

September 2014

**DIRECTORS' NOTE**  
**ONE-TIER VERSUS TWO-TIER BOARD SYSTEM**

**ecoDa** a.s.b.l.

● **NautaDutilh**

## DISCLAIMER

The information contained in this publication is general in nature and may not apply in a given situation, nor does it necessarily represent the views of the authors' firms or their clients. This publication provides only a general overview of the main differences between one-tier and two-tier board systems. All countries have their own corporate governance specificities. For example, the Nordic model is characterised by a hierarchical chain of command in which each body is subordinated to the next highest body in the chain (CEO, board of directors, the general meeting, etc.). The following summary is not intended to be comprehensive and does not cover issues related specifically to listed or regulated activities (i.e. those performed by financial institutions, insurance companies, etc.).

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## 1. INTRODUCTION

Although the European Union is trying to eliminate the differences, corporate law and governance still vary greatly throughout Europe, due to a long history of country-specific socio-economic approaches to the organisation of business and social priorities.

In the two-tier system, a supervisory board oversees, but does not define, corporate strategy. In this system, there is a clear separation between management and supervision or oversight. In the one-tier system, on the other hand, the same board governs the company, defines its strategy and addresses performance-related issues.

Advocates of the two-tier model point out that separating management and oversight creates independence, which makes sense. Proponents of the one-tier system, on the other hand, consider that having both executive and non-executive members on the same body ensures a better flow of information and helps overcome some of the problems boards typically face understanding what is going on within the company. They argue that the one-tier system enables non-executive members to see how executives work together as a team. On the other hand, it is not always easy for non-executive members to distinguish between management and oversight.

The one-tier system is often seen as characteristic of English-speaking countries, while the two-tier system is also known as the German model. The reality is more complex, however. The Nordic Corporate Governance (CG) model is quite unique and provides for a hierarchical governance structure with a direct chain of command from the general meeting, board to CEO. The Italian CG model distinguishes between a management body (a sole director or a board of directors) and a controlling organ (the so-called “board of auditors”).

By means of this note, the European Confederation of Directors' Associations (ecoDa), in close cooperation with NautaDutilh, wishes to highlight the main differences between one-tier and two-tier governance models in order to help companies understand the consequences of each type of system. ecoDa is grateful to those of its members which have contributed to this note and to its Benchmarking & Information Committee, led by Richard Zisswiller. Special thanks also go to Anne Tilleux, Associate Partner at NautaDutilh, who coordinated this project.

ecoDa (the European Confederation of Directors' Associations) is a non-profit association based in Brussels, which acts as the European voice of directors and represents around 60,000 board members from across the European Union (EU). ecoDa acts as a forum for debate and public advocacy for the purpose of influencing public policy debate at the EU level and promoting appropriate director training and professional development as well as boardroom best practices.

NautaDutilh has extensive experience advising companies on corporate governance issues and studying the one-tier and two-tier board systems. In fact, one of our partners even wrote his PhD thesis on "The One-tier Board in the Changing and Converging Corporate World". Throughout its history (dating back to 1724), NautaDutilh has always combined in-depth knowledge with sound legal advice and business acumen. Anne Tilleux heads the Benelux Corporate Governance Group in Belgium. In this capacity, she strives to provide companies with the best, most useful advice. This note will help her and her colleagues achieve this objective.

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### 3. ONE-TIER VERSUS TWO-TIER BOARD SYSTEM - GENERAL OVERVIEW

One-tier board system	Two-tier board system
Organisation	
Single board	Supervisory body and a management body
Composition	
Both executive and non-executive directors may serve on the board.	Executive and non-executive directors serve on separate boards (i.e. the supervisory board is composed exclusively of non-executive directors while the management board is composed exclusively of executive directors).
Organisation	
Unitary	Binary
Committees	
<p><i>Mandatory or recommended</i></p> <p><i>Supervisory and advisory committees</i> (Mandatory) oversight and advisory committees such as an audit committee, remuneration committee and nomination (appointments) committee, composed of a majority of non-executive directors, one or more of whom must be independent.</p> <p><i>Supervisory committee</i> Optional committee entrusted with supervising the company, composed of both executive and non-executive directors. Usually differs slightly from a true supervisory board (as found in the two-tier system) in terms of powers, composition and role.</p>	<p><i>Optional</i></p> <p>Oversight and advisory committees are increasingly recommended or mandatory.</p>

<p>Mostly used in countries which present characteristics of the one-tier system while incorporating certain features of the two-tier system.</p>	
Roles	
<p><i>Board of directors</i></p> <ul style="list-style-type: none"> <li>✓ Management</li> <li>✓ Direction and executive acts</li> <li>✓ Decision-making and oversight</li> <li>✓ Performance enhancement</li> <li>✓ Supervision</li> <li>✓ Accountability</li> <li>✓ Strategic and financial oversight</li> </ul>	<p><i>Management board</i></p> <ul style="list-style-type: none"> <li>✓ Management</li> <li>✓ Direction and executive acts</li> <li>✓ Decision-making</li> <li>✓ Performance enhancement</li> <li>✓ Service and strategic role</li> </ul> <p><i>Supervisory board</i></p> <ul style="list-style-type: none"> <li>✓ Supervision</li> <li>✓ Accountability</li> <li>✓ Decision-making and oversight</li> <li>✓ Monitoring</li> <li>✓ Strategic and financial oversight</li> </ul>
CEO duality	
<p>Allowed</p> <p>The same person can serve as both CEO and chair of the board of directors (although this is generally not recommended by corporate governance practices).</p>	<p>Restricted</p>

Executive directors	
<p>Appointed by the general meeting of shareholders, further to a proposal of the board of directors or appointments committee (if any).</p> <p>An executive director may be appointed by the board of directors when the term of office of another director comes to an end, in order to prevent the board from being paralyzed, for example if the board no longer has a sufficient number of members as required by law or the articles (co-optation procedure).</p> <p>The co-optation of a director must be confirmed at the first general meeting of shareholders following his or her appointment.</p>	<p>Appointed by the supervisory board in joint stock companies or, in limited cases, by the general meeting of shareholders.</p>
Non-executive (supervisory) directors	
<i>Idem</i>	<p>Appointed by the general meeting of shareholders or further to a proposal of the supervisory board or the appointments committee (if there is one).</p>
Conflicts of interest	
<p>Negatively associated with the separation of management and oversight roles due to its composition (a majority of executive directors) and unitary structure.</p> <p>Distribution of tasks and responsibilities weakens the non-executive directors' ability to oversee the implementation of decisions, especially where executive and non-executive directors face the same potential liability.</p>	<p>Positively associated with the separation of management and oversight roles, due to the composition of the supervisory board (independent directors), which ensures independence, and its binary structure.</p> <p>No distribution of tasks and responsibilities.</p>

<p>Greater risk of conflicts of interest between management and shareholders.</p> <p>To avoid conflicts of interest, it is often recommended that the board be composed of a majority of non-executive directors, due to (i) their experience and knowledge, (ii) their contacts, which may enhance management's ability to secure external resources, and (iii) their independence from the CEO.</p> <p>In companies which have achieved a certain level of development, the risk of conflicts of interest is often mitigated through the creation of committees, allowing various functions to be separated. In addition, it should be noted that provisions aimed at preventing and resolving conflicts of interest exist in most jurisdictions.</p>	<p>Lower risk of conflicts of interest between management and shareholders.</p>
Advantages and disadvantages	
<p><i>Advantages</i></p> <p>Spirit of partnership and mutual respect between directors, which allows greater interaction amongst board members.</p> <p>Non-executive directors have more contact with the company and are more closely involved in the decision-making process.</p> <p>Non-executive directors have direct access to information.</p> <p>Decision-making process is faster.</p> <p>A lighter administrative burden as only a single management body needs to hold meetings and only a single set of minutes need be</p>	<p><i>Advantages</i></p> <p>Clear distinction between supervisory and management functions within the company.</p> <p>Clear distinction between the liability of members of the supervisory and management bodies.</p> <p>Supervisory board members are more independent.</p> <p>Clear separation of the roles of chairperson and CEO.</p>

<p>drawn up.</p> <p>Board meetings take place more regularly.</p> <p><i>Disadvantages</i> A single body is entrusted with both managing and supervising the company's operations.</p> <p>It is more difficult to guarantee the independence of board members, and there is a greater risk of non-executive directors aligning too closely with executive directors.</p> <p>Greater liability for non-executive directors.</p>	<p><i>Disadvantages</i> It is more difficult for directors to build relationships of trust, thereby potentially undermining communication between the two boards.</p> <p>Supervisory board members only receive limited information (from the management board) and at a later stage (decreased involvement). There is a heightened risk of the supervisory board not discovering shortcomings (or discovering them too late) and not fully understanding and ratifying strategic initiatives.</p> <p>The decision-making process is delayed due to less frequent supervisory board meetings.</p>
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#### 4. BELGIUM

##### ONE-TIER VERSUS TWO-TIER BOARD SYSTEM

Organisation	
Predominantly one-tier (unitary) management system	<p>All types of companies, mainly:</p> <ul style="list-style-type: none"> <li>– public limited companies (two-tier system organised by law as an alternative: SA/NV and SE);</li> <li>– private limited-liability companies, private limited-liability “starter” companies and sole proprietorships;</li> <li>– general partnerships;</li> <li>– limited partnerships;</li> <li>– limited partnerships with shares;</li> <li>– limited-liability cooperatives and cooperatives with unlimited liability, with the exception of the European cooperative society (SCE) (<i>see below</i>).</li> </ul>
Legal basis	
Company Code	Mandatory rules (hard law), supplemented by case law and literature
Corporate Governance Codes	<p>Non-mandatory but highly recommended rules (soft law), based on the well-known and legally enshrined "comply/apply or explain" approach, i.e. companies are expected to comply with the Code but allowed to derogate from the rules if they provide a suitable explanation.</p> <p>Distinction between the Corporate Governance Code applicable to unlisted companies (published on 23 June 2009 and known as the Buysse Code II) and the Corporate Governance Code applicable to listed companies (published on 12 March 2009 and known as the Daems Code).</p>

<b>Supervisory body (board of directors) in public limited companies</b>	
Role	<p>Responsible for managing and supervising the company's operations and has full managerial authority (although daily management is entrusted to the CEO or executive committee).</p> <p>The board of directors may perform any acts necessary or useful to further the company's corporate purpose.</p> <p>All acts must be in the best interest of the company.</p>
Composition	Executive and non-executive directors
Appointment	Directors are appointed by the general meeting of shareholders for a term of up to 6 years, renewable indefinitely, and may be removed from office at any time.
Powers	The board may exercise all powers except those specifically reserved by law or the articles of association to the general meeting of shareholders.
CEO and chair	The same person can serve as both CEO of the company and chair of the board of directors (although this is not recommended by Corporate Governance Codes).
<b>Managerial body (management committee) in public limited companies (SA/NV)</b>	
Establishment	Optional, albeit recommended by the Corporate Governance Codes.
Role	Responsible for managing the company and, consequently, establishing a two-tier system.
Composition	Composed of directors (referred to as executive directors) and non-director members appointed by the board of directors.

	Directors may also be members of the management committee.
Powers	The management committee may exercise the powers delegated to it by the board of directors, except for general corporate policy and those powers reserved by law to the board of directors. The committee is supervised by the board of directors.
<b>Committees</b>	
Audit committee	<p>Optional, except for listed companies. However, an audit committee is not required in small listed companies, <i>i.e.</i> listed companies where at least two of the following three criteria are met:</p> <ul style="list-style-type: none"> <li>a) fewer than 250 employees on average for the entire financial year concerned;</li> <li>b) balance sheet total of EUR 43,000,000 or less;</li> <li>c) net annual turnover of EUR 50,000,000 or less.</li> </ul> <p><i>Role</i> Advisory committee responsible for internal control and the financial statements.</p> <p><i>Powers</i></p> <ul style="list-style-type: none"> <li>a. Monitoring the financial reporting process;</li> <li>b. Monitoring the effectiveness of the company's systems for internal control and risk management;</li> <li>c. Monitoring the internal audit, if any, and its efficiency;</li> <li>d. Monitoring the statutory audit of the company's annual accounts;</li> <li>e. Assessing and monitoring the statutory auditor's independence and, as the case may be, the independence of the auditor responsible for auditing the consolidated annual accounts, in particular as regards the provision of additional services to the company.</li> </ul>



	<p><i>Composition</i> Non-executive directors only. At least one independent member with experience in the field of accounting and auditing.</p>
Remuneration committee	<p>Optional, except for listed companies. However, a remuneration committee is not required in small listed companies, <i>i.e.</i> listed companies where at least two of the following three criteria are met: a) fewer than 250 employees on average for the entire financial year concerned; b) balance sheet total of EUR 43,000,000 or less, c) net annual turnover of EUR 50,000,000 or less.</p> <p>Possibility to establish appointments and remuneration committees.</p> <p><i>Role</i> Advisory committee responsible for determining the remuneration of directors and members of the management committee.</p> <p><i>Powers</i></p> <ul style="list-style-type: none"> <li>a. Make proposals to the board of directors regarding the remuneration policy and individual remuneration of directors and members of the management committee;</li> <li>b. Draw up the remuneration report and explain this report at the general meeting of shareholders;</li> <li>c. Put forward the proposals necessary regarding the evaluation and re-appointment of directors as well as the appointment and training of new directors.</li> </ul> <p><i>Composition</i> Composed of non-executive members of the board of directors, a majority of whom must be independent.</p>
Other committees	<p>Optional; the board of directors shall determine whether such committees are useful for the company, taking into account its specificities such as size, shareholder structure, activities, risk exposure, management structure and other challenges.</p>

	<p>Recommended by the Corporate Governance Code.</p> <p>Examples of other committees:</p> <ul style="list-style-type: none"> <li>• Nomination (appointments) committee</li> <li>• Risk management committee</li> <li>• Strategy committee</li> </ul>
<b>European company (SE)/European cooperative society (SCE)</b>	
Organisation	The articles of an SE or an SCE must provide for either a management board and a supervisory board (two-tier system) or an administrative board (one-tier system).
Two-tier system	<p><i>Management board (conseil de direction/directieraad)</i>  Composed of one or more members appointed and removed by the supervisory board.</p> <p>The management board can perform all acts necessary or useful to accomplish the corporate purpose, except for those reserved by law to the general meeting of shareholders or the supervisory board. The articles shall list the types of transactions which require the authorization of the supervisory board.</p> <p>The management board shall represent the company to third parties and before the courts.</p> <p>The management board can delegate its daily managerial powers to one or more persons.</p> <p><i>Supervisory board (conseil de surveillance/raad van toezicht)</i>  Composed of at least three members appointed and removed by the general meeting of shareholders</p> <p>The supervisory board oversees the management board.</p>

	<p><i>Comments</i></p> <p>It is not possible to simultaneously serve as both a member of the management board and the supervisory board of the same company.</p>
One-tier system	<p>Managed solely by a board of directors, <i>composed of three or more members</i>.</p> <p>The board of directors can perform all acts necessary or useful to accomplish the corporate purpose, except for those reserved by law to the general meeting of shareholders.</p> <p>The board of directors can delegate its daily managerial powers to one or more persons.</p> <p>The rules on the audit and remuneration committees applicable to Belgian listed companies also apply to listed SEs.</p> <p>Members of the board of directors are appointed and removed directly by the general meeting of shareholders.</p>
<b>Assessment of the Belgian one-tier system</b>	
<p>For the most part, Belgian company law displays the characteristics of a one-tier system, while incorporating certain features of a two-tier system. This is the result of compromises, which has led some scholars to refer to the Belgian system as a two-tier system <i>à la carte</i>.</p>	

## 5. CROATIA

### ONE-TIER VERSUS TWO-TIER BOARD SYSTEM

Organisation	
Both two-tier and one-tier management systems (binary and unitary systems)	<p>Applicable to the following types of companies:</p> <ul style="list-style-type: none"> <li>– public limited-liability company;</li> <li>– European company;</li> <li>– European cooperative society .</li> </ul> <p>Exceptions: private limited-liability company (the establishment of a supervisory board is in most cases voluntary). If established, there is a two-tier system. In addition, the cooperative society is characterised by a two-tier system. The European economic interesting grouping can have additional (e.g. supervisory) bodies in addition to an administrator (manager). In this case, it has a two-tier system.</p>
Legal basis	
Croatian Company Act, Cooperative Society Act, European Company Act and European Cooperative Society Act	Mandatory rules (hard law), complemented by case law and literature
Corporate Governance Code	Set of rules that are not legally compulsory but highly recommended (soft law), based on the well-known and legally enshrined "comply/apply or explain" approach, i.e. companies are asked to comply with the terms of the Code in principle but are allowed to derogate from them, provided they give a suitable explanation.

	The Code applies to companies which issue shares admitted to trading on a regulated market but its application is recommended for all other companies that wish to improve their business and organisation.
<b>Supervisory body (board of directors)</b>	
Role	<p>In the one-tier system, a single board of directors is responsible for managing and supervising the company's operations.</p> <p>The board of directors is authorised to perform any acts necessary or useful to realise the company's corporate purpose.</p> <p>All acts must be in the best interest of the company.</p> <p>In the two-tier system, powers are divided amongst the supervisory board (supervision) and the management board (management).</p>
Composition	In the one-tier system, the board is composed of both executive directors and non-executive directors. In the two-tier system, the supervisory board is composed exclusively of non-executive members.
Appointment	In the one-tier system, executive directors are appointed by the board of directors or court for a term of no more than six years. Executive directors can be members of the board of directors. Non-executive directors are appointed by the general meeting of shareholders. In the two-tier system, members of the supervisory board are appointed by the general meeting of shareholders or further to a proposal of the supervisory board or the nomination committee (if there is one, pursuant to the Corporate Governance Code).
Powers	In the one-tier system, the supervisory board can exercise all powers (supervision and management) except those specifically reserved by law or the articles of association to the general meeting. In the two-tier system, the supervisory board holds supervisory and certain other powers (e.g. representation powers in disputes with the management board).

CEO and chairperson	In the one-tier system, the positions of CEO and chair of the board of directors cannot be held by the same person. The chairperson cannot be the (chief) executive officer (director) of the company. In the two-tier system, CEO duality is not allowed either (although the CEO can sometimes attend supervisory board meetings).
<b>Managerial body (management committee)</b>	
Mandatory	In the one-tier system, the board of directors appoints one or more executive directors to manage the company's affairs. If more than one managing director is appointed, they can only manage the company's affairs jointly. In the two-tier system, the management board is the managerial body.
Role	Management of the company
Composition	In the one-tier system, executive directors are appointed by the board of directors. In the two-tier system, the management body is appointed by the supervisory body.
Powers	In the one-tier system, powers are reserved by law to the executive directors, and in the two-tier system to the management board. The powers of executive directors and members of the management board can be stipulated in the company's articles of association.
<b>Committees</b>	
Audit committee	<p>Recommended by the Corporate Governance Code. The supervisory board/board of directors should establish an audit committee.</p> <p><i>Role</i></p> <p>Responsible for detailed analysis of the financial statements, providing support to the company's accountancy and establishing good internal control mechanisms.</p>

	<p><i>Powers</i></p> <ul style="list-style-type: none"> <li>a. Monitoring the financial reporting process;</li> <li>b. Monitoring the effectiveness of the company's systems for internal control and risk management;</li> <li>c. Monitoring the internal audit, if any, and its efficiency;</li> <li>d. Monitoring the statutory audit of the company's annual accounts;</li> <li>e. Assessing and monitoring the statutory auditor's independence and, as the case may be, the independence of the auditor responsible for the audit of the consolidated annual accounts, in particular as regards the provision of additional services to the company.</li> </ul> <p><i>Composition</i></p> <p>A majority of its members must be independent supervisory board members.</p>
Remuneration committee	<p>Recommended by the Corporate Governance Code.</p> <p><i>Role</i></p> <p>Advisory committee responsible for overseeing the remuneration of directors and members of the management committee. Provides recommendations on the company's remuneration policy. The nomination and remuneration committees can be integrated into a single body in companies with a small number of supervisory board members.</p> <p><i>Powers</i></p> <ul style="list-style-type: none"> <li>a. Make proposals to the board of directors regarding the remuneration policy and the individual remuneration of directors and members of the management committee;</li> <li>b. Check the remuneration report prior to the general meeting of shareholders;</li> <li>c. Make the necessary proposals regarding management contracts;</li> <li>d. Request advice from the CEO regarding the remuneration policy.</li> </ul> <p><i>Composition</i></p> <p>A majority of its members must be independent supervisory board members.</p>

Other committees	Optional
Private limited company/Cooperative society/(European) economic interesting grouping	
Organisation	In most cases, the establishment of a supervisory board in private limited companies is voluntary. If a supervisory board is established in such a company (either on a voluntary basis or in exceptional situations), the company will be composed of a management board, a supervisory board and a general meeting of shareholders, which reflects the two-tier system. In the cooperative society, there is an administrator, who performs managerial tasks, and a separate supervisory board. A (European) economic interesting grouping can have additional (e.g. supervisory) bodies, in addition to an administrator (manager), although this must be provided for in the articles of association.
Two-tier system	<p><i>Management board</i> In a private limited company, this board is composed of one or more directors appointed by the general meeting. In a cooperative society, there is an administrator who performs managerial tasks. In a (European) economic interesting grouping, there is also an administrator (manager).</p> <p><i>Supervisory board (if applicable)</i> Composed of at least three members appointed by the general meeting of shareholders (private limited company, cooperative society). In a (European) economic interesting grouping, a supervisory board must be provided for by the articles of association.</p> <p><i>Comments</i> It is not possible to simultaneously be a member of both the management board and the supervisory board of the same company at the same time.</p>



<b>Assessment of the Croatian corporate governance system</b>	
<p>For a long time, Croatian company law allowed only the two-tier system, due to its close ties to the German corporate governance model. Croatian company law introduced the one-tier system in 2007, due to the harmonisation of national company law with the <i>acquis communautaire</i> of the EU. Today, companies can decide which corporate governance model best suits them. However, it is not allowed to mix or combine the two models.</p>	
<b>Applicable statutory provisions</b>	
<p>Article 434(1) and (2) of the Croatian Company Act (private limited company), Article 16 of the Cooperative Society Act (cooperative society), and Article 601 of Croatian Company Act (economic interesting grouping)</p>	

## 6. FINLAND

### ONE-TIER VERSUS TWO-TIER BOARD SYSTEM

Organisation	
Predominantly one-tier management	All types of companies registered in Finland
Legal basis	
Limited Liability Companies Act	Mandatory rules for companies registered in Finland, supplemented by legislative history, case law and literature.
Corporate Governance Codes	<p>Corporate governance rules include the Finnish Corporate Governance Code (adopted on 15 June 2010, the “Corporate Governance Code”), complementing guidelines and statements, and a statement for unlisted companies (Statement for Improving Corporate Governance of Unlisted Companies, adopted in January 2006).</p> <p>The Corporate Governance Code is based on the so-called "comply or explain" principle. Companies shall comply with the recommendations of the code or provide an explanation if a certain provision is derogated from.</p> <p>The NASDAQ OMX Helsinki Stock Exchange has adopted the Corporate Governance Code in the framework of its self-regulation, which renders the code binding on Finnish listed companies.</p>

Board of Directors	
Establishment	Mandatory
Role	<p>To oversee the administration of the company and the appropriate organisation of its activities, as well as supervise operational management.</p> <p>Call the general meeting; a sufficient number of members must attend the meeting (quorum). The board shall act in the best interest of the company and its shareholders.</p>
Composition	Pursuant to the recommendations of the Corporate Governance Code, a majority of the board must be independent of the company. At least two directors must be independent of significant shareholders of the company. Both genders shall be represented.
Appointment	The shareholders appoint the directors at the general meeting. In private companies, directors may be appointed for an indefinite term, if the company's articles of association so allow. In public companies, directors are in most cases appointed for a term which ends at the close of the annual general meeting following their appointment. Derogations may be provided for in the articles of association.
Powers	<p>The board of directors is responsible for the administration of the company and the organisation of its operations.</p> <p>The board of directors represents the company.</p>
Managing director and chairperson	<p>The board of directors may choose to appoint a managing director, who is in charge of the operational management of the company, further to the board's instructions. The managing director may be a member of the board; however, in a listed company, it is uncommon for the managing director to be a member of the board of directors. Even if the managing director is not a member of the board, s/he has the right to attend board meetings. The managing director shall attend the annual general meeting.</p> <p>If the board has more than one member, a chairperson shall be appointed. The chairperson of the board shall attend the general meeting of shareholders.</p>

	Pursuant to the Corporate Governance Code, it is not recommended for the managing director to also serve as chairperson of the board.
<b>Supervisory board</b>	
Establishment	Optional (uncommon in listed companies and mainly used in family-owned companies and formerly in state-owned companies)
Role	Responsible for supervising the board of directors and the managing director.
Composition	Shall include at least three members, one of whom is appointed the chair. Members of the board of directors or the managing director may not be appointed to the supervisory board.
Powers	Decision-making and other powers shall be defined in the articles of association. The supervisory board may not represent the company.
<b>Committees</b>	
Audit committee	<p><i>Optional.</i> If an audit committee is established, the recommendations of the Corporate Governance Code shall be complied with according to the "comply or explain" principle.</p> <p><i>Role</i> Matters pertaining to financial reporting and control.</p> <p><i>Powers</i> Determined by the committee charter, ratified by the board, including e.g. the power to:</p> <ul style="list-style-type: none"> <li>• monitor the reporting process of financial statements;</li> <li>• supervise the financial reporting process;</li> </ul>

	<ul style="list-style-type: none"> <li>• monitor the efficiency of the company's internal control, internal audit and risk management systems;</li> <li>• review the description of the main features of the internal control and risk management systems in relation to the financial reporting process, which is included in the company's corporate governance statement;</li> <li>• monitor the statutory audit of the financial statements and consolidated financial statements;</li> <li>• evaluate the independence of the statutory auditor or audit firm, particularly the provision of related services to the company;</li> <li>• prepare the proposal for a resolution on the election of an auditor.</li> </ul> <p><i>Composition</i> Pursuant to the recommendations of the Corporate Governance Code, the members of the audit committee shall have sufficient expertise to perform their responsibilities. At least one member shall have special expertise in accounting, bookkeeping or auditing.</p> <p>The members shall be independent of the company and at least one member shall be independent of significant shareholders.</p>
Nomination committee	<p><i>Optional.</i> If a nomination committee is established, the recommendations of the Corporate Governance Code shall be complied with according to the "comply or explain" principle.</p> <p><i>Role</i> Improve the efficient preparation of matters related to the nomination and remuneration of directors, in order to promote transparency and the systematic functioning of the election process.</p> <p><i>Powers</i> Determined in the committee charter, ratified by the board, e.g.:</p> <ul style="list-style-type: none"> <li>• preparation of the proposal for the appointment of directors to be presented to the general meeting;</li> <li>• preparation of the proposal to the general meeting on matters pertaining to the remuneration of directors;</li> <li>• identification of prospective successors/replacements for the directors;</li> <li>• presentation of the proposal on directors to the general meeting.</li> </ul>

	<p><i>Composition</i></p> <p>Pursuant to the recommendations of the Corporate Governance Code, a majority of the committee members shall be independent of the company. The managing director or other company executive may not be a member of the nomination committee.</p> <p>NB. Pursuant to the Corporate Governance Code, the company may also decide to establish a nomination board, consisting of representatives of the company's main shareholders, to prepare proposals for the election of directors and to be in charge of the tasks of the nomination committee set out above. The duties of the nomination board are normally carried out in accordance with guidelines for this board, approved by the general meeting.</p>
Remuneration committee	<p><i>Optional</i></p> <p>If a remuneration committee is established, the recommendations of the Corporate Governance Code shall be complied with according to the "comply or explain" principle.</p> <p><i>Role</i></p> <p>Improve the efficient preparation of matters related to the nomination and remuneration of the managing director and other executives of the company, as well as the personnel remuneration schemes, in order to promote transparency and the systematic functioning of remuneration schemes.</p> <p><i>Powers</i></p> <p>Determined in the committee charter, ratified by the board, e.g.:</p> <ul style="list-style-type: none"> <li>• preparation of matters pertaining to the appointment of the managing director and other executives as well as the identification of their possible successors;</li> <li>• preparation of matters pertaining to the remuneration and other financial benefits of the managing director and other executives;</li> <li>• preparation of matters pertaining to the remuneration schemes of the company;</li> <li>• evaluation of the remuneration of the managing director and other executives as well as ensuring that the remuneration schemes are appropriate;</li> <li>• answering questions about the remuneration statement at the general meeting.</li> </ul>

	<p><b>Composition</b></p> <p>Pursuant to the recommendations of the Corporate Governance Code, a majority of the committee members shall be independent of the company. The managing director or other executive of the company may not be a member of the remuneration committee.</p>
Other committees	Optional; e.g. a working committee or ethics committee may established.
<b>European company (SE)/European cooperative society (SCE)</b>	
Organisation	Possible to establish such companies under Finnish law and EU regulation, but not commonly used. The rules applicable to European companies are based on the EU regulation and the Finnish rules on public companies.
<b>Assessment of the Finnish one-tier system</b>	
<p>The Finnish corporate governance system mainly follows the one-tier model, with certain features of the two-tier model. The board is composed of nonexecutive directors, some of which may have ties to the company or its shareholders (i.e. are not considered independent under the Corporate Governance Code) but are not in an employment relationship with the company. The company's operations and day-to-day activities are handled by the managing director.</p> <p>In certain companies, a supervisory board may be established; however, this type of board is typically only used in order to have an additional supervisory body composed of e.g. family members, in family-owned companies, or shareholder representative, in other types of companies (e.g. formerly state-owned companies). The main supervisory function is generally performed by the board of directors, which is responsible for overseeing operational management, appointing a managing director, and defining the company's strategy, for example.</p> <p>One characteristic of the Finnish governance system is the fairly common existence of substantial shareholders, even in public companies, in which the shareholder may play an active role.</p>	

## 7. FRANCE

### ONE-TIER VERSUS TWO-TIER BOARD SYSTEM

Organisation	
Predominantly one-tier (unitary) management system	<p>Possible in the following types of companies:</p> <ul style="list-style-type: none"> <li>– limited companies (<i>sociétés anonymes</i>);</li> <li>– private limited-liability companies (<i>sociétés à responsabilité limitée</i>);</li> <li>– limited partnerships (<i>sociétés en commandite simple</i>);</li> <li>– limited partnerships with shares (<i>sociétés en commandite par actions</i>);</li> <li>– simplified joint stock companies (<i>sociétés par actions simplifiées</i>);</li> <li>– cooperative companies (<i>sociétés coopératives</i>);</li> <li>– European company (SE);</li> <li>– European cooperative society (SCE).</li> </ul>
Two-tier (binary) management system	<p>Possible in the following types of companies:</p> <ul style="list-style-type: none"> <li>– limited companies (<i>sociétés anonymes</i>);</li> <li>– simplified joint stock companies (<i>sociétés par actions simplifiées</i>);</li> <li>– European company (SE);</li> <li>– European cooperative society (SCE).</li> </ul>
Legal basis	
Commercial Companies Act	<p>Mandatory rules (hard law), supplemented by case law and literature.</p> <p>Introduction of the two-tier governance model, characterised by a supervisory board and a clear distinction between management and oversight, in 1966.</p>



	<p>Guidance provided by codes: AFEP/MEDEF, AFG, Middlednext</p> <p>Two variations within the one-tier governance model:</p> <ul style="list-style-type: none"> <li>• Unified one-tier governance model (chairperson and CEO)</li> <li>• Non-unified one-tier governance model (non-executive chair and CEO)</li> </ul> <p>In the one-tier governance model, the French statutory framework provides for power at the executive level rather than at the board level.</p> <p>In the two-tier governance model, the executive board is often limited to 2 people (the CEO and CFO).</p>
<b>One-tier system</b>	
<b>Board of managers/directors</b>	
Role	<p>The board governs the company, e. g., determines its direction, defines strategy and oversees the implementation thereof, appoints and removes the chair and CEO and determines their remuneration, approves related-party agreements, addresses any issues related to the company's performance, and allows guarantees, security and other important transactions determined by law (outside day-to-day management).</p> <p>In listed companies, the board is also responsible (through the audit committee) for the follow-up of internal control and risk management.</p> <p>The board of directors may perform any acts necessary or useful to further the company's corporate purpose. All acts must be in the best interest of the company.</p>
Composition	Composed of both executive and non-executive managers/directors appointed by the general meeting of shareholders.

Powers	The board may exercise all powers except those specifically reserved by law or the articles of association to the general meeting of shareholders.
CEO and chair	The same person can serve as both CEO of the company and chair of the board of directors.
<b>Two-tier system<sup>1</sup></b>	
<b>Supervisory body (<i>Conseil de surveillance</i>)</b>	
Role	<p>The supervisory board oversees the management board on a permanent basis, without being authorised to interfere with management. It appoints the members of the management body and the chair, fixes their remuneration and can dismiss them. It can proceed with any control or verification it deems useful and allow guarantees, security and other important transactions determined by the law.</p> <p>In listed companies, the supervisory board is also responsible (through the audit committee) for the follow-up of internal control and risk management.</p>
Composition	<p>Composed of at least three members appointed and removed by the general meeting of shareholders for a renewable term of up to 6 years. The members may be removed from office at will.</p> <p>It is not possible to simultaneously serve as both a member of the management board and the supervisory board of the same company.</p>

<sup>1</sup> A company may opt for this system either at its incorporation or at a later stage.

Management body ( <i>Directoire</i> )	
Role	<p>The management board can perform all acts necessary or useful to further the corporate purpose, except for those reserved by law or the articles of association to the general meeting of shareholders or the supervisory board.</p> <p>The management board shall represent the company to third parties and before the courts.</p> <p>The management board can delegate its daily managerial powers to one or more persons.</p> <p>At least every three months, the management board shall provide the supervisory board with a written report on the company's activities.</p>
Composition	<p>Composed of at least two members (in companies with a turnover of at least EUR 150 000) and no more than five members (7 in listed companies) appointed and removed by the supervisory board for a renewable term of up to 5 years (age limitation: 65 years).</p> <p>One person cannot hold more 5 positions on management bodies.</p> <p>It is not possible to simultaneously serve as both a member of the management board and the supervisory board of the same company.</p>
Committees	
Audit committee	<p>Mandatory for listed companies (with some exceptions).</p> <p><i>Role</i> Advisory committee responsible for the follow-up of internal control and the financial statements.</p>

	<p><i>Powers</i></p> <ul style="list-style-type: none"> <li>f. Monitoring the financial reporting process;</li> <li>g. Monitoring the effectiveness of the company's systems for internal control and risk management;</li> <li>h. Monitoring the internal audit, if any, and its efficiency;</li> <li>i. Monitoring the statutory audit of the company's annual accounts;</li> <li>j. Assessing and monitoring the statutory auditor's independence and, as the case may be, the independence of the auditor responsible for auditing the consolidated annual accounts, in particular as regards the provision of additional services to the company.</li> </ul> <p><i>Composition</i></p> <p>Non-executive directors only.</p> <p>At least one independent member with experience in accounting and auditing.</p> <p>In small listed companies, i.e. listed companies where at least two of the following three criteria are met:</p> <ul style="list-style-type: none"> <li>a) fewer than 250 employees on average for the entire financial year concerned;</li> <li>b) balance sheet total of EUR 43,000,000 or less;</li> <li>c) net annual turnover of EUR 50,000,000 or less,</li> </ul> <p>the duties of the audit committee may be performed by the management or supervisory body, provided that when the chairperson of such body is an executive member, s/he is not the chairperson of the audit committee.</p>
Other committees	<p>Optional; the board of directors shall determine whether such committees are useful for the company, taking into account its specificities such as size, shareholder structure, activities, risk exposure, management structure and other challenges.</p> <p>Examples of other committees:</p> <ul style="list-style-type: none"> <li>• Nomination (appointments) committee</li> <li>• Remuneration committee</li> <li>• Risk management committee</li> <li>• Strategy committee</li> </ul>

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## 8. ITALY

### ONE-TIER VERSUS TWO-TIER BOARD SYSTEM

<b>Organisation</b>	
Predominantly traditional management system	<p>Companies which adopt the traditional management system are composed of:</p> <ul style="list-style-type: none"> <li>- an administrative organ;</li> <li>- a board of statutory auditors;</li> <li>- a general meeting.</li> </ul>
<b>Legal basis</b>	
Italian company law	Mandatory rules (hard law), included in a section of the Civil Code and in sector-specific legislation.
Corporate Governance Codes	<p>Rules that are not legally compulsory but highly recommended (soft law), based on the well-known and legally enshrined “comply/apply or explain” approach, i.e. companies are asked to comply with the terms of the Code in principle but are allowed to derogate from them, provided they give a suitable explanation.</p> <p>The Autodisciplina Code, published in 1999 and reviewed in 2011, is applicable only to listed companies.</p>
<b>Administrative organ (board of directors)</b>	
Role	<p>A single board is responsible for management and supervision of the company's operations</p> <p>The board of directors is authorised to perform any acts necessary or useful to realise the company's corporate purpose.</p>

	All acts must be in the best interest of the company.
Composition	Composed of both executive and non-executive directors.
Appointment	Directors appointed by the general meeting of shareholders for an indefinitely renewable term of up to 3 years, unless the articles provide otherwise
Powers	All powers except those specifically reserved by law or the articles of association to the general meeting.
CEO and chairperson	The positions of CEO and chairperson of the board of directors can be held by the same person (although not recommended by the Autodisciplina Code).
<b>Managerial body (management committee)</b>	
Establishment	Optional (although recommended for listed companies by the Autodisciplina Code).
Role	Responsible for management of the company.
Composition	Directors (referred to as executive directors) and non-directors appointed by the board of directors.  Directors may be members of the management committee.
Powers	The powers delegated by the board of directors, with the exception of those reserved by law to the board of directors.

<b>Committees</b>	
Audit committee	<p>Optional, except for listed companies.</p> <p><i>Role</i> Advisory committee responsible for internal control and the financial statements.</p> <p><i>Powers</i></p> <ul style="list-style-type: none"> <li>k. Monitoring the correct use of accounting standards to prepare the balance sheet;</li> <li>l. Providing advice on most business risks;</li> <li>m. Monitoring the financial reporting process;</li> <li>n. Monitoring the internal audit, if any, and its efficiency;</li> <li>o. Requesting during the internal audit more tests in specific (business) areas;</li> <li>p. Reporting to the board of directors on its activity.</li> </ul> <p><i>Composition</i> Generally composed of non-executive members of the board of directors. At least one independent member with experience in the field of accounting and auditing.</p>
Remuneration committee	<p>Optional, except for listed companies.</p> <p><i>Role</i> Advisory committee responsible for determining the remuneration of the directors and members of the management committee.</p> <p><i>Powers</i></p> <ul style="list-style-type: none"> <li>d. Monitoring the correct application of the remuneration policy;</li> <li>e. Making proposals to the board of directors on the remuneration policy and the individual remuneration of directors and members of the management committee;</li> </ul>

	<p>f. Drafting the remuneration report and explaining the report at the general meeting of shareholders; g. Making the necessary proposals regarding the evaluation and re-appointment of directors as well as the appointment of new directors.</p> <p><i>Composition</i> Generally composed of independent members of the board of directors.</p> <p>At least one independent member with experience in accounting and auditing.</p>
Nomination committee	<p>Optional, except for listed companies.</p> <p><i>Role</i> Advisory committee responsible for the nomination of members of the board of directors to ensure a well-balanced composition.</p> <p><i>Powers</i></p> <ul style="list-style-type: none"> <li>a. Advising the board of directors on its composition;</li> <li>b. Recommending to the board of directors the skills of its members;</li> <li>c. Proposing to the board of directors candidates in the event of co-optation.</li> </ul>
Other committees	<p>Optional</p> <p>Risk committee Strategy committee</p>
<b>European company (SE)/European cooperative society (SCE)</b>	
Organisation	The statutes of an SCE must provide for either a management board and a supervisory board (two-tier system) or an administrative board (one-tier system).



Two-tier system	<p><i>Management board</i> Composed of one or more members appointed by the supervisory board, responsible for management of the SCE.</p> <p><i>Supervisory board</i> Members appointed by the general meeting, responsible for overseeing management.</p>
One-tier system	<p>European company (SE) managed by a board of directors.</p> <p>Members of the board of directors appointed by the general meeting of shareholders.</p>

## 9. LUXEMBOURG ONE-TIER VERSUS TWO-TIER BOARD SYSTEM

Organisation	
One-tier (unitary) management system	<p>Possible in the following companies:</p> <ul style="list-style-type: none"> <li>– public limited companies (<i>sociétés anonymes</i>);</li> <li>– private limited-liability companies (<i>sociétés à responsabilité limitée</i>);</li> <li>– limited partnerships (<i>sociétés en commandite simple</i>);</li> <li>– limited partnerships with shares (<i>sociétés en commandite par actions</i>);</li> <li>– limited special purpose partnerships (<i>sociétés en commandite spéciales</i>);</li> <li>– cooperative companies (<i>sociétés cooperatives</i>);</li> <li>– European companies (SE);</li> <li>– European cooperative societies (SCE).</li> </ul>
Two-tier (binary) management system	<p>Possible in the following companies:</p> <ul style="list-style-type: none"> <li>– public limited companies (<i>sociétés anonymes</i>);</li> <li>– European companies (SE);</li> <li>– European cooperative societies (SCE).</li> </ul>
Legal basis	
Commercial Companies Act	Mandatory rules (hard law), supplemented by case law and literature.

One-tier system	
Board of managers/directors	
Role	<p>A single board is responsible for managing and supervising the company's operations.</p> <p>The board of managers/directors may perform any acts necessary or useful to further the company's corporate purpose.</p> <p>All acts must be in the best interest of the company.</p>
Composition	Composed of both executive and non-executive managers/directors appointed by the general meeting of shareholders for an unlimited term, in the case of managers, and for a term of up to 6 years, renewable indefinitely, in the case of directors.
Powers	The board may exercise all powers except those specifically reserved by law or the articles of association to the general meeting of shareholders.
CEO and chair	The same person can serve as both CEO of the company and chair of the board of directors.

<b>Two-tier system<sup>2</sup></b>	
<b>Supervisory body (<i>Conseil de surveillance</i>)</b>	
Role	The supervisory board oversees the management board on a permanent basis, but is not authorised to intervene in management.
Composition	<p>Composed of at least three members,<sup>3</sup> appointed by the general meeting of shareholders for an indefinitely renewable term of up to 6 years and removed from office by the general meeting at will.</p> <p>It is not possible to simultaneously serve as both a member of the management board and the supervisory board of the same company.</p>
<b>Management body (<i>Directoire</i>)</b>	
Role	<p>The management board can perform all acts necessary or useful to accomplish the corporate purpose, except for those reserved by law or the articles of association to the general meeting of shareholders or the supervisory board.</p> <p>The management board shall represent the company to third parties and before the courts.</p> <p>The management board can delegate its daily managerial powers to one or more persons.</p> <p>At least every three months the management board shall provide the supervisory board with a written report on the company's activities.</p>

<sup>2</sup> A company may opt for this system either upon incorporation or at a later stage.

<sup>3</sup> If the company has only one shareholder, one member is sufficient.

Composition	<p>Composed of at least three members,<sup>4</sup> appointed and removed by the supervisory board or by the general meeting of shareholders, if the articles of association so allow, for an indefinitely renewable term of up to 6 years.</p> <p>It is not possible to simultaneously serve as both a member of the management board and the supervisory board of the same company.</p>
<b>Committees</b>	
Audit committee	<p>Mandatory for listed companies (with some exceptions).</p> <p><b>Role</b> Advisory committee responsible for internal control and the financial statements.</p> <p><b>Powers</b></p> <ul style="list-style-type: none"> <li>f. Monitoring the financial reporting process;</li> <li>g. Monitoring the effectiveness of the company's systems for internal control and risk management;</li> <li>h. Monitoring the internal audit, if any, and its efficiency;</li> <li>i. Monitoring the statutory audit of the company's annual accounts;</li> <li>j. Assessing and monitoring the statutory auditor's independence and, as the case may be, the independence of the auditor responsible for auditing the consolidated annual accounts, in particular as regards the provision of additional services to the company.</li> </ul> <p><b>Composition</b> Non-executive directors only. At least one independent member with experience in accounting and auditing.</p> <p>In small listed companies, i.e. listed companies where at least two of the following three criteria are met: a) fewer than 250 employees on average for the entire financial year concerned;</p>

<sup>4</sup> If the company has only one shareholder and its capital is less than EUR 500,000, one member is sufficient.

	<p>b) balance sheet total of EUR 43,000,000 or less;  c) net annual turnover of EUR 50,000,000 or less,  the functions of the audit committee may be performed by the management or supervisory body provided that when the chairperson of this body is an executive member, s/he is not also the chair of the audit committee.</p>
Other committees	<p>Optional; the board of directors shall determine whether such committees are useful for the company, taking into account its specificities such as size, shareholder structure, activities, risk exposure, management structure and other challenges.</p> <p>Examples of other committees:</p> <ul style="list-style-type: none"> <li>• Nomination (appointments) committee</li> <li>• Remuneration committee</li> <li>• Risk management committee</li> <li>• Strategy committee</li> </ul>
<b>Assessment of the Luxembourg system</b>	
<p>The possibility to opt for the two-tier system was introduced in Luxembourg in 2006, in order to allow a system which already existed in other European countries. In practice, the one-tier system is more commonly used in Luxembourg.</p>	

## 10. MACEDONIA

### ONE-TIER VERSUS TWO-TIER BOARD SYSTEM

One-tier board	Two-tier board
Organisation	
One board – the board of directors	Management board and supervisory board
Composition	
<p>Mixed</p> <p>Executive and non-executive members on the same board. The number of directors is between 3-15. The number of non-executive directors should be higher than the number of executive directors</p>	<p>Separate - executive directors and non-executive directors serve on different boards</p> <p>Management Board - composed exclusively of executive directors (the number of members is between 3-11). If a company has base capital of less than EUR 150,000, it can opt for only a manager, rather than a management board</p> <p>Supervisory board - composed exclusively of non-executive directors (between 3-11 members)</p>
Organisation	
Unitary	Binary
Committees	
Recommended	Recommended
Advisory committees, such as the audit committee, remuneration	Same as in the one-tier system

committee and nomination committee, composed of all or a majority of non-executive directors, at least one of whom must be independent.	
Roles	
<p>Board of directors</p> <ul style="list-style-type: none"> <li>✓ Management function</li> <li>✓ Direction and executive actions</li> <li>✓ Decision management and decision-making</li> <li>✓ Performance enhancement</li> <li>✓ Supervisory function</li> <li>✓ Accountability and supervision</li> <li>✓ Decision control and decision-making</li> <li>✓ Strategic and financial oversight</li> </ul>	<p>Management board</p> <ul style="list-style-type: none"> <li>✓ Management function</li> <li>✓ Direction and executive actions</li> <li>✓ Decision management and decision-making</li> <li>✓ Performance enhancement</li> </ul> <p>Supervisory board</p> <ul style="list-style-type: none"> <li>✓ Supervisory function</li> <li>✓ Accountability and supervision</li> <li>✓ Decision control and decision-making, in certain situations</li> <li>✓ Strategic and financial oversight</li> </ul>
CEO	
<p>CEO duality</p> <p>Restricted</p> <p>The positions of CEO and chair of the board of directors cannot be held by the same person. The chairperson of the board must be a non-executive member.</p>	<p>CEO and chairperson</p> <p>Restricted</p> <p>No CEO duality, since the chairperson of the management board cannot be the chairperson of the supervisory board, and vice versa</p>



Executive directors	
<p>Appointed by the general meeting of shareholders</p> <p>A director may be appointed by the board of directors when a directorship ends in order to prevent the board from being rendered ineffective, for example if the board no longer has a sufficient number of members (co-optation procedure).</p> <p>The director's appointment must be confirmed by the first general meeting of shareholders following his/her co-optation.</p>	<p>Appointed by the supervisory board</p> <p>Can be removed from office by the supervisory board at any time, with or without cause</p>
Non-executive (supervisory) directors	
<p>Appointed by the general meeting of shareholders.</p> <p>If stipulated in the instrument of incorporation, can be appointed with cumulative voting</p> <p>Can be removed from office at any time by the general meeting of shareholders, with or without cause</p> <p>The number of non-executive directors should be higher than the number of executive directors.</p> <p>At least ¼ of the non-executive members must be independent</p>	<p>Appointed by the general meeting of shareholders</p> <p>If stipulated in the instrument of incorporation , can be appointed with cumulative voting.</p> <p>Can be removed from office at any time by the general meeting of shareholders, with or without cause</p> <p>At least ¼ of the members must be independent</p>
Conflicts of interest	
<p>The term conflict of interest is defined by in the law (related-party transactions). A strict procedure and sanctions are defined for these types of situations</p>	<p>A conflict of interest is defined in the law (related-party transactions). A strict procedure and sanctions are defined for these types of situations</p>

Advantages and disadvantages	
<p><i>Advantages</i></p> <p>Flow of information</p> <p>Joint meetings and, in many instances, joint decisions, which makes the decision-making process faster</p> <p>Non-executive directors have more contact with the company and are more involved in the decision-making process.</p> <p><i>Disadvantages</i></p> <p>A single body is entrusted with the management and supervision of the company.</p> <p>Risk that non-executive directors will align too closely with executive directors (less independence).</p> <p>At times, there is no clear distinction between supervisory and management functions within the company.</p>	<p><i>Advantages</i></p> <p>Clear distinction between supervisory and management functions within the company.</p> <p>Clear separation of liability between members of the supervisory and management bodies.</p> <p><i>Disadvantages</i></p> <p>Supervisory board members receive limited information which is not always provided in a timely manner (decreased involvement).</p> <p>The decision-making process is sometimes delayed due to the nature of this system. Namely, certain management decisions should be taken with the consent of the supervisory board, which may take time.</p>
Legal basis	
Macedonian Companies Act ( 2004)	Mandatory rules (hard law)
Corporate Governance Codes	Macedonian Stock Exchange Code (2006) - rules which are not compulsory but highly recommended (soft law), based on the well-known and legally enshrined "apply or explain" approach, i.e. companies are asked to comply with the terms of the Code in principle but are allowed to derogate from them, provided they give a suitable explanation.

	National Bank of Macedonia (2007) –principles issued by the Central Bank applicable to banks in Macedonia, as specific and unique companies, which are not compulsory but highly recommended (soft law), based on the well-known and legally enshrined "apply or explain" approach, i.e. companies are asked to comply with the terms of the code in principle but are allowed to derogate from them, provided they give a suitable explanation.
Assessment of the Macedonian system of governance	
Macedonian law provides for both systems (one-tier and two-tier) and allows companies to opt for either a one-tier or two-tier system. The law also states that, once selected, the one-tier system can be changed to the two-tier system pursuant to a specific procedure, and vice versa. It is up to individual companies to make their own analysis and select the system of governance which best suits them.	

## 11. THE NETHERLANDS

### ONE-TIER VERSUS TWO-TIER BOARD SYSTEM

Organisation	
One-tier (unitary) Management system, possible since 1-1-2013	<p>Possible in the following companies:</p> <ul style="list-style-type: none"> <li>– public limited companies (<i>naamloze vennootschappen</i> or NV);</li> <li>– private limited-liability companies (<i>besloten vennootschappen</i> or BV);</li> <li>– European companies (SE);</li> <li>– European cooperative societies (SCE).</li> </ul>
Two-tier (binary) management system - traditional system	<p>Possible in the following companies:</p> <ul style="list-style-type: none"> <li>– public limited companies (<i>naamloze vennootschappen</i> or NV);</li> <li>– private limited companies (<i>besloten vennootschappen</i> or BV);</li> <li>– European companies (SE);</li> <li>– European cooperative societies (SCE).</li> </ul> <p>There are many NVs and BVs without a supervisory board, i.e. only executive directors.</p>
Legal basis	
Commercial Companies Act in Book 2 of the Civil Code	Mandatory rules (hard law), supplemented by case law and literature and corporate governance code.

One-tier system <sup>5</sup>	
Board of directors	
Role	<p>A single board responsible for managing and supervising the company's operations.</p> <p>The board of directors may perform any acts necessary or useful to further the company's corporate purpose.</p> <p>All acts must be in the best interest of the company.</p>
Composition	Composed of both executive and non-executive directors appointed by the general meeting of shareholders for an unlimited term, in the case of executive directors, and for a term of up to 4 years, renewable up to 12 years, in the case of non-executive directors.
Powers	The board may exercise all powers except those specifically reserved by law or the articles of association to the general meeting of shareholders.
CEO and chair	The same person cannot serve as both CEO of the company and chair of the board of directors.

<sup>5</sup> and <sup>2</sup> A company may opt for this system either upon incorporation or at a later stage.

<b>Two-tier system<sup>6</sup></b>	
<b>Supervisory board (<i>Raad van Commissarissen</i>)</b>	
Role	The supervisory board oversees the management board on a permanent basis, without being authorised to intervene in management.
Composition	<p>Composed of at least three members,<sup>7</sup> appointed by the general meeting of shareholders for an indefinitely renewable term of up to 4 years. Members may be removed from office by the general meeting at will.</p> <p>It is not possible to simultaneously serve as both a member of the management board and the supervisory board of the same company.</p>
<b>Management board or board of managers (<i>Raad van Bestuur</i>)</b>	
Role	<p>The management board can perform all acts necessary or useful to accomplish the corporate purpose, except for those reserved by law or the articles of association to the general meeting of shareholders or the supervisory board.</p> <p>The management board represents the company in its dealings with third parties and before the courts.</p> <p>The management board can delegate its daily managerial powers to one or more persons.</p>

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<sup>7</sup> One member is sufficient in smaller companies.

	At least every twelve months, the management board shall provide the supervisory board with a written report on the company's activities.
Composition	<p>Composed of at least one member appointed and removed by the supervisory board, or by the general meeting of shareholders if the articles of association so allow.</p> <p>It is not possible to simultaneously serve as both a member of the management board and the supervisory board of the same company.</p>
<b>Committees</b>	
Audit remuneration, and nomination committee	<p>Mandatory for listed companies (with some exceptions).</p> <p>Role Advisory committee responsible for, as the case may be, (a) internal control and the financial statements, (b) remuneration matters, or (c) nominations and appointments.</p> <p>Composition Non-executive or supervisory directors only. At least one independent member with experience in accounting and auditing (for the audit committee).</p>
Other committees	<p>Examples of other committees:</p> <ul style="list-style-type: none"> <li>• Risk management committee</li> <li>• Strategy committee</li> </ul>

### Assessment of the Dutch system

The possibility to opt for the one-tier system was introduced in the Netherlands in 2013, in particular in order to offer this possibility to foreign Investors. In practice, the two-tier system is more widely used in the Netherlands.



## 12. NORWAY

### ONE-TIER VERSUS TWO-TIER BOARD SYSTEM

Organisation	
Neither a classical one- or two-tier system	<p>Key characteristics:</p> <ul style="list-style-type: none"> <li>- A hierarchical chain-of-command General Meeting (GM) – Board – CEO, where each body is fully subordinate to the nearest higher body in the chain.</li> <li>- A non-executive Board of directors, appointed by and dismissed at any time without stated cause by the GM. Executives, but not the CEO, may be members of the board.</li> <li>- The board has both a supervisory and management role. The management is split between the board and the CEO-</li> <li>- A one-person CEO function, appointed by and dismissed at any time without stated cause by the Board, on the basis of a prior agreement between the board and the CEO.</li> </ul> <p>Applies to all limited liability companies ('AS/ASA's), public or private.</p>
Legal basis	
Norwegian Companies Act/Norwegian Public Limited-liability Companies Act and other relevant legislation such as the Annual Accounts Act And the Accounting	Hard law, complemented by case law and literature.

Act, etc.	
<p>The Norwegian Code of Corporate Governance Practices</p> <p>Listing rules for Equities on Oslo Børs,</p>	<p>A set of recommendations for good corporate governance based on the "comply or explain" principle. Applies only to companies listed on a regulated market (the Oslo Stock Exchange currently lists about 160 companies). However, since its introduction in 2004, the Code has deeply influenced the governance of other types of companies, both publicly owned and private SMEs, as well as many non-profit organisations.</p> <p>The Code was developed and is updated, implemented and enforced by the Norwegian Corporate Governance Board (NUES).</p>
<b>Supervisory body (board of directors)</b>	
Role	<p>The Public Companies Act stipulates that the board of directors is ultimately responsible for managing the company and supervising its day-to-day activities. By law and/or code this includes without limitation:</p> <ul style="list-style-type: none"> <li>– ensuring that the company is adequately organised and structured so that accounting, the management of funds and the company's finances are satisfactorily monitored;</li> <li>– ensuring that the company's systems for internal control and risk management are well organised and function effectively;</li> <li>– appointing, recurrently assessing and, when necessary, removing the CEO;</li> <li>– establishing the company's overall goals and strategy and continually following up on the implementation of strategy and the fulfilment of goals;</li> <li>– ensuring that there are satisfactory processes to monitor the company's compliance with laws and regulations relevant to the company's operations;</li> <li>– defining and following up on necessary guidelines to govern the company's ethical conduct;</li> <li>– ensuring that the company's external communications are as transparent as possible and that all information provided is accurate, reliable and relevant.</li> </ul> <p>If the annual general meeting (AGM) has issued special instructions regarding the management of the company,</p>

	<p>the board is obliged to follow these instructions.</p> <p>The board as a whole as well as each individual board member has a legal obligation to act in the interest of the company and its shareholders.</p>
Composition	<p>The composition of the board of directors should ensure that it can operate independently of any special interests. The majority of the shareholder-elected members of the board should be independent of the company's executive personnel and material business contacts. At least two of the members of the board elected by shareholders should be independent of the company's main shareholder(s).</p> <p>The Public Companies Act stipulates that the chief executive cannot be a member of the board of directors. The Norwegian Code of Practice recommends that no other executive personnel should be a member of the board.. However, the CEO always has the right to participate in board meetings unless the Board decides otherwise on a case by case basis.</p> <p>The Public Companies Act and the Stock Exchange Regulations impose requirements for large companies to establish an audit committee.</p> <p>According to the Public Companies Act the board is required to have a minimum of 40% gender balance.</p>
Appointment	<p>The chairman of the board of directors should be elected by the general meeting so long as the Public Companies Act does not require that the chairman must be appointed either by the corporate assembly or by the board of directors as a consequence of an agreement that the company shall not have a corporate assembly. According to the Norwegian Code of Practice for Corporate Governance, the term of office for members of the board of directors should not be longer than two years at a time.</p>
Powers	<p>The board can exercise all powers except those specifically reserved by law or the articles of association to the AGM. The board also has a veto power for decisions pertaining to the distribution of profits, provided the AGM does not decide on a greater distribution of profits than that proposed by the board. Under Norwegian law, the members of the board of directors are jointly liable for the board's decisions.</p>
CEO and chairperson	<p>The positions of CEO and chair of the Board must by law be separated in public limited companies.</p>

<b>Managerial body (CEO)</b>	
Establishment	The executive management of the company is performed by a single person, the CEO, whose duties and responsibilities are defined by law.
Role	<p>The CEO is responsible for the day-to-day management of the company in accordance with instructions and guidelines given by the Board, as the case may be. The division of duties and responsibilities between the Board and the CEO is to be defined in writing and reviewed recurrently by the Board.</p> <p>With regards to the Board, the prime duties of the CEO are to prepare and propose the Board's decisions and to keep the Board well informed about the company's operations and any other matters required for the Board to effectively carry out its duties. The manner in which such information is to be compiled and reported to the Board is to be defined in writing and recurrently reviewed by the Board.</p>
Composition	A single-person CEO function, appointed by the Board, usually on an until-further-notice employment contract. Irrespective of this, the CEO may be dismissed by the Board at any time without notice and without stated cause, on the basis of a prior agreement between the board and the CEO
Powers	Within the framework of the division of duties and responsibilities as defined by the board (see above), the CEO has far-reaching powers to organise the company and run the business at his/her discretion, subject to a strict legal obligation to do so in the interest of the company and its shareholders. This authority includes taking actions that, due to their significance and/or extraordinary nature having regard to the size and nature of the company's business, would normally fall outside the scope of the CEO's authority, if it is not possible to wait for a decision by the board without significant harm to the company. In such cases the board shall be notified of the action taken as

	soon as possible.
<b>Committees</b>	
Audit committee	<p>The Public Companies Act and the Stock Exchange Regulations require that large companies establish an audit committee. Companies should not make use of the possibility provided for in the legislation and regulations for the entire board of directors to function as the company's audit committee. Smaller companies should also consider establishing an audit committee. The evaluation of the independence of members of the audit committee can be based on the independence criteria set out in Section 8 ("Independence of the Board of Directors"). In addition to satisfying the requirements defined by law and regulation, a majority of the members of the audit committee should be independent of the company. When making recommendations for appointments to the board of directors, the nomination committee should identify which members of the board meet the requirements in terms of independence and expertise to serve on the audit committee. Certain companies in the financial sector are subject to separate legal requirements in respect of the audit committee.</p> <p><i>Duties</i></p> <p>On behalf of the board , mainly to</p> <ul style="list-style-type: none"> <li>– prepare the company's annual accounts and other forms of financial reporting;</li> <li>– oversee the company's systems for internal control and risk management;</li> <li>– oversee the company's internal audit function, if any;</li> <li>– keep in contact with the company's statutory auditor, inter alia by inviting the auditor to attend committee meetings;</li> <li>– assess and monitor the statutory auditor's independence;</li> <li>– analyse the need and appropriateness for the company to purchase non-audit services from the statutory auditor and prepare the board's decisions on such matters.</li> </ul> <p><i>Composition</i></p> <p>Composed solely of non-executive members of the board, at least one of whom should be independent and competent in the field of accounting and auditing.</p>

Remuneration committee	<p><i>Establishment</i></p> <p>Not mandatory by law but recommended by the Code for listed companies to consider establishing a remuneration committee. Still the Board as a whole may perform the duties of a remuneration committee provided that no executive board member participates in the work of the committee.</p> <p><i>Main duties are mainly to</i></p> <ul style="list-style-type: none"> <li>– prepare the Board’s decisions regarding remuneration, i.e. primarily proposed guidelines for remuneration of the executive management to be submitted to the AGM for approval and the remuneration and other terms of employment for the CEO,</li> <li>– monitor and evaluate the implementation of the aforementioned guidelines for remuneration as well as current remuneration structures and levels in the company as a whole,</li> <li>– monitor and evaluate all programmes for variable remuneration of the executive management.</li> </ul> <p><i>Composition</i></p> <p>The chair of the Board may always be member of the committee (and may also chair it). It is recommended that all members are independent of the company management. Appropriate knowledge and experience of executive remuneration is to be adequately represented among the members of the committee.</p>
Nomination committee	<p><i>Establishment</i></p> <p>The company is recommended to have a nomination committee, and the general meeting should elect the chairperson and members of the nomination committee and should determine the committee's remuneration. The nomination committee should be laid down in the company’s articles of association. The general meeting should stipulate guidelines for the duties of the nomination committee. The nomination committee is not a subcommittee of the Board but a body appointed by the AGM and predominantly comprised of representatives of the shareholders.</p> <p><i>Composition</i></p>

	<p>The nomination committee should be independent of the company's board of directors. This means that the candidates for election to the nomination committee should not be proposed by the board of directors. The independence of the nomination committee from the company's board of directors and executive management dictates that candidates for election to the nomination committee should be put forward by the nomination committee itself. The company's guidelines for the nomination committee should establish rules for rotation of the members of the nomination committee, for example by requiring that at a stipulated regular interval the member of the committee with the longest service at that time shall retire and be replaced. <i>Main duties of the nomination committee are to</i></p> <ul style="list-style-type: none"> <li>– propose candidates for the chair and other members of the Board for decision by the AGM,</li> <li>– propose fees for the chair and each Board member on an individual basis, including special fees for committee work as the case may be,</li> <li>– propose candidate for statutory auditor, including remuneration, whenever the appointment of auditor is up for decision at the AGM.</li> </ul> <p>In connection with the call for an AGM, the nomination committee is further obliged to post a statement on the company's website explaining and motivating its proposal with regard to the Code provisions concerning the composition of the Board, including its gender balance.</p>
<b>Assessment of the Norwegian system</b>	
<p>In Norway, executives are not normally elected to the board of directors. Under Norwegian company law, a company's board of directors exercises both a supervisory role and a management role in respect of the company's activities and its managers. The management function requires the board to play an active high-level role in matters which are of an extraordinary nature or of major importance and are therefore not a normal part of the day-to-day management of the company. The board's management responsibility also includes drawing up strategies, budgets and guidelines for the company's activities.</p> <p>Any comparison of the Norwegian Code of Corporate Governance Practice with international codes of practice should take into account the key features of Norwegian company law:</p>	

- In the absence of an agreement with employees to the contrary, companies with more than 200 employees must establish a corporate assembly with at least 12 members, 2/3 of which are elected by shareholders and 1/3 by the employees. The main duty of the corporate assembly is to elect the board of directors. In addition, the corporate assembly has certain duties in respect of supervision, the issuance of opinions and decision-making.
- In any company with more than 30 employees, the employees have the right to be represented on the board of directors. If a company has more than 200 employees but has not elected a corporate assembly, employees must be represented on the board.
- The composition of the board of directors in terms of the gender of its members must meet the requirements of the Norwegian Public Limited Liability Companies Act ( “Public Companies Act”).
- The Public Companies Act stipulates that the chief executive of a company may not be a member of its board of directors.



### 13. POLAND

#### ONE-TIER VERSUS TWO-TIER BOARD SYSTEM

Organisation	
Predominantly two-tier (binary) management system	<p>Types of companies:</p> <ul style="list-style-type: none"> <li>- joint-stock company (<i>spółka akcyjna</i>);</li> <li>- limited-liability company (<i>spółka z ograniczoną odpowiedzialnością</i>)</li> </ul> <p>A two-tier management system is obligatory in joint-stock companies (both listed and unlisted) and limited-liability companies with share capital in excess of PLN 500,000 and more than twenty-five shareholders. Limited liability companies which do not meet this threshold must have a management board and may opt (i) to have a supervisory board, (ii) to have shareholders exercise the supervisory powers individually, or (iii) to introduce both of these control mechanisms. The shareholders' individual right of control may also be exercised in private limited-liability companies, with an obligatory supervisory board, if the company so chooses.</p> <p>Exception for the European company (SE) (see below)</p>
Legal basis	
Polish Commercial Companies Code	<p>Mandatory rules (hard law), whose interpretation and application is complemented by case law and possibly by literature.</p> <p>Mandatory rules on public companies may also be found in the Public Offering of Financial Instruments and Public Companies Act, the Trading in Financial Instruments Act, the Act on Statutory Auditors and their Self-regulation, Entities Authorized to Audit Financial Statements and Public Oversight, etc.</p>

Corporate Governance Codes	<p>Best practices (rules which are not compulsory but highly recommended) whose execution is based on the “comply or explain” approach.</p> <p>While the Polish “comply or explain” rule implements the requirements of Directive 2006/46/EC to publish a corporate governance statement, in practice companies often declare that they do not comply with a given rule, without providing a satisfactory explanation for non-compliance.</p> <p>Two major corporate governance codes: Best Practices of the Warsaw Stock Exchange for Listed Companies and Corporate Governance Rules for Institutions Supervised by the Polish Financial Supervisory Authority. Other codes designed for groups of companies or investors exist as well (e.g. Best Practices for Institutional Investors).</p>
<b>Supervisory body (supervisory board)</b>	
Establishment	Mandatory (subject to the abovementioned limitations for limited-liability companies).
Role	Responsible for supervising the company.
Composition	Composed of at least three or, in the case of public companies, at least five members (non-executive directors).
Appointment	Supervisory board members are appointed and removed from office by the general meeting of shareholders (the articles of association may grant this power to the individual shareholders).
Powers	<p>Powers of the supervisory board include at least:</p> <ul style="list-style-type: none"> <li>(i) Permanent supervision of all areas of activity of the company (especially evaluation of the management board report on the company's operations, the financial report for the previous financial year and the proposals of the management board concerning the allocation of profits or the financing of losses);</li> <li>(ii) Appointment and removal of members of the management board (unless the articles of association provide otherwise);</li> <li>(iii) Suspension of members of the management board for a limited period of time for significant reasons.</li> </ul>

	The articles of association may extend the powers of the supervisory board, in particular provide that the management board must obtain the consent of the supervisory board prior to carrying out acts specified in the articles of association.
CEO and chairperson	No member of the management board may be at the same time a member of the supervisory board.
Managerial body (management board)	
Establishment	Mandatory.
Role	Responsible for managing and representing the company.
Composition	Composed of one or more members of the management board (executive directors).
Appointment	Members of the management board are appointed and removed from office by the general meeting of shareholders, unless the company's articles of association provide otherwise. Members of the management board may be appointed from amongst the shareholders or other persons.
Powers	The powers of the management board include the power to manage the company's affairs and represent it. There is a presumption that, if the law or the company's articles of association do not expressly grant a certain power to other organs (the management board or the general meeting), that power is granted to the management board.
Conflicts of interest	In the event of a conflict between the company and a member of the management board, his or her spouse or relatives up to the second degree and persons with whom s/he has personal relations, the member of the management board is obliged to refrain from taking decisions on that matter and may request that this be recorded in the minutes of the management board meeting.

	In agreements between the company and a member of the management board and in disputes with such a member, the company shall be represented by its supervisory board or an attorney in fact, appointed by a resolution of the general meeting of shareholders.
<b>Committees</b>	
Audit committee	<p>Compulsory only in listed companies and banks established in the form of a joint-stock company. An opt-out is possible for “small” supervisory boards (composed of no more than five members), where the powers of the audit committee can be performed by the entire board.</p> <p><i>Role</i> Advisory committee responsible for internal control and the financial statements.</p> <p><i>Powers</i> The powers of the audit committee include:</p> <ul style="list-style-type: none"> <li>(i) Monitoring the financial reporting process;</li> <li>(ii) Monitoring the effectiveness of the company’s systems for internal control, internal audit and risk management;</li> <li>(iii) Monitoring the statutory audit of the annual and consolidated accounts;</li> <li>(iv) Assessing and monitoring the independence of the statutory auditor or audit firm, in particular the provision of additional services to the entity;</li> <li>(v) Recommending an audit firm to the supervisory board.</li> </ul> <p><i>Composition</i> Composed solely of members of the supervisory board, appointed by the supervisory board itself. The committee shall comprise at least one independent member with expertise in accounting and/or auditing.</p>

Other committees	<p>Audit and remuneration committees are obligatory for most banks operating in Poland (as a result of the implementation CRD III).</p> <p>Other committee are optional.</p> <p>The Best Practices of the Warsaw Stock Exchange for Listed Companies recommend that the supervisory board have committees, as specified in Annex 1 to the Commission Recommendation on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board (2005/162/EC).</p> <p>Remuneration committee Nomination committee Risk committee</p>
<b>European company (SE)</b>	
Organisation	The statutes of a European company must provide for either a management board and a supervisory board (two-tier system) or an administrative board (one-tier system).
Two-tier system	<p>Management board Composed of one or more members appointed by the supervisory board, responsible for managing the company.</p> <p>Supervisory board Composed of at least three members, five in the case of public companies, responsible for supervising the company.</p>
One-tier system	<p>European company (SE) managed solely by a board of directors (<i>rada administrująca</i>), composed of both executive and non-executive members.</p> <p>The board of directors is responsible for the management, representation and supervision of the company.</p>

### Assessment of the Polish two-tier system

Polish company law is an example of a classical two-tier system, based on the German model. Institutions characteristic of the one-tier model (such as independent board members or an audit committee) do, however, exist, mainly as a result of the implementation of EU regulations.

## 14. SLOVENIA

### ONE-TIER VERSUS TWO-TIER BOARD SYSTEM

<b>Organisation</b>	
Predominantly two-tier system (supervisory board and management board)	<ul style="list-style-type: none"> <li>– Listed and unlisted joint stock companies</li> <li>– Limited-liability companies</li> </ul>
<b>Legal basis</b>	
Slovenian Company Act	Mandatory rules (hard law), complemented by case law and literature.
Corporate Governance Codes for listed companies	Soft law, based on the well-known and legally enshrined "comply/apply or explain" approach, i.e. listed companies are asked to comply with the terms of the code in principle but are allowed to derogate from them, provided they give a suitable explanation.
CG Code for SOEs	Soft law as recommended best practices for SOEs.
<b>Supervisory board</b>	
Role	<p>Responsible for management oversight and supervision of the company's operations.</p> <p>All actions taken must be in the best interest of the company.</p>

Composition	Composed only of non-executive directors.
Election	<p>(1) Members of the supervisory board representing the shareholders are elected by the general meeting.</p> <p>(2) The articles of association may provide that a maximum of one third of the members of the supervisory board representing shareholders shall be appointed by the holders of registered shares which may not be transferred without the company's consent. Such shares shall not constitute a separate class of shares.</p>
Responsibilities	<p>(1) The supervisory board shall supervise the conduct of the company's business.</p> <p>(2) The supervisory board may examine and verify the books and accounts of the company, its cash flows, deposited securities, inventory and other items.</p> <p>(3) The supervisory board may request from the management board any information necessary for supervisory purposes. Any individual member of the supervisory board may also request this information, and the management board shall submit the required information to the supervisory board if the articles of association so provide.</p> <p>(4) The supervisory board may call a general meeting. The supervisory board shall submit a proposal to the general meeting regarding the appointment of an auditor, based on the audit committee's proposal.</p> <p>(5) The conduct of the company's operations may not be transferred to the supervisory board. The articles of association or the supervisory board may determine that certain types of activities may only be carried out with its consent. If the supervisory board refuses to grant consent, the management board may require the general meeting to do so. The general meeting's resolution granting consent must be approved by a majority of three-quarters of the votes cast.</p>
Chairperson	The chairperson of the supervisory board must be a non-executive director.



Management board	
Role	Responsible for management of the company. All actions must be in the best interest of the company.
Composition	Only executives appointed by the supervisory board. The management board may have one or more members (managers). (1) If the management board has more than one member, the members shall adopt decisions unanimously unless the articles of association provide otherwise. (2) The articles of association may not provide that, in the event of a difference of opinion, the vote of a particular member or members shall prevail over the majority.
Appointment and discharge	(1) The members of the management board are appointed by the supervisory board. They may not be reappointed before one year prior to the expiry of their term of office. (2) Members or the chair of the management board may be removed by the supervisory board: - if they are in material breach of their obligations; - if they are incapable of conducting the company's business; - if the general meeting passes a no confidence vote in them, unless the no confidence vote is passed for clearly unjustified reasons; or - for other economic or business reasons (significant changes to the shareholder structure, reorganisation, etc.).
Responsibilities	The management board shall conduct the business of the company independently and at its own liability.
Supervisory board committees	

Audit committee	<p>Optional except for listed companies.</p> <p><i>Role</i> Advisory committee responsible for internal controls and the financial statements.</p> <p><i>Composition</i> If the supervisory board establishes an audit committee, at least one member should be an independent expert in accounting or auditing. The other committee members must be supervisory board members.</p> <p><i>Responsibilities</i> The tasks of the audit committee shall include:</p> <ul style="list-style-type: none"> <li>– monitoring the financial reporting process;</li> <li>– monitoring the efficiency of the company's internal control, internal audit, if any, and risk management systems;</li> <li>– monitoring the compulsory audit of the annual and consolidated financial statements;</li> <li>– reviewing and monitoring the independence of the auditor appointed to review the company's annual report, particularly the provision of additional non-audit services;</li> <li>– making proposals to the supervisory board regarding the appointment of an auditor to review the company's annual report;</li> <li>– supervising the integrity of the financial information provided by the company;</li> <li>– evaluating the compilation of the annual report, including formulating a proposal to the supervisory board;</li> <li>– helping to determine major audit areas;</li> <li>– helping to draft the agreement between the auditor and the company;</li> <li>– performing other tasks laid down in the articles of association or supervisory board resolutions; and</li> <li>– cooperating with the auditor in the audit of the company's annual report, particularly through mutual notification of major audit-related issues.</li> </ul>
Nomination and remuneration committee(s)	<p><i>Optional</i></p> <p>Possibility to establish a nomination and remuneration committee.</p>

	<p><i>Role</i> Advisory committee responsible for nominating and determining the remuneration of members of the management board.</p> <p><i>Composition</i> Supervisory board members, a majority of whom must be independent.</p>
Other committees	<p><i>Optional</i></p> <p>Risk committee Strategy committee</p>

## 15. SWEDEN

### ONE-TIER VERSUS TWO-TIER BOARD SYSTEM

Organisation	
Neither a classical one-tier or two-tier system but rather a separate type of governance structure, referred to as “the Nordic model”.	<p>Key characteristics of the Nordic model:</p> <ul style="list-style-type: none"> <li>– a hierarchical chain of command (General Meeting (GM) – Board – CEO), in which each body is subordinated to the next highest body in the chain;</li> <li>– a non-executive board of directors, whose members are appointed by and may be removed at will, without cause, by the GM;</li> <li>– a CEO, who is appointed by and may be removed at will without cause by the board.</li> </ul> <p>Applicable to all limited-liability companies (AB), public or private.</p>
Legal basis	
Swedish Companies Act and other relevant legislation such as the Annual Accounts Act, the Accounting Act, etc.	Hard law, complemented by case law and literature.

Swedish Corporate Governance Code	A set of recommendations for good corporate governance based on the "comply or explain" principle. Applicable formally only to companies listed on a regulated market, of which there are two in Sweden: NASDAQ OMX Stockholm and NGEM Equity, currently collectively listing about 275 companies. However, since its introduction in 2005 the Code has deeply influenced the governance of other types of companies, both publicly owned and private SMEs, as well as many non-profit organisations.
The Securities Council	<p>The Code was developed and is regularly updated, implemented and enforced by the Swedish Corporate Governance Board, a self-regulating body on the securities market.</p> <p>Its role is to interpret the Good Practices on the Securities Market by issuing statements – upon request or at its own initiative – pertaining to rules and practices on the securities market, including the Corporate Governance Code.</p>
<b>Supervisory body (board of directors)</b>	
Role	<p>The board is responsible for managing the company's affairs on behalf of its shareholders. By law and/or code, this includes without limitation:</p> <ul style="list-style-type: none"> <li>– ensuring that the company is adequately organised and structured so that accounting, the management of funds and the company's finances are monitored in a satisfactory manner;</li> <li>– ensuring that the company's systems for internal control and risk management are well organised and function effectively;</li> <li>– appointing, recurrently assessing and when necessary removing the CEO;</li> <li>– establishing the overall goals and strategy of the company and continually following up on the execution of strategy and the fulfilment of goals;</li> <li>– ensuring that there are satisfactory processes monitoring the company's compliance with laws and regulations relevant to its operations;</li> <li>– defining and following up on necessary guidelines to govern the company's ethical conduct;</li> </ul>

	<ul style="list-style-type: none"> <li>– ensuring that the company's external communications are characterised by the greatest possible openness and that all information provided is accurate, reliable and relevant.</li> </ul> <p>If the general meeting of shareholders (GMS) has issued special instructions regarding management of the company, the board is obliged to follow these instructions. However, in listed companies, such instructions are virtually non-existent.</p> <p>The board as a whole and each individual board member has a legal obligation to act in the best interest of the company and its shareholders.</p>
Composition	In listed companies, no more than one person from management may serve on the board. To the extent this possibility is used, which is the case for slightly less than 40% of Swedish companies, this position is normally occupied by the CEO. Hence, the boards of Swedish listed companies are either entirely (around 60% of companies) or predominantly (the remaining 40%) non-executive. However, regardless of whether the CEO is a formal board member, s/he always has the right to participate in board meetings unless the board decides otherwise on a case-by-case basis.
Appointment	All directors, including the chair, are appointed by the GM for an indefinitely renewable one-year term.
Powers	All powers except those specifically reserved by law or the articles of association to the GM. The board also has a veto power regarding the distribution of profits, provided the GM does not decide to distribute greater profits than proposed by the board.
CEO and chairperson	The positions of CEO and chairperson of the board must by law be separate in listed companies.
<b>Managerial body (CEO)</b>	
Establishment	Executive management is performed by a single person, the CEO, whose duties and responsibilities are defined by

	law.
Role	<p>The CEO is responsible for the day-to-day management of the company in accordance with instructions and guidelines given by the board, as the case may be. The division of duties and responsibilities between the board and the CEO is defined in writing and reviewed regularly by the board.</p> <p>Within the Board, the main duties of the CEO are to prepare and propose board decisions and to keep the board informed of the company's operations and any other information required for the board to effectively carry out its duties. The manner in which such information is to be compiled and reported to the board shall be defined in writing and regularly reviewed by the board.</p> <p>As mentioned above, regardless of whether the CEO is a board member, s/he has the right to participate in board meeting unless the board decides otherwise on a case-by-case basis.</p>
Composition	A single CEO, appointed by the board, usually further to an open-ended employment contract. Despite this, the CEO may be removed from office by the board at any time without notice or cause.
Powers	In the framework of the division of duties and responsibilities as defined by the board (see above), the CEO has far-reaching authority to organise the company and run its business at his or her discretion, like the board subject to an obligation to do so in the interest of the company and its shareholders. This authority includes taking actions which, due to their significance and/or extraordinary nature having regard to the size and nature of the company's business, would normally fall outside the scope of authority of the CEO and provided it is not possible to await a decision by the board without significant harm to the company. In such cases the board shall be notified of the actions taken as soon as possible.
<b>Committees</b>	
Audit committee	<p><i>Establishment</i></p> <p>Listed companies are obliged to have an audit committee. However, the board as a whole may perform the func-</p>

	<p>tions of the audit committee, provided it meets all requirements with regard to the composition of such committees (which most Swedish boards do by simply excluding the CEO in cases where the CEO is a board member, which is the case in slightly less than 40% of listed companies, as mentioned above).</p> <p><i>Role</i></p> <p>Even if certain powers are delegated to a subcommittee, the board as a whole and all its members will be held accountable for any decisions and actions taken by the committee. Therefore, the committees of Swedish boards are in general primarily given preparatory duties, leaving decisions on matters of major significance to be taken by the board as a whole and requiring the committee to report to the board on all other decisions and actions taken.</p> <p><i>Duties</i></p> <p>On behalf of the Board , mainly to</p> <ul style="list-style-type: none"> <li>– prepare the company’s annual accounts and other forms of financial reporting;</li> <li>– oversee the company’s systems for internal control and risk management;</li> <li>– oversee the company’s internal audit function, if any,</li> <li>– keep in contact with the company’s statutory auditor, including by inviting the auditor to attend committee meetings;</li> <li>– assessing and monitoring the statutory auditor’s independence,</li> <li>– analysing the need and appropriateness for the company to purchase non-audit services from the statutory auditor and preparing the board’s decisions on such matters.</li> </ul> <p><i>Composition</i></p> <p>Composed solely of non-executive board members, at least one of whom must be independent and competent in the field of accounting and auditing.</p>
Remuneration committee	<p><i>Establishment</i></p> <p>Not required by law but recommended by the Code for listed companies. Nonetheless, the board as a whole may perform the duties of a remuneration committee provided no executive board member (normally the CEO) participates in the committee's deliberations.</p>



	<p><i>Main duties are to</i></p> <ul style="list-style-type: none"> <li>– prepare board decisions regarding remuneration, i.e. primarily propose guidelines for the remuneration of executive management to be submitted to the AGM for approval and the remuneration and other terms of employment for the CEO;</li> <li>– monitor and evaluate the implementation of the aforementioned guidelines for remuneration as well as current remuneration structures and levels within the company as a whole; and</li> <li>– monitor and evaluate all programmes for variable remuneration of executive management.</li> </ul> <p><i>Composition</i></p> <p>The chairperson of the board may be a member of the committee (and may also chair it). All other members must be independent of the company and its management. Appropriate knowledge and experience of executive remuneration should be adequately represented amongst the committee members.</p>
Nomination committee	<p><i>Establishment</i></p> <p>In Swedish corporate governance, the nomination committee is not a subcommittee of the board but rather a body appointed by the AGM and predominantly comprised of shareholder representatives. There are two ways of establishing such a committee:</p> <ul style="list-style-type: none"> <li>– by appointing the members directly at the AGM or</li> <li>– by having the AGM decide on a procedure for the subsequent appointment of committee members.</li> </ul> <p><i>Composition</i></p> <p>At least three members, including the chair. A majority of members must be independent of the company and its management and at least one must be independent of the company's largest shareholder. Directors (except the CEO, if a board member) may be committee members but may not form a majority.</p> <p>In practice the usual set-up of Swedish nomination committees is the chairperson of the board and 2-4 representatives of major shareholders, one of whom chairs the committee.</p>

	<p><i>Main duties of the nomination committee are to</i></p> <ul style="list-style-type: none"> <li>– propose candidates for the chair and other members of the board, for decision by the AGM;</li> <li>– propose fees for the chair and each board member on an individual basis, including special fees for committee work, as the case may be; and</li> <li>– propose candidates for the statutory auditor, including remuneration, when the appointment of auditor is up for decision at the AGM.</li> </ul> <p>In connection with calling of an AGM, the nomination committee is obliged to post a statement on the company's website explaining and justifying its proposal with regard to the code provisions concerning the composition of the board, including its gender balance.</p>
<b>Assessment of the Swedish system</b>	
<p>The essence of Swedish corporate governance is that it is an owner-oriented system which allows major owners to effectively control and take long-term responsibility for the company, while at the same time effectively protecting minorities against abuse of this strong position. Hence, it is a governance model which encourages strong owners to actively participate in the governance of their companies, with a long-term view in their own interest as well as that of the company and its shareholders.</p>	

## 16. UNITED KINGDOM

### ONE-TIER VERSUS TWO-TIER BOARD SYSTEM

Organisation	
One-tier (unitary) management system.	<p>All types of companies, including:</p> <ul style="list-style-type: none"><li>• Private limited company</li><li>• Public limited company</li><li>• Listed company</li><li>• Holding companies and subsidiaries</li><li>• Guarantee and unlimited companies and limited-liability partnerships</li></ul>
Legal basis	
Companies Act 2006	<p>The Companies Act 2006 is an Act of the Parliament of the United Kingdom which forms the primary source of UK company law. It holds the distinction of being the longest act in British Parliamentary history: with 1,300 sections and covering nearly 700 pages.</p> <p>It superseded the Companies Act 1985.</p> <p>The Act provides a comprehensive code of company law for the United Kingdom and makes changes to almost every facet of the law in relation to companies. The key features of the Act are:</p> <ul style="list-style-type: none"><li>• it codifies certain existing common law principles, such as those relating to directors' duties;</li><li>• it implements the European Union's Takeover and Transparency Obligations Directives;</li><li>• it introduces various new provisions for private and public companies;</li><li>• it applies a single company law regime across the United Kingdom, replacing the two separate (if identical) systems for Great Britain and Northern Ireland; and</li><li>• it otherwise amends or restates almost the entire Companies Act 1985.</li></ul>

UK Corporate Governance Code	<p>The UK Corporate Governance Code (formerly the Combined Code) sets out standards of good practice in relation to board leadership and effectiveness, remuneration, accountability and shareholder relations.</p> <p>The Code is not a rigid set of rules. It consists of (main and supporting) principles and provisions. Companies are encouraged to comply with the main principles and, where they are unable to do so, to explain why not.</p> <p>All companies with a Premium Listing of equity shares in the UK are required, under the Listing Rules, to report on their application of the Code in their annual report and accounts. The relevant section of the Listing Rules can be found at <a href="http://fsahandbook.info/FSA/html/handbook/LR/9/8">http://fsahandbook.info/FSA/html/handbook/LR/9/8</a>.</p>
<b>Board</b>	
Role	<p>A single board collectively responsible for the long-term success of the company</p> <p>Checks and balances include:</p> <ul style="list-style-type: none"> <li>• a separate chair and CEO;</li> <li>• a balance of executive and independent non-executive directors;</li> <li>• strong, independent audit and remuneration committees;</li> <li>• annual evaluation by the board of its performance.</li> </ul>
Composition	Composed of both executive and non-executive directors.
Appointment	<ul style="list-style-type: none"> <li>• Pursuant to the Corporate Governance Code, there should be a formal, rigorous and transparent procedure for the appointment of new directors to the board.</li> <li>• The search for candidates should be conducted, and appointments made, based on merit, having regard to objective criteria and with due regard for the benefits of diversity on the board, including gender diversity.</li> <li>• The board should satisfy itself that plans are in place for orderly succession for appointments to the board</li> </ul>

	<p>and senior management, so as to maintain an appropriate balance of skills and experience within the company and on the board and ensure progressive rotation on the board.</p> <ul style="list-style-type: none"> <li>• There should be a nomination committee to lead the process board appointments and make recommendations to the board.</li> <li>• Non-executive directors should be appointed for specified terms, subject to re-election and to statutory provisions relating to the removal of directors. Any term of more than six years for a non-executive director should be subject to particularly rigorous review and take into account the need for progressive refreshment of the board.</li> </ul>
Powers	<p>There should be a clear division of responsibilities at the top of the company between the running of the board and executive responsibility for the running of the company's business. No single individual should have unfettered decision-making powers.</p> <p>The chair is responsible for leading the board and ensuring its effectiveness in all aspects of its role. As part of their role as members of a unitary board, non-executive directors should constructively challenge and help develop proposals on strategy.</p>
CEO and chairperson	<p>The positions of CEO and chair of the board of directors can be held by the same person (although this is not recommended by the Corporate Governance Code). It is unusual within FTSE 350 companies in the UK for the same person to hold both roles.</p>
<b>Executive committee</b>	
Role	<p>Responsible for the day-to-day management of the company.</p>
Composition	<p>Senior executives, who may or may not also be directors.</p>

Powers	The powers delegated by the board of directors, with the exclusion general corporate policy.
<b>Committees</b>  The UK Corporate Governance Code requires a board to have three committees: remuneration, audit and nomination. Following a separate review by Sir David Walker, banks and other financial institutions will usually have a risk committee as well. All of these committees should usually have terms of reference, which should be publicly available.	
Audit committee	<p>The board should establish formal and transparent arrangements explaining how they should apply the corporate reporting, risk management and internal control principles and for the purpose of maintaining an appropriate relationship with the company's auditors</p> <p>The board should establish an audit committee composed of at least three or, in the case of smaller companies, two independent non-executive directors. In smaller companies the chairperson may be a member of, but may not chair, the committee, in addition to the independent non-executive directors, provided the chairperson was considered independent when appointed to this position. The board should satisfy itself that at least one member of the audit committee has recent and relevant financial experience.</p> <p>The main role and responsibilities of the audit committee should be set out in written terms of reference and should include (for example):</p> <ul style="list-style-type: none"> <li>• monitoring the integrity of the company's financial statements and any formal announcements relating to the company's financial performance, reviewing significant financial reporting findings contained in them;</li> <li>• reviewing the company's internal financial controls and, unless expressly addressed by a separate risk committee composed of independent directors or by the board itself, reviewing the company's internal control and risk management systems;</li> <li>• monitoring and reviewing the effectiveness of the company's internal audit function;</li> <li>• making recommendations to the board, to be submitted to the shareholders in general meeting for approval, in relation to the appointment, re-appointment and removal of the external auditor, and approving the remuneration and terms of engagement of the external auditor;</li> </ul>

Remuneration committee	The remuneration committee will, in accordance with the UK Corporate Governance Code, usually have delegated authority to set executive pay but at the board level pay. It should consult the chairperson and/or chief executive regarding their proposals relating to the remuneration of other executive directors. The remuneration committee should also be responsible for appointing any consultants in respect of executive director remuneration. Where executive directors or senior management are involved in advising or supporting the remuneration committee, care should be taken to recognise and avoid conflicts of interest.
Other committees	<p>Risk committee (as specified by the Walker Review)</p> <p>Nomination committee:</p> <p>There should be a nomination committee which should lead the process for board appointments and make recommendations to the board. A majority of members of the nomination committee should be independent non-executive directors. The chairperson of the board or an independent non-executive director should chair the committee, but the chairperson should not also chair the nomination committee when it is dealing with the appointment of a successor to the chair. The nomination committee should make available its terms of reference, explaining its role and the authority delegated to it by the board</p>
<b>Assessment of the UK one-tier system</b>	
UK company law is characterized by a one-tier (unitary) system. The Companies Act 2006 provides the foundations for company law in the UK, and the UK Corporate Governance Code provides guidance to all premium listed companies (FTSE 350), on a “comply or explain” basis.	

