

**BULGARIAN CODE  
FOR  
CORPORATE GOVERNANCE**

**February, 2012**

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## PREAMBLE

Corporate governance is an essential part of modern business practice. It is standard practice in countries with a developed marked economy as well as in countries with emerging markets. It is closely linked to the effective functioning of capital markets. Modern corporate governance practices contribute to global sustainable development and growth of national economies.

For a number of years Bulgarian companies have now been applying the principles and norms of corporate governance as set out in the Commerce Act and the Law on Public Offering of Securities. Many public companies have successfully developed and implemented their own corporate governance charter. The development of the capital market, investor requirements and the experience accumulated by the Bulgarian business community has increased the need for a **National Code for Corporate Governance (The Code). Considering Bulgaria's membership in the EU and in the light of the European Commission's policy as well as the EU Action Plan for Modernization of Company Law and Enhancement of Corporate Governance**, the adoption and implementation of national codes by the Member States is an important condition for efficient free movement of goods, services, capital and people.

**The Code is a standard for best practice and a support for communication among businesses from different countries.**

**The Code takes into consideration and complements the Bulgarian legislation without restating it. It guides Bulgarian companies on how to apply established best practices and principles of corporate governance.** The rules and provisions of the Code constitute standard best practice that has proven effective over the years for the governance and oversight of public companies. For the purpose of this Code, corporate governance is understood as the relations between the boards, shareholders, and stakeholders of the company. **Good corporate governance requires corporate boards to be accountable, loyal, responsible, transparent and independent in order to act in the best interest of the company and society.**

The recommended rules regarding shareholder protection, transparency, the proper functioning of the corporate boards, and the involvement of the stakeholders **are to be applied by all Bulgarian public companies. The Code should also be implemented by those that are planning to become public.** Considering its national scope, the Code should also be adopted and applied by Bulgarian companies with predominant State and municipal ownership.

The Code is to be adopted and implemented according to the **“comply or explain” principle.** It means that companies should comply with the Code, yet if they do not, their corporate boards must explain and disclose the reasons for non-compliance. Companies should post information about the implementation and compliance with the Code on their web sites and include it in their annual reports.

## **DEFINITIONS:**

**Ethical code of conduct** – a set of moral and ethical norms, principles and standards of conduct.

**Executive management** – Executive management comprises the executive members of the Board of Directors, of the Management Board and the authorized representatives of the company, respectively. These are the persons authorized to directly manage and represent the company.

**Corporate boards** – Corporate boards are the company bodies which, on the one hand, manage and represent the company, and, on the other hand, oversee its operations.

In the one-tier governance structure, the governing, representative and controlling functions are carried out by a Board of Directors.

In the two-tier system, the management and representative functions are carried out by a Management Board, and the oversight - by a Supervisor Board.

**By-laws** – By-laws comprise the Articles of Associations and any internal instruments which establish the specific rules, procedures and criteria for the functioning and management of the company.

## Chapter One

### CORPORATE BOARDS

#### *One-tier System*

#### Board of Directors

##### 1. Functions and Tasks

1.1. The Board of Directors must govern the company in a responsible and independent manner and set the vision, goals and strategies of the company in the best interests of all shareholders.

1.2. The Board of Directors should determine the strategic direction of the company and monitor its implementation.

1.3. The Board of Directors should establish the corporate risk management policy as well as control and ensure the proper functioning of the company's internal audit and risk management systems.

1.4. The Board of Directors must ensure the compliance of the company with legal, normative and contractual obligations.

1.5. The Board of Directors should be responsible for the elaboration and the proper functioning of the financial and information systems of the company.

1.6. The Board of Directors must provide directions, approve and control the implementation of the company's business plan; extraordinary material transactions; and all other operations and actions required by the company's by-laws.

1.7. The Board of Directors should define the company's disclosure policy and establish guidelines for the relationships with investors; it supervises and is responsible for the timely provision to the shareholders of any information which they are entitled to receive in compliance with the requirements of the law and the company's by-laws.

1.8. **During their mandate, the members of the Board of Directors** should act in a professional and diligent manner and conduct themselves according to the commonly accepted principles of integrity and duty of care.

The Board of Directors should adopt and follow a professional ethical code of conduct.

1.9. The Board of Directors reports its activity to the General Meeting of Shareholders.

##### 2. Election and Removal of Members of the Board of Directors

2.1. The General Shareholder Meeting must elect and remove members of the Board of Directors in compliance with the law and the company's by-laws, while respecting the **principles of continuity and ensuring the stability of the Board of Directors' work.**

2.2. The responsibilities, tasks, duty of care and duty of loyalty of Board members to the company as well as the criteria and level of remuneration and the conditions for removal from the Board should be stipulated by contract.

### **3. Structure and Competence**

3.1. The number of members and the structure of the Board of Directors should be determined by the company by-laws.

3.2. The composition of the Board of Directors elected by the General Shareholder Meeting should ensure the professionalism, independence and impartiality of its resolutions related to the management of the company.

3.3. The Board of Directors should ensure the tasks and obligations of its members are properly distributed. The basic function of independent directors is to oversee and control the functions carried out by executive management and to contribute effectively to the company's performance in the best interest of all shareholders and in respect of their rights. The Chairman of the Board of Directors should be an independent director.

The required skills, rights and responsibilities of the members of the Board of Directors must comply with the law and the company's by-laws, and follow good professional standards and practice.

3.5. The members of the Board of Directors should have the knowledge and experience required for the position they take. After their election the new members of the Board of Directors have to be familiarized with the basic legal and financial issues related to their task and the company's activities and performance. Continued professional training of members of the Board of Directors should be encouraged.

3.6. The members of the Board of Directors should dispose of sufficient time to carry out their tasks and duties. The company's by-laws should limit the number of directorships a Board member can hold.

3.7. The election of members of the Board of Directors must be done through a transparent procedure which should ensure timely and complete information regarding the personal and professional qualities of the candidates. The number of consecutive terms of the members of the Board of Directors should provide for the company's efficient functioning and must be in compliance with legal requirements.

### **4. Remuneration**

4.1. The Board of Directors should develop clearly defined and specific remuneration policy with regard to the BD members which should preferably be subject to GSM's approval. The amount of and criteria for the remuneration must be approved by the General Shareholder Meeting.

4.2. The amount and criteria for the remuneration should, in accordance with the law and good corporate governance practices, follow criteria such as:

4.2.1. Responsibilities and contribution of the member of the Board of Directors to the company's performance and results;

4.2.2. The availability and ability to select and retain qualified and loyal members of the Board of Directors;

4.2.3. The need to have the interests of the members of the Board of Directors aligned with the long-term interests of the company.

4.3. The remuneration of executive members of the Board of Directors should consist of basic salary and variable incentives.

4.3.1. The variable incentives should be specifically defined or definable and should be linked with clear and specific criteria and indicators with respect to the company's performance and/or the meeting of targets set by the Board of Directors.

4.3.2. In addition to a fixed compensation, as variable incentives the Company can offer to the executive Board member shares, options on shares, and other appropriate financial instruments.

4.4. The remuneration of independent directors should be their basic salary only and depends on their individual participation in meetings, their performance level in regard with their assigned tasks, their ability to oversee and control the operations of executive management and their effective contribution to the company's performance.

4.5. The General Meeting of Shareholders may vote to appropriate to the members of the Board of Directors additional remunerations as bonuses depending on the financial performance of the company.

4.6. The remuneration of the members of the Board of Directors must be disclosed in accordance with the law and the company's by-laws.

4.6.1. Shareholders should have easy access to the adopted company policy concerning the determination of remunerations and bonuses of the board members as well as to information about the annual remunerations and variable incentives received by such members.

## **5. Conflict of Interests**

5.1. The members of the Board of Directors should prevent any real or potential conflict of interests.

5.2. The procedures for preventing and disclosing conflicts of interests should be provided for in the company's by-laws.

5.3. The members of the Board of Directors should immediately disclose any conflicts of interests and provide shareholders with access to information about transactions concluded between the company and members of the board or any related party.

5.4. Each conflict of interests involving the company should be disclosed to the Board of Directors.

5.5. A potential conflict of interests exists when the company intends to realize a transaction that involves:

- (a) a party related to or with financial interest linked to a member of the Board;
- (b) board member that is either member of the Management Board, Supervisory Board or Board of Directors.

## **6. Committees**

6.1. The work of the Board of Directors should be assisted by committees. The Board of Directors should determine the need for setting up committees in accordance with the specific operations of the company.

6.2. Depending on the requirements of the existing legislation and based on the criteria defined therein, the Board of Directors proposes to the general meeting of shareholders of the company to elect an audit committee whose composition should comply with the legal requirements and the specific needs of the company.

6.3. The committees should be set up according to pre-established and adopted written terms of reference which should include the scope, tasks, modalities and reporting procedures of the committee.

### ***Two-tier System***

**The Supervisory Board and the Management Board jointly act in the interest of all the company shareholders and take into consideration the interests of the company's stakeholders.**

## **Management Board**

### **7. Functions and Tasks**

7.1. The Management Board manages the company in accordance with the established company visions, goals and strategies in the best interest of all shareholders.

7.2. The Management Board should implement the strategy of the company in accordance with the directions of the Supervisory Board.

7.3. The Management Board should develop and adopt the company's risk management and internal audit policy. It must implement the company's internal audit and risk management systems and report on implementation to the Supervisory Board.

7.4. The Management Board must ensure that the company meets its contractual obligations.

7.5. The Management Board should set up the company's financial information system and ensures it is efficiently working in accordance with the directions set by the Supervisory Board.

7.6. The Management Board should work in cooperation with the Supervisory Board on: company's business plan; carrying out extraordinary and material transactions; and implementing any other operations and actions required by the company's by-laws.

7.7. The Management Board must inform and report to the Supervisory Board on its actions. Management Board should provide information in the format and within the established deadlines required by the Supervisory Board.

7.8. During their mandate the members of the Management Board should act in a professional and diligent manner and conduct themselves according to the commonly accepted principles of integrity and duty of care. Management Board should adopt and follow a professional ethical code of conduct.

## **8. Structure and Competence**

8.1. The structure and the number of members on the Management Board should guarantee the effective performance of the company.

8.2. The responsibilities, tasks, duty of care and duty of loyalty of members of the Management Board to the company, as well as the criteria and level of remuneration and the conditions for removal from the Board should be stipulated by contract.

8.3. The required skills, rights and responsibilities of the members of the Management Board must comply with the law and the company's by-laws, and follow good professional standards and practice.

## **9. Remuneration**

9.1. The amount and criteria for the remuneration of the members of the Management Board should, in accordance with the law and good corporate governance practices, be based on the following criteria:

9.1.1. The responsibilities and the contributions of the member of the Management Board to the company's performance and results;

9.1.2. The ability to attract, select and retain qualified and loyal managers;

9.1.3. The need to have the interests of the members of the Management Board aligned with the long-term interest of the company;

9.2. The remuneration of the members of the Management Board should consist of basic salary and variable incentives.

9.2.1. The variable incentives should be specifically defined or definable and should be linked with clear and specific criteria and indicators with respect to the company's performance and/or the meeting of targets set by the Supervisory Board.

9.2.2. In addition to a fixed compensation, as variable incentives the Company can offer to the Management Board member shares, options on shares, and other appropriate financial instruments.



9.3. The remuneration of the members of the Management Board must be disclosed in accordance with the law and the company's by-laws. Shareholders should have easy access to the adopted company policy concerning the determination of remunerations and bonuses of the board members as well as to information about the annual remunerations and variable incentives received by such members.

## **10. Conflict of Interests**

10.1. The members of the Management Board should prevent any real or potential conflict of interests.

10.2. The procedures for preventing and disclosing conflicts of interests should be provided for in the company's by-laws.

10.3. The members of the Management Board should immediately disclose any conflicts of interests and provide shareholders with access to information about transactions concluded between the company and members of the board or any related party.

10.4. Each conflict of interests should be disclosed to the Supervisory Board.

10.5. A potential conflict of interests exists when the company intends to realize a transaction that involves:

- (a) a party related to or with financial interest linked to a member of the Management Board;
- (b) company board member that is either member of the Management Board, Supervisory Board or Board of Directors.

## **Supervisory Board**

### **11. Functions and Tasks**

11.1. In accordance with the division of functions within the two-tier governance system, the Supervisory Board must appoint the Management Board of the company, provide it with strategic guidance, oversee and control its activities.

11.2. The Supervisory Board should define and oversee the implementation of the vision, goals and strategy of the company. It should provide adequate guidance to the Management Board for implementation.

11.3. The Supervisory Board should provide adequate guidance to the Management Board concerning the effective development and implementation of the company's risk management and internal audit systems and the proper functioning of financial information systems.

11.4. The Supervisory Board must ensure the compliance of the company with law and the rules embedded in the company by-laws.

11.5. In carrying out its tasks, the Supervisory Board should ensure that an effective and proper functioning information exchange system with the Management Board is in place.

11.6. At least once a year the Supervisory Board should evaluate the performance of the Management Board as a whole and the work of each of its individual members.

11.7. The Supervisory Board must perform its tasks and carry out its obligations in compliance with the law, the company's by-laws and according to the commonly accepted principles of integrity and duty of care.

## **12. Appointment and Removal of Management Board Members**

12.1. The Supervisory Board should appoint and remove the members of the Management Board in compliance with the legal requirements, company's by-laws and in accordance with good corporate governance standards, while respecting the principles of continuity and ensuring the stability of the Management Board's work.

12.2. The compensation policy of the Supervisory Board should guarantee effective performance of the company in the best interest of its shareholders.

## **13. Structure and Competence**

13.1. The members of the Supervisory Board should carry out their tasks independently and impartiality in the best interest of the company.

13.2. The number of members of the Supervisory Board, including the number of independent members and the proper division of tasks among them, should be provided for in the company's by-laws.

13.3. The independent member of the Supervisory Board should be impartial and act in the best interest of the company and all its shareholders.

13.4. The members of the Supervisory Board should have appropriate knowledge and experience required to hold such position. At least one of the members should have financial competences.

13.5. After their election the new members of the Supervisory Board have to be familiarized with the basic legal and financial issues related to their task and the company's activities and performance.

13.6. Continued professional training of members of the Supervisory Board should be encouraged.

13.7. The members of the Supervisory Board should be able to devote sufficient time to carry out their tasks and duties. The company's by-laws should limit the number of board positions the members of the Supervisory Board are allowed to hold.

13.8. The procedures for selecting new Supervisory Board members should take into account the principles of continuity and ensure the stability of the Supervisory Board's work.

## **14. Remuneration of Members of Supervisory Board**

14.1. The amount of the remunerations of the members of the Supervisory Board must be approved by the General Shareholder Meeting.

14.2. The amount of the remuneration of the members of the Supervisory Board should be based on their responsibilities and contribution but should not be tied to the company's results.

14.3. The remuneration of independent members should be their basic salary only and depends on their individual participation in meetings, their performance level in regard with their assigned tasks to oversee and control the operations of executive management and their effective contribution to the company's performance.

14.4. The members of the Supervisory Board should not be compensated for their activity with shares or options, or other variable incentives.

14.5. The remuneration of the members of the Supervisory Board must be disclosed in accordance with the law and the company's by-laws. Shareholders should have easy access to information concerning the remuneration of Supervisory Board members.

## **15. Conflict of Interests**

15.1. The members of the Supervisory Board should prevent any real or potential conflict of interests.

15.2. The procedures for preventing and disclosing conflicts of interests should be provided for in the company's by-laws.

15.3. The members of the Supervisory Board should immediately disclose any conflicts of interest and provide shareholders with access to information about transactions concluded between the company and members of the board or any related party.

15.4. A potential conflict of interests exists when the company intends to realize a transaction that involves:

(a) a party related to or with financial interest linked to a member of the Supervisory Board;

(b) company board member that is either member of the Management Board, Supervisory Board or Board of Directors.

## **16. Committees**

16.1. The work of the Supervisory Board should be assisted by committees. The Supervisory Board should determine the need for setting up committees in accordance with the specific operations of the company.

16.2. Depending on the requirements of the existing legislation and based on the criteria defined therein, the Supervisory Board approves the proposal the Management Board has made to the general meeting of shareholders of the company to elect an audit committee

whose composition should comply with the legal requirements and the specific needs of the company.

16.3. The committees should be set up according to pre-established and adopted written terms of reference which should include the scope, tasks, modalities and reporting procedures of the committee.

## **Chapter Two**

### **AUDIT AND INTERNAL CONTROL**

17. Corporate boards, assisted by the audit committee and in accordance with the established professional standards and requirements, present in writing at the General Shareholder Meeting a motivated proposal for the selection of an external auditor.

18. The principle of rotation should be applied in selecting and appointing an external auditor.

19. The company should develop and implement an internal control system which should also ensure the early identification of any material risks the company may face and to effectively manage those risks.

20. Such system should ensure also the effective functioning of the reporting and disclosure of information systems.

## **Chapter Three**

### **PROTECTION OF SHAREHOLDERS' RIGHTS**

#### **21. Protection of Shareholders' Rights**

**Corporate boards should ensure the equitable treatment of all shareholders, including minority and foreign shareholders, and should be responsible for the protection of their rights.**

#### **22. General Shareholder Meeting**

22.1. All shareholders must be able to participate in the General Shareholder Meeting and to express their opinion.

22.1.1. Shareholders who have the right to vote should have the opportunity to exercise their voting rights through the use of a proxy at the General Shareholder Meeting and where company's by-laws stipulate that - and via electronic communications and/or electronic means.

22.1.2. Corporate boards should exercise effective oversight and ensure that necessary arrangements are made for the voting by authorized representatives (proxies) in accordance with the instructions of the shareholders and in accordance with the law.

22.1.3. Corporate boards must establish rules for the organisation and conduct of regular and extraordinary General Shareholder Meetings. These rules must guarantee the equitable treatment of all shareholders and the right of each shareholder to express his/her opinion about the items on the agenda of the General Shareholder Meeting.

22.1.4. Corporate boards should establish the rules and procedures for the conduct of the General Shareholder Meeting in a manner which does not make voting procedure unnecessarily difficult or expensive.

22.1.5. Corporate boards should take action to encourage the participation of all shareholders at the General Meeting, including those who cannot make it physically by allowing the use of information technology (including Internet) whenever possible and necessary, and in accordance with item 2.1.4 of the present Code.

22.2. All members of the Corporate boards should attend the General Shareholder Meeting.

22.3. Written materials for the General Shareholder Meeting

22.3.1. Documentation and reference materials related to the agenda of the General Shareholder Meeting must be clear, accurate and to the point in order not to mislead the shareholders. All proposals concerning the major corporate events should be presented as separate items on the agenda of the General Shareholder Meeting, including the proposal for the distribution of dividends.

22.3.2. The company should maintain a special section on its website describing the rights of shareholders and the rules and procedures for their participation in the General Shareholder Meeting.

22.3.3. Corporate boards should ensure court-authorized shareholders can place additional items on the agenda of the General Shareholder Meeting.

22.4. Corporate boards must guarantee the right of all shareholders to be informed on a timely basis about the decisions that have been made at the General Shareholder Meeting.

## **Chapter Four**

### **DISCLOSURE OF INFORMATION**

23. Corporate boards must establish the company's information disclosure policy in compliance with legal requirements and the company's by-laws.

24. In accordance with established policies under item 1, Corporate boards oversee the implantation and ensure proper support for an effective system for disclosure of information.

25. The system for disclosure of information should guarantee equal access to information to shareholders, investors, and other stakeholders and should not allow for any abuse of internal information or insider trading.

26. Corporate boards should guarantee that the system for information disclosure provide for comprehensive, timely, true and understandable information to allow for objective and well-informed decision-making and assessments.

27. Corporate boards should establish and oversee the implementation of internal rules for the production of mid-term and annual reports and should oversee the proper disclosure of the information in a way that guarantees compliance with item 3 of this chapter.

28. As a part of a well functioning system for the disclosure of information, the Company should set up and maintain a company website. This website should be operated in accordance with approved policies on the content, scope and regularity of information disclosure. The official information posted on the website should include at minimum:

- basic commercial and corporate information identifying the company;
- up-to-date information about the joint-stock structure;
- company's by-laws and the adopted policies pertaining to the operations and functioning of the of the company;
- information about the structure and composition of the managing and supervisory bodies of the company as well as basic information about their members, including information about any committees;
- financial reports covering at least the previous 3 years;
- materials for upcoming General Shareholders Meeting as well as any additional materials which have been submitted in compliance with the law. information about the resolutions of the General Shareholder Meetings of the last 3 years as a minimum, including information about the dividends distributed by the company within that period;
- information about external auditors;
- information about up-coming corporate events;
- information about the shares issued and other financial instruments;
- any information that is material to the company's activities;
- information about shareholders' rights, including sufficient information on the shareholders' right to request the inclusion of matters and to propose resolutions on matters already included in the agenda of the general meeting under the provisions of Art. 223 (a) of the Commerce Act;
- contact details of company's Investor Relations Director.

28.1. Companies should also maintain an English version of their corporate website with identical content.

29. The company should regularly disclose information about its corporate governance. The disclosure of corporate governance information should be effected in compliance with the "comply or explain" principle. This principle requires companies to explain the reasons for not complying with individual provisions of the Code.

## **Chapter Five**

### **CORPORATE GOVERNANCE AND STAKEHOLDERS**

30. **Corporate governance should ensure effective interaction with the company's stakeholders.** In this category fall certain interested parties and groups of individuals who are directly influenced by the company and who are in a position to influence the company, including for example: suppliers, employees, creditors, civil society groups, and others. The company should identify the stakeholders who are interested in its activities, based on their scale and sphere of influence and impact, as well as their role and relationship to company's sustainable development.

31. In their stakeholder policy, corporate boards must comply with existing laws. **A good corporate governance practices requires taking into consideration the interests of stakeholders in accordance with the principles of transparency, accountability and business ethics.**

32. Corporate boards should establish specific rules for addressing the interests of stakeholders. These rules should ensure appropriate stakeholder engagement when decisions requiring their input are made.

These rules should ensure the balance between the development of the company and the development of the economic, social and ecological environment in which the company operates.

33. Corporate boards maintain effective relations with the stakeholders. The company should, from time to time and in compliance with the legal provisions and the good international practices for disclosure of information of non-financial nature, disclose information about economic, social and environmental issues of concern to stakeholders, for example: anti-corruption policies; labor policies, policies regulating supplier and client relations; the company's corporate social responsibility policies; environmental protections and nature preservation policies.

## **CONCLUSION**

This Code was developed in October 2007 and approved by the National Corporate Governance Committee (NCGC), and was amended in February 2012 by virtue of a decision of the NCGC.