

The directors and the members of the directorship are responsible for organising the company's accounts, in particular:

- Keeping all registers and accounting documents required by law.

- Preparing and registering in due time, with the competent authorities, all the necessary official statements, financial reports and/or accounts and payrolls.
- Accurately registering within the company's books, all financial operations performed by the company as well any relevant documentary evidence.
- Drafting reports on the annual financial statements and providing them to the company's financial auditors and internal auditors at least 30 days before a general meeting which has their approval on the on its agenda.

27. Do a company's accounts have to be audited?

The company's accounts must be audited by a financial auditor (either an individual or a legal entity) in the following situations:

- At least two of the following criteria are cumulatively met:
 - the total value of the company's assets is EUR3.65 million (about US\$4.81 million);
 - the company's net turn-over is EUR7.3 million (about US\$9.6 million);
 - the company' average number of employees during the financial year is 50.
- In the case of a joint stock company, the shareholders decide to have a directorship and a supervisory board.
- The company was admitted to trade on a regulated stock market.
- The company was incorporated as either:
 - a credit institution;
 - a non-banking financial institution;
 - an insurance company;
 - a leasing company.
- Shareholders require an audit by a financial auditor.

Accounts of joint stock companies or limited liability companies with more than 15 shareholders, which are not required to appoint a financial auditor as provided above, are audited by *cenzori* (internal auditors that can be either shareholders or accounting professionals, and who are responsible for reviewing the accounts and assets of the company).

If the accounts are audited by a financial auditor, the company should organise its internal audit.

28. How are the company's auditors appointed? Is there a limit on the length of their appointment?

Financial auditors are either appointed in the bye-laws or by the general meeting. Shareholders usually prefer not to include them in the bye-laws (except for the first auditors that must be included in the bye-laws). While there is no mandatory limit on the length of their appointment, in practice they are appointed for successive one-year terms.

Cenzori are either appointed in the bye-laws or by the shareholders' meeting (except for the first *cenzori* that must be included in the bye-laws) for a three-year mandate; they may be reappointed.

Internal auditors may be appointed by the shareholders' meeting or by the directors. There is no limit on the length of their appointment.

29. Are there restrictions on who can be the company's auditors?

Financial auditors – professional requirements

Individuals may be appointed as financial auditors provided they meet all the following professional requirements:

- They have an economic degree and have four years' experience in the financial/accounting field, or are accounting experts or authorised accountants with an economic degree.
- They have done a three-year practical residency in the financial/accounting field.
- They have passed the official test organised by the professional chamber of auditors, of which they are active members.

Legal entities may act as financial auditors if:

- Individuals auditing the accounts in their name and on their behalf meet the professional requirements provided above.
- The majority of voting rights are directly or indirectly held by individuals that meet the professional requirements provided above.
- The majority of its directors are individuals that meet the professional requirements provided above.

Financial auditors – incompatibilities

Financial auditors must not be employed, nor have any direct or indirect economic interest in the company.

The following persons cannot act as financial auditors:

- Relatives or in-laws up to the fourth degree inclusively, or spouses of the directors.

- Persons receiving a wage or remuneration from the directors or the company itself.
- Persons who are forbidden to act as directors.
- Persons who have control duties within the Ministry of Public Finances or other public institutions.

Cenzori – professional requirements

At least one of the *cenzori* must be an authorised accountant or an accounting expert (either as an individual or in a corporate form). The other *cenzori* must either:

- Be accounting experts or authorised accountants with an economic degree.
- Have an economic degree and at least five years' professional experience in the financial/accounting field.

Cenzori – incompatibilities

The incompatibilities for *cenzori* are similar to the ones for financial auditors (see above, *Financial auditors – incompatibilities*).

30. Are there restrictions on non-audit work that auditors can do for the company that they audit accounts for?

Financial auditors cannot get involved, directly or indirectly, in the company's business activities and cannot carry out accounting, advisory, tax or other similar activities for the company.

31. What is the potential liability of auditors to the company, its shareholders and third parties if the audited accounts are inaccurate? Can their liability be limited or excluded?

Financial auditors and *cenzori* are liable for damages caused to the company due to inaccuracies in the audited accounts.

The agreement concluded with the company can contain limitations or exclusions of liability, except where the financial auditors or *cenzori* acted in bad faith.

Financial auditors may be held liable to their regulatory professional chambers if they:

- Do not observe their ethical and professional codes.
- Performed their professional activity incompetently, or in a dissatisfactory or inefficient manner, which led to serious damage of their professional reputation.
- Infringed any legal regulations or industry norms.

CORPORATE SOCIAL RESPONSIBILITY

32. Is it common for companies to report on social, environmental and ethical issues? Please highlight, where relevant, any legal requirements or non-binding guidance/best practice on corporate social responsibility.

While not mandatory, most multinational companies have started to report on social, environmental and ethical issues.

ROLE OF GENERAL COUNSEL

33. Is it common for the general counsel to be on the company's board or to have a formal role in corporate governance?

It is not common practice for the general counsel to be on the board. However, it does have a formal role in corporate governance and ensures compliance with legal and regulatory issues.

ROLE OF INSTITUTIONAL INVESTORS AND SHAREHOLDER GROUPS

34. How influential are institutional investors and other shareholder groups in monitoring and enforcing good corporate governance? Please list any such groups with significant influence in this area.

Institutional investors are having an increasing role in monitoring good corporate governance, especially in relation to recently privatised companies that are listed on the stock exchange.

WHISTLEBLOWING

35. Is there statutory protection for whistleblowers (persons who disclose criminal activity or other serious malpractice within a company)?

There is no specific statutory protection for whistleblowers.

REFORM

36. Please summarise any impending developments or proposals for reform.

Following the major changes introduced in December, there are unlikely to be any material developments in this area in the near future. However, certain fine tuning might occur following application of the new changes in the day-to-day activity of the companies. The enforcement of the new provisions is ongoing, with major companies considering whether to switch to the dual system and general counsel implementing these changes.



Banking & Finance

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