

REPORT ON THE OBSERVANCE OF STANDARDS AND CODES (ROSC)**Corporate Governance Country Assessment****ROMANIA****April 2004**

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This Corporate Governance Assessment has been completed as part of the joint World Bank-IMF Reports on the Observance of Standards and Codes (ROSC) and updates the findings of the Corporate Governance ROSC completed in 2002. It benchmarks the country's observance of corporate governance against the OECD Principles of Corporate. An initial analysis was prepared for the FSAP by Sue Rutledge of the Europe and Central Asia Region of the World Bank. The corporate governance ROSC is based on a template developed by the World Bank and for which information was collected by the law firm of Musat & Associates, Bucharest. A special mention of thanks is due to the Ministry of Finance and World Bank office in Bucharest for their valuable support. The final report was drafted by Alexander Berg and Victoria Korogodon of the World Bank Investment Climate Department's Corporate Governance Unit. The ROSC assessment was cleared for publication by the Ministry of Justice of the Government of Romania on June 10, 2005.

I. EXECUTIVE SUMMARY

This report provides an assessment of the corporate governance policy framework and enforcement and compliance practices in Romania, and updates the assessment completed in 2002. Strengths and weaknesses are highlighted and policy recommendations are made where appropriate.

The major issues are driven by Romania's effort to join the European Union and the continuing transformation of the Romanian capital markets. Legislative changes in recent years have improved the corporate governance framework. The 2002 and 2004 revisions to the securities laws in particular have increased protections for minority shareholders of publicly held companies (examples include the introduction of cumulative voting, rules to ensure the payment of dividends, and rules governing related party transactions). However, the report notes several areas for further improvement. It recommends that policymakers consider (1) giving a clear mandate to the CNVM to protect shareholder rights, and providing additional resources to allow it to carry out this mandate; (2) protecting shareholder rights for all publicly held companies, including the less active Rasdaq companies; (3) moving forward on the creation of a Corporate Governance Institute, to both provide training to board members, and develop a new Corporate Governance Code, refocused on role of the board of directors; and (4) revising the Company Law, with emphasis on shareholder rights and the board of directors;.

II. CAPITAL MARKETS AND INSTITUTIONAL FRAMEWORK¹

Romania has two distinct trading systems, which are now merging. The Bucharest Stock Exchange (BSE), founded in 1995, is Romania's primary stock exchange; 62 companies were listed at the end of 2003², and 48 were unlisted but traded. The ten largest companies account for about 87 percent of total market capitalization. No listed companies are listed abroad or have issued ADRs or GDRs. Rasdaq was founded in 1996 to provide a trading platform for the companies that went through the mass privatization program. 4,442 issues were quoted at the end of 2003 (about 15 percent of all joint stock companies in Romania).³

From 1997-2001, market capitalization hovered at 1.7-2.8 percent of GDP, among the lowest in the region. 2002 marked the beginning of a significant upswing, and in 2003, the BSE experienced its best year, with several indicators hitting record highs; Rasdaq indexes also increased substantially. At the end of 2003, BSE's capitalization was about 7.8 percent of GDP (USD 3.71 billion) while Rasdaq's was 5.1 percent (USD 2.4 billion).

Ownership is consolidating, and the number of public and listed companies is declining. In 2003, 340 companies delisted. Another 40 companies withdrew from the markets following bankruptcy or mergers, and several large, listed companies were delisted due to takeovers by international strategic investors. The corporate ownership structure is a legacy of privatization, especially the mass privatization program of the mid-1990s. Initially, the ownership structure was dispersed. Today, most BSE listed companies have one or more controlling shareholders. The firms listed on RASDAQ tend to be dominated by employee associations or the State and include several thousand minority shareholders. The State continues to play a major role in governance in many companies. The state privatization agency (APAPS) holds stakes in about 90 percent of listed

¹ See Annex C for a more detailed overview of Romania's capital markets and capital market institutions.

² Listed companies on the BSE are divided into three tiers with progressively more stringent requirements: the Plus Tier, Tier I, Tier II. The Plus Tier requires compliance with BSE's Corporate Governance Code (see below).

³ At the end of 2003, there were 29,415 Romanian joint stock companies (both active and inactive).

companies. In about 100 companies, APAPS also has a “golden share” which gives it the right to board representation.⁴ Shares of publicly traded companies are also held by other public institutions, including ministries.

Institutional investors include the five Financial Investment Companies (*Societati de Investitii Financiare*, or SIF), and 22 open-end and three closed-end funds. The SIFs, which were created as vehicles for the mass privatization program, are key players on the market. Essentially closed-end investment funds, they hold major stakes in banks and many listed companies, and are themselves the most widely held and traded listed companies.⁵ Recently, pension fund legislation was adopted, but no fund has been licensed yet.

Romania’s corporate governance framework is based on civil law, although securities legislation has been influenced by common law. Law 31/1990 (Company Law, hereafter “CL”) was most recently amended in 2003 and sets the framework for all company forms. Only joint stock companies (*societate pe actiuni – SA*) may be publicly held, and all publicly held companies must be quoted on a regulated market. The Capital Market Law (Law 297 of 2004, hereafter “SL”) sets the basic rules for the equity market. Enhancements to the securities laws since 2002 have significantly improved investor protection for shareholders of publicly-held companies.⁶

The securities regulator (*Comisia Națională a Valorilor Mobiliare*, or CNVM), supervises the activities of the stock exchanges, financial intermediaries, enforces disclosure requirements and insider trading laws, and oversees takeovers.⁷ As an independent agency, CNVM may issue legally binding regulations. CNVM has administrative powers, including the authority to impose fines. CNVM has recently placed a higher priority on corporate governance reform. In 2003, the number of issuers sanctioned for failing to comply with disclosure regulations rose significantly, owing to greater CNVM enforcement efforts. CNVM is self-funded, but its budget must be approved by Parliament. It has approximately 199 employees; the pay scale is low compared to the private sector. The CNVM has relatively strong authority over supervised and licensed entities (brokers), but more limited authority over securities issuers, and has no general duty to protect shareholder rights.

The importance of minority shareholder rights protection was highlighted during the intense debate on Ordinance 229/2000, which was ultimately declared null.⁸ The Romanian Shareholders’ Association (RAS) was founded in October 2001, with the goal of protecting minority shareholder interests. The Romanian Chamber for Trade and Industry drafted a voluntary Code of Corporate Governance. In 2001, the BSE proposed a “Plus Tier,” which required companies to comply with the recently developed Corporate Governance Code. However, companies resisted requirements to introduce all of the Code’s provisions into their

⁴ Following the provisions of the *Acquis Communautaire*, APAPS is currently in the process of selling such golden shares. APAPS is planning to wind up its operations in 2004 and sell or transfer its remaining shareholdings.

⁵ For e.g., SIF Muntenia has positions in 350-400 firms of 0.01 – 99 percent ownership, including a majority holding in 24. Each SIF has over nine million shareholders; no single shareholder may formally hold more than 0.1 percent of total shares.

⁶ Law 247 of 2004 replaced Law 525 on Securities, Financial Investment Services and Regulated Markets, which was passed in 2002.

⁷ It is accountable directly to Parliament, to which it presents an annual report. The five member commission is appointed by Parliament for a five year term.

⁸ Minority shareholders claimed that abuses by majority (often foreign) shareholders had resulted in a dramatic deterioration in the financial performance of many companies. Criticism centered around the (i) dilution of minority shareholders in capital increases; (ii) transfer of profits to subsidiaries; (iii) abusive transfer of assets or pledge of assets for loans to majority shareholders; (iv) year-long delays in dividend payments and; (v) limited access to information by outsiders and the near absence of minority representation on boards or censor commissions. The proposal met with resistance from the Foreign Investor Council who claimed that the proposed rules would hamper the normal course of business.

company statutes, and only one company is now listed on the “Plus Tier.” Many of the Code’s provisions were later incorporated into modifications to the SL. In 2003, the BSE established the Corporate Governance Institute, whose aim is to raise Romania’s managerial culture to EU standards and encourage companies to comply with the OECD Principles.

III. REVIEW OF CORPORATE GOVERNANCE PRINCIPLES

This review assesses Romania’s compliance with each OECD Principle of Corporate Governance. Policy recommendations may be offered if a Principle is less than fully observed.⁹

Section I: The Rights of Shareholders

Principle IA: The corporate governance framework should protect shareholders’ rights. Basic shareholder rights include the right to: (1) secure methods of ownership registration; (2) convey or transfer shares; (3) obtain relevant information on the corporation on a timely and regular basis; (4) participate and vote in general shareholder meetings; (5) elect members of the board; and (6) share in the profits of the corporation.

Assessment: Partially observed

Description of practice: Secure methods of ownership registration. Romania maintains a multiple-registrar-based system. Publicly-traded companies must use one of ten independent share registrars, although two large Bucharest-based registrars (including the one operated by the BSE) dominate. Evidence of ownership is the entry in the registrar’s list of shareholders. Although the law does not recognize nominee ownership, brokers and custodians hold Rasdaq-quoted shares on behalf of clients.¹⁰ No problems have recently been reported with this system in practice.

Convey or transfer shares. Shares of publicly-traded companies are freely transferable. The registrars are electronically linked to the clearing and settlement systems of the two stock exchanges. No single central depository exists. The BSE operates an integrated system, and has a department for clearing and settlement. The National Company for Clearing, Settlements and Depository for Securities S.A. (SNCDD) operates as an independent clearing and settlement organization for Rasdaq. The settlement cycle in both cases is T+3; clearance and settlement takes place in DVP. Clearing and settlement procedures generally meet international norms.

The 2004 revision of the securities law introduced provisions to create a central depository. The new central depository will undertake all registry and clearing and settlement activities for all types of financial instruments. The CNVM is currently drafting the implementing regulations for the central depository, and the institution is expected to begin operating in late 2005.

Access to information. Shareholders (in publicly-traded companies) have a number of rights to access information (see Principles IC and IVA below). The CNVM also has new significant rights to require issuers to disclose information.¹¹

Participate and vote in shareholder meetings. Shareholders of common shares have the right to vote and attend shareholders meetings; shareholders of non-voting preferred shares do not.

⁹ **Observed** means that all essential criteria are met without significant deficiencies. **Largely observed** means only minor shortcomings are observed, which do not raise questions about the authorities’ ability and intent to achieve full observance in the short term. **Partially observed** means that while the legal and regulatory framework complies with the Principle, practices, and enforcement diverge. **Materially not observed** means that, despite progress, shortcomings are sufficient to raise doubts about the authorities’ ability to achieve observance. **Not observed** means no substantive progress toward observance has been achieved.

¹⁰ SNCDD estimates that 20 percent of Rasdaq-listed shares are on deposit in the name of brokers at the SNCDD.

¹¹ SL, Article 234.

Elect of members of the board. Shareholders elect board members¹² at the annual general meeting (AGM). The nomination process is not explicitly regulated. In listed companies, 10 percent shareholders may demand that directors be elected through cumulative voting.¹³

Share in the profits. The AGM sets the dividend and its date of payment, which must be within six months after the AGM. The 2002 revisions to the SL contained provisions to remedy problems caused by non-payment.¹⁴

Policy recommendation: The lack of explicit law and regulation of nominee ownership, the rights of beneficial owners, and duties and obligations for custodians are serious legal weaknesses. These provisions should be added to the law and regulation that will govern the creation of the new Central Depository. As an alternative, the new depository could function without a requirement for nominee holding, on a central registry model, which could result in higher transparency of ownership.¹⁵

Principle IB: Shareholders have the right to participate in, and to be sufficiently informed on, decisions concerning fundamental corporate changes, such as: (1) amendments to the governing documents of the company; (2) the authorization of additional shares; and (3) extraordinary transactions that in effect result in the sale of the company.

Assessment: Largely observed

Description of practice: Major corporate transactions, including modifications to company articles, mergers and acquisitions, large asset sales, and winding-up are decided by the extraordinary general assembly (EGM). The EGM authorizes the issuance of capital, unless it decides to delegate this right for a specific amount and time to the board.¹⁶ Existing shareholders have pre-emptive rights in the event of a new share issue; pre-emptive rights can only be canceled by a 75% supermajority at an EGM, attended by at least 75% of capital.¹⁷

The 2002 SL revisions added provisions designed to prevent abuses. Significant transactions (where the value exceeds 20 percent of a company's net assets) require EGM approval.¹⁸ The definition of "net assets" has reportedly caused some problems, because its exact value may be open to interpretation. Capital increases through in-kind contributions (which were historically considered to be a major corporate governance abuse in Romania) must be approved by a 75% supermajority at an EGM, attended by at least 75% of capital, must be based on an independent valuation, and must be relevant to the issuer's activity.¹⁹ However, because the law explicitly exempts privatization contracts, strategic shareholders are allowed to continue to make in-kind contributions, in the absence of pre-emptive rights for minority shareholders, and without re-

¹² Board members are referred to as administrators in Romania.

¹³ SL, Article 235. Boards elected by cumulative voting must have at least 5 members. Ordinance 229/2000 (now repealed) included a provision that mandated minority shareholder representation on boards.

¹⁴ SL, Art. 238. The "reference date" (record date) for dividends must be set by the company, and must be within 10 days of the AGM. The AGM must also establish the payment date, which must be within six months of the AGM, and is 60 days from the publication of the AGM decisions if not otherwise indicated. The decision represents a writ of execution, based on which the shareholders may begin the enforcement procedures against the company, according to the law.

¹⁵ In Slovenia, for example, a central registry-style depository has resulted in a very high transparency of ownership for listed companies.

¹⁶ CL, Article 114. The EGM can delegate the following responsibilities to the board: a change in headquarters' location; a change of the company's scope of work; increase and decrease of share capital or issuance of new shares, and the conversion of shares from one category to another. Per SL Article 243(5), if the EGM delegates the right to increase share capital, the board can only increase capital up to the level of authorized capital (which is still set by the EGM). This right must be renewed once per year.

¹⁷ CL, Article 211; SL, Article 240.

¹⁸ SL, Article 241.

¹⁹ CL, Article 211; SL, Article 240. The CNVM will issue detailed regulations on this article.

valuing assets.²⁰

Policy recommendation: The CNVM should work to issue regulations that apply Article 240 of the SL. Remove exemption for privatized companies for in-kind contributions. The calculation of net assets for large asset sales should be clarified, and require that all transfers of assets be conducted at “market” or “arms-length” prices.

Principle IC: Shareholders should have the opportunity to participate effectively and vote in general shareholder meetings and should be informed of the rules, including voting procedures, that govern them.

Assessment: Largely observed

Description of practice: The board convenes the AGM within four months after the end of the fiscal year.²¹ Notice must be published in the Official Gazette and in a widely circulated newspaper at least 15 days before the AGM and must include the place, time, and agenda, as well as supporting materials (the balance sheet and P&L, with the auditors’ and directors’ reports).²² The notice also sets the “reference date” (record date) for participation in the AGM.²³ Once published, the agenda cannot be modified (without the agreement of all shareholders).²⁴

The new Capital Markets Law requires companies to make available all information about agenda items, on company websites or at headquarters, at least 5 days before a general meeting. Shareholders may (at their own expense) access company documents as specified by company articles. There have been complaints that outsiders do not have access to the same information as insiders, and that some companies charge high fees for annual reports.

The quorum for the AGM is 50 percent of capital, and resolutions are passed by absolute majority of capital present. There is no quorum requirement for a second AGM. EGMs require a 75 percent majority of share capital, and resolutions are passed by shareholders representing at least 50 percent of registered capital.²⁵ Second EGMs require a quorum of 50 percent of registered capital, and resolutions must be voted upon by 1/3 of the registered capital to pass. Resolutions are normally made by open vote. Secret ballots are required for: (i) the selection of board members and the censors and for their removal; (ii) passing resolutions regarding the liability of the directors.²⁶

Shareholders can participate in the AGM by proxy.²⁷ There are no rules governing electronic or postal voting, and it does not appear to be used.

Compliance with shareholder meeting requirements appears to have improved since the prior assessment. Shareholders report fewer attempts to discourage minority shareholder participation.

Policy recommendation: Policymakers should consider extending the AGM notice period to 30

²⁰ Legal opinion of Musat and Co. According to Article 471 of the Law 137/2002 on Certain Measures of the Acceleration of Privatization, share capital increases in privatized enterprises are exempted from the regulations governing publicly-held companies and are not governed by the Capital Market Law.

²¹ CL, Article 111.

²² CL, Article 117.

²³ CL, Article 119 (2). This date is typically several days before the AGM, and can be no greater than 60 days. To be included in the shareholder registry list, an investor must acquire shares at least three days before the reference date established for the AGM (given T+3 settlement).

²⁴ CL, Article 111.

²⁵ CL, Articles 112 and 115. Quorums and majority thresholds may be increased in the articles of association.

²⁶ CL, Article 129. Votes are counted by a secretary elected from among the attending shareholders.

²⁷ SL, Article 243(3). At shareholder meetings of publicly-traded companies, the SL allows anyone but a director to be a proxy. For other types of companies, only shareholders can be proxies.

days (in line with international investor requests).²⁸ Significant shareholders should be allowed to add items on the agenda after publication. Good practice requires the company to publish or distribute shareholder counter-proposals and resolutions at company cost.

Principle ID: Capital structures and arrangements that enable certain shareholders to obtain a degree of control disproportionate to their equity ownership should be disclosed.

Assessment: Partially observed

Description of practice: Two categories of shares are permitted: ordinary shares, which are generally one-share / one-vote, and non-voting preferred shares. Preferred shares have priority dividend rights, may not exceed 25 percent of share capital, and may not be distributed to management, directors or auditors. They may be converted into ordinary shares by an EGM authorized by a special meeting of preference shareholders. Voting caps exist, but are reportedly rare and must be defined in company articles.²⁹ The State holds golden shares in a few “strategic” companies, where it has the right to appoint one or two directors and can veto certain decisions, but has committed to sell these shares.³⁰

Shareholders must disclose significant shareholdings to the CNVM and stock exchanges, and the exchanges publish lists of many 5 percent shareholders in their monthly reports.³¹ Most market participants report a high degree of correspondence between formal and informal sources of information on company ownership. However, the law only requires disclosure of direct holdings, and not all forms of indirect ownership. As a result, it may be difficult to trace indirect and beneficial ownership structures, particularly if several intermediary firms are used, or if the intermediaries are incorporated offshore. Market participants report that an investor in one of the SIFs has circumvented ownership disclosure requirements and voting caps by holding through a number of intermediaries, and is working to establish influence. Shareholder agreements need not be disclosed to the company or shareholders.

Policy recommendation: Voting caps and other rights and restrictions should be disclosed in the annual report. The forthcoming CNVM regulations on ownership disclosure (per Article 228 of Law 247/2004) and future revisions to the capital market law should require full shareholder disclosure of indirect ownership and control. Monitoring ownership disclosure compliance should be a top CNVM priority. Lower thresholds could be set for the SIFs. Shareholder agreements should be disclosed, and all listed companies should also be required to disclose the annual capital investment obligations deriving from privatization contracts.

Principle IE: Markets for corporate control should be allowed to function in an efficient and transparent manner.

Assessment: Largely observed

Description of practice: Romania recently upgraded its takeover rules and issued detailed implementing regulations.³² A shareholder or group of shareholders wishing to acquire a control

²⁸ See e.g. Institute of International Finance, “Policies for Corporate Governance and Transparency in Emerging Markets,” 2002.

²⁹ For example, in the case of the Romanian financial investment companies (the SIFs), the articles of association provide for voting caps between 0.1 and 1 percent of shares; shareholdings above this level do not confer voting rights.

³⁰ Veto rights may involve decisions regarding the pledge or mortgage of assets; company dissolution/liquidation and merger by absorption; change in company objectives.

³¹ SL, Article 228. Shareholders and groups of shareholders must disclose when the thresholds of 5, 10, 20, 33, 50, 75, and 90 percent are crossed. Article 228 of the SL provides that disclosure must be made “...when the proportion of voting rights held by a person reaches, exceeds, or falls below one of the thresholds of 5%, 10%, 20%, 33%, 50%, 75%, or 90% of total voting rights.” The concepts of “shareholders acting in concert” and “indirect control” are defined in Article 2, point 23. Additional regulations will be issued by CNVM.

³² The SL provides basic provisions, and CNVM Regulation 3 of 2003 provides details.

position (defined as at least 1/3 of the total voting rights) must do so through a public tender offer. After acquiring more than 1/3 of total voting rights, a shareholder or group then has the obligation (within two months) to bid for all outstanding shares.³³ The use of nominee accounts and offshore vehicles opens the possibility of acquiring control without triggering a mandatory tender offer. Voting caps can shield management from takeovers, especially at the SIFs.

A shareholder or group of shareholders who acquires more than 95 percent of share capital (90 percent if acquired during a mandatory takeover bid) can “squeeze out” remaining shareholders by requiring them to sell all remaining shares at a reasonable price. Minority shareholders also have a “sell-out” right to require a controlling shareholder with more than 95% of shares to purchase their shares at a reasonable price. Previous rules requiring tender offers before delisting appear to have been removed from current legislation, but CNVM intends to issue new regulations that govern the delisting of companies who do not comply with the new thresholds for admission to trading on a regulated market.

Most “takeover” activity occurs during privatization. However, the State has exempted the privatization process from the takeover rules. There are no provisions to require that minority shareholders be included in privatization offers. In addition, privatization agreements are secret. The takeover of Dacia by Renault in 2002 is an example of the conflict between privatization policy and the protection of shareholders rights.

Policy recommendation: Consider removing exemptions in the takeover code for the privatization process. This would require the State to include minority shareholders in majority-privatization agreements. The lack of requirements for delisting and closing a publicly-held company are a potential loophole and work against shareholder rights. One solution is to explicitly regulate delisting and closing a company in the company law.

Principle IF: Shareholders, including institutional investors, should consider the costs and benefits of exercising their voting rights

Assessment: Materially not observed

Description of practice: The SIFs actively exercise their voting rights and sit on some boards; mutual funds are far less active. Institutional investors are not required to disclose their voting policies.

Policy recommendation: In line with the revised OECD Principles, institutional investors should be required to disclose voting policies.

Section II: The Equitable Treatment of Shareholders

Principle IIA: The corporate governance framework should ensure the equitable treatment of all shareholders, including minority and foreign shareholders. All shareholders should have the opportunity to obtain effective redress for violation of their rights. All shareholders of the same class should be treated equally. (1) Within any class, all shareholders should have the same voting rights. All investors should be able to obtain information about the voting rights attached to all classes of shares before they purchase. Any changes in voting rights should be subject to shareholder vote. (2) Votes should be cast by custodians or nominees in a manner agreed upon with the share’s beneficial owner.

Assessment: Partially observed

Description of practice: Information about share classes and rights are established in the company articles, which are recorded in the Trade Registry. Investors may obtain such information upon request. Any changes to share class voting rights are subject to a vote in a meeting of class shareholders, and to a vote by the AGM.

³³ SL, Article 203. The price must be greater than any price paid by the Offeror within the previous 12 months. If that rule cannot be applied, then the price must be based on either the average weighted market price for the last 12 months, net book value, or value determined by valuation expert according to international valuation standards.

Shareholders have several redress possibilities. Shareholders representing 10 percent of registered capital can request the board to immediately convene an EGM. Shareholders who did not vote or voted against a decision may launch legal proceedings to annul or suspend an illegal AGM resolution, within 15 days of the meeting.³⁴ This is reportedly the most common form of legal action, and some suits have been successful. Shareholders may file derivative actions against directors or managers (see Principle VB). However, court proceedings can be lengthy and costly. While arbitration is accepted under Romanian law, it is not used to settle disputes between companies and shareholders. Most court decisions are final and binding, but are subject to appeal. Executing court decisions remains a problem.

Shareholders holding 5 percent of capital may request the courts to appoint the financial auditor at company expense to review certain operations performed by directors.³⁵ The resulting report is submitted to the auditors, who review it and propose appropriate actions. Shareholders may also appoint experts to evaluate in-kind contributions intended for use in increasing share capital. Shareholders can also exercise withdrawal rights if they disagree with certain company decisions.³⁶

Shareholders may ask the CNVM to take appropriate measures to remedy violations of the SL. CNVM can also call shareholder and board meetings, and set agendas.³⁷ During changes of control, shareholders can also appeal to the Competition Council.

Where nominee-type ownership is used (mainly for Rasdaq-traded issuers) and brokers or custodians hold shares on behalf of ultimate owners, a system is in place that allows the shareholder list to be updated with the names of the ultimate owners (at the time of corporate actions, and quarterly). However, there are no laws that define nominee ownership, or govern the duties and responsibilities of custodians to vote on instruction from beneficial owners.

Policy recommendation: Although its supervision of the capital markets has improved, CNVM should continue to build on its capability to protect minority shareholder rights. CNVM should consider adding the a mandate for shareholder rights protection to its basic mission statement, and exploring the possibility of becoming a special tribunal during shareholder disputes.³⁸ In addition, CNVM should also review the content of issuer disclosure (see additional CNVM recommendations under Principle IVA). To adopt these recommendations, CNVM would require additional resources and trained staff. The lack of formal rules on nominee ownership and corporate governance obligations of custodians violate the OECD Principles and should be corrected.

³⁴ CL, Article 131(2). A previous provision in the 2002 revisions to the securities law that gave this power to all shareholders was revoked in the 2004 revisions to the law.

³⁵ SL, Article 259(2).

³⁶ CL, Article 133. Withdrawal rights (sometimes referred to in other jurisdictions as the “oppressed minority,” “appraisal” or “buy-out” remedy) give shareholders the right to have the company buy their shares upon the occurrence of certain fundamental company changes. In Romania, withdrawal rights only apply to decisions related to changes in business scope, of headquarters location, or corporate form. Price must be calculated against the average set by an authorized expert using at least two methods acknowledged as European valuation standards (EVS). The costs of the valuation must be borne by the company. In addition, under the 2004 Capital Market Law, if some shareholders of a traded company disagree with the decisions taken by the general meeting regarding mergers and spin-offs of non-traded companies, the shareholders may require that the company buy back their shares at either the balance value of the shares or the average traded price over the previous quarter.

³⁷ SL, Article 2.

³⁸ In Egypt, for example, 5% of shareholders can directly appeal to the securities commission, which can itself overturn shareholder resolutions.

Principle IIB: Insider trading and abusive self-dealing should be prohibited.

Assessment: Largely observed

Description of practice: The new SL extensively revised existing rules on insider trading, and implemented the EU Market Abuse Directive. Trading on inside information is illegal, and violators are subject to administrative and criminal penalties.³⁹ In the past, relatively weak powers restricted the prosecution of insider trading violations. In the past five years, CNVM launched several investigations of illegal insider trading, and two of them resulted in prosecution. However, the new law gives the CNVM strong powers to investigate insider trading.⁴⁰ Fines for individuals and brokers have recently been increased, but may still be too low to act as a deterrent.⁴¹ Issuers must draw up a list of employees and others with access to inside information, update it regularly, and submit it to the CNVM upon request.⁴² Managers (and “close associates”) must disclose insider transactions must disclose the existence of transactions in company shares to the CNVM. There are no “black-out” periods during which insiders may not trade.⁴³

Other forms of insider dealing are also regulated by the SL and CL. A director with a direct or indirect (spouse, relatives, in-laws) material interest in a transaction, must inform the board and internal auditors and abstain from deliberating and voting.⁴⁴ Directors, their relatives and 20 percent shareholders can only sell or acquire assets valued at more than 10 percent of the company’s net book value after obtaining EGM approval.⁴⁵ Companies cannot make loans to directors or their relatives.

Policy recommendation: Insider trading fines for individuals are still too low to be meaningful, and should be aligned with those imposed on legal persons. Insider reporting of securities transactions should be extended to all insiders (as defined by the list required by Article 226 of the Capital Market Law), and the CNVM should focus its insider trading enforcement efforts on violations of insider disclosure rules. Sanctions should be widely publicized. CNVM should pay attention to all investors complaints about possible illegal insider trading transactions.

Principle IIC: Board members and managers should be required to disclose material interests in transactions or matters affecting the corporation.

Assessment: Partially observed

Description of practice: Public companies must disclose any contracts above €50,000 between the company and its directors, employees, majority shareholder, and affiliated or related parties.⁴⁶ In addition, as Romanian firms move towards implementation of IFRS, companies will have to report related party transactions in notes to the financial statements, according to the requirements under IAS 24. However, as IFRS/IAS is only gradually being introduced, it is unclear if more than a few companies are complying with this requirement in 2004.

³⁹ See SL Article 244 for a definition of “inside information”.

⁴⁰ SL, Art. 255. The CNVM has the right to have access to any document in any form whatsoever, demand information from any person, including those involved in the transmission of orders or operations, as well as their principals, carry out site-inspections; subpoena telephone and similar records; suspend trading of the financial instruments concerned, and freeze assets.

⁴¹ SL, Art. 276. Fines on insider trading range from 50-100 percent of the transaction value. Individuals are fined ROL 5,000,000-500,000,000 (about USD 1,500 – 15,000).

⁴² SL, Art. 226.

⁴³ The old regulations under Law 52/1994 are theoretically still in place and contain a requirement for immediate reporting of insider transactions, but compliance appears to be limited.

⁴⁴ CL, Article 145. This rule does not apply to share offers or granting loans.

⁴⁵ The threshold is based on the previous year’s financial statements, or the value of the paid-up capital

⁴⁶ SL, Article 225.

The Code of Corporate Governance recommends monthly disclosure of related party transactions.

Policy recommendation: Related party transactions should be reported in the annual report (as required under IAS 24). Current reports of related party transactions should be sent to the relevant regulated markets, and should be carefully monitored and compared with disclosures in annual reports. Large or egregious examples of non-compliance should be selected as “test cases” and enforcement actions taken. Longer term, policymakers will have to consider harmonization with SL requirements and the requirements and definitions of related party transactions under IAS 24, and the vetting of related party transactions by an independent audit committee of the board.

Section III: Role of Stakeholders in Corporate Governance

Principle IIIA: The corporate governance framework should recognize the rights of stakeholders as established by law and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises. The corporate governance framework should assure that the rights of stakeholders that are protected by law are respected.

Assessment: Largely observed

Description of practice: The Bankruptcy Law⁴⁷, Labor Code and other labor legislation, and the Consumers’ Protection Ordinance support rights for stakeholders. The new Labor Code enacted in 2003 obliges companies to consult with unions or employee representatives about decisions that could significantly influence their rights/interests. Under the Trade Unions’ Law, companies must invite union delegates to their board meetings, and board decisions that affect union interests must be submitted to the unions within 48 hours. Trade unions must be consulted on company restructuring or privatization. In practice, employee participation on boards seems rare, except where wage negotiations or layoffs are discussed. Market participants report that the influence of big trade unions, especially within former State enterprises, ensures that union interests are well-protected. Although not specifically reviewed for this assessment, creditor rights are not considered to be well protected.⁴⁸

Policy recommendation: See creditor rights/insolvency ROSC.

Principle IIIB: Where stakeholder interests are protected by law, stakeholders should have the opportunity to obtain effective redress for violation of their rights.

Assessment: Largely observed

Description of practice: Current legislation provides for various means by which stakeholders can seek redress for violation of their rights. Employees and unions may file claims with the Territorial Labor Inspectorates, they may strike, negotiate with management, set up a commission of company and employee representatives to settle disputes arising from collective labor agreements, and they may initiate legal action with the competent courts. Creditors may start conciliation with company management, file legal actions (with regular or bankruptcy courts) or file for arbitration.

Principle IIIC: The corporate governance framework should permit performance-enhancement mechanisms for stakeholder participation.

Assessment: Materially not observed

⁴⁷ The Bankruptcy Law is undergoing changes to enhance the rights of creditors to recover debts faster and more efficiently.

⁴⁸ According to the World Bank’s Doing Business Database, Romania has a Creditor Rights Index of 0 on a scale of 0 to 4, indicating weak creditor rights in absolute terms and the weakest in the region. A detailed description of the results and methodology is available at: <http://rru.worldbank.org/DoingBusiness/>.

Description of practice: Romanian law is silent on employee participation in company profits and on the topic of share options, but companies can set specific rules in their bylaws. Under the CL, a firm may acquire its own shares under terms set by the AGM so as to assign them (within one year) to employees. According to the National Collective Labor Agreement, employees are entitled to a bonus of up to 10 percent of annual company profits.

Principle IIID: Where stakeholders participate in the corporate governance process, they should have access to relevant information.

Assessment: Largely observed

Description of practice: Stakeholders enjoy the rights to information granted by law to all interested parties. They may request and obtain any company information registered with the Trade Registry, although a fee may apply for hard copies. Under the Labor Code, companies must apprise employees of company financial performance. Stakeholders also have access to certain information related to employee-employer relations submitted to relevant authorities, such as tax and unemployment information and certain statistics.

Section IV: Disclosure and Transparency

Principle IVA: The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and the governance of the company. Disclosure should include, but not be limited to, material information on: (1) The financial and operating results of the company. (2) Company objectives. (3) Major share ownership and voting rights. (4) Members of the board and key executives, and their remuneration. (5) Material foreseeable risk factors. (6) Material issues regarding employees and other stakeholders. (7) Governance structures and policies.

Assessment: Partially observed

Description of practice: The SL mandates that publicly-traded companies file annual, semi-annual and “current” reports with the public, the CNVM and the regulated markets.⁴⁹ Secondary regulation defining the reports’ content has not been issued, and CNVM Regulation 2/1996 (supplemented by Instruction 13 of 1996) governing annual report content is considered to be in force. Half yearly reports must be submitted within two months of the reporting period’s end, and annual reports with four months of year-end. BSE and Rasdaq listing rules set disclosure requirements for each listing tier (e.g. Basic Tier, First Tier and “PLUS Tier”).⁵⁰ “Current reports” identifying “significant” (material) events must be submitted within 24 hours and are published in the CNVM Bulletin and at the CNVM’s information office (OEVM); the law does not clarify if current reports must also be sent to the regulated markets.

According to CNVM Regulation no. 2/1996 and Instruction 13, the annual report must include a balance sheet, P&L, cash flow statement, statement of changes in equity, notes to financial statements, and an audit report, and must provide data on current or proposed company activities, such as significant changes in the company’s business plan or structure (including management/governance structure), the main object of its activity and sales markets, main suppliers and competitors identities of directors, executive directors, censors and auditors, number of employees, company assets, and significant contracts concluded during the past year. The report details the positions that any director or CEO has held within the company. It includes a list of share dealings between directors, key executives and the company, its subsidiaries and the companies it controls, and lists the board’s equity position. Aggregate board and key executive remuneration must be disclosed in the annual financial statements. The financial statements and the directors’ report must be signed by the Chairman.⁵¹

⁴⁹ SL, Article 227.

⁵⁰ BSE Regulation no. 3/2001 and CNVM Regulation no. 2/2002.

⁵¹ Ministry of Public Finance Order no. 94/2001.

Sanctions for non-compliance range from 0.1 – 1.0 percent of capital (for late filing or unaudited statements) to 1-3 percent of capital for submitting false, incorrect or inaccurate information. CNVM may also fine individuals (directors or managers) who are deemed responsible for the non-compliance, and delist companies for repeated offenses. CNVM and the exchanges monitor late filing, but do not have the resources to review disclosure content. In general, reports are available for all BSE listed companies and the top Rasdaq companies, and are unavailable for many of the smaller Rasdaq-quoted firms. In 2003, Rasdaq improved its disclosure requirements and saw an increase in the number of listed firms submitting and publishing periodic and continuous reports (over 3,400 reports posted on Rasdaq’s website). However, the quality of most disclosure is considered to be weak, and many market participants complain that many companies do not file adequate reports.⁵²

Companies file fundamental documents (including company charters) in the National Trade Registry, organized under the authority of the Ministry of Justice.⁵³ The Registry can ask a court to dissolve a company that is more than six months late in submitting required documents.

Policy recommendation: The CNVM should revise Regulation 2/1996, and develop a standardized annual report format that includes all of the items recommended by the OECD Principles, including mandatory disclosure of significant ownership, board and key executive remuneration, governance structures, share class information, risk monitoring, and stakeholder issues. CNVM should increase its review and enforcement of disclosure content. Special focus should be given to reviewing the completeness of select non-financial information (ownership disclosures and related party transactions), and to disclosures made by the SIFs. The merged BSE/Rasdaq should develop clear and distinct disclosure guidelines for different types of public companies (e.g. top-tier listed, listed, and other Rasdaq companies). Guidelines for Rasdaq firms should be less burdensome (e.g. limited annual report, no semi-annual report) but should still provide basic information.

Principle IVB: Information should be prepared, audited, and disclosed in accordance with high quality standards of accounting, financial and non-financial disclosure, and audit.

Assessment: Partially observed

Description of practice: Financial reporting requirements are converging with IAS/IFRS, and Romania is working to meet the EU Regulation on the adoption of IFRS for consolidated financial statements of listed companies in 2005. Romanian Accounting Standards differ significantly from IAS; the adoption of key IAS dealing with financial instruments, consolidation, and hyperinflation has been delayed.

Audits must comply with Romanian Standards on Auditing, which are harmonized with ISA. Romanian standards are generally the same as recent versions of ISA. However, they need updating in light of recent revisions to the ISAs, and certain ISAs have not been introduced.⁵⁴ In practice, the Accounting and Auditing ROSC found that many audit reports were confusing.⁵⁵

⁵² To cite one example, a review of 2002 financial information available on Reuters found that only summary, unconsolidated financial statements were available.

⁵³ Law 26/1990 created the trade registry as the main depository of corporate information. The National Trade Registry is composed of 41 local offices, which function under the oversight of their relevant county/city tribunals.

⁵⁴ These include ISA 240, The Auditor’s Responsibility to Consider Fraud and Error in an Audit of Financial Statements; ISA 260, Communications of Audit Matters with Those Charged with Governance; and ISA 505, External Confirmations. Several of the 13 International Auditing Practice Statements issued by the IFAC have not been kept up-to-date or adopted in Romania.

⁵⁵ During the review of financial statements of 15 listed firms, the A&A ROSC team looked specifically at the way in which the various auditors’ reports dealt with noncompliance with IAS 29 (hyperinflation). Auditors handled the issue in many different

Policy recommendation: See Accounting and Auditing ROSC and Action Plan.

Principle IVC: An annual audit should be conducted by an independent auditor in order to provide an external and objective assurance on the way in which financial statements have been prepared and presented.

Assessment: *Materially not observed*

Description of practice: The annual and semi-annual financial statements of listed firms must be audited by a registered auditor (a member of the Chamber of Financial Auditors in Romania, or CFAR) and accredited by the CNVM).⁵⁶ There are no provisions governing the appointment of the external auditor, who tends to be appointed by the board and/or management. There are no requirements for board audit committees. Statutory auditors (*censors*) are no longer required for public companies. Auditors are also required to make special investigations, after requests by significant shareholders.⁵⁷

The CFAR, established in 1999, has 1,487 members in 2003, 1,013 of whom were registered and engaged as auditors. It is implementing audit quality control reviews. However, CFAR's technical resources are not considered adequate. The CNVM has yet to set out its accreditation mechanism, and no auditor or audit firm has ever had its accreditation withdrawn as a consequence of an audit failure.

While auditors are subject to civil, disciplinary, administrative, and criminal liabilities, there have been no court cases.⁵⁸ The CFAR has much stricter guidelines for auditor independence than most EU Member States, and Article 32 of the CFAR's constitution specifically prevents auditors from accepting non-audit work from audit clients.

Policy recommendation: The Company Law should require that the external auditor be elected by the shareholders meeting; international good practice suggests that the auditor should be nominated by (and report to) an independent (or at least non-executive) audit committee of the board. Policymakers should also consider amending the role of the censors' committee as an institution separately elected by (and reporting to) the shareholders' meeting. The censors' committee could, for example, be converted into an independent audit committee of the board of directors, whereby the audit committee consists solely of independent non-executive members. See also the Accounting and Auditing ROSC and Action Plan.

Principle IVD: Channels for disseminating information should provide for fair, timely, and cost-effective access to relevant information by users.

Assessment: *Partially observed*

Description of practice: Shareholders have a number of potential sources for company information, including commercial information services (e.g. Reuters), Official Gazette of Romania, the Trade Registry Office, the OEVM (CNVM), the CNVM Bulletin, the stock exchanges' periodicals, national newspapers and issuer web sites. However, most readily available information consists of summaries of financial statements, and market participants

ways: a small number of auditors followed CFAR wording, some issued adverse opinions, some issued qualified opinions, and some issued an unqualified opinion as to compliance with IAS in spite of the fact that IAS 29 had been left out.

⁵⁶ See Accounting and Auditing ROSC for a complete discussion of the audit profession.

⁵⁷ SL, Article 259.

⁵⁸ Auditors' civil liability is subject to the general rules on liability under the Romanian Civil Code (i.e., only actual damages, not consequential damages) and the SL. The CFAR requires auditors to have professional indemnity insurance in an amount of the auditor's annual gross audit fee income or Euro 400,000, depending on income. Some audit firms include disclaimer provisions within their engagement letters limiting their liability (e.g., liability capped at the level of the audit fees), although their value is unclear.

continue to report that the complete statutory annual reports are often difficult to obtain.⁵⁹ Publication in the Official Gazette is often delayed by up to two months, and obtaining copies is considered to be expensive. CNVM Regulation no. 2/1996 obliges companies to electronically file several reports.⁶⁰

Information available from the Trade Registry and the OEVM includes company statutes/articles of association, annual reports and financial statements, and the identity of directors, key executives and censors. Some market analysts (and the Accounting and Auditing ROSC) reported that Trade Registry information is outdated, missing, or otherwise difficult to obtain. The Law on Transparency (2003) can be expected to positively impact the Trade Registry's operations.

Policy recommendation: The BSE / Rasdaq have made a good start on providing information to the public. In the future, more effort should be placed on making the complete statutory annual reports (required by the SL), including all non-financial information and the full financial statements (with notes and audit reports) easily accessible to the public. This information should be immediately available electronically; the Official Gazette should no longer be a primary source of information on public companies. Shareholders should be able to obtain the full IAS statements, including the notes to the financial statements, the auditor's opinion and the Chairman's letter to shareholders. The BSE / Rasdaq (with the CNVM) should work to develop an integrated electronic information system for statutory and public information disclosure. This system should gradually replace statutory paper filing and should allow issuers to make one disclosure that is sent to the BSE / Rasdaq, the CNVM, and also disclosed to the public.

Section V: The Responsibility of the Board

<p>Principle VA: The corporate governance framework should ensure the strategic guidance of the company, the effective monitoring of management by the board, and the board's accountability to the company and the shareholders. Board members should act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the company and the shareholders.</p>
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Assessment: Partially observed

Description of practice: Romanian company law calls for a single-tier board (*consiliu de administratie*). There is no minimum size requirement, but typical boards of listed companies have four to seven members.⁶¹ Boards elected by cumulative voting must have at least 5 members. Special rules exist for boards of banks and other financial institutions, and the SIFs.⁶² The board may delegate some of its powers to a "Direction Committee," made up of directors.⁶³ Under the CL, directors cannot be employees, except for the board Chairman, who can and commonly does also serve as CEO (also known as General Director or Manager) and presides

⁵⁹ The CL requires firms to submit the annual report and financial statements to the relevant Trade Registry Office and Ministry of Public Finance, along with the directors' report, the report of the Censors' Commission and the AGM minutes within 15 days of the meeting.

⁶⁰ The prospectus of public sales/purchase offers; annual, semi-annual and current reports; annual report of custodians; reports on shareholdings exceeding 5 percent.

⁶¹ Survey of boards presented in *Functioning of Boards of Directors in Romania*, Angela Ionita, Senior Investment Officer, The Romanian Investment Fund Ltd., 2002, presented at the South-East Europe Corporate Governance Roundtable.

⁶² Banks have two-tier boards, and duties/responsibilities are better defined than in general company law. CNVM Order no. 7/1997 sets special "fit and proper"-type qualifications for SIF board members, including Romanian citizenship, higher education, business experience, no criminal record. SIF board members cannot be on the board of any company where the SIF owns shares or in a securities company, and cannot own over 5 percent of outstanding shares. In 2002, four of the five SIFs had seven board members, and SIF Muntenia (which is unique as it is managed by a separate asset management company) had 11.

⁶³ Operations unrelated to the company's day-to-day activities, such as increasing share capital, changing business objectives, etc., cannot be delegated to the Direction Committee. The board can remove Direction Committee members at any time.

over the Direction Committee.⁶⁴ While the basic framework is a one-tier structure, in practice the Direction Committee can take on some of the functions of a two-tier-style management board.⁶⁵ The quorum for board meetings is at least half of the directors, and decisions are taken by a majority of those present.

General eligibility criteria for directors are legal capacity and respectability.⁶⁶ Directors may be shareholders or non-shareholders.⁶⁷ Conflicts of interest disqualify potential candidates; a director cannot simultaneously act as a censor or shareholder/general partner in a competing company, or work in the same line of business.⁶⁸ Legal entities may also be appointed as “directors.” The CL mandates a maximum term of four years for the first set of directors, and subsequent directors serve two-four year terms, depending on the company’s constitutive act. Directors may be re-elected. There are no regulations governing the board nomination process, and no practice of nominating committees.⁶⁹ Sometimes, the presence of a minority shareholder representative is negotiated as part of an investment decision or privatization. Recent reforms have removed the ability of politicians to serve on boards, but they reportedly still serve as “shadow directors.” Board compensation is considered to be low.⁷⁰

According to market analysts, management dominates boards in companies with dispersed ownership, and these boards are indistinct from management. Dispersed ownership structures have offered managers ample room for maneuvering not only board nominations, but also the subsequent organization and functioning of the board.

Policy recommendation: See recommendations on board duties, functionality, and independence below. To allow the board to play a meaningful role, a minimum board size requirement should be added to the company law. To comply with the OECD Principles, it is strongly recommended that an Institute of Directors or similar training organization be created, with support from the BSE/Rasdaq, government, and private sector. Training will give directors an understanding of their role and duties and educate them in financial, business, and industry practices. The Institute should also play a major role in updating the Code of Corporate Governance, which should focus on board issues, and should be drafted in consultation with a range of stakeholders.

Principle VB: Where board decisions may affect different shareholder groups differently, the board should treat all shareholders fairly.

Assessment: Materially not observed

Description of practice: The CL lacks a clear statement of director duties to treat all shareholders equally, and to conduct their duties with due care, due diligence and in the company’s interests. Romanian civil law also appears to lack such “fiduciary”-type provisions.

⁶⁴ Executive directors are allowed in banks, but (despite the fact that it is illegal) does occur in other companies. See *Functioning of Boards of Directors in Romania*, op. cit.

⁶⁵ BSE-quoted companies reportedly tend to have this “hybrid” structure, while Rasdaq companies have a “unitary” structure.

⁶⁶ CL, Article 6 par. (2). Directors cannot be “incapable,” i.e. have been convicted for fraud in management, breach of trust, forgery, use of forgery, embezzlement, perjury, giving or receiving bribe, as well as other irregularities stipulated by law. Recent legal changes have removed nationality restrictions for board members of joint stock companies. There are specific qualifications for bank directors and those of investment companies; pursuant to CNVM Regulation no. 3/2003, director nominees should submit CVs and provide evidence that they fulfill legal requirements.

⁶⁷ CL, Article 183

⁶⁸ CL, Article 137, par. (1)

⁶⁹ CL, Article 129

⁷⁰ Compensation is based on a net fixed fee (10 percent to approx. 15 percent of the general manager’s salary). Compensation for non-bank board members averages USD 200 – 300 per month. Some strategic investors and investment funds reportedly pay additional compensation, for the members appointed by them to the board, from non-company funds. See *Functioning of Boards of Directors in Romania*.

A new paragraph in the SL provides a basic requirement for the equitable treatment of shareholders.⁷¹

Directors are jointly and severally liable in several specific areas, unless the board minutes show they opposed a given decision.⁷² Directors are liable to the company for all acts carried out by employees that cause damage to the company. The board is also liable to company creditors, who, under the Bankruptcy Law, can file an action against the directors after legal reorganization and bankruptcy proceedings are initiated. However, there are no clear standards for the judicial review of claims alleging the breach of these duties, leading to legal uncertainty.

Shareholders can file derivative-type actions against directors or managers, if the AGM refuses to. AGM approval of the annual financial statements does not remove liability from directors or auditors.⁷³ However, there have been few actual shareholder suits against directors. It is rare for directors to be insured for activities performed as part of their duties in all but a few major corporations.

Policy recommendation: The CL should clearly stipulate that the board's duty is to serve the best interest of the company and all shareholders. Directors' duty of care and loyalty should be well defined and specifically mandated in the CL.

Principle VC: The board should ensure compliance with applicable law and take into account the interests of stakeholders.

Assessment: **Largely observed**

Description of practice: When taking decisions, companies and boards must comply with existing legislation as it relates to stakeholders, including the Labor Code, Bankruptcy Law, the Consumer Protection Ordinance, and environment regulations. The board's normal duty to its shareholders and/or employees shifts to creditors only when bankruptcy is filed.

Policy recommendation: International good practice suggests that the duties of directors should switch to creditors as a company becomes financially distressed.

Principle VD: The board should fulfill certain key functions, including (1) Reviewing and guiding corporate strategy, major plans of action, risk policy, annual budgets and business plans; setting performance objectives; monitoring implementation and corporate performance and overseeing major capital expenditures, acquisitions and divestitures. (2) Selecting, compensating, monitoring and, when necessary, replacing key executives and overseeing succession planning. (3) Reviewing key executive and board remunerations, and ensuring a formal and transparent board nomination process. (4) Monitoring and managing potential conflicts of interest of management, board members and shareholders, including misuse of corporate assets and abuse in related party transactions. (5) Ensuring the integrity of the corporation's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for monitoring risk, financial control, and compliance with the law. (6) Monitoring the effectiveness of the governance practices under which it operates and making changes as needed. (7) Overseeing the process of disclosure and communications.

Assessment: **Materially not observed**

Description of practice: The board governs the company, but the law is general regarding specific functions, other than the specific areas of liability discussed in Principle VB. The Code of Corporate Governance provides no additional recommendations on board functionality.

In practice, board functionality appears to vary widely, depending on the degree of management entrenchment and the power of controlling shareholders. Strong managements reportedly set

⁷¹ SL, Art. 209. "Securities issuers shall ensure a fair treatment for all securities holders of the same type and class of securities and shall make available to them all the necessary information so that they may exercise their rights."

⁷² Under the CL, directors are jointly liable for: the validity of the deposits by shareholders; the dividend payments; the existence and security of records required by law; the accurate execution of AGM decisions, and compliance with obligations stipulated by the law and the company constitutive act.

⁷³ CL, Article 181.

strategy and nominate “rubber stamp” boards. In other companies, boards play a strong and strategic role. The AGM or company statutes set director remuneration. No provisions govern the setting of the management remuneration, so this may theoretically be determined by the AGM or board. In cases where the Chairman and CEO are the same individual, the AGM typically sets his/her remuneration.

Policy recommendation: Board functionality and responsibility should be more explicitly described in a revised CL and Corporate Governance Code. The board should supervise and set remuneration for company managers, set strategic plans, capital investment budgets, internal control policies and procedures, and performance evaluation. The Corporate Governance Institute / Institute of Directors should draft detailed implementation guidelines for board members.

Principle VE: The board should be able to exercise objective judgment on corporate affairs independent, in particular, from management: (1) boards should consider assigning a sufficient number of non-executive board members capable of exercising independent judgment to tasks where there is a potential for conflict of interest. Examples of such key responsibilities are financial reporting, nomination, and executive and board remuneration. (2) board members should devote sufficient time to their responsibilities.

Assessment: Materially not observed

Description of practice: There are no legal requirements for public companies to have independent directors, although issuers listed on the BSE’s “Plus Tier” must have at least one.⁷⁴ There are also no statutory or regulatory requirements to set up board committees, and they are uncommon.

Boards must meet at least monthly. Under CNVM Instructions, if an AGM agenda includes board elections, shareholders must receive information on the number of board meetings held over the previous year and the names of all directors who attended at least 80 percent of the meetings. Board minutes must be disclosed to shareholders. An individual can only be a member of three boards at once.⁷⁵

Policy recommendation: Best practice would encourage the widespread introduction of “independent directors,” i.e. directors not tied to the company or controlling shareholders. Board structure and oversight should be enhanced through special committees, particularly an audit committee.

Principle VF: In order to fulfill their responsibilities, board members should have access to accurate, relevant and timely information.

Assessment: Materially not observed

Description of practice: There is no statutory requirement or best practice recommendation for guaranteed board access to information. In practice, some directors/boards do receive legal, tax, and advertising advice.

Policy recommendation: It should be clearly stated that directors have full access to all material information. The provision of such information is the obligation of management.

⁷⁴ Under the Plus Tier’s Corporate Governance Code, an independent director is one who: (1) has not been a director or employee of the issuer (nor a relative of one) for the last three years; (2) is not currently being paid by the issuer or one of its branches, except for his / her fees as a board member; and (3) is not an associate, employee or significant shareholder with other persons or legal entities providing consultancy or other similar services to the issuer, or having business relations with the respective issuer and does not have any interest in major contracts or business relations regarding the issuer’s or its branches’ activity.

⁷⁵ CL, Article 142. However, this limitation does not apply in cases where that person owns at least 25 percent of company stock or is a director at another company that owns 25 percent.

IV. SUMMARY OF POLICY RECOMMENDATIONS

The assessment highlights areas where Romania's corporate governance system falls short of the OECD Principles and makes a series of policy recommendations to address these shortcomings. The next step is to develop a detailed action plan, to be formulated in cooperation with the Romanian authorities and in consultation with the private sector and other stakeholders.

Legislative reform: The market and issuers are still 'digesting' the extensive legislative reform of the past few years. As a result, priority should be given to enforcing existing laws. However, the report notes several areas to consider for legal reform, including changes to various laws to remove exemptions for the privatization program and privatized companies; changes to the Company Law to allow shareholders to appoint the external auditor, and to clarify director duties, functions, responsibilities, and liabilities; and requirements that all trades by insiders be disclosed. *Priority: high*

Institutional strengthening: Other recommendations do not require legal changes, but rather changes in focus and priority. CNVM should continue focusing on corporate governance issues, and should be given more resources to review the content of disclosure and adherence to accounting standards. Regular staff training and the exchange of experts with other securities regulators should include exposure to corporate governance issues.⁷⁶

The large number of quoted companies on Rasdaq will remain a difficult problem for the CNVM and the regulated markets for many years. The report's basic recommendation is to continue to include all public companies under the CNVM's jurisdiction, and give the CNVM the mission to protect shareholder rights in all public companies. The natural delisting process of many companies could be accelerated by technical assistance, training, and outreach. Some companies will be convinced to upgrade their disclosure and shareholder-friendliness and become truly "public," and others will be persuaded to go private. *Priority: high*

Voluntary/private initiatives: Several new initiatives should be pursued by the private sector, perhaps under the auspices of the Corporate Governance Institute. First, the Corporate Governance Code should be updated, and refocused on issues related to the board of directors, in conjunction with any legislative changes introduced by revisions to the CL. It should include best practice recommendations, including ones on board composition independence, functionality, and procedures. The Code should be voluntary, but disclosure of compliance should be included in the listing requirements. Second, board effectiveness would be enhanced through director training. An Institute of Directors should be set up to train company directors, provide accreditation, disseminate best practice (including the use of board committees, nomination and compensation policies), and participate in dialogue between the private and public sectors. *Priority: high*

⁷⁶ Although not specifically addressed in the report, several institutional recommendations from the initial assessment remain important, including: (i) strengthening and training the judiciary in corporate governance issues; (ii) establishing alternative dispute mechanisms for companies and shareholders.

ANNEX A: SUMMARY OF OBSERVANCE OF OECD CORPORATE GOVERNANCE PRINCIPLES

PRINCIPLE	O	LO	PO	MO	NO	Comment
I. THE RIGHTS OF SHAREHOLDERS						
IA Basic shareholder rights			X		•	<ul style="list-style-type: none"> Law does not recognize nominee ownership 10 percent shareholders can demand cumulative voting.
IB Rights to participate in fundamental decisions.		X				<ul style="list-style-type: none"> Large transactions require EGM approval. Pre-emption rights mandatory, in-kind contributions generally illegal, but law explicitly exempts privatization contracts
IC Shareholders AGM rights		X				<ul style="list-style-type: none"> 15 day AGM notice. Compliance with meeting requirements appears to have improved since prior assessment.
ID Disproportionate control disclosure		X				<ul style="list-style-type: none"> Ordinary shares generally one-share/one-vote. Sh must disclose 5% shareholdings to CNVM and stock exchanges, but law only requires disclosure of direct holdings.
IE Control arrangements should be allowed to function.		X				<ul style="list-style-type: none"> Shareholders wishing to acquire majority must bid for all outstanding shares, but privatization exempted from takeover rules. Shareholders who acquire > 90 percent of voting rights must tender for all outstanding shares, and delist company.
IF Cost/benefit to voting				X		<ul style="list-style-type: none"> SIFs actively exercise voting rights and sit on some boards; institutional investors not required to disclose their voting policies.
1. II. EQUITABLE TREATMENT OF SHAREHOLDERS						
IIA All shareholders should be treated equally			X			<ul style="list-style-type: none"> Information on share classes and rights set in company articles, which are in Trade Registry and OEVM. Shareholders with 10 percent of capital can request EGM. Any shareholder may sue to annul or suspend illegal AGM resolution. Derivative actions also allowed. 5% shareholders may request court to appoint experts at company expense.
IIB Prohibit insider trading		X				<ul style="list-style-type: none"> Insider trading illegal, but investigative powers against non-registrants and enforcement limited; two recent prosecutions; fines low. Certain insiders can only sell or acquire large assets with EGM approval.
IIC Board/Mgrs. disclose interests			X			<ul style="list-style-type: none"> Related party transactions > €50,000 must be disclosed immediately. Law does not clarify if these current reports must also be sent to regulated markets.
2. III. ROLE OF STAKEHOLDERS IN CORPORATE GOVERNANCE						
IIIA Stakeholder rights respected		X				<ul style="list-style-type: none"> Bankruptcy Law, Labor Code and other labor legislation, and the Consumers' Protection Ordinance support stakeholder rights. Market participants report large influence of big trade unions.
IIIB Redress for violation of rights		X				<ul style="list-style-type: none"> Wide redress possibilities
IIIC Performance enhancement				X		<ul style="list-style-type: none"> Law is silent on employee participation in company and the topic of share options; employees receive bonus of up to 10 percent of annual profits.
IIID Access to information		X				<ul style="list-style-type: none"> Stakeholders have no special rights
3. IV. DISCLOSURE AND TRANSPARENCY						
IVA Disclosure standards			X			<ul style="list-style-type: none"> SL mandates annual, semi-annual and "current" reports filings with the CNVM and the regulated markets. Some missing OECD items Annual reports available for BSE listed companies and top Rasdaq companies, but unavailable for many smaller companies. Quality of disclosure considered weak.
IVB Standards of accounting & audit			X			<ul style="list-style-type: none"> Financial reporting requirements converging with IAS/IFRS, but current standards differ significantly from IAS. Law requires that audits comply with Romanian Standards on Auditing.
IVC Independent audit annually				X		<ul style="list-style-type: none"> Annual financial statements of listed firms must be audited by registered auditor. No requirements for board audit committees. Statutory auditors (censors) no longer required for public companies.
IVD Fair & timely dissemination			X			<ul style="list-style-type: none"> Shareholders can seek company information through variety of sources; market participants continue to report that the complete statutory annual reports are often difficult to obtain.
4. V. RESPONSIBILITIES OF THE BOARD						

PRINCIPLE	O	LO	PO	MO	NO	Comment
VA Acts with due diligence, care			X			<ul style="list-style-type: none"> Single-tier board (<i>consiliu de administratie</i>); typical listed companies have 4 to 7 members. Board may delegate some powers to "Direction Committee." No regulations governing board nomination process, and no practice of nominating committees.
VB Treat all shareholders fairly				X		<ul style="list-style-type: none"> CL and Romanian civil law lack "fiduciary"-type provisions. New SL provision requires equitable treatment of shareholders. Few actual shareholder suits against directors.
VC Ensure compliance w/ law		X				<ul style="list-style-type: none"> Companies/boards must comply with Labor Code, Bankruptcy Law, Consumer Protection Ordinance, and environment regulations.
VD The board should fulfill certain key functions				X		<ul style="list-style-type: none"> Law is vague on specific board functions; CG Code provides no additional recommendations on board functionality. Functionality appears to vary widely.
VE The board should be able to exercise objective judgment				X		<ul style="list-style-type: none"> Independent directors not required, except on BSE "Plus Tier"
VF Access to information				X		<ul style="list-style-type: none"> No statutory requirement or best practice recommendation for guaranteed board access to information.

ANNEX B: SUMMARY OF POLICY RECOMMENDATIONS

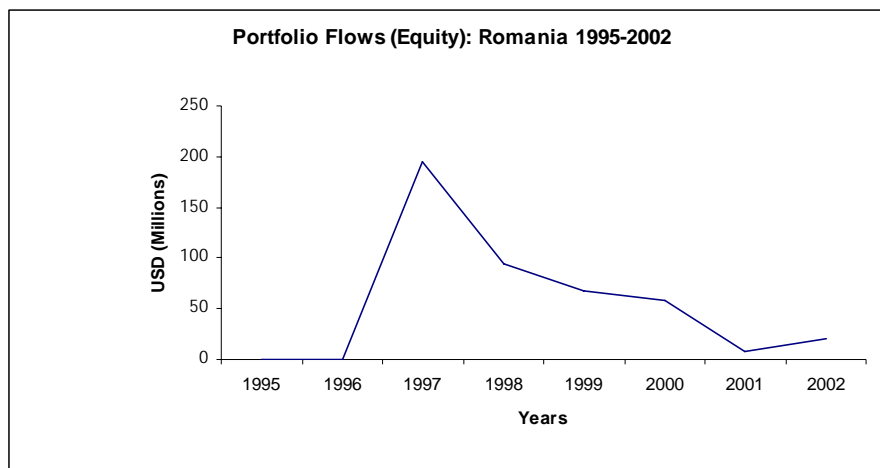
- 1) Revise the company law provisions on boards of administrators of joint stock companies (JSCs) to:
 - Set a minimum number of board members (to allow boards to play a meaningful role, and to permit specialized committees of non-executive board members),
 - Expand board’s authority to include review of company’s financials,
 - Explicitly require that board members conduct their duties with due care and due diligence, and
 - Amend the role of censors for joint stock companies, converting censors’ committees into independent non-executive board committees.
- 2) Revise the company law provisions on JSCs to require that all sales and transfers of assets be conducted at “market” or “arm’s length” prices.
- 3) Revise the company law on JSCs to require that the shareholders’ meeting appoint the company’s external auditors.
- 4) Revise the securities legislation to:
 - Extend the definition of ownership to include indirect control relationships,
 - Require disclosure of direct and indirect control relationships,
 - Explicitly define nominee ownership
 - Develop a revised annual report format
 - Clarify the roles of custodians or eliminate their function,
 - Require that listed companies disclose annual capital investment obligations under privatization agreements,
 - Require that all company insiders disclose sales & purchases of company shares,
 - Strengthen provisions related to supervision of financial conglomerates and include legal definition of financial conglomerates.
- 5) Strengthen development of an Institute of Directors through the Bucharest Stock Exchange, based on the existing Corporate Governance Institute.
- 6) Revise the corporate governance code, including a recommendation that listed companies establish audit committees within boards of administrators.
- 7) CNVM should have additional resources to carry out its mandate to protect shareholder rights, particularly its review and enforcement of disclosure content, and the development of systems to make public the complete statutory annual reports.

ANNEX C: OVERVIEW OF THE ROMANIAN CAPITAL MARKETS

Capital Markets Overview

Romania's economy began to recover in 2000 from its post-transition economic recession. Improved economic performance (and the recent changes to the legal and regulatory framework affecting the capital markets) appear to have had a positive affect on investor confidence. Foreign portfolio equity flows, which declined through most of the mid-1990s through 2001 (USD 195 million to 8 million), began an upswing in 2002, reaching USD 21 million.

However, Romania's investment climate continues to be hampered by perceptions of poor transparency and ongoing abuses. According to the 2003 Corruption Perceptions Index published by Transparency International, Romania is perceived by business people, academics and county analysts as a country with high corruption. On a scale from 1 (most corruption) to 10 (least corrupt), Romania scores 2.8, 125th out of 133 countries, a position that has remained virtually unchanged over the last three years.⁷⁷



From 1997-2001, market capitalization hovered at 1.7-2.8 percent of GDP, among the lowest in the region. 2002 marked the beginning of a significant upswing due, in part, to strong economic growth that has impacted the capital markets. However, market capitalization in relation to GDP still lags behind those of many neighboring countries. Of the eight countries of Central and South Eastern Europe shown in Table 1 below, Romania's market was smaller than all but Bulgaria and Slovakia. While small in terms of total market capitalization compared to world emerging markets, Romanian capital markets, however, are larger in absolute terms than those of their neighbors (see Table 2).

⁷⁷ Transparency International, 2003.

**Table 1: Market Capitalization as a % of GDP
Selected Regional and Emerging Markets**

Date	1996	1997	1998	1999	2000	2001	2002
Romania	0.2	1.8	2.4	2.5	2.9	2.8	10.3
Selected Regional Markets							
Bulgaria	0.1	0.0	7.8	5.5	4.9	3.7	4.7
Croatia	15.0	21.0	15.0	13.0	15.0	16.0	18.0
Czech Republic	31.2	24.1	21.1	21.4	21.4	16.0	22.8
Hungary	11.7	32.8	29.8	34.0	25.8	20.0	19.9
Poland	6.0	8.0	13.0	19.0	19.0	14.0	15.0
Slovak Republic	10.6	8.7	4.4	3.6	3.8	2.6	8.0
Slovenia	3.5	8.9	12.5	10.9	14.1	14.8	21.8
Selected Emerging Markets							
Brazil	28.0	31.6	20.4	42.5	37.6	36.6	27.4
China	8.1	8.0	5.5	6.9	5.6	4.9	3.8
India	31.8	31.4	25.4	41.3	32.1	22.9	25.4
Mexico	32.1	39.1	21.8	32.1	21.6	20.2	16.2
Pakistan	16.8	17.6	8.7	11.9	10.8	8.4	16.9
Philippines	97.3	38.1	54.2	63.2	68.9	58.2	50.6
Turkey	7.2	14.3	11.9	58.2	26.8	15.2	9.8
Russia	20.6	67.8	10.3	39.3	19.5	52.5	67.9

Source: World Bank World Development Indicators, 2003 (Selected Regional Markets); S&P Emerging Markets DB (Selected Emerging Markets)

**Table 2: Market Capitalization of Listed Companies (USD billions)
Selected Regional and Emerging Markets**

Date	1996	1997	1998	1999	2000	2001	2002
Romania	8.4	12.1	20.5	29.6	31.3	25.9	28.8
Selected Regional Markets							
Bulgaria	18.1	12.8	12.0	11.8	11.0	9.1	15.9
Croatia	5.3	15.0	14.0	16.3	12.0	10.4	13.1
Czech Republic	.7	1.6	2.5	2.2	2.5	2.8	4.6
Hungary	.06	.6	1.0	.9	1.1	1.1	4.6
Poland	3.0	4.2	3.2	2.6	2.7	3.1	4.0
Slovak Rep.	2.2	1.8	1.0	.7	.7	.5	1.9
Slovenia	.007	.002	1.0	.7	.6	.5	.7
Selected Emerging Markets							
Brazil	217.0	255.5	160.9	228.0	226.2	186.2	123.8
China	65.9	72.0	51.9	68.2	60.4	56.3	47.6
India	122.6	128.5	105.2	184.6	148.1	110.4	131.0
Mexico	106.5	156.6	91.7	154.0	125.2	126.3	103.1
Pakistan	10.6	11.0	5.4	7.0	6.6	4.9	10.2
Philippines	80.6	31.4	35.3	48.1	51.6	41.5	39.0
Turkey	30.0	61.1	33.6	112.7	69.7	47.1	34.0
Russia	37.2	128.2	20.6	72.2	38.9	76.2	124.2

Source: World Bank World Development Indicators, 2003 (Regional); S&P Emerging Markets Database

Stock Exchanges and Trading Systems

Romania has historically had two distinct trading systems, which are now in the process of merging:

- The Bucharest Stock Exchange (BSE), which began its current operations in 1995, is Romania's primary stock exchange; 62 companies were listed at the end of 2003 (including five Financial Investment Funds (SIFs). The BSE also has 48 unlisted but traded companies.
- Nasdaq was founded in 1996 to provide a trading platform for the companies that went through the mass privatization program. 4,442 were quoted at the end of 2003.

Bucharest Stock Exchange

The Bucharest Stock Exchange (BSE) was re-established in April 1995, by decree of the CNVM and at the request of 24 founding member brokerage houses to trade on the BSE. It began operations seven months later with an initial six listed firms – one of the last exchanges in the region to come into operation.⁷⁸ The BSE Association is comprised of member representatives and chaired by the Chairman of the Board.

The Board of Governors is the BSE's governing body and consists of nine elected members, formed by nine members elected by the BSE Association for a term of five years. A General Manager is appointed to a five-year term by the Board and is responsible for the Exchange daily operations. Supplementary institutions include the Listing Committee, the Ethics and Conduct Committee and the Arbitration Court.

The BSE also has a Clearing and Settlement Department that performs the settlement of trades executed in the market and a Registry Department, which serves as a transfer agent for listed firms.

The BSE "official" listing is structured into three sectors:

- domestic securities issued by Romanian companies;
- bonds and government debt instruments;
- foreign securities.

Domestic listed issuers on the BSE are divided into three tiers with progressively more stringent requirements: Tier II (Base), Tier I and Transparency Plus Tier. The BSE's listing rules are summarized below in Table 4:

⁷⁸ For example, the Budapest Stock Exchange (Hungary) was set up in 1987, the Ljubljana Stock Exchange (Slovenia) began operations in 1989, Poland's Warsaw Stock Exchange in 1991, and the Czech Republic's Prague Stock Exchange in 1992.

Table 4: BSE Listing Rules

Officially Listed Companies	Base Tier (Tier II)	<p>For listing on issuers must</p> <ol style="list-style-type: none"> 1) Have securities that are freely transferable; 2) A share capital of at least Euro 2 million; 3) File an annual, externally audited report; 4) Continuously meet listing and maintenance requirements; 5) Comply with CNVM continuous disclosure requirements.
	Tier I	<p>Issuers must have:</p> <ol style="list-style-type: none"> 1) three years of business operations; 2) minimum share capital of Euro 8 million; 3) profits for two of the previous three years, or if a loss in one of three years then a profit in the prior year; 4) 15 percent of issues and outstanding shares held by at least 1800 shareholders representing a public float of 15 percent of total issue or at least 75,000 shares; 5) reporting of financials in accordance with IAS; 6) a two-year forecasted business plan; 7) two years of positive cash flows; 8) a track record of paying dividends within 60 days of approval by shareholders.
	Plus Tier	<p>The Plus Tier requires compliance with BSE's Corporate Governance Code. Only BSE domestic sector shares may apply for listing on the Plus Tier. Within three months of application, issuers must convene and EGM to amend their articles/company statutes to include all the provisions of the Corporate Governance Code and exclude any that contradict it. Issuers must maintain website in Romanian and English that include the following information:</p> <ol style="list-style-type: none"> 1) annual, semi-annual and quarterly financial statements, with all their annexes; 2) both the Romanian and International Accounting Standards; 3) annual, half-annual and current reports; 4) notices to convene shareholders meetings and decisions taken; 5) price-sensitive decisions taken by the board of administrators; 6) proxy forms; 7) statement of the company shares traded by the members of the boards of administrators and directors; 8) any other public information the BSE deems necessary.
Unlisted but Traded Companies		<p>An informal 'tier' contains public companies that are not listed/quoted on the BSE and are not under the BSE's supervision, but are still traded on an electronic system provided by the BSE. The 'tier' has no BSE disclosure requirements, although the CNVM requires disclosure twice annually. In December 2003, there were 49 such companies.⁷⁹</p>

At the end of 2003, the Bucharest Stock Exchange's (BSE) capitalization was about 7.8 percent of GDP (USD 3.71 billion). General statistics for the exchange are provided in Tables 5-7 below.

⁷⁹ BSE Bulletin, December 2003.

Table 5: BSE Issuers: General Statistics

Year	No. of trading sessions	No. of trades	No. of traded shares (volume)	Turnover (USD)	Capitalization (USD)	No. of companies with listed shares	No. of new companies	No. of delisted companies	No. of accounts in BSE Registry
1995	5	379	42,761	964,375	100,369,698	9	9	0	72,725
1996	84	17,768	1,141,648	5,279,263	60,812,637	17	8	0	145,311
1997	207	609,651	593,893,605	263,622,324	632,432,378	76	59	0	3,071,293
1998	255	512,705	986,804,827	213,589,535	357,139,306	126	50	0	4,403,736
1999	253	415,045	1,057,558,616	89,510,594	316,811,953	127	15	14	4,827,409
2000	251	496,887	1,806,587,265	86,904,761	415,962,624	114	1	14	5,190,140
2001	247	357,577	2,277,454,017	132,015,139	1,228,517,739	65	3	52	5,360,999
2002	247	689,184	4,085,123,289	213,740,131	2,717,507,418	65	1	1	5,729,680
2003	241	440,084	4,106,381,895	302,220,206	3,710,223,467	62	0	2	5,984,499

Source – The Bucharest Stock Exchange Web Site (www.bvb.ro)

Table 6: Bucharest Stock Exchange – Top 10 By Turnover

<i>Top 10 by Turnover</i>				
Company	Symbol	Turnover (USD millions)*	Number of traded shares	Number of trades
Banca Transilvania S.A. Cluj	TLV	4.307	32,461,621	1,225
National Oil Company Petrom S. A.	SNP	2.999	67,151,492	2,892
Banca Română de Dezvoltare	BRD	2.299	3,851,257	860
SIF Oltenia	SIF5	1.863	21,372,011	2,608
SIF Moldova	SIF2	1.723	19,342,162	2,563
SIF Transilvania	SIF 3	1.397	11,313,008	1,973
SIF Banat – Crişana	SIF1	1.358	10,977,636	1,908
Oțelinox S.A. Târgoviște	INX	1.028	269,013	32
SIF Muntenia	SIF 4	0.748	7,088,102	1,857
Siretul S.A. Paşcani	SRT	0.695	5,983,737	759

Table 7: Bucharest Stock Exchange – Top 10 Top 10 By Market Capitalization

<i>Top 10 by Market Capitalization</i>			
Company	Symbol	Market capitalization	
		USD (millions)*	% of total capitalization
National Oil Company Petrom S.A.	SNP	1,680.901	45.52
Banca Română de Dezvoltare	BRD	840.505	22.76
Alro S.A. Slatina	ALR	192.608	5.22
Banca Transilvania S.A. Cluj	TLV	135.332	3.66
SIF Muntenia	SIF4	86.818	2.35
SIF Transilvania	SIF3	71.982	1.95
SIF Banat – Crişana	SIF1	71.517	1.94
SIF Oltenia	SIF5	52.742	1.43
SIF Moldova	SIF2	47.976	1.30
Sicomed S.A. Bucharest	SCD	46.750	1.27

* 2003 average FX rate of USD 1 = ROL 33,200 released by the NBR; see the NBR official site at www.bnr.ro.

Source: BSE Monthly Bulletin – December 2003.

In 2003, the BSE experienced its best year, with several indicators hitting record highs (See Table 8).

Table 8: BSE Indices (BET And BET-C)

Year	BET (USD)		BET-C (USD)	
	Points	Year-end change (%)	Points	Year-end change (%)
1997	715.50	N/A	N/A	N/A
1998	259.01	-63.80	373.44	N/A
1999	186.98	-27.81	219.63	-41.19
2000	159.09	-14.92	166.26	-24.30
2001	181.01	13.83	129.96	-21.83
2002	370.85	104.88	274.80	111.45
2003	498.11	34.3	355.36	29.32

Rasdaq

Rasdaq was created in 1996 as an over-the-counter platform for the over 7,000 companies that came into existence as a result of the Mass Privatization Program in Romania. Patterned after the NASDAQ, it is run by the Romanian Association of Securities Dealers.

The Rasdaq Composite Index (below) was launched on 31 July 1998 at a starting value of 1,000 points. Every issuer listed on the Rasdaq is included in the index calculation, which is based on weighted average of market capitalization. The share of a symbol in the index is limited to 25 percent of total capitalization of the symbols included in the RASDAQ-C. The RAQ-I and RAQII indices were launched together with the introduction of the two upper listing tiers in October 2002 in order to reflect the overall development of the share prices of the best companies listed on those tiers. Rasdaq indexes also increased substantially. In 2003, Rasdaq improved its disclosure requirements and saw an increase in the number of listed companies submitting and publishing periodic and continuous reports (over 3,400 reports posted on Rasdaq's website).

⁸⁰ The World Bank's *Global Development Finance* records a total market capitalization of 10.3 percent of GDP for Romania for 2002, which represents the latest available annual data. As at the date of this report, official GDP numbers for 2003 had not yet been released. Informal sources suggest that, 2003 GDP growth was 4.5 percent, to USD 47,599 billion.

⁸¹ Rasdaq Monthly Report, December 2003.

Indicators	1997	1998	1999	2000	2001	2002
No. of listed companies	5,467	5,946	5,516	5,382	5,084	4,822
No. of traded companies	2,427	3,337	3,267	3,137	2,739	2,100
Capitalization (USD millions)	1,505	794	996	805	1,072	1,812
Value Transactions (USD Millions)	386	419	242	144	93	127
Composite Rasdaq Index	-	716.2	871.2	689.0	829.1	1,051.8
PER (market price/net profit)	-	2.52	3.58	1.52	2.95	3.48*
Ratio price/nominal value	0.39	0.23	0.46	0.34	0.37	0.49
Turnover ratio (%)	42.46	39.25	27.34	16.02	9.92	9.18

* Calculated for the issuers that are subject of the Ministry of Public Finance Order no. 94/2001 approving the Accountancy Standards Harmonized with Vth Directive of the European Communities and with International Accounting Standards. For 91 issuers that are not subject of the aforementioned Order, the value of PER is 6.03. Source: National Securities Commission Annual Report 2002.

Initially, there were no listing requirements for the Rasdaq; these were introduced six years later. In 2002, three tiers were introduced with certain performance and disclosure criteria: the Main (Base) Tier, Tier II and Tier I. The latter two are also known as “excellence tiers.” Tier I has the strictest criteria for admission with regards to profitability, business turnover, assets, free float, capitalization, market liquidity., although listing requirements, in general are less strict than on the BSE. Of the 4,442 companies listed on the Rasdaq at the end of 2003, 14 were on the first tier, 16 were on the second and the rest occupied the Base tier. Rasdaq’s listing rules are summarized below, in Table 10.

Table 10: Rasdaq Listing Rules

Base Tier	<p>Issuers wishing to be listed on the Base Tier must fulfill the following criteria:</p> <ol style="list-style-type: none"> 1) Be a publicly owned company (issuer shares must have been the subject of a public offer according to rules/requirements in effect); 2) Their shares must be dematerialized; 3) The issuer must be registered with OEVM; 4) The issuer must have a contract with an independent registry authorized by CNVM; 5) The company must have at least 100 shareholders (Law 525/2002); <p>The issuer must have social capital of at least Euro 100,000 (Law 525/2002).</p>
Tier II	<p>Tier II issuers must:</p> <ol style="list-style-type: none"> 1) have minimum social capital of Euro 500,000; 2) turnover of at least Euro 2.5 million, and 3) 3) the percentage representing shares of those shareholders with less than 5 percent of total capital must be greater than 10 percent of total shares.
Tier I	<p>To enter Tier I, an issuer must:</p> <ol style="list-style-type: none"> 1) have recorded profit for at least one financial year of the last two; 2) have a turnover of least Euro 9 million; 3) have assets valued at least Euro 4.5 million; 4) have social capital of at least Euro 1 million, and 5) be in a situation where the percentage of those shareholders holding less than 5 percent must be greater than 15 percent of the total number of shares.

Institutional Investors

The domestic investment industry is, like most of the companies listed on the stock exchanges, also largely a result of the privatization program. Institutional investors include the Financial Investment Companies (*Societati de Investitii Financiare*, or SIF), 22 open-ended investment funds, and three closed end funds.

The five SIFs, which were created as vehicles for the mass privatization program, are major players on the market. Essentially closed-end investment funds, they hold significant stakes in banks and many listed companies, and are themselves the most widely held and traded listed companies.

The open-ended funds have about LEI 1 trillion (about USD 3 million) under management, of which 6.2 percent is invested in equities, and 60,000 shareholders. The mutual fund industry was marred by two major scandals in 1996 and 2000, and has not yet recovered its previous levels of shareholders or assets. As a result of the FNI scandal in 2000, the number of open-end fund investors dropped from 240,000 in 1999 to 45,000 in March 2001. Pension fund legislation was recently adopted, but no fund has been licensed yet.

Trade Register

Companies file fundamental documents (including company charters) in the National Trade Registry, organized under the authority of the Ministry of Justice.⁸² The Registry has the power to ask a court to dissolve a company that is more than six months late in submitting required documents.

Other Organizations

A number of non-governmental organizations have been active in promoting corporate governance. The Romanian Shareholders' Association (RAS) was founded in October 2001, with the goal of protecting shareholder interests of the Romanian Companies' shareholders. It was created by the five SIFs (mentioned above) and one individual. The Romanian Chamber for Trade and Industry completed a voluntary Code of Corporate Governance. In 2003, the BSE established the Corporate Governance Institute, whose aim is to raise Romania's managerial culture to EU standards and encourage companies' compliance with the OECD Principles.

Interest in minority shareholder rights protection has been rising since 2000. Abuses and violation of minority shareholders' rights were highlighted during an intense debate on the passage of Ordinance 229/2000, which was ultimately declared null.⁸³ In 2001, the BSE

⁸² Law number 26/1991 created the trade registry as the main depository of corporate information.. The National Trade Registry is composed of 41 local offices, which function under the oversight of their relevant county/city tribunals.

⁸³ Minority shareholders claimed that the dramatic deterioration in the financial performance of companies controlled by strategic investors was partly the result of abuses by majority (often foreign) shareholders. Criticism centered around the (i) dilution of minority shareholders in capital increases; (ii) transfer of profits to subsidiaries; (iii) abusive transfer of assets or pledge of assets for loans to majority shareholders; (iv) year-long delays in dividend payments and; (v) limited access to information by outsiders and the near absence of minority representation on boards or censor commissions. The proposal met with resistance from the Foreign Investor Council who claimed that the proposed rules would hamper the normal course of business.

proposed a “Plus Tier”, which required that companies comply with the recently developed Corporate Governance Code. However, companies resisted the requirements to introduce all of the Code’s provisions into their company statutes, and only one company is now listed on the “Plus Tier”. Many of the provisions of the Code were later incorporated into the modifications of the Securities Law.

Ownership

Ownership is consolidating, and the number of listed companies is declining. In 2003,⁸⁴ 340 companies were delisted following tender offers. Another 40 companies withdrew from the markets following bankruptcy or mergers. Several large, listed companies have been delisted because of takeovers by international strategic investors. Rasdaq and securities regulators are reviewing options for a large number of quoted companies, as the exchange investigates options to merge with the Bucharest Stock Exchange.

Romania’s corporate ownership structure is a legacy of the privatization program of the mid-1990s. Listed companies are mostly companies that have been privatized. Initially, their ownership structure was dispersed. Today, most listed companies have one or more controlling shareholders. The firms listed on Rasdaq tend to be dominated by employees associations or the state and include several thousands of minority shareholders. The State also plays a major role in governance in many companies. The state privatization agency (APAPS) holds stakes in an estimated 90 percent of listed companies. In about 100 companies, APAPS also has “golden shares” which provide for preferred rights for APAPS for representation on the board of administrators.⁸⁵ Other public institutions, including government ministries, also hold shares of publicly traded companies.

The five SIFs have significant ownership stakes in public companies. For example, SIF Muntenia has positions in 350-400 companies, ranging from 0.01 percent – 99 percent ownership, including a majority holding in 24. Each SIF has over nine million shareholders; no single shareholder may formally hold more than 0.1 percent of total shares.

Ownership information for BSE-listed companies as a group is fragmented and not publicly available in all cases. Among the “Top 10” in either total market capitalization or turnover, of those companies whose shareholder registry information is maintained by the BSE, only ALRO Slatina (ALR) and Banca Transilvania Cluj (TLV) have shareholders with holdings of more than 5 percent, according to shareholder registry information disclosed on the BSE website. However, of the 62 companies listed on the BSE at the end of 2003 and whose shareholder registry are kept by the BSE, 47 had shareholders with more than 5 percent of shares and 25 of those had shareholders who individually owned 50 – 92 percent of shares.

⁸⁴ Figures provided by CNVM for January-November 2003.

⁸⁵ Following the provisions of the *Acquis Communautaire*, APAPS is currently in the process of selling such golden shares. APAPS is planning to wind up its operations in 2004 and so will sell or transfer its remaining shareholdings.

Securities Market Regulator

The securities regulator (*Comisia Națională a Valorilor Mobiliare*, or CNVM, <http://www.cnvmr.ro>) was set up in 1994. It supervises the activities of the stock exchanges and financial intermediaries, enforces stock exchange disclosure requirements and insider trading laws, and oversees takeovers.⁸⁶ Revenues are derived from security transaction taxes. Its budget must be approved by Parliament. It has approximately 80 employees. The pay scale for CNVM employees is low compared to the private sector. CNVM staff have some legal protection against personal lawsuits for their professional activities, even when conducted conscientiously and in good faith.

As an independent agency, CNVM may issue legally binding regulations. CNVM has administrative powers, including the authority to impose fines. The Securities Law stipulates that publicly owned companies have the obligation to prepare and send to CNVM current, half-yearly report and annual reports. The violation of these provisions on reporting requirements carries disciplinary or administrative sanctions. Sanctions include warnings, trading suspension or a fine of between 0.1 to 1 percent of paid up share capital for each day of delay.⁸⁷ The most common violations are delays in disclosure of material events and late filing of periodic financial information.

CNVM has recently placed a higher priority on corporate governance reform. In 2003, the number of issuers sanctioned for failing to comply with the regulations/principles of disclosure and transparency rose significantly, owing to greater efforts at enforcement by the CNVM.

During 2003 CNVM sanctioned with written warning, in accordance with the provisions set out in the EGO no. 28/2002 approved by Law no. 525/2002, 2189 companies that failed to send required periodic reports. These sanctions were published on the CNVM website and also in the CNVM Bulletin. These companies were warned that the non-fulfillment or the future infringement of reporting requirements will be sanctioned with more stringent sanctions, i.e. the application of fines.

749 publicly-owned companies that failed to fulfill disclosure obligations even following an initial sanction/warning, were sanctioned with fines representing 0.5 percent of paid up capital. These sanctions were published on the CNVM website and also in the CNVM Bulletin. It should be noted that none of the companies that were sanctioned were listed on the Bucharest Stock Exchange; failure by BSE listed companies to fulfill certain disclosure requirements with regard to periodic reports would result in delisting.

A summary of sanctions imposed since 2000 appears in the table below.

⁸⁶ It is accountable directly to Parliament, to which it presents an annual report. The five-member commission is appointed by Parliament for a five year term.

⁸⁷ In case of false or misleading information, the fine ranges from one to three percent of share capital.

Table 11: Summary of Sanctions Imposed by CNVM and Stock Exchanges Since 2000

Date	Subject of sanction	Infringed rule	Facts	Authority	Sanction
December 2003	749 listed companies	Securities Law Art. 172(j)	Infringement of periodic and continuous reporting obligation for 2002.	CNVM	<ul style="list-style-type: none"> • Fine: 0.5 percent of paid capital.
October 2003	17 listed companies	Securities Law Art. 172(j)	Failure to transmit in due time the report on the general meeting of the shareholders.	CNVM	<ul style="list-style-type: none"> • Warning
September 2003	2190 firms listed on Rasdaq	Securities Law Art. 172(j)	Failure to report/incomplete report on the 2002 financial statements.	CNVM	<ul style="list-style-type: none"> • Warning
2003	403 listed on Rasdaq		Non-accomplishment of the minimum listing criteria.	CNVM and Rasdaq	<ul style="list-style-type: none"> • Delisted
2003	754 listed on Rasdaq	Securities Law Art. 172(j)	Absence of an agreement with an independent registry.	CNVM and Rasdaq	<ul style="list-style-type: none"> • Suspended from trading.
June 2003	S.C. Institutul Român de Valori Mobiliare S.A.		Failure to comply with the CNVM's guidelines from a previous control.	CNVM	<ul style="list-style-type: none"> • Cancellation of Company's authorization. • Initiation of bankruptcy proceedings. • Chairman of the Board, Executive Director and Operations Director barred from capital markets for three years. • Cancellation of authorization for persons acting as securities agents in name of and Company's behalf.
June 2003	S.C. Investech Valori Mobiliare S.A. Bucharest		Failure to comply with the CNVM's guidelines from a previous control.	CNVM	<ul style="list-style-type: none"> • Cancellation of the Company's authorization. • Initiation of the bankruptcy proceedings. • Cancellation of authorization for persons acting as securities agents in name of and Company's behalf.
April 2003	S.C. Investech Valori Mobiliare S.A. Bucharest	Securities Law Art. 172(b)	Failure to ask CNVM for authorization to the change the object of activity to allow it to act as an FISC.	CNVM	<ul style="list-style-type: none"> • Suspension of trading authorization.
December 2002	S.C. Institutul Român de Valori Mobiliare S.A. Bucharest		Absence of an exclusive office, the current location being inappropriate to the specific activity.	CNVM	<ul style="list-style-type: none"> • 90 days suspension of authorization. • ROL 50 million fine for Operations Director. • Warning for board members.

Date	Subject of sanction	Infringed rule	Facts	Authority	Sanction
2002	Listed companies	Law no. 52/1994 ⁸⁸ and Securities Law	Not specified	CNVM	<ul style="list-style-type: none"> • One warning • Three fees
2002	5 FISCs	Government Ordinance no. 24/1993 ⁸⁹ and CNVM Instructions no. 5/1997	Non-compliance with the conditions and the limits of securities holdings and the portfolio structure.	CNVM	<ul style="list-style-type: none"> • Fee*
2002	93 FISCs	Law no. 52/1994, Securities Law and CNVM Regulations and Instructions	Not specified	CNVM	<ul style="list-style-type: none"> • Warning • Fee • 5 to 90 days suspension of authorization. • Withdrawal of authorization.
2002	17 investment management companies	Government Ordinance no. 24/1993, Government Emergency Ordinance no. 26/2002 and CNVM Regulation no. 9/1996	Not specified	CNVM	<ul style="list-style-type: none"> • Warning • 5 to 90 days suspension of authorization. • Withdrawal of authorization.
2002	Registrars	CNVM Regulation no. 9/1997, CNVM Regulation no. 13/1996 and CNVM Regulation no. 2/1995 ⁹⁰	Not specified	CNVM	<ul style="list-style-type: none"> • Warning • Withdrawal of authorization.
2000	2 issuers	CNVM Regulation no. 2/1996 and CNVM Instructions no.3/1996	Non-compliance with the obligation of continuous and periodical report.	CNVM	<ul style="list-style-type: none"> • Fine: 0.1 to 1 percent of share capital.
2000	Issuers	Law no.52/1994	Non-compliance with the obligation referring to takeover bids' authorization.	CNVM	<ul style="list-style-type: none"> • Cancellation of the deal. • Return of titles and advanced funds.
2000	Issuers and securities companies		Infringements of the securities legislation prejudicing the investors.	CNVM	<ul style="list-style-type: none"> • Indemnities for the investors.

⁸⁸ Repealed through Securities Law.

⁸⁹ Repealed by Government Emergency Ordinance no. 26/2002.

⁹⁰ Repealed through the CNVM Regulation no. 3/1996.

Date	Subject of sanction	Infringed rule	Facts	Authority	Sanction
2000	SOV Invest S.A.		Non-compliance with buy back demands referring to fund units issued by the National Fund for Investments.	CNVM	<ul style="list-style-type: none"> • Withdrawal of authorization. • Control in order to estimate the real value of the net assets.
2000	Securities companies		Transactions with embezzled shares.	CNVM	<ul style="list-style-type: none"> • Cancellation of the deals. • Shares suspended from trading. • Suspension/withdrawal of the authorization for the companies and for the securities agents involved. • Barring of the brokerage on capital market for securities agents and members of the Board found responsible. • Return of the shares to/indemnification of the initial holders.
July-September 2000	14 investment management companies and depositories	Government Ordinance no. 24/1993 and CNVM Regulation no. 9/1996	Not specified	CNVM	<ul style="list-style-type: none"> • Warning • Withdrawal of the authorization.
Not specified	Listed companies		Mass-media rumors that might affect the trading of the company's shares.	BSE	<ul style="list-style-type: none"> • Trading suspension, which ended when the issuer clarified rumors with a press release.
Not specified	Listed companies	Securities Law Art. 172(d)	Failure to transmit in due time to the competent authorities the annual financial statements.	BSE Registration Commission to the Stock Exchange Tier	<ul style="list-style-type: none"> • Trading suspension until the financial statements were submitted to the competent authorities.
Not specified	FISCs		Failure to transmit in due time the monthly financial statements specifying the minimum net value of the company's share capital.	BSE	<ul style="list-style-type: none"> • Trading suspension until the transmission of such document was observed.
Not specified	FISCs		Non-payment of the stock exchange membership annual subscriptions when due and payable.	BSE Ethics and Conduct Commission	<ul style="list-style-type: none"> • Trading suspension by the time the subscriptions are paid, but not earlier than one month from the suspension order. • Suspension of voting rights at the general meeting of the Stock Exchange Association.
Not specified	FISCs		Failure to transmit in due time the annual financial statements.	BSE Ethics and Conduct Commission	<ul style="list-style-type: none"> • Trading suspension by the time the statements were transmitted, but not earlier than one month from the suspension order.
Not specified	FISCs	BSE Regulation no. 4, Art. 4.26(1) (m)	Failure to pay the trading and registry commissions or inadequate execution	BSE Ethics and Conduct Commission	<ul style="list-style-type: none"> • Trading suspension.

Date	Subject of sanction	Infringed rule	Facts	Authority	Sanction
			thereto for five days after the deadline.		
Not specified	FISCs and stock exchange agents		Opening own securities account at another stock exchange member company, although entitled to trade on BSE.	BSE Ethics and Conduct Commission	<ul style="list-style-type: none"> • ROL 15 million fine and warning for the two companies. • Suspension of the rights deriving from the authorized securities agent's capacity for one month; compulsory reexamination of the subject securities agent in respect of its knowledge on the stock exchange trading.
Not specified	Stock exchange agents		Leaving unsupervised the workstations activated with username and password while connected to the BSE electronic system.	BSE	<ul style="list-style-type: none"> • Warning
Not specified	Stock exchange agents	Securities Law Art. 155	Price manipulation having a significant change on the closing price.	BSE Ethics and Conduct Commission	<ul style="list-style-type: none"> • 15 to 30 days prohibition from accessing the trading system and compulsory reexamination of its knowledge of the stock exchange trading. • ROL 15 millions fine for the FISCs as stock exchange agents' employers.

* The CNVM revoked the sanctioning ordinance for absence of legal basis, as the infringed rule – the Government Ordinance no. 24/1993 – have been repealed through Law no. 513/2002 approving the Government Emergency Ordinance no. 26/2002.

Sources – CNVM official site: www.cnvmr.ro

BSE official site: www.bvb.ro