



**American Chamber of Commerce
in Romania**

AMCHAM ROMANIA CODE OF CORPORATE GOVERNANCE

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Preamble

The American Chamber of Commerce in Romania (AmCham Romania) Code of Corporate Governance (hereinafter the “Code”) was drafted with the aim to provide guidance to Romanian joint-stock companies in their day-to-day management, as well as in the relationship between the various corporate bodies, the shareholders and other stakeholders and establish best practices of supervision and accountability.

Based on the principles that good corporate governance requires, integrity, transparency of decision making and proper supervision, this Code establishes a set of principles and recommendations for joint-stock companies registered in Romania and members of AmCham Romania. Its aim is to cover principles in the Romanian legislation regarding companies, as well as to introduce new recommendations where the law is silent and, thus, source of doubts.

Apart from the Corporate Governance Code of the Bucharest Stock Exchange, this Code is among the first such initiatives in Romania, promoted by an organization with members having significant exposure to all fields of activity. It is one of the first initiatives to propose a body of good corporate governance principles to non-listed companies in Romania.

This Code acts as a recommended set of best practices proposed to private entities and will therefore be observed on a voluntary basis by the companies.

This Code proposes a modern system of “checks and balances” within a company. The checks would refer to proper and efficient supervision of the management, especially by the shareholders and auditors. The balances would refer to an appropriate distribution of power between the various corporate bodies. Overall, the aim is to have a corporate system which allows the safeguarding of the company’s interest, while adding value to the shareholders and other stakeholders (employees, partners, local communities etc.).

As each company has special features which differentiates it on the market, the Code is flexible enough as to allow each company to select those recommendations which are most suitable for its corporate and shareholding structure and its activity.

It is advisable that the companies follow the “comply or explain” approach, in the sense that in each annual report, the management should present to the shareholders the way the principles and recommendations in the Code are applied or the reasons for which it is considered that certain principles and/or recommendations should not apply for the respective company. The section on corporate governance in the annual report may be subject to shareholders’ vote. If the shareholders do not approve exemption from the Code, it may mean that there is a certain pressure on the management to change the corporate system and apply specific recommendations from the code.

The Code is structured in a number of core principles and recommendations which reflect the widely accepted international “best practices” included in corporate governance codes of international organization (such as the Organization for Economic Cooperation and Development)

and of most foreign states. The sections of the Code refer to shareholders' rights, the management structure, appointment, remuneration and rules for avoiding conflicts of interest, consultative committees, accountability and audit, both through internal control and external auditors.

The current structure of the Code is the result of the continuing work of AmCham Romania's Corporate Governance Committee starting with 2008, in the wake of the economic and financial turmoil which required reshaping most corporate structures. As experienced by western economies which developed corporate governance codes particularly after moments of turmoil (such as the Enron failure and the issues of conflicts of interest in the United States or the disputes over transparency of remuneration and proper accountability in continental Europe), the Code intends to set up standards for fostering the efficiency of corporations in the ever-changing Romanian market.

Although the Code aims to be of general guidance and not to establish strict requirements, it is to be considered as an evolving body of principles. The legislation may be amended, supplemented or changed during the coming years; therefore certain provisions of this Code may have to be adapted as to be consistent with new regulations.

The AmCham Romania Corporate Governance Committee expresses its gratitude to everyone for their contributions and their interest and involvement in the subject.

I. The Shareholders and General Meeting of Shareholders

1. Shareholders' rights

1.1 *Basic shareholders rights*

Principle:

The corporate governance framework should protect and facilitate the exercise of shareholders' rights.

Recommendations:

1.1.1 The basic shareholders rights shall include at least the right to: 1) participate and vote in the general meeting of shareholders, including the right to propose resolutions on the agenda, subject to legal limitations (i.e. shareholding proportion, etc), 2) transfer of shares, 3) obtain relevant information on the company's activity and annual/quarterly financial objectives/performances.

1.1.2 The following major issues should be subject to the general meeting of shareholders' prior approval: (i) spin off, mergers and takeover, (ii) change of the constitutive documents, e.g. change of the company's legal status, main object of activity etc, (iii) election and removal of the members of the Board of Directors or of the Supervisory Board and auditors, (iv) change in the share capital, including capital increase connected with the exemption of pre-emptive rights of the existing shareholders (v) extraordinary and/or significant transactions, including the transfer of all or substantially all assets, that in effect result in the sale of the company.

1.2 *The right to information*

Principle:

The corporate governance framework should encourage active co-operation between management bodies and shareholders in creating the sustainability of financially sound enterprises and maximizing shareholder value in order to ensure an adequate return for shareholders.

Recommendations:

1.2.1 The shareholders shall have a right to information before the general meeting of shareholders takes place, to propose resolutions or ask for clarifications/questions in advance, when needed. Also, the shareholders are entitled to all requested information, unless this would be contrary to an overriding interest of the company. If such an overriding interest is invoked (e.g. information that may endanger the competitive position of the company), it should be further justified. The company may implement a procedure to regulate the disclosure of sensitive or confidential information to shareholders.

1.2.2 Reporting obligations of the relevant board towards the general meeting of shareholders (e.g. report of the board on the annual results, on the management of the company, etc) should be observed.

- 1.2.3 The company may implement an “advisory vote” which would enable the shareholders to express their view on various aspects/topics that are not subject to the approval of the General Meeting of Shareholders.

1.3 *The disclosure of material information*

Principle:

The corporate governance framework should ensure the disclosure, in a timely and accurate manner, of all material matters regarding the financial situation, performance, ownership and governance of the company.

Recommendations

- 1.3.1 Companies, through their competent bodies, should disclose, in a timely and accurate manner, all relevant and important information to the shareholders, but at least the following main issues: (i) financial results and a clear corporate strategy, (ii) remuneration policy for the boards’ members and key executives, (iii) members of the board should be required to disclose their interests in transactions or any other matters affecting the company, (iv) related parties transactions and special purposes vehicles, (v) sensitive stock related information, e.g. changes in thresholds, etc.

- 1.3.2 Good corporate governance requires that all material information should be publicly disclosed on the company’s web site, at the company’s headquarters, or at the shareholder’s reasonable request, in accordance with the company’s internal procedures.

1.4 *Shareholders Agreements*

Principle:

Shareholders Agreements may be executed among shareholders, supplemental to the company’s constitutive documents, as far as they are consistent with the relevant legislation and constitutive documents.

Recommendation:

Shareholders Agreements that enable certain shareholders to obtain a degree of control disproportionate to their equity should be disclosed to all shareholders.

1.5 *The fair and equitable treatment of shareholders*

- 1.5.1 “One share/one vote” principle

Principle:

All shareholders of the same series of a class are to be treated equally, under the same conditions.

Recommendations:

- 1.5.1.1 Good corporate governance requires that companies should follow the “one-share-one-vote” principle, meaning that each share carries the same voting right. Shareholders should have the right to vote at the general meetings pro rata to their contribution to the share

capital, unless otherwise provided in the company's constitutive documents, in accordance with the law.

1.5.1.2 Investors should be able to obtain information about the rights attached to shares before they purchase.

1.5.1.3 Any changes in voting rights should be subject to approval by the general meeting of shareholders.

1.5.2 Protection of minority shareholders

Principle:

Minority shareholders should be protected from abusive actions by, or in the interest of, controlling shareholders acting directly or indirectly.

Recommendation:

Protection may have the form, without limitation, of: (1) disclosure of information, (2) qualified majority for certain decisions, (3) pre-emption rights, etc.

2. Organization of the general meetings of shareholders

Principle:

All the shareholders have the right to be convened to the general meeting of shareholders.

Recommendations:

2.1. The company's constitutive documents should include appropriate dispositions so as to encourage the participation of all shareholders to the general meeting of shareholders.

2.2. Calling the general meeting of shareholders

In addition to the mandatory legal requirements, the calling notice should include the rights of the shareholders and clear instructions on the procedures and steps to be followed by the shareholders prior and during the meeting.

2.3. General meeting of shareholders voting procedure and proxy voting

Principle:

Shareholders should be able to vote in person or in absentia, and equal effect should be given to votes whether cast in person, by proxy or by other means of communication.

Recommendation:

Cross border voting/participation by means of technology should be permitted in accordance with the company's constitutive documents.

II. General Provisions Regarding the Management of the Company

The management may be carried out based on the One-Tier System (Board of Directors) or the Two-Tier System (Supervisory Board and Management Board).

1. Composition of the boards

Principle:

The composition of the boards should be adjusted to the size and complexity of the company's activity as to allow the boards to carry out their duties in an efficient manner.

Recommendations:

- 1.1. Members of the boards should hold the experience and professional qualification needed for the performance of their duties and at least one member should have economic/financial expertise.
- 1.2. It is in the company's best interest that the members of the boards constantly seek to improve their professional qualification and adjust it to the specific requirements of company's activity and to the best corporate governance practices.
- 1.3. The number and complexity of the mandates/duties of the boards' members with other companies should be disclosed and assessed, so as to allow them to duly perform their duties with the company. Each member of the boards should issue a written statement disclosing any conflict of interest with those of the company.

2. Appointment of the boards members

Principle:

The appointment of the members of the boards should be based on formal, rigorous and transparent procedure and criteria.

Recommendations:

- 2.1. A balanced composition of expertise and know-how of the boards should be ensured taking into consideration the structure and the business of the company.
- 2.2. A training program should be available for the new board members aimed at making them familiar with the structure and operation of the company, as well as with their duties as board members.
- 2.3. Reappointment of a member is advisable in case of proper fulfilment of duties. However, such reappointments should be limited to a reasonable number of mandates.

3. General duties and functions of the boards

Principle:

Good corporate governance policies and practices are essential to the boards' fulfilment of their duties of care, loyalty and confidentiality, which must be exercised in good faith.

Recommendations:

- 3.1 Duty of care. In fulfilling their mandate, members of the board have a duty and responsibility to act on a fully informed basis and with the due diligence and care required for professionals.
- 3.2 Duty of loyalty. Members of the boards should exercise their functions in an independent manner and always act taking into account exclusively the interest of the company. A member of a board does not represent the interests of the parties who have proposed his or her election.
- 3.3 Duty of confidentiality. The members of the boards should, at all times (during their mandate and after its termination), respect the confidentiality of matters relating to the company business. Each company should clearly define and inform its members of the board on what is deemed as “confidential information”.

4. Conflicts of interest

Principle:

Any conflict of interest between the company and the members of a board shall be avoided and disclosed. Furthermore, any apparent conflict of interest shall be disclosed to the board and explained.

Recommendations:

- 4.1 Members of the boards should insure that adequate policies and procedures are in place as to avoid at all times conflicts of interest in their activities.
- 4.2 Members of the boards should not place themselves in a position where their personal interests could conflict with their duties to the company. Moreover, they shall not, in connection with their work, demand nor accept from third parties payments, gifts or other material advantages for themselves or for any other person, nor grant third parties unlawful advantages.
- 4.3 A board member whose connections to other companies, persons or businesses may presuppose certain interests that conflict with those of the company and who may therefore influence the decision-making process shall appropriately and timely inform the other board members and refrain from deliberating or voting on the relevant issue.
- 4.4 A potential conflict of interests exists including when the company intends to realize a transaction that involves:
 - (i) a party related to or with financial interest linked to a member of the board;
or
 - (ii) a member of the board who is also an executive officer of the company.
- 4.5 Members of the boards should immediately inform the Board of Directors or the Supervisory Board on any actual or potential conflict of interest. All transactions between the enterprise and the members of the board as well as persons they are close to or companies they have a personal association shall require the approval of the superior corporate body save for the case when such transaction shall be demonstrably on terms that are at arm’s length.
- 4.6 The members of the boards shall not derive benefit or assist others to derive benefit

by giving investment advice from the access to and possession of information about the company, not in public domain and therefore constitute inside information or confidential information.

5. Independence

Principle:

The majority of the members in the Board of Directors and in the Supervisory Board should be independent in carrying out of their duties.

Recommendations:

- 5.1 The company may choose to adopt and implement guidelines and criteria for ascertaining the independence of the members of the boards, that should be made available for public access (e.g. by publication on the company's website).
- 5.2 In case of any event that raises or may raise impartiality questions (e.g. being offered an executive position in another company) the boards may request a confirmation of independence from their members.

6. Organization of boards' meetings

Principle:

The boards should meet on a regular basis and establish clear and efficient rules for the due organization of their meetings. The communication to all members of the required information and documents for the boards' activity should be performed with sufficient time prior to the meeting in order for the members of the board to make an appropriate assessment on all items on the agenda.

Recommendations:

- 6.1 The members of the boards should be, in general, easily reachable and available for addressing the company's needs. However, the boards' activity should entail a reasonable degree of flexibility, such as the possibility to hold meetings by remote access technology.
- 6.2 The meetings should be attended by the representatives of the employees/trade union for those matters that require their consultation. Alternatively, the boards may decide to carry out consultation with the representatives of the employees/trade union before or following the boards meetings, when appropriate for such consultations to be carried out at the boards' level. Other stakeholders may be invited to attend board meetings with regard to matters requiring their input for protecting the company's interests.
- 6.3 All persons who are attending boards meetings (other than the members) should conclude a confidentiality commitment in relation to all matters to be learnt about the company and/or the boards' activity/members at the respective meeting.
- 6.4 Before a decision with significant impact over the company's status is passed, the opinion of independent experts should be sought if complex or highly specialized matters are involved and no appropriate expertise may be found among the boards members.

7. Remuneration

Principle:

The company should use an adequate remuneration policy, in line with the business and long-term strategy of the company as well as the competitive market conditions in order to ensure the high professional and moral profile of the members of the boards.

Recommendations:

- 7.1 The remuneration structure, including severance payment, should be articulated in such a way as to promote the interest of the company for medium and long term and taking into consideration the economic status of the company, preventing the members of the boards to act in their own interests and neglect the interests of the company, and not “rewarding” failing members upon termination of their mandate.
- 7.2 In view of strengthening the commitment of the executive board members to the company and its objectives, their remuneration may consist of a variable part taking into account medium and long-term performance measurements and may entail performance-related remuneration schemes, pension schemes, and share or share-related remuneration schemes.
- 7.3 A remuneration schedule for boards may be published in the annual report presented to the shareholders.

8. Consultative Committees

Principle:

Committees may be formed depending on the business of the company, the size of the company or the markets in which the company operates, such as nomination committees, remuneration committees, audit committees, environmental committees, ethics/ good practices committees or corporate social responsibility committees.

Recommendations:

- 8.1 The establishment of board committees is designed to enhance the efficient preparation of matters within the competence of the board. It may prove useful to establish board committees, in particular for the supervision of the company’s reporting and control systems, the nomination of the management and the development of the company’s remuneration policy.
- 8.2 The boards should appoint members of each committee from among the members of the boards and establish the duties of each committee. Each committee should report to the board.
- 8.3 **Nomination Committee**

Principle:

The Nomination Committee ensures the preparation of personnel changes with the aim that the replacement of a board member is carried out smoothly with the company’s activity continuing uninterrupted.

Recommendations:

- 8.3.1 The committee should prepare proposals relating to the criteria appointments whereby it should ensure that the balance between skills, experience and expertise meets the requirements, prepare the description of duties and determine the qualifications required for individual appointments;
- 8.3.2 The committee should assess the size, composition and activity of the boards at regular intervals and make proposals for a composition profile of boards;
- 8.3.3 The committee should make proposals for appointments and reappointments of members boards; and
- 8.3.4 The committee should monitor the selection criteria and appointment of senior executive staff by the Board of Directors (in the One-Tier System) or the Management Board (in the Two-Tier System).

8.4 Remuneration Committee

Principle:

The company may establish a remuneration committee to improve the efficient preparation of matters pertaining to the appointment and remuneration of board members and other executives of the company as well as the remuneration policy of the personnel.

Recommendations:

- 8.4.1 The committee should prepare proposals relating to the policy on remuneration, compensation and other benefits (e.g. shares and/or options to be granted and/or other variable remuneration components, pension rights, redundancy pay and other forms of compensation) for boards members; and
- 8.4.2 The committee should monitor the disclosure of information about the earnings of individual board members.

8.5 Audit Committee

Principle:

The company should establish an audit committee, to assist in the discharge of its responsibilities in the areas of financial reporting, internal control and risk management. The audit committee should be composed exclusively of non-executive members, and should contain a sufficient number of independent members.

Recommendations:

- 8.5.1 The committee should monitor the **reporting** process of financial statements;
- 8.5.2 The committee should supervise the financial reporting process and to monitor the efficiency of the company's internal control, internal audit, if applicable, and risk management systems;
- 8.5.3 The committee should monitor the statutory audit of the financial statements and consolidated financial statements; and

8.5.4 The committee should make recommendations to the boards regarding the selection, appointment, reappointment and removal of the external auditor and, in addition, the terms and conditions of their remuneration.

III. Specific Provisions Regarding the One-Tier Management System

1. Board of Directors

1.1 *Scope and Objectives*

Principle:

The company is to be governed by the Board of Directors that will act in such a manner as to fulfil its duties and responsibilities effectively and efficiently, to ensure directors' competence and commitment, objectivity in the decision-making process and accountability to the shareholders.

1.2 *Duties and Functions of the Board of Directors*

Principle:

The duty of the Board of Directors is to promote the best interest of the company and of all its shareholders and to monitor the managerial performance and the effectiveness of the company's governance practices.

Recommendations:

The Board of Directors should meet on a regular basis or whenever urgent matters arise.

1.2.1 Guiding Business and Corporate Strategy. The Board of Directors should be responsible for setting and achieving the company's objectives, also taking into account the interests of the stakeholders as to ensure that the company acts in a corporate social responsible manner.

1.2.2 Establishing rules for financial control and planning. The Board of Directors should establish the rules for an adequate internal control system, which must ensure an efficient flow of information between the various hierarchy levels of the company, both onward and backward.

1.2.2.1 The internal control system is the set of rules, procedures and organizational structures aimed at making possible a sound and correct management of the company consistent with the established goals, through adequate identification, measurement, management and monitoring of the main risks.

1.2.2.2 An effective internal control system should safeguard the company's assets, increase the efficiency and effectiveness of business transactions, the reliability of financial information and the compliance with laws and regulations.

2. Management

2.1 *Appointment and Performance Review*

Principle:

The appointment of managers and the review of their performance should be based on their expertise and individual performance.

Recommendations:

2.1.1 Individual review should assess whether each manager continues to contribute effectively and to demonstrate commitment to the role.

2.1.2 The Board of Directors should take into account the results of the performance review by recognizing the strengths and addressing the weaknesses of the managers and, where appropriate, replace or request the resignation of managers.

2.2 *Management Duties and Functions*

2.2.1 The Management is accountable towards the Board of Directors for achieving the company's aims, strategy and policy, and results.

2.2.2 The Management should provide the board of directors in due time with all information necessary for the Board of Directors to carry out its duties.

2.2.3 The Management shall at all times monitor and manage potential conflicts of interest, including misuse of corporate assets and abuse in related party transactions

2.2.4 The Management shall take all necessary measures to ensure the integrity and timely disclosure of the company's financial statements and other material financial and non-financial information that needs to be disclosed to the shareholders and the investors.

2.2.5 The Management shall at all times be able to present the Board of Directors with a balanced and understandable assessment of the company's financial situation.

IV. Specific Provisions Regarding the Two-Tier Management System

Principle:

The company may decide to implement a two-tier management and control system consisting in a Management Board and a Supervisory Board. The company may also decide at any time, by a decision of the general meeting of shareholders, to change the type of the implemented management and control system.

1. Management Board

Principle:

The management of the company shall be ensured by the Management Board who shall act under the supervision of the Supervisory Board.

Recommendations:

- 1.1 The Management Board members should not have family relationships with the members of the Supervisory Board, namely: spouse, relative up to the 4th degree, inclusively, with members of the Supervisory Board or with their spouses.
- 1.2 The Management Board should regularly report to the Supervisory Board the carrying out of its duties and seek the Supervisory Board's advice on sensitive matters.

2. Supervisory Board

2.1 *Role and Attributions*

Principle:

The role of the Supervisory Board is to oversee the activity of the Management Board and to provide support to the Management Board in governing the company in accordance with their duty of care and duty of loyalty.

Recommendations

- 2.1.1 The Supervisory Board has the right to request information regarding the company from the Management Board, internal auditor, officers and employees of the company or external advisors.
- 2.1.2 The Supervisory Board should be informed without delay of any circumstances that may have a material impact on the company.
- 2.1.3 The Supervisory Board should particularly monitor the following aspects related to the Management Board's activity: (a) achievement of the company's objectives; (b) implementation of the corporate strategy and the risks arising from the business activities; (c) the structure and operation of the internal risk management and control systems; (d) the financial reporting process; and (e) compliance with applicable legislation.

The Supervisory Board should discuss the aspects related to the supervision of the Management Board members in their presence and the conclusions

thereof should be included in a report to the company's shareholders.

- 2.1.4 The Supervisory Board should report to the company's shareholders, in writing, in a precise and clear manner, on its work related to the supervision of the activity of the Management Board (including its opinion on the reports issued by Management Board) and to any other aspects within its attributions.

2.2. **Remuneration**

Principle:

The remuneration policy for the Supervisory Board should take account of their non-executive and supervisory role over the business of the company.

Recommendations:

- 2.2.1. In case of Supervisory Board members, remuneration of a fixed amount is recommended, such remuneration not being connected to the share price or directly related to the company's performance.
- 2.2.2. The Supervisory Board members should not participate in stock options and pension plans of the respective company, which might create improper incentives. They may however hold a limited number of shares in the company in accordance with the company's constitutive documents.

V. Accountability and Audit

1. Financial reporting

Principle:

The responsibility for preparing and filing the financial statements lies with the Board of Directors or the Management Board.

Recommendations:

- 1.1 In their annual report the Board of Directors or the Management Board, as the case may be, should explain their responsibility for preparing the accounts and confirm that: (a) the accounting policies used for the preparation of the annual financial statements are compliant with the applicable accounting rules; (b) the annual financial statements provide a true and fair view over the company's activity; (c) the annual financial statements provide adequate disclosure of material related-party transactions; and (d) whether the financial statements were prepared on a going concern basis.
- 1.2 Under the two-tier management system, the Supervisory Board should review the financial statements before they are submitted to the general meeting of shareholders for final approval and draft their report.
- 1.3 The auditors should attend the meeting of the Management Board or Board of Directors, at which the annual accounts are to be adopted.

Principle:

The general meeting of shareholders must approve the financial statements based on the annual reports prepared by the Board of Directors or, as the case may be, by the Management Board and Supervisory Board and the auditor's report.

Recommendation:

- 1.4 The external auditor should be invited to the general meeting of shareholders and may be questioned about his opinion on the 'true and fair view' of the accounts.

2. Internal Control

Principle:

The Board of Directors or the Supervisory Board, as the case may be, should establish and maintain sound risk management and internal control systems to safeguard company's assets and ensure reliability of financial reporting, timely feedback on the achievement of operational or strategic goals, and compliance with laws and regulations.

Recommendations:

- 2.1 If appointed, the Audit Committee should monitor and review, at least annually the effectiveness of the risk management and internal control systems in place.
- 2.2 The Board of Directors or the Supervisory Board, as the case may be, should establish and maintain arrangements by which staff of the company may raise, in

confidence concerns about irregularities in matters of financial reporting (‘whistle-blowing’). If appointed, the Audit Committee should review the effectiveness of such arrangements and ensure that arrangements are in place for the proportionate and independent investigation of such matters and their follow-up.

- 2.3 The external auditor reports to the management as part of the external audit exercise any material weaknesses found in the internal control systems and recommended actions to remedy the deficiencies.

3. Auditors

3.1. *The external auditor*

Principle:

The external auditor is appointed and removed by the general meeting of shareholders. The external auditor should be independent, competent and qualified, its primary role being to provide an external and objective assurance to the relevant board and general meeting of shareholders that the financial statements fairly represent the financial position and performance of the company in all material respects.

Recommendations:

- 3.1.1. Entities that are of significant public relevance because of the nature of their business, their size or their number of employees, in particular companies whose securities are admitted to trading on a regulated market, banks and other financial institutions and insurance undertakings should be subject to external audit.

The Supervisory Board or the Board of Directors should nominate a candidate for this appointment, based on a proposal made by the Audit Committee, as the case may be.

- 3.1.2 The general meeting of shareholders decides on minimum contract duration.

Principle:

The Supervisory Board or the Board of Directors should establish formal and transparent arrangements for maintaining an appropriate relationship with the external auditor.

Recommendations:

- 3.1.3. The remuneration of the external auditor for audit services, and any arrangements with the external auditor to provide non-audit services, should be approved by the Supervisory Board or the Board of Directors, on the recommendation of the Audit Committee, if any and after consultation with the Management Board, as the case may be.

- 3.1.4. On a periodical basis, the Supervisory Board or the Board of Directors and the Audit Committee, as the case may be, shall conduct a thorough assessment of the activities of the external auditor. The main conclusions of this assessment shall be communicated to the general meeting of shareholders for the purposes of assessing a potential re-appointment of the

auditor.

Principle:

The external auditors must be independent in both fact and appearance.

Recommendations:

- 3.1.5. The external auditor shall be independent at all times as required by their professional codes of ethics.
- 3.1.6. The Supervisory Board or the Board of Directors, as the case may be should ensure that rotation principles are observed. Key engagement partners of the external auditor should rotate off the assignment team after maximum seven years and should not be allowed to return in less than two years or to hold a key office in the audited company any earlier than two years.
- 3.1.7. The external auditor should report on an annual basis to the Audit Committee, if any, on their independence.

3.2. *The internal auditors*

Principle:

Where required by law or the financial statements of the company are subject to external audit then the company should establish an internal audit function. The internal auditors are appointed and removed by the Board of Directors or the Management Board.

Recommendation:

- 3.2.1. The Audit Committee, if appointed, should have the primary responsibility for making a recommendation to the Board of Directors or the Management Board on the appointment, re-appointment or removal of the internal auditors.

Principle:

The internal auditors should assist the company in maintaining effective controls by evaluating their effectiveness and efficiency.

Recommendations:

- 3.2.2. The internal auditors should prepare periodical reports according to the programme set by the executive body of the company to the Board of Directors or Management Board/ Supervisory Board and to the Audit Committee, if applicable on its affairs and any significant risk exposures and control issues. Significant issues found should be brought to the attention of the general meeting of shareholders.
- 3.2.3. The Audit Committee, if appointed, should ensure that the recommendations of internal auditors regarding controls are implemented.

Principle:

The company should endeavour to safeguard the independence of the internal audit activity.

Recommendation:

- 3.2.4. Internal auditors should report to a position that has no direct responsibility for the activities under auditor's review, to allow them to fulfil their role in an independent manner.

Principle:

The Audit Committee or, as the case may be, the Board of Directors or the Management Board should review the key areas of internal audit and communicate with the internal auditors to ensure adequate risk management and audit coverage in the company.

Recommendation:

- 3.2.5. The Audit Committee or, as the case may be, the Board of Directors or the Management Board shall perform on a periodical basis a quality assessment of the internal audit function adequacy and performance to ascertain the extent to which the external auditor may rely on the work of the internal auditors.