CORPORATE GOVERNANCE IN ROMANIA

DECEMBER 2001 – JUNE 2004

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JULY 25, 2004

Acknowledgments

First of all we would like to express our gratitude to the Athens Stock Exchange and Thessalonica Stock Exchange for sponsoring this report. With the precious support of the two stock exchanges this report could be prepared and the outputs of the report could be shared with professionals involved in corporate governance development in Romania and in other countries from South East Europe.

We would like also to thank to the Romanian National Securities Commission, the Bucharest Stock Exchange, the Rasdaq Electronic Market and the Romanian Shareholders Association, for the input provided on the draft of the report. The input was provided in the 5th meeting of the South East Europe Corporate Governance Roundtable which took place in June 2004 in Macedonia (Ohrid), and after the conference. Based on the input received the report was finalized.

Last but not least, we would like to thank to the OECD for the technical, organizational and administrative assistance provided in the last four years, for the national and international corporate governance roundtables. With the OECD guidance we understood better our domestic corporate governance challenges, in an international perspective. The OECD helped us in improving corporate governance in our national countries and in the region the "White Paper on Corporate Governance in South East Europe" represents the benchmark used for measuring our progress.

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Disclaimer

The information contained in this report is publicly available information.

The reader should consider along the report, that the survey conducted was done on a small scale, due to time constraints. Therefore, the findings mentioned in the report should be treated accordingly.

Any comments or suggestions on the report are highly appreciated. They could be sent to enne@rdslink.ro or/and narcisa.fatu@scpabostina.ro.

1. INTRODUCTION. PREMISES

1.1 The scope and the structure of the report

In September 2001, OECD in co-operation with the Romanian National Securities Commission and the Bucharest Stock Exchange organized in Bucharest two Roundtables on the Corporate Governance – one for Romania and the first corporate governance conference in South East Europe.

After the Bucharest conferences, three other regional conferences were organized in Istanbul, Zagreb and Sarajevo. The conclusions of these conferences were materialized in the "White Paper on corporate governance in South East Europe" (hereinafter referred to as the "White Paper") which contains corporate governance recommendations for the region and helps in the establishment of national and regional priorities and reforms.

The report "Corporate Governance in Romania" was presented on December 11, 2001, in Bucharest, and contained recommendations for the improvement of the Romanian corporate governance system.

This year a review was needed in order to evaluate the progress made in Romania in the field of corporate governance, for the period December 2001 – June 2004.

This report would review the progress made and it is built on the same structure with the structure of the OECD recommendations made in December 2001.

Although we have had some time constraints, we decided to send a questionnaire to some market participants in order to get their opinion regarding the progress registered in the last 3 years in the field of corporate governance.

The questionnaire was sent to 18 entities, respectively to the Romanian capital market institutions (National Securities Commission, Bucharest Stock Exchange, Rasdaq Electronic Market), to the five financial investment companies (SIFs), to the associations having the objective to promote the interests of investors/shareholders (Romanian Shareholders Association, Foreign Investors Council, The businessmen's Association of Romania), to E.B.R.D. and I.F.C., to the public institutions such as A.P.A.P.S., to the audit organizations such as Romanian Chamber of Auditors and to three investments funds (Broadhurst Investments Ltd., Romanian Post Privatization Fund and Romanian – American Enterprise Fund). From the 18 institutions above mentioned, 8 institutions answered, respectively the National Securities Commission, the Bucharest Stock Exchange, APAPS, the Romanian Shareholders Association, SIF Oltenia, SIF Moldova, SIF Transilvania and Broadhurst Investments Ltd.

The answers to the questionnaire are incorporated in the report.

The report is organized as follows:

(i) Introduction. Premises
(ii) Main sections, as developed by OECD at the end of the year 2001, respectively:

- Ownership structure
- Enforcement and implementation
- The rights and equitable treatment of shareholders
- The role of stakeholders in corporate governance
- Disclosure and transparency
- The responsibilities of the board

(iii) Conclusions and recommendations.

Each of the sections mentioned in point (ii) is organized in sub-sections corresponding to the OECD recommendations.

The sub-sections of the report are organized as follows:

(i) The OECD recommendation represents the title of each sub-section;
(ii) An analysis of the implementation status is made considering the main legislative improvements and the main organizational developments;
(iii) The opinion of market participants is provided, as expressed in the questionnaire above mentioned;
(iv) Preliminary conclusions are made for each sub-section.

The final conclusions and the recommendations represent the last chapter of this report. The recommendations included in the report are made in order to align the Romanian market to the best international standards and practices of corporate governance as promoted by the OECD White Paper on Corporate Governance in South East Europe.

1.2 The Romanian Capital Market: main institutions, legal framework

The **National Securities Commission (NSC)** regulates the institutional network and the infrastructure of the Romanian capital market.

NSC is an autonomous administrative authority, subordinated to the Romanian Parliament.

There are two organized securities markets in Romania: the Bucharest Stock Exchange (BSE) and Rasdaq Electronic Market (Rasdaq). **The BSE and Rasdaq markets are currently in the process of being merged and the market expects this merger to be finalized in the next one to two years.**

Financial instruments traded on the **BSE** are listed on the following tiers: "First tier", "Second tier" and "Bonds market". The companies from the first and second tiers may be promoted to the "Plus tier" whenever they agree to observe and implement the provisions of the BSE Corporate Governance Code.

On May 25, 2004, the market capitalization of the Bucharest Stock Exchange was of 4.8 billion EUR. The total turnover for the period January 1 – May 25, 2004 was of EUR 206 million (or an average daily turnover of EUR 1.96 million).

The BSE index (BET), in EURO currency, surged from 893.60 points at the beginning of the year 2001 to 2689.68 points in July 2004, increasing by three times. (Note: The scope of the report is not to present a detailed analysis of the index increase but to reveal the general trend of the market).

The companies traded on **Rasdaq** are listed on the following tiers: "First tier", "Second tier" and "Base tier".

At the end of April 2004, the market capitalization of Rasdaq was of USD 1.87 billion. The total turnover for the month of April was of USD 9.72 million (or average daily turnover of ~ USD 326,000 million).

The Rasdaq index (Rasdaq C), in USD, surged from 695.47 points at the beginning of the year 2001 to 1403.93 points in July 2004, increasing by 101%. (Note: The scope of the report is not to present a detailed analysis of the index increase but to reveal the general trend of the market).

The **SIFs** are functioning as joint stock companies listed on the BSE under the first tier. Four of the five SIFs are self - managed funds, and all of them are having a fixed capital which is 100% private. The main activities of SIFs are: (i) management of a portfolio of companies where they invested and (ii) investments, in order to maximize the value of their shares.

As of May 7, 2004, the five SIFs had a total market capitalization of approx. USD 460 million. The five SIFs have hundreds of listed companies in their portfolio, being not only minority shareholders but also majority shareholders.

The foreign investment funds invested in listed/traded companies more than USD 250 million, over the last 6-7 years. These funds have/had minority, control or majority positions in companies listed/traded on the BSE and Rasdaq.

There are no **private pension funds** established in Romania.

The existing **mutual funds** would invest primarily in T-Bills, bank deposits and municipal bonds. The mutual funds are small players in the capital market.

The **insurance companies** are very small players in the capital market.

The **Romanian Shareholders' Association** (RSA) is a non-profit and non-governmental organization of Romanian companies' shareholders. It was founded in October 2000 and it is located in Bucharest.

The objectives of the RSA are:

(i) To support the harmonization of the Romanian institutional and legal framework with the EU's standards on issues such as minority shareholder protection and transparency of the capital market;
(ii) To inform and educate shareholders on issues like their rights and how to protect themselves against the management's abuses;
(iii) To become a member and to cooperate with the Euro shareholders Group.

The mission of the RSA is to serve and protect the interests of the Romanian Companies' shareholders. Their aim is to introduce and enforce the principles of the corporate governance issued by the OECD.

RSA was accepted as member by the International Corporate Governance Network and as an associate member of the European Group "Euro shareholders".

RSA was created by the five SIFs (mentioned above) and one individual.

The RSA fully subscribed to the Principles of Corporate Governance issued by OECD and with the Euro shareholders' Recommendations.

1.3 Corporate Governance in Romania

In Romania, the concept of the corporate governance is relatively new.

However, in the last years, the business community started to become more aware of this concept.

The **Companies Law** was adopted in 1990 based on the continental European model of corporate governance. The Companies Law was set up to be applied by all types of commercial companies: state/private owned, domestic/foreign, small/large etc..

The Title III - Chapter IV of the law is entirely dedicated to joint stock companies. Under this chapter, there are the following sub-chapters: (i) Shares; (ii) General Shareholders Meetings (GSMs); (iii) Boards of Directors; (iv) Censors; (v) Bonds; (vi) Registries and the balance sheet.

The Companies Law is the first pillar of the corporate governance system in Romania and to a large extent it seems to meet the international standards.

In 1994 the Romanian Parliament approved the **"Law no. 52 regarding securities and stock exchanges"**. The law regulated the activity of the National Securities Commission, the establishment and functioning of the securities markets together with the institutions and operations specific to such markets, for the purpose of mobilizing the savings by means of securities, under adequate conditions for the protection of investors. The law clearly defined terms such as: issuer, publicly traded company, public offers, control and majority position, takeover, confidential and privileged information etc.

Unlike the Companies Law which was inspired by the continental model and by the Romanian Commercial Code, the Law 52/1994 was a new piece of legislation. For drafting the law, assistance was received from the World Bank experts.

After 1994, due to the market developments, minority shareholders started to be very active in protecting their rights. In the year 2000, the Emergency Ordinance 229/2000 concerning minority shareholders' protection, brought a lot of new proposals, considered normal by the minority shareholders, in order to better protect their rights. The Ordinance was heavily disputed between the minority and majority shareholders and had a short life.

In April 2002 the Emergency Government Ordinance no. 28/2002 regarding securities, financial services and regulated markets was issued. Then, in the summer, the ordinance was approved through the Law no. 525/ 2002 (**hereinafter the Ordinance 28/2002 and the Law 525/2002 will be referred as to the "current Capital Market Law**" or current CML).

The Companies Law is prevailing for the corporate governance, with the exception of the derogations of the Capital Market Law.

Here we have a selection of the new articles and amendments of the **current Capital Market Law**:

(i) Some terms and expressions were amended: significant shareholder (from 5% to 10%), control and majority position (for the control and majority positions the definition was enlarged);
(ii) Some new terms and expressions were introduced: futures, options, report contracts, absolute majority (at 75%), short selling, cumulative voting, trading of rights etc.;
(iii) New responsibilities of the members of the Board of Directors were introduced regarding takeover process and regarding corporate governance;
(iv) The chapter on Investors Protection was significantly improved; this chapter is segmented as follows:
  (i) General principles;
  (ii) Special rules regarding publicly owned companies;
  (iii)Market transparency and equality of investors, with sub-sections:
  - market transparency
  - financial auditors
  - insider trading and market manipulation (*market abuse*)
  - mandatory takeover
  - mandatory withdrawal from the market
  - Compensation Fund for Investors

(v) The concept of SROs (Self Regulatory Organizations) was defined.

The whole chapter regarding the National Securities Commission was eliminated from the law and it was approved separately as an emergency government ordinance which was dedicated only to the NSC statute.

When the provisions of the **current Capital Market Law** started to be implemented, the conflict between the majority and the minority shareholders increased again, this time on the subject referring to the mandatory withdrawal from the market, more specifically on the method of calculating the price at which the mandatory public offer has to be made (90% ownership).

Recently, the capital market law was again subject to change. The Romanian Parliament adopted a **new Capital Market Law that shall be effective starting with 29th of July 2004**. The NSC elaborated the draft in order to harmonize the Romanian capital market legislation with the European legislation and to consolidate in one single law all the provisions regarding the Romanian capital market. The National Securities Commission of Italy, as pre-accession consultant, assisted the NSC in elaborating this draft.

The main sections where differences appear between the current law and the new one, from the perspective of the corporate governance field, are underlined below:
(i) Definitions
  - Some definitions are changed: (i) according to the current law takeover means acquiring a majority position (more than 50% of votes or enough votes to change the majority members of the board of directors); (ii) according to the **new Capital Market Law** takeover means acquiring more than 33% of the votes, etc..
  - Some definitions are eliminated: control position (33% of voting rights), majority position (50% of voting rights); absolute majority position (75% of voting rights);

cumulative voting (the definition of cumulative voting was eliminated but the concept was maintained in the text of the new law) etc..

(ii) Preemptive rights

- The current law interdicts "in kind" capital increases, with some exceptions.
- The **new Capital Market Law** allows "in kind" capital increases to be made. The new law allows the preemptive rights of some small/minority shareholders to be canceled by the GSM, for capital increases in cash or "in kind", if some voting thresholds are met.

(iii) Mandatory delisting tender /public offerings

- The current legislation stipulates the obligation of the majority shareholder to make a public offer to close the company when more than 90% ownership is achieved. The current legislation stipulates the way the price is calculated. The state is exempted from the provisions of this article.
- The new legislation stipulates the obligation of the majority shareholder to make a public offer to close the company when more than 95% ownership is reached. The text of the law is not very clear about shareholders obligations but the NSC underlined that the text would be clarified through the NSC rules which would be issued in this respect. The text of the new law also stipulates the rights of minority/small shareholders when 95% threshold is achieved to ask the majority shareholder to buy their shares for an equitable price. The method of price calculation is changed, compared to the current legislation.

(iv) Mandatory tender/public offers

- According to the current law, mandatory public offers must be made for acquiring significant position (10%), control position (33), majority position (50% plus one share), and absolute majority position (75%). The law stipulates that the price would be established according to the NSC rules.
- The **new Capital Market Law** stipulates that a public offer is mandatory in case the shareholder owns more than 33% of the company's shares. The law provides how the price is calculated and also provides some exceptions regarding the mandatory public offer.

(v) Quarterly reports

- The new Law introduces the concept of quarterly reports

(vi) NSC rights

- The **new Capital Market Law** more clearly empowers the NSC with the rights to request to the issuers all information which is considered necessary for the protection of investors' rights and for ensuring an orderly market. The NSC could better enforce the **new Capital Market Law,** rules and procedures issued for its implementation.

(vii) Investors protection

- According to the current law the shareholders owning 5% of shares could ask the auditors, on a quarterly basis, some reports regarding company's operations. The law specifies that the reports should be made in 15 days from the request and specifies the sanctions in case the report is not made in due time.
- The new law mentions that the financial auditor has to prepare reports, at the request of shareholders representing 5% of votes. The law specifies that the reports should be made in 30 days from the request and specifies that it should be made public on the website of the NSC.
- The new law revises the criteria which have to be met by companies in order to be admitted to trading on a regulated market. (Note: (i) Currently a significant number of

companies which are traded on the BSE or on the Rasdaq market would not meet these criteria. (ii) We believe that the NSC would issue shortly some rules to stipulate what would happen with these companies (most probably these companies would continue to be traded on an Alternative Trading System). (ii) The NSC should consider how to protect the shareholders of the companies which would be delisted from the market. These shareholders should be able to exit at a fair price).

Some general remarks about the **new Capital Market Law** (compared to the current law) (the remarks are related to corporate governance elements):

(i) The new law brings some **improvements** in the following area:

- Shareholders rights and equitable treatment
  Cumulative voting: the new law requires the Boards of directors to be composed of minimum 5 directors if the cumulative voting is applied for Board election.
  Delegation of capital increases from the GSM to the Board: the **new Capital Market Law** imposes certain limits in order the process to be better monitored by shareholders.
- Disclosure and transparency
  Quarterly reports: the concept of quarterly reports is introduced.
  The issuers are obliged to make available certain information on their WEB pages.
  Reporting rules: small improvement is noticed.
- Implementation and enforcement
  NSC has more competencies in requesting additional information from issuers for ensuring protection of investors and enforcing the provisions of the new law.
- The obligation to make a public offer for reaching the 10% threshold is canceled.
- More flexible rules for the publication of the prospectus.

(ii) Some of the **weaknesses** of the new CML

- In some paragraphs the new law is very general leaving room for interpretations:
  Unless the NSC would issue rapidly the rules needed for the implementation of the new law, the conflict between minority and majority shareholders might increase.
- Some provisions of the new law are unclear (ex. mandatory delisting public offerings, admission to trading on a regulated market).
- The new law refers to many rules which must be elaborated by the NSC and which would affect issuers, majority and minority shareholders. There is a deadline of twelve months for the NSC in elaborating these rules;
  We believe that these rules should be elaborated as soon as possible and the 12 month period is too generous.
- The new law "takes away" some of the rights the minority shareholders have in the current law.

Compared to securities law which was in force in 2001 (respectively the **"Law no. 52 regarding securities and stock exchanges"**), **the new CML brings some progress in terms of corporate governance, in the following areas: cumulative voting, disclosure and transparency, related party transactions, payment of dividends, mandatory public offerings etc.**

However, in terms of aligning Romanian corporate governance system to the OECD best international standards and practices, the **new Capital Market Law** looks less compliant than the current CML.

As mentioned above, the new law implements only partially the OECD recommendations regarding best international standards and practices in corporate governance, as enumerated in the White Paper on Corporate Governance in South East Europe.

A **final opinion** about the new law and the by-laws/secondary regulations (rules and regulations which shall be issued by the NSC for implementation of the law) can be released after the whole package of regulations would be in place and a comprehensive analysis would be made.

2. OWNERSHIP STRUCTURE

2.1 Privatization efforts should be intensified and include a program to improve corporate governance in the National Companies (OECD recommendation – 2001).

As mentioned in the OECD report elaborated in December 2001, privatization is the best solution to improve the overall performance of the Romanian national companies.

In December 2001 it was recommended to APAPS to take some corporate governance measures before the privatization takes place, in order to increase the value of the companies from its portfolio.

Privatization in Romania in the last years

In the last years, the privatization of large and very large companies represented a priority for the Romanian Government. In the period 2001 – 2003, 94% of the total share capital of the companies privatized was represented by the share capital of large and very large companies.

Overall, APAPS believes that the privatization pace was satisfactory in the period 2001-2003.

However, APAPS considered that some of the causes which determined delays in the privatization process were: (i) lack of interest from the part of management: managers of state owned companies did not provide, in due time, the reports/information needed in the privatization process; (ii) appearance of some pressures, in the process of negotiation, from the part of stakeholders (creditors, unions), etc..

Prior privatization, the state took some decisions regarding: (i) restructuring of companies; (ii) externalization of some assets (especially social assets such as cantinas etc.); (iii) providing some fiscal facilities (ex. total or partial exemptions from taxes). Also, in order to speed up the privatization process, the state decided to sell some companies at symbolic prices.

Due to the fact that the state was and it is excluded from some obligations stipulated by the capital market legislation and secondary rules, the privatization process disturbed some capital market/corporate governance mechanisms. In some cases the rights of the minority shareholders were not observed.

In the 2001-2003 an APAPS report admitted that after privatization, in majority of companies, financial indicators improved.

The special administration procedure

APAPS made an important decision in 2002, in order to improve corporate governance in state owned companies. According to the "Law no.137/2002 on measures to accelerate the privatization process", APAPS started implementing the "**special administration procedure**" in the period of privatization.

The "special administration" is defined as "the administration of the company between the date when the decision of the Ministry/Local Administration is made and the date of the transfer of the ownership / the date established by the State".

The special administration is done based on a special mandate.
Based on the Governmental Decision no. 577/2002, which approved the methodological norms for the special administration period, an administrator was designated by the State authority. The administrator could be a legal or a natural persona, a Romanian or a foreign entity.

The "special administrator" is entitled to participate at the GSMs and at the meetings of the Board of Directors, in order to supervise if the company fulfills his/her decisions. If the GSM or the Board makes a decision against the mandate of the "special administrator", the "special administrator" can revoke the respective decision, with the approval of the State authority.

The "special administration" procedure reduced the tendency of management and directors:
(i) To diminish the patrimonial value of companies;
(ii) To conclude non-advantageous contracts for the company;
(iii) To hide some of the outstanding debts.

Through this procedure the state established some objectives and performance criteria for the management.

Looking ahead

Starting with April 2004, APAPS merged with the Authority for Capitalization of Banking Assets and a new institution was set up: The Authority for Capitalization of State Assets **(AVAS).** Some analysts believe that this change is not in favor of increasing efficiency due to the way the AVAS is organized (the decision process is delayed due to the new organizational structure).

The year 2007 is Romania's target accession year to the European Union.

The UE officials requested to the Romanian Government to continue structural reforms, in particular in the energetic sector, to make sure this objective is fulfilled in 2007.

The UE officials believe that the privatization of Petrom (the national oil extraction, processing and distribution company which is currently in the final stage of privatization) and privatization of energy and gas companies could be among the most important objectives of the state in the next period.

Also, privatization of the BCR – The Romanian Commercial Bank, the largest Romanian bank, represents a top priority for the Government.

Starting with the year 2004 AVAS would also focus to privatize or liquidate all companies having more than 100 employees.

The eight market institutions and operators that responded to our **questionnaire** have the following views regarding the progress made by APAPS in the last years, in terms of corporate governance:

(i) 1 respondent entity believes that some progress was registered in the case of companies listed on the BSE;
(ii) 1 respondent entity believes that some small progress was made;
(iii) 4 respondent entities believe that no progress was made;
(iv) 1 respondent entity did not answer to the question.

In addition, APAPS answered to this question and believes that the areas where it improved corporate governance are:

(i) introduction in the legislation of the notion of "special administrator" ;
(ii) monitoring of management performances: performance contracts were concluded with general managers (salaries of general managers were correlated with the achievement of some financial indicators; ex. penalties for the general manager could be up to 30% of his/her salary);
(iii) increasing financial supervision and discipline.

Regarding the areas of corporate governance where the state should improve, the respondent entities provided the following answers to our **questionnaire:**

(i) 2 respondent entities believe that improvements should be made in the area of equal treatment of shareholders and elimination through the legislation of the preferential treatment of APAPS /State;
(ii) 1 respondent entity believes that it should be transparency and dissemination of information;
(iii) 4 respondent entities did not provide an answer.

In addition, APAPS itself answered to this question and mentioned that one area where some progress should be accelerated in terms of corporate governance, for the state owned companies, is improvement of management performances through organizing seminars, conferences, training programs etc., with the participation of international experts.

In the period 2001-2004 progress was registered regarding the privatization process.

For the period to follow, the Government has to prioritize and implement structural reforms regarding energy and gas industry. Privatization of the biggest Romanian commercial bank is also an important objective.

Introducing the „special administration" procedure and monitoring management performance represent the main improvements in terms of corporate governance.

APAPS did not start a specific program aimed at improving corporate governance in National Companies, as recommended by the OECD.

2.2 **Ownership in most of the small and medium-sized listed companies should be consolidated, and the companies delisted (OECD recommendation – 2001)**

The lack of liquidity is a feature of many companies listed on the Romanian capital market, being explained not only by the fact that many companies are almost insolvent, but equally by the lack of transparency or by the financial losses registered by these companies.

In 2002, the NSC took into consideration the OECD recommendation regarding consolidation and delisting. Thus, the current CML adopted in 2002 imposed to certain shareholders the obligation to buy out the dispersed shareholders through a tender offer. The price of the tender offer had to be determined according to the law. At the end of this process the company had to be delisted and declared closed-end company.

The rules governing these **mandatory tender offers** were criticized both by the minority and the majority shareholders. The minority shareholders asked for a fair price and the right to contest its value and the majority shareholders contested later on the rules for determining the tender's offer price. As a result, the above mentioned rules were amended three times between April and November 2002.

Currently, the **Capital Market Law** imposes to shareholders or to a group of shareholders acting together and having 90% of the voting rights, the obligation to make a take over bid for the rest of the outstanding shares, in order to close the company. The purpose of closing the company has to be expressly mentioned in the prospectus of the take over bid. The obligation to make the take over bid has to be fulfilled within twelve months from the date of acquiring the position that confers more than 90% of the voting rights. As a transitory rule it was established that the shareholders having this number of shares at December 1, 2002 had to finalize the take over bid until December 1, 2003.

The price of the take over bid, determined by an independent valuator, shall be equal with the average of at least the two of the following three values:

(i) the weighted average market price for the twelve months preceding the date of acquiring the 90% position;
(ii) the net assets value per share determined according to the International Accounting Standards;
(iii) the highest price paid by shareholders having 90% position in the last twelve months, preceding the take over bid.

In case that the price cannot be determined as an average of two of the methods mentioned above, it will be determined considering only one method. If none of the above mentioned methods can be applied the price shall be determined by an independent valuator according to the international valuation standards.

The shareholder initiating the take over bid shall make the price public, by publishing an announcement in a national newspaper thirty days before the offer begins.

The minority shareholders holding at least 75% of the rest of the outstanding shares have the right to contest the price, and they are allowed to appoint another independent valuator for determining the

price. If the price determined by the second valuator exceeds with less than 20% the first price, the final offer price shall be equal to the arithmetic mean of the two prices mentioned before. If the price determined by the second valuator exceeds with more than 20% the first price, a third valuator named both by the minority and majority shareholder shall determine the final price.

Moreover there are two exceptional situations when the rules regarding the mandatory take over bid do not apply, namely:

(i) for the companies were the Romanian state is holding/acquiring a position that confers more than 90%;
(ii) if the shareholder having more than 90% of the voting rights is selling, within 30 days from the date when he reaches the position, a number of shares that reduces its position to less than 90% of the voting rights.

The trading of the shares shall be suspended from the date when the price is published in the newspaper, until the tender offer is finalized.

It is worth mentioning that in the first form of the Capital Market Law (dated April 2002) the NSC was empowered to establish the rules for determining the price in a regulation, but the final decision of the NSC was to include these rules in the law itself.

The enforcement of these rules was one of the main market events of the 2003 year.

According to the RASDAQ annual report for the year 2003, 403 companies were delisted from the market, the wide majority being declared closed end companies.

During 2003, 3 companies were delisted from the BSE as a result of the mandatory tender offer rules.

It should be mentioned that the mandatory tender offer is not the only method for a publicly held company to turn into a closed end company. The current law provides that a publicly held company can be declared by the GSM as closed end company if one of the following conditions is met:

(i) the share capital value is less than the equivalent of 100,000 EUR; or
(ii) the company is having less than 100 shareholders.

The 403 companies mentioned above from the Rasdaq were delisted for two reasons:

(i) as a result of mandatory tender offers;
(ii) due to the fact that they were declared closed end companies by their shareholders (the share capital value or the shareholders number did not meet the legal requirements mentioned above).

The number of the issuers listed on the Romanian regulated markets at the end of 2003 reveals that a significant number (approximately 10%) of the issuers have been delisted.

The Annual Reports of the Bucharest Stock Exchange and RASDAQ indicate the following evolution of the number of listed companies:

RASDAQ	**2003**	**2002**
Number of listed issuers at the end of the year	4,442	4.823
Number of new issuers listed on the market	20	56
Number of delisted issuers - because of a mandatory tender offer, or because the share capital or the shareholders numbers are falling under the legal thresholds	403	312
Companies that are not suspended from trading	2,460	3.469

BUCHAREST STOCK EXCHANGE	**2003**	**2002**
Number of listed issuers at the end of the year	62	65
Number of new issuers listed on the market	-	-
Number of delisted issuers	3	

An interesting remark is that the total contribution of the delisted companies in the Romanian capital market's turnover represented more than 40%, meaning that shares with significant market liquidity were delisted.

Moreover, at the end of 2003, 353 companies listed on the RASDAQ market were suspended from trading being in different stages of becoming closed –end companies.

It should be emphasized also that an important number of companies listed on RASDAQ (615 companies) are suspended from trading because a bankruptcy/liquidation process has been initiated. As a result, sooner or later these companies would be delisted.

We consider important to point out that the current mechanism of the mandatory tender offers has been significantly amended in the **new Capital Market Law**.

According to the **new Capital Market Law**, the shareholder that initiated and finalized a tender offer for all the outstanding shares has the right to ask the other shareholders to sell their shares for an equitable price, provided that he meets one of the following requirements:

(i) he holds shares representing more than 95% of the share capital; or
(ii) he acquired within the tender offer more than 90% of the shares that he intended to buy.

The price of the previous mandatory or volunteer tender offer is considered to be an equitable price provided that: (i) as a result of the offer more than 90% of the shares asked through the offer have been acquired and (ii) the tender offer has been finalized three months before he exercises the right to squeeze out the other shareholders.

If one of the two conditions is not fulfilled, the equitable price shall be determined through an independent assessment made in accordance with the international valuation standards.

We would like to point out that according to the **new Capital Market Law**, the shareholder holding more than 33% percent of the vote is obliged to initiate a tender offer for all the outstanding shares.

This mandatory tender offer should be initiated within two months after the date of reaching the threshold. The price shall be at least equal with the price paid by the shareholder, or by the persons that act in concert with the shareholder, within the previous twelve months for the same shares. If the price cannot be determined according to this rule, it will be determined considering at least the following criteria:

(i) the average weighted market price for the previous twelve months;
(ii) the net asset value per share according to the last audited financial situation;
(iii) the shares value determined by an independent assessment.

Symmetrically, following a tender offer addressed to all the shareholders, a minority shareholder has the right to ask the person that initiated the offer (and holding more than 95% of the shares) to buy its shares for an equitable price.

The price of the previous mandatory or volunteer tender offer is considered to be an equitable price provided that:

(i) as a result of the offer more than 90% of the shares asked through the offer have been acquired and
(ii) the tender offer has been finalized three months before the minority shareholder exercised the right mentioned above.

If one of the two conditions is not fulfilled, the equitable price shall be determined through an independent valuation made in accordance with the international valuation standards. The costs for such an independent valuation shall be borne by the minority shareholder.

The new law brings also a significant change of the current vocabulary regarding the listed companies**.** Therefore, the new law regulates "the companies admitted on the regulated market", meaning that the concepts such as listed/delisted companies are not used anymore by the law. As a consequence the concepts of "listed companies" and "companies admitted to trading on a regulated market" used in these report should be treated as equivalent, although the rules governing the entrance/exit of the companies on/from the market are having a different approach in the current law compared with the new law.

The OECD recommendation regarding the ownership consolidation and companies delisting was only partially transposed into the Romanian legislation in force, and consequently enforced. The OECD recommendations which were not implemented referred to: (i) confirmation of the independence of assessment/valuation by an independent authority and (ii) establishment of an independent authority that assists in consolidating claims regarding the price establishment.

3. ENFORCEMENT AND IMPLEMENTATION

3.1 The capacity of the judicial system to effectively deal with commercial disputes must be strengthened (OECD recommendation – 2001)

The judicial system continues to face insufficient training, lack of experience, delays and even questionable judgments.

The law governing the judicial system is imposing a mandatory professional training for the judges through training sessions organized at least every five years. The Romanian National Institute for Magistrates, an institution subordinated to the Ministry of Justice, is responsible for organizing this training. The main principles governing the magistrates' training are:

(i) A gradual training for new areas of jurisdiction;
(ii) A standardized training at national level;
(iii) The establishment of objectives that shall be reached following every training session;
(iv) Selecting the trainers from the experts appointed by the Ministry of Justice; the experts shall co-operate with the Romanian National Institute for Magistrates;
(v) Specialized training sessions for different law specializations;
(vi) Co-operation with other similar international authorities.

Some series of professional training programs for judges with respect to the bankruptcy law were organized, while the trainings dedicated to the corporate governance and capital market issues were more or less sporadic.

In terms of remuneration of judges, some significant increase was registered. Yet, the remuneration is still far from being sufficient, in order to assure the integrity and the necessary experience for such a position.

The specialization of the Romanian courts are resuming to the following areas:

(i) The civil courts;
(ii) The commercial courts;
(iii) The criminal court;
(iv) The administrative courts.

A judge acting in a commercial court can be asked to solve equally a dispute regarding the corporate governance, the execution of a commercial contract, the nullity of a market transaction or the nullity of a company. Only the judges administering the bankruptcy procedures are specialized ones. Therefore it can be extremely difficult for a judge to deal with so many different areas.

At the present only the Romanian High Court of Cassation and Justice is publishing on the WEB its own decisions, facing some delays in up-dating the information. For all the other Romanian courts some of the decisions could be found in specialized publications were different authors/institutions are selecting certain court decisions and are presenting them generally, in a short version.

During 2003 the Romanian Government promoted a so-called **„anti-corruption law"** aiming to establish rules, mechanisms and institutions aiming to prevent the corruption registered within the

state authorities, including the judicial system. Preventing corruption is one of the main declared priorities of the Romanian Government, while different reports and analysis are still indicating a significant level of corruption within the different state authorities.

At the end of June 2004, new laws regarding the organization of judicial system were enacted.

The progress registered in order to strengthen the capacity of the judicial system to deal with commercial disputes is not significant. Therefore, the efforts in this area should continue in a more determined manner.

3.2 The public and private redress mechanisms for shareholders must be improved and include the use of professional arbitration and collective shareholder action (OECD recommendation – 2001)

In 1999, the NSC enacted a regulation regarding the Arbitration Courts organized by the Bucharest Stock Exchange and RASDAQ. Both Arbitration Courts are designed to settle disputes arising form market transactions, namely disputes between intermediaries and their clients and intermediaries and their agents, provided that both parties agree to use the arbitration mechanisms.

Currently only the Arbitration Court organized by the Bucharest Stock Exchange is functional, but so far this court has not settled any dispute.

Moreover, according to the NSC governing law, the NSC can organize also an Arbitration Court aiming to solve the litigations arising from contracts concluded according to the capital market rules ("trades") or related to the capital market institutions and their operations. The NSC did not organize yet such an arbitration court.

We would like to emphasize that the Romanian Chamber of Commerce organized a professional arbitration court acting in the commercial field that settles the disputes arising from market transactions.

The Romanian Civil Code does not allow using the arbitration mechanism to solve a shareholder's claim aiming to declare the nullity of a general shareholders meeting resolution. This type of litigation can be settled exclusively by the Romanian courts. We would like to emphasize that the wide majority of the minority shareholders claims consist in declaring the nullity of the general shareholders meeting resolutions adopted by breaching the shareholders rights. But, a shareholder's claim aiming to obtain redress from the Company for the damages registered by the non-observance of its right, can be solved by an arbitration court provided that both parties agree to use the arbitration mechanism.

The NSC is empowered by the law to file lawsuits regarding any of its own rules. As a result, the NSC can initiate lawsuits in case that one of the shareholders' rights established by the current and new Capital Market Law and the NSC regulations has been infringed, or can intervene in such a lawsuit. So far, we are not aware of the situations where the NSC used its right to initiate such lawsuits. Considering the problems that NSC is facing with regard to the implementation of the new CML, the extensive use of this right by the NSC can appear unrealistic.

The current Arbitration Courts organized by the Romanian capital market institutions are not designed to solve disputes between shareholders and companies.

The use of the arbitration mechanism, in general, is registering a very low level, and there is not activity for the specialized capital market arbitration courts.

3.3 Parliament should ensure that the National Securities Commission has the independence and resources necessary to fulfill its mandate, including the supervision of the self-regulatory organizations (OECD recommendation -2001)

The National Securities Commission is headed by 7 commissioners appointed by the Parliament, which also approves its budget on an annual basis.

In the activity of the NSC, **significant progress** was registered, in the last 2 years, in the following areas:

(i) Budget stability: the NSC became a self-financing institution and in the last years its financial situation improved significantly. The NSC has currently the necessary financial resources needed for its operations;
(ii) Competitive salaries: staff salaries increased in the last years bringing the staff salaries closer to decent levels;
(iii) Adequate facilities: the NSC moved into a new location, proper for its activity. In the future the NSC plans to buy its own location, according to its budgetary provisions;
(iv) IT infrastructure: NSC implemented an IT system in order to improve the efficiency of its activity.

In the year 2003 some staff training was organized under the twinning program developed with the Italian National Securities Commission. In general, staff training became an important objective for the NSC due to the high needs the institution have in this respect.

The NSC with the assistance of the Italian Securities Commission (CONSOB), implemented an **electronic system** for monitoring and supervision of transactions. The system has two main sections: (i) real time supervision of transactions and (ii) historical analysis of the information existing in the data base. The NSC monitors in real time the trades from BSE, Rasdaq and Sibiu Monetary, Financial and Commodities Exchange.

During the year 2003 the NSC finalized the twinning program NSC – CONSOB. The main objective of the program was the revision of the legal and regulatory framework taking into account the importance of implementing the EU standards. The program was also aimed to help the NSC to increase its capacity as responsible authority for authorization and supervision of the capital market. The most important activity of the twining program was the elaboration of the **draft of the new Capital Market Law** which has to harmonize the Romanian capital market legislation with the European legislation. The CONSOB assistance helped the NSC also in elaborating rules for implementation of the current legislation and rules which would be issued according to the **new Capital Market Law.**

Currently there are three **SROs** in Romania: Bucharest Stock Exchange (by the law effect), Sibiu Monetary, Financial and Commodities Exchange and SNCDD (which ensures clearing, settlement and depository functions for the Rasdaq market). Rasdaq is not an **SRO**. Thus, the NSC performs significant activity regarding the Rasdaq market (Note: the big number of companies traded on the Rasdaq market (few thousand companies), is the result of the method of privatization adopted in Romania. The companies traded on the Rasdaq market did not apply for listing).

Due to the fact that the merger of the BSE with Rasdaq is planned to take place in the next one or two years, we believe that the activity of the NSC will be positively influenced by this merger.

Although the new law is not expressly stipulating about the notion of SRO, the regulated markets defined by the new law would be in fact SROs due to the attributions they have (they would be allowed to issue rules, to enforce them etc.).

Starting with January 2003 the NSC has issued a **monthly bulletin** having the following sections: (i) individual acts issued by the NSC; (ii) main activities of the NSC; (iii) current reports of issuers and of other entities (iv) announcements, interviews etc..

In the year 2004, the most important event of the Romanian Capital Market is the approval by the Parliament of the **new Capital Market Law (CML)**. Consequently, the most important activity of the regulators would be the elaboration / update of the rules (secondary regulations), according to the new law.

The dialogue and co-operation between the NSC and the capital market participants registered some significant improvements in the following area: the NSC is publishing on a regular basis on the WEB page the draft of the regulations to be issued and it is inviting everyone interested to make comments. Moreover the NSC grants enough time for this public analysis of regulations' draft.

In 2004 the NSC will finalize a **"Plan for medium term development of the Romanian capital market"** which will contain measures to be taken and a calendar of implementation.

The main medium term objectives of the NSC are:

(i) Creation of a unitary framework for the investment services. Rules would be elaborated regarding :
- compliance with EU directives regarding authorization process and continuous supervision process;
- compliance with EU directives regarding capital adequacy;
- compliance with international standards regarding the rules of conduct of persons operating on the capital market;
- compliance with EU standards regarding supervision and control activities of the NSC.

(ii) Consolidation of markets and of post-transaction services:
- merger of the BSE and Rasdaq;
- consolidation of post- trading services and creation of a central depositary;
- establishment of the rules for operation and supervision of the alternative trading systems;
- establishment for the final settlement rules of the capital market.

(iii) Issuer transparency
- establishment of listing rules according to the European standards; establishment of rules regarding periodic audited financial statements;
- elaboration of conformity rules with the European standards regarding price sensitive information;
- improvement of rules regarding public offers.

(iv) Market supervision, for the prevention of the market abuse.

The NSC registered significant progress in terms of organizational aspects, in the last years. The main areas were the progress could be noticed: budget stability, adequate facilities, IT infrastructure etc. The NSC started to train its personnel.

The NSC issued monthly bulletins starting with January 2003, becoming more transparent regarding its activity. The NSC continued to issue annual reports.

The NSC made some progress regarding supervision activities. By implementing a new electronic system, the NSC is currently able to monitor in real time the trades from BSE, Rasdaq and Sibiu Monetary, Financial and Commodities Exchange.

Rasdaq was not authorized to function as an SRO. Thus, the NSC has increased responsibilities regarding the functioning of the Rasdaq market. However, the merger of the BSE with Rasdaq would influence positively the activity of the NSC in medium to long term.

Exchange of expertise developed with similar institutions regionally and worldwide. One of the most important programs was the twinning program of the NSC with the Italian Securities Commission.

3.4 Listing requirements should stipulate disclosure of compliance with Voluntary Corporate Governance Code.

In 2001 the Bucharest Stock Exchange established a **"Transparency tier",** or a so-called **"Plus tier"**, where companies could apply for listing.

In this respect the companies had to adopt voluntarily the Code of Corporate Governance proposed by the BSE.

The main provisions of the BSE **Code of Corporate Governance** are**:**

(i) It is mandatory for managers and directors to have ready the GSM materials 15 days before the date of the GSM;

(ii) The issuer has to have a Web site, on the Internet, both in Romanian and English, where at least the following information should be presented: (i) quarterly, half-annually and annually financial results, including their appendices; (ii) current reports for the price- sensitive events, half-annual and annual reports; (iii) all the calling-upon and decisions of the GSM; (iv) the forms for the powers of attorneys/of proxies needed for the GSM; (v) special reports on trading activity of members of the Board of directors and management; (vi) any other public information which might be considered by the Bucharest Stock Exchange.

(iii) The issuers have to provide the following mandatory information in the annual report: (a) identification of the independent directors (based upon declarations of these members), (b) a list of persons entitled/nominated to be in permanent contact with investors, (c) participation of each director of the Board in the meetings of the Board;

(iv) The issuers have to present monthly: (a) the trading activity of directors; (b) cross ownerships respectively: b.1) any participation of more than 5% of the issuer in the ownership structure of any company, b.2) any participation of a company where the issuer is shareholder, in the ownership structure of the issuer, if the participation is more than 5%; (c) commercial transactions concluded between the issuer and directors, employees, shareholders or any "related party"; (d) details about how the preemptive rights were exercised;

(v) The issuers are obliged to meet at least once a year with the financial analysts, securities companies and investors.

(vi) Dividends: they have to be paid in maximum 60 days from the date when the GSM established the distribution of such dividends.

(vii) At least one member of the Board of directors has to be an independent director:
The **independent directors** are defined as the persons who: (i) are not relatives with the members of the management and with the significant shareholders (>10%); (ii) are not employees or directors of the majority shareholder; (iii) are not receiving any compensations from the issuer or its affiliates, with the exception of the Board fee; (iv) are not a party in any contract concluded with the issuer.

(viii) Conflict of interests: the directors and managers of issuers are restricted: (i) to be directors, executive managers, censors of any competitor or company having the same activity; (ii) to exercise any commercial activity similar with the issuers' activity.

The issuers willing to get listed on the "plus tier" will have to sign a "letter of commitment" with the Bucharest Stock Exchange. The issuer has to undertake to amend the constitutive act/charter of the

company with the principles of the Code of the Corporate Governance, in three months after signing the letter of commitment.

The "plus tier" was created in order: (i) to increase corporate governance standards; (ii) to improve the investors' confidence; (iii) to enhance transparency and effective monitoring of the issuer and (iv) to enhance accountability and integrity of the board members of listed companies.

Companies listed on the "plus tier" should have an open approach to timely and accurate disclosure of information, should promote equitable treatment of all shareholders, should observe and protect shareholders rights and should effectively monitor the performance of listed companies.

Until now, only one company joined the "plus tier".

What is important to be underlined is the fact that there are many companies not listed on the "plus tier" which comply with some of the "plus tier" requirements.

In our opinion there are three major causes for having only one company listed on the "plus tier": (i) the Romanian companies did not start to finance their activity from the capital market; (ii) there are too high corporate governance standards for the market (the market has to be further educated to be able to implement these standards); (iii) companies were obliged to change their constitutive act in order to be promoted to the "plus tier".

4. THE RIGHTS AND EQUITABLE TREATMENT OF SHAREHOLDERS

4.1 Changes in share capital must be approved by the shareholders, respect pre-emptive rights, and be priced in a manner consistent with a fair and independent assessment of the company's value (OECD recommendation – 2001)

The approval of a share capital modification

The Romanian Companies Law requires, as a general rule, the GSM's approval for the changes in share capital. Nevertheless, the Companies Law recognizes the shareholders' right to delegate to the board of directors the responsibility to decide on the alteration/change of the share capital.

The board of directors can be empowered to decide on the share capital changes through either the constitutive act or a resolution of the extraordinary GSM. These two means are more or less the same, once the constitutive act can be amended by resolution of the extraordinary GSM. Consequently, the quorum conditions are identical for both means.

The disclosure and registration requirements for a decision of the board of directors regarding the change in share capital are similar to those established for the resolutions of the GSM. It is worth mentioning that neither the Companies Law, nor the general capital market rules in force (not even the **new Capital Market Law**) would impose explicitly that the notification for the board meeting discussing a share capital change should be made public in a manner similar to the notification for the GSM. Moreover a special minimum notification period for the board of directors meeting is not required by the law. Only the RASDAQ regulations regarding the transparency and market integrity require the issuers listed on the first and the second tiers to send to the market the notification for the board meetings discussing a change/alteration of the share capital.

To complete this "delegation process" we would like to point out that the responsibilities of the GSM that could be delegated to directors are strictly determined by the law, as follows:

(i) Changing the central headquarter;
(ii) Changing the scope of activity;
(iii) Changing the share capital;
(iv) Transformation of a type of shares into another type (e.g preferred shares transformed into common shares).

All the other responsibilities of the extraordinary shareholders' general meeting (dissolutions, mergers, issues of bonds) can not be delegated to the Board of directors.

All of the decisions that can be delegated to the board are finally determining an amendment to the constitutive act, since the central headquarter, the scope of activity, the share capital, and the features of the issued shares have to be mandatory included in the constitutive act. Using this delegation process the board is in fact empowered to amend the constitutive act.

The new Capital Market Law imposes some limits to the above-mentioned delegation process regarding the share capital increase, namely:

(i) the GSM or the constitutive act shall impose a maximum value of the share capital increase adopted by the board of directors;
(ii) the board of directors can be delegated to decide a share capital increase for a maximum period of one year; the one year period could be renewed by the GSM.

Strong arguments exist in favor of the delegation process, such as:
(i) the decision-making process is more flexible;
(ii) shorter period of time for changing the share capital;
(iii) lower costs.

The eight market institutions and operators that responded to our **questionnaire** have the following views about the shareholder's right to delegate to the board of directors the responsibility to decide on the change in share capital:
(i) It breaches the shareholders right to decide the share capital modifications – 3 respondent entities;
(ii) It facilitates the decision making process in the company – 4 respondent entities;
(iii) One entity did not answer to this question.

According to the Romanian laws, primarily, the GSM approves the share capital's change. However, the GSM empowers the board of directors to decide on the changes of the share capital.

In case of the delegation process for share capital increases, the laws do not clearly state that all the stipulated procedures for the shareholders' meeting must be followed by directors. We are referring here mainly to the notification period, to the disclosure requirements for such a notification and to the presentation of the proposed terms of capital alteration. Regarding the share capital increase, the decision of the board is similar with the legal regime of the shareholders' general meeting.

The terms of changes in share capital

It is extremely important for the shareholders to be aware of the proposed terms of changes in the share capital, before the decision has been made. Therefore it is useful to provide this information within the GSM's notification.

The Companies Law imposes that the agenda of the shareholders meeting to be explicitly presented, and as the case may be, the proposed amendments to the constitutive act to be wholly included within the announcement. A similar, but a more general requirement can be found in the **current Capital Market Law** stating the investor's right to have access to doubtless and complete information regarding the issuers and their securities. There are no detailed regulations regarding the type of information that must be included in the GSM announcement, when a share capital increase or decrease is discussed. We would like to point out that the NSC, BSE and Rasdaq have the right to ask the issuers to complete the reports. Therefore it is the responsibility of NSC, BSE and Rasdaq to appreciate whether the information provided by the board [1] is complete or not.

[1] As a general rule the board of directors convenes the general shareholders meeting, and consequently prepares the announcement

Although we did not conduct an extensive practical research on this issue, we have noticed that the BSE has often required to its issuers to complete the announcement with details regarding the proposed changes in share capital. Moreover, the BSE suspended the trading of the shares until the required details have been made public by the issuer. We are not aware of similar actions taken by NSC and RASDAQ, and consequently of any sanctions imposed if the issuer did not provide comprehensive information regarding the terms of the change in capital.

Still, the NSC rules impose that a minimum documentation corresponding to the points of the agenda of the GSM has to be prepared and made available to shareholders, upon request. The documentation concerning the change in share capital shall provide at least the following information:

(i) the value of the capital increase/decrease;
(ii) the value of the share capital, both before and after the proposed alteration;
(iii) the features of the new securities;
(iv) the payment methods for the new securities;
(v) the distribution method of the new securities;
(vi) how the company shall use the funds obtained following the share capital increase.

The notification of the GSM must indicate also how this documentation can be obtained by the interested shareholder.

It should be emphasized that according to the new CML the GSM notification is subject to the continuous disclosure requirements; therefore, within 48 hours from the date when the board of directors decided to convene the GSM, the notification has to be submitted to the NSC, to the regulated market, and has to be published in a national newspaper.

The **new Capital Market Law** is bringing significant changes to this matter. Unfortunately, the new rules are somehow confusing, once they do not establish clear reporting period and the specific content of reporting obligations. According to the new law:

(i) the issuer is obliged to inform its shareholders about the convening of the GSMs;
(ii) if the issuer intends to propose some changes to the constitutive act, it is obliged to send the proposed changes to the NSC and to the regulated market where its shares are traded before convening the GSM that shall discuss these changes;
(iii) the issuer is obliged to make available on its WEB page or at its headquarters the documentation regarding the issues to be discussed by the GSM, at least 5 days before the meeting takes place.

The eight market institutions and operators that responded to our questionnaire have the following opinions regarding the proportion of the issuers that provide comprehensive information regarding the terms of the change in capital:

(i) less than 10% of the issuers provide comprehensive information – 4 respondent entities;
(ii) between 10-30% of the issuers – 1 respondent entity;
(iii) between 50-70% of the issuers – 1 respondent entity;
(iv) between 70-90% of the issuers – 1 respondent entity;

(v) over 90% of the issuers – 1 respondent entity (important note: this answer is related only to the BSE issuers).

There is a general principle contained in the Romanian law stating that the issues to be discussed by the shareholders' general meeting have to be explicitly presented in the notification of the GSM.

There is no specific capital market regulation regarding the minimum information to be provided for a change in the share capital. The BSE has taken actions whenever the issuers' notifications were incomplete.

Pre-emptive right

As a general rule, the **current Capital Market Law** does not allow "in-kind" contributions to the share capital of the listed companies. Yet, the same law recognizes some exceptional situations when the "in-kind" contributions are accepted for the listed companies, namely:

(i) the "in-kind" contributions of lands for which an ownership certificate has been issued; in this case the share capital increase shall observe the Privatization law and the new shares shall be due to the Romanian state;
(ii) the "in-kind" contributions made in accordance with the privatization contracts, or approved by the shareholders general meeting in accordance with the Privatization and the Post-privatization law; the direct investments represented by "in-kind" contributions made according to the Law regarding the direct investments,
(iii) any other "in-kind" contributions stipulated by special laws.

The opinions of the eight institutions that answered to our questionnaire, regarding the existence of some exceptional situations when the "in-kind" contributions are allowed, can be structured as follows:

(i) accepting "in-kind" contributions stands for a limitation of the shareholder's rights and has negative effects on the shareholders not being able to subscribe for the new shares – 6 respondent entities;
(ii) accepting "in-kind" contributions stands for a harmonization with the European practices imposed by the European acquis and with the Romanian privatization law – one respondent entity;
(iii) accepting "in-kind" contributions is a necessity imposed by the Romanian realities – one respondent entity.

According to the **current Capital Market Law**, the pre-emptive rights of the shareholders must be honored irrespective of the nature of the share capital increase ("in-kind" or cash contributions).

Any share capital increase that breaches the pre-emptive right shall be null and void. We underline that only a court of justice can pronounce the nullity of such issue. Any interested person can ask the court to pronounce the nullity of the share capital increase.

Another controversial issue regarding the pre-emptive right is related to the period for exercising this right, by subscribing the new shares. According to the Companies Law, shareholders are

allowed to exercise their pre-emptive right within a period of at least 30 days, starting with the date when the resolution regarding the share capital increase is published in the Romanian Official Gazette - the fourth part. We would like to emphasize the fact that the fourth part of the Official Gazette is almost inaccessible for investors and the publication date cannot be easily predetermined. Therefore there are some issuers that are publishing a report for announcing their shareholders that the general meeting resolution has been published. Such a report, although extremely necessary, is more or less a volunteer one, since no capital market rule would impose such an obligation. As a result of this mechanism it is difficult for the majority of shareholders to identify the subscription period. Finding the subscription period requires supplementary efforts. Only the Bucharest Stock Exchange requires to its issuers to make public a report announcing the period of exercising the pre-emptive right.

According to the **new Capital Market Law**, both the "in-kind" and in cash contributions can be used for the share capital increase of listed companies.

For making decisions, in both cases, the legal quorum of the shareholders' general meeting depends on the type of contribution, as follows:

(i) The share capital increase through "in-kind" contribution has to be approved by 75 % of the voting rights and at least 75% of the shareholders have to participate in the shareholders general meeting.
The valuation of the "in-kind" contribution shall be performed by independent valuators.
Moreover the law establishes the rules for determining the number of the new issued shares allotted to the "in-kind" contributor. Thus, the number of the new issued shares is equal with the value of the "in-kind" contribution divided by the highest of the following values: the market price, the net asset value per share or the nominal value of the outstanding shares.

(ii) The **new Capital Market Law** establishes special rules regarding the shareholder's general right to abolish the **pre-emptive right in the case of cash contributions**. In this case the resolution has to be adopted with 75% of the voting rights and at least 75% of shareholders have to be present at the meeting.

With regard to the point (ii) above mentioned, we would emphasize that the Companies Law in force recognizes the shareholder's right to abolish the pre-emptive right provided that the following conditions are met:

(i) There are some solid grounds for abolishing the pre-emptive right (but no definition of "solid grounds" is provided);

(ii) The notification for the meeting has to include the following data: the reasons determining the share capital increase, the persons that shall receive the new shares, the number of the new shares allotted to each person, the price of the new shares and the basis for its determination;

(iii) At least 75% of total number of shareholders have to be present;

(iv) The resolution regarding the abolishment of the pre-emptive right has to be adopted with at least half of the voting rights.

A comparative analysis of the rules regarding the abolishment of the pre-emptive right, as they are established in the Companies Law and in the **new Capital Market Law**, reveals the following conclusions:

(i) for listed companies the abolishment of the pre-emptive rights for the cash contribution can be resolved irrespective of the reasons;
(ii) for listed companies such resolution has to be obtained by a larger majority.

Asked for their opinions regarding the proposals of the **new Capital Market Law** regarding the "in-kind" contributions and the abolishment of the pre-emptive rights, the eight respondent entities expressed the following views:
(i) the provisions of the new law represent a harmonization with the European directives – one respondent entity;
(ii) the provisions of the draft represent a step backward regarding the establishment and the enforcement of good corporate governance rules – 4 respondent entities;
(iii) the provisions of the draft represent a limitation of shareholder's rights and has negative effects on shareholders' that do not have the opportunity to subscribe new shares – 2 respondent entities;
(iv) one respondent entity did not answer to this question.

While the general rule prohibits "in-kind" contributions to the share capital of listed companies, the current Capital Market Law establishes numerous exceptional situations where the "in-kind" contributions are allowed. The new Capital Market Law allows the "in-kind" contributions to be used if some conditions are met.

Price of the new shares

The provisions of the **current Capital Market Law** regarding the way the price would be established in the case of a capital increase are:
(i) A share capital increase cannot be executed until the listed company has made a re-valuation of its "immobilizations" (we would define immobilizations as non-current assets, respectively tangible, intangible and investments in securities).
(ii) When the price is calculated, it is compulsory to add a premium which shall be at least equal with the difference between the net asset value per share and the nominal value per share.
(iii) Net asset value per share shall be calculated taking into account the value of the "immobilizations" at the date of the notification of the shareholders' general meeting which shall decide the share capital increase. The criteria that must be considered for the valuation are: (i) the inflation rate between the last valuation and the notification date of the GSM and (ii) the market value of the assets.

If the new shares are bought by a person other than the shareholders having the pre-emptive rights, the price of a share has to be at least equal with the price established according to paragraph (ii).

The new shares have to be entirely paid on the date of their subscription. We emphasized that a similar rule does not apply to closed-end companies.

The Post-privatization law excludes from application all the current capital market rules governing a share capital increase (e.g the price of the new shares, the pre-emptive right), if the share capital increase is based and justified by the Privatization law and Post-privatization law. The State has exempted the privatization process from the public offering/takeover rules. More than that, the

privatization contracts are not public information. This rule has been criticized by capital markets representatives and operators. Moreover, some shareholders claimed the non-constitutionality of this rule, but the Romanian Constitutional Court appreciated on several occasions that such a rule fully complies with the Romanian Constitution.

The eight market institutions and operators that responded to our questionnaire have the following views about the price of the newly issued shares:

(i) the market value should be the basis for pricing the new shares – 1 respondent entity

(ii) the law should impose that the pricing of new shares shall be based on an independent assessment of the company's value – 7 respondent entities (one of these entities mentioned the necessity of promoting a campaign aiming to explain to the issuer the importance of such independent assessment).

In Romania, there is no legal obligation to determine the price of new shares based upon an independent assessment of the company's value.

Some of the former state owned companies representing a significant number from the total number of listed companies, are excluded from complying with provisions regarding the price of the newly issued shares.

4.2 Control mechanisms must be put in place to monitor and prevent abusive related party transactions (OECD recommendation – 2001)

Both the Capital Market Law and the Companies Law provide rules regarding the control mechanisms aiming to monitor and prevent abusive related party transaction.

Moreover, the amendments of the Companies Law that have been enacted in the first half of 2003 enlarged significantly the situations where a shareholders general meeting resolution was required for related party transactions.

The shareholder having interests contrary to company's interest regarding certain operation has to abstain from the discussions regarding that operation. In case of breaching this rule he becomes liable for the damages caused to the company, if without his vote the resolution couldn't be adopted.[2]

The board members are not allowed to vote any resolution regarding their own person, or their responsibilities as directors, neither personally, nor by proxy.[3]

The board member having an interest that is contrary to that of the company regarding a certain operation, has to notice the others directors and the auditors and has to abstain from discussions. The board member has the same obligation if he/she knows that in a certain operation are interested his/her spouse, his/her relatives or his/her spouse's relatives down to the fourth degree. These obligations do not apply in the following situations:

(i) the board member, his/her spouse or their relatives are subscribing to new shares or bonds issued by the company;
(ii) the board member, his/her spouse or their relatives are granting a loan or are setting up guarantees for the company.

We would like to point out that even for the above mentioned situations it is allowed to provide in the constitutive act that a board member must abstain from voting and discussing that operation. In case the board member breaks these rules he becomes liable for the damages caused to the company if without his vote the resolution couldn't be adopted.[4]

The sale -purchase agreements, the loan agreements and the rental agreements standing for more than 10% of the net assets value, concluded between the company and one of its directors, have to be approved in an extraordinary shareholders general meeting. The same rule applies if the agreement is concluded between the company and one of the following persons:

(i) the board member's spouse ;
(ii) the board member's relatives down to the fourth degree, or the relatives of his/her spouse down to the fourth degree;

[2] article 126 of the Companies Law
[3] article 125 of the Companies Law
[4] article 145 of the Companies Law

(iii) the commercial or civil company where the board member or the persons mentioned at (i)-(ii) are board members, directors or hold at least 20% of the capital, unless a company is a branch of the other company.[5]

It is forbidden for a company to:
(i) to grant loans to directors and managers;
(ii) to provide financial advantages to the board members or managers with the occasion of concluding or executing a sale/purchase agreement, a service agreement etc;
(iii) to guarantee, directly or indirectly, entirely or partially, any loans granted to board members or managers etc.;
(iv) to guarantee, directly or indirectly, entirely or partially, any personal obligations assumed by board members or managers;
(v) to acquire, entirely or partially, a debt of the directors or managers.

This rule applies also to operations involving the following natural or legal persons:
(i) the board member/manager's spouse ;
(ii) the board member/manager's relatives down to the fourth degree, or the relatives of his/her spouse down to the fourth degree;
(iii) commercial or civil companies where the directors/managers or the persons mentioned at (i)-(ii) are directors, managers or hold at least 20% of the capital.

This restriction does not apply in the following situations:
(i) the value of the operation is less than the equivalent of 5,000 Euros;
(ii) the operation is concluded during the normal course of the company's activity, and the clauses are not more favorable to the above mentioned persons than those used normally by the company with any other persons.[6]

All of these rules are aiming to exclude any potential conflict of interest, and are transposing some of the OECD recommendations. Since we did not develop an extensive practical research regarding the enforcement of these rules we cannot express an opinion accordingly. Thus, we are not aware of the existence of any court resolution imposing sanctions (e.g pronouncing the nullity of the transaction concluded with the non-observance of these rules) to directors/managers that exercised their voting right although they held an interest in those transactions. Moreover, the non-observance of these rules is one of the most common claims of the minority shareholders.

The Romanian legal framework does not impose the obligation to disclose all the transactions that include conflicts of interest.

The Parliament members, the Government members, the elected officials and the public servants are not allowed to be simultaneously members of the board of directors or managers of commercial companies.

[5] art. 145 of the Companies Law
[6] art. 148 of the Companies Law

While the rules from the above paragraph are applying to all the Romanian joint stock companies, the following rules are applying only to the publicly held companies being enacted through the **current Capital Market Law.**

The board of directors of the listed companies is obliged to declare and publish in the NSC monthly bulletin a report describing all the operations concluded by the company with the board members, the employees, the majority shareholder, or the affiliated or involved persons, if the value of the operation, in aggregate terms, represents more than the equivalent of 50,000 Euros. If this type of operations is concluded it is compulsory to observe the company's interest compared with other similar offers. The reports elaborated for these operations shall include information, such as:

(i) the contracting parties;
(ii) the signing date;
(iii) the nature of the agreement;
(iv) the object of the agreement;
(v) the total value of the agreement;
(vi) the guarantees;
(vii) the terms of payments;
(viii) any other information necessary to determine the consequences of such an agreement.[7]

The minority shareholders representatives complain about the costs of publishing the above mentioned reports in the NSC monthly bulletin. They consider that the costs discourage both the investors and the issuers from using their rights/complying with the disclosure requirements. The NSC is charging a fee for every report published in the monthly bulleting, and moreover the bulletin is not delivered free of charge.

We must point out also that the report above mentioned has to be prepared within 24 hours from the signing date of the transaction.

The auditors have to analyze the correctness and the appropriateness/adequacy of the operations concluded between the company and the board members, the employees, the shareholders and the affiliated or involved persons.[8]

The shareholder/the group of shareholders holding at least 5% of the share capital has the right to ask the board of directors or the auditors to present quarterly reports regarding certain financial operations. The directors together with the auditors are obliged to prepare the report within 15 days from the request. The report shall be published in NSC's monthly bulletin. If the directors/auditors fail to prepare the report in due time, the mentioned shareholder/shareholders can ask the court to appoint an expert empowered to analyze the operations, and to provide a report; the conclusions of this report shall be published in NSC's monthly bulletin and until the conclusions are published, the board members and the auditors together with the company can be obliged to pay daily damages[9]. This right opens the shareholder's a possibility to exercise a control on certain types of transactions, including related party transactions.

[7] art. 123 of the Capital Market Law
[8] art. 113 of the Capital Market Law
[9] art. 106 of the Capital Market Law

The extraordinary shareholders general meeting must approve the following operations, before they are concluded, provided that their aggregate value for one financial year exceeds 20% of the company's "immobilizations" less receivables**:**

(i) the sale/purchase agreements for assets included in the company's "immobilizations";
(ii) the exchange agreements for assets included in company's immobilizations;
(iii) the guarantees/collateral agreements made with assets included in the company's "immobilizations";
(iv) the rental agreements and the joint venture agreements having a duration of at least one year.

If such an agreement is concluded without the prior approval of the extraordinary shareholders general meeting, any shareholder can ask the court to pronounce such operation null and void, and to make the directors liable for the damages caused to the company.[10] Unfortunately, there are many cases where the majority shareholders convened general shareholders meetings in order to empower, in a very general manner, the directors to conclude transactions that exceeded the limits imposed by the law; under these situations the general shareholders meeting did not have the possibility to analyze the said transactions one by one and to decide consequently. This way of enforcing the legal obligation represents in fact a limitation of the shareholders right to analyze every transaction, and to approve it individually.

Moreover the significant transactions have to be publicly disclosed. Significant transaction means a sale/purchase, a leasing, a rental, an exchange agreement that involves assets of value higher than 10% of the aggregate net assets value. The report to be prepared and made public shall include the following information:

(i) the agreement date;
(ii) a short description of the asset;
(iii) the total amount of the agreement;
(iv) a short description of the agreement;
(v) the financing sources for the acquisition, if the case may be;
(vi) the purpose utilization of the acquired assets, if the case may be.

Such a report will be sent to the NSC, to the regulated market and shall be published in a national newspaper.

The new Capital Market Law

The new law introduces a new disclosure obligation for the issuers; namely the company's obligation to prepare, to send to the NSC and to the regulated market and make available to the public some quarterly reports. A short notice regarding the possibility to study the quarterly report shall be published in a national newspaper.[11]

The whole range of periodic reports includes: quarterly, half-annually and annually reports; all of these reports have to be made public within five days from their approval.

The detailed content of these reports will be stipulated in NSC's regulations.

[10] art. 115 of the Capital Market Law
[11] art 235 of the draft lof the new Capital Market Law

Regarding the disclosure of the related parties' transactions a small practical research made on the auditors' reports received by the RASDAQ market on May 07, 2004 revealed that only 2 out of 9 auditors' reports included information about the related parties' transactions. The other 7 reports made no reference to this issue.

These are the answers to the **questionnaire** regarding the proportion of the auditor's reports that provide information regarding the related parties' transactions:

(i) under 10% of the reports provide this information – 4 respondent entities;
(ii) between 10-30% of the reports – 1 respondent entity;
(iii) between 30-50% of the reports – 1 respondent entity;
(iv) 2 entities did not respond to this question.

The OECD recommendation to put in place control mechanisms to monitor and prevent abusive related party transactions was implemented only partially within the Romanian legal framework.

4.3 Shareholders, including institutional investors, should be encouraged to increase their participation in the corporate governance process (OECD recommendation – 2001)

Although it is possible to notice a slight increase of the public awareness regarding the issue of corporate governance, we are not aware of any large scale educational and public awareness programs initiated by the capital market institutions and/or involved participants.

Given the growth of the capital market indicators during 2003, more information has been published in the newspapers, investing in securities has become a good opportunity, and, consequently, more people gained interest in this area. Once they become investors, the next stage is to face some basic corporate governance issues.

Nevertheless, the Bucharest Stock Exchange established a Corporate Governance Institute aiming to develop such programs, but this structure is not functional yet. Moreover, the BSE has recently launched a program aiming at increasing the awareness of the general public regarding capital market issues, not specifically regarding corporate governance rules.

The main activities included in this program are:
(i) Co-operation with the national radio stations in order to produce some programs that provide information about the market;
(ii) Romanian officials and other public persons are opening some trading session;
(iii) Launching a simulated stock exchange game designed for high school students aiming at developing investor's skills.

Regarding the institutional investors' policies it is worth mentioning that the newspapers have published on several occasions their general investments priorities, but it was extremely rare to find out about their voting policies in the general shareholders meeting.

When asked about the institutions that should be responsible for the development of such educational programs, the eight respondent entities indicated the following institutions:
(i) Romanian National Securities Commission (7)
(ii) Bucharest Stock Exchange (6)
(iii) The Corporate Governance Institute (1)
(iv) RASDAQ market (4)
(v) National Association of the Financial Services Companies (2)
(vi) The Romanian Government (1)
(vii) Professional Associations (1)
(viii) Foreign Investors Council (1)
(ix) Romanian Shareholder's Association (1)

4.4 Techniques designed to prevent shareholders' participation in the general meeting must not be allowed for, the notification period for the meeting should be extended and the decisions of the meeting should be implemented (OECD recommendation – 2001)

The shareholders' right to participate in and vote at the GSM

The shareholders are allowed to participate in and to vote at the general meeting either personally or by proxies. The proxies could be provided equally to shareholders or to other persons.

Please note that such a rule governs only publicly held companies and its setting up has marked an important progress as compared with the previous rules.

The previous rule, established by the Companies Law, provided that shareholders could only give proxies to other shareholders, if the constitutive act did not state otherwise. The great majority of the listed companies did not use this permission of the law, and their constitutive act simply reiterated the restrictive provisions of the Companies Law.

According to the **current Capital Market Law** in force, if a shareholder is represented by a person other than a shareholder the proxy has to be authenticated, while if he is represented by a shareholder it is not necessary for the document to be authenticated. The **new Capital Market Law** eliminates the notarization requirement for the proxy.

The shareholders or their proxies' access to the general meeting is allowed based on their ID and the proxy document, as the case may be. The breach of this rule opens the shareholder's right to ask the court to declare the decisions of the general shareholders' meeting null and void. It is interesting to notice that since these rules aim facilitating the shareholders' participation in the meetings, there are still Romanian issuers requiring supplementary documents in order to allow the access to the meeting. The most common practice is to ask for a certificate to prove the representative/legal power of the natural person that represents a legal person or who signs a proxy in the name of a legal person. Usually, such a certificate is issued by the Romanian Trade Register. Moreover, since the NSC rules state that the notification for the meeting should specify the deadline for the dispatch of the proxy, generally, the issuer establishes such a limit a few days before the general meeting. In practice, many times the shareholders prefer to resent their proxies on the day of the meeting.

The rules governing the procedure of holding the general meeting are raising many question marks. Although a standard approach of these rules would be extremely useful, a Best Practice Guide has not been drafted by any of the market institutions.

The questionnaire included a question aiming to finding out how the market operators/institutions evaluate the rules related to the shareholders' access to the meeting. The following opinions have been expressed:

(i) these rules are flexible and do not impose unjustified barriers on the shareholders' right to participate in the meeting – 6 respondent entities;
(ii) these rules are restrictive, imposing unjustified barriers for the shareholders' rights to participate in the meeting – 2 respondent entities.

The notification period

There are no changes of the rules imposing a 15 day notification between the publishing of the notification for the meeting and the meeting itself. It should be pointed out that the law establishes a minimum period of 15 days, meaning that it is the issuer's option to use an extended period as well. Nevertheless, issuers generally use the minimum 15 day period, although there are cases in which this period is extended.

All eight institutions which responded to the questionnaire estimated that the 15 day notification period is adequate.

OECD recommendation to extend of the notification period for a GSM has not been yet transposed in the Romanian laws. The law in force requires a minimum notification period of 15 days meaning that the issuer is free to publish the notification even with 30 days before the date of the meeting.

The payment of dividends

The general meeting that resolves for dividends to be distributed is obliged to establish their payment period - within six months of the date of the general meeting. If the general meeting does not establish the payment period, the dividends shall be paid within 60 days of the date when the resolution has been published in the Official Gazette. Since the resolution of the general meeting is enforceable, the shareholders are able to impose the implementation of the decisions of the general meeting through forced execution. The **new Capital Market Law** does not propose significant changes of the current rules regarding the payment of dividends but a significant change is promoted regarding the shareholders entitled to receive dividends; while, according to the current legislation the shareholders from the reference date –established by the board of directors as a date prior to the GSM date- are entitled to receive dividends, the **new Capital Market Law** impose to the GSM to establish a date after the meeting that will identify the shareholders entitled to receive dividends.

The OECD recommendation regarding the payment dividend has been transposed partially in the Romanian legal framework; only if the general shareholders meeting does not establish the payment period, the dividends shall be paid within a 60 days period.

5 THE ROLE OF STAKEHOLDERS IN CORPORATE GOVERNANCE

Shareholders along with stakeholders (employees, creditors, suppliers, etc.) assure the success of companies. Therefore, it is in the best interest of companies to boost the co-operation and dialogue between them.

In Romania, notion as stakeholder is not very well known or understood. Employees and creditors are accepted as having legitimate interests in companies' corporate governance but neither of them is treated properly by many boards/companies.

5.1 Romanian companies should put in place governance mechanisms that ensure familiarity and compliance with outstanding legislation related to the rights of stakeholders (OECD recommendation – 2001)

Based on the recommendations included in the White Paper, companies should inform themselves and follow up on legal developments regarding stakeholders' rights, especially in the areas of labor law, health and safety, mortgage and bankruptcy law, as well as environmental law.

Romanian companies should clarify responsibilities among different company bodies regarding relations with relevant stakeholders. They should make sure that an adequate structure and an efficient mechanism are in place to know the company's obligation vis-à-vis these different stakeholders and to ensure compliance with these obligations. Such mechanisms could include formal information of stakeholders, and especially employees, about their specific rights, entitlements and avenues for redress.

In Romania the board should recognize its responsibility and leadership in defining corporate policy towards stakeholders. The board should be also responsible for supervising the implementation of the stakeholder policy decided on. In areas where stakeholder interests are not regulated, companies may still find it useful to develop voluntary policies that include commitments which go beyond common regulatory or conventional requirements.

The eight market institutions and operators that responded to our **questionnaire** have the following views regarding the need of elaborating procedures regarding the communication with stakeholders by the blue chips:

(i) 6 respondent entities considered that it is important such companies to establish these procedures;
(ii) 2 respondent entities refrained from providing an opinion on this issue.

In Romania there is room for improvement regarding governance mechanisms that ensure familiarity and compliance with outstanding legislation related to the rights of stakeholders.

Market participants believe that there is a need to elaborate procedures regarding the communication with stakeholders. They believe that it would be appropriate the blue chips to start elaborating and implementing these procedures, on a voluntary basis.

5.2 & 5.4 Effective consultation and communication with employees must be established. Greater protection must be given to employees and others, that reveal illegal or abusive practices of a company's board and management (OECD recommendations -2001)

Effective consultation and communication with employees

In the field of labor relations, a new labor code was adopted in January 2003.

In general, in Romania, in large companies, especially state-owned or formerly state-owned companies, employees have more influence on the most important decisions concerning their rights, compared to small companies.

In the past, before the new labor code was adopted, the situation was as follows:
(i) employees were rarely invited in the meetings of the Board to be informed about the financial situation of the company;
(ii) employees were rarely consulted in different important issues regarding the activity of the company;
(iii) employees were invited to the meetings of the board for wage negotiations;
(iv) employees had the right to be informed and to express their opinion regarding restructuring plans and lay - offs.

The new labor code, adopted under the Law no. 53/ 2003, established new rules in the relationship between companies/employers (shareholders/ board of directors/ management) and employees.

The new labor code was a subject of controversy between the owners and employees / unions, from the beginning. Many owners and associations of owners believed that the new code allowed employees to exercise too much power in the company. They believed that the law was a gift to employees.

The owners consider extremely rigid the following provisions of the new labor code:
(i) any delays in the payment of salaries or non-payment of salaries could oblige the employers to pay damages to employees;
(ii) the employers must communicate periodically, to employees, the financial situation of the company;
(iii) the employers must consult the union or employees representatives regarding the decisions which affect their interests;
(iv) if employees do not correspond professionally, the employer must propose them other positions in the company, according to their professional qualifications. If the employer does not have vacancy positions, it has the obligation to require support from the local authorities in charge with labor problems;
(v) the employer can fire employees for different reasons only after performing an investigation;
(vi) in the case of individual firing/ lay off, for financial reasons, the employer has the obligation to propose to their employees a training program and their redistribution;
(vii) in the case of collective firings/ lay offs, for financial reasons, the employer has to file a project for collective firing which have to be sent to unions/employees representatives. If the

unions make proposals for avoiding firings/lay-offs, the employer has the obligation to answer in writing and to justify its proposal.

The new labor code is introducing the concept of consultation between employer and union/employees representatives and stipulates the obligation of the employers to train their employees.

Under the new labor code, the working norms have to be elaborated by the employer with the agreement of the unions or employees representatives.

The main four areas where owners believe that there are some problems with the new labor code are: (i) the guarantee fund for payment of salaries; (ii) the role of unions; (iii) the individual working contract, especially the contract concluded for limited period; (iv) the bureaucracy related to contracts and working relationships.

Some analysts believe that the new labor code creates rigidity on the labor force market, through the obligations imposed to employers and encourages bureaucracy. The code was inspired from the European legislation which is considered to have the most advantageous provisions for the unions/employees compared to the legislation from USA where employers have more flexibility in working relationships.

The eight market institutions and operators that responded to our **questionnaire** have the following views regarding the efficient communication of management and directors with employees:
(i) 2 respondent entities believe that frequently this communication is efficient;
(ii) 3 respondent entities believe that rarely this communication is efficient;
(iii) 3 respondent entities refrained from providing an opinion on this issue.

The respondents have the following view regarding the progress registered in terms of corporate governance of the new labor code:
(i) 1 respondent entity believes that it determines a moderate progress;
(ii) 3 respondent entities believe that does not determine a progress;
(iii) 4 respondent entities refrained from providing an opinion on this issue.

The new labor code is creating the legal framework for increasing the consultation and communication between employers and employees.

Employers believe that employees are granted with excessive decision making rights through the new labor code. They believe that the new labor code is generating bureaucratic procedures, inefficiencies in the human resources departments, complex procedure for some lay-off processes and too much involvement of employees in issues which are not of their competence. The employers believe that the new labor code would affect negatively the efficiency of companies, especially of the companies which are in a restructuring phase.

Employees and the unions believe that the code is European and protects correctly the rights of employees.

The new labor code determines a progress in terms of better protection of employees' rights. However, due to the fact that employers believe that too many rights are provided to employees and this situation might negatively affect the activity of the company, it is difficult to say that the new labor code represent a significant progress in terms of corporate governance.

Greater protection must be given to employees and others that reveal illegal or abusive practices of a company's board and management

The eight market institutions and operators that responded to our **questionnaire** have the following views regarding the protection of employees and other persons who are disclosing illegal practices in the company:

(i) 5 respondent entities considered that the employees and other persons who disclosed illegal practices were not enough protected;
(ii) 3 respondent entities refrained from providing an opinion on this issue.

5.3 Creditors' rights must be honored, especially with regard to the bankruptcy procedures (OECD recommendation – 2001)

In Romania creditors as stakeholders have a weaker position than employees, due to the fact that they do not have, in many cases, any means to influence the decision making process.

It is well recognized that creditors' legitimate interests in companies are insufficiently protected. This is especially true during bankruptcy proceedings which are long and generally conducted with a bias towards management and other interested parties.

In Romania it is exceptional for banks to have representatives on the boards of companies.

Worldwide it is well known that the number of bankruptcy cases in an economy represents an important indicator for the evaluation of the functionality of the respective economy. In Romania the statistics show that the number of bankruptcy cases is several times smaller than in other EU countries.

Few considerations regarding the Romanian reorganization and bankruptcy market:
(i) the number of companies which entered a reorganization or bankruptcy procedure decreased in 2003 for the first time in the last 4 years;
(ii) the reorganization and bankruptcy market decreased in 2003 to USD 70-75 million;
(iii) in the last four years liquidation of the state owned companies represented , in terms of value, approximately 2/3 of the total liquidated assets;
(iv) in the last four years from the total of 73,948 applications opened for the bankruptcy procedure 42, 369 of them were solved.

The main legislation regarding bankruptcy procedure:
(i) Government Ordinance no. 64/1995 (GO 64/1995) regarding juridical reorganization and bankruptcy procedure;
(ii) Ordinance no. 38/2002 for modification and completion of GO 64/1995;
(iii) Law 149/ 2004 for modification and completion of GO 64/1995.

In the last years, in same cases, the state was allowed to suspend companies from the bankruptcy procedure. If APAPS received a letter of intention from a buyer, the procedure could have been suspended, with creditors still waiting to recover their money and with an increased liquidation cost. Also the state as creditor had priority in front of the rest of creditors, in some cases.

Recently, a new bankruptcy law was adopted by the Parliament, respectively the Law no 149/2004 which modifies and completes the GO 64/1995. The law is clearer and determines a more rapid implementation of the new bankruptcy procedure.

The main objectives of the new law are:
(i) to accelerate and simplify the judicial reorganization and the bankruptcy procedure;
(ii) to assure an equilibrium between the reorganization procedure and the bankruptcy procedure;

(iii) to eliminate enforced execution procedures which are made in parallel and which affect the procedure of judicial reorganization and the bankruptcy procedure;
(iv) to increase control on the activities of directors and liquidators.

The new law enlarged the number of cases in which the creditor could cancel the "suspect" deeds/documents (ex. the law added to the list the documents concluded by the company with shareholders). Moreover, the courts started to be better organized and a significant progress was made from the procedural point of view.

The Civil Procedural Code was modified in 2002 and 2003 and accelerated considerably the time needed for solving different cases. For instance, in cases where assets could be easily liquidated, the bankruptcy period could be of one year. Consequently, the time needed for closing a bankruptcy case is dependent more on the type of assets which have to be liquidated and not so much on the organization of Courts.

The new bankruptcy law determines a reduction of the means the debtor has to attack the bankruptcy procedure and an increased role of the syndic judge who becomes a supervisor of the procedure. However, due to the fact that a syndic judge may have many cases in parallel, the question is if he/she can make correct decisions, taking into account the level of information existing for each file. But, we need to consider also that the number of syndic judges increased.

The communication in the whole bankruptcy process would be improved due to the fact that a "bulletin" would be issued containing convocations, publicity of different activities/documents which are part of the bankruptcy procedure etc..

According to the new law, when the liquidator or the directors believe to be necessary, they could call the police institutions which are obliged to provide the necessary support in order the liquidators and directors to be able to fulfill their attributions.

For a short period of time, in the period 2002 – 2003, the state as creditor had priority for budget receivables in front of other creditors which did not have guarantees. Due to the fact that the banks and other creditors protested the provision was canceled starting to January 1st, 2004.

The eight market institutions and operators that responded to our **questionnaire** have the following views regarding the progress made in the last 4 years regarding the bankruptcy procedure and protection of creditors' rights:
(i) 6 respondent entities considered that a moderate progress was made;
(ii) 2 respondent entities refrained from providing an opinion on this issue.

In the last years significant progress was made regarding the bankruptcy procedure and protection of creditors' rights. However, for protection of creditors' rights additional improvements is recommended to be made.

6. DISCLOSURE AND TRANSPARENCY

According to the new CML criteria a significant number of issuers shall not meet the requirements to be traded on a regulated market. However, the NSC might issue some specific provisions to allow these companies to be further traded due to the fact that hundreds of companies could fall in this category and the implementation of this article could create some chaos in the market.

The minority shareholders are claiming some rules in order to be sure that whatever happens (e.g. trading on ATS) with these issuers they shall be under the obligation to disclose information. One of the minority shareholders' proposals is the following: companies that have more than 500 shareholders to timely disseminate accurate financial and non financial information to the appropriate agencies, shareholders, and the public at large.

6.1 In order to ensure the integrity of the accounting and auditing activities, the institutional and organizational structure in Romania needs to be strengthened (OECD recommendation -2001

According to The Government Emergency Ordinance no. 75/1999 regarding the financial audit activity, financial auditors must be independent and act free of any constraints that infringe the principles of independence, objectivity and professional integrity.[12]

Therefore all types of relationships (e.g employment relationships) between the financial auditor and the audited company is prohibited. The normative act of the Romanian Government regarding the financial audit also governs the self regulatory body of this profession, namely the Romanian Chamber of Financial Auditors.

The main responsibilities of the Chamber of Financial Auditors are the following:
(i) regulates the admission/exclusion from the profession;
(ii) tests and certificates financial auditors;
(iii) organizes the relevant training;
(iv) issues the financial auditor's code of ethics;
(v) issues controlling procedures for the financial auditors' activity, disciplinary procedures and the sanctions to be imposed in case of a breach of the rules;
(vi) enforces its own rules.

The financial auditing activity can be performed only by the members of the Chamber of Financial Auditors. In order to become a member thereof, certain requirements have to be met and an exam is organized by the Chamber.

From discussions held with professional auditors, here are some of our findings:
(i) In some isolated cases some financial auditors were changed by the companies management for doing well their job;
Due to the fact that the Companies Law is unclear regarding the entity entitled to appoint and revoke the auditor, the management or the Board could easily change the auditor, in some cases, without the approval of the general shareholders meeting.

[12] article 4 of GEO 75/1999

(ii) In some isolated cases some auditors wrote clean audit opinion (although the company did not deserve that) in order to be sure they would maintain the respective company as a client;
(iii) In some isolated cases companies could have two different audit opinions from two different auditors: one clean opinion and one qualified opinion;
(iv) The body of the Chamber entitled by the law to control the activity of the financial auditors is not enough experienced for performing this activity;
(v) Sanctions imposed by the Chamber to auditors in case of a breach of the rules are weak.

In Romania there is no supervision authority, like in other countries, to monitor the audit and accounting profession.

As a conclusion, it is the Chamber of Financial Auditors' responsibility to license and to watch over the financial auditors, and not the Government's[13]. The Chamber is overseen by the Ministry of Public Finances who has to ensure the full compliance of the Chamber's rules with the legal provisions in force.

The OECD recommendation has been transposed partially within the Romanian legal framework.

Though the necessary institutions already exist, it is extremely important that they focus on the enforcement of the rules governing the audit profession.

[13] art. 11 of GEO 75/1999

6.2 The Romanian accounting standards must be improved and their transition to the International Financial Reporting Standards (IFRS) must continue (OECD recommendation – 2001)

The Accounting Law no. 82/1991 was the pillar of the Romanian accounting system, for all companies, up to the year 2001 when the Ministry of Finance issued the Order (OMF) no. 94/2001.

Based on the OMF 94/2001 and the subsequent regulations regarding the audit activity, for the companies supposed to apply the audit requirements harmonized with the European Community Directive IV and International Accounting standards (IAS/IFRS), the provisions regarding the censors and the external independent censors shall stop being applied (please also consider the provisions of point 7.4 below for details). As a consequence, starting with the year 2001, the companies embarked for the application of the international accounting standards were obliged to have a financial auditor (natural or legal person) and were also obliged to start setting up an internal audit activity which included some of the former activities performed by the censors.

The accounting standards state that the issuers have to prepare the following financial statements:
(i) fixed assets;
(ii) reserves for risks and expenses;
(iii) profit distribution;
(iv) analysis of the main activity;
(v) accounts receivable and accounts payable, including other related details;
(vi) accounting principles, methods and policies;
(vii) shares and bonds;
(viii) data regarding employees, directors and managers, including their salaries and contractual relations with the issuer;
(ix) the main financial indicators;
(x) other information including: information regarding transactions with branches, subsidiaries and other affiliated persons, the auditors' fees.

Due to **IFRS/IAS implementation in Romania**, all listed companies implementing these accounting standards should migrate in the next few years towards financial auditors and internal audit departments and would renounce at having censors. This migration should also impact positively the quality of financial reporting.

According to the Order no. 94/2001 of the Ministry of Finance, a program for implementing IFRS was elaborated for the period 2001 – 2005. First companies which were already embarked for this implementation were: national companies, regies autonomes, companies listed on BSE and some of the companies listed on Rasdaq.

However, few standards of the IFRS were not completely implemented in the accounting system of the selected companies (companies had the option to apply the standards IAS 29, IAS 21 and SIC 19 but the financial reports including these standards were submitted only to the Trade Registry, for information of shareholders, stakeholders, other third parties etc.). Therefore, we can conclude that, at this moment, the Romanian companies do not apply "full" IAS/IFRS standards, under the provisions of the OMF 94/2001.

Once the Order of the Ministry of Public Finance no. 1827/2003 was adopted, Romania migrated to fully adoption of International Financial Reporting Standards (IFRS/IAS).

As such, companies meeting two of the following criteria would be obliged to apply full IFRS provisions as of December 31, 2004:
(i) turnover over EUR 7.3 million;
(ii) total assets over EUR 3.65 million and
(iii) average number of employees over 50.

Financial institutions, **companies regulated by the NSC**, national companies and autonomous public companies have to comply even if they do not meet the above criteria.

For these companies IFRS will replace the current statutory accounting and reporting framework**, with effect from January 1, 2005**.

All entities that have to fully comply with IFRS must apply the standards for the year 2005 and for the year 2004 which becomes a comparative year.

For small and micro enterprises, the Ministry of Public Finance issued the Order no. 306/2002, to approve the simplified accounting rules, harmonized with the European Directives. Therefore, as of January 1st 2003, all small and micro enterprises should comply with the provisions of this Order.

From the practice, we have some remarks regarding the implementation of IFRS and of rules regarding the internal audit activity:
(i) organization of the internal audit activity should be accelerated; there are not enough qualified people for performing this activity;
(ii) the need of IFRS training is huge while there is a big pressure on companies for IFRS implementation.

The NSC seems to be more and more concerned with the enforcement of the issuers' obligation to report the financial situations under a complete form and in due time, namely within the first four months of the financial year. Therefore, in 2003, the NSC imposed sanctions (warnings) to more than 2,000 issuers that were in breach of their obligation to send the financial statements for 2002. The NSC warned these issuers to perform their obligations within 30 days; otherwise, another sanction would be imposed. The next stage was to impose fines representing 0.5% of the share capital for those issuers that did not send the financial situation within the 30 day period.

The NSC, BSE and Rasdaq must verify whether the information provided in the financial statements and in notes is complete or not, and to find the appropriate measures to make sure that all missing information is provided. The efforts made to ensure the enforcement of disclosure rules should be strengthened.

6.3 Companies should improve the disclosure of their ownership and control structures (OECD recommendation – 2001)

According to the **current Capital Market Law**, when the percentage of the voting rights held by a person reaches or exceeds one of the thresholds/values of 5%, 10%, 33%, 50%, 75% or 90% of the total shares, that person and the registry must inform, simultaneously, the issuer and the NSC within five business days of the conclusion of the transaction or of the time of the acknowledgement. If a group of persons reaches or exceeds the said thresholds and therefore becomes a significant shareholder and/or acquire a majority or absolute majority control position, all the members of the group shall inform the issuer and the NSC.[14]

The **new Capital Market Law** brings some changes to the said rules, as follows:
(i) the 20% threshold shall also be reported;
(ii) the registry is no longer under the obligation of reporting such information, the obligation applying only to the shareholder;
(iii) the report shall be sent within three business days;
(iv) the report shall also be sent to the regulated market, and the issuer is under the obligation of making public the information received from the shareholders, within three business days;
(v) if the mother company fulfils the reporting obligation, its branch is not under the obligation of reporting the same obligation.[15]

A small improvement of the reporting rules can be noticed since the report is to be sent to more institutions and the reporting period is smaller.

The issuer is under the obligation of disclosing the significant and controlling shareholders (10% and 33%) through a report that shall be sent to the National Securities Commission and to the regulated market, and which shall be published in a national newspaper. The said report shall present the following information:
(i) the changes of the significant shareholders;
(ii) the name of the controlling shareholder (legal or natural person); if it is a legal person, it shall also provide the name of the natural person that controls it;
(iii) the number of shares held by the controlling entity, the degree of control;
(iv) the price paid for obtaining the controlling position;
(v) the person from which the control has been obtained and the description of the transactions having resulted in the controlling position;
(vi) details regarding the financing source, including the financing conditions;
(vii) any other information that can render the controlling position temporary.

Although the information to be provided is quite comprehensive, from the practical perspective, such reports are almost non-existent. In other words, the enforcement of this rule should be improved.

The annual report, as regulated by the NSC, does not necessarily include information about significant or controlling shareholders.

[14] article 127 of the Capital Market Law
[15] article 236 of the draft of the new Capital Market Law

In case of a breach of the rules regarding the disclosure of the significant or controlling shareholders, NSC can impose sanctions such as warning notices or fines.

Although formally the OECD recommendation is transposed within the Romanian legislation since 1996, a special focus is necessary to be made on the enforcement of the issuer's obligation to disclose their ownership and control structures.

Moreover the NSC regulation should be amended by including into the minimum content of the annual report the shareholders or the group of shareholders holding over 5% of the shares.

6.4 Listed Companies must timely disseminate accurate financial and non financial information to the appropriate agencies, shareholders, and the public at large (OECD recommendation – 2001)

Listed companies are under the legal obligation of organizing an internal audit department. The main responsibilities of this department are the following:

(i) to verify whether the company's activity complies with its own programs, policies and management, including compliance with legal provisions;
(ii) to assess the degree of efficiency and adequacy of the financial and non-financial controls organized by the company's management with a view to increasing the efficiency of the company's activity;
(iii) to assess the degree of adequacy of the financial and non-financial data and information provided to the management for a better acknowledgment of the company's current situation;
(iv) to protect the company's patrimony and identify the adequate methods of preventing frauds and losses of any type.

Although the law requires to every issuer to organize an internal audit department, this obligation is not executed yet by some issuers.

According to the law, the internal audit department is independent from the management.

The law does not require the existence of an Audit committee and, consequently, such a committee can be found extremely rarely in the Romanian companies.

We have asked in our questionnaire whether the internal auditor should verify the enforcement of the regulated market rules by the issuers. The respondent entities had the following opinions:

(i) the internal auditor should verify whether the company complies with the capital market rules – 6 respondent entities;
(ii) the internal auditor should not verify whether the company complies with the capital market rules – 2 respondent entities.

The issuers are under the obligation of preparing and sending to the NSC and to the regulated market where they are traded, three types of reports, namely:

(i) the Annual Report

Given the extent of such a report, the company is not obliged to publish it entirely, but a short notice indicating that the report is available and how it can be obtained.

This report shall be finalized, sent to the market institutions and made available to the public by no later than end of April.

The report must include the following type of information:

- Company's activity (e.g. current and future activity, mergers, sell/purchase agreements for assets, changes of the business plan, main products and their markets, new products, any significant dependence of the company to a client or a group of clients, suppliers, competition, employees, analysis of expenses, economic changes that can significantly affect activity);

- Material assets (e.g. the main properties of the company and the problems related to the ownership right, if any);
- Regulated market of the issued securities (e.g the market/markets where the securities are listed, the rough number of the securities holders, the dividend policy);
- Management of the company (e.g directors and their names, their transactions with the company, their participation to the share capital, the litigations involving these persons);
- Balance sheet and its appendices;
- Appendices: constitutive act (if some changes intervened), significant contracts, resignation acts of the management/directors, branches, affiliated persons.

(ii) The Half -Annual report

A notice indicating that the report is available and how it can be obtained must be published in a national newspaper.

This report shall be finalized, sent to the market institutions and made available to the public, according to the new CML in maximum 60 days from the end of the first semester.

The report has to include the following types of information:

- the analysis of the company's activity
- the changes of the share capital and directors
- the financial situation for the first semester.

(iii) The Current Report

Such a report shall be prepared whenever occurs an important event that can affect the market price.

The report shall be published in a national newspaper, and shall be sent to the regulated market and to NSC, according to the current CML within 24 hours of its occurrence.

The new CML imposes that the current report shall be made available within 48 hours of its occurrence.

The most common cases of important events are the notification of the general shareholder's meeting and of its resolution. The list of such events continues with various situations such as litigations, changes of control, significant sale/purchase agreements, new products etc..

(iv) The Quarterly Reports

The **new Capital Market Law** imposes the obligation to prepare on a regular basis quarterly reports also.

(Note: The BSE imposed quarterly reporting starting to 1995).

The general principle included in the law provides that the information should be accurate, complete and made public at the appropriate time.

There is no legal requirement for the issuer to post the financial information on the Web. Unfortunately the number of Romanian issuers having a Web site is very small, and the number of Romanian issuers voluntarily posting the financial information on the Web is even smaller.

A special analysis has to be done with regard to the BSE issuers (approximately 80% of issuers have a Web page). But in Romania there are thousands of publicly held companies, out of them only 59 companies are listed on the first and second tier of the Bucharest Stock Exchange.

It is worth mentioning that one of the requirements for the maintenance of the shares at Bucharest Stock Exchange's "plus tier" is to post financial and non financial information on the Web. The fact that only one issuer meets the PLUS tier requirements speaks for itself.

As a general remark, the issuers listed on Bucharest Stock Exchange are complying with the disclosure requirements in a timely and complete manner.

During 2003, RASDAQ market has launched a campaign aiming to increase the issuers' transparency degree. One of the most important measures was to establish three tiers; for the first and the second tiers certain requirements have to be fulfilled. As a result of RASDAQ and NSC efforts, during 2003, 1,117 issuers listed on RASDAQ have sent reports to the market, compared with 313 during 2002. Although the number of reporting issuers has registered a huge increase, there are still many things to be done in this respect considering that at the beginning of 2004 there were 4,442 issuers listed on RASDAQ market.

Regarding the completeness of the issuers' reports, both the NSC and the regulated markets have the legal power to ask the issuer to complete the report. Important achievements in this respect have been registered regarding the Bucharest Stock Exchange issuers, where reports are more and more detailed.

The financial situations of the publicly held companies have to be audited by financial auditors.

In its effort to provide more and more information to investors, the Bucharest Stock Exchange asked the listed issuers to report their financial calendar including: (i) the reporting date for the preliminary financial information for 2003, (ii) the approval of the financial statements for 2003, (iii) the financial statements for the first and the third quarter of 2004 and for the first semester of 2004. This initiative was extremely successful as 58 (out of a total of 59 issuers) of the listed companies have responded to the BSE request. Until March 31, 2004 all of them observed the reported deadlines. Moreover, the issuers listed on the BSE made public their preliminary financial information for 2003 (before their approval by the general shareholder's meeting).

The institutions and market operators consider that the issuers are complying with the capital market disclosure requirements as follows:

(i) between 10-30% of the issuers – 1 respondent entity;
(ii) over 90% of the issuers – 1 respondent entity (important note: this answer is related only to the BSE issuers);
(iii) 6 entities did not answer this question.

6.5 The potential liability of external/financial auditors should be increased and enforced to ensure their independence and integrity (OECD recommendation – 2001)

According to the law, the Romanian Chamber of Financial Auditors established internal structures that should investigate misconduct and impose sanctions. Moreover, it is possible to involve the judicial system in disputes arising from an auditor's activity.

If the auditors' misconduct represents a criminal offence the prosecutors can initiate a criminal action against the auditors.

So far, we have not heard of any sanctions being imposed on an auditor on account of having breached the rules.

The efforts for enforcing the rules regarding the liability of financial /external auditors should be strengthened, and the NSC should inform the Romanian Chamber of Financial Auditors whenever considers that a financial/ external auditor is not performing his/her duties in accordance with the relevant normative deeds (e.g. if the audit report does not mention the related party transactions).

Actually, the new Capital Market Law provides to the NSC the formal opportunity to inform Romanian Chamber of Financial Auditors Chamber about auditors' irregularities.

7. THE RESPONSIBILITIES OF THE BOARD

In Romania, the Companies Law allows the chief executive officer/the general manager (CEO) to be the chairman of the board of directors.

The chief executive officer is the only executive allowed by the law to be part of a board of directors.

In practice, in many boards, executive managers are members of the board of directors although they are not allowed by the law. This situation is maintained due to the fact that the Companies Law is not providing concrete sanctions.

Taking into account the situation mentioned above, we can conclude that in Romania we are closer to the **two – tier board system** (supervisory board and management board) from the legal point of view and to the **one -tier board system** if we take into account some of the practice.

Along the text of the report, we used the term "board of directors".

7.1 Legislation should clearly stipulate that the Boards' duty is to serve in the interest of all shareholders (OECD recommendation – 2001)

The Board members /directors should act on behalf of the company and therefore should protect the interests of the company and its shareholders. The reference to shareholders should be always translated as a reference to all shareholders, regardless of their equity participation in the company. All shareholders have to be treated in a fair and equitable manner.

It is fundamental for the board members to understand that their individual and collective loyalty should be to the company and to all shareholders. They should not represent specific shareholders within the Board, having the duty to act with diligence and care.

The Companies Law does not clearly stipulate the general attributes of a desirable member of the Board, such as loyalty towards company and all shareholders, strength of character, independent mind, practical wisdom, mature judgment and, of course, independence. The law does not clearly stipulate that the Boards' duty is to serve the best interest of the company and its shareholders.

The law provides the following provisions related to the duty of loyalty:

(i) the boards are liable to the company for the acts of the executive managers and employees, when the damage caused to the company would have not occurred should the boards had exercised their duties;

(ii) the directors of the board are jointly liable with their predecessors if having knowledge of some irregularities committed by their predecessors did not disclose them to the censors.

According to the Companies Law, the director having in a certain transaction a direct or indirect interest, contrary to the interests of the company, must inform the other directors and censors and he/she can not take part in the proceedings concerning the respective transaction. The director has the same obligation if he/she knows that his/her spouse, relatives or associates are interested in a

certain transaction. The director who does not comply with this provision shall be liable for the damage incurred to the company.

Based on the article 150 of the Companies Law, legal action against the founders, directors, censors and the managers of the company can be decided by the general shareholders' meeting. The decision can be made in the general shareholders' meeting even if the issue regarding directors' liability is not included on the agenda. This provision limits the possibility of minority shareholders to initiate legal action against the directors of the company.

However, the article 152 of the Companies Law provides that in case the directors or managers conclude legal documents damaging the activity of the company, and the company, due to the position the directors and managers have in the company, does not act to recover the damage from the respective representatives, any of the minority shareholders has the right to start legal action, in the name of the company, to recover the damage.

The article 98 (2) of the **current Capital Market Law** stipulates that NSC shall issue regulations to protect and guarantee the rights resulted from investment in securities and other financial instruments. The law stipulates in the article 99 and article 100 that it is forbidden to abusively use the position of shareholder, board member/director or employee through non-loyal and fraudulent facts which have the object or the effect: (i) prejudicing the rights resulted from investment in securities and other financial instruments and (ii) prejudicing the holders of these securities and financial instruments.

On the other hand, the holders of securities should exercise their rights in good faith, should observe the rights and the legitimate interests of the rest of holders and the priority interest of the company/issuer, otherwise being responsible for the damages provoked.

The current Capital Market Law stipulates under the article 106 a procedure regarding reporting which should be made by the financial auditors/censors regarding some operations of the company. Shareholders owning individually and collectively at least 5% of the shares of the company can request, on a quarterly basis, reports on some specific operations of the company. The directors and the financial auditors/censors should prepare the report in 15 days and the report should be made public in the NSC bulletin. However, if directors and financial auditors/censors do not comply with this requirement or the report does not contain relevant information, the shareholders who requested the report could ask the court to name an expert who shall analyze the operations. The conclusions of the report would be published in the NSC bulletin. However, until the conclusions are published the directors and financial auditors/censors would be obliged, jointly with the company, to pay for damages for each day of delay.

Under the article 115 of the same law, any contracts to buy, sell, exchange or set up collaterals with "non current assets" (defined as tangible, intangible and investments in securities), which individually or cumulatively represent more than 20% of the "non current assets" minus receivables, over one year period, will be concluded by the managers and by the Board of directors only after the GSM will make a preliminary approval. The law stipulates a similar provision for renting the assets. Should the directors and managers not comply with these provisions, any shareholder can ask the Court to cancel the contract not approved by the GSM and to sue the members of the Board for the

damages provoked to the company. The same provision is maintained in the **new Capital Market Law.**

The **new Capital Market Law**, under the chapter "Issuers", eliminates the provisions of the article 98 (2) of the current law and maintains the provisions of the articles 99 and 100 mentioned above.

In addition, there are two new articles mentioning that issuers/companies shall ensure equal treatment for all holders/investors of the same type and class /category of securities and will put at their disposal all the necessary information in order for the holders to exercise their rights.

Compared to the article 106 of the **current Capital Market Law** (above mentioned), the new law mentions only about the obligation of the financial auditors to prepare reports at the request of shareholders holding at least 5% of the company shares.

The Romanian Shareholders Association has enumerated some of the **abuses made by some Board members**: (i) no analysis is provided for the capital expenditure plan; (ii) refusal to call a GSM (which is a criminal offence); (iii) signing contracts against the interests of the whole company; (iv) trading on insider information; (vi) un-equal treatment of shareholders; (vi) lack of supervision for transfer pricing; (vii) in kind contributions and disposal of assets at non fair values; (viii) dividends paid with discrimination; (ix) dividends declared and not paid; (x) transactions performed with related parties; (xi) lack of disclosure and transparency; (xii) refusal of some directors to provide to shareholders the documents to be discussed in the GSM, before the GSM; (xiii) omission by some directors to notify the shareholders about major extraordinary events (ex. starting of a bankruptcy procedure etc.); (xiv) in some cases - false reporting.

The Companies Law and the **current Capital Market Law s**tipulate the sanctions which could be applied to directors, founders, executive managers etc.. However, in practice, there were very rare cases when directors were found liable and sanctioned. The NSC sanctioned some directors by issuing warnings and fines.

The **current Capital Market Law** stipulates that directors found liable, either alone of collectively, should be asked to repair the prejudices provoked to the company. However, the law does not make any clear provisions regarding collective and individual liabilities,

The eight market institutions and operators that responded to our **questionnaire** have the following views regarding the way the directors act in the interest of the company and all shareholders:

(i) 4 respondents considered that frequently and very frequently directors act in the interest of the company and of all shareholders;
(ii) 2 respondents considered that there are rare cases when members of the Board of Directors act in the interest of the company and of all shareholders;
(iii) 2 respondents refrained from providing an opinion on this issue.

The OECD recommendation was not implemented in the Romanian legislation although the capital market legislation was changed in 2002 and 2004. Only partially and indirectly the recommendation is found in the text of the Companies Law, the current or the new Capital Market Law.

Collective and individual liabilities are not clearly defined by the legislation for effective evaluation and monitoring of the Board's activity. Sanctions stipulated by the Companies Law and by the current Capital Market Law are weakly enforced in practice. Cases when directors were found liable were extremely rare.

Market institutions and operators have totally different opinions regarding the way the members of the Board act: some of them believe that directors usually act in the interest of the company and all shareholders while others consider that they very rare do so.

7.2 Board members should be enabled to carry out their duties in a professional and informed manner (OECD recommendation – 2001)

Directors need to properly fulfill their responsibilities and not merely act as a tool of the majority shareholder and/or management. They need to have adequate qualifications and information on the company.

OECD recommended that, given the limited number of qualified and experienced board members, the legal restrictions that limits board members from serving on no more than three boards to be relaxed.

The BSE Corporate Governance Institute

Given the limited number of qualified and experienced board members, OECD recommended in 2001 a Directors' Institute to be established in order to enhance board professionalism.

In August 2003 the BSE set up the Corporate Governance Institute of the BSE. This Institute is the only Institute having explicitly the objective of promoting corporate governance in Romania.

The scope of the Institute is to actively participate for dissemination and implementation of European and international corporate governance principles. The Institute would promote, for publicly owned companies, the transfer of international know how towards directors/managers/employees.

The Institute intends to organize training through international co-operation and to standardize the corporate governance experience. Training programs would be focused in the capital market field.

Other additional objectives of the Institute are: (i) understanding by participants of economic and social reality of Romania and of other international economies/countries; (ii) organization of projects, programs, seminars and conferences for understanding by participants of the capital market issues in general and BSE issues in particular.

Last but not least, the role of the Institute is to create and promote a managerial culture at the European standards for the Romanian listed companies and to promote OECD corporate governance principles.

Currently the Institute is still in the process of organizing its activity, no major activities being developed.

From the eight market institutions and operators who answered to our **questionnaire**, six of them considered important and very important the existence of an institutional framework to ensure for Board members (i) professional training; (ii) sharing experience; (iii) testing professional qualifications; (iii) creation of a database with Romanian and foreign directors. Two respondents did not answer to the question.

Some of the respondent entities provided some feedback regarding the activities which should be developed by the Institute. One respondent entity considered that would be important the Institute to perform the following activities: (i) to identify factors which may influence the decision of potential investors to invest in the Romanian capital market; (ii) to help the issuers in increasing their transparency; (iii) to help identifying and developing benefits for company's management and directors.

Another respondent entity believes that the main activities of the Institute should be: (i) elaboration of a „Director's Guide" ; (ii) training for members of the board; (iii) issuing periodical bulletins to contain information regarding corporate governance; (iv) educational campaigns for shareholders; (v) elaboration of a Best Practice Guide etc..

OECD recommendation regarding the establishment of a Directors' Institute was implemented through the establishment of the BSE Corporate Governance Institute, in August 2003. The Institute did not start its activity.

The market institutions and operators believe that it is very important the Institute to start its activity.

Management should provide all relevant information to board members

In order to insure dully informed and independent decisions by the Board, Board members should have full access to all relevant information. It should be clearly stated that the management is obliged to provide this information to Board members.

In Romania the legislation is promoting the concept of two-tier boards (with the exception of banks), separating the supervision and the management functions. According to the two –tier concept, the board should be composed of non-executive board members, with the exception of the CEO which could be the chairman of the board.

There are no explicit articles in the Romanian legislation to mention that Board members should have full access to all relevant information and that it is the obligation of management to provide this information. As such, in some cases, independent Board members or directors representing minority shareholders might have difficulties in gathering the relevant information needed in the decision making process.

However, the Companies Law stipulates that the management is obliged to present in front of directors written reports regarding operations executed by them. The nature of these reports is established through the Constitutive Act and organization and functioning rules of the board and management.

The eight market institutions and operators that responded to our **questionnaire** have the following views regarding the access of directors to company information:

(i) 6 institutions believe that members of the board have very frequent and frequent access totally and promptly to all relevant information of the company;
(ii) 2 institutions did not provide an answer.

The legislation is vague regarding the obligation of management to provide full access of directors to all relevant information from the company.

Although the market institutions and operators believe that directors very frequently and frequently have access to all relevant information needed in exercising their duties, we believe the Companies Law should be explicitly amended and provide the right of directors to all relevant information.

Limitations regarding the number of board seats

Based on the provisions of the Companies Law, the directors are allowed to be on a maximum **three boards** at the same time. However, the law stipulates that the interdiction above mentioned does not apply in the case the respective director is owner of at least one fourth of the total shares of the company where he/she is elected (or he/she is a director in a company which holds at least one fourth of the total shares of the company where the election of the board is made).

Civil servants acting as board members

In Romania, in November 2002, the Government publicly recognized that a significant number of its advisors, who were civil servants, were members of boards in some private companies.

The Parliament members, the Government members, the elected officials and the public officers are not allowed to be simultaneously members of boards or managers of commercial companies, according the **"anti-corruption law"** which was adopted by the Parliament in 2003.

Corporate governance responsibilities of the boards

The Board should be responsible for putting in place a structure of corporate governance that assures compliance with relevant legislation. Board responsibility should include deciding on company objectives, evaluating performance and deciding on remuneration of management.

Based on the OECD Principles, Chapter V: "the corporate governance framework should ensure: (i) strategic guidance of the company, (ii) effective monitoring of the management (by the board) and (iii) board's accountability to the company and shareholders".

The board of directors is crucial in promoting and implementing corporate governance standards and practices.

The **duties and the powers of the board of directors** are found mainly in the following laws and regulations: (i) Companies Law; (ii) Capital Market Law; and (iii) Constitutive Act. In addition, the Board members must observe (i) the Board of Directors' Rules adopted by each company, (ii) the rules and procedures applied to publicly traded companies and issued by the National Securities Commission, by the Bucharest Stock Exchange or Rasdaq, (iii) the BSE Code of Corporate Governance (as the case may be).

In practice, in the overwhelming majority of cases, at the moment of appointment of a director, there is no contract which is signed between the company and the directors or between the directors and shareholders. Therefore, it is only implied that, all the laws and rules mentioned above must be observed by the appointed directors.

Based on the **Constitutive Act** of each company, additional duties/responsibilities have to be observed by directors. However, these duties are different from company to company, according to shareholders view.

According to the Constitutive Act and to the rules of organizing and functioning of the board, the main duties and responsibilities of directors are:

(i) To review the corporate strategy, business plan, company objectives, major plans for action, and risk policies of the company;
(ii) To make proposals to shareholders for the approval of the Annual Report which contains, at least: the report of the board, the annual financial statements, the report of the financial auditors/censors, the budget for the next year (including the capital expenditures etc.);
(iii) To appoint, monitor and compensate the key executives of the company; compensation should be related to the objectives of the company which need to be set;
(iv) To ensure the integrity of the company's accounting and financial reporting system, including an independent audit; the Board has to make sure that appropriate systems of control are in place, in particular, systems for monitoring risk, financial control, and compliance with the law;
(v) To make recommendations and proposals to shareholders for the selection of financial auditors;
(vi) To make sure the activity of the "Internal Audit" Department is organized properly inside the company;
(vii) To monitor and manage potential conflicts of interests between management, directors and shareholders, including misuse of company assets and abuse of related party transactions;
(viii) To monitor the corporate governance implementation and the corporate performance, the effectiveness of governance practices under which it operates;
(ix) To oversee capital expenditures, acquisitions and divestitures, the process of disclosure and communication;
(x) To call upon the GSMs for ordinary or extraordinary sessions;
(xi) To provide continuous and periodic disclosure of information to shareholders and to potential investors;
(xii) To approve the organizational chart of the company;
(xiii) To make sure that all the necessary rules and procedures are in place and are implemented;
(xiv) To negotiate or delegate to the management the right to negotiate the Collective Bargaining Contract with the union;
(xv) To supervise and oversee the management in elaborating all the procedures of the company;
(xvi) To decide regarding loans, acquisitions, divestitures, renting, leasing etc., in some limits, as established by the Constitutive Act or by law;
(xvii) To approve the insurance policy of the company;
(xviii) To protect the company's patents;
(xix) To propose to the GSM the setting up of joint stock companies;
(xx) To oversee the overall internal and external communication of the company;

(xxi) To ensure timely dividend payments to shareholders, ;
(xxii) To maintain the legal registries;
(xxiii) To implement the decisions made by the GSMs;
(xxiv) To comply with the Romanian laws and by-laws of the company.

Moreover, the Board is acting and should further act as a "training agent", in particular in the area of capital market legislation, for the executive management.

The **current Capital Market Law** provides additional duties to the board members in the case of takeovers.
The current law stipulates additional responsibilities of the Board in the following cases:
(i) if shareholders owning more than 5% of shares request quarterly reports from the financial auditors regarding some specific operations;
(ii) if the GSM delegates to the Board some of its attributions;
(iii) in the case of dividend payment;
(iv) in the case of buy/sell/ exchange or setting of collaterals for "non current assets";
(v) in the case of renting assets;
(vi) in the case of in kind contributions and for capital increases which shall be made based on asset re-valuation.
As re-enforced by the art. 133 of the **current Capital Market Law**, the board has to keep confidential all the matters involving the company until there has been a general disclosure to the public. They also have to make sure that the directors and the management do not trade shares of the company when price sensitive facts have not yet been disclosed to the general public.

The board has to insure that the business and other opportunities available to the company are not taken by a director or other members of the management (or by relatives, friends, outside business associates), for personal gain. The directors have to avoid conflicts of interest and apparent conflicts of interest. The directors have to also monitor and manage conflicts of interest and should make sure that adequate procedures are in place, especially regarding related party transactions.

The **new Capital Market Law** does not provide the same level of details regarding the duties and responsibilities of the Board, compared to the **current Capital Market Law**.

The eight market institutions and operators who answered to our **questionnaire** have the following view regarding the authority and the strategic role of the directors:
(i) 5 respondent entities believe that frequently directors have enough authority and play a strategic role in the development of the company; two of these respondents believe that the strategy is established by the majority shareholder;
(ii) 2 respondent entities did not provide an answer.

Most of institutions and operators which answered to the questionnaire mentioned that they are not aware of case where directors were found liable for some damages provoked to the company. If these cases exist, they are extremely rare.

The board is the center of the corporate governance system, being the link between shareholders, stakeholders and managers and between the company and the outside world.

The main duties of the board are: (i) monitoring management; (ii) monitoring conflicts of interest; (iii) protecting the rights of all shareholders; (iv) being responsible for disclosure etc..

The shareholders, through the constitutive act, are very important corporate governance agents. Through the constitutive act specific requirements to the Board could be introduced by shareholders to implement good corporate governance principles.

7.3 Companies should have a sufficient number of independent directors (OECD recommendation – 2001)

OECD recommended listing requirements to stipulate that companies have a sufficient number of independent directors, i.e. non-executive, not related to the company or to the controlling shareholders. It was recommended independence to relate to anything (ex. political parties) that may influence decision making in a way that takes the focus away from the business perspective.

The Companies Law, the current and the new Capital Market Law do not mention any provisions about the independent directors.

The notion of independent director was introduced by the Bucharest Stock Exchange, in the **Code of Corporate Governance**. The Code of Corporate Governance issued by the BSE provides that at least one director should be independent, if companies are listed to the plus tier. According to the Code, the independent director is the person that cumulatively meets the following requirements:

(i) should not be a relative of directors, management, significant shareholders of the issuer or of directors and management of significant shareholders, if the significant shareholder is a legal person;
(ii) should not be an employee or a member of the board of the majority shareholder, if the majority shareholder is a legal person;
(iii) should not receive any payment, other than the board fee, from the issuer or its branches;
(iv) should not be a party of a contract concluded with the issuer or its branches.

However, the concept of **independence from shareholders and management** is not defined. The two concepts of independence are very important considering the fact that it is extremely rare to find directors being independent from shareholders on one hand and from management on the other hand.

According to the BSE Code of Corporate Governance, the issuer shall provide in the Annual Report the name of independent directors.

The seven market institutions and operators that responded to our **questionnaire** believe that it is important to have one or more independent directors in the board. One institution did not provide an answer.

The eight market participants and operators who answered to our **questionnaire** have different opinions regarding the independence of directors from shareholders and management:

(i) 2 respondent entities consider that rarely directors are independent;
(ii) 4 respondent entities consider that directors are not independent;
(iii) one respondent entity considers that directors are rather not independent from shareholders but independent from management;
(iv) one respondent entity did not answer to our question.

In Romania, the concept of the independent directors is quite new. The Capital Market Law and listing requirements do not require companies to have one independent director or a sufficient number of independent directors.

Audit, Nomination and Compensation Committees (composed of independent directors) are not defined under the Romanian legislation or capital market rules.

There are no cases or extremely rare cases where companies established voluntarily specialized committees composed of independent directors.

In general, the market participants believe that directors are rather not independent or if they are independent they are independent from management but not necessary from shareholders. As such, the presence of truly independent board members is still an exception.

7.4 The effectiveness of the Board should be strengthened through the use of specialized committees, including an Audit Committee, to replace the censors (OECD recommendation – 2001)

Audit, Nomination and Compensation/Remuneration Committees (composed of independent directors) are not defined under the Romanian legislation or under the capital market rules.

According to **international standards**, the Audit Committee should act based on written procedures regarding its responsibilities and obligations. The Audit Committee should provide an annual letter to shareholders regarding its activity and also should make an interim revision of the quarterly financial reports. The Audit Committee should revise the press releases regarding the financial situation, should evaluate the accounting policies selected by the management, should review significant or un-common transactions and should discuss the financial statements with the management and the external auditor. All in all, the Audit Committee has three fundamental responsibilities: (i) evaluate the internal and external audit process; (ii) oversee financial reporting and (iii) assess the processes related to the company's risks and control environment. The Audit committee should assess the risks of fraud at all levels of management.

Internal auditors are responsible for monitoring the performance of company's internal controls while the independent financial/external auditors are responsible for auditing and attesting the company's financial statements.

An independent communication and information flow between the Audit Committee and the internal and financial/external auditors is recommended, in order to improve the effectiveness of their activity.

Based on the art. 140 of the Companies Law, the board of directors can delegate part of its responsibilities to a **Directors' Committee**, composed of members selected from the board of directors. The Chairman of the Board may be the CEO (general manager of the company) who may be also the chairman of the Directors' Committee.

The Directors' Committee must inform the Board of Directors immediately of any violations observed in the process of exercising its duties. The Directors' Committee has to meet at least once a week, in the company.

In practice, in Romania, such delegation does not take place. There are extremely rare cases where the Board delegates a part of its responsibilities to a Directors' Committee.

However, informally, in some boards, a delegation of directors' attributes/responsibilities takes place among the board members. In the board meetings, directors present their opinion on some specific issues (ex. financial statements, legal issues, operations, capex, human resources etc.), making also a recommendation to the whole board. In this way, the activity of the board becomes more efficient.

In Romania, the Companies Law provides that a joint stock company has to have 3 censors (statutory auditors) and 3 deputies. Recently, the Companies Law introduced the concept of "financial auditor" without eliminating the concept of censors (statutory auditors).

The current Capital Market Law provides that the companies traded on a regulated market have to appoint financial auditors. The new law does not make any reference to the censors.

The most important duties of the censors (statutory auditors) are: (i) to participate in Board meetings and eventually express their opinion; (ii) to supervise the activity of the company; (iii) to check if the financial statements are legally presented and to check if the patrimonial elements were valued as required by the law. They are also obliged to (i) inspect some activities of the company on a monthly basis, (ii) to call the ordinary and extraordinary shareholders meeting, if the meeting was not called by directors; (iii) to make sure the provisions of the Companies Law and Constitutive Act are implemented by directors. They have the obligation to inform the directors or the GSM, as the case may be, if they observe that mangers and directors do not comply with the legislation.

When the Companies Law was changed, some **attributions of the censors were not covered by the financial auditors**:

(i) censors issued a certificate to demonstrate that the directors deposited their guarantees;
(ii) censors were obliged to participate at all board of directors meetings;
(iii) in the case of vacancy of one director, the censors together with the other directors, appoint a temporary director until the GSM was called.

Additional attribution of censors compared to the attributions of the financial auditors:

(i) censors are elected by the general shareholders' meeting (it is not compulsory for the financial auditor to be elected by the GSM);
(ii) censors are obliged to participate in the GSM; censors are obliged to verify if the GSM is held according to the provisions of the Companies Law;
(iii) censors could make proposals for the agenda of the GSM;
(iv) censors could obtain from directors monthly reports regarding some operations of the company.

According to article 133^2 of the Companies Law a significant shareholder (10% of share capital) can request to the Court to name one or more experts to analyze some operations of the company and to prepare a report which should be submitted to censors for analysis and for taking all the necessary measures needed.

Art 149 of the Companies Law stipulates some very important duties of the censors in the case a shareholder complains about some activities of the company. Under the provisions of this article censors could call the GSM, if the complaint is made by shareholders representing 25% of the share capital.

However, the censors (in companies where they still exist) should supervise and control, not only the activity of the company but also the correctness and the opportunity of transactions or contracts concluded by the company with its directors, employees, shareholders or related or affiliated parties.

Common attributions of censors and financial auditors, according to the Companies Law:

(i) directors have to present to censors/financial auditors, one month before the GSM is held, annual financial statements, their report and other necessary documents;

(ii) the report of censors and financial auditors, along with the annual financial statements and directors reports should be made available to shareholders with 15 days in advance of the GSM.

Unfortunately, in many companies, the censors were/are not recognized as independent parties and they are rather recognized as being subordinated directly or indirectly to the management / majority shareholders.

It is recognized that the censors, which were supposed to provide certain auditing and compliance monitoring functions, have been largely ineffective, this situation further weakening the board by creating confusion regarding the relative responsibilities of the two bodies.

Currently, the following situation exists:

(i) censors are replaced by financial auditors while the process of IFRS implementation takes place;

(ii) some important attributions of censors (especially regarding some redress mechanisms for minority shareholders) were not transferred to the financial auditors and were not taken by any other entity;

(iii) there is no legislation to define the role and attributions of the Audit Committee;

(iv) the appointment of the auditors, in some, was delegated to the procurement department and was done as a one year contract; in some cases the only criteria used for the election of the auditor was the financial criteria;

(v) many companies had statutory accounts and also full IFRS/IAS accounts but they sent to the NSC, BSE and Rasdaq only the statutory accounts. NSC, BSE and Rasdaq did not require explicitly the IFRS/IAS accounts to be communicated to the market, if available.

In Romania there are extremely rare cases where Audit Committees could be found. If they exist they are established voluntary by shareholders.

The boards are not certifying that the financial statements provide accurate and relevant information on the state of affairs of the company. This certification is coming from the financial auditors.

Under the new accounting legislation, some of the responsibilities of censors needed to be gradually delegated to the financial and internal auditors. However, in this process, some responsibilities are rather missed and taken neither by financial auditors nor by internal auditors.

7.5 The board and board members should operate in a fashion that is transparent, and consistent with the intentions of the general meeting. This includes the nomination and remuneration of directors (OECD recommendation – 2001)

Nomination of board members

In Romania, the appointment and the replacement of the board of directors is exclusively made by the General Shareholders Meeting (GSM), in the ordinary session, following a secret ballot procedure.

According to the **Companies Law**, unless the Constitutive Act does not otherwise stipulate, if the seat of one or more directors becomes vacant, the other directors together with the censors, with a quorum of two thirds and with absolute majority, proceed to the appointment of temporary director until the next GSM will be called upon for the final approval of the director. In practice, the timing is not clearly stipulated and for a few months (sometimes for more than six months), some positions remain vacant in the boards. In addition to that, the Companies Law does not clearly stipulate what is happening when financial auditors replace the censors.

All shareholders have the right to nominate candidates for the board of directors. They could send their proposals (CVs/biographies) in advance or could make proposals directly in the GSM.

The Companies Law stipulates that the annual financial reports etc. should be available to all shareholders 15 days before its date. However, there is no obligation regarding the CVs/biographies of nominees to be sent to the company within a specific number of days, before the meeting is held.

In practice, some shareholders would send in advance a letter nominating their candidates and would attach a CV/biography. Other shareholders would make their recommendations directly in the general shareholders meeting.

If the proposals for nominees are not sent to the company and are made by shareholders directly at the meeting, there is less transparency in the nomination process and shareholders have to be present in the meeting to know the full list of nominees.

The CVs/ biographies do not have a standardized format; each candidate/nominee is free to decide about the content of his/her CV/biography.

The nominees are not obliged to be present physically in the meeting, when they are elected as Board members. In general, the nominees participate in the general shareholders assembly and are allowed to introduce themselves in front of all shareholders participating at the meeting.

There is no procedure for nomination of Board members included in the current legislation or rules. As such, in many cases, shareholders are not timely, adequately and effectively informed about nominees.

However, one **important** step made in improving the situation is the fact that based on the current and the **new Capital Market Law**, **cumulative voting** was introduced for the election of board members. As such, at the request of a significant shareholder owning at least 10% of shares, the cumulative method of voting is compulsory. In the companies where cumulative method of voting is applied, the **new Capital Market Law** stipulates that the Board should be composed of minimum 5 members.

Moreover, CNVM adopted the "Rules no. 3/ March 2004 regarding application of cumulative voting in publicly owned companies". According to these rules, in case of vacancy in the Board, regardless of the reason, the general shareholders meting has to be called in maximum 30 days (the Companies Law does not stipulate a deadline in this respect). According to the above mentioned rules, shareholders of the publicly owned companies are allowed to request to the board members of the company (and implicitly to all shareholders) to apply the cumulative voting for electing the directors. The request should be made 5 days before the general shareholders meeting. If the cumulative voting method is applied, the board of directors should be composed of at least 3 persons, unless this provision contravenes to other legal provisions in force.

AS mentioned above, th**e new Capital Market Law** stipulates that in case the cumulative voting is applied, the company should elect minimum five Board members.

The BSE **Code of Corporate Governance** stipulates that the issuer listed on the "plus/transparency tier" has the obligation to prepare materials for all the points of the agenda of the GSM, 15 days before the meeting is held. It could be assumed that this provision applies also in the case of election of Board members.

Six market participants and operators who answered to our **questionnaire** believe that by introducing the cumulative voting and by having minority shareholders represented in boards, the transparency would increase and the probability the boards to act in the interest of the company and of all shareholders would also increase.
Two institutions did not provide an answer to this question.

The nomination process of board members is not very transparent and it differs from company to company. There is no complete procedure established by any legislation or rules for nomination of board members. However, for publicly owned companies, the NSC rules regarding cumulative voting provide some elements which should help the transparency in the process of nomination of Board members. Due to the existing situation there are cases when shareholders are not timely, adequately, and effectively informed about nominees.

The remuneration of Board members and management.

Based on the provisions of the **Companies Law** directors could be compensated only based on a decision taken by the general shareholders meeting.

The compensation of directors could be composed from a fixed part and a variable (performance related) part.

In general, the shareholders' meeting establishes a net monthly fee which is paid to each director, regardless of the director's activisms.

In the report "Functioning of boards of directors in Romania", elaborated by Angela Ene in December 2002 and presented to OECD, the main conclusions were drawn, for first tier BSE listed companies:

(i) for the state owned companies the monthly fees for directors were expressed as a percentage (20%) of the gross salary/ salary/ base salary of the general manager; it was estimated a range of the net monthly fee for a director between USD 100 in small companies to USD 500 in large companies;
(ii) for the rest of companies listed on the BSE first tier, the net monthly fixed fee, excepting the banks, was between USD 100 – 300/500, from small to very large companies;
(iii) for the banks, the net monthly fees of the members of the Board was between 600 – 800 USD;
(iv) there were some cases where the chairman was better remunerated than the rest of Board members, including the situation of the banks;
(v) directors were not remunerated based on the performance of the company.
(vi) very rarely, other directors, with the exception of the Chairman, were better remunerated; the situation could happen especially in the case of foreign directors.

Considering the average salaries of the CEOs/ general managers, we can conclude that the payment of directors is quite poor, respectively between 10% to 15% of the general manager's salary.

Some directors appointed by strategic investors and investment funds are paid additional salaries or compensations, from non-company funds, on a confidential basis.

In the case of the SIFs, it seems that the range of the Board remuneration is between 300 – 500/700 net USD. Also, in some of the SIFs, the directors along with the employees get a bonus based on the performances obtained. The global bonus is expressed as a percentage of the net profit and it is approved by the GSM.

In some companies, directors' compensation is augmented by benefits that are not approved by shareholders (ex. company cars, mobile telephones etc.).

Based on the accounting ordinance OMF 94/2001, companies must report the following information:

(i) details regarding the salaries and retirement benefits of the managers and members of the Board of Directors;
(ii) details regarding the loans provided to the members of the Board of Directors, the interest and the guarantees offered;
(iii) the payments made to auditors.

There are very rare cases when companies comply with this requirement. Some companies preferred to mention the details specified on point i) as a percentage of their sales or as an aggregate amount.

Regarding the institution which should be responsible in implementing the provisions of the OMF 94/2001 above mentioned, we received the following feedback in our **questionnaire** (the institutions which should be responsible are enumerated according to their importance and their role in the process):

(i) 3 market participants believe that the institutions which should be responsible for implementation are: financial auditor; NSC, BSE/Rasdaq;
(ii) 1 institution believes that the order is: NSC, financial auditor, BSE/Rasdaq;
(iii) 2 institutions believes that NSC should be responsible;
(iv) 1 institution believes that the GSM should decide;
(v) 1 institution did not answer to the question.

The eight market participants and operators who answered to our **questionnaire** have different opinions regarding remuneration of directors:

(i) 1 respondent entity believes that directors are properly remunerated;
(ii) 2 respondent entities believe that directors are not properly remunerated;
(iii) 1 respondent entity believes that directors are not properly remunerated and weak performance of directors is due to improper remuneration;
(iv) 4 respondent entities did not provide an answer.

The eight market institutions and operators that responded to our **questionnaire** have the following views regarding the implementation of the specialized committees (Audit, Nomination, and Remuneration):

(i) 3 institutions believe that it is important/opportune to have in the Romanian companies specialized committees composed also from independent board members;
(ii) 1 institution believes that it is important to have these committees but only in very large companies;
(iii) 3 institutions believe that it is not important/opportune to have these committees;
(iv) 1 institution did not provide an answer.

Audit, Nomination and Compensation/Remuneration Committees are not defined under the Romanian legislation or capital market rules.

The remuneration of directors and management is not disclosed, in majority of cases, in the financial statements.

Poor payment of directors could be the cause of poor performance of some boards. Remuneration of directors based on performance is not implemented in Romania.

Remuneration Committees do not exist.

8. CONCLUSIONS AND RECOMMENDATIONS

8.1 Progress registered in the last three years. Current situation

In our view, Romania registered moderate progress, in the last three years, in terms of corporate governance.

The new CML registers some progress in terms of corporate governance compared to the law in force in December 2001 BUT is too general and have, in some areas, weaker corporate governance provisions compared to the current CML which is in force since 2002.

The 2001 OECD corporate governance recommendations were partially implemented in Romania in the period December 2001- June 2004.

Briefly, the stage of progress and implementation, in each of the recommended sections proposed by OECD, is as follows:

(i) Ownership structure

Privatization

Progress was registered in the privatization process, in the period 2001-2003;

In the last years, due to the fact that the state was excluded from some obligations stipulated by the capital market legislation and the secondary rules, some of the capital market mechanisms were not observed. In some cases the rights of the minority shareholders were not observed.

Introduction of the "special administration" concept and closer monitoring of the performance of the management in state owned companies determined some corporate governance improvements;

A specific program to improve corporate governance in National Companies was not developed;

Ownership consolidation

- Consolidation of small and medium sized listed companies started;
- Delisting of companies started;
- Valuation/assessment of a company is not confirmed by an independent authority;
- No independent authorities were established for assisting in consolidating claims regarding establishment of price in a capital increase;
- The **new Capital Market Law** provides totally different rules regarding tender offers compared to the current legislation.

(ii) Enforcement and implementation

The judicial system

- The judicial system continues to face insufficient training, lack of experience, delays and even questionable judgments;
- Judges are not specialized; the only specialization of judges is in the field of bankruptcy legislation/procedure;
- In terms of remuneration, although significant salary increases were registered for judges, the salaries are far from being sufficient in order to assure the integrity and the necessary experience for such a position;
- The progress registered in order to strengthen the capacity of the judicial system to deal with commercial disputes was not significant;
- Sporadic and totally insufficient training was made of judges and lawyers in the field of capital market legislation;
- During 2003 the Romanian Government promoted a so-called „anti-corruption law" aiming to establish rules, mechanisms and institutions dealing with corruption registered within the state authorities, including the judicial system. Preventing corruption is one of the main declared priorities of the Romanian Government.

The public and private redress mechanisms

- The current Arbitration Courts organized by the Romanian capital market institutions are not designed to solve disputes between shareholders and companies;
- The use of the arbitration mechanism, in general, registers a very low level and the activity of the specialized capital market arbitration courts does not exist.

National Securities Commission

- The NSC elaborated a draft for a **new Capital Market Law** which was adopted by the Parliament in June, being applicable starting to **July 29, 2004**. The new law has to harmonize the Romanian capital market legislation with the European legislation. In terms of aligning the Romanian corporate governance system to the OECD best international standards and practices, the new Capital Market Law looks less compliant than the current legislation and implements partially the OECD recommendations. However, we have to mention that the new law brings some corporate governance improvements compared to the current/previous legislation and compared to the first securities law adopted in 1994.
- The NSC made some progress in terms of personnel training and some significant progress in terms of its organizational developments (budget stability, adequate facilities, IT infrastructure etc.);
- The merger of the BSE market with the Rasdaq market is expected to take place in the next 1-2 years; the NSC is encouraging the two institutions to finalize the merger as soon as possible;
- The Rasdaq market did not achieve the status of SRO, to reduce the responsibilities the NSC have about the Rasdaq market; the merger above mentioned would have a positive impact on the NSC activity in medium to long term;
- Starting with January 2003 the NSC has issued monthly bulletins, increasing transparency of its activity;
- In 2004, the NSC will finalize a "Plan for the medium term development of the Romanian capital market";
- The dialogue and co-operation between the NSC and the capital market participants registered some significant improvements in the following area: the NSC is publishing on a regular basis on the WEB page the draft of the regulations to be issued and it is inviting everyone interested to

make comments. Moreover the NSC grants enough time for this public analysis of regulations' draft.

Voluntary Code of Corporate Governance

- The BSE elaborated a Code of Corporate Governance;
- The listing requirements of the "transparency tier" or the "plus tier" require compliance with the Code;
- The standards from the plus tier proved to be too demanding for the Romanian companies, only one company being listed on this tier.

(iii) The rights and equitable treatment of shareholders

- In case of delegated powers from the GSM to the Board, the laws do not clearly state that the procedures for the shareholders' meeting must be followed by the board that decides on the alteration/change of a share capital (ex. notification period, disclosure requirements for such a notification, presentation of the proposed terms of the capital alteration);
- There is no detailed regulation to mention minimum information to be provided for a change in share capital; the BSE has taken significant actions whenever the issuers' notification was not complete;
- While the general rule prohibits in-kind contributions to the share capital of listed companies, the **current Capital Market Law** established numerous exceptional situations where the in-kind contributions were allowed; the **new Capital Market Law** allows to use the in-kind contributions for the share capital increase provided that some special voting requirements are met;
- There is no legal obligation for determining the price of the newly issued shares based on an independent assessment of the company's value;
- Control mechanisms were not put in place to monitor and prevent abusive related party transactions;
- The OECD recommendation regarding the payment of dividends has been transposed partially in the Romanian legal framework; only if the GSM does not establish the payment period, the dividends shall be paid within a 60 days period;

(iv) The role of stakeholders in corporate governance

- The new labor code determines a progress in terms of protection of employees rights; however, employers believe that too many rights are provided to employees;
- Greater protection must be given to employees and others that reveal illegal or abusive practices of a company's board and management;
- In the last years an important progress was made regarding the bankruptcy procedure and protection of creditors' rights; the new bankruptcy law (adopted in 2004) provides the legal framework for the bankruptcy procedure to be accelerated and creditors' rights to be better protected. However, for protection of creditors' rights additional improvements should be made.

(v) Transparency and disclosure

- The Chamber of Financial Auditors is responsible to license and to watch over the financial auditors. The Chamber of Financial Auditors is overseen by the Ministry of Public Finances, whose main task is to ensure the full compliance of the Chamber's rules with the legal provision in force;

- Enforcement of the rules governing the audit profession must be strengthen;
- Enforcement of the issuers obligation to disclose their ownership and control structures is necessary;
- The NSC regulations should be amended by including into the minimum content of the annual report the shareholders or the group of shareholders holding over 5% of the shares;
- The NSC should determine whether the issuers are complying with the requirement to have an internal audit department and to find the appropriate measure in order to remedy the situation;
- Efforts for enforcing the rules regarding the liability of financial/external auditors should be strengthened, and the NSC should inform the Romanian Financial Auditors Chamber whenever considers that a financial/external auditor did not perform its duties in accordance with the relevant normative deeds;
- Significant progress was made by the BSE and Rasdaq in terms of transparency and disclosure.

(vi) The responsibilities of the board

- Boards' duty to serve the interest of all shareholders and collective / individual liabilities are not clearly stipulated in the legislation;
- Sanctions for directors are weakly enforced in practice;
- The BSE Corporate Governance Institute did not start training of directors;
- The legislation is vague regarding the obligation of management to provide full access of directors to all relevant information from the company;
- Limitations regarding the number of board seats a director can take remained the same (maximum 3 board seats);
- Premises for excluding civil servants from boards were created through the adoption of the "anti-corruption law";
- The concept of the independent directors is quite new; listing requirements do not oblige companies to have a minimum number of independent directors; if the company voluntarily gets listed on the "plus tier" it would have to appoint some independent directors in the Board;
- Directors are independent from management but not necessary from shareholders; the presence of truly independent board members is still an exception;
- Audit, Nomination and Compensation Committees are not defined by any Romanian legislation or capital market rules; they are not implemented in Romania;
- The boards are not certifying that the financial statements provide accurate and relevant information on the state of affairs of the company; this certification is coming from the financial auditors;
- Under the new accounting legislation, some of the responsibilities of censors (statutory auditors) were and would be gradually delegated to the financial auditors and internal auditors; however, in this process, some of censors responsibilities are rather missed and taken neither by the financial auditors nor by the internal auditors, weakening the mechanisms existing in the company to control conflicts of interests;
- The nomination process of board members is not very transparent and differs from company to company; there is no complete procedure established by any legislation or rules for nomination of board members. However, for publicly owned companies, the NSC rules regarding cumulative voting provide some elements which should help the transparency in the process of nomination of Board members. Due to the existing situation there are cases when shareholders are not timely, adequately, and effectively informed about nominees;

- The remuneration of directors and management is not disclosed, in majority of cases, in the financial statements, as required by the law;
- Poor payment of directors could be the cause of a poor board performance. Remuneration of directors based on performance is not implemented in Romania.

In addition, we would like to point out that the **"White Paper on corporate governance in South East Europe"** was poorly promoted in the market. With the exception of the Romanian Shareholders Association which organized one roundtable where the White Paper was discussed and of the Rasdaq market which posted the paper on its site, no other institution promoted the White Paper.

Currently, in our opinion, in Romania, the most important corporate governance "agents" are:
(i) the BSE Institute of Corporate Governance;
(ii) the National Securities Commission through the **new Capital Market Law** and the rules which shall be issued for the implementation of the new law;
(iii) the Romanian Shareholders Association as the most active institution in fighting for the protection of the minority shareholders rights;
(iv) the BSE and Rasdaq listing requirements;
(v) the NSE, BSE and Rasdaq as enforcement institutions.

As mentioned above, in order to harmonize the Romanian legislation with the EU legislation, the NSC proposed the draft of the **new Capital Market Law to the Parliament. The draft was adopted in June 2004, being in force starting to July 29, 2004.**

The new Capital Market Law or the so called "consolidated law of the capital market", compared to the current legislation, is very general, provides many changes of definitions and concepts (especially regarding public offers and mandatory delisting), has fewer provisions regarding the possibility of the minority shareholders to request information from the company, takes away some of the minority shareholders rights. However, it should be fair to say that the new law promotes also some improvements in terms of corporate governance, compared to the current law.

However, only after the NSC would elaborate the secondary rules needed for the implementation of the new law, a final overall opinion could be released about the corporate governance progress promoted by the new legislation and regulations.

The **BSE Corporate Governance Institute** was established last year and it is expected to start its activity this summer. The Institute would have a crucial role for improving corporate governance in Romania.

Once the Institute would develop the activities above mentioned, the BSE and Rasdaq could start upgrading their corporate governance related requirements for companies admitted to trading.

8.2 Recommendations

8.2.1 Legislative and regulatory recommendations

1. Companies Law

1.1. The Companies Law should clearly stipulate in the text the general attributes of a desirable member of the Board, such as loyalty towards company and all shareholders, strength of character, independent mind, practical wisdom, mature judgment and, of course, independence. The law should clearly stipulate in the text that Boards' duty is to serve the best interest of the company and of all shareholders. Sanctions should be also stipulated. Alternatively or subsequently, if voluntary Codes of Corporate Governance and Codes of Ethics will be effectively promoted and assumed by Romanian issuers, such provisions can be included and successfully implemented in these codes.

1.2. The collective and individual liabilities of directors should be clearly defined in the Companies Law.

1.3. Given the limited number of qualified and experienced board members, the legal restrictions from the Companies Law should relax the provision that limits board members from serving on no more than three boards. Considering the Romanian realities such an amendment could be introduced in the law once more and more professional independent board members are recognized by the market.

1.4. The Companies Law (and the **new Capital Market Law/** NSC regulations) should specifically mention that the board members have full access to all company information and in particular to all relevant information.

1.5. The responsibilities and liabilities of the financial auditors (external auditors) should be revised in order to be clear and complete. They should be better defined in order to increase the independence and authority of the financial auditors.

1.6. Clear provisions should be made regarding the election, revocation and independence of the financial auditors. The notion of Audit Committee and independent directors should be introduced in the law. Both concepts could start being implemented by listed companies, in stages, according to company size considerations. The law could stipulate a time span for implementing these concepts (another solution could be the adoption in the next 1- 2 years of a special law to contain these provisions, respectively The Romanian Corporate Governance Law).

1.7. Notion of censors should be clearly eliminated for listed companies/companies admitted to trading on a regulated market. The censors can remains as an internal control body for unlisted companies. Clear delimitation of responsibilities between the internal and external control bodies should be provided by the law.

1.8. Board duties, functionality and responsibility should be more explicitly described.

1.9. The GSM notification period should be extended from 15 days to 30 days.

2. Capital Market Law & secondary regulations

2.1. Although the **new Capital Market Law** brings a slight improvement regarding the delegation process by limiting the extensive powers of the board of directors to exercise GSM's attributions, we still recommend the delegation process to be completely eliminated; as result the law shall state that only the GSM shall decide upon share capital alteration and all the others amendments to the constitutive act; until such a change of the law can be promoted, we recommend to the NSC to establish a set of rules stating that the notification for the board meetings where a share capital is changed should follow the same procedures like the GSM procedure.

2.2. We support the OECD recommendation dated 2001, according to which in-kind contributions to share capital should not be allowed; therefore a change of the **new Capital Market Law** is required accordingly. However, considering that the recent changes of the Capital Market Law were aimed to harmonize the Romanian legislation with the European Directives, it will be extremely difficult to promote such a change; therefore, a significant help for the minority shareholders (5% or 10%) will be to recognize their right to ask for a new expert to value the in-kind contribution if they consider the proposed valuation as being non-realistic.

2.3. It is recommendable the law to be amended in the sense that the pre-emptive rights to be honored for every share capital increase. The beginning date of the subscribing period for the shareholders having the pre-emptive right should not be related to the publication date of the resolution in the Official Gazette since this is not an effective mean for investors' information.

2.4. We recommend the market to develop and increase the use of independent assessments of a company's share value, and if necessary to include such a provision in the Capital Market Law. For shares having a good liquidity on the market, the market price can be use also for determining the price of the new issued shares.

2.5. According to the best practice rules and OECD recommendations, issuers should disclose all the transactions that include conflicts of interest. The current Romanian rules are imposing for related party transactions that only certain agreements valuing more than 50,000 Euros to be disclosed, and in this respect we consider this provision to be appropriate, provided that the law imposes the obligation to report any agreement that individually values more than 50,000 Euros. A special attention should be paid to the enforcement of these rules since the number of issuers reporting the related party transactions is quite insignificant.

2.6. We reiterate the OECD recommendation regarding the payment of dividends within a 60 days period from the general shareholders meeting, meaning that a change of the new law is required.

2.7. The definition of the conflict of interests and/or some examples of the situations considered as being conflicts of interests should be included in the capital market legislation/rules.

2.8. The notion of Audit Committee and independent directors should be introduced in the law (if they are not introduced in the Companies Law). Both concepts could start being implemented by listed companies, in stages, according to size considerations. The law could stipulate a time span for implementing these concepts (another solution could be the adoption in the next 1- 2 years of a special law to contain these provisions, respectively The Corporate Governance Law).

3. Audit and Accounting Laws

3.1. The law shall stipulate the responsibilities of the internal audit department in a clearer and concrete manner.
3.2. The relevant organizations should impose a code of ethics for auditors, and the most important issue is that such a code have to be enforced in an appropriate manner

4. Privatization Laws

4.1. We consider that the special regime established for the share capital increases executed in accordance with the privatization and post-privatization law should be eliminated, while the special rules of the Capital Market Law are not only harmless, but in most cases in the benefit of the company itself.
4.2. Takeovers should not be excluded from the privatization process.
4.3. Privatization contracts should be public for listed companies.

5. Bankruptcy Law

5.1 Definition of affiliated person should be introduced.

6. Regulations and by-laws

6.1. The most important and urgent activity of the NSC is the rapid elaboration of the rules needed for the implementation of the **new Capital Market Law**; once the rules are drafted, consultation with the market participants would be recommended.

6.2. The minimum data to be included in the notification for a share capital change should be detailed by a NSC regulation applicable to all listed companies.

6.3. The NSC regulations should ask the issuers to include into the minimum content of the annual report the shareholders consolidated structure (the shareholder or the group of shareholders holding over 5% of the shares) as it was registered at the end of the financial year (31st of December).

6.4. It should be analyzed if it is a realistic option to impose, at least gradually, to issuers, the obligation to post on the WEB all the information they are sending to the NSC. We emphasize that the **new Capital Market Law** imposes to the issuer to make available on its WEB site the GSM documentation with five days before the GSM takes place.
6.5. The rules of the NSC which would be elaborated for implementing the new law should take into account the provisions which could help investors in redress actions, including using of the arbitrage mechanisms.

7. Other relevant legal provisions

7.1. The concept of business judgment should be introduced in the Romanian legal system in order to protect board members from being held liable for wrong business decisions.
7.2. The BSE and Rasdaq should require in their listing requirements for the first and second tiers (blue chips) that at least one member of the Board to be independent.
7.3. Listing requirements for companies listed on the first and second tier on BSE and Rasdaq (blue chips) should require the existence of an Audit Committee composed of members of the board and from at least one independent director.
7.4. NSC, BSE and Rasdaq shall elaborate a procedure and issue rules in order the nomination process of board members to be more transparent.

8.2.2. Institutional related recommendations

1. The Committee for the development of the Romanian Capital Market.

We believe that the development of the market would trigger implicitly improvements of the Romanian corporate governance system.

We recommend to the leading investors on the Romanian capital market to take the initiative and to create **The Committee for the development of the Romanian Capital Market**.

This Committee could be enlarged with leaders of the NSC, BSE, Rasdaq and with leaders of the insurance industry, mutual fund industry etc..

In time, the leaders of other institutions which could help the development of the market could be part of this Committee. Such institutions could be: The Romanian Government (ex. Prime Minister's adviser on financial markets), AVAS, the Chamber of Auditors etc.).

We recommend the activity of the Committee to be made public from time to time.

Semi-annually, we believe this Committee should inform the market about the progress registered in achieving its objectives. The Committee could organize **roundtables** where all the parties involved in the development of the market should be invited, including the press. One special point of the agenda of these roundtables should be the progress registered in corporate governance.

Two suggestions for this Committee:

(i) Privatization contracts would be recommended to stipulate, for very large and large companies, minimum free float provisions (ex. 20% of the share capital would remain publicly held). The Government, AVAS, NSC, BSE and Rasdaq should very closely co-operate in this respect;

(ii) Elimination of the preferential treatment of the State in case of listed/traded companies.

One important objective of this Committee should be the improvement of the Romanian corporate governance system.

If this committee would not be organized, we would recommend the BSE Corporate Governance Institute, the capital market institutions or investors to organize semi-annually or annually some corporate governance **roundtables** where the progress registered by the Romanian market to be discussed and further steps to be made to be decided.

2. The National Securities Commission

2.1 Elaboration of rules and regulations for the implementation of the new CML

As stated above, we believe that the most important and urgent activity of the NSC is the rapid elaboration of the **rules and regulations** needed for the implementation of the **new Capital Market Law.**

Considering the fact that new rules and regulations would be issued, the NSC should increase the dialogue with the market. Ideally would be a system of working/communication to be established with the market (ex. for the comments received from the market but not taken into account, the NSC to send in writing a minimum justification).

For the elaboration of rules and regulations, some (additional) technical assistance could be considered by the NSC (for more details see the Chapter VI below).

2.2 Enforcement and implementation

The NSC should more actively sanction directors and managers of issuers for non-compliance with the capital market rules and regulations.

The NSC should more actively co-operate with the Chamber of Financial Auditors for proposing sanctions to financial/external auditors.

The NSC could consider starting initiating lawsuits.

A permanent objective of the NSC should be the enforcement and implementation of the law and of the rules and regulations issued.

2.3 Consolidation and delisting. Focus in monitoring corporate governance.

The current and the new CML define the **"squeeze out"** procedure.

As a result of this procedure, the consolidation and delisting of small and medium sized listed companies started and would continue in the following years. (Note: the text of the new law is not clear but the NSC pointed out that the squeeze out procedure is maintained under the new law).

In terms of compliance with corporate governance rules/principles, we would recommend to the NSC and Rasdaq to **monitor** all companies according to provisions of the law but to much closer monitor the blue chips.

It would be recommended that in the next 2-3 years ONLY few hundred companies (instead of few thousands) to be listed/ traded on the new market which would result from the merger of BSE and

Rasdaq. The end result would be that the activity of the NSC would be simplified with the possibility to focus on the most important companies/issuers of the market.

2.4 Transparency and disclosure

The most important and easy tool the NSC has for improving corporate governance is to enforce transparency and disclosure rules.

We would recommend to the three capital market institutions (NSC, BSE and Rasdaq) to start considering having a common data base, for all publicly available information.

2.5 The "Plan for medium term development of the Romanian capital market"

We recommend a special chapter on strategic actions for capital market development to be included in the plan.

We recommend also to the NSC to include the corporate governance as a separate chapter of this plan.

2.6 Personnel

We recommend a special department/person to be appointed for being in charge with all corporate governance related aspects, including: (i) the relation with BSE, Rasdaq and BSE Corporate Governance Institute, (ii) corporate governance awareness inside NSC, (iii) contact and collaboration with OECD and other international organizations etc.

Training (in house and abroad) of the personnel should be made in the area of corporate governance.

As also suggested by different market participants, the NSC should consider accelerating training program for all its personnel.

2.7 Web site improvements

All publicly available information should be posted on a web site. See also the recommendation from point 2.4 above.

A separate web page should be dedicated to corporate governance issues; for instance, on this page, the White Paper on Corporate Governance in South East Europe could be also posted, in Romanian and English.

2.8 Corporate Governance theme in the curricula of universities

Currently the corporate governance is part of the curricula of two Master of Business Administration programs developed by the Academy of Economic Studies.

We believe that in universities Corporate Governance should start considering being introduced in the curricula, at the initiative of the NSC.

3. BSE's Corporate Governance Institute

While the recommendations regarding the BSE's Institute are not comprehensive, we intend to enumerate some of them:

Firstly we should mention that we are welcoming the recent decision of the BSE to start the activity of the Institute.

Our perception is the fact that the market has to be stimulated in getting interested in corporate governance related issues. Therefore, we suggest the activity of the Institute to start with increasing the awareness regarding corporate governance in general and advantages of implementing good corporate governance practices, in particular.

In parallel, at the beginning of its activity, the Institute could organize few sessions for internal discussions and exchange of experience with people from the NSC, BSE, Rasdaq and RSA.

Afterwards, the Institute could approach directors and managers of blue chips, SIF's representatives, judges (from Ministry of Justice and National Institute of Magistrates), external and internal auditors, journalists etc. by developing active internships, workshops for exchange of experiences etc.

Domestic and international lecturers/people with corporate governance experience could be invited to discuss with the participants well known domestic and international case studies.

Notions of "plus tier" / "transparency tier", independent directors, specialized committees - would start being introduced, by the Institute.

The Institute could also start elaborating The Best Practice Code (for the general shareholders meetings), Directors' Guideline, Stakeholders procedures etc.

The Institute, through all its activity could make the participants aware of the best practice provisions of the White paper on Corporate Governance from South East Europe.

NSC and BSE, through the Corporate Governance Institute, could have the initiative to establish a co-operation with the Ministry of Justice and the National Institute for Magistrates in order to include corporate governance/capital market issues in the workshop curricula for the judges and prosecutors. The capital market experts can play an important role in these specialized trainings.

Other activities which could be considered by the Institute:

(i) The Institute could provide a contract model, which could be signed by the company and its directors;
(ii) The Institute could make the directors and managers aware about the provisions of the BSE Code of Corporate Governance;
(iii) The Institute could start familiarizing the directors with the notion of specialized committees: Nomination, Audit, and Compensation. The Institute could start elaborating rules for organizing these committees which could be more easily taken by companies as examples and could be implemented voluntary;
(iv) The Institute could develop awareness in the field of capital market and in the areas of accounting and financial reporting, strategic planning, human resources, risk management etc..
(v) The Institute could take the leadership role in educating the journalists regarding the corporate governance aspects;

The institute should promote the corporate governance principles from the White Book and could co-operate with other institutes at the regional level, for sharing experience.

In medium to long term, the Institute could set up a **"Corporate Governance Club".**

The result of the activities mentioned above might be:

(i) the market would be better prepared for the introduction of the corporate governance concepts etc.;
(ii) the activity of the Institute would be a good platform for the BSE and Rasdaq (which would be soon merged) and for the real implementation of new listing requirements (independent directors, specialized committees), in 2-3 years from now;
(iii) the Institute would help for active and intense co-operation and exchange of experience of capital market institutions (NSC, BSE and Rasdaq) with the Romanian Government, Ministry of Justice/ National Institute of Magistrates, Chamber of Auditors etc.;
(iv) directors and managers, after being aware of the advantages of implementing good corporate governance principles, would be more prepared to propose to their shareholders the promotion of their company to the "Plus tier" or to a similar tier and therefore they would be more prepared to subscribe voluntarily to the BSE Code of Corporate Governance;

We recommend the Institute to also co-operate with other international institutes of directors or similar organizations.

4. Bucharest Stock Exchange

We recommend the **Code of Corporate Governance** to be revised.

We believe that, in parallel with the development of the activity of the Institute, the BSE could reanalyze the listing conditions for the "plus tier". It could the market to perceive the requirements for the "plus tier" of being too high. One of the major obstacles could be the fact that the Constitutive Act of the company should be changed by the General Shareholders Meting in order a company to get promoted to the plus tier.

In the campaign to attract companies to the plus tier priority should be given to large and very large companies.

5. AVAS

AVAS should elaborate a special program aimed at improving corporate governance in the state owned companies, especially in the large and very large companies.

AVAS should start collaboration with the NSC, BSE and Rasdq regarding capital market regulations and the way the corporate governance could be improved through the help of capital market institutions.

AVAS should consider making public privatization contracts for listed companies.

6. The Chamber of Financial Auditors

The Chamber of Financial Auditors through its specialized entity should better control the activity of its auditors.

All the persons involved in controlling the activity of the auditors should be experienced. If the people involved are not experienced the Chamber should consider replacing the auditors performing the control with more experienced auditors.

Sanctions should be applied to financial auditors not complying with the rules of the profession.

7. Internal Audit Association

Internal Audit Association could be considered to be created as a pillar in developing faster this activity at the level of companies.

8.2.3. Recommendations related to stakeholders

Romanian companies should put in place governance mechanisms that ensure familiarity and compliance with outstanding **legislation** related to the **rights of stakeholders**. Companies should implement the legislation related to the rights of stakeholders.

Companies should inform themselves and follow up on legal developments regarding stakeholders' rights, especially in the areas of labor law, health and safety, mortgage and bankruptcy law, as well as environmental law.

Companies should also start becoming social responsible, should act in order to implement this concept.

Romanian companies should clarify their responsibilities among different company organs regarding relations with relevant stakeholders. They should make sure that an adequate structure and an efficient mechanism are in place to know the company's obligation vis-à-vis these different stakeholders and to ensure compliance with these obligations. Such mechanisms could include formal information of stakeholders, and especially employees, about their specific rights, entitlements and avenues for redress.

One way to increase efficiency of the board regarding this process would be directors to delegate among themselves responsibilities regarding different stakeholders: elaboration of a procedure regarding compliance with outstanding legislation, discussions with the management, monitoring legislation and the compliance process, relationship with the respective stakeholder, etc.. The respective board member could take the lead of the process, inform the Board regularly and make proposals to the Board regarding the delegated responsibilities.

The blue chips could start, in the next 2-3 years, developing **voluntary procedures related to stakeholders**, becoming models for the market. The BSE Corporate Governance Institute could help in drafting these procedures, in order to speed up the process.

The **new labor code** determines a progress in terms of better protection of employees' rights. However, due to the fact that employers believe that too many rights are provided to employees and this situation negatively affects the activity of the company, it is difficult to say that the new labor code represent a significant progress in terms of corporate governance. Therefore, we recommend the Ministry of Labor to further discuss with employers and unions/employees representatives regarding the main divergent opinions and to try to find solutions to determine both parties to be satisfied with the rights they have.

Currently, according to the Unions Law 54/2003, grater protection is given to employees revealing illegal or abusive practices of a company's board and management. However, it seems that additional protection would be needed in order these practices to be disclosed by employees. There is a general view that employees are scared of losing their job when revealing illegal or abusive practices of a company's board and management.

The **new bankruptcy legislation** should be further enforced in order to better protect creditors' rights. Training of syndic judges should be done on a continuous basis.

8.2.4. Recommendations regarding members of the Boards of Directors

A mandate **contract** between the company and its directors might increase the awareness of responsibilities / duties of the respective directors. Therefore, a contract might be useful to be signed, by each director, with the person empowered by the GSM, at the moment of his/her appointment. The contract shall stipulate all the duties and responsibilities of each director, based on the legal framework in place and the sanctions which could be applied for non-compliance with legislation etc..

Like in other countries from the region, it will be very useful to be published a **"Directors' guideline".** This guideline shall contain all the necessary laws, regulations, codes etc. needed to be known by a director.

The executive management (with the exception of the chairman which could be also the CEO/general manager) should be excluded from the boards, according to the provisions of the Companies Law.

Separation of the chairman of the Board from the CEO is further encouraged, in parallel with making sure that the Board has all the technical/industry related expertise to be able to make the best decisions for the company.

For all blue chips the **CVs' of directors and managers** should be posted on the company's web site. The BSE and Rasdaq should monitor closely if this requirement is implemented.

One of two **independent directors** could start being appointed, in the next 2-3 years, in large and very large companies. They have a crucial role in monitoring management, conflicts of interests, promoting corporate governance. The independent directors would be recommended to be included in the composition of specialized committees.

After the market is familiarized with the concept of independent directors and after a data base with independent directors would be in place, the BSE and Rasdaq should require in their listing requirements for the first and second tiers (blue chips) that at least one member of the Board to be independent.

Implementation of the **specialized committees** should be made sequential, after some awareness would be made for blue chips directors. Companies and market institutions should start first implementing the Audit Committees and then the Nomination and Remuneration Committees.

Listing requirements for blue chips could require, in 1-2 years, the existence of an **Audit Committee** composed of members of the board and from at least one independent director.

Due to the fact that the **procedures for nomination** of directors are not included in legislation, NSC, BSE and Rasdaq could consider elaborating a procedure and issuing rules in order the nomination process of board members to be more transparent.

We recommend the **remuneration** of directors to be entirely made by the company in order to increase their independence. Directors should not be paid from non-company resources, respectively directly or indirectly by some shareholders, based on some confidential arrangements. Or, if they are paid, this should be disclosed.

The "board fee" shall be paid based on the work, involvement and results of directors. Companies could start paying different board fees for different directors according to the workload of each director (as the case may be).

Companies should start considering paying performance bonus for directors.

When establishing the "board fee" we would recommend the following: (i) the strategy of the company to be analyzed in order to make an estimate of the amount of time / resources needed to be allocated by directors; (ii) a directors contract to be signed to stipulate the average number of days to be allocated, per month, by each director; (iii) performance criteria to be established for ensuring a bonus scheme for directors (each year, the activity of directors shall be analyzed/ evaluated).

If board members would be paid according to their contribution towards the success of the company, more professional directors will be attracted in the "directors" industry and the number of professional independent directors will increase.

The board of directors should monitor if the remuneration of directors and management is properly disclosed in the Annual Report and make sure that this requirement is met by the company. The BSE and Rasdaq market should also exercise some pressure over the blue chips in disclosing this information. This information should be included in the Annual Report.

For the compensation of the management, we would recommend that at least the total cost for the top management salaries to be included in the Annual Report.

Directors should comply with the provisions of the Companies Law and of the Capital Market Law regarding the obligation of making public the decision made for **delegated decisions** by the GSM.

Directors should make sure that the responsibilities of shareholders, directors and managers are clearly defined in the constitutive act, in the rules for organizing and functioning of the board of directors and respectively in the rules for organizing and functioning of the executive management.

8.2.5. Other recommendations

Declaration of the **conflicts of interest** should start being made by shareholders, directors, managers, auditors, company lawyers, other advisors, banks (there are cases where the same bank is working with a competitor). This is not a practice in the Romanian market.

The **SIFs and the foreign investment** funds, through their board members, shall become "corporate governance messengers" and shall become more active in promoting corporate governance principles (the SIFs and the foreign investment funds have a very significant number of directors (may be hundreds of directors) appointed in many Romanian companies).

The SIFs and some foreign investment funds are in the same time minority, control and majority shareholders, due to their diversified portfolio. As such, they could be considered major "agents for change" and "corporate governance agents" due to the fact that they have directors appointed in different boards. These directors have the most important role in implementing better corporate governance principles and standards.

We would recommend these funds to be leaders in implementing the corporate governance principles, in companies where they are shareholders.

In some countries implementation of the concept of independent directors started as follows: a **public committee** was named and started to approve independent directors. This option could be also considered in Romania.

Corporate Governance principles shall be applied by **foreign/strategic investors**, like in their country of origin.

Some foreign investors, although coming from western markets, hesitate to apply the corporate governance principles in Romania like they do in their country of origin.

It is well known that the foreign investors are also "corporate governance agents". Therefore, more transparency and disclosure is recommended also from their side.

8.2.6. Recommendations for Technical Assistance

Capital market institutions should further focus their attentions towards getting Technical Assistance (TA) for the following:

1. International internships and domestic training for the NSC in the field of corporate governance.

2. Domestic and international TA assistance, for the NSC, for urgent elaboration of the rules and regulations needed for the implementation of the new CML.

   NSC is currently receiving some assistance from the Italian and Spanish Securities Commissions. However, if this assistance is not for all the major rules, additional international TA should be considered.
   For aspects regarding harmonization of previous rules and regulations with current once TA from domestic lawyers could be considered.

3. Specific TA should be asked by the NSC on the following fields: change of control, conflicts of interest, consolidation/delisting, creation of Alternative Trading Systems for closed –end companies etc.

4. We recommend foreign and domestic technical assistance to be considered for changing the Companies Law.

8.2.7 Final recommendation

We believe that the OECD South East Corporate Governance Roundtable should continue to be organized, at least annually, for evaluating the progress made by each country in the region and for exchange of experience of countries from the region.

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9. ABBREVIATIONS USED

A.P.A.P.S.	- Authority for Privatization and Management of State Ownership
AVAS	- The Authority for Capitalization of State Assets (AVAS).
Board	- Board of Directors
Board members	- members of the board of directors
BSE	- Bucharest Stock Exchange
Censor	- statutory auditor

Companies Law no 31/1990 - Companies Law

Current CML	- Current Capita Market Law
Directors	- members of the Board of Directors
Auditor	- financial auditor, external auditor
GSM	- General Shareholders' Meeting
Institute	- BSE Institute of corporate governance
NSC	- National Securities Commission
O.E.C.D.	- Organization for Economic Co-operation and Development
Open company	- publicly owned company; publicly traded company; publicly held company
RSA	- Romanian Shareholders Association
Rasdaq	- RASDAQ Electronic Market
SIF(s)	- Financial Investment Fund(s)

Emergency Ordinance 28/ 2002 regarding securities, financial services and regulated markets (OUG 28/2002)" amended by the "Law 525 / 2002 for the approval of the Ordinance 28/2002 - the current Capital Market Law

The new Capital Market Law as it was approved by the Romanian Parliament that shall become effective on 29th of July 2004 - the new Capital Market Law (new CML).

White Paper on corporate governance in South East Europe - White Paper.

10.1 ANNEX 1 APPLICABLE NORMATIVE DEEDS

The Report was prepared by observing the following normative deeds:

1. The Government Emergency Ordinance no. 28/2002 regarding securities, financial investments services and regulated markets, approved with amendments and completions by Law 525/2002, subsequently amended and completed, published in the Romanian Official Gazette, Part I, no. 238/09.04.2002, referred as the current Capital Market Law;

2. The Capital Market Law no. 297/2004, referred as the new Capital Market Law;

3. The Government Emergency Ordinance no. 25/2002 regarding the National Securities Commission Statute, subsequently amended and completed, published in the Romanian Official Gazette, Part I, no. 226/13.03.2002;

4. The Law no.31/1990 – The Companies Law, republished in the Romanian Official Gazette, Part I, no. 33/29.01.1998, subsequently amended and completed;

5. The Law no. 137/2002 regarding some measures for accelerating the privatization process, subsequently amended and completed, published in the Romanian Official Gazette, Part I, no. 215/28.03.2002;

6. The accountancy law no. 82/1991, subsequently amended and completed, republished in the Romanian Official Gazette, Part I, no. 629/26.08.2002;

7. The Minister of Public Finance and the National Securities Commission no. 106/2002 regarding the accountancy rules harmonized with the Fourth European Economic Communities and the International Accounting standards applicable to the entities regulated by the National Securities Commission, published in the Romanian Official Gazette, Part I, no. 947/23.12.2002;

8. The Government Emergency Ordinance no. 75/1999 regarding the financial audit activity, subsequently amended and completed, republished in the Romanian Official Gazette, Part I, no. 598/22.08.2003;

9. The internal auditor code of ethics as adopted by the Minister of Finance through the Order no. 252/03.02.2004, published in the Romanian Official Gazette, Part I, no. 128/12.02.2004;

10. The N.S.C. regulation no. 2/2002 regarding the transparency and integrity of the RASDAQ market, approved by the Order of the N.S.C. President no. 90/26.08.2003, published in the Romanian Official Gazette, Part I, no. 712/01.10.2002;

11. The NSC regulation no. 2/1996 regarding the timely and continuous disclosure, approved by the Order of the NSC President no. 9/29.03.1996, published in the Romanian Official Gazette, Part I, no. 92/07.05.1996;

12. The NSC by-laws (instructions) no. 8/1996 regarding the general securities holders meeting, approved by the Order of the NSC President no. 14/12.06.1006, published in the Romanian Official Gazette, Part I, no. 176/05.08.1996;

13. The regulation of the Bucharest Stock Exchange no. 3 regarding the listing of securities at the Stock Exchange Rate (the last amendments approved by the Decision of the National Securities Commission no. 1363/06.08.2001);

14. The B.S.E. procedure no. 3.1 for the enforcement of the Regulation regarding the listing of the securities at the Stock Exchange (the last amendments approved by the Decision of the National Securities Commission no. 1379/28.06.1999;

10. 2 ANNEX 2

Survey on corporate governance codes of best practices*)

) Extract from the material presented by the Bucharest Stock Exchange at the South Eastern Europe Corporate Governance Roundtable - Ohrid, Macedonia, June 10-11, 2004.

1. Disclosure and Transparency

IFRS implementation

BSE listed issuers performed their obligation to send financial statements for 2002-2003, under complete form and in due time, as follows:

BUCHAREST STOCK EXCHANGE	2003	2002	2001
Number of listed issuers at the end of the year	62	65	65
Number of companies which reported within 120 days	48	27	43

Preliminary financial information

One of the BSE major concerns was and still is raising the transparency standards for the listed companies. In this regard we have asked our listed companies to make public their preliminary financial information for the previous financial year, before their being approved by the general shareholders meeting. This process started three years ago and currently our listed companies have fulfilled the obligation related to reporting preliminary financial information, in terms of 93%.

BUCHAREST STOCK EXCHANGE	2003	2002	2001
% of listed issuers which reported preliminary financial information	93%	78%	64%

Financial calendar

In its effort to provide more and more information to the investors, BSE asked, for the first time, the listed issuers to send within 30 days of the previous financial year, the annual financial calendar giving the dates or periods established for:

- the preliminary financial information announcement;
- the date of general meeting shareholders called to approve the annual financial statements;
- the financial statements for the first and the third quarter announcement;

- the financial statements first semester announcement;
- any presentations of accounting data to financial analysts, shareholders, journalists, investors etc.

We consider this initiative was extremely successful as 58 (out of a total of 59 issuers) of the listed companies have responded to our request.

Company Website

We consider important to point out that our listed companies have registered important achievements regarding having a Web page or publishing financial information on Web.
As a general remark, there is no legal requirement for a listed company to post information on website, only our Code contains a special provision related to publishing financial and non financial information on the Web.

Currently, 90% of the companies listed on BSE provide "company profile" on line.
A recent survey of Websites of the 15 largest (as capitalization greater then 1.5 million Euros) BSE listed companies has shown important achievements on this area.
What is usually presented?

- Translated Website (English):11;
- Company history: 12;
- Management names: 12;
- Strategy statement: 12;
- Financial statements:11;
- Annual report:11;
- News: 11;

Ownership-thresholds of 5%, 10%, 33%, 50%, 75% or 90%

According article 127 of the GEO 28/2002, when the percentage of the voting rights held by a person reaches or exceeds one of the thresholds/values of 5%, 10%, 33%, 50%, 75% or 90% of the total shares, that person and the registry must inform, simultaneously, the issuer and the NSC within five business days of the conclusion of the transaction or of the time of the acknowledgement. If a group of persons reaches or exceeds the said thresholds and therefore becomes a significant shareholder and/or acquire a majority or absolute majority control position, all the members of the group shall inform the issuer and the NSC.

It is worth mentioning that under this reporting rule, BSE registered during 2002-2004 the following figures:

BUCHAREST STOCK EXCHANGE	2004 *	2003	2002
Number of reporting forms registered at BSE	33	58	57

*04/30/2004

1.2 The rights and equitable treatment of shareholders

Pre-emptive Rights

According to GEO 28/2002, the pre-emptive right of the shareholders must be granted irrespective of the nature of the share capital increase ("in kind" or cash contributions).
Contrary, the Privatization law excludes from application of all the market rules governing a share capital increase like the pre-emptive right, if the share capital increase is based and justified by the Privatization law or post Privatization law.
Despite of these contradictory provisions of law, all of our listed companies granted, in 100% of cases, the pre-emptive right irrespective of the nature of the share capital increase or applicable Privatization law.
It is also mentioning that during the period 2002-2004 our listed companies have adopted and registered over 50 share capital increases.

Dividends

According GEO 26/2002 provisions, the general meeting of shareholders that adopts the payment of dividends shall establish their payment period - within six months of the date of the general meeting. If the general meeting does not establish the payment period, the dividends shall be paid within 60 days of the date when the resolution has been published in the Official Gazette. Since the resolution of the general meeting is enforceable, the shareholders are able to impose the implementation of the decisions of the general meeting through forced execution.

During 2003, the Romanian Government promoted a so-called „anti-corruption law" which modified and completed of Companies' Law 31/1990 and introduced a new rule regarding the payment period of the dividend.
According this new provision of the law, the dividends shall be paid within eight months of the date of the general meeting.

In this context and despite of these contradictory provisions of the law, we consider important to point out that:

- In 2003 - 50% of the listed companies which choose to pay dividends for the financial year 2002 – paid dividends in 60 days of the date of the general meeting ; the other half paid dividends within six months;
- In 2004- 40% of the listed companies which have chosen to pay dividends for the financial year 2003- would pay dividends in 60 days of date of the general meeting; 60% of them would pay dividends within six months;

BUCHAREST STOCK EXCHANGE	2003	2002
Number of listed issuers at the end of the year	62	65
Number of listed issuers reporting profits	44	54
Number of listed companies which paid/ will pay dividend	23	26

1.3 The BSE Corporate Governance Institute

It should be also emphasized also that BSE tried also to implement the OECD recommendation regarding establishment of the Directors' Institute in order to enhance board professionalism.

Relating to our leading role in Romanian capital market in the education and promotion of global best practices in corporate governance, we shared the opinion that we should be involved in creating and developing a Corporate Governance Institute.

In August 2003, the BSE set up the "Corporate Governance Institute of the BSE". This Institute is the only Institute having explicitly the objective of promoting corporate governance in Romania.

Since August 2003, BSE's representatives have established important contacts and tried to acquire knowledge from prestigious institution like CIPE and World Bank in order to start-up this important task. We currently are establishing the organizational chart of the institute and hope that end of 2004 to start the activity.

The scope of the Institute is to actively participate in the dissemination and implementation processes of European and international corporate governance principles. The Institute intends to promote, for publicly owned companies, the transfer of international know how, professional training of directors, managers, Board members and employees.

Last but not least, the role of the Institute is to create and promote a managerial culture at the European standards in the Romanian listed companies and to promote OECD corporate governance principles.

Other additional objectives refer to:

- organizing projects, programs, seminars and conferences for understanding by participants of the capital market in general and stock exchange market in particular;
- elaborating training program for understanding by participants of economic and social reality from Romania and from other international economies/countries;
- elaborating procedures related to the rights of stakeholders;
- taking the leadership role in education the journalist regarding corporate governance concepts;

We consider that the directors, after being trained and after sharing their experience and knowledge, would be more prepared to propose to their shareholders the promotion of company to the "Plus tier" and therefore they would be more prepared to subscribe voluntarily to the Code of Corporate Governance of the BSE.
This way, directors would be aware of the corporate governance issues and would more easily accept additional listing requirements related to corporate governance.