ROLES OF BOARD OF DIRECTORS AND SUPERVISORY BOARDS

Introduction

At no previous time has there been so much scrutiny of boards and their members as at present. The US cases of Enron and World Com were the first in many on both sides of the Atlantic and recently the problems of Parmalat, Skandia and others have underlined how critical this subject has become.

The World Bank ROSC Assessment identified the need to clarify the roles of the members of the board of directors and the supervisory boards in Slovakia. This is not a problem which is unique to Slovakia. In many countries regulators and legislators are attempting to better define the respective roles of board members and perhaps the greatest emphasis has been on those who are supposed to act as independent supervisors, namely the supervisory board members who are increasingly being held to account for their independence and supervision of the effective and proper management of the company. Accordingly board members are keen to understand their role, duties, and accountability in order to be able to effectively discharge them.

Since the standards of care, especially of supervisory board members, have been rising generally throughout Europe in the past few years it appeared appropriate to attempt to address this subject. There are alternative approaches.

The first is by legislation and in the medium term this will be an option for Slovakia. However in other jurisdictions, they wished to move with greater speed and indeed recognising that one size does not fit all, preferred a more flexible approach; they thus used alternative mechanisms. For example, in the Netherlands, the new Corporate Governance code contains specific provisions on the role of the boards, their independence.

The EU, through the Corporate Governance Action Plan issued last year, stressed the importance of member states improving corporate governance practices through the adoption of corporate governance codes by listed companies. The Transparency Directive requires all member states to require their listed companies to sign up to a lead corporate governance code on a “comply and explain” basis and to report accordingly. Responsibility for the compliance statement falls to the boards.

Slovakia meets this requirement as the Bratislava Stock Exchange with effect from January 2004 requires all listed companies to sign up to the Slovak Corporate Governance Code and to report accordingly.

However this is a first step and it is proposed that Slovakia, embracing the approach of the Netherlands, through the private sector, develop a set of standards for boards which would be incorporated as an annex to the Slovak Corporate Governance Code. The following is a draft upon which it is proposed to consult.
The Bratislava Stock Exchange has sought support from the First Initiative to develop the draft document and in doing so has the support both of the Financial Markets Authority (the “UFT”) and the National Bank of Slovakia, both of which are keen to see improvements in the corporate governance standards in Slovakia.

The paragraphs in bold form the Principles, which it is proposed become a part of the Slovak Corporate Governance Code, and the remaining text is by way of explanation of best practice. Thus by signing up to the code on a comply and explain basis companies would accept that their boards should undertake the roles outlined in the Principles, embracing the best practice provisions, but also recognising that they can explain the reasons for any non-compliance which it is accepted may be for sound business reasons.
Principles

1. Role of the board of directors

1.1 The role of the board of directors is to manage the company, which means, among other things, that it is responsible for achieving the company's aims, strategy and policy, and results. The board of directors is accountable for this to the supervisory board and to the general meeting of shareholders. In discharging its role, the board of directors shall be guided by the interests of the company, taking into consideration the interests of the company's stakeholders.

1.2 The board of directors shall provide the supervisory board in good time with all information necessary for the exercise of the duties of the supervisory board.

1.3 The board of directors is responsible for complying with all relevant legislation and regulations, for managing the risks associated with the company activities and for financing the company. The board of directors shall report related developments to and shall discuss the internal risk management and control systems with the supervisory board and its audit committee.

2. Role and procedure of the Supervisory Board

2.1. The overall role of the supervisory board is to supervise the policies of the board of directors and the general affairs of the company and its affiliated enterprise, as well as to assist the board of directors by providing advice. In discharging its role, the supervisory board shall be guided by the interests of the company and its affiliated enterprise, and shall take into account the relevant interests of the company's stakeholders. The supervisory board is responsible for the quality of its own performance.

2.2 Each supervisory board member shall be capable of assessing the broad outline of the overall policy and have the specific expertise required for the fulfilment of the duties assigned to him within the framework of the supervisory board profile. The composition of the supervisory board shall be such that it is able to carry out its duties properly and all members shall undertake appropriate training and induction programmes.

2.3. The supervisory board and its individual members each have their own responsibility for obtaining all information from the board of directors and the external auditor that is necessary in order to be able to undertake its duties properly as a supervisory organ. If the supervisory board considers it necessary, it may obtain, at the expense of the company, information from officers and external advisers of the company. The supervisory board may require that certain officers and external advisers attend its meetings.
Principles and best practice guidance

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Best practice.

1.4 The board of directors shall submit to the supervisory board for approval: a) the operational and financial objectives of the company; b) the fundamental strategy designed to achieve the objectives; c) the parameters to be applied in relation to the strategy, for example in respect of the financial ratios, asset and property requirements and so forth. The main elements of these shall be set out in the annual report.

1.5 The board of directors shall ensure that the company has an internal risk management and control system that is suitable for the company and includes: (a) risk analyses of the operational and financial objectives of the company; (b) a code of conduct for employees; (c) guides for the layout of the financial reports and the procedures to be followed in the preparation of the reports; and (d) a system of monitoring and reporting.

1.6 The board of directors shall report in the annual report as follows: a) that the internal risk management and control systems are adequate and effective and shall provide clear substantiation of this; b) on the operation of the internal risk management and control system during the year under review and describe any significant changes that have been made and any major improvements that are planned, and shall confirm that they have been discussed with the audit committee and the supervisory board. c) the sensitivity of the results of the company to external factors and variables.
1.7 The board of directors shall ensure that employees have the possibility of reporting alleged irregularities of a general, operational and financial nature in, the company to the chairman of the board of directors or to an official designated by him, without jeopardising their legal position. Alleged irregularities concerning the functioning of board of directors members shall be reported to the chairman of the supervisory board. The arrangements for whistleblowers shall in any event be posted on the company's website.

1.8 A member of the board of directors may not be a member of the supervisory board of more than two listed companies. Nor may such member of the board of directors be the chairman of the supervisory board of a listed company. Membership of the supervisory board of other companies within the group to which the company belongs does not count for this purpose. The acceptance by a board of directors member of membership of the supervisory board of a listed company requires the approval of the supervisory board. Other important positions held by a board of directors member shall be notified to the supervisory board.

1.9 The board of directors and each individual director shall take all reasonable steps to avoid any conflict of interest or apparent conflict of interest between him/herself and the company. Decisions to enter into transactions under which board of directors members would have conflicts of interest that are of material significance to the company and/or to the relevant board of directors member require the prior approval of the supervisory board.

2. Role and procedure of the Supervisory Board

Principle

2.1. The overall role of the supervisory board is to supervise the policies of the board of directors and the general affairs of the company and its affiliated enterprise, as well as to assist the board of directors by providing advice. In discharging its role, the supervisory board shall be guided by the interests of the company and its affiliated enterprise, and shall take into account the relevant interests of the company's stakeholders. The supervisory board is responsible for the quality of its own performance.

2.2 Each supervisory board member shall be capable of assessing the broad outline of the overall policy and have the specific expertise required for the fulfilment of the duties assigned to him within the framework of the supervisory board profile. The composition of the supervisory board shall be such that it is able to carry out its duties properly and all members shall undertake appropriate training and induction programmes.
2.3. The supervisory board and its individual members each have their own responsibility for obtaining all information from the board of directors and the external auditor that is necessary in order to be able to undertake its duties properly as a supervisory organ. If the supervisory board considers it necessary, it may obtain, at the expense of the company, information from officers and external advisers of the company. The supervisory board may require that certain officers and external advisers attend its meetings.

Best practice:

2.4. The division of duties within the supervisory board and its procedures shall be laid down in regulations. These shall include a paragraph dealing with its relations with the board of directors, the general meeting of shareholders and the employees council, where relevant.

2.5. The supervision of the board of directors shall include:
2.5.1. the achievement of the company's objectives;
2.5.2. the corporate strategy and the risks inherent in the business activities;
2.5.3. the structure and operation of the internal risk management and control systems;
2.5.4. the financial reporting process;
2.5.5. the compliance with the legislation and regulations.

2.6. The supervisory board shall discuss at least once a year the following:
2.6.1. the corporate strategy and the risks of the business,
2.6.2. the result of the assessment by the board of directors of the structure and operation of the internal risk management and control systems, as well as any significant changes thereto.
Reference to these discussions shall be made in the report of the supervisory board.

2.7. The supervisory board shall discuss at least once a year, without the presence of any member of the board of directors the following:
2.7.1. its own functioning and that of its individual members, and the conclusions that must be drawn;
2.7.2. the desired profile, composition and competence of the supervisory board;
2.7.3. the functioning of the board of directors as an organ of the company and the performance of its individual members, and the conclusions that must be drawn.
Reference to these discussions shall be made in the report of the supervisory board.

2.8. The annual report of the company shall include:
2.8.1. a report of the supervisory board in which it describes its activities in the financial year and includes the specific information referred to in 2.6 and 2.7 above;
2.8.2. in respect of each member of the supervisory board details of the age, profession, nationality, principal responsibilities on the board, other positions held by the member, the date of initial appointment and the current term of office;
2.8.3. a detailed statement regarding the attendance at meetings of each member of the supervisory board.

2.9 The composition of the supervisory board shall be such that the members are able to act critically and independently of one another and of the board of directors and any particular interests. The report of the supervisory board shall state that, in the view of the Supervisory board members, has been fulfilled, and shall also state which supervisory board member is not considered to be independent, if any.

2.10. A supervisory board member shall be deemed to be independent if the following criteria do not apply to such member or his/her spouse, partner, life companion, foster child or relative by blood or marriage up to the second degree:
2.10.1 has been an employee or member of the board of directors of the company (including associated companies) in the five years prior to the appointment;
2.10.2 receives personal financial compensation from the company, or a company associated with it, other than the compensation received for the work performed as a supervisory board member;
2.10.3 has had an important business relationship with the company, or a company associated with it, in the year prior to the appointment;
2.10.4 is a member of the board of directors of a company in which a member of the board of the company which he supervises is a supervisory board member;
2.10.5 holds at least ten percent of the shares in the company (including the shares held by natural persons or legal entities which cooperate with him under an express or tacit, oral or written agreement);
2.10.6. is a member of the board of directors or supervisory board or is a representative of a legal entity which holds at least ten percent of the shares in the company, unless such entity is a member of the same group as the company;
2.10.7. has temporarily managed the company during the previous year where board of directors members have been absent or unable to discharge their duties.

2.11.1. All members of the supervisory board shall avoid any conflict of interest or apparent conflict of interest between the company and itself and its members.
2.11.2. Decisions to enter into transactions under which supervisory board members would have conflicts of interest that are of material significance to the company and/or to the relevant supervisory board members require the approval of the supervisory board. The supervisory board is responsible for deciding on how to resolve conflicts of interest between board of directors members, supervisory board members, major shareholders and the external auditor on the one hand and the company and on the other.
2.12. The general meeting of shareholders shall determine the remuneration of supervisory board members which shall not be dependent on the results of the company. The notes to the annual accounts shall, in any event, contain the information on the level and structure of the remuneration of individual supervisory board members.

3. Role of the chairman of the supervisory board.

3.1. The chairman of the supervisory board determines the agenda, chairs the supervisory board meetings, monitors the proper functioning of the supervisory board and its committees, arranges for the adequate provision of information to the members, ensures that there is sufficient time for making decisions, arranges for the induction and training programme for the members, acts on behalf of the supervisory board as the main contact for the board of directors, initiates the evaluation of the functioning of the supervisory board and the board of directors and ensures, as chairman, the orderly and efficient conduct of the general meeting of shareholders.

4. Composition and role of three key committees of the supervisory board.

4.1 The supervisory board shall appoint from among its members an audit committee, a remuneration committee and a selection and appointment committee. The function of the committees is to prepare the decision-making of the supervisory board.

4.2 If the supervisory board decides not to appoint an audit committee, remuneration committee or selection and appointment committee, the entire supervisory board shall be responsible. In its report, the supervisory board shall report on how the duties of the committees have been carried out in the financial year.