

**INTERNATIONAL CENTER FOR ENTREPRENEURIAL STUDIES**

**UNIVERSITY OF BUCHAREST**

**"CORPORATE GOVERNANCE INITIATIVE FOR  
ECONOMIC DEMOCRACY IN ROMANIA"**

**CORPORATE GOVERNANCE CODE**

June 24, 2000

# CORPORATE GOVERNANCE CODE<sup>1</sup>

## Principle

The main principle of corporate governance concerns the owners' right to use their property in order to make a profit.

THIS VOLUNTARY GOVERNANCE CODE OF BEST PRACTICES WAS INITIATED AND ADOPTED BY BUSINESS ASSOCIATIONS AND CONSISTS OF A SET OF REFERENCE STANDARDS FOR USE BY ANY REPUTABLE COMPANY<sup>2</sup> WHICH ADOPTS ITS OWN CORPORATE GOVERNANCE CODE.

THIS CODE IS ONLY THE STARTING POINT FOR THE DEVELOPMENT OF A CORPORATE GOVERNANCE CULTURE IN ROMANIA. ALL WHO ARE INTERESTED IN IMPROVING AND ADOPTING IT ARE INVITED TO PARTICIPATE.

THIS CODE WAS ADOPTED BY BUSINESS ASSOCIATIONS DURING THE WORKSHOP CONDUCTED BY THE STRATEGIC ALLIANCE OF BUSINESS ASSOCIATIONS, IN BUCHAREST ON MARCH 24, 2000.

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<sup>1</sup> Explanatory footnotes provided by Harold F. Bonacquist, Member of the New York Bar, American Bar Association Rule of Law and Commercial Law Liaison to Romania, 1999-2000.

<sup>2</sup> In Romanian law, "corporation" refers to any juridical entity, i.e., any entity chartered by the state to carry on business activities. In this translation, the term "company" is used as a generic reference to all forms of juridical entities recognized under Romanian law: General partnership, limited partnership; limited liability company; limited joint stock company; and joint stock company. Only a **limited joint stock company** or a joint stock company can be listed on a stock exchange.

# CORPORATE GOVERNANCE CODE

## Chapter I - Goals and Definitions

### 1. Goals

Starting from the principle of observing and strengthening private property rights, this Code provides a set of rules and standards to guide the management of a company with respect to its strategic planning and decision making, in order to promote the interests of shareholders and associates,<sup>3</sup> creditors, customers, employers and employees.

This Code is not concerned with the general rules which define business ethics, either with respect to the relationship between companies or with respect to the ethical obligations of the employees of a company.

### 2. Definitions

A. Corporate Governance refers to the system of rules according to which companies are managed and controlled.

B. Corporate Governance is concerned with the interests of both the internal constituencies of the enterprise and of the external constituencies of the enterprise, as follows:

i. Internal constituencies are the shareholders or associates, members of the Board of Directors ("Board"), members of the managing committee, executive officers, employees, creditors, investors, and customers;

ii. External constituencies are the legal provisions underlying and substantiating the relations established between the internal constituencies, and the decision-making activities of a company.

C. According to the **Company Act**, the management structure of a Romanian company is based on the traditional model and follows two forms, according to the legal relations established between the parties:

i. Shareholders/associates (principals) - Board (agents) - executive officers/managers (employees);

ii. Shareholders/associates - Board - managing committee<sup>4</sup> - executive

officers/managers. D. The goals of Corporate Governance are:

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<sup>3</sup> The term "shareholder" refers to a person (legal or natural) who owns shares in a joint stock company or in a limited joint stock company. The term "associate" refers to a person who owns stocks in a limited liability company, in a general partnership company or in a limited partnership company. Baes on the Company Act all these companies are legal entities.

<sup>4</sup> The term "shareholder" refers to a person (legal or natural) who owns shares in a joint stock company or in a limited joint stock company. The term "associate" refers to a person who owns stocks in a limited liability company, in a general partnership company or in a limited partnership company. Baes on the Company Act all these companies are legal entities.

- i. Effective and ongoing communications between internal constituencies;
- ii. Financial discipline, by internal and external audit of the company;
- iii. Efficiency, by optimal decisions made by the Board;
- iv. Ongoing communications to the public about the financial status of the company and its objectives.
- v. Acting responsibly with respect to the community and the environment.

E. A creditor of a company is a bank, a factoring company, a loan guarantee fund, a natural person owning bonds, or a supplier, if the supplier is consistently delivering goods on credit. A financing entity/investor of a company may be a closed investment fund (legal person), mutual fund, a venture capital fund, a private pension fund,<sup>5</sup> an investment bank, a leasing company, the European Bank for Reconstruction and Development or other international financial bodies, or a natural person owning shares or convertible bonds issued by the company.

F. A dominant company is a company having control over another company or group of companies.

G. Representative members of the Board are those who have been appointed to the managing committee. The members of the managing committee should not be confused with the executive officers of a company.<sup>6</sup>

H. Meeting fees are amounts received by the member of the Board participating in Board meetings. Meeting fees may be given in exchange for presence tallies, according to the financial situation of the company, and are calculated as a percentage of its net profit.

**I. Company Act refers to the Law no.31/1990 concerning the companies, republished.**

## **Chapter II - Scope**

3. This Code may be used by any company, but is especially appropriate for those listed with a stock exchange, or whose shares are sold on the RASDAQ market, irrespective of the origin of the capital (state or private). This Code may also be used by those companies that have received financing from a venture capital fund or whose shares are held by a mutual fund, a closed investment fund (other than a venture capital fund)<sup>7</sup>, or by a pension fund, even if the shares of these companies are not yet quoted on a stock exchange or the **RASDAQ**.

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<sup>5</sup> Under Romanian law, mutual funds, venture capital funds and private pension funds are not juridical entities (although their managing agents can be). They are included in this definition of creditors to ensure that their lack of juridical status does not interfere with their exercise of the rights generally available to creditors.

<sup>6</sup> See p.4B & 16

<sup>7</sup> A. venture capital fund is a nonjuridical form of closed investment fund.

## **Chapter III - Structure of the Board; Appointment Criteria**

### **4.Board Structure and Functions**

A.The Board shall be comprised of an odd number of members with representation and executive functions<sup>8</sup>, organized in a managing committee, and an even number of non-representation members. However, if the shareholders so decide, the company may have a Board without a managing committee. In this case, a part of the representation function and, implicitly, of the decision-making activity, shall be delegated to the executive officers of the company.

B.The representation function refers to the right and duty of a member of the Board to act on behalf of the company with respect to third parties, i.e., to communicate or negotiate with third parties, or to commit the company's assets. Even though non-representation members may make decisions in the Board, they cannot represent the company with respect to third parties.

### **5.Criteria Regarding the Appointment of a Person as a Board Member**

A.General criteria:

- i.Any person appointed as Board member shall satisfy the following requirements:
- ii.Have legal capacity, be honest, and be well-trained in economics, law, or the industry in which the company operates;
- iii.Serve simultaneously on the Boards of no more than two companies;
- iv.Be able to analyze balance sheets, loss and profit accounts, cash flow statements and financial statements. (This criterion does not apply to persons appointed as experts in the scientific or technological fields);
- v.Not have been removed from another Board of the same company or of another company for mismanagement;
- vi.Not hold the position of deputy, senator, minister, secretary of state, undersecretary of state or director in a ministry, governmental agency or other public institution. This provision also applies to the spouse, and relatives to the fourth degree, inclusive, of the persons having a mandate of deputy or senator, or who are appointed in the position of minister, secretary of state, director in a ministry, governmental agency or other public institutions.

B. Special criteria:

The members of the Board should avoid being shareholders or associates of the company, except where the company is organized as a limited partnership, a general partnership or as a limited joint stock company<sup>9</sup>. Also, so long as they serve on the Board, members of the Board should not hold any shares in

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<sup>8</sup> "Representation" functions are the right to act on behalf of the company in dealings with third parties (see TI 4B). "Executive" functions are internal management functions.

<sup>9</sup> This exception exists so that principals with unlimited liability may participate in the management of the company.

the company,<sup>10</sup> and should not be a shareholder or associate, executive officer, or auditor of a supplier, distributor or competitor of the company in which they are Board members. This provision is also applicable to the spouse and the relatives to the fourth degree of the board member, so that the situation may be avoided in which simultaneously with holding a Board position, the relatives or the spouse of the Board member are carrying on the same trade in competition, or become suppliers or distributors for the company, as well as the situation in which the Board member has a material interest or a material relationship with a person who has contracted with the company.

C. In the case of limited liability companies, associates may decide, during the general meeting of /associates, if the provisions of subparagraph B should apply to the members of the board.

6. The provisions of paragraph 5, subparagraphs A and B are equally applicable to companies in which the state is a majority shareholder or associate,<sup>11</sup> and to the following types of companies, if so decided by a vote taken at the general meeting of their shareholders:

i. Companies in which the state is not a majority shareholder/associate, if the majority shareholder/associate determines that a conflict of interest might occur if Board members are also shareholders or associates;

ii. Companies in which control (i.e., ownership of 33% or more of the shares with voting rights) or majority position (i.e., ownership of 51% or more of the shares with voting rights) are held by companies in which the state is a majority shareholder/associate or has a control position;

iii. Companies managed by a legal person that has appointed natural persons to make decisions.

7. Whenever a situation arises that could be regarded as a conflict of interest as a result of the violation of the general and special conditions of paragraph 5, subparagraphs A and B, or of paragraph 6 of this Code, the person subject to the potential conflict shall so notify the other members of the Board or the shareholders' representative. If the person subject to the potential conflict does not make such notification, the general assembly of shareholders shall,<sup>12</sup> during an extraordinary or ordinary meeting, convened after the disclosure of the situation, remove the person from the Board.

8. The chairman of the Board may have representation and executive functions within the company, as chief executive officer. However, the general meeting of shareholders may decide that the chairman of the Board should have the right to appoint another person as chief executive officer, who shall be an employee of the company. In this latter case, the Board shall not appoint a managing committee from its members,<sup>13</sup> but shall establish the limits of the representation activity and of the division of decision-making responsibility between the chairman of the board and the chief executive officer.

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<sup>13</sup> See note 4.

<sup>10</sup> This exception exists so that principals with unlimited liability may participate in the management of the company.

<sup>11</sup> Although typically the Romanian state will be a shareholder in a joint stock company, occasionally the state is associate in a limited liability company.

<sup>12</sup> This restriction upon the right of shareholders to waive potential conflicts of interest was felt necessary in order to protect the rights of minority shareholders.

<sup>13</sup> See note 4.

## 9. Board Size

A. Except where the company charter or paragraph 7 of this Code provides otherwise, the Board may consist of two members with no representation functions and three members with representation functions (organized as the managing committee). In small companies, such a structure is not necessary. In large companies, the number of board members may be increased, but to no more than seven, to enable decision-making within an optimal time. The members with representative functions may also have decision-making functions in the daily management of the company.

B. The members with no representative functions may be appointed from among the following categories of persons:

- i. Board members or executive officers of a dominant company;
- ii. Former executive officers, who are no longer working full time, but have sufficient expertise from their previous positions to be able to constructively contribute to the board proceedings;
- iii. Branch managers with demonstrated superior performance.

10.1. The general meeting of shareholders/ may appoint as a member of the Board an independent person (with no representation functions in the company), who has been recommended by one of the creditors or investors of the company, or by a shareholder. This person shall enjoy a good reputation and professional training in the legal and economics fields, or in the industry in which the company operates. The rules stipulated in paragraphs 5-7 of this Code apply to such persons.

10.2. The provisions of paragraph 10.1 are especially applicable in those cases in which:

- i. the company has not repaid borrowings from a bank or investor upon the dates established in the loan contract, if the loan was obtained by the issuance of bonds, or the company has not redeemed its shares on the date agreed to with a venture capital fund. The foregoing also applies to financing by leasing;
- ii. the company has not submitted to its creditors required quarterly or semi-annual financial information.

## II. Nature of the Management Contract

The management contract is an agency contract having both contractual and statutory attributes. Based on this contract, the shareholders' representative, on behalf of the company, and the persons appointed as Board members, establish their rights and duties according to the **Company Act**.<sup>14</sup> The management contract shall provide, at a minimum, the fees, meeting fees, termination provisions, and the management and representation functions of Board members. The representation function may be exercised by the chairman of the Board, by the board vice-chairman, and, in those cases specified in the

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<sup>14</sup> Under Romanian law, the rights and duties of board members are established in the **Company Act on the whole, without details. For this reason it is necessary to negotiate contracts between the board members and the shareholders.** The shareholders representative is elected at the meeting of shareholders and acts on behalf of the shareholders in negotiating the contracts with the board members.

company charter, also by the chief executive officer, if the latter is not the same person as the chairman of the board. The division of representation functions between the chairman of the Board and the chief executive officer should be clearly set forth, according to the employment contract concluded between the company and the chief executive officer.

### **12. Nature of the Contract Concluded Between the Company and the Executive Officers**

The employment contract is concluded between the company represented by the chairman of the Board and the executive officers, according to law. The contract establishes the rights and obligations of the parties, according to the labour legislation and the job description.

### **13. Board Meetings**

In order to fulfill their duties, the board shall meet regularly, as provided for in the company charter, and whenever otherwise necessary. The Board shall establish, by its own regulation and according to law and the company charter, the procedures for meeting, communicating the agenda, making decisions, communicating the decisions, and the frequency of the meetings, according to the particular needs of the company.

If a managing committee has been appointed, its decisions shall be communicated to the Board prior to each meeting.

### **14.1 Participation of Other internal constituencies/Stakeholders in the Board Meetings**

Upon invitation, board meetings may be attended by:

i. a representative of shareholders, if the shareholders specifically so request. Where a request has been submitted in writing to the board secretariat<sup>15</sup> by a minority shareholder, a representative of the majority shareholder shall also attend the meeting. This rule is similarly applicable where the request has been submitted by a majority shareholder, or by a representative of a group of shareholders. Mutual funds, closed funds organized according to a civil contract, and private pensions funds shall be represented by their respective management companies;<sup>16</sup>

ii. A representative of the company's customers, but only for those items on the agenda which concern the business relations between the company and the customers;

iii. A representative of the trade unions, or of the employees, if there are no trade unions, but only for those items on the agenda which concern salary or labour policies, included in the company's strategic or restructuring plans. The participation of the trade unions' representative, or of the employees' representative, shall be restricted, if certain information on the agenda of the Board of Directors is confidential;

iv. one or more executive officers.

14.2. In addition to the cases stipulated in paragraph 10, the Board may invite one or two representatives of the company's creditors or investors to attend the board meetings. Such persons may include

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<sup>15</sup> The secretariat performs functions analogous to those performed by the secretary of a U.S. corporation.

<sup>16</sup> See notes **Error! Bookmark not defined**, and 5.

representatives of banks, venture capital funds, **angel investors** who are not involved in the company's management, mutual funds, pension funds, and other institutions of the financial and capital markets. At the time of their appointment as representatives of the creditors or investors, they shall submit a declaration to the secretariat of the Board of Directors, stating that they do not serve as a Board member, executive officer or auditor with a competitor, supplier or distributor of the company.

### **15.1.Core Functions of the Board**

A.The Board shall ensure the proper management of the company and effectively control it, supervise the executive officers, and ensure that it has the authority to take action with respect to the matters entrusted to it by the general meeting of the shareholders, to which end it shall:

- i.Coordinate the activities of the company, based on the development policy approved by the general meeting of shareholders;
- ii.Establish the organizational chart of the company, the functions of its departments or divisions, and the relationship between them;
- iii.Establish the functions of subsidiaries, branches and other secondary units;
- iv.Establish salary and employment policies;
- v.Establish the authority and responsibilities of the executive officers, managers of branches and other secondary offices, and other persons who can commit the company's assets;
- vi.Establish the corporate control systems (other than those established by the internal auditors' commission);
- vii.Draft and submit the annual report to the general meeting of shareholders for approval, on which the corporate business plan shall be based.

B.The board should establish clear policies with respect to production, marketing, investments, authority levels, etc. Revisions to these policies shall be considered at each general meeting of shareholders. Strictly technical aspects of those policies shall be implemented by the executive officers. The board should approve the viability or feasibility of projects or issues submitted for analysis.

### **15.2.Action Plan**

The Board should elaborate an action plan as part of the business plan, based upon its strategic plan.

### **15.3.Code of Ethics**

The Board should establish, in addition to this Code, its own code of ethics, which should be implemented in the same manner as are the company's other corporate governance practices. The code of ethics shall:

- i.Meet the norms of corporate behavior of this Code and any policies and ethical guidelines established by the Company for its personnel;

ii. Be unanimously accepted and approved by the Board:

iii. Be detailed, so as to include behaviour guidelines for all of the company's employees.

## **16. Role of the Executive Officers**

A. The executive officers are employees of the company. By delegation of competencies and authority, they implement the decisions of the Board of Directors, according to the company's goals and strategic planning. In this manner, and according to their authority level established by the Board of Directors, the executive officers may organize, plan, coordinate, control and decide only as regards the activities entrusted to them. They may also analyze, draft and forward to the Board proposals, programs and projects, according to the company's goals and strategic planning, or plans for the improvement of the company's activities. In all cases, the tasks and responsibilities of the executive officers shall be established by the Board of Directors.

B. The provisions of subparagraph A apply as well where the Board appoints an employee of the company as chief executive officer.<sup>17</sup>

C. Where an executive officer is selling or buying the shares of the company in which he is working, either directly or indirectly, he shall notify the secretariat of the Board regarding this transaction and shall make a written report, immediately after the conclusion of the transaction, showing the date of the transaction, the price and the number of shares. The report shall be presented at the next board meeting convened after the date of the transaction. This communication procedure secures the protection of the new shareholder's rights.<sup>18</sup>

## **17. Employment Contracts of the Executive Officers**

The employment contract of an executive officer should not extend for more than four years without shareholder approval. However, the contract may be concluded for a shorter period, unless the company charter provides otherwise.

## **18. Payments to Board Members**

A. The members of the Board shall receive a monthly payment, as well as meeting fees, the amounts of which shall be negotiated between the shareholders' representative and the board members. Meeting fees shall be paid only if the member is present at the board meetings and shall be reasonable in amount, based upon the company's financial situation. Payment of meeting fees is not recommended for small and medium-sized companies, nor for large companies in which the state is a shareholder.<sup>19</sup>

B. The annual income of each Board member shall be disclosed by a detailed report, itemizing each element thereof (monthly payments and meeting fees).

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<sup>17</sup> Per p. 8, the Chairman of the board can be the chief executive officer. **But in this case the chief executive officer isn't an employee.**

<sup>18</sup> This paragraph is intended to address a perceived laxity within certain companies regarding the registration of share transfer information.

<sup>19</sup> These terms are not defined in the Code or applicable legislation.

## Chapter IV - Communication

### 19.1. Communication with Internal Constituencies

A. The Board shall provide to the internal constituencies (as defined above) with a complete financial report, containing accurate and timely information.

B. The annual and semi-annual reports should also address the impact upon employees of financial and other business decisions of the company, and issues of environmental protection.

C. When drafting the report, the members of the board shall observe the principles of transparency, objectivity and reliability of the disclosed information.

### 19.2. Board Reports to Shareholders

A. The board shall provide the shareholders, gathered in ordinary or extraordinary meeting, a report which should include the following:

i. A financial statement prepared according to the accounting standards and practices in force in Romania, certified by internal and outside auditors. If the company has among its shareholders foreign legal persons, or if GDR, ADR or EDR (Global Depositary Receipts, American Depositary Receipts or European Depositary Receipts) have been issued, based on which the payment of its dividends is done in a convertible currency, the statement should be made according to IAS (if IAS has not been fully introduced in the Romanian accounting standards), according to the requirements of a capital market of the EU countries, or according to GAAP system, as the case may be;

ii. The uses of the funds obtained from the public by issuing new shares or bonds; that is, the sum which has been expended during the fiscal year, and when and where and under what form any residual funds have been invested. This detailed information shall be recorded in the balance sheet of the company as a separate annex enclosed with the accounting statements;

iii. A detailed presentation of the company's debts, distinct from the accounting balance sheet;

iv. A market assessment;

v. A report regarding the effectiveness of the internal audit;

vi. A report regarding the effectiveness of the company's by-laws;

vii. The activity report of the executive officers;

viii. A statement regarding any violations of this Code.

B. Upon the written request of the shareholders, the board is bound to produce intermediate financial reports, and to supply additional information on the topics of interest to the shareholders. The Board members shall also disclose information to shareholders, without the latter's specific request, whenever one or more shareholders request an increase of the **share capital** by an in kind contribution of goods

constituting "second hand" equipment.<sup>20</sup>

### **19.3 Types of Reports Which the Board may Submit to Shareholders, Other Than Those Stipulated in Paragraph 19.2:**

- i. A report identifying those family members of the board members and of the executive officers (including board members and managers of a subsidiary or manager of a branch of the company) who are doing business with the company (e.g. suppliers, dealers);
- ii. A report recorded in the Board ledger,<sup>21</sup> regarding any interest that the board members or the executive officers have in each contract the company signed with a third party (company, investor). This report shall disclose any potential conflicts of interest. This report may be read by any shareholders of the company, but it also shall be communicated to the other shareholders, to ensure that all shareholders have equal access to important information.
- iii. A report on loans granted to the board members or executive officers, if the company is carrying on banking operations, or guarantees the company extended to a creditor or financing entity, as surety, in favour of a board member or executive officer, if the company is not carrying on banking activities;
- iv. A report on expenses incurred by board members and executive officers, and paid by the company, for dwelling, medical assistance, training, travel abroad, use of car, holiday house, etc.
- v. Income statements and other earnings.

### **19.4. Additional information for shareholders:**

- i. Monthly average stock price quoted on the listing stock exchange;
- ii. Rating valuation, if bonds are issued. If the company is rated by more than one rating agency, it is bound to inform both the shareholders and the public of all ratings received. It is very important for an investor to know the exact rating received by the company from each rating agency;
- iii. Leverage calculation based on group liabilities, in case of a holding company;
- iv. Accounting statements of the corporate subsidiaries. However, if the company is consolidated, a consolidating accounting balance sheet should be used, to highlight the results of both the **dominant** company and its subsidiaries.

<sup>20</sup> This paragraph is intended to address a perceived problem involving an "in-kind" capital contribution of over-valued used equipment.

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<sup>21</sup> I.e., minutes

## 20. Reports to be Submitted to the Board by the Executive Officers Between the Meetings of Shareholders:

The essential information to be submitted to the board should include:

- i. Working plans and annual budgets, as well as updated, long-term action plans;
- ii. Capital, workforce and cash flow budget statements;
- iii. Quarterly and semi-annual performance indicators achieved by the company as a whole and by each division, sector, etc.
- iv. Audit reports, including any possible cases of fraud or relevant violations;
- v. Notifications received from fiscal bodies that ascertain, or initiate legal proceedings regarding, fiscal infringements;
- vi. Incidents or serious risks of accidents, leaks of noxious or polluting substances;
- vii. Failure to pay timely obligations owed to customers and creditors, public or private;
- viii. Failure to collect receivables or overdue payments for goods delivered or services performed by the company;
- ix. Significant complaints regarding the reliability of the company's products or the quality of its services.
- x. Any decision of the board or of a manager, head of section or other decision-maker which resulted in constraints being imposed on the company's activities, or which unfavorably influenced another company, with possible repercussions to the company;
- xi. Proposals regarding association or collaboration contracts with a third party;
- xii. Improvements to the marketing policy of the company;
- xiii. Transactions involving substantial payments to customers or suppliers, or involving payments in exchange for shares, or payments to acquire patents or copyrights;
- xiv. Labour conflicts and proposals for solving them;
- xv. Proposals to manage financial risk by contractual clauses or **hedging transactions**.

21.1. The information set forth in paragraph 20 may be requested at any time by a shareholder of the company, by a written request submitted to the Board of Directors, except for such information as might lead to the disclosure of confidential information (such as patents, investments in new technologies, or intention to manufacture a new product), and except for information regarded by the **National Security Exchange Commission** as confidential and capable of inducing a third party to which such information

was sent to attempt to influence the market price of the company shares, or to attempt an acquisition or merger. Information should<sup>22</sup> be conveyed only if the shareholder agrees in writing to maintain confidentiality, especially with respect to patents, new technologies and market products, new targets of marketing policy, intermediate financial statements, and transactions the company is concluding, including the identity of the contracting parties.

21.2.If the information provided in paragraphs 19-20 is conveyed by a member of the board or an executive officer, or by any other employee of the company, to a third party for the purpose of acquiring, merging or producing a moral or material prejudice to the company, the general assembly of shareholders, meeting in extraordinary session, shall, in addition to taking civil or criminal action, remove and replace the responsible board members, and dismiss the responsible executive officers and other employees.

## **22.Assistance of the Board Secretariat**

All shareholders should have access to the information held by the secretariat of the Board and may address the chairman of the board or the chief executive officer.

Before contacting the board secretariat, shareholders should analyze and clarify any problem they have with the chairman or vice-chairman of the Board or the chief executive officer, if the latter is not the chairman of the Board.

## **23.Dialogue and Social Partnership**

With the support of trade unions or employees' representatives, the Board and the executive officers shall introduce systems to secure the achievement of the following goals:

- i.Improvement of the information flow within the company, so that the employees may better understand the company they are working for and its objectives;
- ii.Periodical consultations between the employees and the chief executive officer or the members of the Board of Directors, before making decisions which directly impact the employees;
- iii.Early and efficient identification and solution of labour

conflicts. **Chapter V - Audit of Board Members' Activity**

## **24.Minimum Compulsory Requirements For Board Members And Executive Officers**

For the prudential management of the company, the board members and executive officers are bound periodically to examine and revise as appropriate:

- i.The maximum exposure to a single debtor, expressed as a percentage, and calculated as the ratio between the total amount of the debt and the level of the company's own funds;
- ii.The minimum liquidity level, calculated according to the maturity of the receivables to be collected and the maturity of the debts owing to customers, creditors or investors;

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<sup>22</sup> The term "should" is intended to be hortatory, not mandatory.

iii. The appropriate level of monthly expenses (or the company as a whole, and for its subsidiaries, branches and agencies):

iv. The extent to which the company may commit to buy equipment, or shares or bonds issued by another company. In this latter case (of shares or bonds), in accordance with **Company Act** and the company charter, the Board shall request the shareholders, gathered in session, to communicate the maximum limit in percentages, to which the company can commit.

### **25.1. Auditors**

A. The internal auditors shall strictly observe the principles of professional ethics observed by chartered accounting experts, and shall obtain undertakings from the shareholders to respect the independence of their activity, according to the provisions of **Company Act**.

B. The company's operations and financial statements shall be based on international accounting standards. Any deviation from these standards shall be explained, and the outside auditors shall specify whether they approve of such deviation.

25.2. The internal auditors have at any time the right to review the manner in which the internal financial control is performed, and therefore they shall have unconditional access to the company's ledgers as well as to the ledgers of the Board and of the managing committee. The auditors commission may review any contract signed by an executive officer which commits the assets of the company.

### **26.1. Independent Auditors**

Any joint stock commercial company, within the category of large companies, and especially those under state control, should<sup>23</sup> appoint an independent auditor.

26.2. The independent auditor shall assist the company in keeping the accounting records, shall certify the internal auditors' report, and shall present an annual report, separate from the internal auditors', which accurately reflects the financial performance of the company. The auditor shall also analyze the practices and procedures of the internal control and of the internal auditors, and if he thinks that they are not adequate, based on written conclusions, he shall make recommendations to the shareholders and to the Board for their improvement.

26.3. Other companies may also implement the provisions of paragraphs 26.1 and 26.2, in order to confirm the accuracy of their financial statements and of their internal auditors' activity.

## **Chapter VI - Final Provisions**

### **27.1. Monitoring of Implementation, Enforcement and Amendment**

The provisions of this Code may be used by companies, professional and employers' organizations, local chambers of commerce and industry, the Chamber of Commerce and Industry of Romania, and by self-regulating bodies on the capital markets. Business associations, employers' associations and local chambers of commerce and industry may adopt this Code in order to secure the observance of its

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<sup>23</sup> The term "should" is intended to be hortatory, not mandatory.

provisions by their members. In such instance, the organizations shall include the provisions of this Code in their company charters.

27.2. Any persons who initiated and signed this Code, or who have later adhered to it, may initiate a request for a change in its provisions by notifying the Chamber of Commerce and Industry of Romania.

28.1. In order to enforce and amend this Code, either based on changes in the law or based on proposals made by professional businessmen's or employers' associations, a permanent body shall be created, charged with monitoring and revising this Code. This body shall also supervise the way in which the provisions of this Code are observed and will record proposals for amendments.

28.2. In order to impose strict rules for listing with a stock exchange or for admittance on the RASDAQ market, it is recommended that the Bucharest Stock Exchange committee and the council of the RASDAQ market, as well as any other stock exchanges to be created, request that all **companies** that they list submit, in addition to their annual financial reports, a report showing the way in which their Board has observed the provisions of this Code. These conditions may also be recommended to banks, to credit guarantee funds, to leasing companies, and to mutual funds and closed investment funds, when a company is requesting financing.

28.3. To secure the enforcement of the provisions of art. 28.2, the signatories to this Code, the persons adhering later to this Code, as well as the Bucharest Stock Exchange committee, the council of **RASDAQ**, the banks and the **National Union of Investment Funds**, the Chamber of Commerce and Industry of Romania, the local chambers of commerce and industry, the businessmen's professional associations, and the employers organizations, may issue a Certificate of Conformity to the provisions of this Code, which may be enclosed with the annual reports of the commercial companies to be financed or quoted with the stock exchange or on the RASDAQ market.

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