

# **VOLUNTARY CORPORATE GOVERNANCE CODE**

**Made by Strategic Alliance of Business Associations (SABA)  
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## Principles

1. The Corporate Governance framework should protect shareholder's rights.
2. The Corporate Governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights.
3. The Corporate Governance framework should recognize the rights of stakeholders as established by law and encourage active co-operation between corporations and stakeholders in creating wealth, jobs and the sustainability of financially sound enterprises.
4. The Corporate Governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership and governance of the company.
5. The Corporate Governance framework should ensure the strategic guidance of the company, the effective monitoring of management by board, and the board's accountability to the company and shareholders.

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>1</sup> WHICH ADOPTS ITS OWN CORPORATE GOVERNANCE CODE.

THIS CODE IS THE CONTRIBUTION OF ROMANIAN BUSINESS ASSOCIATIONS 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 TIMISOAR ON MARCH 26, 2002.

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<sup>1</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 liability 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>2</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:

- a) 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 (it is suggested to remove reference to these categories due to the generality of the wording) ;
- b) 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 corporate laws, 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:

- a) Shareholders/associates (principals) – Board (agents) – executive officers/managers (employees);
- b) Shareholders/associates – Board – managing committee<sup>3</sup> – executive officers/managers.
- c) Remark : it is suggested that the right of property, in respect of shares, be clear defined.

**D.** The goals of Corporate Governance are:

- i. Necessary, sufficient and useful, effective and ongoing communications between internal constituencies;
- ii. Effectiveness and efficiency of company activities in respect of reaching managerial goals measured through internal and external quality auditing. ;
- iii. Ensuring effective protection of shareholders’ rights
- iv. Efficiency, by optimal decisions made by the Board;
- v. Ongoing communications to the public about the financial status of the company and its objectives observing commercial confidentiality (secrets).
- vi. 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, or a supplier, if the supplier is consistently delivering goods on credit. A financing

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<sup>2</sup> The terms “shareholders or associates” and “shareholder/associates” are used where a provision is applicable to all corporate entities. (see note **Error! Bookmark not defined.**) Where a provision is applicable only to a stock company, the term “shareholders” is used.

<sup>3</sup> Under the Romanian model, members of the board may form a managing committee, which will provide day-to-day management of the company.

entity/investor of a company may be a closed investment fund (legal person), mutual fund, a venture capital fund, a private pension fund,<sup>4</sup> an investment bank, a leasing company, the European Bank for Reconstruction and Development or other international financial bodies, or a natural person owning 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>5</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 percentage of its net profit, proportional to the active participation, that is as depending on the personal input to reaching the goals of the company .

## **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>6</sup>), or by a pension fund, even if the shares of these companies are not yet quoted on a stock exchange or the RASDAQ market.

## **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>7</sup> organized in a managing committee, and an even number of non-representation members. It is recommended that the Board of Directors include as large a number of independent members as possible and its operation be based on work committees. 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. Appointment and revocation of the board shall be made by means of cumulative vote upon request of shareholders holding at least 5% of the company stock, allowing thus that minority shareholders have their own representative in the Board. Wherever the structure of the Board and the capital structure do not allow appointment of such a member in the Board, one of the auditors shall be appointed by the minority shareholders, and a special task of such auditor shall supervision of the company transactions with the involved persons.

**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 while observing strictly the appointed mandate. Even though non-representation members may make decisions in the Board, they cannot

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<sup>4</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>5</sup> See ¶¶ 4B & 16.

<sup>6</sup> A venture capital fund is a non-juridical form of closed investment fund.

<sup>7</sup> “Representation” functions are the right to act on behalf of the company in dealings with third parties (see ¶ 4B). “Executive” functions are internal management functions.

represent the company with respect to third parties (remark: the following completion is suggested: the representation function refers to the right and obligation 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 observing the deeds of the company and the regulations in force.

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

### **A. General criteria:**

Any person appointed as Board member shall satisfy the following requirements:

- Have legal capacity, be honest, and be well - trained in economics, law, have no prior criminal record and be well trained the industry in which the company operates;
- 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)
- Not to have been removed from another Board of the same company or of another company for mismanagement;
- 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 nor the position of city or county councilor. This provision also applies to the spouse, and relatives to the first degree, inclusive, of the persons having a mandate of deputy or senator or city/county councilor, or who are appointed in the position of minister, secretary of state, and director in a ministry, governmental agency or other public institutions.
- It is recommended that the members of the Board be at the same time shareholders, having in view the property right.

### **B. Special criteria:**

It is recommended that for the duration of their mandate in the Board, members should not be shareholders or associates, executive officers, or auditors of any 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>8</sup> and to the following types of companies, if so decided by a vote taken at the general meeting of their shareholders:

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

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<sup>8</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.

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>9</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>10</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 (remark : proposal : the president may hold representation function, not executive).

### **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:

- Board members or executive officers of a dominant company;
- 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;
- 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.

### **11. 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 laws

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<sup>9</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>10</sup> See note 3.

regarding commercial companies and management contracts.<sup>11</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 company charter, also by the chief executive officer, if the latter is not the same person as the chairman of the board. It is recommended to extend the representation function to other executives as well, according to the deeds and shareholders agreement of the company. 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.

It is recommended that the classification be worded “Management Agreement is an agency mandate”.

It is recommended that the deeds and the shareholders agreement set forth that the members of the Board of Directors be appointed by resolution of the General Assembly of Shareholders.

It is recommended that the notion of shareholders representative be clearly defined.

## **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 labor legislation and the job description.

## **13. Board Meetings**

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

### **14.1 Participation of Other 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>12</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, It is recommended that the right of shareholders to participate at the meetings of the Board be regulated through own deeds statutory documents and regulations;<sup>13</sup>
- ii. A representative of the company’s customers,<sup>14</sup> but only for those items on the agenda which concern the business relations between the company and the customers;

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<sup>11</sup> Under Romanian law, the rights and duties of board members are not established in the articles of incorporation or by-laws (as in the U.S.), but in contracts negotiated 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.

<sup>12</sup> The secretariat performs functions analogous to those performed by the secretary of a U.S. corporation.

<sup>13</sup> See notes **Error! Bookmark not defined.** and 4.

<sup>14</sup> Presumably, each customer is entitled to separate representation.

- iii. A representative of the trade unions, with consultation rights for issues of economic, social, cultural and sportive interest;
- 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 representatives of banks, venture capital funds 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.
- viii. one of the members of the Board shall be charged to perform the function of representative for the relationship with trade – unions.

**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.

The Board should define the general long, medium and short term policies to:

- include as constituents the marketing, quality, security environment protection, production, human resources policies etc;
- set the general goals of the company for the enforcement of the policies and monitor them for each department at relevant authority levels;
- establish action plans in order to reach the objectives as defined;
- ensure an ongoing development and improvement of the corporate performance.

### **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 behavior 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>15</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>16</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>17</sup> Remark: it is required that this paragraph be removed on grounds of creating an unjustified discrimination.

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

### **Chapter IV – Communication and transparency**

#### **19.1 Communication with Internal Constituencies**

**A.** The Board shall provide 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:

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<sup>15</sup> Per ¶ 8, the Chairman of the board can be the chief executive officer.

<sup>16</sup> This paragraph is intended to address a perceived laxity within certain companies regarding the registration of share transfer information.

<sup>17</sup> These terms are not defined in the Code or applicable legislation.

- 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.

The minutes of the Board meetings having competences related to the general Assembly of Shareholders on the agenda must be made available to shareholders and must be made public under the same conditions as General Assembly. Copies of such minutes shall be made available to the shareholders at their expense. The value of the copies shall not exceed the cost of duplication.

Supply to the shareholders of the following types of reports

a. **Current reports** concerning events important to the company having an impact upon the share value. Such reports shall be made available no later than 2 days after the actual event. Reports should lay a special emphasis upon the corporate transactions with board members, shareholders, executive management and other affiliated persons. Reports concerning such transactions should describe the parties to the contract, the contract object, and value of the transaction, collaterals, duration, penalties and any other relevant information. Information concerning such transactions shall not be classified as being confidential.

b. **Periodical reports:** quarterly for quarters I and III, twice a year and yearly. Such reports must be presented according to the International Accounting Standards and must include explanations concerning assets operations and estimates concerning future company activity as well as a business plan. Twice a year and yearly reports shall be approved by the auditors' commission and by the external auditor.

c. Special reports. Such reports shall be edited by the Board members, upon request by the significant shareholders, to investigate certain assets operation, once during the quarter at most.

- All documents in concerning the agenda of the Board shall be made available to shareholders at least 15 days prior to the meeting. All complete and relevant information shall be included.

- Shareholders must have the right to include topics on the agenda, and the actual procedure of Board meeting must ensure a real debate concerning all topics on the agenda

**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 social

capital by an in kind contribution of goods constituting "second hand" equipment.<sup>18</sup>

It is recommended that the procedure be clarified on a case basis – definition of the request, subjects, nature of information and modality of communication thereof. The procedure should also be applicable for any capital increase.

It is recommended that the concept of “community” be introduced therein; therefore decisions should take into account the impact upon the society and community.

### **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, 19 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. Any shareholders of the company may read this report, 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 favor 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 parent company and its subsidiaries.

### **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;

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<sup>18</sup> This paragraph is intended to address a perceived problem involving an “in-kind” capital contribution of over-valued used equipment.

<sup>19</sup> I.e., minutes.

- 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. Labor conflicts and proposals for solving them;
- xv. Proposals to manage financial risk by contractual clauses or stock exchange 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 Commission of Securities 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>20</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.

It is recommended, on a case basis, to clarify the nature, form, and level of aggregation of operative and strategic information to which the shareholders have access in order to make decisions through the Shareholders Assembly.

**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;

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<sup>20</sup> The term "should" is intended to be hortatory, not mandatory.

iii. Early and efficient identification and solution of labor conflicts.

iv it is recommended to correlate these provisions with those of the collective labor agreement established within the company

## **24 Equal Shareholder Treatment**

- Announcement of the general assembly meeting shall be made by publication of notice in a newspaper with vast coverage as well as through the market information department of the institution selling the stock of the company
- The announcement must contain information concerning the location of the venue (necessarily in Romania), the date and the time of the venue as well as the agenda
- Access of the shareholders shall be allowed on the basis of their ID for physical persons and on the basis of POA(power of Attorney) for legal entities

The reference date for the shareholders entitled to receive dividends is the date set for determining the shareholders holding voting rights in the general assembly setting forth the dividends.

(2) Public owned companies shall notify in the public announcement the fact that the agenda proposed includes setting the value of the dividends by the board of the company

(3) The dividends as approved shall be paid no later than 60 days after the date of the meeting wherein the dividends payment has been set.

(4) in case of public owned companies, dividends shall be only paid in cash, proportionally to the participation to capital.

- The documents related to selling, exchanging or mortgaging assets of the company in amount (cumulative or individual) of more than 20% of the capital during one financial exercise year upon the date of the legal transaction, shall only be concluded by the managers or by the Board members after prior approval by the shareholders extraordinary meeting.

(2) Assets rental for periods exceeding one year, of a total value individual or cumulative exceeds 20% of the capital stock on the date of the legal transaction conclusion shall have the prior approval of the shareholders extraordinary meeting.

- Companies shall update the value of their assets prior to the execution of any capital increase if the inflation rate exceeds 20% as compared to the date of the last assessment.

(2) Upon updating the value of the assets provided for under the previous paragraph, the utility and market value of the assets shall be taken into consideration.

(3) the difference resulting from such an update shall necessarily be used for the increase of the capital stock of the company, either through the increase of the nominal share value or through the emission of new shares that will be distributed freely to all shareholders. New shares shall be distributed to the shareholders proportionally to their participation to the capital at the reference date for the shareholders that can participate to the general meeting concerning the capital increase.

(4) The capital increase with the amount resulting from the assets value update shall be carried out prior to the proposed capital increase.

- In – kind contribution to the capital of public – owned companies are prohibited. The general shareholders assembly shall not, under any circumstance, suspend or cancel the shareholders' right of preemption. The shares issued in exchange for cash contribution shall be entirely paid for upon subscription.

In order to solve any conflict that might arise it is recommended, on a case basis, to harmonize own regulations with European Union relevant regulations.

## **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;
- iii.** The appropriate level of monthly expenses for 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 Law No. 31/1990 regarding commercial companies, republished, 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 Law No. 31/1990 regarding commercial companies, republished.

**B.** External independent auditors and auditors of public owned companies shall be appointed among those chartered persons that have not had nor have special current business relations or other kind of relations with any shareholder, member of the board of manager of the company

**C.** The company’s operations and financial statements shall be based on Accounting Law 82/1991 and its enforcement norms. 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>21</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<sup>21</sup> of commerce and industry, the Chamber of Commerce and

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<sup>21</sup> The term “should” is intended to be hortatory, not mandatory.

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 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 demand alteration of its contents through the information of the Strategic Alliance of Business Associations (SABA) and through organization of relevant debates by the Secretariat of the SABA that is bound to inform its members. The demands for changing the present Code have to be transmitted to the SABA's Secretariat, who is obliged to inform all members about the request and to organize the specific debates.

**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. The organization and the operation modality for the Code monitoring and improvement institution as well as its subordination and control shall be the task of the ASAA secretariat in exercise.

**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 commercial 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 market, the banks and the National Union of Collective Investment Bodies, 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.

**“Corporate Governance - an effective and efficient tool Romanian companies”** – initiated by Strategic Alliance of Business Association, project implemented by five partners, members of the Strategic Alliance of Business Associations (SABA), supported by the Center for International Private Enterprise (CIPE) Washington, an affiliate of US Chamber of Commerce

The partners are:

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## **STRATEGIC ALLIANCE OF BUSINESS ASSOCIATIONS MEMBERS**

1. ASSOCIATION OF EMPLOYERS AND CRAFTSMEN CLUJ
2. ASSOCIATION OF MILLERS AND BAKERS WITH PRIVATE CAPITAL
3. ASSOCIATION OF SHOEMAKERS AND LEATHER MANUFACTURERS IN ROMANIA
4. BUSINESS CENTER TRANSILVANIA – Salaj Subsidiary
5. BUSINESS FOUNDATION CONSTANTA
6. BUSINESS OPORTUNITTIES FOR WOMEN
7. CASTTEL - Consulting Agency, Assistance, Services for Local Economy Technology
8. CHAMBER OF COMMERCE, INDUSTRY AND AGRICULTURE BACAU
9. CHAMBER OF COMMERCE AND AGRICULTURE CLUJ
10. CHAMBER OF COMMERCE AND AGRICULTURE TIMISOARA
11. CHAMBER OF COMMERCE AND INDUSTRY ARGES
12. CHAMBER OF COMMERCE COVASNA
13. CHAMBER OF COMMERCE AND INDUSTRY HUNEDOARA
14. CHAMBER OF COMMERCE AND INDUSTRY IASI
15. CHAMBER OF COMMERCE, INDUSTRY, NAVIGATION AND AGRICULTURE CONSTANTA
16. CHAMBER OF COMMERCE AND INDUSTRY “OLTENIA” – DOLJ
17. CHAMBER OF COMMERCE AND INDUSTRY NEAMT
18. CHAMBER OF COMMERCE AND INDUSTRY ROMANIA (CCIR)
19. CHAMBER OF COMMERCE AND INDUSTRY VALCEA
20. CHAMBER OF COMMERCE OF PRIVATE ENTREPRENEURS
21. CONSULTING CENTER FOR SMEs TULCEA
22. EMPLOYERS FEDERATION BIHOR
23. EMPLOYERS ASSOCIATION CLUJ COUNTY
24. EMPLOYERS ASSOCIATION MEDIAS
25. ENTREPRENEURIAL UNION OF PRODUCERS AND USERS FOR INDUSTRIAL EQUIPMENT FOR ENVIRONMENT PROTECTION
26. FOUNDATION FOR SME PROMOTION BRASOV
27. FEDERATION OF PRIVATE FARMERS IN ROMANIA
28. INTER-PROFESSIONAL EMPLOYERS’ GROUP NEAMT
29. MANAGEMENT AND BUSINESS CONSULTING CENTRE CONSTANTA
30. NATIONAL COUNCIL OF SMEs IN ROMANIA
31. NATIONAL CONFEDERATION VITAL
32. NATIONAL FEDERATION OF ROMANIAN EMPLOYERS

33. NATIONAL DAIRY ASSOCIATION
34. PRIVATE ENTREPRENEURS FEDERATION TIMIS
35. ROMANIAN ASSOCIATION FOR ELECTRONICS AND SOFTWARE
36. ROMANIAN EMPLOYERS' ASSOCIATION – Mures Subsidiary
37. ROMANIAN ASSOCIATION OF MANAGER WOMEN
38. ROMANIAN ASSOCIATION OF SHAREHOLDERS
39. REGIONAL ASSOCIATION OF EMPLOYERS CONSTANTA
40. STUDY AND ANALYSES CENTER SUCEAVA
41. UGIR 1903
42. ROMANIAN SHAREHOLDERS ASSOCIATION
43. BACAU COUNTY INDUSTRIAL ENTREPRENEURS ASSOCIATION
44. BACAU COUNTY ASSOCIATION OF MILLERS AND BAKERS
45. BACAU COUNTY IMPORTERS AND EXPORTERS' ASSOCIATION
46. BACAU COUNTY TRANSPORTERS' ASSOCIATION

**List of companies and persns that attended various project stages**

**List of seminar participants Corporate Governance– CONSTANTA 14 -15 noiembrie 2001**

<b>No.</b>	<b>Name/first name</b>	<b>Position</b>	<b>Institution/location</b>
1.	NACU CALINESCU TUDOR	Economist	BRD GSG Sucursala Constanta
2.	CERNATESCU MARIN	Director General	SC HORTICOLA MIHAIL KOGALNICEANU SA
3.	SUTA HAIDA	Economist PIS	SC HORTICOLA MIHAIL KOGALN. SA
4.	MISA IONUT	Expert	APAPS CONSTANTA
5.	PETRESCU DAN	Director Tehnic	SC PETROSERV SA
6.	CHIRAN IULIAN	Director	SC GRUP PETROL MARIN
7.	FOCA MARIAN	Presedinte	UJSL CNSLR “FRATIA”
8.	MADALINA DRAGAN	Consilier Juridic	SC EFORIE SA
9.	STANIA RAZVAN MARIUS	Inginer Sef	AGROSERVICE CONSTANTA SA
10.	ZAMAN MIHAI	Director	AGROSERVICE CONSTANTA SA
11.	LEPADATU ELENA	Director	BRD GSG Ag. Balada Constanta
12.	TUDORICA GABRIELA	Sef Serviciu Personal	CN ASOCIATIA PORTILOR MARITIME Constanta
13.	POPOVICI LIDIA	Sef Serviciu Clienti Persoana Juridice	CEC SUCURSALA CONSTANTA
14.	DICA CORNELIU	Director Marketing	CN APMC SA
15.	CIOBOTARU RODICA	Referent I	SIF TRANSILVANIA Rezentanta Constanta
16.	BABAU GABRIELA	Referent II	SIF TRANSILVANIA Rezentanta Constanta
17.	ANTOHI GHEORGHE		CRAMN MANGALIA
18.	BOACSA CORINA		BARONF CONSTANTA
19.	GOGA SERGIU		SC GRUP PETROL MARIN SA CONSTANTA
20.	PLESU TIBERIU		CNSLR FRATIA
21.	OLTEANU NICULAE		SC CONTINENTAL SA Sucursala Constanta
22.	BRESCAN ELEONORA		SC DOBROGEA SA CONSTANTA
23.	MARCU LIANA		SC DOBROGEA SA CONSTANTA
24.	TOPALA GEORGETA		COREMAR SA CONSTANTA

**List of seminar participants Corporate Governance Ramnicu Valcea, 22-23 November 2001**

<b>No.</b>	<b>Name/first name</b>	<b>Position</b>	<b>Institution/location</b>
1.	BALATICA TUDOR	Administrator	SC VALCEANA SA
2.	NICOLAESCU ADRIAN	Vicepresedinte	CCI Arges
3.	ANTONESCU NICOLAE	Director – Dep.Dezv Econ si Integrare Europeana	CCIA Sibiu
4.	DICU NICOLAE	Presedinte Director General	Filiala CNIPMMR Ramnicu Valcea SC PICOMITEX SA
5.	PURECA SORIN	Director Economic	SC FORAJ SONDE RAMNICU VALCEA SA
6.	VOCHITU FELICIA	Director Resurse Umane	SC UZINELE SODICE GOVORA SA
7.	MARINOIU COSTEA	Director	SC EXLIBRIS SA
8.	PURCARESCU G.	Vicepresedinte IMM	
9.	BORAC GHEORGHE	Director General	SC COMAT VALCEA SA
10.	STOICA MIHAI		SC COMAT VALCEA SA
11.	RADULESCU FLORIN	Director Economic	SC COMAT VALCEA SA
12.	VULPESCU OCTAVIAN		BURSA DE MARF OLTENIA SA
13.	CORNEL TOMITA		TOMICOR SRL
14.	POPESCU CONSTANTIN		SOC DE INV FIN OLTENIA SA
15.	DASCALU CONSTANTIN	Vicepresedinte	CCI OLTENIA Dolj
16.	MARINESCU VIFOREL		SC SODEROPHARM SA
17.	TITA ILIE	Vicepresedinte	CCIA OLT
18.	SORESCU MARIA		BRD Sucursala Judeteana Valcea
19.	RIZOIU GHEORGHE	Sef departament	CCI VALCEA
20.	STEFAN VICTORIA	Sef serviciu actionariat	SC OLTCHIM SA
21.	PRICA MARIANA	Director Calitate – Manager Proiect	SC CARVIL SA
22.	SPIRIDON NICU	Presedinte CA	SC BERE ALUTUS SA
23.	CIOCAN VASILE	Actionar	
24.	VALENTIN CISMARU	Presedinte	CCI VALCEA
25.	ZAHARIA NARCIZA FLORENTA	Director Executiv SRA	CCI VALCEA
26.	CISMARU ELENA	Presedinte	SC HARINVEST SA Ramnicu Valcea
27.	CAZANGIU MIHAELA	Judecator	TRIBUNALUL VALCEA
28.	ILINA GHEORGHE	Director FIN - CTB	BRD
29.	FIERA IOAN DAN		SC GOVIL SA
30.	CRACIUNESCU DUMITRU		SC DIANA SRL
31.	BALASOIU CONSTANTIN		CCI VALCEA

**List of Corporate Governance public hearings witnesses – Timisoara 30 Nov 2001**

<b>No.</b>	<b>Name/first name</b>	<b>Position</b>	<b>Institution/location</b>
1.	FORA CORNELIU		Ceramica Crinul SA
2.	PAUN CONSTANTIN	Vicepresedinte CA	SC AGATEX SA
3.	MANIOV VICHENTIE		NOVACAN GROUP
4.	MARCU MARITA	Inspector personal	SC DERMATINA SA
5.	LIUBA MARA	Sef birou actionari	SC MECACOM SA
6.	CULEA VLADIMIR	Director, administrator	SC EXPOTIM SRL
7.	NICOSEVICI MIRCEA		Regia Autonoma AQUATIM
8.	MIRCEA EUGENIU	Director personal	SC CENTRUMAG PRIVAT SA
9.	IOAN SAVU	Director sucursala	SC ASTRA SA
10.	PAL GABRIEL	Sef marketing	SC GUBAN SA
11.	HOLOTESCU DAN	Director financiar	GRAFOPRINT
12.	IOVESCU MENUTA	Membru C.Ex.	CCIAT

**List of seminar participants Corporate Governance – Cluj Napoca 6 -7 Dec. 2001**

No.	Name/first name	Position	Institution/location
1.	ALEXE NICOLAE	Director General	ACSA SA Campia Turzii
2.	PUSCAS IOAN	Director Economic	ACSA SA Campia Turzii
3.	MAIER MARIUS	Director General	CENTRAL SA
4.	AVRAM IOAN	Director Executiv	EXPOTRANSILVANIA SA
5.	SCARINGI ADINA	Departament Publicitate	EXPOTRANSILVANIA SA
6.	MARCHIS IOAN	Director Economic	LIBERTATEA SA
7.	SATMAR DAN	Director	SAMUS MEX DEJ
8.	Pr. Dr. ILIES LIVIU	Profesor	UBB Fac. Business
9.	Dr. RUSU LAZAR	Lector	UBB Fac. Business
10.	IGNAT MIRCEA	Director	AGRO FULGER
11.	GIURGEA ION	Membru Colegiu	CCIA Cluj
12.	VITOC IONEL	Director	AMBIENT PROIECT
13.	GIRBA IOAN	Director	MARGRAM
14.	BOT VASILE	Director Economic	CCIA Cluj
15.	POP LIVIU	Director General Adj.	ALCOM SA
16.	BOZGA FRANCISC	Sef Serviciu Productie	SOMES SA DEJ
17.	SILAS ELENA	Sef Compartiment Marketing	SOMES SA DEJ
18.	VARGA NICOLAE	Presedinte	ATCOM Cooperativa Igiena
19.	CONSTANTINESCU IOAN	Administrator - asociat	COMIMPEX SRL

**List of Corporate Governance public hearings witnesses – Bucharest 14 Dec. 2001**

No.	Name/first name	Position	Institution/location
1.	FLOREA DUMITRESCU	Vicepresedinte	AGER Bucuresti
2.	CRISTIAN PARVAN	Presedinte	CCIA Calarasi
3.	VICTOR DUMITRACHE	Presedinte	BADUC SA
4.	ALECU GHEORGHE	Presedinte executiv	UNIROMSIDER
5.	GRATIELA IORDACHE	Director executiv	Asociatia Actionarilor din Romania
6.	FLORIN LUCA	Secretar general	BRD - GSG
7.	ION POP	Director	CCIRB
8.	ANTON DOBRE		Asociatia Investitorilor Straini din Romania
9.	GHEORGHE STROE		Asociatia Generala a Economistilor din Romania
10.	IOAN CHESA	Referent de Specialitate	CCIRB
11.	JULIEN BRATU		Asociatia Investitorilor Straini din Romania

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