

European Corporate Governance Network

A Survey on Corporate Governance Rules in Hungary and Romania

Team members:

John S. Earle

Stockholm Institute of Transition Economics and Central European University

Victor Kaznovsky

Bucharest University of Mathematics

Csaba Kucsera

Eötvös Loránd University and Central European University

Álmos Telegdy

Budapest University of Economics Sciences and Central European University

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Table of Content

THE HUNGARIAN CORPORATE GOVERNANCE RULES

1. Introduction	2
2. Legal Forms and Description of the Population of Firms	3
2.1 Legal forms and information requirements	3
2.2 Description of the population of firms	4
2.2.1 Distribution of registered companies by legal form, 1998 and 1999	4
2.2.2 Distribution of companies by industrial branches at the end of 1998	5
2.2.3 Employment size of the companies, 1998 and 1999	6
3. Ownership Structure and Voting Rights	7
3.1 Ownership disclosure rules for listed companies	7
3.1.1 Company law	7
3.1.2 Accounting rules	8
3.1.3 Implementation of the Large Holdings Directive	9
3.1.4 Currently applied disclosure rules	9
3.2 Quantitative analysis	11
3.2.1 The sample used	11
3.2.2 Voting blocks by rank	11
3.2.3 Percentiles for voting power concentration	12
3.2.4 Voting blocks by blockholder type	12
4. Inside Supervision	13
4.1 The legal and institutional description of boards	13

THE ROMANIAN CORPORATE GOVERNANCE RULES

5. Legal Forms and Description of the Population of Firms	16
5.1 Legal forms and information requirements	16
5.2 Description of the population of firms	19
5.2.1 Distribution of companies by legal form, 1998 and 1999	19
5.2.2 Distribution of companies by industrial branches at the end of 1999	20
5.2.3 Employment size of the companies, 1998	20
6. Ownership Structure and Voting Rights	21
6.1 Ownership disclosure rules for listed companies	21
6.1.1 Company law	21
6.1.2 Accounting rules	22
6.1.3 Regulatory rules	22
6.1.4 Stock exchange regulation	23
6.1.5 Implementation of the Large Holdings Directive	23
6.2 Quantitative analysis	24
6.2.1 The sample used	24
6.2.2 Voting blocks by rank	24
6.2.3 Percentiles for voting power concentration	24
6.2.4 Voting blocks by blockholder type	24
7. Inside Supervision	25
7.1 The legal and institutional description of boards	25
8. Outside Supervision	26
8.1. Market Supervision	26

The Hungarian Corporate Governance Rules

1. Introduction

The structure of this survey follows the questionnaire proposed by the European Corporate Governance Network. Its first part consists of the presentation of the main features of the Law on Business Associations and contrasts the characteristics of regulation of different legal forms. The distribution of Hungarian firms along several characteristics (legal form, industry employment size) is also presented. Then the ownership disclosure rules are discussed, followed by a quantitative description of the ownership structure and voting rights of the firms listed on the Budapest Stock Exchange (BSE), using data from May 2000. In the last part of the survey we provide an overview of the insider supervision of firms.

2. Legal Forms and Description of the Population of Firms

2.1 Legal forms and information requirements

Legal Forms.	Unlimited partnership	Limited partnership	Joint enterprise	Limited liability company	Company limited by shares
Name of the legal forms:	közkereseti társaság	betéti társaság	közös vállalat	korlátolt felelősségű társaság	részvénytársaság
Main features: limited versus unlimited liability	-Unlimited, joint and several liability	- Liability of the " <i>general partner</i> " for the obligations not covered by the assets of the partnership is unlimited - " <i>Limited partner</i> " is only obliged to provide the contribution undertaken in the articles of association	- If the assets of the enterprise do not cover any debts, the members shall, in proportion to their contribution, bear joint liability for the debts of the enterprise as guarantors	Limited liability	Limited liability
Minimum capital (HUF)	0	0	0	3 Mill.	20 Mill.
Smallest number of owners	2	2	2	1	– single-man company limited by shares (only closed (non-listed)) can have only one owner – public (listed) company: at least 2
Smallest number of managers	0	0	1	1	– The deed of foundation of a <i>close company</i> instead of the Board of Directors can elect a general manager (1 person) – <i>public company</i> : the size of the board of directors must be between 3-11.

Note: n.a. – not applicable. These are the legal forms mentioned by the Law on Business Associations. Other legal forms are the following: Cooperative, Agricultural cooperative, Sole proprietor, government institution, Compulsory social security, Non-profit institution, Other institution.

2.2. Description of the Population of Firms

2.2.1 Distribution of Registered Companies by Legal Form, 1998 and 1999

Legal Forms.	1998				1999			
	Registered		Active		Registered		Active	
	Number of firms	Percent of firms	Number of firms	Percent of firms	Number of firms	Percent of firms	Number of firms	Percent of firms
Unlimited partnership (kkt.)	5006	1.4	4063	1.3	5217	1.4	4386	1.4
Limited partnership (bt.)	161857	45.6	140449	45.8	170762	46.4	150637	47.0
Limited liability company (kft.)	157990	44.5	134107	43.8	160647	43.7	136777	42.7
Company limited by shares (rt.)	4251	1.2	3736	1.2	4350	1.2	3853	1.2
Other partnership without legal entity*	26182	7.4	24130	7.9	26998	7.3	24762	7.7
Total	355286	100.0	306485	100.0	367974	100.0	320415	100.0

Source: *Statistical Yearbook of Hungary, 1998 pp 272-273, Statistical Yearbook of Hungary, 1999 pp 276-277*

Note:

Registered corporations: units with legal entity and tax number, figuring in the administrative register at the time of the survey;
Active corporations: those corporations, which had tax reports in the subject year or in the preceding year, which supplied statistical information or which were established in the reference year or in the year before. (31/12/1998; 31/12/1999)

*Data on joint enterprises is not available

2.2.2 Distribution of Companies by Industrial Branches at the end of 1998, 1999

Industry	Total 1998	Percent 1998	Total 1999	Percent 1999
AGRICULTURE, HUNTING, FORESTRY AND FISHING	39042	5.0	38203	4.8
MINING AND QUARRYING	405	0.1	446	0.1
MANUFACTURING, of which:	82839	10.6	82775	10.3
Food products, beverages and tobacco	8696	1.1	8361	1.0
Textiles, wearing apparel, leather and fur products	14212	1.8	13771	1.7
Wood, paper and printing products, publishing	16559	2.1	16646	2.1
Chemical industry	4193	0.5	4107	0.5
Non-metallic mineral products	3450	0.4	3418	0.4
Basic metals and fabricated metal products	12893	1.7	13149	1.6
Machinery and equipment	14882	1.9	15217	1.9
Other manufacturing, recycling	7954	1.0	8106	1.0
ELECTRICITY, GAS, STEAM AND WATER SUPPLY	555	0.1	551	0.1
CONSTRUCTION	66257	8.5	67742	8.4
WHOLESALE AND RETAIL TRADE: REPAIR OF MOTOR VEHICLES AND HOUSEHOLD GOODS	216292	27.7	210512	26.2
HOTELS AND RESTAURANTS	44752	5.7	42790	5.3
TRANSPORT, STORAGE, POST AND TELECOMMUNICATIONS	46239	5.9	45383	5.7
FINANCIAL INTERMEDIATION	14664	1.9	18680	2.3
REAL ESTATE, RENTING AND BUSINESS ACTIVITIES	190608	24.5	209381	26.1
EDUCATION	11899	1.5	14363	1.8
HEALTH AND SOCIAL WORK	18199	2.3	21073	2.6
OTHER COMMUNITY, SOCIAL AND PERSONAL SERVICE	47567	6.1	50282	6.3
OTHER*	152	0.0	34	0.0
TOTAL	779470	100.00	802215	100.0

Source: Statistical Yearbook of Hungary, 1998 pp 275-276.

Note:

The table refers to active corporations and unincorporated enterprises.

* Private households with domestic servants and extraterritorial organizations and corporations

2.2.3a Employment Size of Companies, 1998

Legal Form	Employment categories					Total
	11 >*	11 - 20	21 - 50	51 - 300	> 300	
Unlimited partnership (kkt.)	3981	52	26	4	0	4063
Limited partnership (bt.)	138822	1175	368	81	3	140449
Limited liability company (kft.)	119222	6692	5113	2750	330	134107
Company limited by shares (rt.)	1675	296	415	847	503	3736
Other partnership without legal entity*	24115	14	0	1	0	24130
Total	287815	8229	5922	3683	836	306485

Source: Statistical Yearbook of Hungary, 1998 p.274.

Note: The table refers to active corporations and unincorporated enterprises.

* Including corporations with unknown staff number.

2.2.3b Employment Size of Companies, 1999

Legal Form	Employment categories						Total
	0 and unknown	1 - 9	10 - 19	20 - 49	50 - 249	> 250	
Unlimited partnership (kkt.)	1861	2398	88	32	7	0	4386
Limited partnership (bt.)	71592	76458	1989	486	102	10	150637
Limited liability company (kft.)	40710	76942	9636	6233	2793	463	136777
Company limited by shares (rt.)	742	904	370	455	811	571	3853
Other partnership without legal entity*	23399	1339	19	3	2	0	24762
Total	138304	158041	12102	7209	3715	1044	320415

Source: Statistical Yearbook of Hungary, 1999 p.278.

Note: The table refers to active corporations and unincorporated enterprises.

*Data on joint enterprises is not available

3. Ownership Structure and Voting Rights

3.1 Ownership Disclosure Rules for Listed Companies

3.1.1 Company Law:

Act CXLIV of 1997 / Section 180.

What is the legal procedure for transferring shares (e.g. anonymous, registered shares can only be transferred with the consent of the company, the company has a shareholder register which is public/for the eyes of the management only)?

(1) Bearer shares are freely negotiable without an indication of their holder.

(2) Unless otherwise provided by law, registered shares are freely negotiable, however, the deed of foundation of a close company may restrict the negotiation of shares according to the provisions of this Act, or may make such transfer subject to the consent of the company.

Does the company have to notify the company register (or similar) when it acquires or holds a stake in another company ?

Yes, it has to be published in the yearly report of the company (Prospectus) as well as in the Extraordinary Report of the company.

Appendix 3 to Act CXI of 1996 Compulsory Content Elements of the Prospectus :

(18.) introduction of investments if market value of an investment (or if it cannot be established, the nominal value thereof) exceeds ten per cent of the registered share capital of the issuer, or, if the issuer has a direct or indirect majority interest in the given company,

What are the thresholds for such notifications ?

For the Extraordinary Report : *Appendix 6 to Act CXI of 1996 Scope of Information to be Published as Extraordinary Information:*

(19.) new investments of the company, and the increase of their already existing investments if it exceeds ten per cent of the registered share capital or primary capital of the company, forming the subject of the investment,

Is the information from the company register (or similar) only available on paper or in computer readable form as well?

Only in printed form.

If the information is available from databases, is the information from the different sources consistent (the official notifications being the benchmark) ?

The benchmark is the Company Gazette, the official newspaper of the BSE. (Cégközlöny)

Note: N.A: Information not available; Citations from laws are in *italics*.

3.1.2 Accounting Rules :

<p>What ownership information do these companies have to report in the annex of their annual reports (Fourth Company Law Directive, 78/660/EEC of 25 July 1978 covering all limited liability companies; Seventh Company Law Directive 83/349/EEC of 13 July 1983 on consolidated accounts) ?</p>	<p>Appendix 5 to Act CXI of 1996: Compulsory Content Elements of the Regular Prospectus:</p> <p>– "B) Changes in the company: Any changes taken place in the company's organisation, in persons of senior official and employees, and in its proprietorship structure reaching five per cent of the registered share capital."</p> <p>– "11. / c) Change in the securities structure of the issuer: 1. data of securities issued by the company in the relevant year, 2. detailed description of interim changes in the rights attached to the securities being in circulation, 3. title of the issuer's senior employees to the securities issued by the issuer."</p>
<p>Which national law transposed the accounting standards directives ?</p>	<p>Act XVIII of 1991 on Accounting in consolidated structure with its amendments (Promulgated: 11 May 1991) (78/660/EEC, 83/349/EEC)</p> <p>In the Act C. of 2000 on accounting rules the Hungarian Parliament renewed the old law.</p>
<p>Has the Member State imposed additional requirements via its national accounting standards (e.g. as a result of the activities of the International Accounting Standards Committee or rival standards)?</p>	<p>The Hungarian Accounting Law (HAL) and the International Accounting Standards (IAS) are different.</p>
<p>Is the information from this source only available on paper (the printed annual report) or in computer readable form?</p>	<p>Only in printed form.</p>
<p>If the information is available from databases, is the information from the different sources consistent (the printed annual report being the benchmark)?</p>	<p>not available</p>

Note: N.A: Information not available; Citations from laws are in *italics*.

3.1.3 Implementation of the Large Holdings Directive

In contradiction with the fact that the Hungary was the first among the transitional countries which established a stock exchange, the legislation of the capital market had been lagging behind, as compared to many other transition countries. The main problem concerned disclosure rules, which were not in conjunction with the European Commission's Directive (88/627), which provides instructions to the member and accession countries to harmonize their disclosure rules. In order to correct it, the Parliament

made a comprehensive overview and modification of the finance-related acts – including Securities Act from 1996 and Company Act from 1997 – in the early summer of 2001, entering into force at 18th of July, 2001. This law implements the Directive into the Hungarian legal system.

In the following part of this section we discuss the main features of the two regulations.¹

Disclosure rules of listed firms by July 2001

According to the Company Act (114/97), any owner who acquires shares which increase his or her holdings above 25% + 1, 50% + 1 and 75% + 1 vote, has to notify the Company Court and the Company Gazette within 30 days. The owner is not allowed to exercise his or her voting rights related to the newly acquired shares until he or she satisfied the disclosure obligation. The disclosure has to be made only if the owner crosses the thresholds from below.

The Securities Act (111/96) also regulates the disclosure. Every listed firm is required to publish the “Yearly Report” (by 15 February), which includes all changes in the ownership structure, which exceeds 5 percent of the equity share.² Also, the firm is obliged to issue an “Extraordinary Report,” if the management’s equity holdings change (by any amount).

The third requirement is regulated by the "Regulations for Listing, Continued Trading and Disclosure," created by the Stock Exchange Council. According to it, the yearly and regular report (issued every quarter or half a year, depending on the class of the listing) has to contain the name and accurate holdings of each shareholder possessing more than 5 percent of the company’s shares. Also, the issuer is required to inform the BSE in an Extraordinary Report if any owner holding more than 5 percent of the shares increases or decreases his or her holdings by more than 5 percent. The issuer has to make its announcement within 30 minutes during trading hours, or until 8.30AM of the next trading day, if the exchange of shares was realized after trading hours.

This piece of regulation is very strict, however, it is contingent upon the registration of the newly acquired shares. If the owner does not register them, she will not be able to exercise her voting rights related to these shares. However, by this way she can withdraw voting shares, increasing her voting power in an indirect way. Through this mechanism, the shareholder can increase her voting power without announcing the public. Another way to avoid publicity is to acquire shares via nominees: the real owner can stay behind the curtain.

Comparing the three pieces of regulation, the one set by the BSE is the strictest (it requires more details and shorter announcement period). However, the relatively small penalties in the case of violations create doubts about the enforcement of the regulation (Huf 100,000 – 1 Mln).³ Moreover, not the owner of

¹ Obviously over the time period which we discuss empirically in Section 4 (1996-2000), the old regulation was in force. Thus, for understanding our findings, the knowledge of the main features of the old regulations are necessary.

² In this case the change of the equity holding, not of the voting power is subject to disclosure.

³ The Huf/Euro exchange rate was around 260 in the first part of 2001.

the shares, but the issuer company is subject to the penalty, which does not know about the changes in the ownership unless it is announced. The wedge between the penalty and the owner further weakens the possibility of enforcement.

Finally, we emphasize that the regulation valid by July 2001 is based on equity, not voting power. Thus, non-voting shares and preference shares, which may make a difference between equity holding and voting power, are not taken into account.

Disclosure rules of listed firms valid from July 2001⁴

A fundamental change in the regulation consist in the fact that the equity holding is changed with voting shares. The shareholder has to uncover itself, thus it cannot stay behind a nominee. Additionally, the law requires the disclosure of “acquisition of influencing interests.” Thus, both direct and indirect shares (and their joint influence), is subject to disclosure.

Second, it is the shareholder’s obligation to announce the Hungarian Financial Supervisory Authority (HFSA), and also the Managerial Board.⁵ The period of announcement is two calendar days. In case of violation the sanctions also changed, the fee is between Huf. 500,000 – 100 Mln. Additionally, the shareholder has to initiate the publication of the change of her holdings “immediately” in the following places: the newspaper used for announcement (of national circulation), the homepage of the company (if it exist), the “Hungarian Capital Market” (Magyar Tőkepiac-official newspaper of the BSE) and the homepage of the BSE.⁶ The issuer is also required to inform the BSE about the changes related to the voting rights.

Finally, the thresholds for the obligation of disclosure have also changed:

- crossing of 5 and 10 percent⁷
- between 10 – 50 crossing each 5 percent
- crossing of 75 and 90 percent

The disclosure has to be made when crossing from both below and above. Again, the unit of measurement is voting power, not equity holding.

⁴ As we have already mentioned, this regulation enters into force on 18th of July, and there will be a 60 days period available for every shareholder to publish their voting holdings.

⁵ According to an HFSA official, most likely the organization will develop a publicly available database on the ultimate holdings of the companies.

⁶ In order to protect small shareholders the BSE intends to set up an "Issuer Information Project", which is going to manage information regarding the disclosure of any reported price-sensitive information. The issuer must inform the BSE within 30 minutes, and this information is embargoed from further spreading. Then there are 60 minutes available for the BSE to decide on the possible suspension of the trade for a limited period also set by the BSE.

⁷ The lower threshold may be modified to 2 percent by the Company Statute.

The Large Holdings Directive has not been implemented in Hungary yet. However, a draft law was created, which is going to be discussed by the Parliament in June of 2001.

3.1.4 New disclosure rules

When was the Transparency Directive transposed, and in what law/regulation?	L/2001. Act on the Modification of the Finance-Related Acts
When did the legislation become effective?	18. 07. 2001.
Which are the “competent authorities or authorities” referred to in Article 13?	Hungarian Financial Supervisory Authority
The Transparency Directive left the Member States a considerable degree of freedom in implementing the individual articles (see text of directive in Appendix). Indeed, Article 3 allows the Member States to tighten up the transposition at will, converting the provisions of the directive into common minimum standards. Hence, from the directive itself very little is obvious about the transposition: In Article 4(1), what are the reporting thresholds that were chosen?	lower and tighter thresholds, 5%, 10%, 15%, 20%, 25%, 30%, 35%, 40%, 45%, 50%, 75% and 90 %
Is the first time notification threshold referred to in Article 5 10% or lower?	5 percent
Do natural persons or legal entities have to notify why they notified (i.e. which of the possibilities in Article 7 apply)?	Yes, (although the practice is still unknown)
Do natural persons or legal entities have to notify how they control an undertaking (a, b or c in Article 8)?	Yes (regulated by Paragraph 94/B (4).c.)
How much time may pass between crossing a threshold and reporting to the company (and the competent authority/authorities)?	2 calendar days
How much time may pass between the notification of the company (and the competent authority/authorities) and the notification of the public; Art. 10(1)?	not clearly specified by the law (it should be published in the next issue of the periodicals)
Who notifies the public; Art. 10(1)?	Issuer in line with the BSE (both on their homepages and their periodicals)
Does the national law prescribe that “a company must also be informed in respect of the proportion of the capital held by a natural person or legal entity”; Art. 4(1)(3)?	Yes

By what means are the company and the competent authority/authorities notified; Art. 4(2)? How does the competent authority store the notifications (paper, computer)?	According to a HFSA official, they are going to store the data in computer-readable form. (This is just a plan, the practice is still unknown.)
In addition to the immediate distribution mentioned in the directive (unless the company is responsible) does the competent authority distribute the notifications cumulatively (e.g. on floppy disk upon request)?	The practice is still unknown.
Does the competent authority/authorities have to declare how often it has applied the waiver rule set out in Article 11 (and for which natural person, legal entity)?	No sign of waiver rule.
What are the sanctions mentioned in Article 15?	Loss of all voting rights and / or a fine of up to 100 mn HUF (imposed by the HFSA).
How are these sanctions applied (or, what powers are conferred upon the competent authority/authorities for the performance of their duties; Art. 12(2))?	The practice is still unknown.

3.2. Quantitative Analysis

3.2.1 The sample used

We have data only on the firms listed on the BSE. This dataset was constructed by entering data from the Company Fact Book (2000), published by the Budapest Stock Exchange and Bank & Tőzsde. The data are from May 2000.

Table 3.2.2. Voting Blocks by Rank⁸

Voting block	Minimum	Median	Mean	Maximum
Largest	0.2	43.5	44.7	100.0
2 nd largest	0.0	18.0	18.6	42.5
3 rd largest	0.4	10.2	9.7	20.2
sum of the 4- 10 th largest	0.2	7.8	9.6	28.4

Total number of companies: 64.

⁸ Under five percent of ownership share, the data generally aggregates the owners by category, except in the case of the state and municipality. The most extreme case is a firm where only the state is named with 0.2 percent ownership stake. The result of this aggregation is that our results are biased towards the large owners. This comment applies to all tables from this section.

Table 3.2.3. Percentiles for Voting Power Concentrations

Range (percent)	Largest owner		All owners	
	Percent	Cumulative	Percent	Cumulative
0-5	1.6	1.6	7.3	7.3
5.01-10	0.0	0.0	22.3	29.6
10.01-25	28.1	29.7	38.0	67.6
25.01-50	29.7	59.4	17.9	85.5
50.01-75	28.1	87.5	10.1	95.5
75.01-90	7.8	95.3	2.8	98.3
90.01-95	3.1	98.4	1.1	99.4
95.01-100	1.6	100.0	0.6	100.0

Source: Company Fact Book, 2000

Note: Total number of companies: 64. In the case of all owners, only the identifiable owners are used in the analysis.

Table 3.2.4. Voting Blocks by Blockholder Type

Type of owner	Number of firms.	Minimum	Mean	Median	Maximum	Std. Dev.
Families/Individuals	18	4.7	19.5	12.4	60.9	17.1
State / Municipalities	15	0.0	24.9	10.0	93.1	35.1
Banks	1	6.5	6.5	n.a.	6.5	n.a.
Domestic Firms	23	3.2	20.4	18.5	50.9	13.0
Foreign	90	0.5	26.7	18.0	100.0	23.3
Investment Firm	32	4.4	22.0	15.2	68.4	17.2
All Blocks	179	0.0	24.1	15.6	100.0	21.9

Note: Total number of companies: 64. Only the identifiable owners are used in the analysis. n.a.: not applicable.

4. Inside Supervision

4.1 The Legal and Institutional Description of Boards

Legally available board structures (on or two-tier board)	One-Tier Board
Are they the same for all legal forms?	Yes
What are their titles (in the original language)?	Igazgatótanácsi tag
What are their functions?	<p><i>Act CXLIV of 1997 on Business Associations, Section 109./2:</i> <i>The following shall fall within the competence of the council of directors:</i></p> <ul style="list-style-type: none"><i>a) formation of the internal organization, and the order of management and supervision of the enterprise;</i><i>b) approval of plans related to business administration;</i><i>c) approval of the enterprise's report pursuant to the Accounting Act;</i><i>d) decision on the appropriation of after-tax profits;</i><i>e) passing of resolutions which define tasks to be implemented in the business administration of members;</i><i>f) resolution of termination without legal successor or transformation of the enterprise;</i><i>g) approval of members joining the enterprise, and approval of the restriction of the liability of new members;</i><i>h) consent to the transfer of membership rights;</i><i>i) election and removal of the director, as well as the exercise of employer's rights related to the director;</i><i>j) if a supervisory board operates at the enterprise, the appointment thereof, withdrawal of its mandate, and establishment of remuneration;</i><i>k) if an auditor operates at the enterprise, the appointment thereof, withdrawal of his mandate, and establishment of remuneration;</i><i>l) alteration of the articles of association;</i><i>m) initiatives to exclude a member;</i><i>n) decisions to conclude or amend a contract, the value of which exceeds the value limit set forth in the articles of association, or which is concluded by the enterprise outside its ordinary activity with one of its members;</i><i>o) decision on all issues which are assigned to the competence of the council of directors by this Act or the articles of association.</i>
What are their power?	hire and fire managers (<i>and see above</i>)
Does the chairman of the board of directors have veto power or a "golden vote"?	No

<p>By whom are directors/managers nominated, appointed (and for how long), re-appointed, promoted, removed, remunerated?</p>	<p>In general the shareholders meeting, but in the deed of foundation it may transfer the following of its competence to the supervisory board: <i>The deed of foundation (statutes) of a company limited by shares, or the articles of association of a limited liability company may transfer to the competence of the supervisory board the election and removal of the members of the board of directors (managing director), the establishment of their remuneration, as well as the approval of the legal transactions set forth in the deed of foundation (statutes, articles of association).</i> <i>Act CXLIV of 1997 on Business Associations, Section 33/1:</i></p>
<p>How are these decisions taken (majority voting, unanimity)?</p>	<p>The law requires 50% plus one vote.</p>
<p>Does anybody have veto power?</p>	<p>No</p>
<p>Are the nomination and appointment rules set out in company law, the company statute, imposed by the stock exchange?</p>	<p>The company statute.</p>
<p>Is it possible to obtain a list with the names of the persons who sit on the board and in the various committees for each company?</p>	<p>Yes. The "Company Fact Book" (published by the Stock Exchange) contains the names, with the exact dates for the entering and quitting of such positions.</p>
<p>Is it possible to find out how much the individual directors and managers earn (pay, bonuses, stock options)?</p>	<p>No.</p>
<p>Do directors have to declare how many shares in their own company they possess and when they buy and sell?</p>	<p>The directors has to declare to the company. The shareholding of the director is published in the Regular Prospectus (Yearly Report) of the company, and the changes in the shareholdings in the Extraordinary Report.</p>
<p>Is it possible for a shareholder/a member of the public to obtain a copy of the managers employment contract/the directors employment contract</p>	<p>Most probably not.</p>

Note: N.A: Information not available; Citations from laws are in *italics*.

The Romanian Corporate Governance Rules

5. Legal Forms and Description of the Population of Firms

5.1 Legal forms and information requirements

Legal Forms.	Regies Autonomes	Partnerships	Simple Limited Partnership	Simple Joint Stock Partnership	Joint Stock Company
Name of the legal forms:	Regie Autonoma	Societate In Nume Colectiv	Societate In Comandita Simpla	Societate In Comandita Pe Actiuni	Societate Pe Actiuni
Main features: limited versus unlimited liability	Regies autonomes State owned	Partner-ship	Simple limited partnership	Simple joint stock partner-ship	Joint stock comp
Minimum capital	Not applicable (state)	None specified by law	None specified by law	None specified by law	Rol 25 Mln
Smallest number of owners	Not applicable (state)	None specified by law	None specified by law	None specified by law	5
Smallest number of managers	7	None specified by law	None specified by law	None specified by law	None specified by law

Legal Forms.	Limited Liability Comp.	Manufacturing Cooperative	Consumer Cooperative	Credit Cooperative	Work Associations (Other Than Cooperatives)
Name of the legal forms:	Societate Cu Raspundere Limitata	Societate (Cooperativa) Mestesugareasca	Societate (Cooperativa) De Consum	Societate (Cooperativa) De Credit	Asoc.Sau Org.Cu Scop Lucrativ (Altele Decit Cele Cooperatiste)
Main features: limited versus unlimited liability	Limited liability comp	Manufact-uring coop	Cons. coop	Credit coop	Work assoc. (other than coop.)
Minimum capital	Rol 2 Mln	None specified by law	None specified by law	Rol 150 Bln.	None specified by law
Smallest number of owners	1	None specified by law	None specified by law	None specified by law	None specified by law
Smallest number of managers	None specified by law	None specified by law	None specified by law	None specified by law	None specified by law

Legal Forms.	Agricultural Companies	Freelancers	Family Associations	Other
Name of the legal forms:	Societati Agricole Legalizate In Baza Legii 36/1991	Persoane Independente Autorizate In Baza Legii 54/1990	Asociatii Familiale Autorizate In Baza Legii 54/1990	Alte Forme Jurid.(Unit.Econ. Cult.Soc.Obs.Fara Form.Expresa)
Main features: limited versus unlimited liability	Agric. Associations of at least 2 families	Free-lancers	Fam. assoc	'Vocational' freelancer (lawyer,doctor, etc.)
Minimum capital	Rol 100,000	None specified by law	None specified by law	None specified by law
Smallest number of owners	10	1	10	None specified by law
Smallest number of managers	3	1	None specified by law	None specified by law

5.2. Description of the Population of Firms

5.2.1a Distribution of Companies by Legal Form in 1999 (sample of firms)

Legal Forms.	Number of firms	Percent of firms
Regii autonome	173	0.2
Partnership	1402	2.0
Simple limited partnership	78	0.1
Simple joint-stock partnership	2	0.0
Joint-stock company	11421	16.4
Limited liability company	53104	76.3
Manufacturing cooperative	1012	1.5
Consumer cooperative	1081	1.6
Credit cooperative	200	0.3
Work associations (other than coops.)	1	0.0
Agricultural companies	985	1.4
Family associations	6	0.0
Other legal forms	134	0.2
Total	69599	100.0

Source: Romanian Enterprise Registry 1999

Note: Firms with less than five employees are not in the sample

5.2.1b Distribution of Companies by Legal Form in 1998

	Regii Autonome	Joint-stock company	LTD	Cooperative	Other	Total
Number of firms	183	12422	291106	2236	12429	318376
Percent of firms	0.1	3.9	91.4	0.7	3.9	100.0

5.2.2 Distribution of Companies by Industrial Branches at the end of 1999

Industry	Total	Joint stock companies	Limited liability companies
Mining and quarrying	220	93	127
Manufacturing	36463	3947	32516
Energy, Gas, Water	228	186	42
Construction	10253	1412	8841
Wholesale and retail repair	212018	4027	207991
Hotels and restaurants	9589	443	9146
Transport and storage	11210	897	10313
Post and Telecoms	549	61	488
Real estate transactions	12875	1103	11772
Education	550	52	498
Health and social assistance	3582	26	3556
Other social and personal activities	5991	175	5816
Total	303528	12422	291106

Source: Statistical Yearbook of Romania, 1999

5.2.3 Employment Size of Companies, 1998

Legal Form	Percentiles of employees for companies with 5 and more employees						
	5	10	25	50	75	90	95
Partnership	5	5	5	7	11	20	28
Simple limited partnership	5	5	6	8	14	25	38
Simple joint stock partnership	17	17	17	25	0	0	0
Joint stock company	6	7	15	45	138	407	793
Limited liability company	5	5	6	8	15	31	54

Source: Romanian Enterprise Registry, 1999

Note: Firms with less than five employees are not in the sample

6. Ownership Structure and Voting Rights

6.1 Ownership Disclosure Rules for Listed Companies

6.1.1 Company Law (31/1990, republished on Jan 29, 1998):

Does the list of owners have to be deposited at the company register (or elsewhere) when the company is founded ?	Only at the Registry of Commerce
If yes, what information about the owners does the list contain (name, address) ?	Full name of individuals or name of company, address, no. of shares (written in letters), date of subscription, and declaration that the subscriber has learned of the prospect of the issue of shares.
What is the legal procedure for transferring shares (e.g. anonymous, registered shares can only be transferred with the consent of the company, the company has a shareholder register which is public/for the eyes of the management only)?	<p>(1) <i>Bearer shares are freely negotiable without an indication of their holder.</i></p> <p>(2) <i>For public held companies, registered shares are either traded freely and trades reported at the at the company, which keeps its own registry, or at authorised registrars, or trades are done on the two official markets (Bucharest Stock Exchange and Rasdaq). The company must not give consent.</i></p> <p>(3) <i>For the case of closed company, trades are done only by contracts</i></p>
Are the directors of the company allowed to hold ownership certificates and up to what percentage of nominal capital ?	Yes, no limit if not specified by the constitutive act (deed of foundation)
Are the directors allowed to purchase ownership certificates in the name of the company and if yes up to what percentage of nominal capital ?	Only the chairman of the board of directors can buy on behalf of the company in special cases: if the company pays only from profit and this was a decision of the General shareholder meeting
Does the company have to notify the company register (or similar) when it acquires or holds a stake in another company ?	It has to report to the company register anyway in order to possess the shares. Also 5% or more holdings (by any party) are subject to disclosure rules.
What are the thresholds for such notifications ?	5 % or larger holdings have to reported (see below)
Is the information from the company register (or similar) only available on paper or in computer readable form as well?	Mainly in computer readable form, but only to the company, not the general public.
If the information is available from databases, is the information from the different sources consistent (the official notifications being the benchmark) ?	Yes

6.1.2 Accounting Rules :

What **ownership** information do these companies have to report in the annex of their annual reports (Fourth Company Law Directive, 78/660/EEC of 25 July 1978 covering all limited liability companies; Seventh Company Law Directive 83/349/EEC of 13 July 1983 on consolidated accounts) ?

Ownership information is not subject to any accounting rule

Which national law transposed the accounting standards directives ?

The International Accounting Standards are gradually being implemented. First the companies listed on the first tier are subject to dual reporting and so on. This has been specified by an order of the Ministry of Finance.

Has the Member State imposed additional requirements via its national accounting standards (e.g. as a result of the activities of the International Accounting Standards Committee or rival standards)?

The Hungarian Accounting Law (HAL) and the International Accounting Standards (IAS) are different.

Is the information from this source only available on paper (the printed annual report) or in computer readable form?

The Bucharest Stock Exchange's rules are such that even if the reports come in on paper, it provides also electronic format.

If the information is available from databases, is the information from the different sources consistent (the printed annual report being the benchmark)?

Yes

6.1.3 Regulatory Rules:

Apart from the transposition of the transparency directive, are there any other regulatory rules that impose additional ownership data reporting requirements (distinguish between different markets if country has more than one)?

In the case of the Stock Exchange, all holdings of the management or up to the 4th family degree of relatives must be declared to the Exchange, even if below 5%, but are not made public.

In the case of the other market, the OTC (RASDAQ) no such internal regulations exist.

If yes, is the ownership data available and from where?

In the case of the Stock Exchange, directly from the company in management signed documents.

6.1.4 Stock Exchange Regulation:

Apart from the transposition of the transparency directive and any other rules imposed on the stock markets and its participants, does the stock exchange itself impose additional ownership data reporting requirements (distinguish between different markets if country has more than one)?

As above

If yes, is the ownership data available and from where?

As above

6.1.5 Implementation of the Large Holdings Directive

Romania has not adapted yet the European Commission's Large Holdings Directive (LHD), which provides guidelines for small shareholders right's protection, a key institutional factor in the functioning of any stock exchange. However, the current regulation meets the principles of the LHD, and it is even stricter in a few aspects.⁹ According to it, "...any person who, acting directly or indirectly, severally or in concert and in connection with third parties, acquires or holds and under the provisions hereof becomes the holder or the owner of some shares bearing voting rights, or of some securities conferring rights to such shares which, cumulatively, represent 5% or more of the total voting rights...shall notify the National Securities Commission..." (Law 52/Art 88). Above the 5 percent threshold, the holder is obliged to disclose any acquirement which increases the owner's holdings as much to exceed two percent of voting rights (Law 52/1994, articles 88, 89).¹⁰ The period of announcement is 2 working days. Thus, both the length of the period of announcement and the thresholds are more restrictive in the Romanian legislation. Also, a new piece of regulation introduced in June 1999 requires the specification of the source from where the shares were bought. Although the regulation is stricter than the Directive's commendation, the relatively low sanctions make doubts about the adherence of the disclosure rules. In case of violation, individuals have to pay a fee of Rol 1 Mln and legal persons Rol 10 Mln.¹¹ The trivial punishment in case of violation may well undermine the strict regulation.

⁹ Instructions 13/1996, detailing the technical aspects outlined in the law regarding securities and stock exchanges (52/1994).

¹⁰ For example, if an owner had 15.6 percent of voting shares and acquires an extra .5 percent, he or she has to disclose that the holdings exceeded the 16 percent threshold.

¹¹ The USD equivalent is 35 for physical, and 350 for legal persons. (The exchange rate of USD – Rol was around 28,500 at the in June 2001).

6.2 Quantitative Analysis

6.2.1 The sample used

We have data only on the firms listed on the Bucharest Stock Exchange. These data is originated from the Stock Exchange Registry.

Table 6.2.2. Voting Blocks by Rank

Voting block	Minimum	Median	Mean	Maximum
Largest	5.0	51.5	52.9	95.0
2 nd largest	5.0	16.0	16.4	39.0
3 rd largest	5.0	9.0	9.6	25.0
4-10 th largest	5.0	6.0	6.9	10.0

Source: Stock Exchange Registry
Total number of companies: 122.

Table 6.2.3. Percentiles for Voting Power Concentrations

Range (percent)	Largest owner		All owners	
	Percent	Cumulative	Percent	Cumulative
0-5	0.8	0.8	9.7	9.7
5.01-10	0.0	0.8	18.7	28.4
10.01-25	8.2	9.0	27.0	55.4
25.01-50	28.7	37.7	17.3	72.7
50.01-75	50.8	88.5	22.3	95.0
75.01-90	9.0	97.5	4.0	98.9
90.01-95	2.5	100.0	1.1	100.0
95.01-100	0.0	100.0	0.0	100.0

Source: Stock Exchange Registry
Note: Total number of companies: 122

Table 6.2.4. Voting Blocks by Blockholder Type

Type of owner	Number of firms.	Minimum	Mean	Median	Maximum
Families/Individuals	20	5	13	10	51
State / Municipalities	34	9	51	54	92
Banks	7	11	26	25	51
Insurance	3	29	37	32	50
Domestic Firms	64	5	23	17	90
Foreign Firms	13	5	16	17	29
Assoc./pools	34	5	44	41	83
Holding	64	5	40	45	95
Investment Firm	39	5	13	7	72
All Blocks	278	5	31	21	95

Source: Stock Exchange Registry
Note: Total number of companies: 122

7. Inside Supervision

7.1 The Legal and Institutional Description of Boards

Legally available board structures (one or two-tier board)	Two tier board
Are they the same for all legal forms?	Yes for shareholder companies and limited liability companies.
What are their titles (in the original language)?	General Assembly (Adunarea Generala: AG), Board of Directors (Consiliu de Administrare CA)
Does the chairman of the board of directors have veto power or a "golden vote"?	No
By whom are directors/managers nominated, appointed (and for how long), re-appointed, promoted, removed, remunerated?	The AG names the CA which in turn names the General Manager, all normally for 4 years, but depending on the company statute.
How are these decisions taken (majority voting, unanimity)?	Majority
Does anybody have veto power?	Only the representative of the state, in companies where this is the case
Are the nomination and appointment rules set out in company law, the company statute, imposed by the stock exchange?	Only the Company Law (31/1990) and the company statute specify any rules
Is it possible to obtain a list with the names of the persons who sit on the board and in the various committees for each company?	All companies have to inform the Registry of Commerce. The ones listed on the Stock Exchange have to declare the list to the stock exchange which makes the information available to investors.
Is it possible to find out how much the individual directors and managers earn (pay, bonuses, stock options)?	No
Do directors have to declare how many shares in their own company they possess and when they buy and sell?	Yes for Exchange listed companies if larger or equal to 5%. Yes, to CA in general, if the shares represent a guarantee for some asset or contract, etc.

8. Outside Supervision

8.1 Market Supervision

a. Legal and Institutional Description

1. Stock Market Institutions and Rules

<p>Stock Markets: What are the main stock markets and who is in charge of supervising them? Who owns the main stock markets ?</p>	<p>There are two equity exchanges:</p> <ol style="list-style-type: none">1. The Bucharest Stock Exchange, which is a public institution,2. The RASDAQ Ltd. With OTC trading functions and which is owned by the National Association of Securities Dealers (ANSVM in local language)
<p>Insider Trading: What are the insider trading rules that apply for the different markets? Who is in charge of enforcing them? What are the possible penalties? Have there been cases where the insider trading law was applied?</p>	<p>For the Stock Exchange; a Deputy General Manager of the Exchange or the Ethics and Conduct Committee can apply sanctions for illicit conduct. Such are categorized actions like: trading before sensitive information has reached market participants (front running), trading such that manipulation of price or volume indicators occur, very short term contrary trades without real purpose of exchange of ownership (wash trades), opening of accounts for fictitious clients, any conduct not abiding by the rule of maximizing the profit of clients or ignoring the clients investment objectives, advantaging of the brokerage company, buying at lower prices before issuing a large buying order of a certain client.</p> <p>Reports of such actions are forwarded to the National Securities and Exchange Commission (CNVM in local language) which can take pecuniary and legal sanctions according to Law 52/1994. The form of sanctions can be temporary or complete trading license withdrawal, fines (up to 30 Mil. ROL), legal actions. There have been cases of penalties both for brokerage companies and for traders.</p> <p>For the other market, RASDAQ, only the brokerage companies are responsible for incomplete data on aggregate block trade information. This is enforced by the CNVM.</p>
<p>Takeover Rules: Are there any takeover rules? What are the main ingredients of these rules?</p>	<p>Yes. The companies act (31/1990) specifies the possibility of mergers and splits, that have to be approved by the CA if the value of the assets is more than ½ of the social capital of the company that does the takeover.</p> <p>For shareholder companies (law 52/1994), a control position (more than 50%) give full rights to the owner,. The owner has to abide by the competition law 21/1996 (has to obtain the approval of the Competition Council (Consiliul Concurentei) to perform the takeover, as well as to the public disclosure rules pertaining to the capital market in cases of purchases of stakes larger or equal to 5%</p>
<p>Auditors: Which documents the companies publish are previously checked by auditors? What legal responsibilities, for example liability, do the auditors assume? Have there been any well known cases where auditors have been brought to court by shareholders or directors?</p>	<p>The Government ordinance 75/1999 specifies the framework of auditing of the financial and accounting statements of all companies. The Auditors publish their opinion on the documents filled by and on the responsibility of the management of the company. This analysis is made by sampling of the relevant documents in a company that involve less than an established threshold of value, all other documents above that level of value being analyzed entirely.</p> <p>Since the legal act has only recently been issued, no cases of trials of auditors have taken place.</p>