

QUESTION	ANSWER	CITATION	COMMENT
The Responsibilities of the Board			
<i>Regulatory Framework</i>			
Please provide accurate historical description and analysis of the evolution and content of the regulatory framework			
1. What are the principal normative acts and other sources of guidelines that make up the corporate-governance framework for Board responsibilities and structure?			
1.1. Laws	<p>a) Law on Entrepreneurs (LOE) – adopted by the Georgian Parliament on 28.10.94, significantly amended on 28.07.99 in regard of JSC regulation, fiduciary duties of directors and members of supervisory boards, protection of minority shareholder rights, etc.</p> <p>b) Law on Securities Market (LSM) – adopted by the Georgian Parliament on 24.12.98</p> <p>c) Administrative Violations Code (AVC)</p> <p>d) Criminal Code (CrC) – adopted by the Georgian Parliament on 22.07.99.</p>		LOE provides general legal framework for all types of enterprises (companies), while LSM and NSCG rules regulate (together with “regulated” participants of securities market) Reporting Companies – those having 100 or more holders of the securities issued by the company or if such securities are traded at a stock exchange.
1.2. Regulations	<p>a) National Securities Commission of Georgia (NSCG) Rule on Rights of the Reporting Companies’ Securities Owners and on Respective Obligations of the Managing Body Members (R1) - adopted by NSCG on 2.12.02;</p> <p>b) NSCG Rule on the Preparation and Submission of Financial Statements by Reporting Companies(R2) - adopted by NSCG on 2.12.02;</p> <p>c) NSCG Rule on the Reporting on the Beneficial</p>		According to the LSM, the Managing Body is the Supervisory Board and (managing) Directors. See, also, the comment to the question 2.

	<p>Ownership of the Securities by a Managing Body Member of a Reporting Company (R2) - adopted by NSCG on 21.01.00.</p> <p>d) The NSCG Rule on the Rights of Shareholders of the Reporting Companies and the Respective Duties of the Members of the Managing Body (R3). – adopted by NSCG on 2.12.02</p>		
1.3. Other normative acts	-		
1.4. Exchange Rules	-		
1.5. Codes of Conduct	-		
1.6. Other	-		
2. How is the term "director" defined?	<p>“The rights to manage the activity of a company shall have... directors - in Limited Liability Companies, Joint Stock Companies and Co-operatives.”</p> <p>“The managerial activity shall be the activity serving to realise directly or indirectly the purposes of the company.”</p>	<p>LOE – Article 9.1</p> <p>LOE – Article 9.2</p>	<p>Here we should stress the difference between the Director, as defined by LOE, and the Member of the Supervisory Board (MSB) – for companies where two-level boards exist (mandatory - for JSCs and voluntary – for LLCs).</p> <p>These differences are described in details below.</p>
3. Does the regulatory framework stipulate positive qualifications for a person to be appointed as a director? If yes, what are these qualifications?	Neither for directors nor for MSBs.		
4. Does it stipulate conditions under which a person cannot be appointed as a director? If yes, what are these conditions?	In case of Reporting Companies, person can be restricted by NSCG to be appointed as a director or a MSB for a certain time period, for violations of fiduciary duties being at the position of a director or a MSB of a Reporting Company.	LSM – Article 16.5.a	
5. What is the required board structure?	The board structure does not have any peculiarities except those described in Questions 6-8.		

<p>6. Does your company law prescribe a unitary or dual board structure consisting of a supervisory and a management board/director?</p>	<p>For Joint Stock Companies (JSC) the two tier board is mandatory: the Supervisory Board and (managing) Directors. There may be even one (managing) Director. Directors cannot be members of the Supervisory Board. For Limited Liability Companies (LLC) introduction of the Supervisory Board (the second tier) is possible but not compulsory.</p> <p>Establishing of the Supervisory Board is mandatory for LLCs, where more then 50% of shares belong to the state, Charter Capital is higher then GEL30,000 and annual turnover is higher then GEL100,000. In such cases the rules of the present Law concerning the Supervisory Board of Joint stock companies shall apply.</p> <p>48.2. Establishing of Supervisory Board is mandatory for LLCs if requested by a shareholder (shareholders) of 20% of the Charter Capital.</p>	<p>LOE- Articles 54-55 LOE – Article 48</p>	
<p>7. If the company law prescribes a dual board structure, or if this is common practice in the articles of association, please respond to the following questions:</p>			
<p>7.1.Is a dual board structure compulsory or not?</p>	<p>Compulsory by LOE for JSCs and not compulsory for LLCs.</p>	<p>LOE- Articles 54-55 LOE – Article 48</p>	
<p>7.2.If not compulsory, can the use of a dual board structure be established in the articles of association?</p>	<p>Yes.</p>	<p>LOE – Article 48</p>	
<p>7.3.If so, is this option commonly used?</p>	<p>Not often.</p>		
<p>7.4.What are the duties of the supervisory board?</p>	<p>Tasks and competence of the Supervisory Board are the following: a) The Supervisory Board supervises the activity of the directors; b) The Supervisory Board may, at any time,</p>	<p>LOE- Articles 55.8-9</p>	

demand the reports of the directors concerning the company's activity including the relationships with the affiliated enterprises;

c) The Supervisory Board may control and check the accounting books of the company as well as its property, in particular the cash-office and the state of securities any goods, it may engage individuals or experts to execute this activity;

d) The Supervisory Board calls the general meeting if it is necessary for the company;

e) The Supervisory Board checks the annual reports, proposals for the distribution of the profit, and informs the general meeting accordingly. The council should indicate how and in what volumes it has checked the activity of the managers of the company during the previous year, what parts of the annual report it has checked up and whether these checks caused significant changes of the final results;

f) The Supervisory Board may appoint and discharge the Directors, conclude and cancel labour contracts with them;

g) The Supervisory Board is entitled to represent the Company when making transactions with the Directors and at the decision of the Supervisory Board conduct legal proceedings on behalf of the company against Directors. . The Supervisory Board may, in the case of an issue relating to responsibility of its members, appeal against Directors without the decision of a General Meeting;

h) The functions of the directors shall not be delegated to the members of the Supervisory Board.

The following activities should be performed exclusively with the consent of the Supervisory Board:

a) Purchase or disposal of more than 50-% of the enterprises;

b) Purchase, disposal, pledging or leasing of real

	<p>estate or rights similar to them, as well as renting a production unit out or cessation of its activities;</p> <p>c) Formation and liquidation of the branches;</p> <p>d) Planning of annual budget as a planned balance and a profit and losses plan as well as an investment plan, the assessment of obligations proceeding from long-term legal relationships;</p> <p>e) Investments or divestments, the amount of which individually or during one fiscal year exceeds 10 % of the book value of a Company's total property as of the end of the last year;</p> <p>f) Taking of credits and loans in a higher amount than fixed by the council;</p> <p>g) Security of credits and loans if they are outside the routine economic activity. Such a security shall not apply to the directors and the members of the Supervisory Board;</p> <p>h) Starting new type of business activity or cessation of existing one;</p> <p>i) Determination of general principles of the economic policy;</p> <p>j) Determination of the principles of participation of the managers in the profits and other related relations as well as the granting of pensions to them;</p> <p>k) Appointment and discharge of trade representatives (procurators);</p> <p>l) Allowing the shares and other securities issued by the Company to be admitted for trading on a stock exchange, if such admission imposes additional material expenses on the Company by law.</p> <p>m) Making decisions on buying back its own shares in the cases provided for in this law, unless otherwise defined by law.</p>		
<p>7.5.What are the duties of the management board?</p>	<p>56.1. The management and representation of the company shall be duty of the Directors.</p>	<p>LOE- Articles 56.1-3</p>	

	<p>56.2. The authority of the directors shall be determined by the instructions approved by the Supervisory Board. If such instructions do not exist, the general principles of management shall apply.</p> <p>56.3. The directors represent the joint stock company at the Court and in other relationships.</p>		
8. Are there any legal requirements as to the composition of the board(s). If yes what are these requirements:			
8.1. in terms of size?	<p>For (managing) Directors – there are no restrictions on number of Directors.</p> <p>For the Supervisory Board – it shall consist of not less than three and not more than twenty-one members. At the same time, the number of members must divide by three.</p>	<p>LOE - Article 55.1</p> <p>LOE – Article 48</p>	
8.2.in terms of qualifications?	No.		
8.3.in terms of seats designated to specific shareholders or constituents, including labour representatives?	<p>2/3 of Supervisory Board members are elected on general grounds by the general meeting, while 1/3 may be elected from the company staff (the rule of electing the Supervisory Board members from the company staff is to be determined by special voting instructions adopted by the general meeting). The owner(s) of not less than 20% of the Charter Capital have the right to have at least one representative at the Supervisory Board.</p>	<p>LOE - Article 55.1</p> <p>LOE – Article 48</p>	<p>A member of a Supervisory Board of a company may not at the same time be a Director or an executive officer of the same company. (LOE - Article 55.3)</p>
9. Does the legislation prescribe the use of independent directors?	No		
9.1.If yes, how is independence defined?	N/A		
9.2.What are the exact provisions regarding their appointment?	N/A		
9.2.Is a concrete number or percentage of	N/A		

independent directors required?			
10. Is a distinction made between non-executive directors and independent directors? If yes, please describe.	N/A		
11. Is there a limit as to how many boards an individual can be represented on?	No.		
12. What are the rules and procedures for			
12.1. nominating,	In general, there are no nominating rules. However, in cases when the general meeting of shareholders decides to elect 1/3 of SBMs from the company staff procedure for (nominating and) electing the Supervisory Board members from the company staff is to be determined by special voting instructions adopted by the general meeting.	LOE - Article 55.1	
12.2. electing and	<p>The general meeting of shareholders is authorised to elect representatives of the shareholders to the Supervisory Board as well as recall them from the Supervisory Board;</p> <p>If after six months from the date a member left the Supervisory Board a new member is not elected, the regional court on the territory where the company is located may, by declaration of a shareholder or a (managing) Director or a member of the Supervisory Board appoint a new member, unless otherwise provided by a charter.</p> <p>In cases when the general meeting of shareholders decides to elect 1/3 of SBMs from the company staff procedure for (nominating and) electing the Supervisory Board members from the company staff is to be determined by special voting instructions adopted by the general meeting.</p>	<p>LOE - Article 54.6</p> <p>LOE - Article 55.2</p> <p>LOE - Article 55.1</p>	

	When electing members of the Supervisory Board the shareholders may agree to use the cumulative voting method.	LOE - Article 54.8	
12.3. removing board members?	The general meeting of shareholders is authorised to recall a member of the Supervisory Board at any time. Any member of the Supervisory Board may leave it at any time	LOE - Article 54.6 LOE - Article 55.2	
13. Does the regulatory framework stipulate a maximum election term?	According LOE, members of the Supervisory Board are elected for four years, but their authority shall be prolonged until the next regular meeting is called.	LOE - Article 55.2	
14. For how long are board members generally elected?	Generally, they are elected for four years or more (as is prescribed by LOE). However, change of controlling shareholder(s) or if a new shareholder (or group of shareholders acting in accord) acquires 20 or more percents of common shares, initiates respective changes in the Supervisory Board.		
15. Are all board members re-elected at the same time or are staggered terms allowed?	There are no restrictions in this regard. In most cases the abovementioned pattern takes place.		
16. Does the regulatory framework specify the role of the Chairman? If so, what are the main duties of the Chairman?	The Chairman (the Deputy-Chairman when the Chairman is absent) calls the meetings of the Supervisory Board and determines the agenda. The Chairman or the secretary of the Board meeting prepares the minutes. The Chairman of the Supervising Board chairs the general meeting of shareholders. In case of Chairman's absence the Deputy-Chairman heads the meeting.	LOE - Article 55.5 LOE - Article 54.4	
17. Does it require the separation of Chairman and Chief	By LOE a (managing) Director cannot be a member of	LOE - Article 55.3	We stress once again, that

Executive Officer?	the Supervisory Board. The functions of the directors shall not be delegated to the members of the Supervisory Board. So, only a Director may be the CEO, while Chairman of the Supervisory Board cannot be a Director.	LOE - Article 55.8.h	according LOE Members of the Supervisory Board are not called Directors, while managing executives are called Directors.
18. Does the regulatory framework prescribe the formation of any special purpose committees within the board:	No.		
18.1. audit committees?	N/A		
18.2. remuneration committees?	N/A		
18.3. or nomination committees?	N/A		
19. If so, what are the requirements for such special purpose committees?			
19.1. audit committees?	N/A		
19.2. remuneration committees?	N/A		
19.3. or nomination committees?	N/A		
20. And what are their respective functions:			
20.1. audit committees?	N/A		
20.2. remuneration committees?	N/A		
20.3. or nomination committees?	N/A		
21. For example, are there provisions concerning the size of board remuneration and the possibility to offer stock options to board members?	General Meeting of Shareholders decides on the Supervisory Board remuneration The Supervisory Board executes contracts with Directors. It also is authorised to determine the principles of participation in profits of the Directors and other managers as well as the granting pensions to them;	LOE - Article 54.6 LOE - Article 55.9j	
22. How is the form and level of board remuneration decided?	General Meeting of Shareholders decides on the Supervisory Board remuneration The Supervisory Board executes contracts with	LOE - Article 54.6	

	Directors. It also is authorised to determine the principles of participation in profits of the Directors and other managers as well as the granting pensions to them;	LOE - Article 55.9j	
23. Is this done by the general meeting or through other procedures?	<p>General Meeting of Shareholders decides on the Supervisory Board remuneration</p> <p>The Supervisory Board executes contracts with Directors. It also is authorised to determine the principles of participation in profits of the Directors and other managers as well as the granting pensions to them;</p>	<p>LOE - Article 54.6</p> <p>LOE - Article 55.9j</p>	
24. To whom is the board primarily responsible?	The Supervisory Board members and (managing) Directors, if they do not fulfil their obligations, are jointly and severally responsible to the company for the damages incurred.	LOE – Articles 9.7, 55.10 and 56.4.	
25. Is it clearly stipulated that the board's duty is to serve in the interest of all shareholders?	The LOE stipulates, that the Supervisory Board members and (managing) Directors shall serve “in a manner they believe to be in the best interests of the company.”	LOE – Articles 9.7	
26. What is the’s field of competence and how is it expressed in the regulatory framework?			
(For example: “The board is responsible for the organisation of the company and management of its affairs, while the managing director is responsible for the day-to-day business”).	<p>Tasks and competence of the Supervisory Board are the following:</p> <p>a) The Supervisory Board supervises the activity of the directors;</p> <p>b) The Supervisory Board may, at any time, demand the reports of the directors concerning the company's activity including the relationships with the affiliated enterprises;</p> <p>c) The Supervisory Board may control and check the accounting books of the company as well as its property, in particular the cash-office and the state of securities any goods, it may engage individuals or</p>	LOE – Articles 55.8- 9 and 56.1- 3.	

experts to execute this activity;

d) The Supervisory Board calls the general meeting if it is necessary for the company;

e) The Supervisory Board checks the annual reports, proposals for the distribution of the profit, and informs the general meeting accordingly. The Supervisory Board should indicate how and in what volumes it has checked the activity of the managers of the company during the previous year, what parts of the annual report it has checked up and whether these checks caused significant changes of the final results;

f) The Supervisory Board appoints and discharges the directors, conclude and cancel labour contracts with them;

g) The Supervisory Board is entitled to represent the Company when making transactions with the Directors and at the decision of the Supervisory Board conduct legal proceedings on behalf of the company against Directors. . The Supervisory Board may, in the case of an issue relating to responsibility of its members, appeal against Directors without the decision of a General Meeting;

h) The functions of the directors shall not be delegated to the members of the Supervisory Board.

The following activities should be performed exclusively with the consent of the Supervisory Board:

a) Purchase or disposal of more than 50-% of the enterprises;

b) Purchase, disposal, pledging or leasing of real estate or rights similar to them, as well as renting a production unit out or cessation of its activities;

c) Formation and liquidation of the branches;

d) Planning of annual budget as a planned balance and a profit and losses plan as well as an investment plan, the assessment of obligations

- proceeding from long-term legal relationships;
- e) Investments or divestments, the amount of which individually or during one fiscal year exceeds 10 % of the book value of a Company's total property as of the end of the last year;
 - f) Taking of credits and loans in a higher amount than fixed by the council;
 - g) Security of credits and loans if they are outside the routine economic activity. Such a security shall not apply to the directors and the members of the Supervisory Board;
 - h) Starting new type of business activity or cessation of existing one;
 - i) Determination of general principles of the economic policy;
 - j) Determination of the principles of participation of the managers in the profits and other related relations as well as the granting of pensions to them;
 - k) Appointment and discharge of trade representatives (procurators);
 - l) Allowing the shares and other securities issued by the Company to be admitted for trading on a stock exchange, if such admission imposes additional material expenses on the Company by law.
 - m) Making decisions on buying back its own shares in the cases provided for in this law, unless otherwise defined by law.

Competences of the (Managing) Directors:

The management and representation of the company shall be duty of the Directors.

The authority of the Directors shall be determined by the instructions approved by the Supervisory Board. If such instructions do not exist, the general principles of

	<p>management shall apply.</p> <p>The directors represent the joint-stock company at the Court and in other relationships.</p>		
27. Is the division of power between the board and the management clearly specified in the regulatory framework? If yes, how?	See the answer to the previous question.		
28. What are the general board responsibilities?			
28.1.Are boards responsible for the appointment of the key executive positions of the company	The Supervisory Board appoints and discharges the directors.	LOE – Article 55.8f	
28.2.Are boards responsible for supervising and reviewing their performance and remuneration?	<p>The Supervisory Board supervises the activity of the directors;</p> <p>The Supervisory Board may, at any time, demand the reports of the directors concerning the company's activity including the relationships with the affiliated enterprises;</p> <p>The Supervisory Board concludes and cancels labour contracts with the Directors</p>	<p>LOE – Article 55.8a</p> <p>LOE – Article 55.8b</p> <p>LOE – Article 55.8f</p>	
28.3.Are boards required to periodically report to shareholders the status of the company affairs?	<p>The Supervisory Board checks the annual reports, proposals for the distribution of the profit, and informs the general meeting accordingly. The Supervisory Board should indicate how and in what volumes it has checked the activity of the managers of the company during the previous year, what parts of the annual report it has checked up and whether these checks caused significant changes of the final results;</p> <p>The directors shall prepare an annual report and a proposal on the distribution of a net profit for the presentation to the Supervisory Board. The Supervisory</p>	<p>LOE – Article 55.8e</p> <p>LOE – Article 57.1.</p>	

	Board shall present an accepted proposal on the distribution of a net profit to the General Meeting of shareholders for approval. If the directors and the Supervisory Board cannot agree on the proposal of the distribution of a net profit the both options shall be presented to the General Meeting.		
29. Does the regulatory framework specify the fiduciary duties of the board?	The members of the Supervisory Board and (managing) Directors should take all the efforts in conducting company's activity in good faith, with care that a person of ordinary prudence would exercise in similar circumstances, and in a manner that they believe to be in the best interests of the company. If they do not fulfil their obligations, they are jointly and severally responsible to the company for the damages incurred. Abovementioned persons must prove that they did not infringe their obligations.	LOE – Articles 9.7, 55.10 and 56.4.	
30. Are specific duties of the board prescribed vis-à-vis:			
30.1. the shareholders?	If the NSCG finds that a Member of the Supervisory Board or a Director of a Reporting Company is involved in the activity restricted by NSCG rules and he/she got any benefit from such activity at the expense of shareholders, and such activity caused damages to the company or its shareholders, the NSCG may request from such a Member of the Supervisory Board or a Director to compensate the damages to the company and its shareholders.	LSM – Article 16.5c	
30.2. the company as such or	The Supervisory Board members and (managing) Directors, if they do not fulfil their obligations, are jointly and severally responsible to the company for the damages incurred. Abovementioned persons must prove that they did not infringe their obligations.	LOE – Articles 9.7, 55.10 and 56.4. LSM - Article 16.3	
30.3. or society at large?	In case the company has creditors and their claims were	LOE – Articles 9.7,	

	<p>not satisfied by the company due to damages caused by violation of fiduciary duties by Directors or Members of the Supervisory Board, company's refusal concerning the demands of regressive compensation or, the compromise of the company shall be void if such compensation is necessary in order to meet the creditors' claims. This rule is not applicable if a person responsible to compensate is insolvent or, in order to avoid bankruptcy and bankruptcy proceedings he/she makes a deal with his/her creditors. If the compensation is necessary meeting the creditors' claims, the obligations of the managers are not terminated because they had acted to perform the partners' decisions.</p> <p>The Members of the Supervisory Board and the Directors of a Reporting Company shall provide reports regarding percentage of the company's securities in their beneficial ownership to the NSCG and the stock exchange where the company's securities are traded.</p>	<p>55.10 and 56.4.</p> <p>LSM –Article 12.</p>	
31. Does the regulatory framework prescribe specific duties of skill? If yes, please describe.	No		
32. Or fiduciary duties? If yes, please describe.	<p>The Members of Supervisory Board and the Directors shall take all the efforts in conducting company's activity in good faith, with care that a person of ordinary prudence would exercise in similar circumstances, and in a manner that they believe to be in the best interests of the company.</p> <p>NSCG may adopt rules specifying the fiduciary duties of the members of the Supervisory Board and Directors of the Reporting Companies. Recently NSCG had adopted such rule – The Rule on the Rights of Shareholders of the Reporting Companies and the Respective Duties of the Members of the Managing Body (R3).</p>	<p>LOE – Articles 9.7, 55.10 and 56.4</p> <p>LSM – Article 16.2.</p>	<p>According the LSM, the Managing Body is the Supervisory Board and (managing) Directors. See, also, the comment to the question 2.</p>

<p>33. Are any administrative duties of directors specified? If yes, please describe.</p>	<p>Accordinging R3:</p> <ol style="list-style-type: none"> 1. The Members of the Supervisory Board and Directors of a Reporting Company shall ensure protection of rights of company’s securities holders. Protection of each right shall be supervised by at least one personally liable Member of the Board or a Director (hereinafter – “The Curator”). 2. The Curators shall be identified by the company Charter or any other internal act. If this not done, all members of the Supervisory Board and all Directors are deemed responsible for protection of the securities holders’ rights. 3. To protect the rights of the securities holders, the respective Curator shall: <ol style="list-style-type: none"> a) Ensure that registration of the facts related with the ownership rights on the securities is timely, reliable and secure. In this regard he is responsible for the relations with the securities registrar and in accordance with the fiduciary duty principles (LSM, Article 16.1) control its activities. b) Ensure publicity of the annual, semi-annual and current reports of the company, as well as the reports of the Directors and Supervisory Board members on the beneficial ownership of the securities, with regularity, in the form and scope prescribed by legislation, in particular: <ol style="list-style-type: none"> a. publishing in such a periodic media, which is distributed at the whole territory of Georgia; b. posting the information regarding preparing (adopting) of the reports not later then the next day after filing such reports with the NSCG and for the 		<p>Accordinging the LSM, the Managing Body is the Supervisory Board and (managing) Directors. See, also, the comment to the question 2.</p>

	<p>period such reports are kept by the company, on the visible place in the offices of the company. During working hours such reports shall be readily accessible for acquaintance, making abstracts or copies to any securities holder;</p> <ul style="list-style-type: none">c. providing to the registered holders of securities by mail or via courier. <p>c) Ensure, personally or together with the other members of the Managing Body, orally or in written, providing to the securities holders, upon request, adequate comments (clarification) regarding activities of the Managing Body of the company, as well as on the past, current and forecasted activities of the company, purchase, sale or pledging of company assets and on other events information on which was requested. If he/she considers providing such information as damaging to the commercial interests of the company, he/she shall justify this adequately, first of all providing NSCG's confidentiality statement regarding the information. Besides, the comments (clarification) provided to one or several securities holders shall be made public in a manner prescribed by paragraph 3.b);</p> <p>d) Ensure calculation and distribution of dividends and funds due after the company liquidation to all securities holders in accordance with the Georgian legislation.</p> <p>4. The Curator together with a Director (if the Curator is not a Director) shall ensure:</p> <ul style="list-style-type: none">a) Calling of the General Meeting of shareholders in a manner and time prescribed by the Georgian legislation;b) Organization of issuance/cancellation and recording of proxies as set by legislation;		
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	<p>c) Accessibility of the General Meeting minutes and decisions (indicating shareholders participating in voting and number of votes given) furnished in the prescribed form, to the securities holders, upon request;</p> <p>d) Calling of the Extraordinary General Meeting of shareholders or refusing to call such meeting with appropriate justification, in accordance with the article 53.3.3 of the LOE.</p> <p>5. If the company receives an appeal from a securities holder or a potential investor regarding violation, by some reason, of his/her legitimate right, the corresponding Curator shall, in reasonable time-period, investigate and eliminate the violation and its reasons and, if needed, address the NSCG or the court, when the violation can not be eliminated in other way. The Curator, shall inform in written the appellant about measures undertaken, immediately but not later than in 15 days after receiving of the appeal if not stated otherwise by law. The measures undertaken shall be timely and effective. If it is stated in the appeal that in the appellant's opinion his/her rights are infringed due to the Curator's reason, the Curator shall immediately inform the Supervisory Board about this and act in accordance with its directions, taking into account the time-period for responding to the appellant prescribed by this paragraph.</p> <p>6. In case of absence of a Curator the sphere of his/her supervision shall be transferred to a director, Chairman or Deputy Chairman of the Supervisory Board by appropriate company act, for a period of absence of the Curator.</p>		
<p>34. Are there any provisions on consequences of breach of duty?</p>	<p>Yes.</p>		

35. Are:			
35.1.Criminal	<p><u>Related with:</u></p> <ul style="list-style-type: none"> ▪ Fraud ▪ Misappropriation or plundering ▪ Encroachment on property; ▪ Illegal entrepreneurial activity ▪ Legalization of illegal income ▪ Monopolistic activity and restriction of competition; ▪ Illegal use of trademarks; ▪ Falsification; ▪ Production, import or realization of goods dangerous for human health or life; ▪ Production, keeping, realization or transportation of excise goods without excise marks; ▪ False advertisement; ▪ Violation of accounting rules; ▪ Illegal activity during bankruptcy proceedings; ▪ Violation of accounting rules during bankruptcy proceedings; ▪ Non-reporting of bankruptcy; ▪ Illegal receiving of credits; ▪ Violation of customs rules; ▪ Tax evasion; ▪ Misuse of the authority; ▪ Commercial bribery; <p><u>Related with violations of public offering of securities:</u></p> <ul style="list-style-type: none"> ▪ Deliberate Public offering of securities without Prospectus or with a terminated Prospectus, which caused significant damages – is punishable by a penalty or by up to two (2) years of reformatory works or by up to three (3) years of imprisonment; 	<p>CrC :</p> <p>Article 180</p> <p>Article 182</p> <p>Article189</p> <p>Article 192</p> <p>Article 194</p> <p>Article 195</p> <p>Article196</p> <p>Article197</p> <p>Article 198</p> <p>Article200</p> <p>Article 201</p> <p>Article 204</p> <p>Article 205</p> <p>Article 206</p> <p>Article 207</p> <p>Article 208</p> <p>Article 214</p> <p>Article 218</p> <p>Article 220</p> <p>Article 221</p> <p>CrC – Article 213</p>	

	<p><u>with beneficial ownership of reporting company securities by a member of Managing Body:</u></p> <ul style="list-style-type: none"> ▪ Failure to report such beneficial ownership -penalty up to GEL1.500 imposed on the member of the Managing Body. 		
35.3.Civil liabilities for breach of duty imposed?	<p>The Supervisory Board members and (managing) Directors, if they do not fulfil their obligations, are jointly and severally responsible to the company for the damages incurred. Abovementioned persons must prove that they did not infringe their obligations.</p> <p>If the NSCG finds that a Member of the Supervisory Board or a Director of a Reporting Company is involved in the activity restricted by NSCG rules and he/she got any benefit from such activity at the expense of shareholders, and such activity caused damages to the company or its shareholders, the NSCG may request from such a Member of the Supervisory Board or a Director to compensate the damages to the company and its shareholders.</p>	<p>LOE – Articles 9.7, 55.10 and 56.4. LSM - Article 16.3</p> <p>LSM –Article 16.5c</p>	
36. Are there legal provisions mandating the representation of stakeholders on boards? If yes, please describe.	<p>2/3 of Supervisory Board members are elected on general grounds by the general meeting, while 1/3 may be elected from the company staff (the rule of electing the Supervisory Board members from the company staff is to be determined by special voting instructions adopted by the general meeting).</p> <p>No other stakeholders representation in the board is envisaged by legislation.</p>	<p>LOE - Article 55.1 LOE – Article 48</p>	
37. How is the directors access to information regulated:			
37.1.Do directors have the explicit right to inspect corporate accounts?	<p>The Supervisory Board may control and check the accounting books of the company as well as its property, in particular the cash-office and the state of securities</p>	<p>LoE – Article 55.8.c</p>	

	any goods. It may engage individual Board Members or experts to carry out this activity.		
37.2.What other rights are specified in this respect?	The Supervisory Board may, at any time, demand the reports of the directors concerning the company's activity including the relationships with the affiliated enterprises;	LoE – Article 55.8.b	
38. What are the requirements in terms of board meetings?	<p>The Chairman (the Deputy Chairman when the Chairman is absent) calls the meetings and determines the agenda. The minutes are to be prepared by the Chairman or the secretary of the meeting.</p> <p>The meetings of the Supervisory Board are to be held not less than once a quarter. The notification is to be sent in writing, with the intended agenda, not later than before eight days. The members of the Supervisory Board may be represented by other members of the Board. One member may represent one other member only.</p> <p>The Supervisory Board is authorised to make decisions if at least half of its members are present or represented. If the Supervisory Board is not authorised to make decisions the Chairman (or the Deputy Chairman in the absence of the Chairman) may call a new meeting within not less than 8 days, which shall be authorised to make decisions only if at least 25% of the members Supervisory Board are present or represented. If the Supervisory Board is still not authorised to make decisions, the Chairman (or the Deputy Chairman in the absence of the Chairman) may within not less than 8 days call a new meeting, which shall be authorised to make decisions regardless the number of attendees.</p>	LoE – Article 55.5-7	

<i>Practical viewpoint on Boards</i>			
Please respond and illustrate by using case studies, brief examples and board statistics, as available.			
39. How important is the board in corporate governance in your country?	In most of cases not very important and plays more formal role		
40. Is the existing legal framework successfully put into practice?	No		
41. Are board members enabled to carry out their duties in a professional and informed manner?	In most of cases – no.		
42. Do boards fulfil their strategy setting and monitoring functions properly?	In most of cases – no.		
43. Do the boards and board members operate in a transparent fashion, consistent with the intentions of the Assembly General Meeting?	In most of cases – no. However, there are no special transparency requirements for any Board decision.		
44. The latter question also targets the nomination and remuneration of directors?	Supervisory Board decides on nomination and remuneration of directors. The decisions are taken in a standard manner – not different with any other decision of the Board.		
45. Are boards truly independent from management and major or controlling shareholders?	No		
46. Is cumulative voting used and does it have an impact on enhancing board independence?	Cumulative voting is not mandatory by law. As a rule, it is not used in practice.		
47. Do boards play an effective role with respect to	No		

conflicts of interest, related party or major transactions?			
48. Do companies have a sufficient number of independent directors?	No		
49. Do board committees exist and if so, do they fulfil their role?	As a rule, there are no board committees.		
50. Are they instrumental in enhancing board effectiveness?	N/A		
51. Do they have sufficient power and resources at their disposal?	N/A		
52. Do board members possess adequate qualities and competencies?	In average – no		
53. How do companies identify, select and recruit competent directors?	Members of the Supervisory Board, as a rule, are chosen first of all on the basis of loyalty to the major shareholder(s). Competency is the next priority only.		
54. Are board members adequately compensated?	No. In most of cases they are not compensated at all, since the position is regarded more as a honourable position rather than high responsibility duty.		
55. Are there education and training programmes for directors?	No		
56. What are the perceived needs in this respect?	Today, especially, after adoption of the R3 rule, the duties and responsibilities of the Board members became more specific. Penalties for violation of the duties are strict enough. So, without well-trained competent candidates for boards most of joint-stock companies' boards may be left without any member. Hence, there is great need in training courses, schools of directors, etc.		

57. What role do the bilateral and multilateral donors play in assisting such needs?	Currently - irrelevant.		
58. What is the profile of board directors? Are there any statistics in terms of their spread among:	There is no statistics in this regard. By experts view:		
58.1.Financial professionals	2-5%		
58.2.Legal professionals	1-2%		
58.3.Retired industry leaders	50%		
58.4.Retired senior government officials	20%		
58.5.Other	23-27%		
59. Do professional associations exist and what is their role in enhancing professionalism and board ethics?	There is no professional association of Directors of board members		
60. Please provide statistics, as available, or describe trends, regarding:	There is no statistics in regards. The trends are:		
60.1.Average size of boards of directors?	6-9 members in the supervisory board.		
60.2.Average number of executive board members.	1-3 (managing) directors.		
60.3.Average number of non-executive (independent) board members?	There is no concept of Independent board members in Georgian legislation. In practice, less than half of Supervisory Board members are more closely involved in management issues.		
60.4.Number of companies with:	There are practically no committees in the Supervisory Boards.		
- audit committee			
- compensation/remuneration committee			
- nomination committee			
- other committees			
60.5.Average size of committees:	N/A		
- audit committee			
- compensation/remuneration committee			
- nomination committees			
- other committees			

60.6. Attendance of directors meetings?	In average - very poor.		
60.7. Average number of directors meetings per year?	1-3		
60.8. Average board remuneration?	Practically – zero.		
60.9. Number of companies with board training programmes?	Non.		
Stakeholders			
Please provide a description of the regulatory framework together with some empirical illustrations			
61. Please describe which legal acts define the role and rights of shareholders and in what respective terms:			
61.1.company law	LOE – in respect of shareholders and creditors		
61.2.labour law	The Georgian Code of Labour Laws (CLL) – adopted by the Georgian Parliament on September 1, 1999: in respect of employees.		
61.3.environmental law	Georgian Law on Environment Protection (LEP) – adopted by the Georgian Parliament on December 10, 1996: in respect of general public/government		
61.4.contract law	The Georgian Civil Code (CC) –adopted by the Georgian Parliament on June 26, 1997: in respect of creditors.		
61.5.insolvency law	The Georgian Law on Bankruptcy Proceeding (LBP) – adopted by the Georgian Parliament on June 25, 1996: in respect of creditors.		
61.6.other	The Constitution of Georgia (CG) - adopted by the Georgian Parliament on August 25, 1995;		

	<p>The Georgian Civil Procedural Code (CPC)</p> <p>The Georgian Consumer Protection Law (CPL) – adopted by the Georgian Parliament on March 20, 1996: in respect of consumers.</p>		
62. What concrete provisions ensure the (proper) protection of stakeholder rights:			
62.1.in the company law	<p><u>Shareholders rights</u></p> <p>Usually the shareholders execute their rights (voting right, right to receive information, right of verification, right to call an extraordinary general meeting and appeal against general meeting decisions (article 15.2.)) at the general meeting.</p> <p>The shareholder has the right to ask the directors and the Supervisory Board for the explanation of any item of the agenda and express his/her opinion. If the inquiry is made in written form ten days before the meeting, it should be performed or discussed as one of the issues of the agenda. Refusal to grant the information is possible on the basis of the essential interests of the company only, which must be justified in written.</p> <p>Shareholders - owners of 5% of the Charter Capital at least, have the right to demand a special audit of the economic activity and the annual balance if they consider that there are certain violations. In case their demands are not satisfied by the general meeting, the decision on the special check may be made by the regional court on the territory where the concrete company is located.</p>	<p>LoE – Article 53.3</p> <p>LoE – Article 53.3.1</p> <p>LoE – Article 53.3.2.</p>	

	<p>Shareholders - owners of 5% of the Charter Capital, have the right to demand the calling of a special meeting if the interests of the company so require. The demand is to be motivated in written form. If the directors do not hold the meeting within 20 days from the date the demand is made, the shareholders may appeal to the regional court on the territory where the concrete company is located.</p> <p>Shareholders may use their voting right in their personal interests except the cases where the decision relates to the deals with them or the approval of their account.</p> <p>If a dominant shareholder of a joint stock company located on the territory of Georgia deliberately used its position to cause the damage to the interests of the company he has to compensate other shareholders appropriately. A dominant shareholder is a shareholder, or a group of shareholders acting in concert, with the practical ability to influence the outcome of votes on the general meeting of the joint stock company.</p> <p>If the joint-stock company failed to pursue the claim against the third person the shareholder, on behalf and in the interests of the joint-stock company, may bring the claim to court. The shareholder will be considered as appropriate claimant if the company, within 90 days after written notification from the shareholder has failed to bring the claim to court on its own or to provide a proof that such a claim is against the interests of the company.</p> <p>In case the court rules in favour of the</p>	<p>LoE – Article 53.3.3</p> <p>LoE – Article 53.4</p> <p>LoE – Article 53.5.</p>	
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	<p>shareholder the joint-stock company is obliged, within the reasonable limits, to compensate the shareholder for the out of court expenses, including attorney fees, related to this claim. The company is discharged from such compensation if the company can prove that satisfaction of the claim is damaging for the company. If the stockholder is not accepted as an appropriate claimant or the claim is not satisfied, the shareholder has to compensate reasonable expenses the company incurs in connection with the claim.</p> <p>The court, taking into account shareholder's financial condition, may postpone the payment of the court expenses.</p> <p>In addition, please note the answers to question 33.</p>		
62.2.in the labour law	<p>Employees have (but are not limited to) the following rights:</p> <ul style="list-style-type: none"> ▪ to receive equal payment for equal work without any discrimination and not less than official minimum wage; ▪ to use established break during the working day; ▪ to use official holidays, paid annual leave and seek leaves as established by law; ▪ to unite in trade unions; ▪ to request safe and sound working conditions; ▪ to request full compensation of the work related health damages. 	<p>CLL –Article 2,</p> <p>CLL - Article 155</p>	
62.3.in the environmental law	<p>Any person has the right to get compensation for the damages incurred caused by violation of the Georgian environmental legislation requirements.</p>		
62.4.in the contract law	<p>The rights of solidary creditors, the grounds for solidary creditors rights origination, etc.</p>	<p>CC –Article 349</p>	
62.5.in the insolvency law	<p>Procedures are described for convocation of the creditors meetings and for submission of the creditors application,</p>	<p>LBP – Article 22</p>	

	also the rights of the creditors committees.		
62.6.in the other legal acts	<p>Any consumer has the rights to request:</p> <ul style="list-style-type: none"> ▪ documents proving the conformity of goods and services with the standards; ▪ safety of produced goods; ▪ reliable information on the quantity, quality and assortment; ▪ compensation for damages caused by goods of inadequate quality, dangerous for health or life, harmful for his/her property. 	CPL – Articles 2-6	
63. Is judicial redress provided for by the existing legal framework? If yes, by which laws and in what terms?	<p>Any person has the right to appeal to the court for protection of his/her rights and freedoms.</p> <p>Any person has the right to request compensation for damages from the person who caused such damages by illegal activity, premeditation or negligence.</p> <p>Judicial protection of rights is ensured for every person. The court initiates consideration of a case upon appeal of a person for protection of his/her/its rights or legitimate interests.</p> <p>Any employee has the right to appeal to the court for protection of his/her rights and freedoms. The labour conflicts can be considered by regional (city) courts, as well by trade unions.</p> <p>Any citizen has the right to request change of decisions on location, design, construction, reconstruction and exploitation of ecologically dangerous units, through judicial proceedings.</p> <p>Protection of consumer rights by courts and agencies with appropriate authority is guaranteed by law.</p> <p>The damages to stakeholders may be material or moral.</p>	<p>CG – Article 42</p> <p>CC – Article 992</p> <p>CPC – Article 2.1</p> <p>CLL – Article 2.3 and Article 194</p> <p>LEP – Article 6</p> <p>CPL – Article 2</p> <p>CC – Article 413.1 and</p>	

	<p>Material compensation for moral damages can be requested only in cases directly specified by law and in reasonable and fair amounts. Compensation for moral damages can be requested separately from compensation of material damages.</p> <p>In cases when not only damages but criminal actions (envisaged by CrC) take place criminal liability can be applied, e.g.:</p> <ul style="list-style-type: none"> ▪ for violation of freedom of labour, labour legislation and labour safety rules; ▪ violation of environmental legislation; ▪ violation of consumer protection rules; ▪ illegal actions during bankruptcy proceedings 	<p>18.6</p> <p>CrC - Articles 168-170</p> <p>Articles 286-306; Article 219 Articles 205-207</p>	
64. Is redress by means of mediation and arbitration provided for in the current legislation on stakeholders?	<p>By Georgian legislation redress for stakeholders can be reached by negotiations or arbitration. If parties can not reach agreement through negotiations the conflict can be resolved by arbitration or judicial procedures. In case the parties reached agreement to pass resolution of conflict to the private arbitrator the court ceases its proceedings.</p>	<p>The Georgian Law on Private Arbitration - adopted by the Georgian Parliament on April 17, 1997.</p>	
65. Do internal redress procedures for employee rights exist and if yes, please describe?	<p>The CLL regulates labour relations of the company with the resident employees.</p> <p>Labour conflicts, e.g. related with creation of safe and healthy working conditions, compensation of health damages related with the work, equal payment for equal work, etc. can be considered by the Labour Conflict Commissions and trade unions.</p> <p>Company administration shall investigate and record all</p>	<p>CLL – Article 194</p> <p>CLL - Article 154</p>	

	accidents taking place in the company.		
<p>66. Could you provide examples of cases related to stakeholder right violation?</p>	<p><u>Creditors</u></p> <p>1. A contract was signed between Georgian and Latvian companies, according to which the Latvian party had to ship the agreed amount of wheat and the Georgian party had to pay the price of the received goods. The seller had fulfilled its obligation in full, while the buyer defaulted on its obligation and did not pay for the goods received. According to the initial contract, the Moscow Permanent Arbitration Court (MKAC) examined the case and by its decision the buyer was obligated to pay the amount due.</p> <p>By the Georgian legislation, a foreign country (arbitration) court decision, to be in force in Georgia, must be endorsed by the Supreme Court of Georgia. The Latvian company appealed to the Supreme Court of Georgia for such endorsement of the MKAC decision. The Supreme Court refused the application and this refusal cannot be appealed. The motivation for the refusal was non-material violation of the dispute resolution rule by the MKAC arbitration court.</p> <p><i>So the situation emerged, when the creditor cannot enforce its justified claim.</i> The MKAC states that there was no violation in its hearing procedures and refuses to examine the case anew. As for the Supreme Court of Georgia, it rejects any possibility to cancel its first ruling. So, it's clear that the creditor has absolutely justified material claim but has no means to enforce it.</p> <p>2. A creditor sued a debtor company in the court requesting payment of \$248,000. The land plot owned by the company was, practically, the only source for such payment. To avoid the liability, the debtor company transferred the land to its founding partner through a fictitious transaction. The creditor requested</p>		<p>Please, note that the answers to questions 66 and 67 are complementary.</p> <p>The full details of the cases can be provided to the interested reader.</p>

to annul the transaction, because it was evident that the only reason of such transfer was to make impossible for the creditor to enforce its claim. The court, while imposing the payment obligation on the creditor, refused to invalidate the land transaction. *As a result, the creditor lost any opportunity to enforce its justified material claim.*

Employees

1. A state-owned company owed more than one-year salary to its employees. The employees sued the company in the court. Finally they won the case and the court obligated the company to pay the amount due.

Despite the final resolution of the dispute, the process of satisfying employee claims took more than one year. Here one should take into account that the case was heard only in the courts of first and second tiers and nobody appealed to the third instance – Supreme Court (in which case the claim satisfaction period would significantly increase).

At the same time, according to the Civil Procedures Code, the labour disputes shall be examined and resolved within a month. In practice this norm is not observed and *employees are virtually unprotected, e.g. not being paid for more than a year.*

2. An individual, while working in a company got a professional injury and as a result, according to the law, got the right for compensation (life-long pension) from the company. He sued the company for the satisfaction of his claim and after examining the case in courts of three instances he won. However, the procedure took about 18 months and during this period he was deprived of the pension absolutely essential for his subsistence.

<p>67. Could you provide examples of cases of legal redress related to such violations or lack thereof?</p>	<p>1. Coming back to the first creditors' case considered in the previous question 66, to resolve the problem the Latvian party addressed the arbitration court (MKAC) to comment on the said formal violation of the court examination procedure. As a result it was established that no violation had taken place. After receiving this official comment the creditor appealed to the Supreme Court of Georgia to reconsider the case due to newly established facts. As it seems, this was the only legal way to resolve the problem.</p> <p>However, the Supreme Court refused the plaintiff in considering the case, with a <i>formal</i> excuse that this would be a procedural violation, however it had no <i>material</i> arguments to neutralize the just claim of the creditor.</p> <p>2. The second creditors' case considered in the previous question 66, illustrates the situation when due to the refusal of the court to nullify the land plot transaction the creditor lost any chances to satisfy its just claim.</p> <p>However, it should be noted, there are plenty of cases when courts, in similar situations, take decisions to nullify the fictitious transactions thus enabling creditors to exercise their rights.</p> <p>3. In the labour disputes, to avoid the said delays in receiving the due salary/pension payments (caused by the lengthy court appeal and examination procedures), it is desirable the court of the first instance rules for immediate execution of its decision – of course in cases when the claim of an employee is absolutely justified and when it is clear that the only reason for the subsequent appeal by the employers is to delay the due payment.</p>		<p>Please, note that the answers to questions 66 and 67 are complementary.</p> <p>The full details of the cases can be provided to the interested reader.</p>
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	The courts have such right to rule the immediate execution (though in respect of only one year pay, not more). Such precedents exist, but the practice needs broadening. The practice also shows that if a first tier court rules the immediate execution, the company (which lost the case) virtually never appeals to upper courts, although it still can, because the only reason for such appeals, as a rule, is the hope to delay the payments.		
68. Do performance enhancing mechanisms exist for stakeholder participation in corporate governance, such as:			
68.1.employee participation in corporate boards,	Legally optional, but not used, as a rule.		
68.2.employee stock ownership plans or other profit sharing mechanisms,	Such mechanisms are not used in practice		
68.3.creditor involvement in governance in the context of insolvency proceedings?	These mechanisms are envisaged by LBP.		
69. How are the stakeholder rights applied in practice?	Practical implementation of the stakeholder rights needs significant improvement.		
70. Does the corporate governance framework recognise the rights of stakeholders as established by law?	The Georgian corporate governance framework, first of all, is aimed to protection of the shareholders and creditors rights. As for other stakeholders – protection of their rights is considered as the lower priority in practical agenda.		
71. What are the main current pitfalls in addressing their rights by the corporate governance framework?	As can be seen from the cases discussed in questions 66 and 67, the major pitfalls in addressing stakeholder rights in Georgia lay not in the specific corporate governance legislation (e.g., the Law on Entrepreneurs), but in other parts of legislation, such as the Civil Procedures Code or inefficient court practice.		
72. At this stage of development of the corporate sector,	Shareholders, creditors and then employees (in much		

which are the most important stakeholder groups in your country?	less extent).		
73. Are institutional investors important stakeholders in the corporate governance landscape of your country?	No. In Georgia there are practically no institutional investors. Due to delays in pension reform – there are practically no private pension funds. The State pension fund does not have right to make investments. As for insurance companies – they are very passive in investing in corporate sector.		There is only one private pension fund in Georgia created in 2001, but due to lack of tax incentives the private pension schemes practically can not work in Georgia.
74. Is there a practice by boards of disclosing how the interest of stakeholders are being protected?	No		