



ICLG

The International Comparative Legal Guide to:

Corporate Governance 2016

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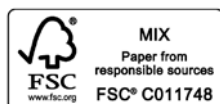
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EDITORIAL

Welcome to the ninth edition of *The International Comparative Legal Guide to: Corporate Governance*.

This guide provides the international practitioner and in-house counsel with a comprehensive worldwide legal analysis of the laws and regulations of corporate governance.

The guide is divided into country question and answer chapters. These provide a broad overview of common issues in corporate governance laws and regulations in 30 jurisdictions.

All chapters are written by leading corporate governance lawyers and industry specialists, and we are extremely grateful for their excellent contributions.

Special thanks are reserved for the contributing editors, Bruce Hanton and Vanessa Marrison of Ashurst LLP, for their invaluable assistance.

Global Legal Group hopes that you find this guide practical and interesting.

The *International Comparative Legal Guide* series is also available online at www.iclg.co.uk.

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1 Setting the Scene – Sources and Overview

1.1 What are the main corporate entities to be discussed?

Public companies limited by shares (*nyrt.*) or stock corporations are the corporate entities which can be listed on a stock exchange.

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

The new Civil Code, i.e. Act V of 2013 on the Civil Code (the “**Civil Code**”), Act C of 2000 on Accounting (the “**Accounting Act**”), Act CXX of 2001 on capital markets (the “**CMA**”), the Corporate Governance Recommendations issued by the Budapest Stock Exchange (“**BSE**”) on the basis of the Recommendations of the European Commission no. 2004/913/EC and no. 2006/162/EC (the “**CGR**”) and the by-laws of the company, i.e. the rules of the board of directors and the supervisory board.

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

This answer was not available at the time of printing.

2 Shareholders

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

The board of directors or (in the case of a one-tier management system set out below) the management board is the body responsible for the operation, management and day-to-day business of the stock corporation. The shareholders have limited influence on the operation and management of a stock corporation. In private stock corporations, the articles of association may provide special decision-making rights to the supervisory board. Such decision-making powers of the supervisory board are not permitted in the case of public stock corporations. In private companies, special classes of shares may provide the holder of such shares with veto rights or other special rights; however, such special rights are not in compliance with the CGR.

Certain substantial transactions require the passing of a resolution of the general meeting, e.g. amendments of the articles of association, capital decreases or increases, transformation transactions, merger and dissolution of the company and also the remuneration and the bonus system of the stock corporation. Additional cases can be stipulated in the articles of association.

2.2 What responsibilities, if any, do shareholders have as regards the corporate governance of their corporate entity/entities?

The individual shareholders have no special responsibilities in relation to corporate governance except for exercising their rights as provided under the Civil Code and the articles of association in line with their general fiduciary duties to the company and to the other shareholders. The annual general meeting of the shareholders (the “**AGM**”) has to resolve on the annual corporate governance report (the “**Annual CG Report**”).

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

The AGM must be held within six months following the end of the financial year. At the AGM, the shareholders have to decide on the annual report and the Annual CG Report of the stock corporation.

Extraordinary general meetings (“**EGM**”) must be convened within eight days if: (i) the equity of the stock corporation decreases to less than two-thirds of the registered capital due to losses; (ii) the equity of the stock corporation decreases below the minimum level of the registered capital; (iii) the stock corporation is threatened by insolvency or has stopped making payments; or (iv) the assets of the stock corporation do not cover its debts. In other cases, shareholders having at least one per cent of the votes are entitled to ask the board of directors to convene the AGM or EGM (together, the “**GM**”).

Unless provided otherwise, the decisions of the GM are subject to a simple majority except for the amendment of the articles of association, the transformation into a private company, the transformation, merger or demerger and the dissolution of the stock corporation which requires at least 75 per cent of the votes represented at the GM. The articles of association may contain other matters that require qualified majority decisions.

If the GM refuses the appointment of a special auditor to review the last annual report or any transaction in connection with the operation of the management in the last two years, the shareholders representing at least one per cent of the votes can request the court of registration to appoint such an auditor.

If the GM refuses to enforce any claim of the stock corporation against the shareholder, board member or auditor of the company, the shareholders representing at least one per cent of the votes are entitled to enforce such claims on behalf of the stock corporation within 30 days following the date of the GM.

The shareholders representing at least one per cent of the votes are entitled to suggest additional agenda items within eight days following the announcement of the invitation to the GM. The shareholders or its proxy holder have the right to participate and speak at the GM and to request information required to make a proper assessment of the agenda items.

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

No, except for exceptional cases, e.g. when abusing their limited liability for the company's claims to harm creditors.

2.5 Can shareholders be disenfranchised?

Yes, if the bidder of a public takeover bid acquires more than 90 per cent of the shares in the company and has announced its intention, it can establish a call option over all remaining shares.

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

If the GM refuses to enforce any claim of the stock corporation against the shareholder, board member or auditor of the company, the shareholders representing at least one per cent of the votes are entitled to enforce such claims on behalf of the stock corporation within 30 days following the date of the GM.

2.7 Are there any limitations on, and disclosures required, in relation to interests in securities held by shareholders in the corporate entity/entities?

In addition to merger control, acquiring more than 75 per cent in a company triggers a reporting requirement to the court of registration pursuant to the Civil Code. Moreover, the shareholders have to report to the Hungarian National Bank if their shareholding exceeds or falls below 5, 10, 15, 20, 25, 30, 35, 40, 45, 50, 75, 80, 85, 90, 91, 92, 93, 94, 95, 96, 97, 98 and 99 per cent of the votes. Not fulfilling the aforementioned duties results in the suspension of the voting rights attached to the affected shares.

3 Management Body and Management

3.1 Who manages the corporate entity/entities and how?

Stock corporations can have a two-tier (board of directors, supervisory board) and one-tier management structure. In the case of a two-tier system, the board of directors is responsible for the day-to-day running of the business, while the supervisory board is supervising the management board, without having any executive powers in the management of the company. The board of directors has to submit a report to the supervisory board in relation to the operation, the financial position and the business policy of the company every three months.

If the company selects to use a one-tier system, no supervisory board is needed and the management board must have at least five members consisting of internal and external (independent) board members. The number of external board members must exceed the number of internal board members.

In both cases, the GM of the company has to appoint an audit committee of at least three members who has to be appointed from the members of the supervisory board or the management board (in the case of a one-tier system).

The company is entitled to establish committees that are internally responsible for certain business matters or entrust individuals with certain competences within its boards.

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

The appointment and the removal of the members of the board of directors or management board is subject to the decision of the GM. The maximum term of the appointment is five years.

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

The decisions in relation to the remuneration of the members of the board of directors, the members of the supervisory board and the principal officers of the company and the principles of the long-term remuneration and bonus scheme of the principal officers fall within the exclusive competence of the GM. According to the CGR of the BSE, it is recommended to have a fixed (i.e. non-performance related) remuneration in the case of supervisory board members, and a proportion of the fixed and the variable elements of the remuneration of the management should incentivise them to undertake strategic thinking rather than focus on short-term profit maximisation. Furthermore, the CGR provides that the company should issue an annual remuneration report in relation to the remuneration of the board members.

3.4 What are the limitations on, and what disclosure is required in relation to, interests in securities held by members of the management body in the corporate entity/entities?

There is no limitation of shares that may be owned by members of the management bodies. The members of the management are subject to the reporting obligations set out in question 2.7 above and have to disclose all dealing with the company and with the Hungarian National Bank within two business days. In relation to certain matters, exercise of the voting rights by the members of the management may raise conflict of interest issues (e.g. approval of own acts or waiver of such members' liability *vis-à-vis* the company). According to the CGR, insider dealings must be reported to the supervisory board, the board of directors and the audit committee, and the company has to establish specific guidelines in relation to insider dealings.

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

The process for the meetings of the board of directors and the management board is regulated by the by-laws of the board of

directors. According to the CGR, the company has to set up its by-laws and its own annual agenda which should determine the frequency of the meetings and the tasks to be managed by the board.

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

The members of the boards must be independent from, and cannot be instructed by, the shareholders, and have to act on the basis of the priority of the interest of the company. The board members have to act in compliance with the Companies Act and the applicable laws, the articles of association of the company and the decisions of the GM. The GM cannot exercise the competences of the board members. The members of the management are liable *vis-à-vis* the company in accordance with the liability for the breach of contracts set out in the Civil Code, which is a strict form of liability. The liability of the board member is exempted if the action has been approved by the GM or covered by the general release decision thereof.

3.7 What are the main specific corporate governance responsibilities/functions of members of the management body and what are perceived to be the key, current challenges for the management body?

According to the Civil Code, the board of directors or the management board has to take all actions which do not fall within the competence of the shareholders or the GM. According to the CGR, the board of directors or the management body has to, *inter alia*, participate in the establishment of the strategy of the company and control the strategic investments of the company, and establish and maintain a transparent accounting system and system of internal controls.

3.8 What public disclosures concerning management body practices are required?

The board of directors or the management board has to establish an annual report to the GM, and reports to the supervisory board (if applicable) on a tri-monthly basis in relation to its activities.

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

Yes, D&O liability insurances are common and have become very popular with companies insurance due to the strict provisions of the new Civil Code.

4 Transparency and Reporting

4.1 Who is responsible for disclosure and transparency?

In general, the management board as a whole is responsible for due and timely disclosures and transparency. In the case of the annual corporate governance report, the board has to submit the proposal of the annual report and the GM has to resolve on the annual corporate governance report.

4.2 What corporate governance related disclosures are required?

The annual reports of stock corporations have to prepare and publish annual financial statements, which include the prescribed financial statements and the related notes, as well as a management report and a supervisory board report. Listed companies also have to prepare semi-annual financial reports and interim reports in between. Moreover, they have to comply with, *inter alia*, *ad hoc* disclosure requirements (rules on the publication of insider information) set out in the CMA. They also have to publish directors' dealings. Furthermore, the annual corporate governance report must be published on the website of the company.

According to the CGR, the board of directors or the management board has to determine the practices of the company in relation to public announcement and the provision of transparent and fair information to the market by way of equal treatment of all interested parties and stakeholders. The company has to make public announcement in relation to, *inter alia*, the annual timetable of corporate actions, the strategic goals of the company, the remuneration and the compensation of the board members, the risks associated with the operation and the business of the company, the results of the company, the shareholder structure and the corporate governance practices of the company.

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

Companies fall under mandatory audit and they also have to establish an audit committee from the members of the management board or the supervisory board, depending on whether the company chooses a one-tier or two-tier management structure. The audit committee must have at least three members and at least one of its members needs to have qualifications in accounting or audit services. The audit committee provides support to the supervisory board or the management board in relation to the controlling of the financial reports and reporting systems and the appointment and management of the auditor of the company.

4.4 What corporate governance information should be published on websites?

According to the Civil Code, the company has to publish on its website, *inter alia*, the basic data of the company, the annual corporate governance reports, the invitation to the GM, proposal submitted to the GM, the forms used for third party representations or voting in writing at the GM, the aggregated data in relation to the number of the shares, the voting rights and other data in relation to the shares prior to the GM. In general, the articles of association can provide that the company publishes all its announcements required to be made by the Civil Code on its website.

According to the CGR, the guidelines in relation to the internal controlling systems, the inside dealings of the company, the annual compensation reports, the annual reports of the company and the annual schedule of corporate actions and events must be published.

5 Miscellaneous

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

There is no statutory regulation in relation to corporate social responsibility (“CSR”). In practice, however, companies more often participate in CSR-related activities and establish specific bodies to make decisions in such matters. If the company participates in CSR-related activities, the reports on the company’s activities in the area of CSR are published on the company’s website.



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

If the number of employees on a yearly average exceeds 200, one-third of the supervisory board must be elected from the employees. If the company applies a one-tier system, the management board has to agree with the works council in relation to the participation of the employees in the management board. In this latter case, the employee representatives participate in the approval of the annual corporate governance report.



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LENDVAI

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