

# **CORPORATE GOVERNANCE IN MACEDONIA, FYROM**

An Analysis of Corporate Governance Developments Affecting  
Non-Listed Joint Stock Companies in Macedonia

SKOPJE, MACEDONIA, FYROM  
APRIL 2005

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Submitted to the OECD International Meeting on Corporate Governance  
of Non-Listed Companies, Istanbul, Turkey  
April 19-20, 2005

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*The opinions expressed herein are those of the authors and do not necessarily reflect the views of USAID, the Macedonia Corporate Governance Project, Emerging Markets Group, the Rotterdam School of Management or member organizations of the Macedonian Corporate Governance Council.*

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## 1. INTRODUCTION

This analysis provides an overview of recent corporate governance developments affecting non-listed joint stock companies in Macedonia. The report summarizes the findings of corporate governance surveys, reviews the latest legal developments in commercial legislation affecting corporate governance standards, and describes the steps that have been taken by the Macedonian government, the donor community, and the private sector to improve corporate governance standards of Macedonian non-listed joint stock companies. The authors would like to acknowledge Janet Katz, Bob Singletary, Wade Channel and Darrel Brown for their contribution to research papers and surveys used for this paper. The statistical analysis of joint stock companies in this paper is derived from a research paper written by Tom Carson and Gregory Maassen for the OECD and USAID in 2003.

The OECD has played an important role in recent corporate governance developments in Macedonia. On June 19, 2003, the OECD participated in the “National Conference on the OECD White Paper on Corporate Governance for South Eastern Europe” organized by the Ministry of Economy and the Macedonia Corporate Governance and Company Law Project (USAID – CG&CL project).<sup>1</sup>

The conference, held in Skopje, presented the official Macedonian translation of the White Paper as part of a drafting process that would ultimately result in a new Company Law in May 2004. The 5<sup>th</sup> OECD Southeastern Europe Corporate Governance Roundtable was held on June 10-11, 2004 in Ohrid – Macedonia, in cooperation with the Macedonian Corporate Governance Council (established in January 2004), the Ministry of Economy and USAID – CG&CL Project. During this conference, the Macedonian delegation introduced a new company law based on OECD corporate governance principles and EU company law directives.

## 2. MACEDONIA’S NEW CORPORATE GOVERNANCE STANDARDS

Long-term efforts to improve the investment regime paid off last year in the adoption of a new law governing corporate governance standards of joint stock companies (listed and non-listed) and other commercial legal entities. On April 30, 2004, the Macedonian Parliament passed the Law on Trade Companies in the second and final reading. This law brings substantial improvements to the legal climate for shareholders and investors, both through improvements to the old law and through introduction of a more inclusive law-making process.

The 2004 law was developed under unusual circumstances. While the existing 1996 law was still fully in force, a new company law had been passed by Parliament in 2002. However, prior to its implementation, the Government changed and decided not to implement the 2002 law. As an interim measure, Parliament passed motions to extend the application of the 1996 Law on Trade Companies – first to June 30, 2003, then to December 31, 2003 and again to April 30, 2004 to enable a team of legal professionals to draft a new law. The 2004 Company Law thus replaces both the 1996 and 2002 versions and complies with the EU Company Law Directives and OECD Corporate Governance Standards.

### 2.1 Public Consultations on Corporate Governance Standards

After the passage of the law at the first reading in Fall 2003, the Ministry of Economy organized public consultations throughout Macedonia (see figure below). Based on these hearings, various modifications were made to the law and a new draft was released in January 2004. A second round of public hearings was held in February 2004 to give stakeholders an opportunity to examine the law and to verify whether the drafting committee had accepted their comments and suggestions during earlier consultations. This highly participatory approach led to improvements in the drafts and acceptance of modern corporate governance

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<sup>1</sup> See [www.maccorpgov.com.mk](http://www.maccorpgov.com.mk) for more information on the USAID Macedonia Corporate Governance and Company Law Project.



- Shareholders' right to information about the company; and
- Accounting requirements that are in line with international financial reporting standards.

Given the scope of the new company law, the law also introduces the following important aspects that indirectly can affect the activities of Macedonian non-listed joint stock companies:

- **National Electronic Commercial Register:** A new national, electronic and publicly accessible commercial register is created that will be maintained at the Central Registry. Shareholders of non-listed joint stock companies will no longer have to rely on manual searches of court files;
- **Streamlining of the Business Registration Process:** A framework is established that will reduce the lead time and processing time for business registrations. The new framework is structured in a manner that will support the eventual removal of registration courts from the business registration process. This is a cutting-edge change that places Macedonia well ahead of its neighbors in introducing business-friendly reforms;<sup>2</sup> and
- **Legal Mandate for the One-Stop Shop:** In addition to streamlining business registration, the law mandates the enactment of regulations in support of a one-stop shop. The purpose is to consolidate business filing, licensing and application requirements so that the steps required for a business to become and continue to be operational are minimized. The ultimate goal is to enable a company to deal with all administrative requirements in one place at one time. An added benefit is found in removing unnecessary administrative burdens from the courts, thus enabling the courts to concentrate their resources more effectively on resolving commercial disputes.

These and other improvements have resulted in a new regime that, once implemented, lowers entry and administrative costs for investors and shareholders of non-listed joint stock companies. In addition, the improved corporate governance provisions of the law introduce protections that make minority investment much more attractive, which can be expected to have a positive impact on domestic capital markets. At the same time, greater transparency requirements and accounting standards have been introduced to improve creditworthiness for Macedonian companies. Despite these positive developments, the principal challenge for Macedonia is to ensure that all the good laws will be put into practice (EBRD, 2004:6).

Additional work is needed to complete the overall regime. Drafting committees continue to work on enabling regulations while there is a continued need for extensive public, shareholder and company education programs to ensure that the obligations and rights of various stakeholders are understood and compliance is achieved. As noted by the EBRD (2004:5), general reform priorities for Macedonia “are to improve effective implementation and enforcement of existing legislation. For example, the regulator should be given sufficient independence and resources to carry out its mandate; the competence of the judiciary system in adjudicating corporate governance related disputes should also be enhanced.”

### 3. SHAREHOLDER AGREEMENTS

#### 3.1 Amendment 292 on Shareholder Agreements

A persistent corporate governance issue, mitigated by the new company law, has been the signing of shareholder agreements in Macedonia. Based on the (old) 1996 company law, management of joint stock companies were allowed to sign shareholder agreements with employees of the company, who were by

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<sup>2</sup> A Simplified Registration for Small Suppliers: The new law also creates a new category of small scope commercial activity that will allow, for example, street vendors to register with local authorities instead of registration courts and removes the requirement for these vendors to comply with complicated book keeping standards.

default also shareholders of the company. These agreements were used to transfer basic rights of minority shareholders to the management of the company, such as the right to vote during general meetings of shareholders, the right to dividends and the right to transfer shares. Usually the duration of an agreement according to the old Company Law was five years.

One quarter of Macedonian joint stock companies, i.e., mostly non-listed companies, had signed agreements with their shareholders in 2003 (USAID CG&CL Project: 2004). The main reason companies chose to sign shareholder agreements is that they would provide for “more efficient work” and “better share management.” The main reason why companies chose not to sign shareholder agreements is that there was no need to sign these (36%) or because shares were held by relatively few people (11%). The majority of companies (52%) were likely to seek a renewal of the shareholder agreements if the new company law allowed this. In signing the agreements, the shareholders gave to management the right to vote during Annual Meetings of Shareholders in 71% of the companies where agreements were signed. Other rights given to management include the right to appoint members of the board of directors (4.9%) and the right to transfer (sell or assign) their shares (6.8%).

### **3.2 Limitations on the Transferability of Shares**

These findings supported the decision of the drafting committee of the 2004 company law and the Ministry of Economy to amend article 292 of the 1996 company law in July 2003. The amendment prohibits managers and directors of joint stock companies to sign shareholder agreements with employees possessing shares of the company. The amendment helps to ensure that shareholders/employees are protected against abusive voting rights agreements with management under the rules of the 1996 law. Further measures have been taken in the new 2004 company law to abolish the practice of shareholder agreements between managers and shareholders/employees of the company.

## **4. BOARD INDEPENDENCE**

### **4.1 Greater Independence Requirements of Directors**

The new company law requires non-listed joint stock companies to have a minimum number of non-executive and independent directors on their Board of Directors. According to article 367 of the law, the number of non-executive members of the Board of Directors shall be greater than the number of executive members. Since the same article states that the Board of Directors shall have at least three members, the Board of Directors must have as a minimum two non-executive directors. In addition, article 367 of the law states that when the Board of Directors has up to four non-executive directors, at least one shall be independent. When the Board of Directors has more than four non-executive members, at least one-fourth should be independent.

### **4.2 The Definition of Independent Directors**

With this requirement, the new Macedonian company law adopts the definition of the latest OECD White Paper for South Eastern Europe. Although the White Paper does not provide for a clear definition of the independence of directors, it does refer to some basic principles used elsewhere to define board independence:

- “An independent director is a non-executive board member who, by virtue of his position vis-à-vis the company, its shareholders and its management, brings great impartiality and objectivity to the board’s deliberations. It is generally felt that in order to qualify as independent, a board member should not have (or be perceived to have) an inherent conflict of interest with the company or those close to it. He/she should have no business or contractual relationship (other than a service agreement as a board member) with the company and should not be under the undue influence of any other board member or group of shareholders” (OECD, White Paper 2003:71).

The decision of the drafting committee to follow the OECD principles was based on an understanding that an Anglo-Saxon definition of board independence - as used in the Higgs report for example - would be less useful for Macedonia. Few qualified individuals would be able to meet the stringent independence requirements which would result in a shortage of qualified individuals. According to article 3, Section 1:25 of the company law, an independent director is a natural person who, and whose family members:

- Has not had any material interest or business relation with the company directly as a business partner, a member of the management body, supervisory body or an officer of the company within the five preceding years;
- Has not within the five preceding years received and does not receive from the company any additional income to his salary;
- Is not a relative of any of the members of the management body, supervisory board or the officers of the company; and
- Is not a shareholder who owns more than one tenth of the shares in the company or who represents a shareholder who owns more than one tenth of the shares in the company.

## **5. NEW VOTING REQUIREMENTS**

### **5.1 Cumulative Voting**

An innovation in the new law is the right of shareholders to elect directors with cumulative voting when this is provided by the charter of the company (article 344, clause 2). The drafting committee of the new company law was aware that cumulative voting is only effective when minority shareholders organize themselves to vote collectively on candidates for the Board of Directors. This assumes that minority shareholders:

- Have the resources and skills to campaign for the election of candidates for the Board of Directors;
- Have the willingness to be actively engaged in contacting other shareholders prior and during the general meeting of shareholders;
- Have a good understanding of the company law; and
- Are able to strategically use cumulative voting.

According to article 283, clause 6 of the company law, each shareholder has access to the list of shareholders in the Central Securities Depository. With this list, they can contact other shareholders and discuss the election of members of the Board of Directors. Unfortunately, shareholders are not authorized to copy the list. This technical problem hopefully will be resolved with the introduction of the new securities law.

### **5.2 More Information on the Candidates of the Board of Directors**

Macedonian non-listed companies are subject to disclosure requirements only normally found in Western corporate governance codes that regulate listed joint stock companies. Article 344, clause 3 of the new company law states that all shareholders be provided the following information about candidates for the board of directors (supervisory board) at least seven days prior to their election at a general meeting of shareholders:

- Age, gender, education and other professional qualifications;

- Working experience;
- Companies in which the candidate is and/or has been a member of the management body or the supervisory board;
- Other “important” positions held by a candidate;
- The number of shares owned by the candidate in the company and in other companies; and
- Any loans of the company and other liabilities towards the company.

### **5.3 Information on Members of the Board of Directors**

New to non-listed joint stock companies in Macedonia is the requirement that the annual report of the company disclose the earnings of each member of the management board and executive and non-executive members of the board of directors. This includes information on the salary, allowances, bonuses, insurance and other rights (article 384, clause 7).

## **6. SHAREHOLDERS’ ACCESS TO INFORMATION**

### **6.1 Shareholders’ Right to Information**

The new Macedonian company law has established greater information rights to shareholders. Article 406 establishes a “Right of Information” that authorizes any shareholder to obtain information at the general meeting of shareholders about the company’s state of affairs and its relations with other companies, if such information is related to the items on the agenda of the general meeting of shareholders. In addition, the shareholder who is denied the information may request in writing that his question and request, as well as the reasons for the denial be entered into the minutes of the meeting. The shareholder, who has been denied the information, may also request court enforcement of his right of information. The claim of the shareholders should be filed within fifteen days as of the date of convening the general meeting of shareholders.

In more detail, Article 319 defines which by-laws, regulations and documents should be kept by the company at its head office at any time. Article 320 defines the shareholders’ “Right to Information.” According to the new Macedonian company law, a shareholder of a non-listed corporation is entitled to inspect the by-laws, regulations and the documents of the company at the company's registered office in the manner stipulated by the company charter. Shareholders are also entitled to have access to the minutes and the resolutions of the meetings of the management bodies through the non-executive members of the board of directors and/or the supervisory board.

### **6.2 Notice Requirements**

A non-listed joint stock company may require the shareholder requesting inspection to provide advance notice for the inspection within a term of not longer than three days prior to the date of the intended inspection. The company may require the shareholder to cover the cost of the requested copies, which may not be higher than the administrative cost thereof.

In the event that the company does not allow the shareholder to carry out the inspection and copy the by-laws, regulations and documents, the shareholder may submit a request to the court in order to obtain access to the by-laws, regulations and documents. The request should indicate the by-laws, regulations and documents that the shareholder wishes to inspect or receive, as well as the form in which the by-laws, regulations or the documents should be delivered. The court, within eight days as of the submission of the

request, should decide whether to order the company to allow the shareholder to inspect the by-laws and the documents to which the proposal pertains and/or to supply the shareholder with a transcript of the by-laws, regulations and documents, at the expense of the company.

### **6.3 The Confidentiality of Information**

Shareholders have the obligation to protect confidential information of the company. A shareholder is not authorized under the new company law to publicly announce and/or present such information, unless the shareholder presents it to other shareholders when exercising certain rights as determined by law, the company charter and/or company by-laws and regulations, before a competent body and/or in the event the information has already been publicly announced.

## **7. INTERLOCKING DIRECTORATES**

### **7.1 Limitations on Interlocking Directorates**

Executive and non-executive directors of Macedonian non-listed companies are subject to directorship limitations normally found only in Western corporate governance codes that regulate listed joint stock companies. Article 346 of the company law states that a non-executive member of the board of directors or a member of the supervisory board may not be appointed to more than five boards of directors as a non-executive member, or to more than five supervisory boards of Macedonian joint stock companies (companies having a registered office in the Republic of Macedonia), at any one time. An executive member of the board of directors or a member of the management board may not be elected as an executive member of a board of directors, or a member of a management board of other Macedonian joint stock companies except in banks, insurance companies, and other companies as provided for by law. An executive member of the board of directors, or a member of the management board, may not be elected as a non-executive member or a member of the supervisory board in more than five other Macedonian joint stock companies.

## **8. MAJOR TRANSACTIONS**

### **8.1 The Definition of Major Transactions**

According to article 455 of the company law, a major transaction is any transaction (or a series of related transactions) with a value of 20 percent or more of the book value of all assets of the company. The following transactions are exempt from this requirement:

- Transactions that are concluded to acquire common shares or bonds convertible into shares of the company; or
- Transactions that are concluded within the regular course of business of the company.

In addition, the law gives companies the opportunity to define any transaction as a major transaction in the charter of the company. For example, any transaction with greater than 10 percent of the book value of all assets of the company can be a major transaction according to the charter of the company.

### **8.2 The Approval of Major Transactions**

The company law uses three thresholds to determine the value of assets and the approvals needed to conclude a transaction:

- **Transactions with a value of  $\leq 20\%$  of the total book value of assets:** According to article 455, clause 1 of the company law, management is normally authorized to approve a transaction with a

value of  $\leq 20$  percent of the total book value of assets, and that is not related to a major transaction, unless the charter of the company determines otherwise (article 455, clause 1 of the company law). Any transaction with a greater value requires the approval by the board of directors/supervisory board or the general meeting of shareholders before it can be concluded, unless the transaction is concluded within the ordinary course of business of the company or when the company acquires common shares or bonds convertible into shares of the company with the transaction.

- **Transactions with a value of  $> 20\% \leq 50\%$  of the total book value of assets:** According to article 456, clause 2 of the company law, any transaction that meets the criteria for a major transaction with a value equal to or greater than 20 percent but not more than 50 percent of the book value of all assets of the company cannot be concluded by the management of the company without the approval of the board of directors/supervisory board by all its members unless the transaction is concluded within the ordinary course of business of the company or when the company acquires common shares or bonds convertible into shares of the company with the transaction. The general meeting of shareholders may also be authorized to approve such a transaction when this is provided by the charter of the company. The general meeting of shareholders can adopt the resolution by a majority vote which may not be lower than the majority of the voting shares represented at the general meeting of shareholders, unless the charter stipulates a greater majority (article 456, clause 3 of the company law).
- **Transactions with a value of  $> 50\%$  of the total book value of assets:** Any transaction that meets the criteria for a major transaction with a value greater than 50 percent of the book value of all assets of the company must always be approved by the general meeting of shareholders before it can be concluded, unless the transaction is concluded within the ordinary course of business of the company or when the company acquires common shares or bonds convertible into shares of the company with the transaction. The resolution can be adopted by a majority vote that is not less than two thirds of the voting shares represented at the general meeting of shareholders, unless the charter stipulates a greater majority (article 455, clause 1 of the company law). See also the tables below.

**Table 1: The Approval of Major Transactions ( $\leq 20\%$ )**

Value of assets as a percentage of the total book value of assets of the company:	The transaction is to be concluded within the regular course of business of the company:	or	The company acquires common shares or bonds convertible into shares of the company with the transaction:	or	The transaction is defined as a major transaction by the charter of the company:	Who can approve the transaction?
$\leq 20\%$	Yes		Yes		No	Management
$\leq 20\%$	No		No		No	Management
$\leq 20\%$	Yes		Yes		Yes	Board of directors or supervisory board or general meeting of shareholders
$\leq 20\%$	No		No		Yes	Board of directors or supervisory board or general meeting of shareholders

**Table 2: The Approval of Major Transactions ( $\geq 20\% \leq 50\%$ )**

Value of assets as a percentage of the total book value of assets of the company:	The transaction is to be concluded within the regular course of business of the company:	or	The company acquires common shares or bonds convertible into shares of the company with the transaction:	or	The transaction is defined as a major transaction by the charter of the company:	Who can approve the transaction?
> 20% $\leq$ 50%	Yes		Yes		No	Management
> 20% $\leq$ 50%	No		No		No	Board of directors or supervisory board
> 20% $\leq$ 50%	Yes		Yes		Yes	Board of directors or supervisory board or general meeting of shareholders
> 20% $\leq$ 50%	No		No		Yes	Board of directors or supervisory board or general meeting of shareholders

**Table 3: The Approval of Major Transactions (> 50%)**

Value of assets as a percentage of the total book value of assets of the company:	The transaction is to be concluded within the regular course of business of the company:	or	The company acquires common shares or bonds convertible into shares of the company with the transaction:	or	The transaction is defined as a major transaction by the charter of the company:	Who can approve the transaction?
> 50%	Yes		Yes		No	Management
> 50%	No		No		No	General meeting of shareholders
> 50%	Yes		Yes		Yes	General meeting of shareholders
> 50%	No		No		Yes	General meeting of shareholders

### 8.3 The Board of Directors/Supervisory Board and Major Transactions

The board of directors/supervisory board plays an important role in the approval process of major transactions in the new company law. In summary:

- The board of directors/supervisory board should approve by law transactions with a value of 20 percent or a greater value, but not more than 50 percent of the book value of all assets of the company before these can be concluded;
- The transaction must be approved **by all members** of the board of directors/supervisory board before it can be concluded;
- If the transaction is not or cannot be approved **by all members** of the board of directors/supervisory board, the general meeting of shareholders should approve the transaction before it can be concluded by a majority vote which may not be lower than the majority of the voting shares represented at the general meeting of shareholders, unless the charter stipulates a greater majority;

- As soon as the general meeting of shareholders is requested to approve a major transaction , the board of directors/supervisory board should determine the value of the assets involved in the transaction(s);
- As soon as the general meeting of shareholders is requested to approve a major transaction , the board of directors/supervisory board should provide the following information in writing to the general meeting of shareholders at least 21 days prior to the meeting (see also article 456, clause 5 of the company law):
  - A statement that explains that the general meeting of shareholders is requested to approve a transaction;
  - A statement that explains that the general meeting of shareholders has the authority not to approve the transaction;
  - A recommendation by the board of directors/supervisory board to the general meeting of shareholders to approve or not approve the transaction;
  - The parties involved in the transaction;
  - The beneficiaries of the transaction;
  - The value and nature of assets involved in the transaction; and
  - The financial terms of the transaction.

#### **8.4 The General Meeting of Shareholders and Major Transactions**

The tables above indicate that the general meeting of shareholders plays an important role in the approval process of major transactions. In summary:

- The general meeting of shareholders by a majority vote which may not be lower than the majority of the voting shares represented at the general meeting of shareholders can approve by law transactions with a value equal to or greater than 20 percent but not more than 50 percent of the book value of all assets of the company when the board of directors requests the general meeting of shareholders to approve the transactions; and
- The general meeting of shareholders by a majority vote that shall not be less than two thirds of the voting shares represented at the general meeting of shareholders should approve by law transactions with a value greater than 50 percent of the book value of all assets of the company before these can be concluded; and
- The general meeting of shareholders by a majority vote which may not be lower than the majority of the voting shares represented at the general meeting of shareholders can approve by law transactions that have been defined by the charter of the company as a major transaction and that according to the charter need approval from the general meeting of shareholders before these can be concluded.

## **9. RELATED PARTY TRANSACTIONS**

### **9.1 The Definition of Related Party Transactions**

New in the Macedonian company law is the introduction of related party transactions. According to article 457 of the 2004 company law, a related party transaction is:

- Any transaction (including but not limited to a loan, credit, pledge and/or guarantee) in which a member of the management body and/or supervisory board or the manager is an interested party, including the officers and/or a shareholder who together with related parties own 20% or more of the company's voting shares, and/or a person who has the authorisation to provide mandatory instructions to the company, shall be considered as related party transaction and shall be effected by the company pursuant to a procedure in compliance with the provisions of this law.

A party is defined as a related party if such a person, his representative, spouse, parents, children, brothers/sisters from both parents and/or from one parent only, adoptive parents, adopted children, and/or any related party (hereinafter: “interested party”):

- Is a party to such transaction, a beneficiary thereof, a representative and/or intermediary in such transaction; and/or
- Individually and/or jointly owns 20% and/or more of the shares of the legal person that is a party in the transaction, a beneficiary thereof, a representative and/or intermediary in such transaction; and/or
- Is a member of the management or the supervisory body of the legal person which is a party in the transaction, a beneficiary thereof and/or representative in such transaction, and/or is an officer in such legal person; and/or
- If so stipulated by the company charter.

The law provides an exemption to the procedures for related party transactions when:

- The company is a single member company and that single member also represents the company in a managerial capacity;
- All shareholders of the company have an interest in the transaction;
- Pre-emptive rights are exercised by shareholders; and
- A company's shares are acquired and/or redeemed.

### **9.2 Notification Requirements**

The new Macedonian company law has introduced notification requirements of management. According to article 458, a company is obliged to notify and seek approval of the general meeting of shareholders of any transaction that is entered within two years of the company's founding and that involves the acquisition of assets that are owned by the founders and that have a value that exceeds one tenth of the charter capital of the company.

In addition, article 459 requires the disclosure of any interested party in a company's transactions. Any interested party is obliged to notify the board of directors, or the supervisory board of:

- The companies, in which they alone and/or together with related parties possess 20% and/or more of the parts or voting shares;
- The companies in which they perform certain managing duties; and
- Current and/or potential transactions known to them, in which they act or may act as interested parties.

### 9.3 The Approval of Related Party Transactions

The new company law also introduces procedure for the approval of related party transactions. According to Article 460, any related party transaction shall be subject to approval by the board of directors or supervisory board and/or the general meeting of shareholders.

- **The board of directors/supervisory board:** The resolution to approve a related party transaction can be approved only by a majority of votes of the members of the board of directors or the supervisory board who do not have an interest in the transaction.
- **The general meeting of shareholders:** The general meeting of shareholders has the authority to approve the transaction when all members of the board of directors or the supervisory board are interested parties. The general meeting of shareholders also has the authority to approve the transaction if the number of disinterested members of the board of directors or the supervisory board is less than the quorum requirement for a meeting of the board of directors or the supervisory board pursuant to the charter. In addition, the general meeting of shareholders has the exclusive authority to approve a related party transaction by a majority vote of all disinterested shareholders who own voting shares if:
  - The value of assets involved in such transaction and/or series of related transactions is 2% and/or more of the book value of the company's assets, based on the company's most recent audited financial statements and/or based on the offered price in the case of purchasing property;
  - A transaction and/or related transactions involve the issue pursuant to subscription and/or the sale of shares that represent more than 2% of the company's common shares outstanding in that period and the common shares into which securities previously issued in series and convertible into shares can be converted; or
  - A transaction and/or related transactions involve the issue pursuant to the subscription of convertible bonds, which may be converted into common shares and which represent more than 2% of the company's issued common shares, and if at the same time the common shares previously issued in series may be converted into shares.

## 10. MACEDONIAN JOINT STOCK COMPANIES

### 10.1 Introduction

In a country with just over two million residents, Macedonia has a relatively large number of joint stock companies (606) that have emerged from the privation process in the 1990s. As of August 2003, approximately 452 joint stock companies can be defined as “working companies.”

**Table 4: Active Joint Stock Companies in Macedonia<sup>3</sup>**

Registered joint stock companies	606
Additional non-registered joint stock companies	24
Total number of joint stock companies	630
Non-valid joint stock companies <sup>4</sup>	(178)
Active joint stock companies in Macedonia	452

Source: USAID CG&CL Project (2004).

For the most part, joint stock companies are involved in manufacturing and processing. To a lesser extent, companies work in construction, transport and activities involved with agriculture and natural resources (mining, fishing, forestry).

A large proportion of the joint stock companies in manufacturing (processing) are located in the eastern part of the country (43.6% of this sector). In Skopje, companies are active in finance and services (77% of all companies in this sector), construction and transport (35%) and wholesale/retail (46%). In the southwest region of the country, companies specializing in agriculture and natural resources are in high proportion (41%).

The northwest region is not especially noted for a high proportion of any specific type of activity, though 21% of the restaurants and hotels are registered there. Overall, processing and manufacturing represents at least 50% of all registered activities in each region except Skopje.

Macedonian joint stock companies employ just under 100,000 full-time employees and have issued approximately 1.37 million shares to some 268,000 shareholders who most often are also an employee or former employee of the company.

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<sup>3</sup> Statistical information on joint stock companies in Macedonia is based on a census among 452 active joint stock companies in 2003. Although the survey did not distinguish between listed and non-listed joint stock companies, the large number of non-listed companies in the survey appear to dominate the findings of the survey. In addition, in the absence of stringent listing requirements in Macedonia and a rapidly decreasing population of listed companies due to tax legislation, a limited number of approximately twenty Macedonian “Blue Chips” resemble the status of a listed company. Those companies that were listed during the survey were listed due to tax legislation and were not subject to additional listing requirements or corporate governance requirements. As such, it may be assumed that the findings are representative for non-listed joint stock companies.

<sup>4</sup> 178 joint stock companies were excluded from the census because they were under bankruptcy proceedings or bankrupt (38); not active (1); under strike and not operating (4); repeatedly listed in court registration lists (13); no longer existing (55); changing company status from joint stock company to limited liability company (31); branch offices of a central registered company (14); and researches were unable to confirm or obtain accurate data (22). 416 of 452 companies participated in the census.

**Table 5: General Characteristics of Joint Stock Companies in Macedonia**

<b>Location</b>	Skopje	28.4%
	Northwest	11.3%
	Southwest	24.5%
	East	35.8%
<b>Primary activity of company</b>	Agriculture & Natural Resources	7.7%
	Processing & Manufacturing	54.1%
	Construction & Transport	12.3%
	Wholesale & Retail	12.0%
	Hotels & Restaurants	5.8%
	Finance & Services	8.2%
<b>Number of employees</b>	10 or less	10.6%
	11 – 50	24.8%
	51 – 150	30.0%
	151 – 500	24.8%
	501+	9.9%
<b>Plans for external investment</b>	No plans for external investment	20.9%
	Foreign investment only	17.3%
	Domestic investment only	26.7%
	Mixed foreign and domestic	30.8%
	Do not know/no answer	4.3%

Source: USAID CG&CL Project (2004).

## 10.2 Macedonian Joint Stock Companies and Foreign Investment

Although a majority (75%) of joint stock companies in Macedonia plan to seek external investment for the company in the future, and nearly half (48%) are looking for foreign sources of investment, most companies had no prior external investment experience. A majority (76%) of Macedonian joint stock companies has never received external investment. Among companies planning for foreign investment in the future, only 24% previously attracted foreign investment. In summary, many joint stock companies expect to attract external investment, but have limited experience in doing so.

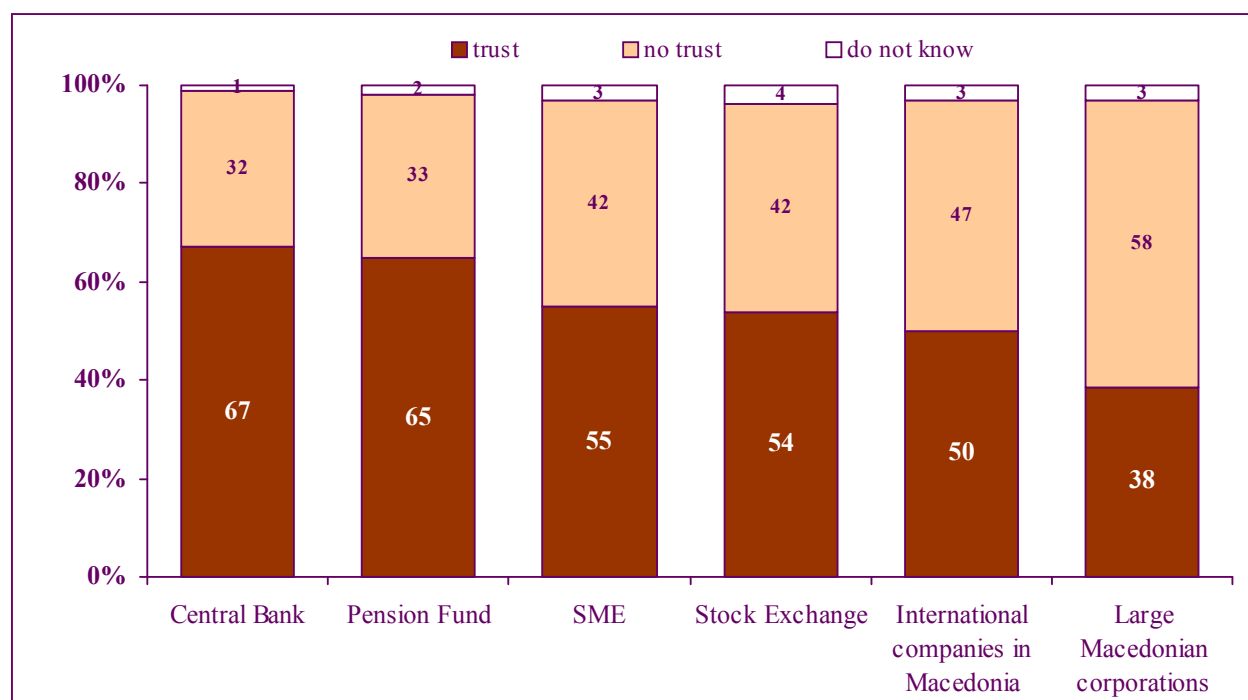
Joint stock companies seeking foreign external investment appeared to be only marginally better informed than other companies about developments in the company law. This runs contrary to the expectation that joint stock companies seeking investment would be more aware of the need to have a higher understanding of developments in corporate law than those that do not seek investment. As a result, the Ministry of Economy and the Macedonian Corporate Governance Council developed a comprehensive training program for directors and managers of joint stock companies and other constituencies (accountants, appraisers, lawyers, notaries, judges and others) to ensure that private sector participants understood the importance of corporate governance and compliance with the 2004 law in attracting financing.

## 10.3 Trust in Macedonian Joint Stock Companies

One problem working against the objective to mobilize private savings is the low level of confidence most Macedonians have in private sector institutions. Data for this discussion comes from a general population survey on attitudes toward private sector issues (USAID CG&CL Project, 2003). As shown in the figure below, public confidence in large Macedonian corporations – mostly non-listed joint stock companies – is low in comparison to other institutions. Overall, 38% state they have trust (“some” or “very much”) in the largest domestic companies compared to 58% that do not. Trust is much higher in the SME sector (55% “trust”) and in international corporations operating in Macedonia (50% “trust”).

**Figure 2: Trust in Private Sector Institutions in Macedonia**

Data: General Population Survey (N = 800)



Source: USAID CG&CL Project (2003).

Another interesting observation is that the experience of investing in Macedonian companies through the stock exchange does not appear to lead to increased levels of confidence. Trust in the Macedonian Stock Exchange is moderate at 54% of those who know there is a stock exchange. Shareholders did not differ significantly in their opinion compared with non-investors with respect to their opinions about trust in the private sector.

## 11. THE BOARD OF DIRECTORS OF MACEDONIAN JOINT STOCK COMPANIES

### 11.1 The Governance Structure of Macedonian Joint Stock Companies

Two out of five joint stock companies (170) have a one-tier board of directors (board of directors), where all board members meet together to govern the company. A typical non-listed joint stock company with a one-tier board might be:

A metal processing company employing 230 full-time employees. The board of directors for this hypothetical company has five members: two executive and three non-executive directors. They meet nearly every month (on average, 9 times a year). Board meetings usually last two and half hours. The executive directors almost always attend board meetings. Most of the non-executive members usually attend, though they may miss a few meetings. Board members frequently ask questions during the meetings and almost always vote. Minutes are kept.

A total of 224 companies operate with two-tier boards – 54% of all companies. A typical joint stock company with a two-tier board might be:

A transportation company operating with 270 full-time employees. There are four members on the supervisory board. They meet four times a year, usually for two hours each time. Nearly all of the board members attend the supervisory board meetings. Supervisory board members frequently ask

questions, and they always vote. Minutes are almost always taken. The management board in this company meets monthly. Four or five times a year there are joint meetings with the supervisory board. Management board members always vote, and minutes are taken.

## 11.2 Profiles of Board Members in Joint Stock Companies

Overall, 92% of all joint stock companies with one-tier boards of directors have 1 to 3 executive directors. Most have 1 to 3 non-executive directors (49%) or 4 to 7 non-executives (43%). For many companies with a one-tier board, the board has 4 to 7 members (81%). Many supervisory boards in joint stock companies with a two-tier board have three members (37%) or five (22%). In total, 76% of joint stock companies with two-tier boards have at least five members on the supervisory board.

## 11.3 Board Meetings

On average, one-tier boards of directors meet nine times a year. In 43% of the companies, the board meets 2 to 7 times a year, and in 39%, the board meets 7 to 12 times a year. The board meets monthly in 21% of all companies with one-tier boards. The supervisory board meets once a year in companies with a two-tier board. In 61% of the companies with a two-tier board, the board meets 2 to 6 times a year, and in 10.3%, the board meets 7 to 12 times a year. Just 3.6% of joint stock companies with a two-tier board meet 13 or more times a year.

- **One-Tier Boards:** There is no relation between the number of board meetings and the average length of the meeting. The average length of the board meeting does not decrease if the company holds them more frequently. Executive members of the board attend all meetings in 86% of the companies. In another 9%, at least half of the executive board members attend. Non-executives attend less frequently. In 54% of the companies, all attend, and in 39% at least half attend. Board members vote during board meetings in 97% of the companies with one-tier boards. In most companies, board members always ask questions (61%) or at least usually do (34%). In all but four of these companies, minutes are kept of the board meetings.
- **Two-Tier Boards – The Supervisory Board:** Generally, board meetings last one hour (40%) or two hours (41%). In a few cases, board meetings last three or more hours (16.5%). The more frequently these companies hold supervisory board meetings, the more likely they are to be longer in duration. Twenty-three companies held between 7 to 12 supervisory board meetings per year and in 30% of these companies the meetings lasted 3 or more hours. For those that held 13 or more supervisory board meetings a year, in half of these companies the meetings lasted 3 or more hours. Members ask questions in most of the companies during supervisory board meetings (52% “always,” 31% “usually”). Supervisory board members vote in 93% of all two-tier boards and minutes are kept in most meetings (92%).
- **Two-Tier Boards – The Management Board** Joint supervisory / management board meetings normally occur 2 to 6 times a year in 44% of all companies with two-tier boards. In 20%, these joint meetings occur once a year, and in 10%, they occur at least seven times a year. In another 26% of the companies surveyed with two-tier boards, the company representative did not answer the question. Board members vote during these meetings and minutes are kept (96% of two-tier companies). Management board meetings are reported to be “very effective” (62%) or “somewhat effective” (35%) for similar reasons as the supervisory board.

## 11.4 Board Composition

Similar to one-tier boards, two-tier boards rarely elect consultants or suppliers as directors on the supervisory board. Auditors and family members of the directors are also rarely elected. In contrast to the one-tier boards, employees and shareholders are not members of the supervisory board for a majority of two-tier

boards (65% and 68%). Employees are on the board in 35% of companies, and shareholders are on the supervisory board in 33%.

## 12. GENERAL MEETINGS OF SHAREHOLDERS

### 12.1 The Annual Meeting of Shareholders

According to the Macedonian company law, joint stock companies must hold an Annual Meeting of Shareholders no later than three months after the preparation of the annual accounts, the financial statements and the annual report on the operations of the company for the preceding business year, not later than six months after the end of the calendar year and not later than 14 months as of the last annual meeting. In total, 62% of the joint stock companies have held an Annual Meeting of Shareholders at least once a year between 1998 and 2003. In contrast, 29% of companies have held less than one per year and 6% have held no Annual Meeting of Shareholders (the remaining 2.4% did not answer the question).

Of those surveyed, 76% of all companies had held their 2003 Annual Meeting of Shareholders. Most, 53% of the 326 companies that held an Annual Meeting of Shareholders in 2003, did so in May. Another 34% held their annual meeting earlier in the year. Another 11% did so after the May deadline established by the company law (in June or July 2003).

Nearly one out of four companies did not hold their annual meeting (24%, or 101 companies) in 2003. The main reasons why they did not do so include:

- Strike or bankruptcy proceedings 22%
- The company is in transition (undergoing restructuring) 14%
- Auditor's report was not ready 11%
- "Other" reasons 11%
- No need for one 10%
- No revenue and absence of most of the shareholders 5%

Other reasons included: the shareholders were already informed and did not request a meeting; there is only one shareholder; or the status of shares were being changed. Another 13% did not provide a reason why the Annual Meeting of Shareholders was not held. In 43% of the cases there was no Annual Meeting of Shareholders when the government is the majority or super-majority shareholder. There was no Annual Meeting of Shareholders in 27% of the cases where the management and board of directors held a majority or super-majority.

**Table 6: Percentage of Joint Stock Companies That did not Hold the Annual Meeting of Shareholders in 2003 by Status of Minority Position**

Data: All joint stock companies (N=416)

Classification of status of minority position	% not holding Annual Meetings of Shareholders
90% held by single class of shareholder (53 joint stock companies)	17
90% held by management and board of directors (6 joint stock companies)	50
Minority rights restricted (104 joint stock companies)	18
Minority rights unrestricted (239 joint stock companies)	22
Did not provide enough information about shares (14 joint stock companies)	21
Total 416	23% <sup>5</sup>

Source: USAID CG&CL Project (2004).

<sup>5</sup> 1.4% (7) joint stock companies stated they did not know if the company held an Annual Meeting of Shareholders in 2003.

## 12.2 The Organization of Annual Meetings of Shareholders

Companies generally organize their Annual Meeting of Shareholders in accordance with the Macedonian company law. This is verified in the manner they notify shareholders of the Annual Meeting of Shareholders. Nearly 95% of the 390 joint stock companies that held an Annual Meeting of Shareholders notified all their shareholders of the annual meeting. In most cases, companies placed notifications of the annual meeting in daily newspapers (78%). Of those surveyed, 50% of the companies notified shareholders at least 21 days before the meeting (in compliance with the law), and another 34% did so well in advance of this, 22 days before or more. Only 16% failed to notify their shareholders according to the legally specified period.

In general, this presents a positive impression of the way joint stock companies conduct their Annual Meeting of Shareholders, for the 76% of companies that held them. Many of the companies that did not hold the annual meeting were going through transition due to restructuring or have a limited number of shareholders. In the latter case, they felt little need to hold the annual meeting even though required by law. Other findings are also positive:

- In nearly all joint stock companies that hold the Annual Meeting of Shareholders, the agenda is provided along with the notification of the meeting (95%).
- Shareholders may ask the company to add additional items to the agenda (92%).
- Shareholders ask questions during the meetings and vote in nearly 99%.
- Nearly all joint stock companies that held the Annual Meeting of Shareholders kept minutes of the meeting. However, this does not mean that all shareholders received these minutes. A majority of shareholders (54%) rarely or never ask to receive copies of the minutes. Another 23% sometimes do. In total, 85% of the shareholders do not request the minutes as an expected and normal procedure following the annual meeting.

## 12.3 The Quorum for Annual Meetings of Shareholders<sup>6</sup>

Between 1998 and 2003, 26 companies did not hold any Annual Meeting of Shareholders. Another 10 ‘do not know’. The remaining 380 companies held annual meetings in at least once in these years. Among these companies, nearly half of all shareholders (47%) “always attend.” The remaining half (47%) “usually attend.” In only 6% of the companies shareholders “usually do not” or “never” attend the annual meetings.

## 12.4 Decisions Made by Joint Stock Companies

Decisions made most frequently include calling the Annual Meeting of Shareholders – 82% of joint stock companies, changing the charter – 64%; and appointing new members to the board of directors or supervisory board – 61%.

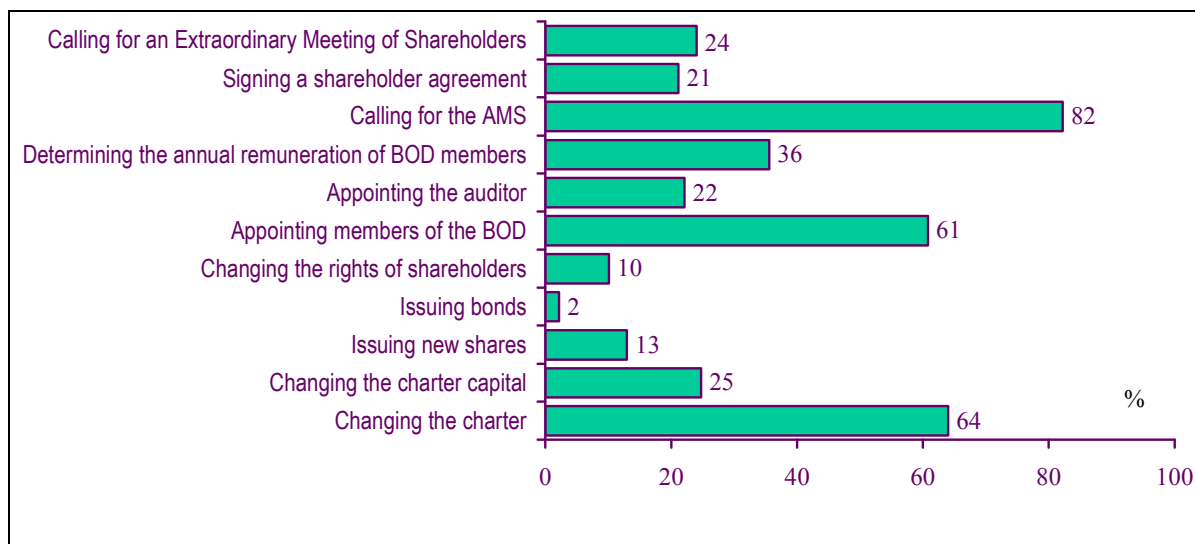
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<sup>6</sup> Data from the Corporate Governance and Company Law Project, Results from the Private Sector Attitudes Baseline Survey (June 2003) asked shareholders about the effectiveness of Annual Meetings of Shareholders. Of the 139 respondents who own shares, 78% stated they have not attended an Annual Meeting of Shareholders in the previous two years. Most (70%) stated they “were not getting the information they need to understand the duties and privileges of being a shareholder.” And, 88% stated they are interested in receiving this information.

On the positive side, among those respondents in the general survey who attended an Annual Meeting of Shareholders in the previous two years, two out of three reported they were provided financial information about the company at the Annual Meeting of Shareholders. About the same number reported that they voted during the annual meeting, either on appointing members to the board of directors and/or on accepting the annual financial report.

**Figure 3: Types of Decisions Made by Companies Between 1998-2003**

Sample: All joint stock companies (N=416)

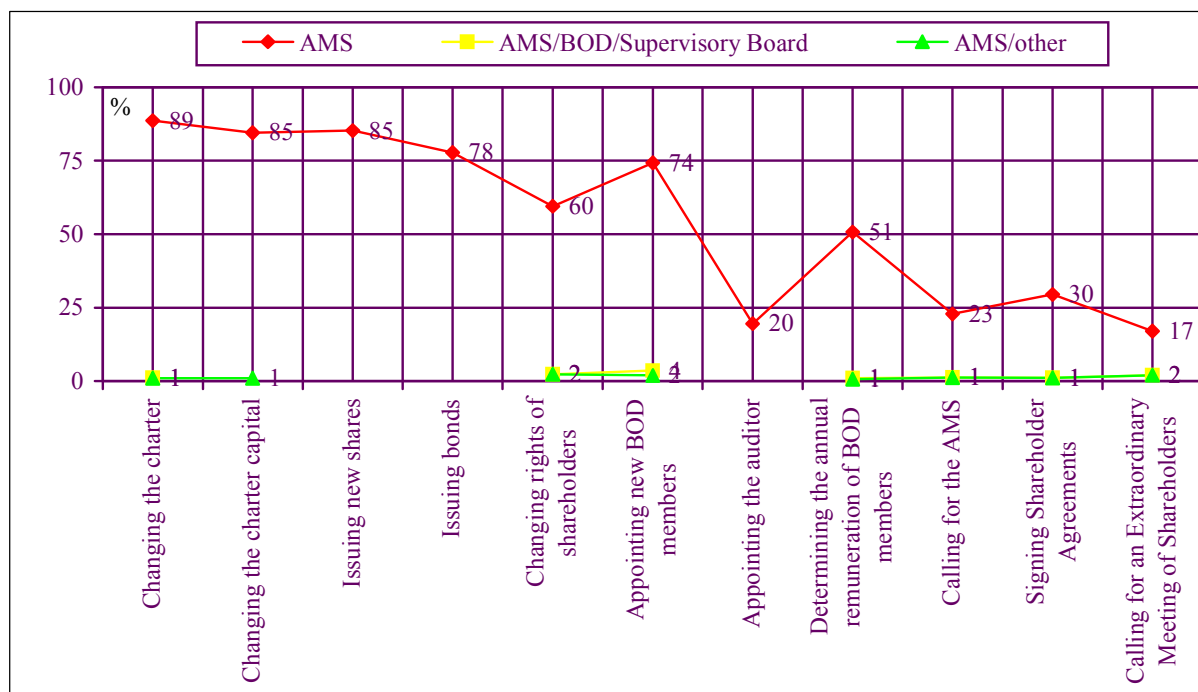


Source: USAID CG&CL Project (2004).

The general meeting of shareholders approved in a majority of the companies changes to the charter, the charter capital (a decision made by few companies), and the rights attached to shares. Other decisions made related to the issue of new shares or bonds (decisions made by few companies), the appointment of new directors to the board of directors or supervisory board and the approval of the annual remuneration of members of the board of directors or supervisory board.

**Figure 4: The Percentage of Decisions Approved by the General Meeting of Shareholders Between 1998-2003**

Sample: All joint stock companies (N=416)



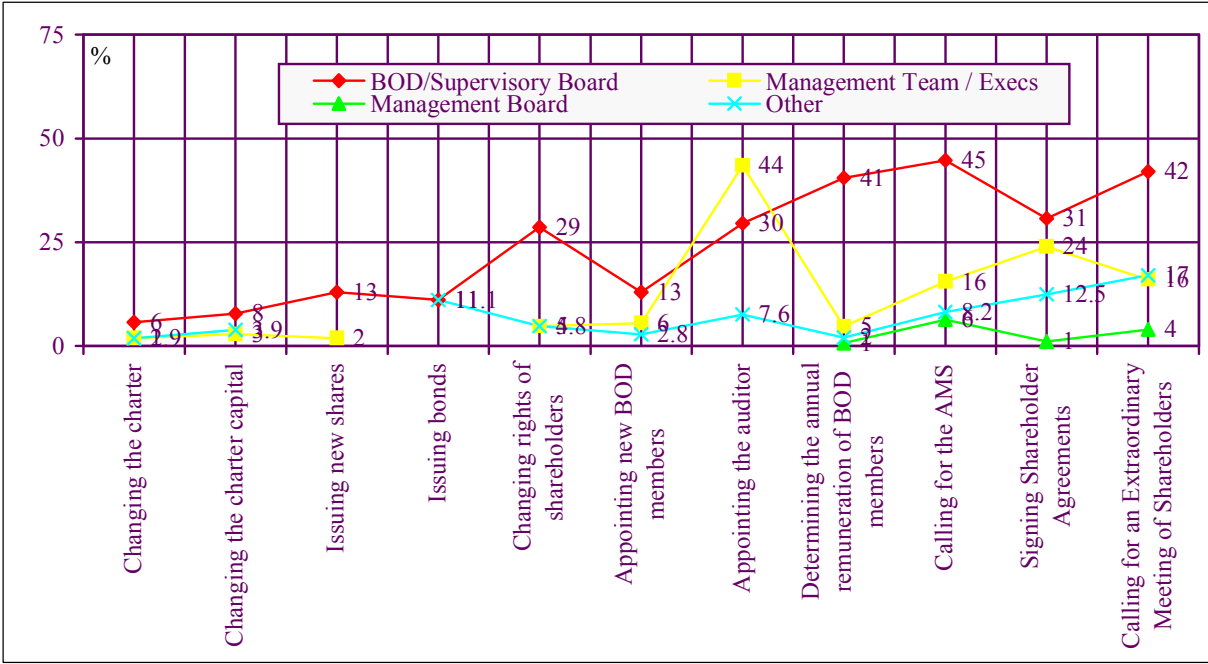
Source: USAID CG&CL Project (2004).

Decisions that are made less frequently are more likely to be incorrectly approved under the company law. Although the general meeting of shareholders is empowered to decide on the following two decisions, the general meeting of shareholders was usually not involved:

- Appointing an external auditor: This was decided by the board of directors or supervisory board or others in 80% of companies - the general meeting of shareholders decided on the appointment of the external auditor in only 20% of the joint stock companies; and
- Determining the annual remuneration of members of the board of directors and supervisory board: 49% of companies decided this through the board of directors or by others. The general meeting of shareholders made this decision in 51% of the companies.

**Figure 5: The Percentage of Decisions Approved by Other Bodies of the Company Between 1998 - 2003**

Sample: All joint stock companies (N=416)

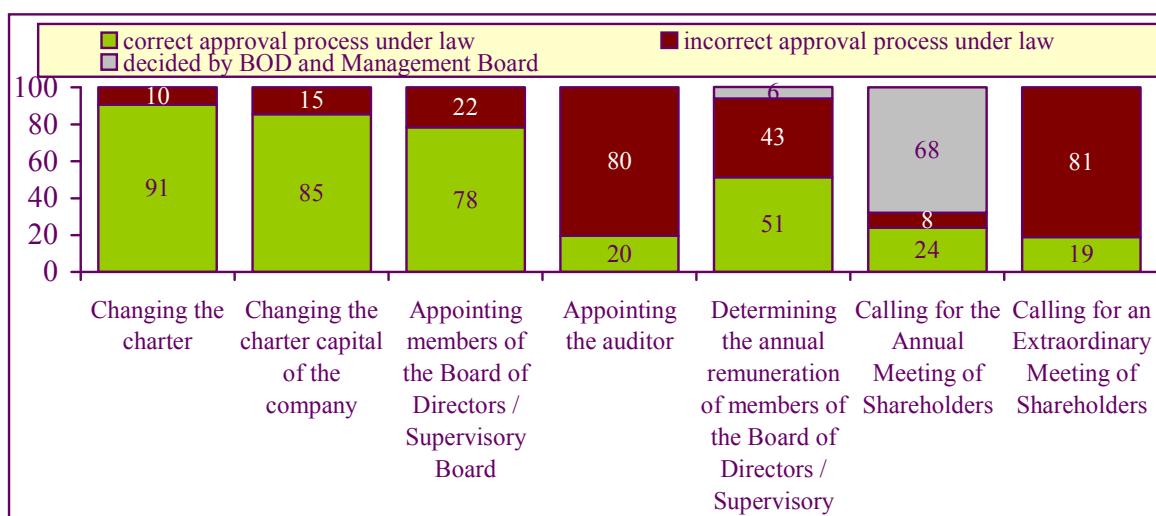


Source: USAID CG&CL Project (2004).

Shareholder meetings were called by the board of directors or supervisory board (45% for the Annual Meetings of Shareholders; 42% for extraordinary meetings among the few companies that called for them). The management team along with the executive directors of the board of directors called the meetings in 16% of companies.

**Figure 6: Evaluation of Decision-Making Under the Macedonian Company Law**

Data: All joint stock companies (N = 416)



Source: USAID CG&CL Project (2004).

## 12.5 Decisions Made by Joint Stock Companies and Foreign Investment

Similar to the overall trend among joint stock companies in Macedonia, companies seeking foreign investment rarely followed correct procedures when it concerned the more intimate financial affairs of their companies:

- Only 21% followed the correct procedure in appointing the external auditor by having the Annual Meeting of Shareholders approve this decision;
- 54% of companies seeking foreign investment followed the correct procedure when determining the annual remuneration of members of the board of directors or supervisory board;
- Only 76% of companies seeking foreign investment held an Annual Meeting of Shareholders for 2003 as of July of that year (6.5% of companies seeking foreign investment have never held Annual Meetings of Shareholders or 'do not know' if they have); and
- Only between 50% to 63% of the companies correctly notified shareholders of the Annual Meeting of Shareholders. Between 31% to 40% of the companies notified shareholders less than 21 days before the meeting in companies seeking foreign investment. However, the agenda was correctly sent along with the notification of the Annual Meeting of Shareholders in 96% of all joint stock companies.

## 13. OWNERSHIP CONTROL

### 13.1 Management Control in Macedonian Joint Stock Companies

Managers hold shares in 40% of all joint stock companies. Only employees and the government own shares in a higher proportion of the companies. Non-executive directors, including supervisory directors, hold shares in 25% of the companies. Overall, management, non-executive directors (in one-tier boards) and supervisory directors of the two-tier board (combined) have shares in 51% of all joint stock companies. In most cases, neither management nor the non-executive directors or supervisory directors have given up voting rights for the shares they hold, except in very few cases.

Management is most likely to hold majority positions in the companies in which they work. This is not clearly the case for non-executive directors or supervisory directors. In 9.4% of companies, non-executives including supervisory directors have a majority position (in 4.1% of these companies, this is even a super-majority position.) However, non-executive directors and supervisory directors are almost as likely to hold minimal stakes in these companies.

**Table 7: Shareholder Position of Management and Non-Executive Board Members**

Data: All joint stock companies (N=416)

Shareholder position	Management	Non-Executive Directors + Supervisory Directors	Combined
A. Minimal (<10%)	6%	8.7%	4.6%
B. Minority (10% <50%)	12.3%	6.7%	12%
C. Majority (50% - <75%)	13%	5.3%	18.8%
D. Super-majority (75% +)	9.1%	4.1%	15.4%
(C + D) Majority + (50%+)	22.1%	9.4%	34.2%

Source: USAID CG&CL Project (2004).

When the shareholdings of both management and non-executive directors or supervisory directors are combined, the percentage of control increases. The combined management / non-executive/supervisory block holds a majority status in 34% of all joint stock companies and a super-majority in 15% of all companies. These shareholdings usually retain voting privileges.

### 13.2 Corporate Governance and State Ownership

A concern stated in the OECD White Paper on Corporate Governance for South Eastern Europe is the corporate governance practices of companies in which the government is a majority shareholder. The data from Macedonia shows that the government has great opportunities to implement internationally accepted corporate governance standards in companies given its ownership interest in many Macedonian companies. Most companies followed correct procedures for some key decisions, but some did not for other decisions:<sup>7</sup>

- Correct procedures were followed in deciding on changing the charter in 91% of cases where the government has a majority position and in 75% of cases where it is the super-majority;
- Correct procedures were followed in the decision to change the charter capital in 75% of the cases where the government holds a majority position. There is only one company in which the government holds a super-majority and the company decided to change the charter capital. The correct procedure was followed in this case;
- The decision to issue new shares was incorrectly decided upon in 56% of companies where the government holds a majority position. There is only one case where a company in which the government holds a super-majority issued new shares. In this case, the correct procedure was followed;
- The decision to change the rights attached to shares was incorrectly decided upon in 50% of cases where the government holds a majority share. In the one case where the government holds a super-

<sup>7</sup> These refer to circumstances that the general meeting of shareholders should approve decisions according to international corporate governance standards.

majority position in a company that changed the rights attached to shares, the correct procedure was not followed;

- The selection of new members to the board was done correctly in 77% of companies where the government holds a majority position, and in 91% of cases where the government has a super-majority;
- Deciding upon the annual remuneration of board members was done incorrectly in 77% of companies where the government holds a majority position and in both cases where the government is a super-majority and this decision was made;
- Appointing the external auditor was incorrectly decided upon in 81% of companies where the government holds a majority position and in the one case where the government is a super-majority and the company appointed a new auditor;
- Shareholders were notified less than 21 days before Annual Meeting of Shareholders in 11% of companies where the government holds a majority position, compared to 23% of companies where the government is the super-majority. In 17% of the cases where the government holds a majority position, the correct procedures were not followed for notifying shareholders of the Annual Meeting of Shareholders. This compares to 50% of companies where the government has a super-majority;
- The agenda was distributed correctly in nearly all cases where the government holds a majority (94%). This was less true where the government is a super-majority (69% correct);
- Less than 50% of shareholders attended the previous Annual Meeting of Shareholders in 34% of companies where the government is a majority. In 26% of these companies, at least 50% of the shareholders were represented by proxy at the last Annual Meeting of Shareholders. However, 57% of these companies did not answer this question or did not know the answer; and
- In 8% of companies where the government holds a super-majority, less than 50% of shareholders attended the last Annual Meeting of Shareholders. For 8% of these companies, a majority of shareholders were represented by proxy at the last Annual Meeting of Shareholders. Again, most companies (69%) did not answer this question.

#### **14. CONCLUSION**

Based on the (old) 1996 company law, managers of non-listed joint stock companies were allowed to sign shareholder agreements with employees of the company, who were by default also shareholders of the company. These agreements were used to transfer basic rights of minority shareholders to the management of the company, such as the right to vote during general meetings of shareholders, the right to dividends and the right to transfer shares. Usually the duration of an agreement was five years according to the old company law.

Although this practice deprived minority shareholders from their basic rights, it also preserved a unique shareholder base in Macedonia. While a consolidation of power in the hands of management has taken place in many post-communist countries, Macedonia continues to have approximately 260,000 shareholders (more than ten percent of the adult population) who increasingly understand the economic benefits of shares and who are becoming increasingly eager to voice their rights.

With the introduction of new corporate governance legislation in 2004, Macedonian non-listed companies are subject to disclosure requirements only normally found in Western corporate governance codes that regulate listed joint stock companies. Minority shareholders have greater access to information, are able to organize

into voting blocks, and are better protected during major transactions and related party transactions. The new company law also curtails shareholder agreements and imposes greater liabilities on management and directors when they do not comply with the law.

Although the legal framework for corporate governance of non-listed joint stock companies has dramatically improved, the implementation of the new standards remains a challenge. As observed by the EBRD, the principal challenge for Macedonia is to ensure that all the good laws are put into practice. This challenge requires a greater understanding by management of non-listed companies of the importance of corporate governance to attract financing. Shareholders require continuing education about their rights while the judicial system needs to be prepared to take up a new challenge through specialized commercial courts.

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