

THE LEGAL FRAMEWORK OF THE SLOVENIAN CORPORATE GOVERNANCE¹

PRAVNI OKVIR VLADANJA V SLOVENSКИH PODJETJIH

Aleksandra Gregoriè, Martina Šetinc Tekavc
Faculty of Economics, University of Ljubljana, Slovenia

Abstract

Corporate governance determines the influence of the different stakeholders over the company, the formation and functions of the executive bodies, their remuneration, accountability and appointment, etc.

This paper presents the legal framework of the Slovenian corporate governance. First, the main characteristics of each of the legal forms of the Slovene companies are presented. The following chapters deal with the joint stock companies, namely with the disclosure rules, the voting process and the structure of the management and supervisory board as the main aspects of the corporate governance. Finally, special provisions regarding single-owner companies, financial holdings, banks, insurance companies and investment funds are presented.

Povzetek

Sistem vladanja v podjetjih določa vpliv različnih interesnih skupin na poslovanje podjetja, delovanje in strukturo upravnih organov, njihovo nagrajevanje, odgovornosti in naloge, itd. V članku predstavljamo pravni okvir vladanja v slovenskih podjetjih. Začenjamo s predstavitvijo osnovnih značilnosti različnih pravnih oblik slovenskih podjetij. V poglavjih, ki sledijo, se osredotočimo na najpomembnejše vidike vladanja v slovenskih delniških družbah, to je na zahteve o obveščanju javnosti, proces glasovanja delničarjev, sestavo in pooblastila upravnega odbora in nadzornega sveta. Pravno analizo zaključujemo s predstavitvijo določil, ki se nanašajo na podjetja z enim družbenikom, finančne holdinge, banke, zavarovalnice in investicijske sklade.

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1. INTRODUCTION

There are different systems of corporate governance in the world. These systems vary in the concentration of ownership and voting power, the breadth and depth of capital markets, a company's access to external finance, the identity of the controlling shareholder, the regulatory and legal framework etc. According to those writing from the legal perspective of corporate governance, it is the latter, namely the legal protection of the different contributors of funds to companies, that is the most important factor explaining why firms are financed and owned so differently in different countries (LaPorta, Lopez-de-Silanes, Shleifer and Vishny, 1999). The protection of shareholders and creditors determines their readiness to finance companies, the development of the securities markets, the role of the banks in companies financing and, accordingly, their financial structure.

In the years prior to transition Slovenia had a special economic system that was neither centrally planned nor market based, but rather something in between - a market-planned economic system. It was a system involving the social ownership of business enterprises, workers' self-management and peculiar finance. In this system, the main problem was providing funds to enterprises to start up and expand, as there was no real owner². The ownership transformation in 1992 was meant to bring about a change of the social capital into real equity, to resolve the large indebtedness of firms and to provide new capital flows into enterprises.

Today's ownership of Slovenian companies is in fact the result of the Slovenian model of ownership transformation³. Slovenian companies ended up with 40 percent of the capital being distributed internally, 18 percent going to the hands of the country's citizens, with the remaining transferred to the various funds. An analysis of the ownership concentration of the 136 companies listed on the official and free stock market⁴ shows that the ownership in those companies is relatively dispersed. In fact, in half of those companies the largest shareholder does not hold more than 23 percent of the voting rights and only 10 percent of the companies has a major shareholder owning the majority of the voting rights. The largest shareholder in only five percent of those companies exercises more than 75 percent of the voting rights. The most common main shareholders of Slovenian companies are the National Investment Funds, followed by the state funds (Capital Fund), other non-financial companies and individuals (for more, see Gregoric, Prasnikar, Ribnikar, 2000).

Slovenia is a transition country. Financial underdevelopment, lack of financial accountability, the absence of hard budget constraints, dispersed owners with no incentive or skills to monitor management and the remaining state influence in companies' decision-making are today some of the distinctive features of Slovenian corporate governance. Thus, ensuring proper legal protection of investors in order to facilitate external financing for companies and providing an efficient legal environment seem to be one of the main tasks of building up an efficient system of corporate governance in Slovenia.

It is the aim of this paper to analyse the legal framework in which Slovenian companies operate. The legal definition and main characteristics of each legal form of Slovenian company are presented in the second chapter. Moreover, an attempt has been made to define the group of companies and to present some basic statistics on the activity, legal form and number of employees in Slovenian companies.

² The companies had a so-called business fund instead of the real equity in their balance sheets. The business fund was actually the capital in social ownership and therefore owned by nobody. Those in power usually provided the start-up capital. Further expansion was financed by the banks that were also controlled by the ones in power. Because of the difficulties in generating the funds internally, as well as the lack of the external source, social enterprises ended up highly leveraged, while price increase seemed to be the only way to finance their debts.

³ The 1992 Law on Ownership Transformation allocated 20 percent of firm shares to insiders (workers), 20 percent to the Development Fund that auctioned the shares to investment funds, 10 percent to the Capital Fund, and 10 percent to the Restitution Fund. In addition, in each enterprise the workers' council or the board of directors (if one existed) was empowered to allocate the remaining 40% of company shares for sales to insiders (workers) or outsiders (through a public tender). Based on the decision on the allocation of this remaining 40 percent of shares, firms can be classified as being privatised to insiders (the internal method) or outsiders (the external method).

⁴ On July 31st, 2000 there were 146 companies listed on the stock market, 36 on the official A and B market and the remaining 110 on the free market. The market capitalisation of these shares amounted to 629.170 Mio SIT (17.3 % of GDP). These data doesn't include the shares of the 46 investment funds.

Crucial for the functioning of securities markets is public confidence in the securities dealt with on these markets. This confidence depends largely on the quantity and quality of information made available to the public. Therefore, a sound information policy on securities and the issuers of securities is essential for the proper operation of these markets (Proposal on Council Directive on information to be published when major holdings of capital of a listed company are acquired or disposed of, 1985). The following Directive 79/279/EEC co-ordinating the conditions of admitting securities for an official exchange listing; Directive 80/390/EEC on the listing particulars to be published for securities to be admitted for an official stock exchange listing; Directive 82/121/EEC on information to be regularly published by companies whose shares have been admitted for an official stock exchange listing; and the Large Holdings or Transparency Directive (66/627/EEC), providing for the disclosure of the acquisition or disposals of major holdings in the capital of listed companies in fact all aim to provide stronger public confidence in the securities market and encourage greater interpenetration of the securities market at Community level. The main disclosure requirements and their compliance with the European Union Directives for joint-stock companies, whose securities are listed on the Ljubljana Stock Exchange, are presented in the third chapter of this paper. Special reference is made to implementation of the Large Holdings Directive in Slovenian Law.

Shareholders participate in a company's decision-making by exercising their votes at the Shareholders' General Meeting. Anyway, ownership does not simply lead to control as there are several legal devices that different countries use to deviate from one-share-one-vote principle in order to separate ownership and control⁵. Those devices allowed by the Slovenian Companies Act as well as the board structure and functioning of the Shareholders' General Meeting are presented in the fourth chapter herein. Special provisions regarding the disclosure of ownership and control in holdings, single-owner companies, banks, insurance companies, investment funds, foundations and trusts are presented in the fifth chapter. Finally, conclusions are drawn in the last chapter.

2. COMPANY TYPES AND GROUPS

The main law governing companies in Slovenia is the Companies Act (Zakon o gospodarskih družbah, Uradni list RS 30/93), modelled on the German regulation of commercial companies and adopted here in 1993. Further amendments to the Act were made in 1994, 1998 and 1999. The Act introduces the following forms of commercial companies:

1. **Partnerships**, namely the general partnership, limited partnership and silent partnership; and
2. **Companies with share capital**, namely the limited liability company, joint stock company and limited partnership with share capital.

In addition, there are two types of hybrid companies:

- **Double Partnership** ("dvojna družba"), based on the German GmbH & Co. KG; and
- **Limited Partnership with Share Capital** ("komanditna delniška družba"), based on the German Komanditgesellschaft auf Aktien or Italian Società in Accomandita per Azioni.

Except for silent partnership and the entrepreneur⁶, all the companies are considered legal persons. These companies acquire the character of a legal person upon inscription in the companies register. The main and most important characteristics of the different types of

⁵ For more see Becht, M., Trading-off liquidity against control, 1999

⁶ The entrepreneur is a natural person (not a company) engaged in the economic activity and subject to the regulations of the Companies Act.

companies, namely their names and legal forms, their key legal features, minimum capital required, minimum number of owners and managers are presented in Table 1 below.

More than 77,000 legal persons⁷ were registered in Slovenia at the end of 1998. The prevailing legal organisational form was the limited liability company (for more, see Tables 1a and 2a in the Appendix). In fact, there were 47,615 limited liability companies compared to only 1,339 joint-stock companies at the end of 1998. The largest share of the former companies were involved in wholesale and retail-sale activities (43.7 percent), real estate and renting business activities (20.3 percent) and manufacturing (15.8 percent). The same conclusions can be drawn for the joint-stock companies (for more, see Table 3a in the Appendix).

Natural persons were mostly organised as individual private entrepreneurs. Wholesale and retail activities, real estate and rental activities, manufacturing, as well as transport, storage and communications seem to be the activities of main interest to entrepreneurs and the other natural persons (see Tables 4a and 5a in the Appendix).

Sixty-two percent of all companies were inactive and did not employ anyone at the end of 1998, mostly due to the low capital requirements for starting up a company at the very beginning of transition (in 1993). Most of the other companies (98.6 percent) employed fewer than 250 employees (see Table 6a in the Appendix), while only 67 companies had more than 1,000 employees⁸. Most natural persons have only one employee (55 percent), while only 14 of them employ 50 or more persons. There is no natural person with more than 199 employees.

⁷ According to the Statistical Yearbook of the Republic of Slovenia, legal persons include all the companies, institutions, associations and other organisations that obtained the status of a legal person by registration in an appropriate constitutive register or record by law.

⁸ The number of the employees is one of the criteria according to which the Slovene Companies Act distinguishes between small, medium and large companies. Any company that satisfies at least two of the stated criteria (number of employees does not exceed 50, annual income is lower than SIT 200 million, average level of assets is not higher than SIT 100 million) shall be classified as a small company. Any company that satisfies at least two conditions (average number of employees is not higher than 250, annual income is below SIT 800 million, average level of assets is not higher than SIT 400 million) and is not a small company is classified as medium-sized company. A large company is therefore any company exceeding at least two of the upper stated criteria, including all banks, insurance companies and the associated companies obliged to draw up consolidated accounts.

Table 1: The main characteristics of the different types of companies

Legal Forms	General Partnership	Limited Partnership	Double Partnership	Silent Partnership	Joint- Stock Company	Limited Partnership with Share Capital	Limited Liability Company	Entrepreneur
Names of legal forms	družba z neomejeno odgovornostjo (d.n.o.)	komanditna družba (k.d.)	dvojna družba	tiha družba (t.d.)	delniška družba (d.d.)	komanditna delniška družba (k.d.d.)	družba z omejeno odgovornostjo (d.o.o.)	samostojni podjetnik (s.p.)
Main features	<ul style="list-style-type: none"> ⇒ legal person ⇒ unlimited liability of partners with their share and their personal assets ⇒ suitable for family business 	<ul style="list-style-type: none"> ⇒ legal person ⇒ two types of partners: general partner has unlimited liability, special partner limited ⇒ provisions for general partnership apply to limited partnership unless otherwise determined 	<ul style="list-style-type: none"> ⇒ legal person ⇒ limited partnership in which all general partners are companies in which there are no personally liable partners 	<ul style="list-style-type: none"> ⇒ not a legal person (not registered) ⇒ silent partner invests assets into the company of the principal of the silent partnership and acquires the right to share the profits 	<ul style="list-style-type: none"> ⇒ legal person ⇒ limited liability of shareholders (only liable to the limit of the worth of unpaid shares) 	<ul style="list-style-type: none"> ⇒ legal person ⇒ two types of partners: general partner has unlimited liability, stockholders limited liability 	<ul style="list-style-type: none"> ⇒ legal person ⇒ limited liability (partners are not liable for the company's obligations, only liable to the limit of the worth of unpaid shares) 	<ul style="list-style-type: none"> ⇒ natural person ⇒ unlimited liability
Minimum capital	None	None	None	None	4.100.000 SIT	None	2.100.000 SIT	None
Min. no. of owners	2	1 + 1	1 + 1	exactly 2	5 (will be changed to no limit)	1 + 1	1 - 50 (maximum)	exactly 1
Smallest number of managers	<ul style="list-style-type: none"> ⇒ all partners have the right to manage the business of the company ⇒ the partnership agreement can transfer the management to one or more partners or third person ⇒ if several partners manage the business, usually each of them is entitled to do business unless the partnership agreement provides for joint management ⇒ it is possible to revoke or renounce the right to management 	<ul style="list-style-type: none"> ⇒ special partner(s) are not entitled to manage the company (if they do, they will be accountable as a general partner - unlimited liability) ⇒ regulation regarding management of general partner(s): same as General Partnership partners 	<ul style="list-style-type: none"> ⇒ same as Limited Partnership 	<ul style="list-style-type: none"> ⇒ same as the principal of the silent partnership (depends on what kind of company is involved) 	<ul style="list-style-type: none"> ⇒ Executive management: one or more managers ⇒ if the management is one-tier organised (no Supervisory Board) the Executive Management must have at least 3 members 	<ul style="list-style-type: none"> ⇒ for management the provisions of Limited Partnership are sensibly used 	<ul style="list-style-type: none"> ⇒ the Partnership Agreement defines the rights of the partners to manage and the manner in which it will be exercised ⇒ if the Partnership Agreement does not include provision on management, the provisions on the management of Joint Stock Company apply 	<ul style="list-style-type: none"> ⇒ he works alone, manages alone

Source: Zakon o gospodarskih družbah (Companies Act), Uradni list Republike Slovenije, 30/93, 29/94, 82/94

A **group of companies or associated companies** is referred to in Article 462 of the **Companies Act**. Any legally independent companies that are mutually related to one company holding a controlling share in the other (controlled company and majority-share company), one company depending on the other (dependent company and controlling company) or in such a way that they form a concern, share each other's capital or are associated through corporate contracts (subordination contract, profit-transfer contract, contract which forms a profit group, partial profit-transfer contract, lease agreement, concession contract), shall be considered associated companies. In any event, a group of companies exists whenever one company (parent undertaking) exercises control over one or more other companies (subsidiary undertaking).

Control is furthermore defined in the **Slovene Accounting Standards** (Slovenski računovodski standardi). Control is the power of a parent undertaking to exercise the majority of the shareholders' (members') voting rights in its subsidiary undertaking or the power of a parent undertaking as the shareholder (member) of the subsidiary to appoint (remove) the majority of members of its management or supervisory board. Moreover, a parent controls its subsidiary whenever it can exercise a dominant influence over a subsidiary undertaking as above regardless of its share-holdings (membership) in the subsidiary or that it controls alone, pursuant to an agreement with other shareholders in or members of that subsidiary undertaking, a majority of shareholders' or members' voting rights in that subsidiary undertaking.

A third definition of a group of associated companies can be found in the **Banking Act** ('Zakon o bančništvu', Uradni list RS, 7/99). A group of associated companies must be regarded as a single borrower by banks when making credit-risk evaluations. The associated companies for this purpose⁹ are legally independent companies that, due to common capital or common leadership, together design their business policy and operate towards a common end. Further, companies are considered as a group whenever one of them exercises a strong influence on the operating, financing and business results of the other companies within the group.

A banking group exists whenever a bank or financial holding with their headquarters in the Republic of Slovenia exercises control over one or more subordinated banks or other financial institutions or companies providing complementary (auxiliary) financial services and operating in Slovenia or abroad. A bank or financial holding is a controlling company whenever it owns directly or indirectly the majority-share in the capital or voting rights of the subordinated companies, it has the right to appoint the majority of the management and supervisory board members or has a dominant influence on the subordinated companies. Moreover, whenever due to special contracts with other shareholders the bank (financial holding) has the right to exercise their voting right in a way that all votes together represent the majority needed to appoint the majority of the management and supervisory board members, or whenever it directly or indirectly holds at least 20 percent of the voting rights or ownership share in the subordinated company and realises that participation together with another legal person that is not member of the banking group, it shall be considered a controlling company.

The **Act on the prevention of the restriction of competition** ('Zakon o preprečevanju omejevanja konkurence', Uradni list RS, 56/99) refers to the group in Article 11, which prohibits the concentration of the undertakings. For the purposes of this Act, the notion 'control' means rights, contracts or other means which

⁹ Banking Act, Article 10, Uradni list RS, 7/99

enable the possibility of exercising a decisive influence on an undertaking, but is in particular assured by ownership of the entire capital or of a capital interest, the ownership or the right to use assets of an undertaking and by the right or any contract that allows a decisive influence on the voting or decisions of the organs of an undertaking.

3. CORPORATE TRANSPARENCY IN THE SLOVENIAN LISTED JOINT STOCK COMPANIES

The transparency of a company's performance, its ownership structure, voting rights, board composition and functioning is crucial for investors to allow them to properly assess a company they are considering investing in. Transparency is in particular important for those companies whose securities are listed on the stock market as it allows the investors to make the right assessment of the securities issued in order to make correct investment and dis-investment decisions.

The only stock market in Slovenia is the Ljubljana Stock Market. The **Securities Market Act** ('Zakon o trgu vrednostnih papirjev, Uradni list RS, 56/99) as the main legislation regulating that stock market is based on both the Anglo-American tradition and the European Union's Directives. The more than 400 articles of the Securities Market Act determine the issuance and trading of securities, as well as the roles of the Stock Exchange, the Securities Market Agency¹⁰, Central Securities Clearing Corporation (KDD) and other participants in the securities market. Further, the Stock Exchange Management Board has adopted its own Rules and Procedures¹¹ on the basis of Article 227 of the Securities Market Act and the Articles of Association of the Ljubljana Stock Exchange.

The **Ljubljana Stock Exchange Rules** (article 2) refer to the Stock Exchange as

'...a joint stock company that has been established in order to provide the conditions necessary for the supply and demand of securities, and for organised, transparent, liquid and efficient trading in securities, in accordance with law and other regulations'.

The Ljubljana Stock Exchange organises the trading of freely transferable ordinary and preferred shares, government, corporate and municipal bonds, closed-end investment fund shares and short-term financial instruments issued by the Bank of Slovenia and Slovenian government. Thirty-three banks established the Ljubljana Stock Exchange as a joint-stock company in December 1989. Non-bank financial institutions were allowed to become members of the Stock Exchange a year later. The Stock Exchange members, the Republic of Slovenia and the Bank of Slovenia are the only ones allowed to be its shareholders, each of them holding at most 10 per cent of the shares, except from the latter two.

¹⁰ From here on referred to as the Agency.

Trading of securities on the Ljubljana Stock Exchange is taking place on two organised markets, the official market and the free market. According to the Article 233 of the Securities Market Act, the following requirements have to be fulfilled by an issuer in order to have its securities listed on the official market:

1. the securities have to be fully paid;
2. the securities have to be freely transferable;
3. the securities have to be issued in de-materialised form;
4. the securities, given the operating of the issuer and the characteristics of the issued securities, have to fulfil all the conditions set by the Official Ljubljana Stock Exchange Rules, especially regarding the capital of the issuer, the history of its operating, the nominal or market value of the securities presented for listing in the official market, as well as the number of the securities' holders;

Table 2: Conditions to be met before securities may be listed on the official market

Years of operating	3
Veracity and objectivity of financial statements	Audited financial statements for the past three years
Value of capital*	SIT 500 million USD 3 million
Minimal value of the stock of a class (book or market value if previously on the organised market)	SIT 200 million USD 1.25 million
Diversification** of the stocks in public	At least 25% (SIT 100 million or USD 600,000)
Minimum number of stock owners	150

Source: Ljubljana Stock Exchange, Official Ljubljana Stock Exchange Rules

* The value of the shareholders' capital, surplus, reserves and undivided profits

** All the securities are deemed public except those owned by the management of the issuer and the securities owned by those holding more than 10 percent of a particular issue

The free market has been operating since January 1995. All the securities not accepted for quotation on the Stock Exchange official market, but fulfilling the other conditions are listed on the free market. Securities that can be traded on the free market are therefore those securities:

1. that are not subject to the limitations of paragraph 1 of the article 51¹² of the Securities Market Act;
2. have been fully paid by the subscribers;
3. are freely transferable; and
4. are issued in a de-materialised form.

Since 1993, all trading on the Ljubljana Stock Exchange has been performed electronically (using the electronic trading system called BTS). There is no difference in trading, clearing or settlement between the two market segments. The only differences between the two segments are the less strict reporting requirement for the companies listed on the free market and the absence of the 10% daily limitation movement for the securities' prices on the free market.

¹¹ Other acts regulating the stock market are: the De-materialisation Act, the Foreign Exchange Act, the Law on Management Companies and Investment Funds, the Companies Act, the Law on Take-overs, the Law on the First Pension Fund and the Remodelling of the Investment Funds, the Law on Obligations, the Banking Act and the Value added Tax Act.

¹² Securities issued with the purpose of exchanging the existing securities in event of acquisition, merge, separation of companies, for the purpose of exchanging the securities due to a change in the nominal value, the issue of securities in the event of conversion of a limited

The one responsible for supervising the Slovenian capital market is the **Securities Market Agency**, established on 13 March 1994 as a self-regulating legal entity, independent in carrying out the following tasks:

1. issuing operating licences to financial institutions in accordance with the Securities Market Act and Investment Funds and Management Companies Act;
2. giving approvals for a public offering of securities and operating licences to brokers and members of fund management companies' Management Boards;
3. supervising public offerings on the primary market, surveying the activities of authorised participants at the secondary market, surveillance of activities of the Stock Exchange and the KDD related to insider trading and surveillance of other persons who provide services related to securities without holding the Commission's licence and who advertise services related to securities;
4. the preparation of bylaws, which represent the legal basis for regulation, control and development of the securities market; and
5. preparing and maintaining the public registers and other data related to the securities market.

The Agency has two bodies, the Council of Experts composed of the president and eight members, and the Director of the Agency. The members of the Council of Experts and the Director are appointed for a five-year period by the government of the Republic of Slovenia on the proposal of the Minister of Finance. Annual reports on its work have to be submitted by the Agency to the National Assembly of Slovenia by 30 June for the current year.

3.1 DISCLOSURE RULES

The main provisions regarding the registration of a company, the documents to be lodged on registration, the information about the owners that needs to be disclosed, the legal transfer of the company's shares etc. for each company type are found in the **Companies Act** (see Table 3 below, Table 8A in the Appendix).

The Companies Act also contains general provisions on the preparation of the companies' business books and financial statements. Article 50 of the Companies Act requires companies to follow the general principles of permanency, consistency and recording of all changes at the instance of their appearance. Executive Management is responsible for the timely and accurate preparation of a company's accounting statements and business reports¹³. In addition, the Companies Act determines the basic content of the business report, the accounting statements and the explanations to the accounting statements, as well as some basic valuation principles.

company into public limited company with shares kept by the initial partners, the issue of shares in the event of the increase of capital out of retained earnings, etc. shall not be traded on the organised securities market nor offered to public in any other way.

¹³ The business report, the accounting statements and the explanations form the company's annual report. The companies are obliged to prepare annual reports for each business year that might differ from the calendar year.

Table 3: Rules on disclosure, ownership and transfer of the share of the company's capital for joint-stock companies¹⁴

Company law	Joint Stock Company
Register when a company is founded	Court Register ("Sodni register")
Documents that the company has to lodge	<ul style="list-style-type: none"> ▪ evidence tendered by the authorised bank that the management freely disposes of the amount paid in ▪ a statement by the founders that they are acquainted with the obligation to inform the court that there are no obstacles for the appointment of the members of management ▪ notarised company statute ▪ an account of the founding expenses borne by the company ▪ documents on the appointment of the Management and the Supervisory Board ▪ the founding report and audit report by the Management and Supervisory Board members and the report by the founding auditors ▪ notarised signature of the members of management and other company representatives
Does the list of owners have to be lodged at the register when the company is founded?	yes
What information does the list of owners contain?	<p>for founders</p> <ul style="list-style-type: none"> ▪ name ▪ address ▪ liability type ▪ dates of entry and withdrawal <p>for stockholders: nothing</p>
Legal procedure for transferring shares	<ul style="list-style-type: none"> ▪ shares issued to the bearer - no legal procedure for transferring shares ▪ registered shares (which are entered in the share book together with the name and residence of the holder) - transfer by endorsement and notification in the share book, the company's approval can be required by the statute
Limits on the Directors to hold ownership certificates of the company	no
Purchase of ownership certificates in the name of the company	the company as a rule can not hold its own shares, only exceptionally is the acquisition of a company's own shares allowed, if this would prevent imminent serious damage, the whole amount of own shares must not exceed 10% of the amount of capital stock
Company notification for acquisitions or holdings of stakes in other companies	if more than a quarter of the shares of a joint-stock company is acquired, the owner must immediately inform this company in writing; if a company acquires a majority share in another company, the owner must immediately inform this company in writing
To whom is registration data made available?	everyone interested can request to inspect or take an extract of the Court Register, direct electronic transmission can also be ordered

Source: Zakon o gospodarskih družbah (Companies Act),.Uradni list Republike Slovenije, 30/93, 29/94, 82/94

¹⁴ For other legal forms, see Table 8A in the Appendix.

Detailed rules on drawing up financial accounts are provided by the **Slovenian Accounting Standards** (SAS) and the General Accounting Principles adopted by the Slovenian Auditors Institute in 1993 (a new draft SAS is now under discussion and is set to be accepted by 2002). The SAS are based on the International Accounting Standards and the EU Directives on annual accounts and consolidated accounts. The SAS requires companies to follow the fundamental accounting assumptions¹⁵, as well as to draw up financial statements by taking into account the principles of prudence, substance over the form and materiality (all the items that could in any way affect valuations and decisions shall be disclosed). The Executive Management is responsible for providing external users with accounting information that must represent a true and fair view of the company's financial position, performance and changes in financial position. A true and fair view of financial reporting means the unbiased, correct and clear reporting of all perfectly reliable verified facts supported by relevant notes and explanations. In fact, the company's note of accounts shall provide all supplementary information necessary for the correct and easy understanding of the financial statements' data (Standard no.30).

One of the largest peculiarities of Slovene Accounting Standards compared to the International Accounting Standards lies in the revaluation of items. Article 67 of the Companies Act requires companies to state items, claims, liabilities and capital at the end of the business year at their actual value, where revaluation is defined by the accounting standards. The SAS require companies to adjust the items in the financial system in order to express the purchasing power of the monetary unit at the end of the financial year. The revaluation is made on the basis of the retail price index or, in the case of short-term investments, long-term investments in loans or liabilities on the basis of the agreement between the creditor and the debtor. The effects of the revaluation are summed up in the revaluation result and normally reduce the stated profit, leading to the undervaluation of Slovenian companies with respect to other companies that draw up their financial statements according to the International Accounting Standards. The IAS in fact provide for revaluation to be done the Slovenian way only in a hyperinflationary situation, namely when the cumulative three-year inflation rate exceeds 100 percent.

The annual accounting statements of large- and medium-sized joint-stock companies, large limited liability companies, associated companies and companies whose securities are quoted on the stock exchange, shall be audited by an independent auditing house within six months of the end of the business year. Within two months of the end of the business year, a share capital company should submit its annual report to the organisation authorised for the processing and publication of data. The latter should make this data available on request to anyone interested against the payment of actual expenses of the copy provided. If not subject to different provisions, all information that companies are requested to make public by law should be published in the Official Gazette of the Republic of Slovenia.

Article 55 of the Securities Market Act requires companies whose securities are listed to disclose all the information requested under the article 20 (the information to be disclosed when applying for authorisation for an initial public offering)¹⁶. Moreover, the companies must also disclose the names of the holders of 10 % or larger

¹⁵ Viewing the company as a going concern, consistency in the preparation of financial statements from one period to another, recording of the expenses and revenues at the moment they are incurred and earned and not actually paid.

¹⁶ The companies shall provide the following: five copies of the listing prospectus with all the information necessary for the investor to make an evaluation of the company-issuer of the securities, the Security Market Agency's approval for the initial or additional public offerings of securities, a fair copy of the company's Article of Association, the extract from the court register, the report on audited financial statements, the

stakes of the issued securities. The securities issuer has to inform these 10% threshold owners about the application for approval for public offering. The disclosure of information and annual reports for companies, whose securities are listed, is furthermore defined by the Rules and Procedures of the Ljubljana Stock Exchange.

Companies must notify the Stock Exchange and the public immediately after the pertinent meeting of the Supervisory Board or at least not later than it provides the Bank of Slovenia or the agency authorised to process statistical data of their unaudited, unconsolidated and consolidated annual financial statements. In any event, notification must not take place later than two months after the end of the financial year for unconsolidated financial statements and not later than in three months after the end of the financial year for consolidated financial statements.

The report on audited financial statements shall be submitted to the Stock Exchange immediately after its approval by the Supervisory Board, but not later than 30 days after receipt of the auditors' report and not later than 6 months after the end of the financial year. Companies are requested to publish in a daily newspaper with nationwide circulation within 6 months of the end of the financial year the following: the minimum data on the auditors' report, the balance sheet, profit and loss account and the cash flow statement for the current and preceding financial year, the auditor's opinion and remark about the conformity of the announcement with the Stock Exchange Rules and the Securities Market Act.

According to the Companies Act, the organisation authorised for processing and publication of data should make the data from annual reports available to whoever so requests it, and shall issue on request a copy of the data against payment of actual expenses for the copy provided.

The companies required to publish a consolidated financial statement should disclose the names of the companies included in the consolidation, the auditor's opinion on the consolidated financial statements and the consolidated financial and cash flow statements for the current and the preceding financial year. Prior to publication, the company should deliver one copy of the report to the Stock Exchange and inform it about the date of publication and the newspaper in which the data will be published. The same rules apply to the publication of semi-annual reports that should be published and delivered to the Stock Exchange within two months of the end of each fiscal half-year. All the reports of the company shall be made available to the public at its head office.

Companies are also required to notify the Stock Exchange and the public about all the events and circumstances who could have a material impact on the price of its securities, such as changes in business activities, operating conditions or general environment, including any suspension of operation, changes in the Management and Supervisory board, significant changes in the ownership of the company, changes in its accounting policy, decisions and resolutions influencing the capital structure of the company, such as any intended increase or reduction of capital, changes in the contents of the rights of the class of listed securities and any status changes to the company or its legal and organisational form. Further, notification about the date, the agenda, the conditions for attendance, proposed and adopted resolutions at the General Shareholders' Meeting, the place and time of the dividend payment has to be notified to the Stock Exchange and the public as soon as possible.

evidence of successfully concluded primary issue of securities, the resolution of the Central Deposit Clearing Corporation, Inc. on entry of securities into the register of de-materialised securities, the list of ten biggest holders of securities with their respective ownership shares, the

When requesting an expansion of the listed security by further issues, the company-issuer shall submit to the Stock Exchange among other things the latest available information on the ten major shareholders of the company, the number of their voting rights and the information on the ten largest buyers of newly issued shares, if available. The document showing the degree of the security's dispersion in public, the list of the ten major shareholders and the total number of the shareholders shall also be presented, among other things, when requesting an expansion of the listed security on the basis of a merger.

3.2 THE TRANSPARENCY DIRECTIVE

The provisions of the Large Holdings Directive are in a way implemented in the article **64 of the Take-overs Act** (Zakon o prevzemih, Uradni list RS, 47/97). The Act regulates the manner and conditions on the purchase of securities of individual joint stock company- issuer of securities, when a natural or legal person acquires or wants to acquire a share of securities, which gives more than 25 per cent of voting rights arising from these securities. Except for some articles, the act refers mainly to securities of the companies listed on the stock exchange or securities for which the issuer successfully completed the public bid or acquired the permission for further sale according to the Securities Market Act. Any person who acquires a share of securities of joint stock company which give together with securities he previously acquired at least 25 per cent voting right has the obligation to give a public bid for purchase of this securities according to the Take-overs Act (article 4). Public bid is a published proposal for concluding a contract on sale of securities of the company-issuer, which is addressed to all holders of these securities. The bidder has the obligation to give notice about his intention to the SEC, the management of the company- issuer of securities and to the Office for Protection of Competition. The public bid has to be published by the bidder in a daily newspaper distributed throughout the territory of the Republic of Slovenia. Together with the take-over bid, the bidder has to public the take-over prospectus containing any relevant information about the bidder, the company and the bid itself¹⁷.

According to the article 64 of the Take-overs Act, any individual person that directly or indirectly acquires 5% of the issuers' voting securities or any further 5% of these securities (referred to as the qualified holding), shall notify it to the issuer of these securities and to the SEC not later than three business days from the date that the person became (should become) aware of the acquisition. The issuer receiving the notification shall publish it a nation-wide newspaper within three days after the receipt of the notification.

The **Securities Market Act (article 55)** requires the securities issuers to disclose, when applying for organised trading and secondary public offering, the names of the persons holding at least 10 percent of the issue of the securities for which the application has been made. The companies whose securities have been listed on

total number of subscribers to securities and information on the percentage of securities, held by the Management Board of the company-issuer.

¹⁷ The prospectus shall include information about the bidder; the company-issuer of securities; companies acting in respect of the bid on their own behalf and for the account of the bidder and those affiliated with the bidder; the purchase price of the securities and the basis for determining the price; the securities in question; the lowest percentage of the total issue of relevant securities that have to be sold in order to make the bid successful; the securities acquired by the bidder prior to submission of the take-over bid; the methods of payment; the circumstances for withdrawal of the bid; the deadline for acceptance of the bid; the purpose of the take-over bid and the intended method of management of the taken over company (policy of employment, restructuring of the company, modifications of the company's articles of association and profit distribution etc.).

the official stock market have to notify to the Stock Exchange the names of the ten biggest security holders, the total number of the security holders, as well as the percentage of shares held by the company's management board.

4. CONTROL IN THE SLOVENIAN JOINT-STOCK COMPANIES

4.1 BOARD STRUCTURE

Except for large and listed companies¹⁸, Slovenian companies can choose between on-tier and two-tier governance structure. The **two-tier system** introduces an intermediate body, the Supervisory Board, with the obligation to supervise the conduct of the company's affairs, inspect and verify the company's documents and books, treasury, the deposited securities, etc. The Supervisory Board has the right to convey the Shareholders' General Meeting, but must not interfere directly with the management of the company¹⁹. There have to be at least three members in the Supervisory Board, while a higher number can be made possible with the company's Article of Association. The Shareholders' General Meeting (Shareholders' Assembly), with the possibility of re-appointment, elects members representing the interest of the shareholders for a maximum of four years. The Law on Workers' Co-Determination requires that in companies with up to 1,000 employees (more than 1,000 employees), at least one-third (or not less than one half) of the Supervisory Board members have to be workers' representatives. Members of the Management Board, persons already holding three positions on the supervisory boards of other companies, members of the management board of the subsidiaries or other companies in which the company's executives are supervisory board members, and persons that legally prohibited to be members of the Management Board can not be Supervisory Board members²⁰.

The **Executive Management** or the Management Board runs the company for the good of the company, independently and at its own responsibility. The Management Board prepares measures from the sphere of competence of the Shareholders' Assembly, the contracts and other enactment to be approved by the Assembly and executes the decisions adopted by the latter. Moreover, it reports to the Supervisory Board on the planned business policy and other matters concerning the company's affairs, the profitability of the company and its equity, turnover, financial position and other performance indicators, any transactions that might influence the company's affairs significantly and other matters requested. It is the Supervisory Board that appoints the Management Board members (unlimited possibility of re-appointment) and determines the remuneration of the Management Board members. The members of the Management Board can be entitled to a share of the company's profit if determined

¹⁸ The adoption of a two-tier system is mandatory for companies with the capital stock of at least SIT 300 million, the average annual number of employees exceeding 500, with successive founding, for companies listed on the stock exchange and for companies whose number of registered shareholders exceeds 1000.

¹⁹ The Articles of Association may prescribe some decisions to be taken only with the approval of the Supervisory Board. In any case, if the Supervisory Board declines the approval, the managers can implement the decision after gaining the approval of at least three-quarters of all the votes cast at the Shareholders' Assembly.

²⁰ Companies Act, article 263.

by the Article of Association. In fact, it should make sure that the total receipts of the Management Board members are proportional to their tasks and the financial situation of the company.

The functions of the Supervisory Board in the one-tier companies are exercised directly by the Shareholders' General Meeting, while the law requires the Management Board to have at least three members. Each member of the Management Board shall have one vote and one of them shall be appointed president. The majority of the Management Board member has to be Slovenian citizens, as well as the director or the procurator of the company.

4.2 THE VOTING PROCEDURE

According to the rights they carry, the Companies Act distinguished **four classes of shares**:

1. ordinary shares that give the owner the right to participate in management of the company, the right to a dividend and to a corresponding part of the assets in the case of bankruptcy; and
2. preference shares that give the owner all of the abovementioned rights, as well as certain priorities such as the payment of fixed amounts or percentages of the nominal share value or profits, priority in payments in the case of company's liquidation, etc. Preference shares can be cumulative or participation preference shares. The former entitle the holder to payment of all unpaid dividends before an ordinary shareholder gets any dividends, while the later give the holder in addition to a priority dividend the right to be paid the dividend to which ordinary shareholders are entitled.

Each share shall carry one vote (Companies Act, article 179). Preference shares only can be shares with no voting right and constitute not more than a half of the capital stock²¹. The issuing of shares of the same nominal value but carrying different number of votes is strictly prohibited. Shares carrying identical rights make up a class of shares.

If not determined otherwise by law, the shareholders exercise their voting rights at the **Shareholders' General Meeting (the Assembly)**. The Shareholders' General Meeting decides on the distribution of profits and the annual report, appoints and recalls Supervisory Board members, makes changes to the Article of Association, decides on any reduction or increase in the capital, the termination, merger, affiliation of the company or other changes the Article of Association. Unless requested by the company's management itself, the assembly shall not decide on issues concerning the management of the company.

The decisions of the Assembly are valid if adopted in the presence of shareholders holding at least 15 percent of the capital stock represented. The Article of Association may make participation in the Assembly and the exercise of voting rights conditional on the shareholders depositing their shares ten days before the Assembly with the notary or in some other way. Moreover, the Article of Association may make the participation conditional to the shareholder obligation to report at least three days prior to the Assembly.

²¹ Companies can issue non-voting ordinary shares if provided by a special law (Companies Act, article 305).

Unless provided differently by the Article of Association, the majority of the shareholders' votes cast (ordinary majority) is necessary for the adoption of the decisions of the Assembly. The law requires at least three-quarters of the votes cast for the adoption of special decisions, such as a reduction in the capital stock, liquidation of the company, changes to the Article of Association, recalling of the Supervisory Board members, etc.

The decision to convene the Assembly is taken by the Management Board by the majority vote at least one month before the session. Moreover, the Assembly shall also be convened if shareholders whose total shares account for one-twentieth (5 percent) of the capital stock demand so in writing and send their request to the Executive Management stating the purpose and reasons for holding the Assembly²². The title, registered office of the company, date and venue of the Assembly session and the conditions for participation in the Assembly and for the exercise of voting rights must be published in the notice. The Executive Management shall also provide the shareholders with reliable information on the affairs of the company if necessary for the assessment of the Assembly's matters. Shareholders can make proposals or contra-proposals on the agenda by sending a counter-proposal within a week from the announcement of the Assembly.

The shareholders' voting right should be exercised in respect of the nominal amounts of shares owned. Again, the Articles of Association may limit the voting right of an individual shareholder in the way that its votes in respect to the number of shares shall not exceed a definite number or percentage. Moreover, the Articles of Association may provide that a shareholder's shares may have counted in them the shares belonging to another shareholder on behalf of the first. In the case of a company as a shareholder, the Articles may allow its shares to be counted along with the shares belonging to its subsidiary, controlling company or company linked with it through a concern, or to a third person on behalf of such companies. Limitations, if applied, may not be imposed on any individual shareholder.

A **proxy**, upon depositing the relevant authorisation in writing with the company, may exercise the voting right of a shareholder. The Companies Act does not define the nature of the relationship between the shareholder and its proxy. It is a matter of the two involved to define through private contracts. Proxy voting by an individual should be distinguished from the exercising of voting rights by a financial organisation or shareholders' association. According to the Article 298, a financial organisation or other persons may exercise, or confer the exercise of, the voting right for registered shares only with written authorisation to that effect. The shareholder may give the authorisation for a maximum period of 15 months and can withdraw it at any time. The financial organisation or other authorised persons exercising the voting rights for a shareholder needs to deposit a warrant with the company. Within twelve days of the announcement of the assembly session, the Executive Management should notify those financial organisations which at the last Assembly exercised shareholders' voting rights or requested the report of the convening of the Assembly, the publication of the agenda and the proposals of the shareholders (Article 287). The Executive Management should address the notification to all shareholders who have deposited shares with the company, or so requested that after the announcement of the convening and which were entered as shareholders in the company's share book but which were not represented by any financial organisation at the last Assembly. The financial organisation has to send with no delay the report to the

²² Companies Act, Article 284.

represented shareholders. For further exercise of the voting rights, the financial organisation shall acquaint the shareholder with its own proposal for exercise the voting right under individual items of the agenda. The shareholder should be asked to give instructions for the exercise of the voting right, otherwise the financial organisation has the right to exercise those voting rights as it pleases.

The Stock Exchange rules define any **collection of voting authorisations** from more than 50 shareholders of a joint-stock company as an organised collection that has to be notified to the Agency. The authorisation obtained is valid for only one shareholders' meeting and has to contain the voting proposals, name of the proposed vote and a call to the shareholders to provide the voting proposals.

The Companies Act does not refer specifically to the **shareholders' association**. Anyway, it states that all the provisions referring to financial organisations should apply also in the case of the shareholders' association representing shareholders. If a financial organisation or a shareholders' association exercises the voting right on behalf of another shareholder, the amount and class of the shares for which they have been authorised should be indicated in the list of the participants at the Assembly (Article 291). The list should be made available to all the participants for their inspection before voting.

The Act on Privatisation of Legal Persons in the Ownership of the Slovene Development Fund (Zakon o privatizaciji pravnih oseb v lasti Slovenske razvojne družbe, Uradni list RS, 71/94, 57/95, 39/96) refers to the participation of shareholders through so-called authorised associations (družba pooblastenka). According to the Article 17 the employees, former employees and other beneficiaries of the internal buy-out may constitute, for implementation of the internal buy out, a special legal person that will participate in the internal buy-out in its name yet on behalf of its founders. Although the Companies Act does not refer to the authorised association, it will probably represent one of the institutional representatives of the shareholders. The shareholders create the association by contributing their own shares as the capital of the association with the only purpose to influence jointly, through a common representative, the management of their company (Bohinc,1996).

There is no requirement for minority shareholders' representation on the company's Management Board, nor is reference made to a mandatory dividend. In any event, there are some important issues that need to be pointed out in connection with the **minority shareholders**:

1. The right of convening the Assembly by shareholders holding 5 percent of the capital (Article 284 of the Companies Act);
2. The right (standing) of any shareholder to contest in legal proceedings any Assembly decision which is in violation of the company's fundamental goals or fair business practice and aims at doing harm to a shareholder or impair the interest of the company. Moreover, any decision that is to a shareholder's or a third person's advantage at the expense of the company or other shareholders may be contested in legal proceedings (Article 364 of the Companies Act). According to the Article 366, any shareholder attending the assembly may contest its decision only if they immediately inform the Assembly of their intention to sue and their statement is recorded in the minutes. A shareholders who was not present at the assembly may contest its

decision only if they were unlawfully prevented from attending the Assembly or were not invited in the proper manner, or if the Assembly debated an issue that was not on the agenda.

3. Shareholders accounting for at least ten percent of the share capital can, upon a petition, request the court to recall the Supervisory Board (Article 267);
4. Shareholders accounting for at least one-tenth of the capital stock may file a petition to initiate liquidation proceedings in court (Article 373);
5. Shareholders accounting for at least five percent of the capital stock can require an administrator for liquidation to be appointed by the court (Article 377);

4.2 THE BANKRUPTCY PROCEDURE

The **Law on Compulsory Settlement, Bankruptcy and Liquidation** (Zakon o prisilni poravnavi, steèaju in likvidaciji, Uradni list RS 67/93) regulates the conditions for the execution and the procedure of compulsory settlement and bankruptcy against debtors. The bankruptcy procedure may be instituted against a debtor who has been insolvent or excessively indebted for a longer period of time or in other cases determined by law. The creditors, the debtor, or a personally liable partner can propose the bankruptcy procedure. The creditor must prove with an authentic document the existence of its due and unpaid claim and the inability of the company-debtor to settle the claim. Upon the proposal, the president of the bankruptcy senate collects information in order to determine the presence of a reason for bankruptcy. It is also the official obligation of the court to start the bankruptcy procedure whenever the debtor has been unable to pay salaries to its employees for the last three months, where his account has been blocked for the last twelve months or where he has been illiquid for the last twelve months.

Moreover, Article 317 of the Companies Act provides that a company must be dissolved whenever the capital stock decreases to below the minimum determined by law, namely below the 3,000,000 SIT and no further increases of the capital have been simultaneously determined.

The announcement of the commencement of a bankruptcy procedure must be posted on the court announcement board and published in the Official Gazette of the Republic of Slovenia. With the announcement limitations commence on the legal and business capacity of the debtor, the authorisations and rights of the management, administrative bodies and representatives and other civil and legal consequences of the bankruptcy. Moreover, Article 105 requires all authorisations of the company's management, legal representatives and administrative bodies to be transferred to the trustee in bankruptcy and that the employment of all the company's employees terminates. The trustee, the bankruptcy senate and the board for creditors²³ are the bodies of the bankruptcy procedure prescribed by the law.

On the day of the commencement of the bankruptcy procedure a bankruptcy mass shall be formed. All assets of the debtor are included in the bankruptcy mass, unless otherwise determined by law. Where a bankruptcy procedure is instituted against a partnership, the assets of a personally liable partner should also be

²³ The board of creditors is established for the purpose of creditors' protection. It discusses the reports of trustee in bankruptcy and the balance of the bankruptcy mass, examines the documentation in the possession of the trustee, has the right to object to the work of the trustee and to propose his dismissal as well as the nomination of a new trustee, informs the creditors about the bankruptcy procedure, etc.

placed in the bankruptcy mass, unless he demonstrates that in all probability the creditors shall be completely satisfied from the assets of the company. Creditors are requested to register their claims through an application to the bankruptcy senate within two months prior to the commencement of the procedure. The bankruptcy procedure shall not influence any exemption or separation rights²⁴ if received at least two months prior to the commencement of the bankruptcy procedure. Article 132 refers to a special bankruptcy mass out of which the separation rights are covered. Moreover, this Article gives to the separation creditor the right to establish the unpaid portion of the claim as a bankruptcy creditor whenever the portion of the assets for which a separation right is received (the special bankruptcy mass) is not sufficient to cover the creditor's entire claim. The bankruptcy senate orders the bankruptcy debtor to deliver to the creditors the portion of assets over which the exemption rights have been recognised and to pay the claims for which the separation rights exist.

The assets placed in the bankruptcy mass should be sold at a public auction if not determined otherwise by the bankruptcy senate upon the opinion of the board of creditors. The separation creditors whose claims and separation rights have been recognised have to be paid first from the purchase price. All the other debts of the company must be paid proportionally out of the mass after payment of the amount necessary to cover the expenses of the bankruptcy. Shareholders can only be paid after the complete payment of the company's creditors and in proportion to the nominal value of their shares unless the company's Articles of Association provide priority payments for a determined class of shares.

5. SPECIAL PROVISIONS

5.1 SINGLE OWNER COMPANIES

The 12th Company Law Directive on single owner companies (89/667/EEC) has not yet been codified in Slovenian law, but the **Companies Act** already largely complies with the Directive in that part dealing with single partner companies. These companies are limited liability companies with only one partner (the only founder or one who becomes the only shareholder due to changes in partnership) and are registered in the Court Register like other companies. The founder decides independently on all matters within the competence of the partners of such a company (adoption of the annual balance sheet for founding shares, payment of the founding share, return of subsequent payments, division and termination of business shares, appointment and recall of directors, appointment of procurators and business representatives, enforcement of company's claims on directors or partners in connection with indemnifying damage caused during the founding or in the course of business, representing the company in legal proceedings against the directors, etc.). These decisions must be recorded in the ledger, which shall be certified by a public notary. There is no provision in the Companies Act that other

²⁴ The exemption right is the right to exempt things from the bankruptcy that do not belong to the debtor, while the separation right is the right to a special payment from the debtors' assets such as the pawn right, retention right, right to repayment, etc.

decisions, including contracts between the sole member and his company as represented by him, to be recorded in minutes or drawn up in writing (Article 5 of the Directive 89/667/EEC).

5.2 HOLDINGS

The **Companies Act** defines holdings as the incorporated majority-share companies that hold a majority of shares in a legally independent company and mainly performs the tasks of the establishment, financing and management. The holding is a joint-stock company and has to be registered in the Court Register as does the corporate contract itself. The data that must be disclosed or deposited by registering a holding in view of its ownership structure, voting rights and ownership disclosure rules are the same²⁵ as for any other joint stock company (see Table 2).

5.3 BANKS

A bank can be established in the form of a joint-stock company with a maximum of one third of capital in the form of preference shares²⁶. For any person, the acquisition of a qualified share²⁷ of a banks' capital is subject to the approval of the Slovenia's Central Bank. Authorisation is required for any increase of the stake to 20 per cent, 33 per cent and 50 per cent or to a share giving the shareholder the dominant influence in the bank. If the holder of the stated thresholds wants to reduce its share so that its stake in the bank falls short of the approved abovementioned thresholds, it must notify his intention to the Slovene Central Bank. For any financial institution in which a bank holds more than 10 percent of the capital, the acquisition of that bank's shares exceeding ten percent of the voting rights is prohibited.

A bank must not directly or indirectly provide credit financing or guarantee supporting the acquisition of shares of companies in which capital the bank participates with at least 20-percent stake. The total value of bank assets in the non-financial organisations' capital shall not exceed the 60 percent of the banks' capital.

A big exposure is considered every exposure of a bank to a single entity that exceeds 10 percent of the bank's capital. Before entering into a contract that would cause a big exposure or lead to a bank's exposure exceeding 15 or 20 percent of the bank's capital, the bank must obtain an approval of the bank's Supervisory Board. The approval of the Supervisory Board must also be obtained when entering into a contract with the bank's Management Board members, Supervisory Board members or procurator and whenever the contractual conditions

²⁵ A holding can be listed as any other joint stock company. The Securities Market Act imposes additional requirements on associated persons in general and therefore holdings too. According to the Article 12 of this act, the related entities are legally independent entities that are related in terms of: 1) management, capital or other aspects, so that they either, due to the said relations, jointly formulate their business policy and perform concerted actions so as to attain joint business objectives; 2) one of the entities can direct the other or exert significant influence upon its decision-making process as regards financing and business; 3) the operations of one entity or its business results significantly influence the operations or business results of another entity. Related entities pursuant to this Act shall, in particular, be: 1) entities mutually related as close relatives; 2) by an entity or entities deemed to be related entities pursuant to other points hereunder which participate in another entity either jointly, directly or indirectly; 3) by the same entity or the same entities deemed to be related entities pursuant to other points hereunder which participate in the two entities in question; 4) by constituting a contractual concern or concern between relations of equal status pursuant to the Companies Act; 5) as members of either the management or supervisory boards, or as persons employed on the basis of an employment contract to which the tariff section of the collective agreement is not applicable, related to the company in which they perform such a function or in which they are employed, and the close relatives of such a person.

²⁶ Banking Act, article 15-17.

differ from the usual bank conditions. The total value of all big exposures within a bank should not exceed the 800 percent of the bank's capital, while the banks' exposure to the single person²⁸ should not exceed 25% of the bank's capital. Nevertheless, the bank's exposure to a person that indirectly or directly controls the bank, is directly or indirectly subordinated to the bank, or is directly or indirectly controlled by the same person as the bank should not exceed 20 percent of the bank's capital. If, due to a merger of two persons or any other reason the bank has no influence on, the bank's exposure exceeds the 20-percent limit, the bank has to notify the Bank of Slovenia and submit a report on the adjustment of the exposure.

According to the **Banking Act** (Zakon o bancnistvu, Uradni list RS, 7/99), banks shall keep business books and make annual reports in accordance with the Companies Act, the standards and principles of accounting and the general accountancy requirements (Standard no.31) issued by the legally authorised organisation. The Central Bank prescribes the detailed form of the banks' financial statements, the content of the banks' annual and monthly report, as well a detailed description of the evaluation and form of items in their financial statements. Unaudited accounting statements shall be submitted to the Bank of Slovenia within two months of the end of the year. Moreover, information about movements in the accounts, the banks' capital, capital adequacy, exposure to credit and liquidity risk, the position of non-balanced items, as well as the value of investments in the capital of the non-financial organisations and immovable property should also be reported to the Bank of Slovenia on a regular basis.

The bank controlling a banking group is obliged to prepare consolidated annual accounting statements and submit them to the Bank of Slovenia, as requested. An independent auditing house shall audit the annual and consolidated accounting statements of banks. The audited accounts shall be submitted to the Bank of Slovenia and the Ministry of Finance within eight days of receipt of the auditing report, but no later than within five months of the end of the calendar year.

5.4 INSURANCE COMPANIES

An insurance undertaking is a legal entity with its head office in the Republic of Slovenia that has been granted authorisation to perform insurance business by the supervisory authority. According to Article 13 of the **Insurance Companies Act** (Zakon o zavarovalnistvu, Uradni list RS,13/00), the insurance company can only be organised in the form of a joint-stock company or mutual²⁹ company, while the reinsurance companies can only be organised as joint- stock companies.

The direct or indirect acquisition of a qualified share³⁰ in an insurance company is subject to the authorisation of the Agency for Insurance Supervision (Agencija za zavarovalni nadzor). The same applies to any

²⁷ According to the Banking Act as a qualified share must includes the direct or a indirect ownership of a business share, a company's stock or other rights within a company that give the owner 10 % of the company's voting rights or capital stock.

²⁸ Or a group of associated legally independent persons that have to be considered as a single person.

²⁹ A mutual insurance company is a legal entity performing insurance operations for its members and adhering to the principle of mutuality. When there are no special provisions, general provisions of Companies Act and provisions for joint-stock companies also apply to mutual insurance companies.

³⁰ The same as for a bank's qualified share.

further acquisition or reduction of the insurance undertaking's shares, whereby 20%, 33% or 50% of voting rights or participation in its capital is either achieved or exceeded or whereby the person becomes its controlling entity. Further, any changes to the companies' register data, information about the general shareholders' meeting, the names of the shareholders, appointment or dismissal of Management Board members, the intended opening, transfer, closing or temporary cessation of a branch or representative office and changes in the types of service performed by the branch, the direct or indirect acquisition, reduction or increase of a qualified stake in another legal entity and any significant changes in capital structure, cessation of the performance of particular insurance services also have to be reported to the Agency for Insurance Supervision.

The Insurance Company Accounting Directive 91/674/EEC was incorporated by Slovenian Accounting Standard 32 that also takes into account Financial Accounting Standards (FAS) no.5 and no.60, as well as German and Austrian laws (Versicherungsaufsichtsgesetz – VAG 1987). Moreover, the main charts of accounts for insurance undertakings, the types, forms and contents of financial statements, a detailed method for valuing balance-sheet items and compiling financial statements, as well as detailed contents of the certified actuary's report are prescribed by the Ministry of Finance. Unaudited financial statements should be submitted to the supervisory authority within three months of the end of the calendar year. Insurance companies dealing in reinsurance are obliged to submit unaudited financial statements within four months of the end of the financial year.

5.5 INVESTMENT AND PENSION FUNDS

Investment funds may be organised either as a joint-stock company (investment company) or a mutual fund. The investment company can be established for the purpose of publicly gathering funds and investing those funds in transferable securities according to the risk management and portfolio diversification rules. The investment company's funds are gathered through the public issuing of shares that are transferable without restriction. The investment fund should not issue preferential shares or other shares that give a single shareholder a preferential position, as well as shares that give the shareholder a disproportionate ownership claim. Shares in an investment fund may only be paid up in cash and must be fully paid up prior to the entry, establishment or capital increase in the Companies' Register. Shares may only be registered shares and transferable without restriction. The investment fund cannot acquire its own shares. A single natural or legal person may hold directly or indirectly no more than 5% of the total shares of the investment fund. If a single person acquires a more than 5% ownership share, the shares exceeding the 5%-threshold give the owner no voting right or profit share. Prior to inscription in the Companies' Register, the investment fund should obtain the authorisation of the Agency.

The **mutual fund** is not considered a legal person. A single natural or legal person should not own more than 5% of the mutual fund's total capital unless the excess amount is the result of a sale by other holders of the capital of the same mutual funds. The holder of such share cannot acquire new mutual fund claims whilst ever it holds that excess share.

The **Management Company** is the only one, which can establish and run a mutual fund or investment company. While it is not allowed to own directly or indirectly any claims in the mutual fund that it manages, the management company should subscribe and fully pay up shares of a total value of at least SIT 1 million when establishing an investment fund. Once the fund is established, the funds' management company cannot acquire or dispose of any shares. The management company should not directly or indirectly own shares or business stakes in other management companies, the bank used must be authorised to perform payments for the investment fund, the Central Securities Clearing Corporation that has been authorised for the saving of the funds' securities, the authorised stock-broking company and its shareholders. The shareholders of the management company, the members of its Management Board, employees or persons providing services on a contractual basis must notify the management company of any acquisition or sale of or ownership stakes in the above companies and indicate the number of shares bought or sold, plus the date and price of the acquisition or sale.

The **First Pension Fund** of the Republic of Slovenia is a separate pool of assets managed on behalf of policyholders with the sole purpose of satisfying obligations arising from supplementary pension insurance policies. In its own name and on behalf of the policyholders, the Capital Fund manages First Pension Fund assets separately from other assets of the Capital Fund. Management of the First Pension Fund should perform the following tasks: managing policyholders' accounts, supervising of and assuring the veracity of calculations of required coverage and mathematical reserves to satisfy the First Pension Fund's obligations arising from annuity payments to policyholders, calculating and effecting annuity payments to policyholders, and supervising the management of First Pension Fund assets managed by management companies.

For the purpose of managing the First Pension Fund, the competent body of the Capital Fund is obliged to appoint a Management Board consisting of two members, of which at least one member must have specialised knowledge and experience required for managing the Fund. The Agency for Insurance Supervision is the one responsible for the First Pension Fund. The provisions of the law governing the supervision of insurance companies apply to supervision of the First Pension Fund.

5. 6. STOCK EXCHANGES, FOUNDATIONS, TRUSTS AND OTHER ENTITIES

The **Stock Exchange** is a public limited company authorised by the Securities Market Agency to organise trading³¹. Unless otherwise stipulated by the Securities Act, the provisions of the Companies Act relating to public limited companies apply to the Stock Exchange. The minimum amount of equity of the Stock Exchange is SIT 1 million. The Stock Exchange may only issue ordinary registered shares of the same class, in book-entry form and is not allowed to trade them on the organised market. Shareholders in the Stock Exchange may only comprise the stock-broking company-stock exchange members, the Republic of Slovenia and the Bank of Slovenia. An individual shareholder other than the Republic of Slovenia and the Bank of Slovenia, may not either directly or indirectly hold more than 10% of all shares of the Stock Exchange.

³¹ Article 216, Securities Market Act

The **trust** concept is not known in Slovenian law. According to the Foundation Act (1995), a foundation refers to property tied to a certain purpose. The purpose of a foundation must be generally useful or charitable and, as a rule, lasting. Since a foundation means property, it has no owners - it is owned by nobody and therefore has no members or shareholders. However, if there is more than one founder of the foundation the founders can form a joint body but this body is not allowed to assume the tasks of foundation. In any case, the foundation has its Board of Directors consisting of at least three members appointed according to the internal rules or statute of the foundation.

6. CONCLUSIONS

The paper sketches out an overview of the legal framework in which Slovenian companies operate. Special attention is paid to the legal protection of shareholders, their access to information about their company, ownership and voting rights. In order to shed some light on the legal protection of Slovenian creditors, some reference is made to the bankruptcy procedure. Moreover, it has been attempted to take into account suggestions of the European Corporate Governance Network that deserves the main credit for realisation of this research.

According to Gelfer, Pistor and Raiser (2000), shareholders' protection in transition countries in 1998 exceeded the average world level. In 1992, Slovenia had a zero starting point in the protection of both shareholders and creditors. While in 1998 Slovenian shareholders enjoyed lower protection with respect to the transition average, it was still higher than that assured in the German civil law countries from whence the Slovenian Companies Act originates. Slovenian secured creditors had on average greater rights and could exercise more influence in bankruptcy with respect to other transition countries. In 1998 this reached a level of creditors' protection above the world average. Despite these great results of legal implementation in the transition countries, legal enforcement of the rules and the effectiveness of the legal institutions still have to be improved as they appear to be more important to increasing external finance than the mere presence of suitable legislation in the statute books.

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