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The International Comparative Legal Guide to:

Corporate Governance 2017

10th Edition

A practical cross-border insight into corporate governance

Published by Global Legal Group, with contributions from:

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Published by
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London SE1 3PL, UK
Tel: +44 20 7367 0720
Fax: +44 20 7407 5255
Email: info@glgroup.co.uk
URL: www.glgroup.co.uk

GLG Cover Design
F&F Studio Design

GLG Cover Image Source
iStockphoto

Printed by
Ashford Colour Press Ltd
June 2017

ISBN 978-1-911367-56-7
ISSN 1756-1035

Strategic Partners

MIX
Paper from responsible sources
FSC® C011748

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1 Setting the Scene – Sources and Overview

1.1 What are the main corporate entities to be discussed?

The distinction between private and public companies is well recognised by Cyprus Companies Law, Capital 113 ("**Companies Law**"). One principle statutory difference is that in respect of a public company, the public at large may be invited to subscribe for securities (shares and debentures), whereas a private company is prohibited from doing so.

Despite the fact that corporate governance concerns all types of companies, this Chapter will concentrate on public limited companies listed on the Cyprus Stock Exchange ("**CSE**"), the shares of which are traded on the main market, the main projects market and the shipping companies market. These companies are obliged to fully implement the Code of Corporate Governance ("**Code**") issued by the CSE. Public limited companies are not necessarily obliged to be listed on the CSE and if so, they enter into a private contractual arrangement with the Cyprus Securities and Exchange Commission ("**CySEC**") to gain access to CSE, a sophisticated market for its shares, falling within CySEC's regulatory ambit.

Where a listed company applies the provisions of the Code of the CSE, it is deemed that the Code also applies to the whole group of companies to which the company belongs, including any subsidiary through central subcommittees and where the subsidiary companies of the listed company themselves maintain committees referred to in the Code, namely the Nomination, Remuneration and Audit Committees, then the subsidiary companies themselves must also apply the provisions of the Cyprus Governance Code of the CSE.

Public limited companies and, to a greater extent, listed public limited companies are subject to a more onerous legislative and regulatory regime, aiming to protect the general public and investors.

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

The principal piece of primary legislation governing the formation and operations of companies in Cyprus is the Companies Law, which is virtually identical to the former UK Companies Act 1948. Indicatively, the Companies Law sets out, *inter alia*, the provisions relating to the incorporation of companies and matters incidental thereto, the rights and powers reserved for shareholders and the powers and duties of the directors.

The company's articles of association should be read in conjunction with the Companies Law and any other relevant law, provided herein, in cases where corporate governance issues are concerned. Subject to the provisions of the Companies Law, which prevails over the articles of association of a company in the event of a conflict, the articles prescribe regulations for companies and set out the rights and duties as between the company, the shareholders and the directors.

UK common law rules and equitable principles, having been incorporated, by statute, in the Cypriot legal system are applicable in relation to the fiduciary duties of directors and employees in certain circumstances.

The CSE was established under the Securities and Stock Exchange Law of 1993 and is supervised by CySEC. The provisions of the aforesaid law together with the regulations issued thereunder, balance the interests of issuers and investors, by providing proper protection to local and foreign investors, without making it increasingly difficult for public limited companies to be listed on the CSE.

By the Cyprus Securities and Exchange Commission Law of 2009, a supervisory power regarding capital market and transactions is vested in CySEC.

Adherence to the provisions of the CSE's Code (4th edition, April 2014) is obligatory for companies listed on the CSE, the shares of which are traded on the main market, the main projects market and the shipping companies market. In so far as companies listed on all other markets of the CSE, they may voluntarily comply with the Code provisions, however, paragraph B.3.1. of the Code shall be applied by all listed companies, excluding companies of the non-regulated market of the CSE.

Further to directly applicable EU regulations, such as the EU Market Abuse Regulation 596/2014 ("**MAR**") which entered into force on 03/06/2016 and the EU Regulation on specific requirements regarding statutory audit of public interest entities ("**New EU Audit Regulation**") which entered into force on 17/06/2016, the following national laws, of which the supervision and application is vested in CySEC, are the basic corporate governance sources and were intended to harmonise national law with EU directives:

- The Market Abuse Law of 2016.
- The Investment Services and Activities and Regulated Markets Law of 2007 (the "**Investment Services Law**").
- The Transparency Requirements (Securities Admitted to Trading on a Regulated Market) Law of 2007 (the "**Transparency Law**").
- The Takeover Bids Law of 2007 (the "**Takeover Law**").

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

Corporate Social Responsibility/Non-financial reporting

By initiating a national action plan for CSR (2013-2015) through the Directorate General for European Programmes, Coordination and Development and approved by the Council of Ministers on 11/02/2013, the Government has shown more of an interest in creating a favourable environment for businesses to develop, in a systematic and coordinated way, practices of corporate social responsibility ("**CSR**") (see question 4.3 below).

Recently, the Office of Registrar of Companies and Official Receiver prepared a bill, titled "the Companies (amending) (no.2) law of 2017" which aimed to harmonise the Companies Law with Directive 2014/95/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups. The bill was approved by the Council of Ministers on 15/02/2017, submitted to the House of Representatives on 24/02/2017 and was scheduled to be brought before the House for voting on 19/05/2017.

The bill, in line with the EU directive and with regard to public-interest entities (such us listed companies on regulated markets, credit institutions and insurance undertakings) which are large undertakings and parent undertakings of a large group, in each case having more than 500 employees, establishes a minimum legal requirement in relation to the disclosure of a non-financial statement in their management report containing information to the extent necessary for an understanding of their development, performance, position and impact of their activity relating at least to social, environmental and employee matters, respect for human rights, anti-corruption and bribery matters.

Additionally, the bill intends to implement the EU directive in so far as it requires public entities, which are not small or medium sized and are listed on a regulated market, to include in their corporate governance report a description of the diversity policy applied by the Board with regard to aspects such as, age, gender, or educational and professional backgrounds of members, the objectives of that policy, how it is implemented and the results from the reporting period. If no such policy is applied, the statement shall contain an explanation as to why this is the case. The responsibilities of the auditors have expanded so that they are now required to express their opinion regarding the diversity policy in the report and to check if the information on the diversity policy was provided.

Gender balance on the Boards of listed companies

On 21/04/2016 the percentage of women participating on Boards of companies listed on the regulated market and on the emerging companies market were 10% and 15% respectively, which is below the average share of women (23.3%) participating on the Boards of the largest publicly listed companies registered in all Member States in April 2016. According to the latest CSE statistics, the participation of women had not increased by 21/04/2017, remaining at 10% in the regulated market and increasing by only 1% in the emerging companies market.

Since there are no national measures in place in order to improve gender balance on the companies' Boards, in April 2017 the CSE's advisory committee submitted a suggestion to the CSE's Council to take measures encouraging and promoting increased participation of women on Boards.

The new EU Market Abuse Regulation

For the purpose of effectively implementing the **MAR** and Directive 2014/57/EU on criminal sanctions for market abuse (market abuse directive), the Market Abuse Law of 2016 was enacted and repealed the Insider Dealing and Market Manipulation (Market Abuse) Law. The provisions of the Market Abuse Law of 2016 apply within the scope provided in MAR.

Under MAR, the definition of inside information for the purposes of insider dealing (see question 3.4 below) remains the same, however MAR now clarifies that information which, if it were made public, would be likely to have a significant effect on the prices of financial instruments, derivative financial instruments, related spot commodity contracts, or auctioned products based on emission allowances, shall mean information that a reasonable investor would be likely to use as part of the basis of his or her investment decisions.

Inside information, insider dealing and market manipulation is redefined and unlawful disclosure of inside information is now defined and regulated by MAR, whereas legitimate behaviour is also defined and regulated for cases of insider dealing and unlawful disclosure.

The requirement to announce inside information as soon as possible, except under certain circumstances, remains the same and what has changed is the introduction of more extensive record keeping if the decision has been made to delay such disclosure. Further, the information to be included on the insider list has been extended to include additional information on national identification numbers, personal telephone numbers and the precise time at which the person has acquired the information.

The supervisory powers of competent authorities, such as CySEC, have now increased. Cooperation between Member States, third countries and the European Securities and Markets Authority (ESMA) is enhanced, whereas the administrative sanctions and other administrative measures have been revised.

The new EU Audit Regulation

This Regulation applies to statutory auditors and audit firms carrying out statutory audits on public-interest entities. Under the new framework, the majority of audit committee members must now be independent and one member must be competent in accounting or auditing. The Regulation also requires the statutory auditors and audit firms to submit an additional report to the audit committee on the results of the statutory audit, expanding the auditor's reporting requirements with the intention of providing greater transparency in the auditor's report on key audit matters such as areas identified as significant deficiencies in the entity, significant matters involving actual or suspected non-compliance with law and regulations or articles of association in so far as they are considered to be relevant in order to enable the audit committee to fulfill its tasks and other significant matters arising from the statutory audit. The statutory auditor and audit firm are now under a duty to report promptly to the supervising authorities of the public-interest entities any information which come into their attention while carrying out the audit about a material breach of the laws, regulations or administrative provisions related to the conditions governing authorisation or which specifically govern pursuit of such entity, a material threat or doubt concerning the continuous functioning of the entity and a refusal to issue an audit opinion on the financial statements or the issuing of an adverse or qualified opinion.

2 Shareholders

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

The shareholders of the company are in a position, through the articles of association, to determine the role of the Board and divide the decision-making powers between the shareholders and

the Board. Since the division of powers between the Board and the shareholders is determined by the articles, it is not possible to generalise about the patterns of division found in practice.

Of paramount significance is the statutory power of shareholders, by simple majority, to appoint and remove a director, before the expiration of her/his period of office. The power to remove a director cannot be excluded by the articles of association or by any other agreement between the company and its directors, serving as a powerful inducement to the directors not to disregard the shareholders' management views and positions.

Despite the flexibility given to the company to divide decision-making powers between shareholders and the Board, there are a number of situations where the legislation requires that the shareholders are mandatorily involved in corporate decisions by approving the Board's decisions. Indicatively, the share capital may be altered by ordinary majority as per the ways described in the Companies Law. Also, by way of majority of 75%, the shareholders may approve, amongst others, any alterations to the company's objects and articles, company's type and company's name and may approve the acquisition of a public company's own shares by the company, the reducing of the share capital, the approval of a merger or acquisition plan and may decide to wind up the company voluntarily.

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

With a view to promoting the effective engagement of shareholders in the corporate governance of the companies they invest in, the Code establishes the principle that the Board uses the annual general meetings ("**AGMs**") in a constructive way, in order to communicate with investors and encourage their participation therein. The Code's provisions under this principle, however, do not place any direct responsibilities on the shareholders' shoulders, but they rather recognise the importance of their participative role by imposing responsibilities on the Board, *inter alia*, by requiring the Chairman of the Board to ensure that the Presidents of the Committees are available to answer the shareholders' questions and that the agenda and the organisation of the general meetings do not eliminate substantial dialogue and the decision-making procedure. In regard to proposals submitted to an extraordinary general meeting ("**EGM**") or proposals considered to be of unusual nature, these should be adequately and clearly explained to shareholders, who shall be given sufficient time before the date of the meeting to evaluate them.

The Code also includes provisions aiming to guarantee the equitable treatment of the shareholders, including minority shareholders. Once again, the emphasis is on the Board to safeguard the equitable treatment of all shareholders at general meetings such us by requiring that the Board appoints a management executive or an officer of the company as Investor Liaison Officer, that all information pertaining to the company shall be distributed fairly, in a timely fashion and in a costless manner to all shareholders and that the Board gives timely and precise reports to the shareholders on all material changes concerning the company. Within the context of achieving equitable treatment of all shareholders, the Code directly requires that shareholders furnish themselves with timely and sufficient information, including the date, place and agenda of the general meeting, as well as being fully briefed on issues to be discussed at the meeting. In addition, institutional investors must enter into constructive dialogue with the companies.

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

Statutory meeting

Every company, within a period of not less than one month and more than three months from the date on which the company was entitled to commence business, shall hold a general meeting of the members of the company, called the statutory meeting ("**SM**"), whereby the directors shall, at least 14 days before the day on which the meeting is held, forward a statutory report to every member of the company. The statutory report incorporates various particulars, such us an account or estimation of the preliminary expenses of the company and the particulars of any contract. The shareholders present at the meeting shall be at liberty to discuss any matter relating to the company's formation or arising out of the statutory report. Essentially, the SM provides the shareholders with the opportunity to assess the status of the ground before the company is fully engaged in business.

Annual General Meetings and Extraordinary General Meetings

The law differentiates between the two most important types of general meetings, the AGMs and the EGMs.

The conveyance and holding of an AGM, with 21 days' notice, in each calendar year is obligatory and no more than 15 months shall elapse between one AGM and the next. It is not required for the company to hold an AGM within its first calendar year of incorporation or in the following year, provided that the company holds its first AGM within 18 months from its incorporation. In the event of default, the Companies' Registrar may, upon application of any shareholder, direct the calling of a general meeting and give relevant instructions.

Regarding public listed companies, irrespective of any contrary provision in their articles, the directors must duly proceed to convene an EGM, if required by the shareholders holding not less than one-twentieth of the paid-up capital, which confers voting rights at general meetings of the company. In the event that the directors omit to convene a meeting within 21 days of the date of the deposit of the requisition, the requisitionists or any of them representing more than half of the total voting rights of all of them, may themselves convene a meeting within three months of the date of deposit of the requisition. In so far as the articles of association do not provide otherwise, two or more shareholders holding not less than one-tenth of the issued share capital, may themselves call an EGM.

Where it is impracticable to call a meeting or to conduct such a meeting in accordance with the articles or the Companies Law, the Court, at its own motion or on the application of any director or shareholder entitled to vote at the meeting, may order a meeting of the company to be called, held and conducted in such manner as it thinks fit and give relevant directions.

Every shareholder of a listed company shall have the right to ask questions related to issues on the agenda of a general meeting and to receive answers subject to any measures that a company may take to endure the identity of the shareholder, unless the answer would interfere in an appropriate manner with the preparation of the meeting or the protection of confidentiality or with the business interests of the company or the answer has already been given on its website in a special position in a question and answer format.

A shareholder may participate at a meeting by a proxy or through other electronic means, if these are offered by the listed company. Regarding the electronic means, these may be subject to such proportionate conditions and restrictions, ensuring the identity of the shareholder and the security of the electronic communication.

The shareholder in a listed company is also entitled to appoint a proxy by electronic means. Following a recent amendment to the Companies Law, subject to any contrary provision in the articles, a shareholder in a listed company may participate at a general meeting through telephone or by any other means, by which the persons participating may in parallel hear and be heard by all other persons.

Types of resolutions

An ordinary resolution ("**OR**"), is passed by a simple majority of votes cast by persons who are present and entitled to vote. An OR is sufficient for the removal of directors and auditors and whenever the law or articles do not specifically provide for a special resolution ("**SR**") or extraordinary resolution ("**ER**"). An SR is passed by a majority of 75% of the votes cast by persons who are present and entitled to vote at a general meeting of which a notice no less than 21 days, although shorter notice may be given if agreed by a majority of shareholders holding at least 95% in nominal value of the shares giving the right to attend and vote at the meeting. An SR is required, amongst others, for amending the objects clause, the share capital, the articles of association, the company name, for reducing the share capital and for voluntarily winding-up. An ER is passed by at least 75% of the votes cast by persons who are present and entitled to vote at a meeting which has been duly convened by a notice specifying the intention to propose the ER. This type of resolution is required for a voluntary winding up where the company resolves that it cannot by reason of its liabilities continue its business and it is advisable to wind up. The required period of notice is at least 21 days if the ER is proposed at an AGM, and a minimum of 14 days if it is proposed at an EGM.

Following a recent amendment in 2015, shareholders have been granted the right to include in the company's articles a requirement so that resolutions at general meetings are passed with a greater majority. The imposition of such requirement, however, is not possible for resolutions removing a director.

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

A core feature of company law is the separate legal personality of the company, which is distinct from its shareholders. The company has unlimited liability for its debts. In contrast, the shareholders' liability to pay the company's debts is limited to the amount which remains unpaid, in respect of the nominal value of their shares and in case of shares that have been taken up at a premium, their liability is limited to the total amount that they have agreed to pay for the shares.

The Companies Law, in various instances, statutorily lifts the veil. For example, where the minimum number of shareholders in a public company is reduced and the company carries on business for more than six months, any shareholder who is aware of this fact is severally liable for the payment of the whole of the company's debts contracted subsequent to the expiration of the six-month period and while she or he was a shareholder. The responsibility of a shareholder to pay all or any of the company's debts or other liabilities may also exist in case of fraudulent trading with the intent to defraud creditors, in the course of winding-up of a company, where she or he is knowingly party to the carrying on of business in this way.

Only in rare circumstances the Courts judicially decide to lift the corporate veil and hold the shareholders liable, *inter alia*, where the company is used for fraud or illegal or improper purpose or where the issue of controlling interest is to be determined for tax purposes.

2.5 Can shareholders be disenfranchised?

The Companies Law provides that if a majority in number representing three-fourths in value of the creditors or shareholders, as the case may be, present and voting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Court, be binding on all the creditors or shareholders, as the case may be, and also on the company. Further, there is a statutory right to an offeror who holds not less than 90% of the shares in a company following a scheme or contract involving the transfer of shares to acquire the shares of any dissenting shareholder.

There is also a "squeeze-out" right pursuant to Takeover Bids Law for listed companies, which applies to companies registered in Cyprus, whose securities are admitted to trading on a regulated market in Cyprus or companies not registered in Cyprus (provided that certain requirements are fulfilled). An offeror holding not less than 90% of the shares in a company is enabled to exercise his or her "squeeze-out" right.

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

Adhering to the principle that directors' common law duties are owed to the company as a whole and not any other persons, such as its shareholders, the proper claimant in case of infringement of the directors' duties is the company. The decision to sue against wrongdoing directors lies with the Board, however, it is open to the shareholders collectively by ordinary resolution to initiate litigation.

A minority shareholder may exceptionally and on the company's behalf be allowed to sue the wrongdoing directors by way of a derivative action, such as when fraud (e.g. misappropriation of company's assets) is committed against her/him. The minority shareholder needs to satisfy the Court that fraud exists and that the alleged wrongdoers are in control of the company, so that the company which is the "proper claimant" cannot institute proceedings itself.

There are various remedies available such as restraining injunctions, damages payable to the company and rescission of contract, if any.

Ordinarily, the directors do not owe any duties to shareholders collectively or individually, however a director may owe fiduciary duties to a shareholder if a special factual relationship arises between the directors and the shareholder, e.g. where there is a supply of specific information and advice on which the shareholder has relied. Shareholders, acting for themselves, may assert a claim against a director where they have suffered loss directly in circumstances in which no loss has been suffered by the company.

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

There are no statutory limitations regarding the number of securities a shareholder can hold in a company, however, the articles of association may in rare situations provide otherwise.

For listed companies, the Takeover Bids Law provides that every takeover bid for acquisition of the total of the offeree company securities is considered successful, if the acceptances, added to the percentage already held by the offeror, would in aggregate carry 50% or more of the voting rights of the offeree company.

There are disclosure obligations with regards to securities held by shareholders in a company. Companies Law requires any company

to keep a register of members and enter therein the names and addresses of the shareholder, and in the case of a company having a share capital, a statement of the shares held by each shareholder, the date at which each person was entered in the register as a shareholder and the date at which any person ceased to be a shareholder. The register of members should be opened for inspection during business hours by any member without charge and by any other person, on payment of a fee. Further, it is mandatory for a company to notify the Registrar of Companies as to any change in relation to the name or address of any shareholder as entered in the register of members. Any person may inspect the documents kept by the Registrar of Companies, upon payment of the relevant fee.

Disclosure is also required by the Transparency Law, where any person acquiring or selling, directly or through a third person, a participation in a company incorporated in Cyprus whose shares are listed on CSE or on a regulated market of another Member State of the EU. In particular, a shareholder who acquires or disposes shares to which voting rights are attached, has an obligation to notify the issuer, CySEC and the CSE under the Securities and Stock Exchange Law (if the shares concerned are shares listed on the CSE) in relation to the percentage of voting rights held, provided that as a result of such acquisition or disposal the shareholder's percentage reaches or exceeds the threshold of 5%, 10%, 15%, 20%, 25%, 30%, 50% or 75% of the total voting rights of the issuer.

3 Management Body and Management

3.1 Who manages the corporate entity/entities and how?

The role of the Board as the most important decision-making/managing body within the company is the core of the first principle laid down by the Code, which states that "every listed company should be headed by an effective Board, which should lead and control the company". As mentioned above, the Companies Law largely leaves the determination of the Board' role to the provisions of the articles of association, though which the shareholders delegate authority to the Board.

Under the Companies Law, a minimum of two directors is required and is sufficient for a public company to exist. For listed public companies, the Code's second principle requires that the Board includes a balance of independent non-executive directors ("**NED**") and remaining directors, such that no individual director or small group of directors can dominate the Board's decision making. The Board should include executive directors ("**EDs**"), as well as a sufficient number of NEDs, with sufficient abilities, knowledge and experience, so that their opinion carries significant weight in the Board's decision making. In respect of companies which are listed either on the CSE's Main Market or on the Major Projects Market or on the Shipping Companies Market, a minimum of 50% of the members of the Board (excluding the chairman) should consist of independent NED. For companies listed on other markets, at least the one third of the Board must be independent NEDs and additionally the companies shall give an explanation for the number of the directors who are not independent NEDs and who exceed the percentage of 50%, in the second part of their annual report, and submit an application to the Council of the CSE for a reasonable time for compliance. The Board shall also appoint one of the independent NEDs to be the senior independent director, who must be available to shareholders if they have concerns which through the normal channels had failed to resolve. The Code lays down several minimum requirements which must be met in order for a NED to be considered independent. Where the Board considers that a director is independent, even if not all the provisions of independence are fulfilled, a comprehensive explanation should be given in the annual report on corporate governance.

The Board should identify in the annual report the Chairman and the Chief Executive officer ("**CEO**"), who is responsible for the proper running of the Board and shall ensure that all the issues on the agenda are sufficiently supported by all available information. The roles of the Chairman and CEO should not be exercised by the same individual and the division of responsibilities between the two shall be clearly established, set out in writing and agreed by the Board.

The Board is also required to set up four distinct committees, while retaining the right to establish more committees. The committees required by the Code are the following:

- A Nomination Committee leading the process for Board appointments and making recommendations to the Board.
- A Remuneration Committee to make recommendations to the Board on the context and level of the ED's remuneration and the formation of specific packages for each of the EDs (including pension rights and any compensation payments).
- An Audit Committee, which submits proposals to the Board regarding the appointment, termination and remuneration of the company's auditors and keeps under continuous review the scope and results of the audit and its cost-effectiveness and the independence and objectivity of the auditors, as well as any non-audit services provided to the company by the auditors.
- A Risk Management Committee.

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

The Code's principle requires a formal and transparent procedure for the appointment, in listed public companies, of new directors to the Board, which shall consist of competent and suitable individuals able to participate in the Board, taking into consideration, apart from their knowledge and experience, their honesty and integrity. As mentioned above, a Nomination Committee must be in place and it shall lead the process for Board appointments and make recommendations to the Board. The majority of the Nomination Committee shall be NEDs and its Chairman should be either the Chairman of the Board (if she or he is NED) or a NED. The Chairman and members of the Nomination Committee shall be expressly identified in the annual report.

All directors shall be subject to election by shareholders at the first general meeting after their appointment. They are also obliged to resign at regular intervals and at least every three years, on the understanding, however, that they may submit themselves for re-election. In regard to NEDs, they shall be appointed for a specific term, and their re-election should not be automatic.

The Companies Law provisions apply in respect to the directors' removal, granting the power to the shareholders to remove a director before the expiration of her/his period of office, by OS, following a prescribed procedure which gives the right to the director in question to make written representations of reasonable duration and to request that such representations are notified to the shareholders prior to the meeting. If these representations are not sent, due to late receipt by the company or because of the company's default, the director may insist that the representations be read out at the meeting where, in any event, she or he will also have the right to be heard orally. As mentioned above, the shareholder's statutory power to remove a director may not be excluded.

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

Whilst the Companies Law is in essence silent as to the manner in which directors of a company are to be remunerated, the issue is most commonly dealt with by the applicable articles of association. In the absence of any provision to the contrary, and subject to the model articles of Companies Law not being excluded, the remuneration of directors shall from time to time be determined by the company in the general meeting. It is, however, unlawful under the provisions of the Companies Law, for a company to pay a director remuneration, whether as director or otherwise, free of income tax, or otherwise calculated by reference to or varying from the amount of his income tax. The Companies Law requires that full details of directors' emoluments are included in any accounts of a company laid before it in the general meeting, or in a statement annexed thereto. Emoluments for the abovementioned purposes include emoluments paid to or receivable by directors either in relation to their directorial services, or in respect of other services performed in the course of their directorship or in relation to any managerial aspect pertaining to the company. Further, directors' service contracts shall be approved by shareholders in a general meeting.

For listed companies, the Code requires that companies establish a formal and transparent procedure for developing a policy on EDs' remuneration and for fixing the remuneration packages of individual directors. Directors shall not be involved in deciding their remuneration and in order to avoid potential conflicts of interests, the Board shall set up a Remuneration Committee, consisting exclusively of NEDs, responsible for making recommendations to the Board on the executive's context and level of remuneration and determining on their behalf specific packages for each of executive, the final package to be offer to each executive, should be approved by the shareholders at a general meeting. The members of the Remuneration Committee shall be listed each year in the Board's remuneration report to the shareholders. The Code also provides that the level of remuneration shall be sufficient to attract and retain the directors needed to run the company successfully, but also shall avoid paying more than is necessary for this purpose. It is also stated in the Code that a proportion of executive's remuneration is to be structured, so as to link rewards to corporate and individual performance. The Code also advises the Board to set fixed employment contracts, which do not exceed five years and reduce the notice period of indefinite contracts to one year or less. The employment contracts of EDs shall not contain clauses that can be interpreted as being prohibitive in the event of a merger or acquisition of the company, nor shall there be any clauses subjecting the company to fines imposed on directors.

A remuneration report shall be submitted to the company's shareholders each year and shall be annexed to the company's annual report. Listed companies on all markets of CSE shall also contain a statement in the company's report on corporate governance of the remuneration policy and related criteria as well as details of the remuneration of each ED and NED.

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 are no statutory or regulatory limitations regarding the number of securities that directors can hold in their companies, however, directors of listed companies shall ensure that they do not abuse, or place themselves in breach of the provisions of MAR and Market Abuse Law 2016 regarding inside information and insider dealings by acquiring or disposing of, for its own account, securities to which inside information relates.

With regards to disclosure requirements, the Companies Law requires that every company keeps a register showing each director's interests in the shares of the company. The said register shall be kept at the company's registered office and shall be open to inspection during business hours.

As to the shareholding of listed companies, the disclosure requirements described in question 2.7 above, are equally applied to directors who hold such securities. Further, the MAR also imposes additional disclosure obligations to persons discharging managerial responsibilities, including directors and persons closely associated with them, to notify their company and CySEC, within a prescribed period of time, of every transaction conducted on their own account relating to the company's shares or other financial instrument linked thereto. The listed company, in turn, shall ensure that the above information is made public promptly not later than three business days after the transaction and in a manner which enables fast access thereof. The abovementioned notification of transaction shall contain, *inter alia*, the name of the person, the reason for notification, the name of the relevant company, a description and the identifier of the financial instrument, the nature of the transaction, the date and place of transaction and the price and volume of the transaction. Further, subject to certain exceptions, the MAR restricts the conduct of the above transactions during a closed period of 30 calendar days before the announcement of an interim financial report or a year-end report which the issuer is obliged to make public.

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

The process for Board meetings is largely left to be regulated by the articles, and in the absence of relevant provisions, the model articles of Companies Law apply as stated below. The directors regulate their meetings, as they think fit, while the decisions are reached by a majority of votes, with the chairman having the second or casting vote in case of equality of votes. A director may, and the secretary on the requisition of a director shall, at any time summon a meeting of the directors with no need to give notice of a meeting of directors to any director who is abroad at the relevant time. The Board is allowed to determine the quorum necessary, and unless so fixed, the number shall be two. The directors are obliged to declare the nature of their direct or indirect interest in a contract or proposed contract with the company at meeting of directors and they will not be allowed to vote or their vote shall not be counted, nor shall they be counted in the quorum present at the meeting. The Code requires that the Board meets regularly, at least six times a year.

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

Directors owe fiduciary duties to the company as a whole, emanating from UK common law and equitable principles. Deriving from the fiduciary doctrine of loyalty, the directors are under a duty to avoid a conflict of interest between their duties and their self-interest, to make sure their duties to one company do not conflict with their duty to another company and to make sure they do not make any profit where their own interests are conflict with their duty to the company. The latter duty has been rationalised by statute as requiring the directors to account for their interest to any contract

or proposed contract of the company. Additional duties imposed on directors, intending to control the exercise of the directors' fiduciary powers, are their duties to act within their powers delegated to them, with care and skill and in good faith for the benefit of the company as a whole. The remedies available against the directors include restraining injunctions and/or compensation for any loss sustained and/or rescission of the contract which relates to the breach of duty in question. In a conflict of interest situation, the director is liable to account for any profit made or loss sustained, but it is possible for the company to excuse the breach by way of an ordinary resolution, except where the breach of duty constitutes a fraud on the minority.

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?

A list of all the functions which are imposed on the Board by the Companies Law is beyond the scope of this chapter, however these relate to two main areas of corporate life, the production of the annual accounts and reports (please refer to questions 3.8 and 5.2 below) and the regular administration of the company.

The Code provides that the Board should meet regularly, at least six times a year and sets out specific matters which must be reserved for its authority, which as a minimum requirement shall include matters such as the objects and strategic policy of the company, its annual budget and business plan, any unusual or material transactions of the company and/or its subsidiaries and associated companies in relation to which any director, CEO, senior executive, senior executive, secretary, auditor or major shareholder of the company who directly or indirectly holds more than 5% of the company's issued share capital or voting rights might have a direct or indirect interest.

The Code also provides that the Board shall submit a balanced, detailed and understandable assessment of the company's financial position and prospects. A healthy system of internal control shall be maintained in order to safeguard shareholders' investments and the company's assets. To this end, the Board shall annually conduct a review of the effectiveness of the Company's internal control systems and certify in the report on corporate governance the accuracy, completeness and validity of the information provided to investors. The Board shall certify annually to CSE that the company has adopted and complies with the procedure of verification of the accuracy and completeness of the information provided to shareholders and that to the best his/her knowledge there has been no violation of the Cyprus Securities and Exchange Commission Law.

It is not possible herein to refer to the entirety of the Board-related matters regulated by the Code, but it should be noted that all directors should bring an independent and unbiased judgment, while dedicating the required time and attention in carrying out their duties and should be appropriately briefed and trained upon their appointment. It should be also pointed out that the aim of the Code is to strengthen the monitoring role of the Board, to protect small shareholders, to adopt greater transparency and to provide timely information, as well as to sufficiently safeguard the independence of the Board of Directors in its decision-making.

3.8 What public disclosures concerning management body practices are required?

Companies Law imposes a duty on company's directors to ensure that annual accounts and where required, the annual consolidated financial reports, are prepared and published in conformity with the requirements of the aforesaid law and the International Accounting Standards. The company's accounts must be presented no later than 18 months from the date of incorporation of the company and each year thereafter and must give a true and fair view of the company and its financial situation. If the directors fail to take such action, they can be found guilty of a criminal offence and could be liable upon conviction by the courts to imprisonment for a period not exceeding one year or to a fine, or both.

The company's financial accounts shall be accompanied by a director's report, the purpose of which, in essence, is to reflect the company's state of affairs. The director's report shall provide, *inter alia*, information regarding any change during the financial year in the nature of the business of the company or in its subsidiaries or in the classes of business in which the company has an interest, any change to the share capital and any significant change to the structure, the allocation of responsibilities, or the compensation of the Board of directors.

Listed companies have an obligation to include a report by the Board on corporate governance in their annual report. Apart from the other obligatory inclusions in the corporate governance report outlined in questions 3.3 and 3.7 above and any other disclosure requirements provided by the Companies Law, the Company shall state in the corporate governance report whether it complies with the Code and the extent to which it implements its principles. The company shall also confirm that it has complied with the Code provisions and in the event that it has not, it shall give an adequate explanation.

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

The Companies Law explicitly provides that any provision whether contained in articles or in any contract with the company or otherwise for exempting any director or other officers of the company, including its auditor, or indemnifying her or him against any liability in respect of any negligence, default, breach of duty or breach of trust of which she or he may be guilty in relation to the company shall be void. However, a company may indemnify its directors or other officers (including its auditor) against any liability incurred by them in defending any proceedings, whether civil or criminal in which judgment is given in their favour or in which they are acquitted or in connection with any application, whereby a Court by exercising its discretion may wholly or partly relieve them from liability.

There is no statutory provision prohibiting companies from maintaining insurance for directors or other officers against personal liability arising from the exercise of their duties. In practice, Cypriot companies usually do maintain such insurance and pay the insurance premium.

4 Other Stakeholders

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

There is no requirement in the Companies Law or elsewhere for any form of employee participation on the Board or any rules on employee profit-sharing. Employees are permitted, though to acquire shares and this is in fact a common phenomenon, especially in listed companies, which enables the employees to participate to some degree in the decision-making process of the company and in the profit-sharing system. In order to facilitate the acquisition of

shares by employees, the Companies Law allows an exception to the prohibition of the company to provide financial assistance for the purchase or subscription of its shares, where the shares are to be held by or for the benefit of employees, including any director holding a salaried employment or office in the company. In regard to listed companies in particular, the allotment of shares without any contribution is permitted to the company's employees, whereas a company is permitted to acquire its own shares without special resolution of the general shareholders' assembly, if the shares are acquired for the purpose of being transferred to the company's employees or to the employees of an associate company.

Employees' participation at EU level has to some extent been safeguarded by the implementation of Directive 2001/86/EC into national law (no.277(I)/2004) on supplementing the statute for European companies with regards to the involvement of employees and the right of employees to be involved in uses and decisions affecting the European company.

Cyprus has also implemented, by way of national law (no.106(I)/2011), the directive 94/45/EC on the establishment of a European Works Council or a procedure in Community-scale undertakings and Community-scale groups of undertakings for the purposes of informing and consulting employees.

The company's employees may, in circumstances arising from the terms of their employment contract, be deemed to owe fiduciary duties towards the employer, *inter alia*, where they are required to act solely in the employer's interest or are not permitted to place themselves in a position of conflict or to make an unauthorised profit and where they are obliged, if they do make profits, to pay them to the employer company. In light of UK case law, some situations are likely to give rise to the imposition of fiduciary duties to the employees, such as where employees have control of company property or where they are autonomous or exercise a high-level management function or they interact with clients or suppliers without supervision or in case of fraud perpetrated on the employer or bribery.

4.2 What, if any, is the role of other stakeholders in corporate governance?

Cyprus, by way of law or regulations, has yet to adopt a more holistic view by considering the interests of stakeholders in corporate decision-making and by embodying their engagement and involvement in corporate governance. Further, no duties to be owed by the Board to any stakeholders have yet to be recognised or established.

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

The Directorate General for European Programmes, Coordination and Development, under its revised role and having been appointed as the National Coordinator for the promotion of CSR in Cyprus, developed a national action plan ("**NAP**") of 2013-2015, to promote, in a coordinated manner, the concept of CSR in Cyprus, to encourage responsible entrepreneurship and to motivate companies to take into account the impact of their activities on society. The main objective is to increase the number of Cypriot companies engaging in CSR and raise awareness that CSR does not concern only large companies, making it obvious that even the smallest companies can take actions that promote responsible entrepreneurship, limiting the negative impact on society and achieving a balance between profitability and sustainable growth. The NAP purports to play an effective role in the implementation of the "Europe 2020" strategy through dialogue with stakeholders and the provision of annual social and environmental information in ways that ensure the process of documentation and transparency.

The NAP has been prepared with the involvement and contribution of all involved governmental bodies, Cyprus business, semi-governmental organisations, business entities and non-governmental organisations and was approved by the Council of Ministers on 11/02/2013. Based on the survey carried out during the process of drafting the NAP, only 4.7 out of 10 businesses stated that they have adopted CSR practices.

The plan includes specific actions which were promoted and are being gradually promoted, such us the organisation of CSR information days, the preparation and dissemination of information materials and others. It is expected that revision of the plan may arise as a result of the new CSR strategy that is currently under preparation by EU.

Cyprus Organisation for Standardization has issued the Cyprus standard CYS ISO 26000:2014-Guidance on Social Responsibility, where information is provided for CSR and how it can become part of everyday business practice.

There is no legislative and regulatory framework in place for the incorporation of CSR practices into a company's business, however, the Office of Registrar of Companies and Official Receiver prepared a bill to harmonise national law with directive 2014/95/EC as regards disclosure of non-financial and diversity information by certain large undertakings and groups. This bill was submitted to the House of Representatives on 24/02/2017 and it was scheduled to be brought before the House for voting on 19/05/2017 (see question 1.3 above).

5 Transparency and Reporting

5.1 Who is responsible for disclosure and transparency?

The Board, as a whole, is statutorily responsible for transparency and disclosure allowing shareholders or potential investors to have access to relevant information so that they can have a fair view of the development and progress of the company's activities and its current status. The Code supports the above and vests obligations for transparency and disclosure to the Board.

5.2 What corporate governance related disclosures are required?

Key for the corporate governance is for the Board to ensure that the company complies with its financial reporting requirements and that all significant information that may assist the shareholders and public to assess the prospect of the company are disclosed. The relevant provisions of the Companies Law and Code related to the Board's remunerations and financial reporting requirements are outlined in questions 3.3 and 3.8 above.

Annual financial statements and included reports

Listed companies shall comply with the disclosure requirements provided in Securities and Stock Exchange Law, which requires companies whose shares are listed on CSE to publish as soon as possible and at the latest within four months of the end of every financial year, the annual financial statements, audited by independent auditors. The financial statements must include the audited annual financial statements together with the report by independent auditors, the directors' report and a statement by the Board that according to the knowledge of employees, who are

responsible for the preparation of the annual financial statements, the accounting records are true and complete. Copies of the annual financial statements and a copy of the published half yearly report of the company's activities and its results for the first half of every financial year are sent to CSE and CySEC.

Periodic and ongoing information by issuers

The disclosed annual and half-yearly financial statements of companies listed on a regulated market shall remain available to the public for at least 10 years. The requirement for publishing quarterly financial reports has been abolished by the Transparency Law (Amendment) Law of 2016. An issuer is also under a duty to disclose, no later than the end of the day after it was notified, the total amounts of shareholding in it, as well as any notification it receives from the shareholders in relation to their transactions (see question 2.7 above) and disclose to CySEC any increase or decrease in the number of voting rights and capital at the end of each calendar month, as well as any change to the rights of classes of shares and derivatives or any change in the rights of holders of such securities. Additionally, every issuer shall publish notices or distribute circulars concerning, *inter alia*, the place, time and agenda of meetings, the payment of interest and the right of shareholders to participate in the meeting.

Disclosures related to meetings

Apart from the abovementioned obligations, listed companies have an obligation to announce at least 10 days in advance the date on which the Board meeting will take place in order to decide certain matters. The subject of issues upon which such matters are to be disclosed involve payment or non-payment of a dividend, approving financial statements or discussing any matter regarding the listed securities of the company. Further, listed companies are obliged to announce to CSE immediately, and at least one hour before trading, decisions relating to certain matters such as new bond issues, changes to the capital structure and amendments to the company's constitutive documents. The disclosure of any information relating to the acquisition or disposal of a substantial interest in a company, must also disclosed, as described in the answer to question 2.7 above.

Disclosure for takeover bids

The Takeover Bids Law provides that the offeror announces to CSE and CySEC and publishes her/his decision to make a takeover bid on the offeror's website, if such exists, provided that it is final and she/he has every reason to believe that it can be implemented.

Disclosure of inside information

MAR provides that an issuer shall inform the public as soon as possible of inside information which directly concerns him/her. Namely, the issuer shall ensure that the inside information is made public in a manner which enables fast access and complete, correct and timely assessment of the information by the public and shall not combine the disclosure of inside information to the public with the marketing of its activities. Regardless of the aforesaid obligation, an issuer may, on its own responsibility, delay disclosure to the public of inside information, provided that the immediate disclosure is likely to prejudice the legitimate interest of the issuer, such delay is not likely to mislead the public and the issuer is able to ensure confidentiality of the information. In this case, an issuer is obliged to inform CySEC accordingly, by providing a written explanation thereof.

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

The required financial statements, as described in question 5.2 above, must be audited by a properly licensed and independent auditor, appointed by each company and thereafter the Board is responsible for publishing the audited accounts. The Companies Law provides that whenever the financial statements are published in full they must be published in the form in which they were presented by the auditors and accompanied by their duly signed and dated report. The auditors express an opinion on whether the directors' report is compatible with the financial statements and whether the relevant legal requirements are fulfilled. Further, the auditors shall state whether they have identified any essential discrepancies in the directors' report and give indications in relation to their nature. Lastly, the auditors shall ensure that the duly signed auditors' report is made available to the shareholders of the company. It shall be noted that the auditors' and audit firm's reporting responsibilities have significantly expanded under the new EU Audit Regulation (see question 1.3 above).

5.4 What corporate governance information should be published on websites?

All information and documents disclosed, as outlined in question 5.2 above, shall be published on the companies' websites. The Investment Services Law also requires that a CIF shall have a website, the address of which must be notified to CySEC and the number and content of its authorisation shall be entered herein, as well as the fact the company is supervised by CySEC, and any other element CySEC may define by way of directives. Further, the Companies Law provides that a listed company shall make available to its members on its website the notice for the calling of a general meeting, the total number of shares and voting rights at the date of the notice, the documents to be submitted to the general meeting, copies of the draft resolutions or where no resolution is proposed to be adopted, comments from the directors for each item on the proposed agenda of the general meeting, copies of the forms to be used by a proxy to vote and copies of the forms to be used to vote by correspondence, unless these forms have been sent directly to each member.

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