

Corporate Governance Code

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Preface

Introduction

The importance of good corporate governance as an integral pillar of corporate sustainability and a mechanism to support trust between corporations, regulators, governments, shareholders, and stakeholders is globally recognized. All over the world, policymakers and regulators have incorporated key corporate governance concepts and practices into national laws and regulations to support the adoption of good governance practices.

In Kosovo, this journey reached an important point with the revision of the Law on Business Organizations in 2018, which incorporates a number of important corporate governance concepts into national law. Furthermore, Article 9 of the law also provides that "the Minister shall adopt a Corporate Governance Code, including provisions on monitoring and implementation of this Code".

The current document is a manifestation of this requirement, building on existing corporate governance standards already in Kosovo. While there are still no specific governance standards for companies listed in Kosovo as in countries with an existing capital market, banks and public sector enterprises are already addressed by special corporate governance regulations, issued in 2014 and 2016, respectively.

While policymakers are working to further develop the national legal framework and align it with European Union best practices, additional efforts are needed to promote good governance. These efforts are particularly important among large enterprises that have the ability to establish stronger governance protocols and which are willing to take advantage of them within and in their interactions with stakeholders.

The Code is based on and is in line with international standards reflected in the OECD G20 Principles on Corporate Governance, last updated in 2015, as well as the acquis and relevant European Union standards in counterpart jurisdictions¹. It is also in line with the principles of governance applicable to banks and public sector enterprises in Kosovo, although the latter are excluded from its scope of application as they are regulated separately.

While all enterprises registered in Kosovo are encouraged to adopt its recommendations, this Code specifically refers to "large enterprises" as defined in Article 5 of the Law on Accounting, Financial Reporting, and Auditing, which is required to adopt the provisions of this Code on the basis of "agree or explain".

While the authors acknowledge that not all provisions of this Code may be relevant to small and medium-sized enterprises and they are encouraged to adopt those relevant recommendations that will increase the efficiency of their corporate governance structure. In particular, small and medium-sized enterprises with external shareholders may consider adopting mechanisms that increase confidence in them. On the other hand, publicly² owned

¹Including in particular DIRECTIVE (EU) 2017/828, REGULATION (EU) 2018/1212, the Action Plan of the Commission for Sustainable Growth, as well as the Corporate Governance Guidelines and Principles for Companies Registered in Europe issued by ECODA in 2010.

²Including Publicly Owned Enterprises, in accordance with the applicable law on Publicly Owned Enterprises as well as Socially Owned Enterprises under the administration of the Privatization Agency of Kosovo, as referred to in Article 23 on Business Organizations.

banks and companies will be regulated separately through the existing corporate guidelines applicable to them and thus shall not be subject to this Code.

Large foreign enterprises (according to the same definition of the Accounting Law) will also be required to adopt the recommendations of the Code.³As such, they will be required to issue a Corporate Governance Statement. Companies that have already adopted an internal corporate governance code/recommendation should only report on issues covered by this Code, which their Code or Rules of Procedure do not address.

Given the early stages of developing corporate governance practices in the country, the Code will be applied as a voluntary standard for one year after its publication. This time is intended to allow companies to adapt their governance frameworks to reflect their recommendations. Starting in 2022, the Kosovo Financial Reporting Council will be the oversight and responsible institution in enforcing companies' compliance with it.

For the fiscal year ending in 2022, "large enterprises" as defined in the Law on Accounting and Financial Reporting will make an explanation in their annual report of how they comply with the provisions of this Code on a "agree or explain" basis. This extends the existing provision of the Law on Business Organizations (Article 7) which requires large companies to prepare a Corporate Governance Statement, including "information on corporate governance, description of internal control systems, composition, and administration of management bodies", supervision and their committees".

This Code aims to highlight best practices to be followed in these areas and provide a basis for companies to present their governance structures in the Corporate Governance Statement. The Corporate Governance Statement shall describe in particular any deviations from the adoption of the provisions of this Code, outlining the rationale for these changes and any corrective action to be adopted.

In addition, management and boards should consider appropriate mechanisms to integrate the recommendations of this Code into corporate governance frameworks. They can do this by reflecting the recommendations of this Code in the company's statute and regulations, as well as in non-binding documents such as the company's specific governance and ethics code or a board guide. In doing so, they will also refer to the relevant corporate legislation which addresses corporate governance issues.

Responsibility for implementing these guidelines lies with the various governing bodies, including the board, senior management, and investor relations. Thus, the implementation of these practices requires a clear allocation of governance responsibilities to the relevant company bodies at the board and executive level.

This Code will be developed in conjunction with the development of international best practices in corporate governance and in accordance with relevant economic and corporate developments in Kosovo. The Kosovo Financial Reporting Council will monitor these developments and will consider any necessary revisions to this Code.

³These include branches of foreign business organizations and representative offices of foreign business organizations in Kosovo as designated in Article 23 of the Law on Business Organizations.

Terminology

Terms and expressions used in this Code shall have the following meaning:

Board Director / Company Director: A board member of a company, including executive and non-executive board members.

Code: The Minister issues the Corporate Governance Code, together with the provisions for monitoring and implementation of this code. The Corporate Governance Code is adopted in the form of a guide and does not constitute a legal act.

Controlling interest: The ability to influence the actions or decisions of the enterprise directly or indirectly, holding 50% or more of the voting rights in a company or having the right to appoint 50% or more of the board. Distributed shareholding companies can also be controlled by shareholders who own fewer shares.

Law on Business Organizations: Law no. 06/L-016 on Business Organizations approved on May 24, 2018 by the Government of Kosovo.

Corporation: A joint-stock company or limited liability company registered in Kosovo.

Corporate Governance: Involves a set of relationships between a company's management, board of directors, shareholders, and other stakeholders, providing the structure through which company objectives are set and the means to achieve those objectives are determined.

Corporate Secretary: A senior official appointed by the board of directors, responsible for supporting the Chairman of the Board in facilitating routine board interactions, as well as ad hoc activities such as board evaluations and training.

Cumulative voting: A method of electing board members that gives each shareholder a voting right equivalent to the number of shares he/she owns, and with which the shareholder has the right to exercise his/her voting right towards a nominee or distribute his/her votes to several nominees.

Internal audit: Is an independent activity, objective control, and advice created to add value and improve the operations of a company.

Investor Relations: A function that aims to support effective communication between a company and its current and potential investors and other stakeholders that integrates finance, communication, marketing, securities, legal competencies, and compliance.

CEO: A full-time Board member of the company's executive management team, and participates in its day-to-day activities.

Foreign companies: A branch registered in Kosovo to conduct lawful business activities for a foreign business organization established under the law of a jurisdiction outside Kosovo.

Large company: According to Law no. 06/L -032 on Accounting, Financial Reporting and Auditing, large enterprises / groups are those that exceed the limits of at least 2 of the following 3 criteria: statement of financial position of twenty million euros; net turnover of forty million euros; more than 250 numbers of employees during the financial year.

Chairman of Independent Directors: is an independent director appointed by the board to serve in the leadership capacity to coordinate the activities of other independent directors.

Ministry: The Ministry of Trade and Industry which was responsible for drafting this Code.

Non-executive Director: a Board member who is not a full-time member of the Company's management team, and does not participate in his day-to-day activities.

Independent Director: a non-executive member of the Board who enjoys complete independence in his/her position from management and shareholders.⁴

Executive management: persons responsible for the strategic management of the enterprise, who may include the Chief Executive Officer, Senior Financial Officer, Senior Audit Officer, Senior Operations Officer, Senior Risk Management Officer, and others as required.

Shareholders Assembly: an assembly composed of shareholders of enterprises established in accordance with the provisions of the Law on Business Organizations.

Stakeholders: any person who has a financial investment in the enterprise, including employees, creditors, customers, suppliers, and the community.

Significant shareholders: any person/entity who owns (5%) or more of the company shares or voting rights in it.

Parties involved: any person or entity related to the reporting entity as defined in International Accounting Standard 24.⁵

Remuneration: fixed and variable compensation received from executives and board members. For management it may consist of fixed and variable payments; for board members from the basic fee.

Chapter I. Shareholder and Stakeholder Rights

⁴Correct definition according to Article 168 of the Law on Business Organizations.

⁵ <https://www.ifrs.org/issued-standards/list-of-standards/ias-24-related-party-disclosures/>

Leading corporate shareholders as key governance actors should play an important role in relation to corporate affairs. However, from a legal perspective, they do not have direct competence to monitor the company's operations, a responsibility which rests with the board and management. Their rights to influence corporate affairs are generally indirect, including the right to influence the election of board members, to amend the founding documents of the company, and to approve extraordinary transactions.

The effective exercise of shareholder rights is essential for the proper functioning of the corporate governance system. It is important that the corporate governance framework protects and facilitates the effective exercise of shareholders' rights and ensures their equal treatment. The protection of shareholder rights is of particular importance to companies with external shareholders or minority shareholders, where risks of minority shareholder abuse may arise.

This section of the Code addresses the effective exercise of shareholder rights by providing guidance to enterprises on how to incorporate shareholder rights into the governance framework and how to protect them. The following recommendations are based on the existing provisions of the Law on Business Organizations, providing further guidance on the exercise of shareholder rights, the rights and responsibilities of institutional investors, the conduct of general meetings and the rights of shareholders in fundamental decisions.

It is important that these recommendations are interpreted in the context of the corporate ownership structure, especially towards foreign or small investors who face particular risks. While companies may need to review their core corporate documents such as association statutes to ensure that these rights are adequately reflected, it is recommended that the approved framework be flexible, allowing companies to make adjustments on demand.

I.A. The exercise of ownership rights by shareholders

Companies must ensure that the fundamental rights of shareholders are addressed in their governance framework, and are in line with applicable law.⁶

These include the right to provide ownership registration methods; to issue or transfer shares; receive relevant and material information on a regular and timely basis; participate and vote in general meetings of shareholders; elect and remove board members; and share corporate profits.

Shareholders should be trained and encouraged to exercise their voice in the annual meetings of shareholders using the principle of one member one vote, which enables their voice to be heard in the decision-making processes of the enterprise.⁷

All shareholders of the same class should have equal rights.⁸ Preferred shareholders can benefit from additional rights as stated in the founding documents of the company, as long as it adheres to the basic principles of share capital.

⁶Please refer to the Law on Business Organizations which already addresses these fundamental issues, providing specific guidance on shareholder ownership rights for different types of enterprises.

⁷However, unlike other jurisdictions, the Law on Business Organizations provides that a share must be owned by more than one shareholder in certain companies (Article 91). However, unless the Statute of the Limited Liability Company provides for otherwise, all the co-owners of a Share shall exercise their vote and other rights in the Limited Liability Company only through a single joint representative, but they are jointly and separately responsible for all obligations that respect the Share.

Companies must maintain an up-to-date register of their shareholders of all classes and allow shareholders access to enterprise registers.

Documents related to the holding of past shareholders' meetings and approved decisions will be made available to all shareholders.

I.B Holding general and extraordinary meetings of shareholders

The companies will organize a regular Annual General Meeting (AGM) once a year. The modalities for organizing an annual general meeting of shareholders are described in the Law on Business Organizations.

In particular, annual shareholders' meetings shall be held within thirty (30) days after the board receives the audited financial statements of the company, but not later than ninety (90) days after the end of the last financial year.

The board of directors will be responsible for ensuring the timely holding of the annual meeting of shareholders, in accordance with the relevant legislation and provisions in the founding documents of the company.

Shareholders should be able to participate effectively and vote in general shareholders' meetings and should be informed of the rules, including voting procedures governing them.

Shareholders must be provided with sufficient and timely information regarding the date, location and agenda of general meetings, as well as complete and timely information regarding the issues to be decided at the meeting.

Provided it is in compliance with the above, the company statute or sub-legal acts or other governing documents may specify the exact date and time, or a method for determining the exact date and time, for holding the annual meeting.

As such, the shareholders' meeting will be held at the place specified in the governing documents of the company or at a place designated by the board of directors. The aim should be to facilitate the participation of the largest number of shareholders.

During AGM, shareholders should have the opportunity to ask questions to the board and management and propose resolutions regarding the company's business flow.

Shareholders must be able to vote in person or in absentia, and equal effect must be given to votes either given in person or in absentia. Foreign shareholders must be able to cast their ballots without hindrance even if they vote through intermediaries.

⁸In particular, all shares of the same class will be entitled to the same dividend distribution.

Absentee voting, including the electronic distribution of representation materials, and the reliable ballot confirmation system, should be facilitated, especially by companies with foreign shareholders.⁹

The Board of Directors shall ensure that the shareholders are provided with the audited financial statements and other relevant documents at least thirty days prior to the AGM.

Shareholders should be able to submit questions regarding the financial statements and the external audit report, including the auditors who should participate in the AGM and be available to answer questions.

Shareholders appoint the board of directors and approve its remuneration. In particular, compensation schemes for board members and directors must be subject to shareholder approval.

Shareholders will have the right to add items to the agenda at the company's annual meetings as long as they are relevant to the company's affairs.

The company's founding documents may further specify a minimum number of shareholders required to sponsor a resolution specified as a percentage of market value or voting rights.¹⁰

The Board will be allowed to convene extraordinary shareholder meetings in accordance with the provisions specified in the Kosovo Law on Business Organizations.

Extraordinary shareholders' meetings may be convened by the board of directors or by shareholders who own at least ten percent (10%) of the company's capital.¹¹

I.C Shareholders' rights in fundamental decisions

All shareholders of the same class should be treated equally. All investors should be able to obtain information about the rights attached to all series and classes of shares before receiving them.

Capital structures and arrangements that enable shareholders to obtain a degree of influence or control disproportionate to their ownership of capital need to be disclosed (clearly).

The rights attached to different classes of shares will not be changed except with the prior approval of the shareholders (by a simple majority of the shareholders of that class negatively affected).

The rules and procedures governing the acquisition of corporate control and extraordinary transactions need to be clearly disclosed in order for investors to understand their rights.

⁹The Law on Business Organizations already provides that the statute of a Joint-Stock Company may provide that shareholders may participate in a shareholders' meeting in an electronic or telephone communication, or any other distance communication (Article 184).

¹⁰They must comply with the provisions of the Law on Business Organizations.

¹¹Kosovo Law on Business Organizations also provides that in some cases the Managing Director/Chief Executive Officer may also be allowed to convene a meeting.

Transactions must take place at transparent prices and on fair terms that protect the rights of all shareholders according to their class.

Strategies against the acquisition of small shareholders ("poison pills") should not be used to protect management and the board from liability, and boards should exercise due diligence in adopting any such strategy.

Shareholders who alone or together with related parties, own more than fifteen percent (15%) of the ordinary shares of a company with more than one hundred (100) holders of ordinary shares, shall immediately notify the Company for this fact and any rights they benefit from this block of shares control.¹²

Securing additional long-term shareholder rights is increasingly considered a good corporate governance practice. Companies can provide mechanisms to promote long-term share ownership.

In controlled companies, the corporate governance regulations of the company may specify special rights and responsibilities for controlling shareholders to ensure that their influence on the affairs of the company is not excessive.¹³

I.D Rights and responsibilities of institutional shareholders

Institutional investors, including pension and mutual funds, and insurance companies, both private and public, need to be aware of their management responsibilities.¹⁴

Institutional investors should strive to develop ownership and management policies, in which they describe their expectations as investors.

Such policies may include their engagement strategies, the approach(es) to be used for such interventions, and how they will evaluate the effectiveness of these engagements.

Institutional investors operating in a fiduciary capacity must disclose their corporate governance and voting policies, including how they manage material conflicts of interest.

Institutional investors must vote at shareholders' meetings in accordance with their voting policies and establish an ongoing dialogue with portfolio companies.

To do this, it is recommended that institutional investors have sufficient resources dedicated to reviewing the corporate governance of their companies in which they have invested, especially in companies registered in Kosovo.

¹²For further information on correct procedures, refer to Article 208 of the Law on Business Organizations.

¹³For example, when a company may enter into a significant transaction with a controlling shareholder, additional controls and balances and the timely disclosure of such transactions are recommended.

¹⁴The recent amendment to the G20/OECD Principles on Corporate Governance and the national standards that followed it include specific management responsibilities over institutional investors.

Institutional shareholders can publish the results of their ownership and engagement strategies in an annual report.

Such reports may include the nature and number of engagements, the results of those engagements, and their views on market changes.

Responsible institutions holding securities as nominees should not cast ballots on those securities unless they have received authorization to do so.

Beneficiary shareholders, on the other hand, are encouraged to communicate their voting decisions to financial market intermediaries.

Although institutional investors may use the advice of authorized advisors and other company-specific sources of information, they will not delegate their management responsibilities to these entities.

I.F Rights and privileges of stakeholders

The legal and regulatory framework in Kosovo recognizes the rights of stakeholders¹⁵ and aims to encourage cooperation between corporations and stakeholders in creating wealth, employment, and corporate sustainability.

Companies that create governance systems and codify them in governance codes will address stakeholder rights and board and management commitments to the stakeholder community.

The Corporate Governance Statement will disclose any decision that significantly affects the rights of stakeholders, or any significant grievances filed by stakeholders.

To the extent that company employees are permitted to appoint a board representative, the procedures for their appointment and election should be clear. Employee representatives will have equal rights on boards, including especially with regard to the right to vote.

¹⁵The specific rights of stakeholders are particularly enshrined in the Law on Business Organizations. Corporate governance rules for banks and public sector enterprises also address the rights of creditors and employees as long as the latter are invited to attend boards.

Chapter II. Composition and management responsibilities

Responsibility for implementing the corporate strategy is placed in the hands of the selected, motivated management team and, when necessary, replaced by the board. The responsibility of the management team for defining and executing the corporate strategy, risk management, auditing, and other functions is overseen by the board.

In doing so, the board effectively delegates to management its tasks for the day-to-day execution of the corporate strategy, a third corporate governance body, after the shareholders and the board. As a result, executive management has responsibility for the internal governance of corporate affairs and has the most complete information about strategic, operational, and progress challenges.

The corporate governance framework should establish an appropriate level of executive powers to be delegated to management. If too little power is given, and management freedom of action is very limited, the company is likely to become inflexible. However, with excessive managerial powers the interests of shareholders can be compromised.

The management team will be appointed by the board or a committee thereof such as the Appointment and Remuneration Committee, once it has secured itself for their ability to run the corporation. Management remuneration is also determined by the board in order to align management goals with corporate long-term objectives, addressing potential short-term vision risks.

The senior management team has the greatest implication in corporate affairs on a day-to-day basis and thus is determinant of corporate viability. Therefore, it is necessary for them to have the right skills and knowledge. The composition of senior management depends on the size and complexity of the corporate structure, usually including the Chief Executive Officer (CEO), Chief Financial Officer (CFO), Chief Operating Officer (COO), Chief Legal Officer, Audit, and other senior executives.

II.A Responsibilities of Senior Executives

The Human Resources function will maintain an up-to-date profile for each management role and will consider the right of inheritance planning for key roles.

The duties and responsibilities of senior officials will be described in the company code of governance or its equivalent.¹⁶

Senior management members must have the appropriate experience, competencies, and integrity to manage the businesses and people under their supervision.

They need to have access to adequate training in order to increase their knowledge to be prepared for developments related to their area of responsibility.

¹⁶The specific competencies of a Chief Executive Officer/Managing Director are described in the Law on Business Organizations.

Summary of responsibilities and reporting lines of senior executives should be codified in the organizational chart to be updated regularly, and as far as possible, also made available to the public.

The Chief Executive Officer shall establish and make available to the relevant parties a delegation of his authority to have clarity regarding the authorized signatories, as well as controls to avoid fraud.

The process of selecting CEOs and senior executives, as well as monitoring their performance is the responsibility of the board or a committee dedicated to it (eg Governance or Appointment and Compensation Committee).

The process of determining executive remuneration is also the responsibility of the board or a committee of it, e.g. Nomination and Remuneration or Governance Committee.¹⁷

II.B Risk Management and Internal Audit Functions

Risk management involves overseeing risk management responsibilities, specifying the types and degree of risk that a company is willing to accept, and how it will manage them.

Effective risk management is increasingly recognized as a critical component of good corporate governance and involves processes at both the executive and board levels.

The Board will oversee the risk management system and systems established to ensure that the corporation complies with applicable laws, including the laws of taxation, competition, labor, environment, equal opportunity, health, and safety.

While the ultimate responsibility for risk management lies with the board (or a committee - such as the Risk Management Committee). It is the responsibility of management to ensure that the risks taken are in coherence with the risk profile of the company.

The specific functions of corporations such as risk management and internal audit are of particular importance for ensuring assurance to management and the board by making proper oversight of key risks and the accuracy of financial reporting.¹⁸

The internal audit function is equally important for managing risks, particularly governance and integrity risks. Internal audit will help organizations meet objectives by bringing a systematic approach to assessing and improving the effectiveness of risk management, control, and governance processes.

Ultimately, the board is responsible for overseeing the internal control system based on reports it receives from management and directly from the internal auditor.

¹⁷It can be based on a standard of comparison that will be used by the board as a contribution to its decision-making.

¹⁸The external audit function, which will be addressed in further detail below, provides further assurance in that regard by reporting directly to the board.

It is recommended that the internal audit function be headed by an independent Head of Internal Audit (i.e. Chief Audit Officer).

Management should be responsible for developing internal audit and risk management programs by submitting these programs for approval by the board.

The Internal Audit Department will prepare and submit a written report on its activities to the Board and the Audit Committee.¹⁹

Based on this reporting, the board (or a committee thereof) should ensure the integrity of the corporate accounting and financial reporting systems, including independent auditing, risk management, financial and operational control, and compliance.

While internal auditing helps organizations maintain the integrity of their operations, it should be complemented by external audit activity, which should be performed by a licensed and qualified external auditor appointed by the board (ie, the Audit Committee).

The roles of Chief Risk Officer and Chief Internal Audit Officer, to the extent that they exist, should not be combined with other functions in the company²⁰

The departments of risk, compliance, and internal audit, must be provided with the necessary financial resources to perform their duties. This should be the object of discussion with management and the board, if required.

In addition to internal audit and risk functions, the compliance function should proactively identify, document, and assess compliance risks.

The board of directors is responsible for ensuring that there is a written compliance policy, and that its implementation is in line with the risk management strategy.

¹⁹These reports will include an assessment of the Company's internal control system and the final opinion, recommendations should ideally be issued on a quarterly basis.

²⁰For example, it is not recommended to combine the positions of risk officer and legal officer or to require the risk officer to report on behalf of the legal officer.

Chapter III. Structure and Responsibilities of the Board

One of the main shareholders' rights is the appointment of directors and the definition of board competencies. The Board is one of the most powerful governing bodies, so its main task is to oversee the implementation of corporate governance codes and regulations. A governance framework should formally define the structure of the board, including the size, composition and process by which directors are appointed to the board.

Along with corporate governance strategy, the board is primarily responsible for reviewing and guiding corporate strategy, key action plans, risk management policies and procedures, annual budgets and business plans, key capital expenditures, acquisitions and depreciation. The Board is also responsible for overseeing risk management and compliance systems established to ensure that the corporation complies with applicable laws.

The Board has a duty to act in the interest of the shareholders and must treat the interests of the stakeholders fairly, including those of employees, creditors, customers, suppliers and local communities. Boards are constantly required to make exchanges of complex ideas, devote considerable time to the execution of their tasks, and report to shareholders on the performance of the enterprise.

Having a clear and effective framework is essential for overseeing corporate activities, including management performance, achieving objectives so that shareholders receive adequate reporting and auditors perform their responsibilities with due diligence and without conflict of interest. An effective Board should be constantly encouraged by its Chairperson to ensure that they have the knowledge and resources to address corporate challenges.

This section of the Code addresses best practices in structuring an effective board, ensuring that it manages conflicts of interest and balances complex exchanges between stakeholder benefits and assessments. In particular, this section addresses the duties and responsibilities of the director, best practices of board independence, the structure and composition of the board, its committees, and mechanisms for evaluating and improving board efficiency on an ongoing basis.

IIIA. Duties and responsibilities of the Director

It is of critical importance that board members should be able to commit themselves effectively to their responsibilities, dedicating sufficient time to the exercise of their duties.

Each board member owes fiduciary company and its shareholders which means that he/she should act on a fully informed basis, in good faith and with due diligence and care.²¹

Board members should avoid any circumstances that may put their objectivity at risk or that might compromise their ability to dedicate sufficient time to their board responsibilities.

In practice, board members need to consider how their executive and non-executive responsibilities may affect their dedication and independence.

²¹Refer to Article 258 of the Law on Business Organisations which further defines the duty of care and loyalty.

Where board decisions may affect shareholders differently, the board should treat all shareholders fairly.

Notably, directors appointed by a specific shareholder shall be reminded that they owe to all shareholders as a collective.²²

Boards are expected to take due regard of, and deal fairly with, other stakeholder interests including those of employees, creditors, customers, suppliers and local communities.

IIIB. Structure of the board and its committees

The board shall contain a sufficient number and a balance of executive and non-executive directors to enable it to carry out its responsibilities with diligence and care.

The criteria regarding board member qualifications and independence shall be outlined in the company's corporate governance code or the board charter.²³

The size of the board shall be determined in light of the size and complexity of the company, its shareholder structure, and the need for varied technical expertise.

It is recommended that the board be comprised of no less than 5 directors of which the majority shall be independent, non-executive directors.

Board members shall be elected by shareholders for a period of 4 years, renewable up to 3 times, if approved by a shareholder vote. Shareholders may be able to use cumulative voting to vote for a board candidate.

Companies shall nominate and appoint a sufficient number of independent directors who shall comprise no less than a third of the board and by having each board committee chaired by an independent board member.

In companies with more than two hundred and fifty (250) shareholders, at least 3 independent directors must be nominated as per Law on Business Organisations.

In companies with one hundred (100) or more shareholders, family members of employees may not comprise a majority of the board as per the Law on Business Organisations.

²²In companies, part of a group where separate boards may exist, the duty of loyalty is to the board of which he/she is a member of.

²³As per Article 175 of the Kosovo Law on Business Organisations, a board charter may provide that the board shall adopt in writing rules on corporate governance covering matters such as standards for the qualification and independence of the director, responsibilities of directors including participation in meetings, diligence in reviewing materials and rules of publishing and reviewing conflicts of interest, director compensation policy, continued planning both for directors and officials as well as other matters of corporate governance which are deemed as appropriate.

It is considered a good practice to appoint a Lead Independent director, with particular powers to request information of the management and to lead the debate among independent directors.

It is preferable that the board be chaired by an independent director and it is strongly recommended that the roles of the Chief Executive Officer and the Chairperson are maintained separate.

To the extent that board committees exist, each should be chaired by a board member who is not a chairperson of another committee and is preferably an independent director.

The Board includes diverse expertise in the financial, operational, risk, governance and other areas relevant to the company's business.

It is also recommended that boards have gender representation, with the aim of including at least one female member represented on the board.

The Chairperson of the Board, to be elected from among the members of the Board, facilitates discussions at ordinary and extraordinary meetings of the Board and ensures that the representatives of the Board have the appropriate skills and independence.

Boards may consider appointing a Deputy Chairperson from among the board members to facilitate the continuation of work in the event that the Chairperson is temporarily unavailable to perform his/her duties.

If a board member's contract is terminated or he /she resigns on his/her own volition, the company shall record the reasons for doing so in the minutes of the board meeting where this decision is approved.

According to the Law on Business Organizations, the minutes of the board meeting are prepared no later than 3 days after the date of the meeting and are signed by the Chairperson (or another director) who presided the meeting and the Company Secretary (or the person who acted as such at this board meeting).

IIIC. Composition and structure of board committees

To discharge its responsibilities appropriately, boards shall establish board committees, including the Audit, Risk Management and Governance.²⁴ Additional committees may be established upon request.

Board committees shall include relevant expertise and may seek to obtain external expertise when necessary. It is not recommended to invite individuals who are not members of the board to be members of its committees.

²⁴The Governance Committee may also be called a Remuneration and Nomination Committee; however it is proposed that this Committee has a wider remit that appointment and compensation of board and executives.

It is recommended that executive directors comprise no more than half of the board and that their participation in Audit and Governance Committees in particular is limited.

Board committees shall possess the specialised expertise in the area for which they have a particular responsibility and shall report to the board on their activities, results and conclusions.

For this purpose, at least one member of the Audit Committee must have financial expertise, at least one member of the Risk Management Committee must have risk expertise and at least one member with Corporate Governance expertise.

Each board committee consists of not less than 3 members, and their participation in the Committee is limited to the duration of their term.

It is preferable for members of one committee not to be members of any other committee.

The Corporate Governance Committee (or Staff and Remuneration Committee) shall appoint senior executives and shall determine their remuneration in accordance with the long-term performance of the corporation and the interest of the shareholders.²⁵

Corporate Governance (or the Staff and Remuneration Committee) has a special responsibility for overseeing all governance issues in the company, in particular ensuring that the company corporate governance code, company charter, authority matrix and other relevant documents be up to date and reflect best practices.

This committee also has the ultimate responsibility for reviewing and issuing the Corporate Governance Statement to be part of the annual report, which explains compliance with this Code.

IIID. Conduct of board meetings

The Board and its committees make their decisions by a simple majority, which will constitute a quorum. This can be facilitated by having an odd number of Committee members.

Companies aim to hold no less than four board meetings a year, in person or by other means (if physical meetings are challenging).

It is recommended for Board Committees to meet on a quarterly basis and determine an appropriate frequency of meetings.

The role of the Chairperson and the work of the Board, and of its Committees, may be supported by a Corporate Secretary (i.e. the Secretary of the Board).

²⁵If needed, it may resort to third party assistance in determining suitable remuneration.

It is considered good Corporate Governance practice for board decisions, including any dissenting opinions, to be recorded in the minutes of Board meetings and to be documented by the Secretary of the Corporation or an equivalent.

In large companies, not combining the role of Corporate Secretary with another role is considered as best practice.

The Corporation Secretary must have the necessary legal expertise (at least the bar exam) and governance to perform his/her functions without being a member of the Board.

IIIE. Enhancing board effectiveness

Board evaluations will help assess board efficiency and highlight gaps needed in terms of board capabilities and issues in the dynamics of board interactions.

It is recommended that such assessments be conducted at least once every two years, using a methodology and approach to be determined by the Chairperson of the Board.

The Chairperson of the Board, using board assessments and discussions with board members shall aim to develop board collective and individual capacities by providing additional training on relevant subjects.

Depending on budget availability, board members are able to request additional technical expertise (legal, financial, human resources, etc.) that could enable them to perform their duties effectively.²⁶

According to the Law on Business Organizations certain significant transactions require boards to obtain the opinions/evaluations of third parties which are covered by the budget.

²⁶ For example, the board may ask human resource officials to provide you with the legal basis for compensating engaged experts.

Chapter IV. Disclosure of information and transparency

Disclosure of financial and non-financial information material is a fundamental pillar of good governance, signalling corporate transparency to shareholders and stakeholders. Shareholders and potential investors require access to regular, reliable and comparable information for them to evaluate management and make information-based decisions regarding corporate valuation. Full disclosure that promotes transparency is essential to the shareholder's ability to monitor companies and is essential to their ability to exercise their rights on an informed basis.

In contrast, incomplete disclosure and non-transparent practices can contribute to unethical behaviour and loss of market integrity at great cost, not only to the company and its shareholders, but to the economy as a whole. Incomplete disclosure can also negatively affect individual companies by increasing, for example, the cost of capital and negatively affecting the company's equity reputation with customers and suppliers.

At the same time, disclosure requirements should not impose unreasonable administrative or cost burdens on companies. Companies are not expected to disclose information that could jeopardize their competitive position. Public disclosure is required on an annual basis, although companies may need to make periodic disclosures on material matters and other voluntary disclosures as needed.

Transparent disclosure of information should include financial and non-financial information material on corporate matters, prepared by management and approved by the board. This chapter provides guidance on how companies can improve the quality of their financial and non-financial disclosures. It also provides an indication of the content of the Corporate Governance Statement that companies should publish on an annual basis.

IVA. Shareholder access to information

Companies use the most effective methods to communicate with shareholders and should not discriminate between shareholders regarding the provision of information.

Companies are advised to provide clear, adequate and comparable disclosures, addressing all material financial and non-financial developments to the Kosovo Council for Financial Reporting (KCFR).

All registered business organizations (except the Central Bank and its regulated organizations) must submit their annual financial statements to the Kosovo Council for Financial Reporting (KCFR).²⁷

Boards and senior management are advised to refer to the relevant provisions contained in the 2018 Law on Accounting, Financial Reporting and Auditing regarding disclosure and transparency.

²⁷According to Article 18 of the Law on Accounting and Financial Reporting, this shall include consolidated financial statements, the management report, the consolidated management report and the audit report of the annual financial statements, respectively the audit report of the consolidated annual financial statements.

In addition to registration with the KCFR, annual reports and material announcements are posted on corporate websites and communicated directly to major shareholders.

It is important to note that communication within corporations does not privilege any shareholder, where everyone is given equal access to information.

Companies need to disclose their shareholder structure, particularly any beneficial shareholder with equity shares exceeding 5%. Any significant changes to the ownership structure must be communicated to the shareholders.

IVB. Corporate Governance Statement

Under the Law on Accounting, Financial Reporting and Auditing (Article 7), large enterprises are required to add a statement of compliance, discussion, management analysis and a Corporate Governance Statement.²⁸

Although the list below is not exhaustive, the Corporate Governance Statement to be approved by the board includes the following elements:

- The composition of the board and committees, as well as their independence
- Key decisions adopted by the board during the year, and any reasoning required
- Number of board committee meetings and levels of attendance at these meetings
- Board evaluation of key risks, their management and how they may affect the company's operations
- Information on the appointment of the external auditor
- Information on the oversight of the internal audit function
- Oversight of the Board of Directors and its view on corporate legacy planning
- Remuneration of board and senior executives, including any capital scheme²⁹
- Any illegal, unethical action that could materially affect the operations of the company
- The results of board evaluations and the concrete actions in which these may have resulted
- Information on each significant transaction and each related party transaction and processes for their approval

Any deviation from this Code must be justified and addressed in the Corporate Governance Statement in the "match-or-explain" form in relation to this Code.

According to the relevant EU regulations, public interest entities with more than 500 employees include in their Corporate Governance Statement, non-financial information related to environmental, social and employee-related issues, compliance with the human rights, anti-corruption issues.³⁰

²⁸As per Article 7 of the Law, it should include the following elements: all information on the corporate governance practices, description of internal control systems and risk management related to the financial reporting process; and composition and functioning of the managerial and oversight board and committees.

²⁹Internationally, it is regarded as good practice for boards to develop and disclose a remuneration policy statement covering board members and key executives.

³⁰For full text of the regulation, please refer to: <https://data.consilium.europa.eu/doc/document/PE-47-2014-INIT/en/pdf>

Companies aim to communicate about their environmental and social impact by adopting key comparable performance indicators that refer to internationally accepted standards, such as the United Nations Sustainable Development Goals.

IVC. Shareholder relations

Companies with foreign shareholders, as far as possible, aim to provide communication in relevant foreign languages, to allow them easy access to corporate reporting.

Appointing an investor relations official is considered a good practice for companies with a large shareholder base or those listed on public equity markets.

Companies are advised to appoint a spokesperson to publicly communicate with authorities, shareholders and the public through traditional media, the internet and social media as needed.

On the other hand, other executives and board members of the company abstain from making public statements on behalf of the company that may affect the valuation of the company.

Chapter V. Ethics and integrity structures and practices

No corporate governance framework can be effective in the absence of appropriate ethics and integrity policies and their application. The board sets the rules at the top of the organisation, including by introducing appropriate integrity processes and procedures and overseeing their implementation. The board has the ultimate responsibility to ensure that key governance, and integrity risks are addressed through an ethics and integrity framework.

The ethics and integrity framework should include policies and procedures dealing with anti-bribery, whistleblowing and addressing conflict of interest situations. Ethics and integrity policies should address practices at the level of the board, senior management and employees as well as their interactions with third parties. As such, they should address how board members are to behave in conflict of interest situations by for example, requiring conflicted board members to abstain from participating in decision-making processes.

They should also address behavioral expectations at the senior management and employee level. An ethics policy developed by management and approved by its board or committee, can provide a solid basis for communicating these expectations. Additional policies, such as a whistleblowing policy, or the anti-corruption policy may reinforce the ethical framework within the corporation.

Ultimately, a high standard of ethics and integrity provides shareholders with assurance of the safety of their investments and stakeholders of positive social and environmental impact. On the contrary, unethical and illegal practices by corporate officers may not only violate the rights of stakeholders but also be to the detriment of the company and its shareholders in terms of reputation effects and an increasing risk of future financial liabilities.

This chapter addresses the board and management role in promoting an ethical culture, addressing conflict of interest situations, as well as reviewing and approving related party and other high-risk transactions. The objective of this section of the Code is to provide practical guidance on how an ethical culture within organisations can be fostered and how shareholder and stakeholder trust can therefore be reinforced.

VA. Board and management role in promoting ethics

Management shall prepare and periodically update policies relevant to the compliance, integrity and anti-corruption, aimed to address key risks facing the company.

The Corporate Governance Committee within the Board shall be responsible for approving and periodically reviewing these policies.

The Board shall ensure that appropriate resources are dedicated to integrity and compliance functions and that appropriate controls exist to prevent corporate fraud.

Stakeholders, including individual employees and their representative bodies, should be able to freely communicate their concerns about illegal or unethical practices to the board and to competent public authorities.

Whistleblowing activity by stakeholders should be allowed to facilitate reporting of unethical/illegal practices, and companies shall commit to investigating these appropriately and to protecting stakeholders from reprisal.

VB. Managing conflicts of interest

The Chair shall verify and confirm that board members do not have any conflicts of interest when they assume their duties.

A declaration should be signed by each board member confirming absence of conflicts of interest at the beginning of his/her term.³¹

Members of the board and key executives should be required to disclose whether they, directly, indirectly or on behalf of third parties, have a material interest in any transaction or matter directly affecting the company.

How conflict of interest situations are to be addressed at the employee, senior management and board levels should be addressed in the company's ethics policy or the equivalent.

Transactions constituting a conflict of interest to members of the executive and/or the board as defined in the Kosovo Business Organisations Law shall be approved by the majority of the board, wherein the conflicted board member shall abstain from voting.³²

VC. Related party and high risk transactions

Related-party transactions (RPTs) should be approved and executed in a manner that ensures proper management of conflicts of interest and corporate and shareholder interests.

Material related party transactions and how they were approved shall be disclosed in the annual financial report.

Material related party transactions should be subject to additional approval protocols by the board or a committee thereof, whereby any conflicted board member shall be required to abstain.

Critical governance risks such as procurement, import/export activity and government contracting (as well as any sector specific risks) should be subject to additional review by the internal audit function and the Audit Committee of the Board.

Minority shareholders should be protected from abusive actions by, or in the interest of, controlling shareholders acting either directly or indirectly.

³¹ Board members should be required to notify the board of any changes to their executive or non-executive activities, shareholdings or other interests that may affect this statement.

³²Please refer to Articles 258-260 in the Law on Business Organizations for further information about how these transactions shall be approved.

As such, all significant transactions with controlling shareholders shall be subject to an Audit Committee Approval.

Furthermore, it is recalled that major transactions³³ as defined in the Kosovo Law on Business Organisations shall be approved by at least two-thirds (2/3) of the shares entitled to vote on the transaction in the shareholder assembly.

³³ As per the Law, on Business Organizations a “major transaction” means a transaction or related series of transactions which include the purchase or other acquisition, the sale or other transfer, or the pledge or mortgage, of company property, property rights, or other rights which have monetary value, the value of which comprises twenty percent (20%) or more of the book value of assets.