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Corporate Governance 2014

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Chapter 20

Luxembourg

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1 Setting the Scene - Sources and Overview

1.1 What are the main corporate entities to be discussed?

In Luxembourg, there are two markets, both operated by the Luxembourg Stock Exchange: (i) the EU regulated market, as defined in article 4 § 1 point 14) of the Directive 2004/39/EC (the "**Regulated Market**"), being subject to the prospectus, transparency and market abuse legislation and offering European passport for securities (the "***Bourse de Luxembourg***"); and (ii) an exchange-regulated market, being a multilateral trading facility, as defined in article 4 § 1 point 15) of the Directive 2004/39/EC, where, amongst others, the compliance with prospectus and transparency legislation is not required, however, there is also no possibility of European passporting of securities listed thereon (the "**Euro MTF**").

The present chapter covers Luxembourg companies which are admitted to listing and trading on the Regulated Market (including the LSE) and on the Euro MTF (the "**Listed Companies**").

A most common form of a Listed Company is that of a public limited company (*société anonyme*) ("**SA**"). However, shares of a European Company (*Societas Europaea*) ("**SE**"), or limited partner shares of a corporate partnership limited by shares (*société en commandite par actions*) ("**SCA**") may also be admitted to trading on a regulated market.

It should be borne in mind that neither shares of private limited liability company (*société à responsabilité limitée*), a company form very popular with investors in Luxembourg, nor of special limited partnership (*société en commandite speciale*), a new vehicle introduced in 2013 and inspired by the UK limited partnership, nor common limited partnership (*société en commandite simple*) may be offered to the public and traded on the regulated markets, and therefore these entities will not be subjects of this chapter.

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

The main legislative sources for the corporate governance of Listed Companies are as follows:

- the law of 10 August 1915 on commercial companies, as amended, (the "**Company Law**") is the main piece of legislation containing corporate law rules applicable to commercial companies, including the Listed Companies;
- the law of July 10, 2005 implementing the prospectuses for securities Directive 2003/71/EC (the "**Prospectus Law**");
- the law of May 9, 2006 implementing the market abuse Directives 2003/6/EC, 2003/124/EC, 2003/125/EC and 2004/72/EC (the "**Market Abuse Law**");
- the law of May 19, 2006 implementing the takeover bid Directive 2004/25/EC (the "**Takeover Bid Law**");
- the law of January 11, 2008 implementing the Transparency Directive 2004/109/EC (the "**Transparency Law**");
- the law of May 24, 2011 implementing the shareholders' rights Directive 2007/36/EC (the "**Shareholders' Rights Law**"); and
- the law of July 21, 2012 on squeeze-outs and sell-outs of securities of Luxembourg companies admitted or formerly admitted to trading on a regulated market or which have been the object of a public offer (the "**Squeeze-outs and Sell-outs Law**").

Important "softlaw" sources of corporate governance are the 10 Principles of Corporate Governance of the Luxembourg Stock Exchange (the "**10 Principles**"), based on the existing Luxembourg legislation regarding commercial companies and, in particular, the Company Law. This document contains three types of rules applicable to the companies listed on the Luxembourg Stock Exchange: (i) mandatory general principles, which must be complied with without exception; (ii) "comply or explain" recommendations (also mandatory, however, a company may choose to depart from them, subject to explaining why it deems that a particular recommendation is not suited to its specific situation); and (iii) guidelines which are indicative and not binding. Among other sources of corporate governance the circulars and regulations of the Luxembourg financial sector supervisory authority (*Commision de Surveillance du Secteur Financier*, "**CSSF**") should also be mentioned (they are applicable to the Listed Companies listed on the Regulated Market and the rules and regulations of the Luxembourg Stock Exchange (*Règlement d'ordre intérieur de la Bourse de Luxembourg*)). They are further applicable to the companies listed on both Bourse de Luxembourg and Euro MTF.

Finally, for each Listed Company, the particular rules governing its corporate governance (which should be in conformity with the applicable mandatory rules contained in the sources of corporate governance mentioned above) shall be included in its articles of association – a constitutive document adopted at the incorporation (or another event resulting in the creation of a company, e.g. transformation or merger) and remaining under control of the shareholders who may amend it from time to time. Also, the Company Law mentions internal rules and regulations, which may be adopted by the board of directors with respect to the practical functioning of the board of directors.

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

As regards the SCAs, a welcome change was introduced by the law implementing the AIFM Directive 2011/61/EU as a result of which the Company Law now contains an exhaustive list of acts which can be performed by the limited partners of the SCA without being considered as performing management acts. Such list includes advice to and supervision of management, authorisations given to management for acts falling outside their scope of competence as set out in the articles of association, loans and other assistance provided to the SCA or its affiliates and exercise of the limited partners' rights in such capacity. Thus the risk for a limited partner of a SCA of unintentionally performing actions which would be considered as management of the SCA (and resulting in his unlimited liability) has been substantially reduced. Also, the managers of the SCA may now be chosen from amongst persons other than the general partners who are subject to a liability regime applicable to directors of SAs.

An important change for Listed Companies was made in the Luxembourg legislation in 2013: the law of 6 April 2013 on dematerialised securities has introduced dematerialised shares, as a third form of securities, alongside the existing registered and bearer shares. Additional changes in this field are further expected with the draft bill of law n° 6625 amending the bearer share regime. As a result of the proposed amendments, being in line with the GAFI recommendations and aiming at ensuring transparency of shareholding in SAs and SCAs, the bearer shares will be deposited with a depositary (appointed from a list of selected entities/professionals such as, e.g., banks, lawyers, notaries) and registered in a share register.

2 Shareholders

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

As a matter of principle, the management of a SA is reserved to its board of directors (please see remarks under question 3.1 below relating to the monistic/dualistic system of management; also please note that a SCA is managed by one or more managers, who may, but do not have to, be its general partner(s)). In a typical situation, the shareholders of a Listed Company, and acting as a general meeting of shareholders, being a corporate body of the company, would be competent to decide on: amendments of the articles of association; change of the nationality of the company; approval of corporate restructuring (transformation, mergers, divisions); voluntary dissolution of the company; approval of financial statements of the company and of distributions to the shareholders (except for the interim dividends which may be decided by the management body); and appointing and removal of directors (and of members of the supervisory board, where applicable), of the statutory auditor (or in case of the SCA of members of the supervisory council) or, if applicable, of the independent auditor.

It may be considered as "best practice" that certain fundamental decisions relating to the management of the company, such as e.g. exit from the principal investment or carrying-out of a major acquisition, be submitted by the management body to the general meeting of shareholders for approval.

One should also note the specific role of limited partners and general partners in the SCA. For additional security, the Company Law lists exhaustively the acts which can be performed by the limited partners in such capacity (please see remarks in question 1.3). The general partner(s) of the SCA may be at the same time the manager(s) of the company and, unless the articles of association provide otherwise, have *veto* right with respect to the decisions of the general meeting of shareholders (i) concerning the third parties, or (ii) amending the articles of association.

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

Sometimes, the articles of association of a company may provide for additional consultation or consent rights of the shareholders. In such case, it should always be ascertained that such "co-decision" rights given to the shareholders are not excessive and do not interfere with the independent management of the company by its board of directors, management board or managers, as the case may be, in which case the shareholders could be deemed effectively involved in the management of the company and incur liability as *de facto* directors.

Otherwise, the shareholders' influence on the management of the company would, in principle, be indirect e.g. by way of appointing members of the board of directors.

While exercising their rights, the shareholders are obviously entitled to pursue their individual interests which may be incompatible with the interests of some of the other shareholders. However, the shareholders may not privilege their own interest, at the expense of other shareholders', if such conduct is contrary to the corporate interest of the company, at the risk of incurring sanctions (such as civil liability or annulment of abusive act) for abuse of majority (in the case of majority shareholder(s)) or abuse of minority (in the case of minority shareholder(s)). The latter, rare in practice, situation could be deemed to exist, e.g. where the minority blocked the necessary capitalisation of the company without any valid reason. The former, more common in practice, could include taking exclusive control over the board of directors of the company.

The specific aspect of the corporate governance relating to the appointment of the members of the management body also carries an additional responsibility for the shareholders – principle 3 of the 10 Principles requires that the board of directors be composed of competent, honest and qualified persons, chosen in consideration of the specific features of the company. The 10 Principles further recommend that the board of directors include the shareholders' representatives and an appropriate number of independent directors.

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

Two main categories of general meetings of shareholders of Listed Companies may be distinguished: extraordinary general meeting of shareholders (the "**EGM**"), held before a notary and dealing with matters involving amendment of the articles of association of a company; and ordinary general meeting of shareholders (the "**OGM**") dealing with all other matters. From this point of view, the annual general meeting of shareholders (the "**AGM**"), voting on the approval of the annual financial statements of the company, on the allocation of the company's profits/losses and on the discharge to the members of the management body for the performance of their duties, would be a specific sub-category of the OGM.

Unless higher majority/quorum applicable to general meetings of shareholders is required in the articles of association, the rules in this respect are as follows:

- Decisions of the OGM (e.g. approval of annual accounts at

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an AGM, appointment and removal of directors or auditors) are taken by simple majority of the votes cast (abstentions, votes which are null or blank do not count) and there is no quorum requirement.

- Decisions of the EGM (e.g. increase of the share capital, approval of merger/demerger or dissolution) require a quorum of 50% of the share capital and a majority of 2/3rd of the votes cast (abstentions, votes which are null or blank do not count). If the quorum is not met at a meeting, the meeting can be reconvened. At the reconvened meeting, there is no quorum requirement, however, the majority of 2/3rd of the votes cast is still required. In case there are different classes of shares, the change to the rights of a class requires the same quorum and majority provisions to be met within each class.
- In case of loss of more than ½ of the share capital, a general meeting of shareholders has to be convened to decide on the dissolution or continuation of the company. The decision is taken with the same quorum and majority rules as the ones applicable to a change to the articles. If the loss exceeds ¾ of the share capital, the decision to dissolve the company is taken by a "majority" of ¼ of the votes cast.
- Change of nationality and increase of the commitments of the shareholders requires unanimous consent of shareholders.
- In the particular case of the SCA, unless otherwise provided for in the articles, the vote of the general partner is required for all shareholders' decisions amending the articles or being of interest to third parties.

Pursuant to the Company Law, the general meetings of shareholders are convened by the management body of the company or by its statutory auditor or supervisory council. Such bodies are under obligation to convene a general meeting of shareholders if shareholders representing at least 10% of the share capital so require (and submit a proposed agenda of the meeting). Furthermore, pursuant to the provisions of the Shareholders' Rights Law, shareholders of the company listed on the Regulated Market representing at least 5% of the share capital (and not 10% as required under the general provisions of the Company Law) have the right to introduce additional items on the agenda of the general meeting and propose resolutions concerning the items already included or proposed to be included on the agenda. In relation to the exercise of the shareholders' rights at a general meeting, the Shareholders' Rights Law explicitly confirms the right of each shareholder to ask questions to the company (represented by its management body) regarding the items on the agenda of the meeting.

Also, shareholders representing at least 20% of the share capital have the right to request the board of directors to adjourn a general meeting of shareholders, which has already started, for a period of 4 weeks.

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

As a matter of principle, the shareholders' liability for the company's own liabilities is, in fact, only limited to the amounts they paid for their shares in the company (i.e. they assume the economic risk of the company's bad results). This is obviously subject to the exception of the general partner in a SCA.

Nonetheless, Luxembourg law allows, in some exceptional cases, to pierce the corporate veil of a company and extend the company's liability to another person. This could, in particular, be the case of extending a company's bankruptcy to a shareholder who acted as de facto director of a company. Factual elements which could lead a court to consider that a shareholder was acting as *de facto* director could include, amongst others: the fact the assets of the company were mixed with the ones of its shareholder(s) or the control over the company was exercised clearly to the detriment of the company and to the profit of the controlling shareholder.

Also, the general principle of civil law "who through his fault causes damages to another is obliged to make reparation to the latter" applies also in the field of the company law. Accordingly, in some cases, the liability of shareholders could be engaged for a wrongful act towards the company (and, where applicable, indirectly the creditors of the company), such as e.g. abuse of majority/minority or manifestly insufficient capitalisation.

2.5 Can shareholders be disenfranchised?

Pursuant to provisions of the Transparency Law, the voting rights attached to the shares in a Listed Company which are in excess of one of the relevant reporting thresholds shall be suspended, if the fact that the shareholder has reached such threshold has not been duly disclosed.

Also, a shareholder (or shareholders acting in concert) of a Listed Company who own(s) at least 95% of its share capital has (have) the right to compel the shareholders holding the remaining percentage of the shares to sell their stake to it (them), pursuant to the provisions of the Takeover Bid Law and the Squeeze-outs and Sell-outs Law.

Finally, according to the Luxembourg legal doctrine, the articles of association may provide for the possibility of exclusion of a shareholder from the company (usually by means of a call option mechanism), subject to respect of certain procedural rights, such as the right to be heard and give explanations. Such possibility must be included in the articles of association of the company at its incorporation or, if it was introduced by way of amendment to the articles of association, be approved by a unanimous vote of all shareholders.

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

Members of the management body are acting as agents of the company and are liable *vis-à-vis* the company for (i) the fulfilment of their duties and for any shortcoming in the performance thereof, and (ii) for any breach of the articles of association of the company or of the provisions of the Company Law.

Legal proceedings based on contractual liability (*actio mandati*) of directors towards the company (as well as on the basis of breach of articles of association or the Company Law provisions) can only be brought before the court in the name of the company by the decision of the general meeting of shareholders taken with simple majority or, where applicable, by a liquidator or bankruptcy receiver of the company. No such proceeding can be initiated, if discharge was validly granted to the directors by the annual general meeting of shareholders (for actions of the directors reflected in the annual accounts of the company), it being understood that such a discharge does not prevent a liquidator or bankruptcy receiver to act against the directors.

Also, a shareholder may not, acting individually in its own name, initiate legal action against the company, unless it can prove that a fault committed by the directors has caused him individual damage independent and separate from the one which has been caused to the patrimony of the company.

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

Any acquisition or disposal of shares by a person resulting in its shareholding in a company listed on the Regulated Market going above or below any of the relevant reporting thresholds is subject to notification by such person to the Listed Company in question and thereafter to publication by the Listed Company itself. The relevant thresholds are as follows: 5%, 10%, 15%, 20%, 25%, 33 1/3% and 66 2/3% of the voting rights in the company. As regards the companies listed on Euro MTF, the rules and regulations of the Luxembourg Stock Exchange require publication of changes of shareholdings involving, exceeding or falling below the following thresholds: 5%, 1/3, 50% and 2/3 of the voting rights in the company.

In addition, the members of the management body of Listed Companies whose shares are listed on the Regulated Market, in accordance with the provisions of the Market Abuse Law, are obligated to promptly notify the Listed Company itself and the CSSF of any operations carried out on their behalf on the shares or derivatives/other financial instruments linked to such shares.

3 Management Body and Management

3.1 Who manages the corporate entity/entities and how?

A SA can choose from two types of management structure:

- the monistic system, where the SA is managed solely by a board of directors, and which is the most common form; and
- the dualistic system, where the management is entrusted to a management board under the supervision of a supervisory board, which is a form rarely used in practice.

A SA may change from one system to the other at any time during its life, subject to the adoption of the relevant resolutions and corporate formalities.

Considering that the monistic system of management of a SA is the most popular in practice, the below considerations will be focused on SAs being Listed Companies and managed by a board of directors.

The board of directors is the corporate body which is responsible for the management of the SA. It has the widest competence and powers for all matters not reserved by law or the articles to the shareholders' meeting. This includes all actions necessary or desirable to be taken within the framework of the realisation of the corporate object of the SA. The limitations to the powers of the board of directors are unenforceable towards third parties even if they are duly published. Furthermore, the board of directors represents the company towards third parties and in legal proceedings.

The board of directors can delegate specific tasks to one or more agents, board members or not. The articles of association can authorise the board of directors to create committees but this is not a prerequisite for the board to be able to create various committees and determine their composition, competence and functioning. Luxembourg law does not regulate the creation and existence of such committees which do not have any specific role assigned to them by law and are organised on a contractual basis (based on the articles of association and/or the delegation by the board of directors). The general Luxembourg law rules on mandate and delegation apply to the committees which would only have the competence which has been delegated to them by the board of directors. The committees will need to report on their activities to the board of directors.

The board of directors can delegate the day-to-day management and representation of the company to one or more directors, agents or other officers. The appointment, dismissal and competence of these day-to-day representatives are governed by the articles of association or by a decision of the board of directors. The delegation of the day-to-day management to a member of the board of directors requires the board of directors to report annually to the shareholders' meeting any salaries, emoluments and benefits allocated to such director entrusted with the day-to-day management.

In addition to the above general framework of functioning of the board of directors provided for in the Company Law, interesting particularities result for the Listed Companies from the application of the principles and recommendations contained in the 10 Principles, including, amongst others:

- entrusting of the executive management of the company to a management body headed by a CEO, being a different person than the chairman of the board;
- ensuring the proper composition of the board of directors, as regards the qualification of the board members, but also as regards the due representation of shareholders, the presence of independent directors and appropriate number of directors;
- creating committees for the purpose of review and advice on specific matters; and
- setting-up an effective structure of management where assignments and duties are clearly defined and necessary powers delegated for the purpose of carrying out the assigned duties.

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

The board of directors must be composed of at least 3 directors. The SA may have a sole director if it is incorporated by a single shareholder or a shareholders' meeting acknowledges that there is only one remaining shareholder in the SA. In such case, the SA may be managed by a single director until the next shareholders' meeting acknowledging that the SA has more than 1 shareholder.

The board members are appointed by the shareholders' meeting for a maximum (but renewable) term of 6 years. A director can be revoked *ad nutum* (without justification or grounds, without notice and without indemnity) by the shareholders' meeting. A director may also resign.

In the event of a vacant post of a member of the board, the remaining members of the board of directors are entitled to co-opt a replacement person, unless otherwise stipulated by the articles of association of the company. In this scenario, the replacement member shall be finally elected at the next general meeting of shareholders.

The board members shall elect from amongst themselves a chairman, who, unless otherwise stated in the articles of association shall have a casting vote in case of a tie.

Subject to the 10 Principles requiring that the directors be properly qualified to perform their role, there are no specific legal requirements in order to be able to be appointed as director of a SA. The candidate must have legal capacity and majority to act as a director but apart from that anyone can be appointed as director, including a shareholder (but not the auditor of the company or the members of certain professions whose professional rules or regulations preclude them from acting as directors).

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

The remuneration of the members of the board of directors may only be decided by the general meeting of shareholders of a Listed Company.

The 10 Principles contain a number of recommendations relating to the fair and transparent remuneration of the members of the management body. It is, in particular, recommended that the directors' remuneration should be reviewed annually by the general meeting of shareholders and the criteria of directors' remuneration, share attribution schemes, share options and similar rights be subject to its approval. It is also recommended that the board of directors establish a remuneration committee which will assist with drawing up a remuneration policy for directors and executive managers.

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?

Please refer to question 2.7 *in fine*.

In addition, if a board member has an opposing interest in a transaction which is on the agenda of a meeting of a board of directors, he is obligated to abstain from taking part in deliberation and voting on that particular item. Also, mention of the conflict of interest must be made in the minutes of the board meeting, and the following general meeting of shareholders must be informed about the existing conflict of interest and the board's decision with respect to such transaction.

To the extent that the fact that a director holds shares in the company may in some situations be qualified as conflict of interest, the reporting on such conflict to the general meeting of shareholders may be viewed as additional case of mandatory disclosure of director's shareholding in the company.

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

In practice, the process of meetings of the board of directors is covered in the articles of association of a Listed Company. In the unlikely event that this was not the case, the Company Law states that general rules applicable to deliberating meetings (*assemblées délibérantes*) shall be applicable, which, in practice, is construed as reference to the rules of procedure of the Luxembourg house of parliament. The Company Law further contains some basic rules on the quorum and majority, fixing these, in the absence of alternative rules contained in the articles of association or specific legislation, at, respectively, at least half of the board members present or represented, and simple majority of the board members present or represented.

Unless the articles of association stipulate differently, pursuant to the Company Law the board of directors may permit, in its internal rules, the practice of holding meetings of the board of directors by means of video or teleconference. It is common for this possibility to be provided for directly in the articles of association.

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

Each member of the board is under the duty to abide by the Company Law, the articles of association and other applicable legislation, and the duty to manage the company as a normally prudent and diligent director.

Directors are in an agency relationship with the company. They shall fulfil all obligations mandated by their position and are liable if they violate their social mandate by improperly managing the company or by performing acts in violation of laws or the articles of association. As a matter of general law, they are also under the duty to report on the execution of their mandates to the company and the shareholders.

Each director must act *bona fide* in the best interest of the company. Concerning the company's interest, the directors must consider the company as a whole: the company's interests are not necessarily identical to the shareholders' interest or the creditors' interests. In case of conflict between these various interests, the interests of the company as a whole and as an entity separate from the shareholders must be given priority. Particular attention has to be paid in case the same persons are sitting on boards of directors of several companies being members of the same group, as each of them may have a different corporate interest.

Liability of directors of a Listed Company is a matter of public policy (*ordre public*), whether their liability is committed towards the company or towards third parties. Directors' civil liability may take 3 forms: contractual liability towards the company for the exercise of the mandate (*actio mandati*); liability for breach of the articles of association and of the Company Law (towards the company and third parties); and tort liability (in principle, towards third parties).

As mentioned above, under the Company Law, the annual general meeting of shareholders of a company approving its annual accounts may grant to its directors a discharge for the performance of their mandate. Such discharge will have the effect of precluding any liability claims of the company (but not of third parties, liquidators or bankruptcy receivers) having granted it against the discharged directors for any fault in the execution of their mandate (*actio mandati*) covered by the discharge.

For the discharge to be valid, the annual accounts must not contain any omissions or false indications concealing the true situation of the company and any actions taken outside the corporate object of the company shall have been explicitly stated in the convening notice for the meeting approving the accounts.

In addition to the civil law liability aspects, Section XI of the Company Law imposes on directors certain criminal penalties in the event of mismanagement or misconduct (e.g. misuse of corporate assets, distribution to shareholders in the absence of profits, late filing of annual accounts, unlawful financial assistance, etc.). In some cases of bankruptcy, the directors may also face additional liabilities, including, in extreme cases, the extension of the bankruptcy to themselves and their private estate.

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?

Each director should consider carefully each action to be taken by the company and, in particular, each item on the agenda of board meetings. If it can be established that the director has taken all the necessary actions to satisfy himself of the corporate benefit of the company, he will normally be immune from any claims. A diligent director should be active at board meetings, ask for additional information, documents or explanations when necessary, read the documents submitted for approval to the board and have his own opinion on the company's best interests.

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According to Luxembourg case law, a director has an individual power of investigation. The director should carry out all the necessary research to be able to participate in meetings and take particular caution when supervising the other directors. A director cannot rely on the fact that he was not aware of the decisions taken by the board to avoid his liability.

The 10 Principles stress the importance for a director to dedicate the time and attention required to his duties, and to limit the number of his other professional commitments. It is also recommended that new directors receive appropriate training on the way the company operates, enabling them to contribute in the best possible manner to the work of the board of directors.

Finally, each director must execute his mandate with loyalty, honesty and in good faith. The directors also owe the company a duty of confidentiality. Consequently, directors may not disclose information concerning the company, which they receive through their function as a director, except of course, where such disclosure serves the best interest of the company.

3.8 What public disclosures concerning management body practices are required?

Please see questions 3.3 and 3.4 above with respect to disclosure of remuneration and the conflict of interest of the directors.

Furthermore, the 10 Principles emphasise the importance of establishing by a Listed Company a policy of active communication with its shareholders, involving, in particular (i) disclosing the ownership structure, (ii) providing equal access to information on the company, and (iii) using modern means of communication to facilitate access to, and making use of, information on the company.

Also, pursuant to the 10 Principles, a Listed Company should include in the annual management report a corporate governance statement describing all the relevant events connected with corporate governance during the preceding year and including, in particular: (i) indication of the recommendation under the 10 Principles which were not complied with by the company and corresponding explanation; (ii) detailed information on the directors (e.g. identifying the independent directors and describing the activity and attendance of individual directors) and the members of executive management; and (iii) information on the remuneration of the members of the management body. Furthermore, a Listed Company should publish on its website a corporate governance charter describing and disclosing all the main aspects of its corporate governance policy.

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

A Listed Company may subscribe a D&O insurance policy for its directors. The directors may also benefit from indemnity arrangements, aimed at keeping them safe from claims relating to the performance of their functions, subject to the following exceptions:

- the directors' liability towards the company may not be excluded by way of indemnity arrangements with the company itself; as a result; and
- indemnity or insurance may not cover fraud, wilful misconduct or criminal liability.

4 Transparency and Reporting

4.1 Who is responsible for disclosure and transparency?

To the extent a Listed Company is obligated to apply a particular transparency measure or make a specific disclosure (e.g. publish periodic financial reports or a shareholder's participation exceeding one of the reportable thresholds), the responsibility lies with the company – which means in practice – with the management body representing the company. While the applicable provisions do not require that some particular member of the board of directors be in charge of disclosures, the directors may want to delegate such task to a particular agent (not necessarily being member of the board) or decide that members of relevant committees are responsible for making publications falling within their scope of competence.

4.2 What corporate governance related disclosures are required?

All Listed Companies must approve and publish their annual accounts. Listed Companies whose shares are listed on the Regulated Market must publish (i) a yearly financial report including audited annual accounts and a management report, (ii) biannual financial reports, and, in some cases, (iii) quarterly financial reports. Similar requirements as those under (i) and (ii) are also provided for in the rules and regulations of the Luxembourg Stock Exchange.

As mentioned earlier, the shareholder's exceeding/falling below reportable participation threshold and the transactions on the shares of the Listed Company to which the management body members (and certain persons related to them) are party, must also be subject to disclosure.

Also, information such as the composition of the board of directors, the name of the person responsible for the day-to-day management and of the auditor of the company is filed with the trade and companies register, available to the public. Convening notices for the general meetings of shareholders have to be published in a Luxembourg national journal and for the companies listed on the Regulated Market, in a Luxembourg national journal and the Luxembourg official gazette, as well by means of such media as may reasonably be relied upon for the effective dissemination of information to the public throughout the European Economic Area and which ensures fast access to it on a non-discriminatory basis.

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

Listed Companies whose shares are listed on the Regulated Market must have their accounts audited by a certified auditor (*réviseur d'entreprises agréé*). The rules and regulations of the Luxembourg Stock Exchange also require, in respect of the companies whose shares are listed on Euro MTF, that their annual accounts be verified by at least one auditor.

In companies in which an audit committee has not been established, the 10 Principles recommend that the matters of financial reporting and internal control be dealt with by the board of directors in close collaboration with the auditors of the company.

Also, the 10 Principles recommend that the audit committee together with auditors be involved in the decision making process in which conflict of interest between a director and the company has been revealed and issue an opinion on the contemplated transaction.

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4.4 What corporate governance information should be published on websites?

The provisions of the Transparency Law require that information to be made public pursuant to its provisions (e.g. periodic financial reports) should be published by the companies whose shares are listed on the Regulated Market by means of such media as may reasonably be relied upon for the effective dissemination of information to the public throughout the European Community. Publication of information on websites such as, amongst others, Luxembourg Stock Exchange, Thomson Reuters or Business Wire would be viewed as meeting the above requirement.

Furthermore, pursuant to the provisions of the Market Abuse Law, the companies whose shares are listed on the Regulated Market are required to post on their websites all inside information that they are required to disclose publicly.

Finally, the 10 Principles put an important accent on efficient communication with the public and shareholders and recommend, in particular, publication of the Listed Company's corporate governance charter on its website.

5 Corporate Social Responsibility

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

The Luxembourg legal framework does not contain any requirements with respect to the corporate social responsibility.

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

In exceptional cases of large SA type companies (employing 1000 employees during the period of the last 3 years or companies established on the territory of the Grand Duchy of Luxembourg in which the state of Luxembourg holds a participation of a minimum of 25%) representation of employees on the board of directors is required.

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