



CORPORATE GOVERNANCE IN MACEDONIA

A census of all active joint stock companies in Macedonia

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The opinions expressed herein are those of the authors and do not necessarily reflect the views of USAID, Deloitte Touche Tohmatsu Emerging Markets, Overseas Strategic Consulting, the Macedonian government or member organizations of the Macedonian Corporate Governance Council.

CONTENTS

| | |
|--|-----------|
| INTRODUCTION..... | 2 |
| EXECUTIVE SUMMARY AND ACTION PLAN | 4 |
| 1. MACEDONIAN JOINT STOCK COMPANIES | 7 |
| 2. SHARES, SHAREHOLDERS AND EMPLOYEES | 14 |
| 3. SHAREHOLDER RIGHTS | 21 |
| 4. SHAREHOLDER AGREEMENTS | 26 |
| 5. AWARENESS OF THE 1996 COMPANY LAW | 29 |
| 6. DECISION MAKING AND COMPLIANCE WITH THE 1996 COMPANY LAW | 33 |
| 7. THE GENERAL MEETINGS OF SHAREHOLDERS | 39 |
| 8. THE BOARD OF DIRECTORS | 43 |
| 9. THE MANAGEMENT AND SUPERVISORY BOARD | 47 |

INTRODUCTION

This report provides the findings from the Corporate Governance Enterprise Survey carried out among joint stock companies in Macedonia in August 2003. The report also includes selected findings from a public opinion survey of adults in Macedonia on the awareness of the Macedonian company law, shareholder rights and issues related to private sector development conducted by the USAID Corporate Governance and Company Law Project (CG&CL Project) in July 2003 (available on www.maccorpgov.com.mk).

The main findings presented here result from a *complete census*, with an overall completion rate of 92% of all active joint stock companies now operating in Macedonia. This high completion rate, along with additional steps taken to verify the data, provides the most accurate description possible of corporate governance at this point in the development of the private sector in Macedonia.

High levels of resources allocated for the research produced the quality of results reported here. But, more importantly, the success of this component of the research program results from participation by leading institutions in Macedonia. A cornerstone of this participation was Ms. Milica Georgieva, Head Legal Department of the Ministry of Economy who directly encouraged Macedonian joint stock companies to participate in this research and then used the findings of this research to develop an open and transparent drafting process for the new company law which passed Parliament on 30 April, 2004.

Other leading members of the Macedonian Corporate Governance Council including the Securities and Exchange Commission (Dr. Vesna Pendovska), the Stock Exchange (Milco Kupev), the Central Depository (Stevan Sapceski), the Skopje Regional Chamber of Economy (Aleksandar Atanasovski and Arizankovska Jadranka) and the Macedonia Business Lawyers Association (Liljana Cekovska) supported this research through participation on a Corporate Governance Advisory Committee that reviewed all key steps in the research program carried out in 2003. Samir Latif (senior legal advisor CG&CL-Project) coordinated support from these key Macedonia institutions.

Thomas Patrick Carson, Ph.D. (senior research specialist CG&CL-Project) had overall responsibility for conducting the research, with the assistance of Snezana Kiradziska and Marjan Mihajlov of the CG&CL-Project. The research methodology was designed by Darrell Brown (senior legal advisor CG&CL-Project) and Dr. Gregory F. Maassen (Chief of Party CG&CL Project). Fieldwork was carried out between June 3 – August 10, 2003 by Strategic Marketing and Media Research in Skopje under the direction of Blagica Micov. Data entry and preparation of questionnaires was carried out by Stratum Research in Skopje under the direction of Boge Bozinovski. The final report was written by Thomas Patrick Carson, Ph.D. and Dr. Gregory F. Maassen.

Methodology

Contact data for the companies were obtained from the Registration Courts in Skopje, Bitola and Stip. Project staff verified all registration records through telephone calls to ensure the status of companies and the accuracy of contact names, telephone numbers and addresses. This process took nearly two months to complete.

Three companies completed a pretest of the questionnaire. This final questionnaire was designed as a self-completed instrument and was sent to all valid joint stock companies with the support of the Ministry of Economics and a letter signed by the Minister. Interviewers then arranged to visit the contact person at each company to review and complete the questionnaire.

Of 416 completed interviews, all but four were reviewed in person by an interviewer. These four respondents completed questionnaires and sent them back to the project before contact with an interviewer. Interviewers requested respondents to sign a statement verifying the accuracy of the information collected in the interview. Of the total number of respondents, 96% signed these statements.

Respondents

The census was directed to chief executive officers, members of the management board, and chairperson of boards of directors and supervisory boards. The breakdown in classes of respondents who participated in the census is given below:

- Chief executive officers or general directors of the company, 54%;
- Chairperson of the board of directors, supervisory board or management board, 17%;
- Deputy directors, 6%;
- Department managers, 7%;
- Members of the board of directors, 2%;
- Company staff (in house counsel, secretary of the Board), and 10%;
- Other (majority owner, government trustee, other), 7%.

Response Rate

The registration records of the registration courts in Macedonia provided listings for 606 joint stock companies. The research project found an additional 24 joint stock companies that were not registered with any of the registration courts. From this, 178 listings were eliminated from the census due to reasons noted in footnote 1 below. The high response rate of 92% for the census is calculated as follows:

| | |
|--|--------|
| Registered joint stock companies | [606]; |
| <u>Additional non-registered joint stock companies</u> | [24]; |
| Total number of joint stock companies in Macedonia | [630]; |
| - 178 Non-valid joint stock companies; ¹ | |
| Total number of valid joint stock companies | [452]; |
| <u>- 36 Joint stock companies refused to participate in the census</u> | |
| Completed interviews | [416]. |

Completed interviews resulted into a response rate of 92% [completed interviews (416) / valid respondents (452)].

¹ Joint stock companies were excluded from the census because they were:

| | |
|----|--|
| 38 | Under bankruptcy proceedings or bankrupt; |
| 1 | Not active; |
| 4 | Under strike and not operating; |
| 13 | Repeatedly listed; |
| 55 | No longer existing; |
| 31 | Changing company status from Joint Stock Company to Limited Liability Company; |
| 14 | Branch offices of a central registered company; and |
| 22 | Unable to confirm or obtain accurate data. |

Total: 178 non-valid joint stock companies excluded from the research.

EXECUTIVE SUMMARY AND ACTION PLAN

Shareholder Agreements Are Common

One quarter of companies have signed agreements with their shareholders to transfer certain rights attached to their shares. Of the companies that have signed agreements, 70% of companies have entered into agreements with over 50% of their shareholders. In 71% of companies that gave signed agreements, shareholders were asked to give up their right to vote during the Annual Meeting of Shareholders. The main reason companies chose to sign shareholder agreements is that they provide for "more efficient work" and "better share management." The main reason why companies chose not to sign shareholder agreements is that there is no need to sign these (36%) or shares are held by relatively few people (11%). The majority of companies (52%) are likely to seek a renewal of the shareholder agreements if this is allowed by law.

Action Plan: These findings supported the decision of the drafting committee of the new company law and the Ministry of Economy to amend article 292 of the 1996 company law that was in force until April 30, 2004. The amendment prohibits managers and directors of joint stock companies to sign shareholder agreements with employees possessing shares of the company. The amendment ensures that shareholders/employees are protected against abusive voting rights agreements with management under the rules of the 1996 law. Further measures are taken in the new 2004 company law to abolish the practice of shareholder agreements between managers and shareholders/employees of the company.

The Awareness of Shareholders About Their Rights is Limited

Less than a majority of shareholders surveyed in the general population study are aware of their rights to be involved in the decision-making process of the company. Almost one-third of interviewed shareholders were unable to mention any rights they have. Only 2 percent of the shareholders identified the right to elect an auditor during a general meeting of shareholders as a shareholder right. Just 37 percent of the interviewed shareholders were aware of their right to vote and participate in the general meeting of shareholders.

Action Plan: The CG&CL project, in close cooperation with the Ministry of Economy and various organizations represented by a permanent working group for public education, has been actively involved in the organization of town hall meetings, seminars for journalists and other interest groups, and in the modernization of a shareholder rights organization in 2003. In 2004 and 2005, a large-scale public education effort will be implemented in close cooperation with the Ministry of Economy and the Macedonian Corporate Governance Council to educate the general population and shareholders in Macedonia through radio programs, TV-spots, article placements in journals and newspapers and various educational programs. In addition, the drafting committee for the 2004 company law modernized the company law by incorporating EU Directives on Company Law, the 2003 OECD Whitepaper on Corporate Governance in South-East Europe and the at that time draft 2004 OECD Corporate Governance Guidelines.

The Registration of Joint Stock Companies Needs Modernization

The registry records of the three registration courts in Macedonia used for the census were not up to date on the number of active joint stock companies in the country and the changes in the charters of companies. In conducting the research, the team obtained information on 24 additional joint stock companies that are operating, but not currently registered. Another 13 listings (companies) were actually repeated entries in the records for companies already registered. Joint stock companies are registered on paper and not through an electronic system in the three registration courts.

Action Plan: The drafting committee of the 2004 company law has simplified registration procedures for legal entities, including joint stock companies. In addition, the 2004 company law provides for the establishment of an electronic register in the Central Register in Skopje that will centralize the electronic registration of joint stock companies, minimizing the role of the registration courts in the registration process and modernizing the registration procedures for legal entities in Macedonia.

Basic Compliance With the 1996 Company Law is in Place

The census reveals that many companies correctly follow procedures in the 1996 company law to make changes in their charters and charter capital and in the appointment of members to their boards of directors. Compliance in these cases is determined by whether the general meeting of shareholders gave the necessary approvals.³ More troublesome has been the practice of companies to have the external auditor appointed by management. Only 23% of companies seeking exclusively foreign investment and 20% of those seeking mixed foreign and domestic investment had the general meeting of shareholders appoint an auditor.

From the census of companies, 77% have held an Annual Meeting of Shareholders in 2003. For those that have not held an Annual Meeting of Shareholders, the main reasons for not holding the Annual Meeting of Shareholders is that the company is experiencing a strike or is in pre-bankruptcy proceedings (22%) or the company is in transformation (14%). In the last five years, 6% of companies did not hold an Annual Meeting of Shareholders and 29% held less than 5 during this time.

Of the companies surveyed, 63% correctly notified shareholders of the Annual Meeting of Shareholders. However, 16% notified shareholders less than 21 days before the meeting (the company law requires a 21 days notification period). Nonetheless, the agenda was correctly sent along with the notification of the Annual Meeting of Shareholders in 95% of companies. Very few companies issued new shares (13%), bonds (2%) or changed the rights attached to their shares (10%) during the past five years.

Action Plan: The findings of the census indicate that a majority of companies have organized an Annual Meeting of Shareholders in 2003 and that most companies have shareholders involved in frequently occurring decisions. Nevertheless, a basic shareholder right such as the appointment of the external auditor is rarely observed. The CG&CL project, in close cooperation with the Ministry of Economy and the Macedonian Corporate Governance Council, will launch a comprehensive education program for companies and other stakeholders (judges, lawyers, accountants, appraisers, shareholders and others) following the enactment of the 2004 company law.

³ Due to the limited number of questions that could be included in the survey, other aspects of the decision-making process are not taken into consideration, such as quorum, notification and other requirements when these decisions were made.

Developments in the Company Law are not Understood as a Means to Attract Financing

Though a majority of joint stock companies (75%) plan to seek external investment in the company in the future, and nearly half (48%) are looking for foreign sources of investment, a majority (76%) has never received external investment before.

Companies seeking foreign external investment are only marginally better informed than other companies about developments with the company law. Those companies seeking foreign investment are no better positioned when it comes to understanding the new company law than others. This runs contrary to the expectation that companies seeking investment would be more aware of the need to have a higher understanding of developments in corporate law than those that do not seek investment.

A majority of companies that seek external investment are in the processing and manufacturing sectors of the economy (57% of those planning for foreign investment). In contrast, 35% of companies in the financial and services sectors have no plans for external investment at this time and relatively few are seeking foreign investment. Few companies plan to raise external investment by issuing stock at this time. The survey of companies finds that most of them intend to attract loans as a means of financing in the future.

Action Plan: The census reveals that joint stock companies need to be more aware of the importance of modern corporate governance standards in the 2004 law in order to attract financing. The CG&CL project, in close cooperation with the Ministry of Economy and the Macedonian Corporate Governance Council, will develop a comprehensive training program for directors and managers of joint stock companies and other constituencies (accountants, appraisers, lawyers, notaries, judges and others) to ensure that private sector participants understand the importance of corporate governance and compliance with the 2004 law in attracting financing.

Limited Awareness of Companies About New Company Law Deserves Attention

Many joint stock companies seeking foreign investment indicated that they are unsure of new developments in the company law. To a large degree, this uncertainty is reflected by uncertainty about the status of the law in 2003. For those planning to attract foreign investment, 44% of joint stock companies are aware of proposed changes in the company law; and only 24% know details of proposed changes to the company law in August 2003.

Actions Taken: The findings of the census supported the development of a comprehensive, open and transparent drafting process for the new 2004 company law by the Ministry of Economy. The project and the Ministry of Economy organized more than 25 public events in September - November 2003 throughout the country as part of the first drafting phase of the 2004 company law. Public events also were held in February 2004 to ensure that the general population was involved in the second drafting phase of the company law. More than 1,000 individuals and organizations participated in these events.

1 ■ MACEDONIAN JOINT STOCK COMPANIES

The Number of Companies

Registration records from the three registration courts in Macedonia provided listings for 606 joint stock companies. As of June 2003:

- 38 of the registered companies were under bankruptcy proceedings or are bankrupt;
- 56 were listed in the registration records, but no longer exist or are not currently active; and
- 31 had changed their status from a joint stock company to a limited liability company.

Four additional companies were not operating due to strikes. In total, 29% of the registered companies dropped out of the research because they no longer fit the criteria of a “working enterprise.”

The registration records were also not always up to date on the latest changes occurring in companies. From the initial base of information from the registration courts, 24 additional joint stock companies are operating in Macedonia, but they appear not to be registered. Another 13 listings were actually repeated entries in the records for companies already registered.

Several of the joint stock companies interviewed for this project were subject to labor strikes, but were still operating. Responses to some of the questions in the interviews indicate that many other companies are also undergoing transformation. This unsettled status creates confusion in how they operate and self-govern. The nature of this transformation is not included in this research. Other joint stock companies may still transform to limited liability companies. Changes in the legal status of companies and uncertainties in their operations should be considered to gain a more complete assessment of joint stock companies in Macedonia.

The Location of Joint Stock Companies

According to data in the registration courts, the regional distribution of joint stock companies is as follows:

- Skopje 28.4%;
- Northwest region 11.3%;
- Southwest region 24.5%; and
- Eastern region 35.8%.

These regional classifications do not correspond to official demarcations, but are based upon categories used by SMMRI, one of the Macedonian research companies involved in the census.

Each region contains several larger towns or cities that may help orient the reader to the geographical area covered in the classification:

- **Northwest** includes Tetovo (15 joint stock companies) and Kumanovo (18), as well as smaller communities;
- **Southwest** includes Bitola (29), Struga (10), Prilep (23) and Ohrid (17);
- **East** includes Gevgelija (18), Kr. Palanka (10), Karbinici (12), Stip (11), Strumica (17) and Veles (24); and
- **Skopje** contains the capitol (118 joint stock companies).

The Primary Activities of Joint Stock Companies

The descriptions companies declare in registration documents are often broadly stated in order to provide a wide range of activities from which revenue may be derived. To gain a more precise picture, we asked company representatives to describe the primary activity of their company. The following categories are based on the descriptions of the respondents:

- Processing and manufacturing 54.1% of joint stock companies;
- Construction and transport 12.3%;
- Wholesale and retail 12%;
- Finance and services 8.2%;
- Agriculture and natural resources 7.7%; and
- Hotels and restaurants 5.8%.

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

A large proportion of the companies in manufacturing (processing) are located in the eastern part of the country (43.6% of this sector). In Skopje, companies are active in finance and services (77% of all companies in this sector), construction and transport (35%) and wholesale/retail (46%). In the southwest region of the country, companies specializing in agriculture and natural resources are in high proportion (41%). The northwest region is not especially noted for a high proportion of any specific type of activity, though 21% of the restaurants and hotels are registered there. Overall, processing and manufacturing represents at least 50% of all registered activities in each region except Skopje.

The Employees of Joint Stock Companies

The size of joint stock companies, measured in number of employees, varies widely. Combining both full-time and part-time workers, joint stock companies range from:

- 10 or less employees 10.6%;
- 11 – 50 24.8%;
- 51 – 150 30%;
- 151 – 500 24.8%; and
- 501+ employees 9.9%.

Approximately one-third of the companies employ less than 51 people, nearly one-third employs 51 – 150 people and the remaining companies employ more than 151 people. Many of the companies employing over 500 people are located in Skopje (46%). Companies in the east often employ fewer people (41% of all companies employing 11 – 50 employees and 32% of all companies employing 10 or less). Processing and manufacturing companies tend to have a higher number of employees (71% of all companies employing 501+, 69% of all companies employing 151 - 500). Joint stock companies active in finance and services and wholesale/retail generally employ fewer people than joint stock companies in other industries.

According to data reported in this census, joint stock companies employ just under 100,000 full-time employees (98,729) and relatively few part-time workers (796). Four companies did not provide data on their employees. From the remaining 412 companies, only 17% indicated that they employ people part-time. Among these companies, on average 88% of the total employees work full-time.

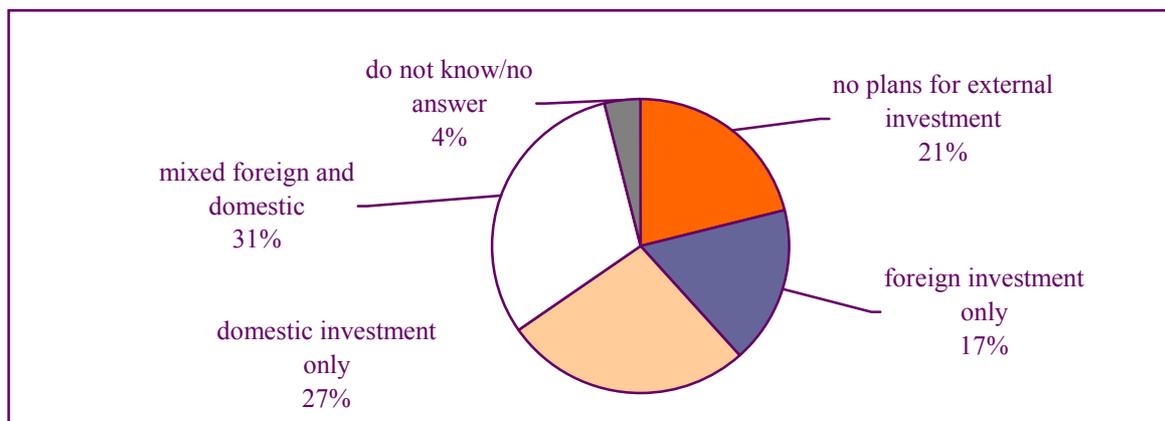
External Investment for Joint Stock Companies

Of all companies in the survey, 75% intend to seek external investment in the future. In summary, of these companies:

- 31% plan to attract external investment from both foreign and domestic sources;
- 17% primarily from foreign sources; and
- 27% only from domestic sources.

A majority of companies that intend to seek external investment are in the processing and manufacturing sectors of the economy (57% of those planning for foreign investment). In contrast, 35% of companies in the financial and services sector have no plans for external investment at this time and relatively few are seeking foreign investment. Among all joint stock companies in the survey, 48% will specifically seek foreign investment according to their representatives.

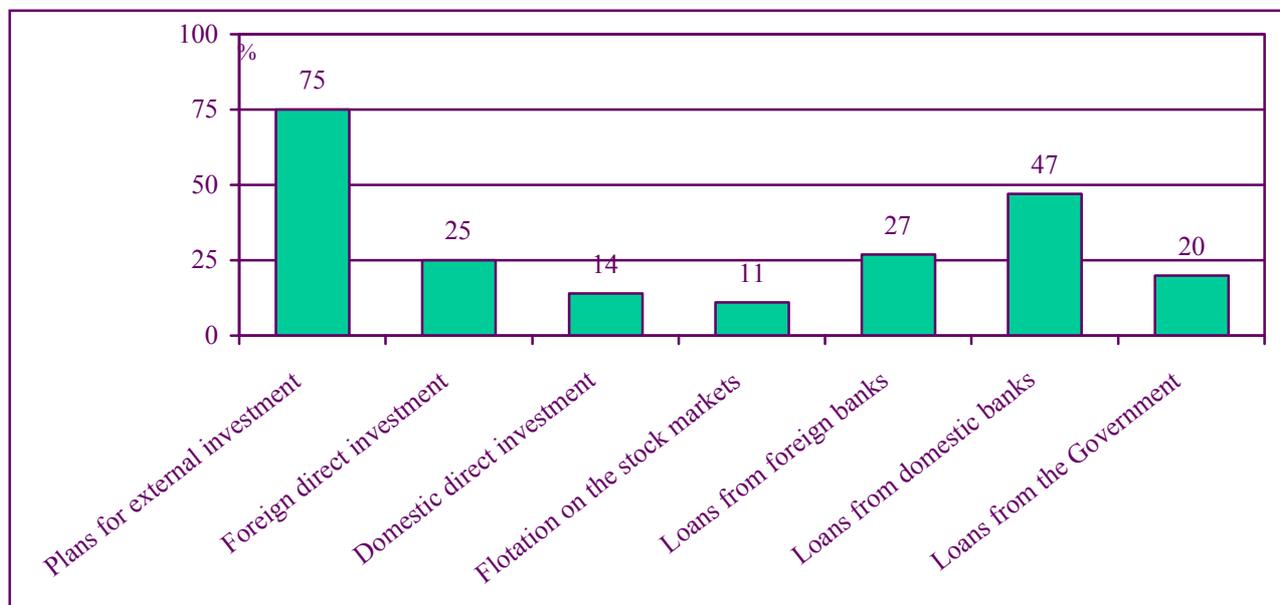
Figure 1: Plans for External Investment
Data: All joint stock companies (N= 416)



Few companies plan to raise external investment by issuing stock at this time. The census finds that most joint stock companies intend to obtain financing by negotiating loans from the following financial institutions:

- 47% from domestic banks;
- 27% from foreign banks; and
- 20% from the government.

Figure 2: Plans for External Investments in the Future (Source of Investment)
Data: All joint stock companies (N=416)

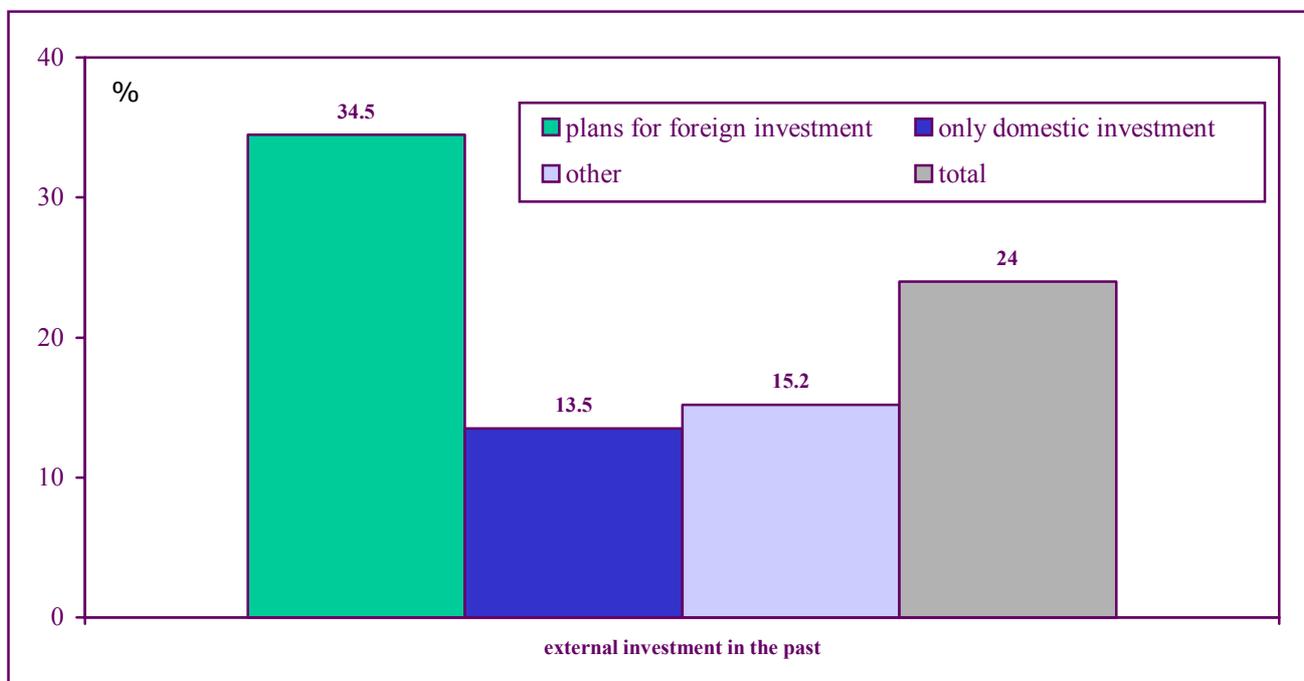


Although a majority (75%) of joint stock companies plan to seek external investment for the company in the future, and nearly half (48%) are looking for foreign sources of investment, most companies have no prior external investment experience. A majority (76%) of joint stock companies has never received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

many joint stock companies expect to attract external investment, but have limited experience in doing so.

Figure 3: External Investment in the Past and Intentions in the Future

Data: All joint stock companies (N = 416)



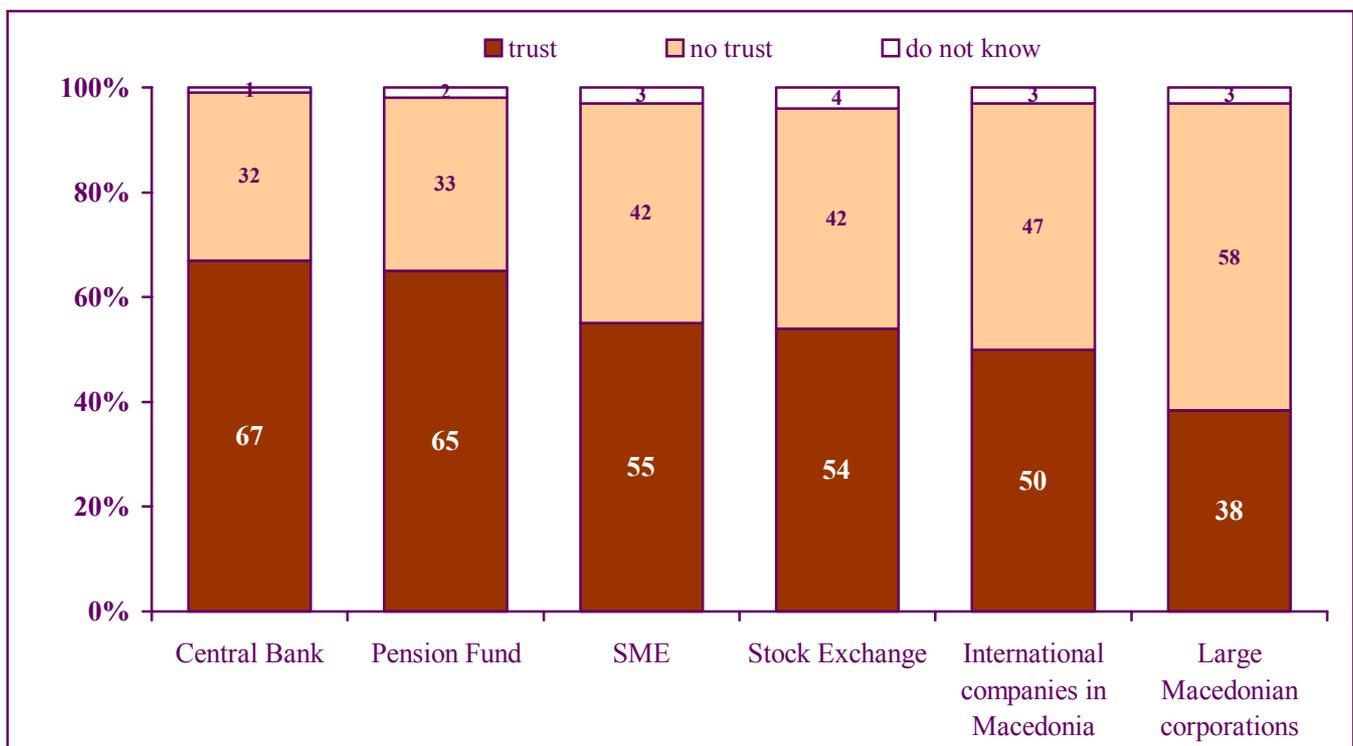
One selling point in attracting investment is having good corporate governance practices in place. This is particularly important for those companies seeking foreign investment. Given the importance of attracting external investment to companies, trust of (potential) investors in joint stock companies is essential.

Trust in Joint Stock Companies

One problem working against the objective to mobilize private savings is the low level of confidence most Macedonians have in private sector institutions. Data for this discussion comes from the general population survey on attitudes toward private sector issues.⁴ As shown in the figure below, public confidence in large Macedonian corporations is low in comparison to other institutions. Overall, 38% state they have trust ("some" or "very much") in the largest domestic companies compared to 58% that do not. Trust is much higher in the SME sector (55% "trust") and in international corporations operating in Macedonia (50% "trust").

⁴ Corporate Governance and Company Law Project, *Results from the Private Sector Attitudes Baseline Survey (June 2003)*.

Figure 4: Trust in Private Sector Institutions in Macedonia
Data: General population survey (N = 800)



Trust in the Central Bank is high among those respondents who knew of the institution (68%). Overall, trust in the banking sector appears to be a problem due to recent bank failures in the region. When asked:

Is it better to keep your money in the banks here in Macedonia, or is it better to keep your money at home?

A majority, 53.4%, stated it is better to keep the money at home, compared to 39.8% who responded it is better to keep money in the bank. Others did not know or gave another option (keep money in foreign banks).

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

Table 1 on the following page summarizes the characteristics of Joint Stock Companies discussed in the section.

Table 1: General Characteristics of Joint Stock Companies in the Census
(N = 416)

| | | Row % |
|--------------------------------------|----------------------------------|-------|
| Location | Skopje | 28.4% |
| | Northwest | 11.3% |
| | Southwest | 24.5% |
| | East | 35.8% |
| Primary activity of company | Agriculture & Natural Resources | 7.7% |
| | Processing & Manufacturing | 54.1% |
| | Construction & Transport | 12.3% |
| | Wholesale & Retail | 12.0% |
| | Hotels & Restaurants | 5.8% |
| | Finance & Services | 8.2% |
| Number of employees | 10 or less | 10.6% |
| | 11 - 50 | 24.8% |
| | 51 - 150 | 30.0% |
| | 151 - 500 | 24.8% |
| | 501+ | 9.9% |
| Awareness of company law | Little or no awareness | 35.8% |
| | Aware, but no details | 39.9% |
| | Aware of details | 24.3% |
| Plans for external investment | No plans for external investment | 20.9% |
| | Foreign investment only | 17.3% |
| | Domestic investment only | 26.7% |
| | Mixed foreign and domestic | 30.8% |
| | Do not know/no answer | 4.3% |

2 ■ SHARES, SHAREHOLDERS AND EMPLOYEES

Many commentators call for an increase in the influence (and attentiveness) of shareholders as a means to improve the governance of companies, improve the overall performance of companies and to decrease the scale of questionable practices that have led prominent enterprises to scandal and business failure. Among the most influential corporate governance guidelines, the OECD guidelines place much emphasis on the protection of shareholder rights as an essential part of modern corporate governance systems.

In order to assess the role of shareholders in the governance of Macedonian joint stock companies, the census has obtained information about the number and types of shares issued by joint stock companies, the types of shareholders and the rights attached to these shares.⁵

The Number of Shares Issued by Joint Stock Companies

Out of 416 joint stock companies, 10 companies (2.4%) failed to provide information on the total number of shares they issued. The remaining 98% of joint stock companies in this research issued 1.37 million shares. Dividing companies approximately into quartiles based on the total number of shares provides the following range:

| Shares Issued | Percentage of Companies |
|-------------------------|-------------------------|
| <10,800 shares | 25% |
| 10,801 – 30,000 shares | 25% |
| 30,001 – 105,800 shares | 23.3% |
| 105,801+ shares | 24.3% |

A high proportion of joint stock companies, with the largest total volume of outstanding and issued shares, is registered in Skopje (35.6%) compared to other regions and cities in Macedonia.

Having a large volume of outstanding and issued shares is connected with the number of employees who are also shareholders of the company. Those companies with the largest volume (105,801+ shares), also have the highest numbers of employees. 65.9% of companies with the largest volume of shares have more than 500 employees. Companies with less than 10,800 shares tend to have few employees: 63.6% of this group has 10 or less. However, the higher volume of outstanding shares is not necessarily a result of the number of employee shareholders.

⁵ The study was unable to verify the total value of shares and the total capitalization of the companies. As a result, this data is excluded from this report. The study obtained additional data from the CG&CL Project's general population survey on the extent of share ownership among the public, which data has been included in this study.

On average, joint stock companies with:

- <10,800 shares have 61 employees, and in 53.8% of these companies, employees own 25%+ of the total shares;
- 10,801 – 30,000 shares have 122 employees, and in 59.6% of these companies, employees own 25%+ of the total shares;
- 30,001 – 105,800 shares have 254 employees, and in 58.8% of these companies, employees own 25%+ of the total shares; and
- 105,801 + shares have 547 employees, and in 51.5% of these companies, employees own 25%+ of the total shares.

As the number of shares increases, so does the average number of employees. However, the percentage of employee ownership in these companies does not increase. One reason may be that employee ownership of shares is diluted in companies with large stock issues. Another reason might be the desire of management and members of the boards of directors to possess a sufficient number of shares to dominate the general meeting of shareholders. Overall, there is no relationship between the total number of shares (or shareholders) of a joint stock company and the percentage of shares owned by employees.⁶

Out of 416 joint stock companies, 55 companies failed to provide data on the percentage of common and preferred shares they have issued. Among the remaining companies, approximately 97% of the outstanding and issued shares are common shares and 3% are preferred shares. In total, 200 out of 416 companies report they have issued preferred shares.

The Number of Shareholders in Macedonia

In the census, we asked each joint stock company about their total number of shareholders. According to the data provided by the companies, there are approximately 203,500 shareholders in Macedonia. However, 42 companies failed to provide this information. The number of shareholders could not be independently verified using data from the Central Securities Depository due to restrictions in Macedonian legislation restricting access to data maintained by the Depository.

The following table summarizes the percentage of companies that have a certain number of shareholders:

| | |
|------------------------|-------|
| Single shareholder | 2.4% |
| 2 – 10 shareholders | 8.7% |
| 11- 50 shareholders | 11.5% |
| 51 – 200 shareholders | 27.4% |
| 201 – 500 shareholders | 17.1% |
| 500+ shareholders | 22.6% |

⁶ Correlations between the percentage of employee shareholding and either the total number of shares or the total number of shareholders are statistically insignificant and the correlations are small. Graphs of these variables display random relationships and are not included in the report.

Having a large number of shareholders is associated with the size of the company, and this is associated with the extent that employees own shares. There is no direct relation between the number of shareholders and employee ownership of shares.

The total number of shareholders of a joint stock company is associated with the number of employees of the company. Of joint stock companies with over 500 shareholders, 58.5% have over 500 employees. Of companies with only one shareholder (11 in total), 5 have less than 151 employees and 2 have over 500 employees. The sole shareholder for these two joint stock companies is the government.

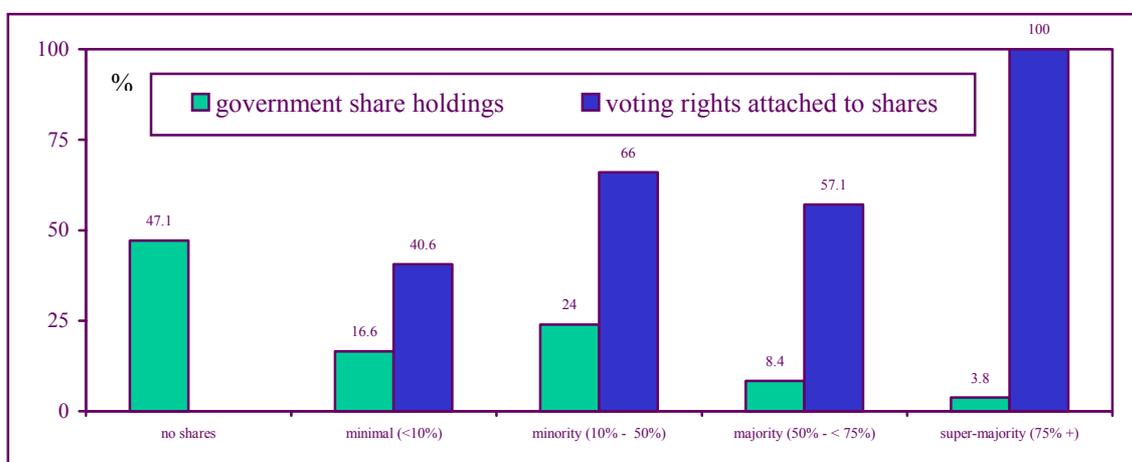
The Role of the State as Shareholder

The 2003 OECD White Paper on Corporate Governance in South Eastern Europe expresses concern about the scale and influence of government ownership of corporate shares. The census finds that the government of Macedonia holds shares in 53.6% of the joint stock companies. The size of ownership varies. The government is:

- A minimal (<10% shares) shareholder in 16.6% of joint stock companies;
- A minority (10% - <50%) shareholder in 24% of joint stock companies;
- A majority (50% - <75%) shareholder in 8.4% of joint stock companies; and
- A super-majority (75%+) shareholder in 3.8% of joint stock companies.

While remaining a shareholder in many joint stock companies, the government does not always retain or exercise its voting privileges as indicated by respondents.⁷ This is more likely the case when the government holds small positions. In 59.4% of companies in which the government holds a minimal shareholder position, government shares cannot vote. In 34% of companies in which the government holds a minority position, it has no voting privileges. The percentage rises among companies in which the government holds a majority share position – 42.9% of all such cases. In all cases in which the government is a super-majority shareholder, the government retains voting privileges.

Figure 5: Government Shareholding and Voting Rights
Data: All joint stock companies (N=416)



⁷ Voting shares might be restricted due to shareholder agreements, the type of shares (preferred shares) or might be perceived as non-voting shares because their owners have never exercised any voting rights attached to these shares.

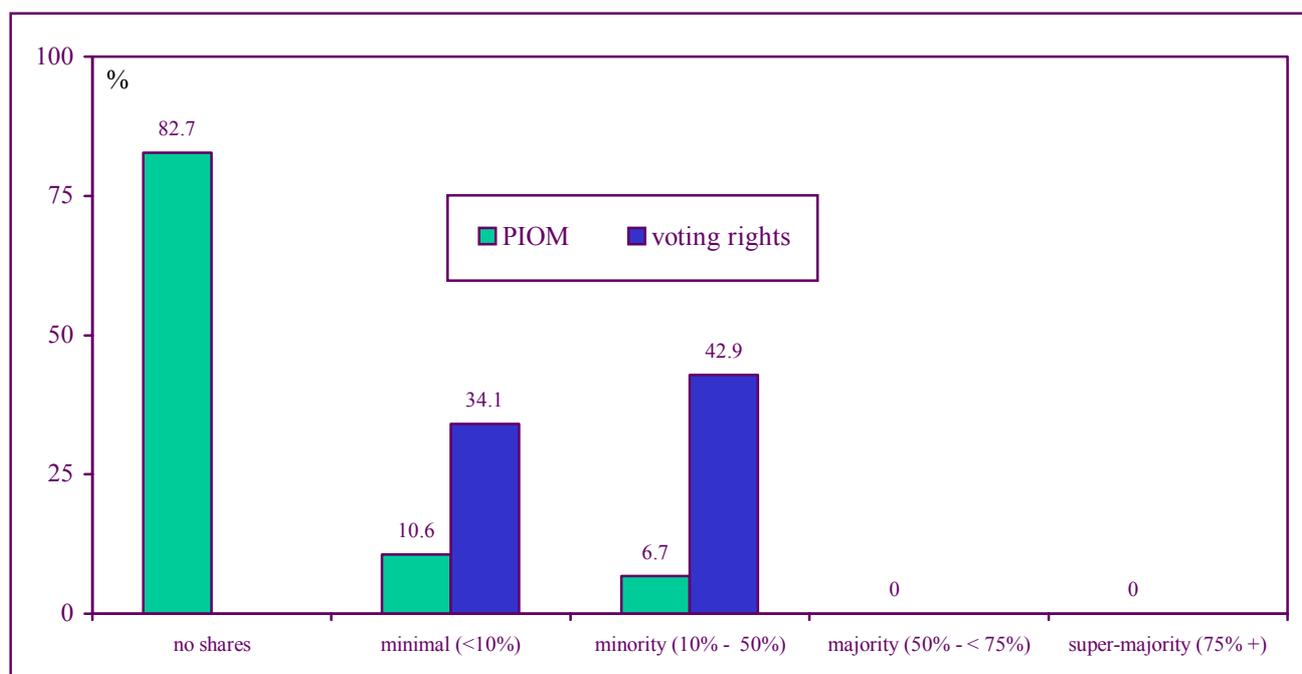
Shares Held by the Pension and Disability Insurance Fund (PIOM)

The retirement fund remains a limited equity investor at this time, retaining shares in only 17.3% of all joint stock companies. According to respondents, the PIOM often does not retain its voting rights.⁸ As such, it appears to play a limited role as an institutional investor in the governance of joint stock companies in Macedonia. The following list summarizes the number of shareholdings of the PIOM:

- Minimal shareholding (<10% of shares) - in 34.1% of minimum shareholding cases PIOM retains voting rights;
- Minority shareholding (10% - < 50%) - in 42.9% of minority shareholding cases PIOM retains voting rights; and
- PIOM does not retain 50% or more of the shares in any joint stock company.

Figure 6: PIOM Shareholding and Voting Rights

Data: All joint stock companies (N= 416)



Management, Non-Executive and Supervisory Directors and Their Shareholdings

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

⁸ Ibid, footnote 7.

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

Table 2: Shareholder Position of Management and Non-Executive Board Members

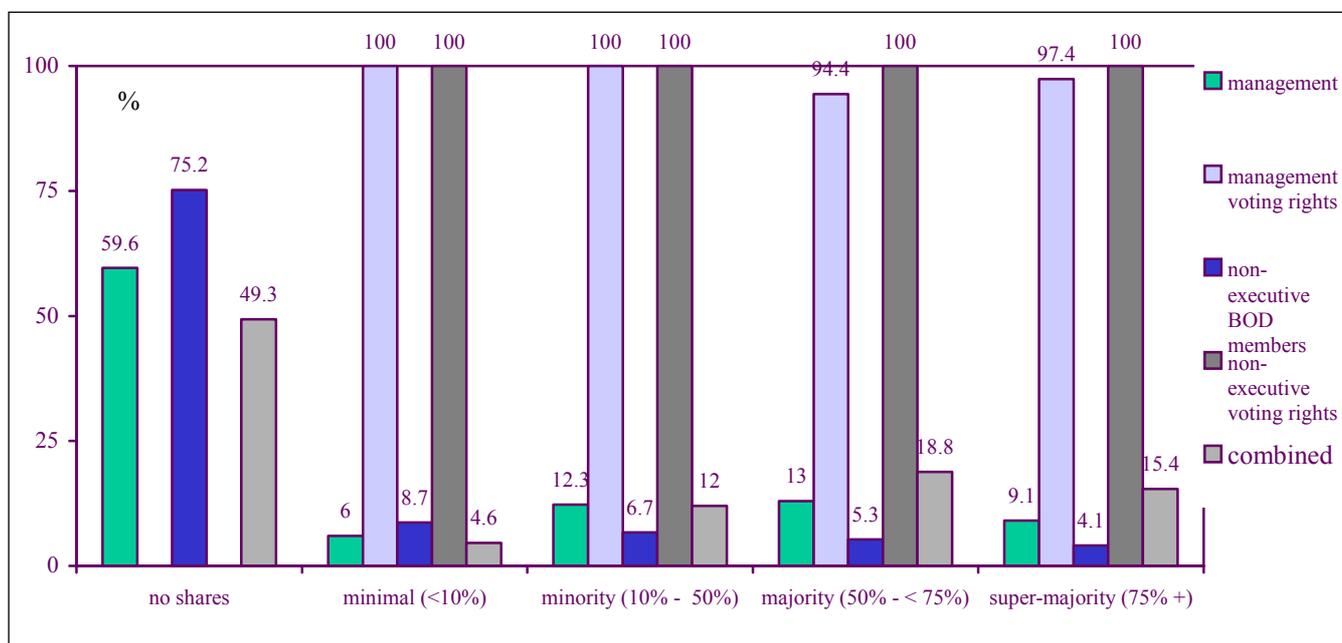
Data: All joint stock companies (N=416)

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

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

Figure 7: Shareholding and Voting Rights

Data: All joint stock companies (N=416)

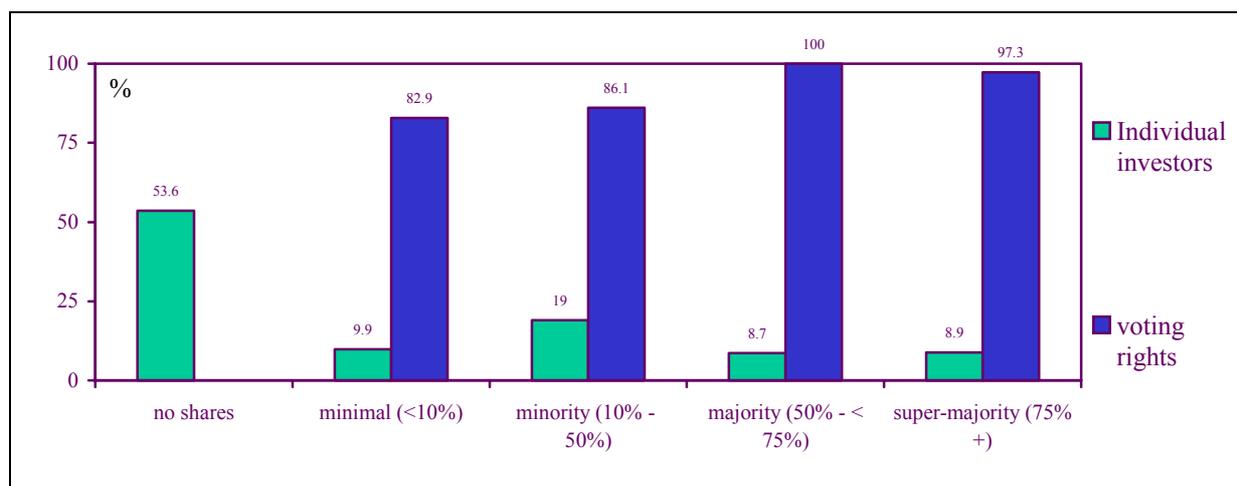


Individual Shareholders

Individual shareholders are defined as investors outside of the management, the board of directors or the supervisory board, who are not employees of the company and do not represent the shares held by the government. Overall, individual shareholders hold stock in 193 joint stock companies (46%). In 91% of these cases, the shares owned by individual shareholders retain voting rights. Loss of voting rights occurs primarily when they hold minor stakes in the company. Moreover, in almost all of the cases in which individual shareholders may not vote, these shares are preferred stock (89%).

Figure 8: Individual Shareholders and Voting Rights

Data: All joint stock companies (N=416)



Individual shareholders are more likely to hold a minority or a minimal stake in joint stock companies. Individual investors hold a majority stake in only 9% of all joint stock companies and a super-majority stake in another 9% of all joint stock companies.

The Extent of Shareholdings Among the General Population

Data from the general population survey shows that:⁹

- 80.5% of the adult population in Macedonia have never owned shares;
- 3.5% own less than 16 shares;
- 2.3% own between 16 – 50 shares;
- 3.4% own between 51 – 100 shares;
- 2.9% own more than 100 shares;
- 6.4% did not know / no answer; and
- 1.1% sold the shares they once owned.

⁹ Corporate Governance and Company Law Project, *Results from the Private Sector Attitudes Baseline Survey (June 2003)*.

The remaining 6% did not know, or did not answer the question. Clearly, share ownership is a limited phenomenon among the general population in Macedonia. Those who own shares of a joint stock company often are or have been an employee of that company.

The Extent of Shareholdings Among (Former) Employees

In nearly all cases, shareholding is associated with employment. Less than 20% of Macedonians own shares, and in nearly 91% of these cases, these shares are connected with their current or former employment. Of those who own shares:

- 39.6% own shares in the company they currently work for;
- 51.1% own shares in the company they used to work for; and
- Only 6.5% own shares in another company other than a current or former employer.

Employee shareholders are a prominent feature of joint stock companies. Of the total, 84% of joint stock companies have employee shareholders. The extent of employee shareholding varies widely among these companies:

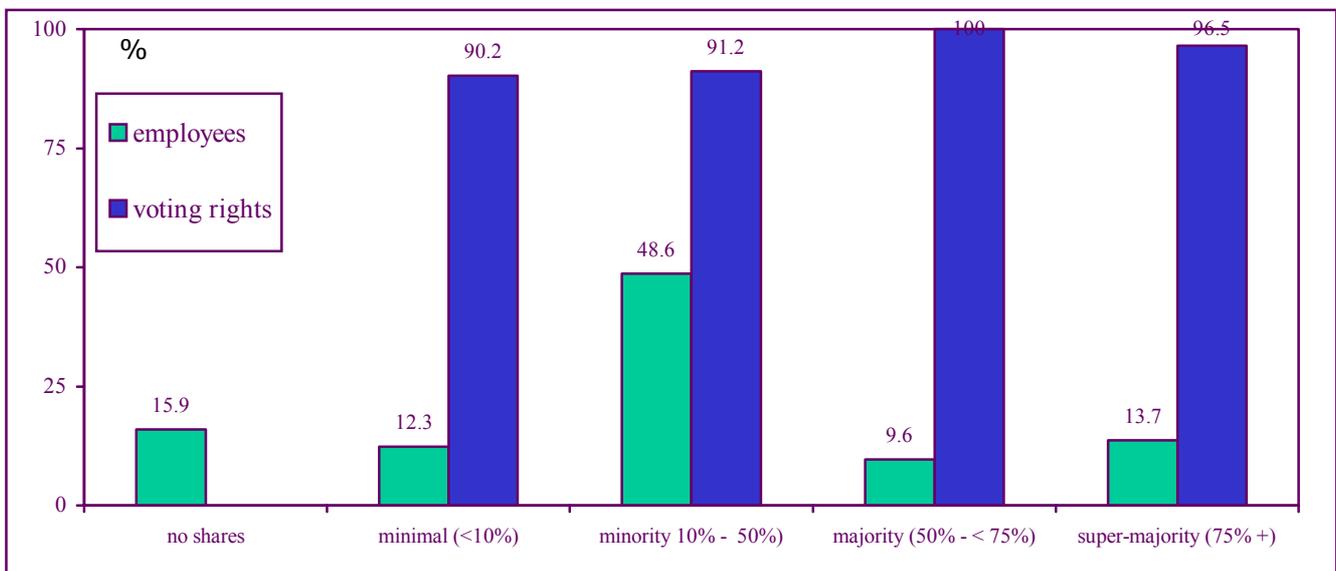
| Percentage of Companies | Percentage of Employee Ownership |
|--------------------------------|---|
| 12.3% | Employees have <10% of shares; |
| 48.6% | Employees have 10% - < 50%; |
| 9.6% | Employees have 50% - < 75%; and |
| 13.7% | Employees have 75%+. |

Eight out of every ten joint stock companies have employee shareholders. In over seven out of every ten joint stock company, employees (as a class) have at least a minority stake in the company.

3 ■ SHAREHOLDER RIGHTS

In nearly all cases, the ability of shareholders to use the rights attached to their shares is dependent upon whether the company has shareholder agreements in place (see next chapter). The figure below shows that in over 90% of joint stock companies with employee shareholders, these shares retain voting rights. In all cases where employees have a majority stake, they retain voting rights.

Figure 9: Employee Shareholding and Voting Rights
Data: All joint stock companies (N=416)



Although shares possessed by employees may retain voting rights, employees are relatively uninformed (and uninvolved) in exercising their rights as shareholders. In the general survey of adults, interviewers asked respondents to answer the following question:¹⁰

Can you tell me three of the most important rights you have as a shareholder?

The respondents who owned shares were not provided with a list or any cue to aid in answering this question. When asked about the rights attached to their shares, 32% could not answer the question. The percentage of respondents mentioning rights attached to their shares is as follows:

- Transferability (sell their shares) 55%;
- Vote and participate in decision making 37%;
- Receive an annual report 23%;
- Elect directors of the company 19%;

¹⁰ Corporate Governance and Company Law Project, *Results from the Private Sector Attitudes Baseline Survey (June 2003)*.

- To be notified of material changes in the operation of the company 13%; and
- Elect an outside auditor 2%.

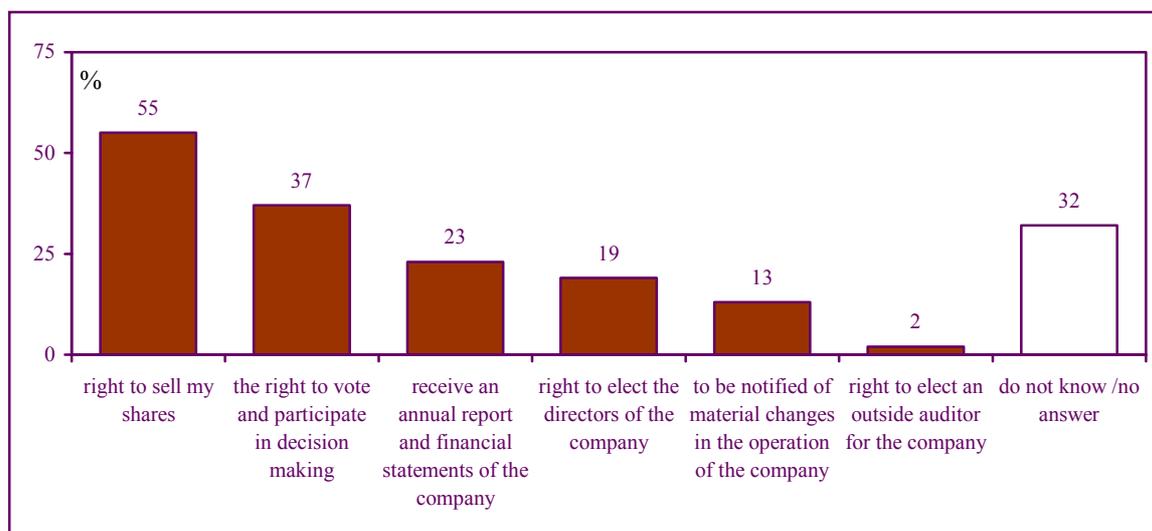
This list represents three different areas of rights:

- Free transfer of shares;
- Involvement in decision making during the general meeting of shareholders; and
- Supervision over financial details of the company through the election of an outside auditor and the approval of the annual financial statement during the general meeting of shareholders.

Less than a majority of shareholders surveyed in the general population were aware of their rights to be involved in the decision-making process. Relatively few are aware of their rights to receive financial information of the company in which they own shares. Only two percent of the shareholders could mention that they have the right to elect the outside auditor. Almost one-third of the shareholders could not mention a single right as a shareholder!

Figure 10: The Awareness of Shareholder Rights

Data: General population survey, shareholders past and present (N=139)



These data must be qualified in that they represent the opinions of shareholders drawn from a larger survey of the general population, rather than from the census data of joint stock companies.¹¹ Further, approximately half of these respondents no longer work for the company in which they own shares (as discussed above).

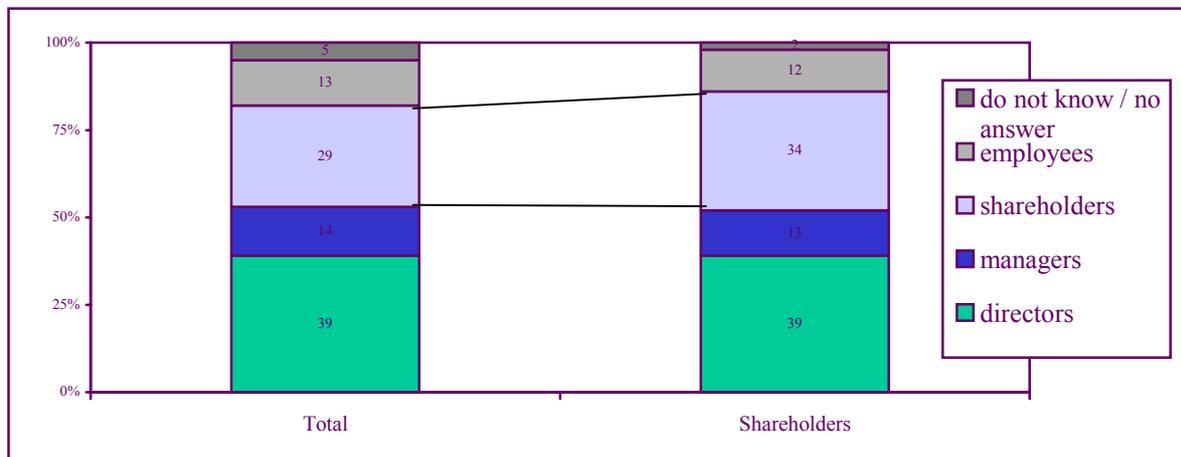
Shareholders do not understand their rights and their relationship to the joint stock company. Shareholders confuse their status and role with that of employees, managers and directors. This is seen in responses to the question in the following figure, asked in the general survey. Only 29% of the general population, and 34% of shareholders, correctly answered that

¹¹ Corporate Governance and Company Law Project, *Results from the Private Sector Attitudes Baseline Survey (June 2003)*.

shareholders are in the end the owners of a joint stock company. Shareholders are only slightly better informed of this than the public in Macedonia.

Figure 11: Who Are the Owners of Joint Stock Companies?

Data: General population survey (N = 800; N_{shareholders} =139)



The Extent and Influence of Shareholders

The census identified the following groups of shareholders:

- The government;
- Managers;
- Non-Executive members of the board of directors and supervisory directors;
- Individual investors;
- Employees; and
- The PIOM.

The four categories of shareholding are:

- Minimal stake: <10%;
- Minority stake: 10% - < 50%;
- Majority stake: 50% - < 75%; and
- Super-majority stake: 75%+.

In 12.7% of the joint stock companies, 90%+ of shares are held by a single group of shareholders. This may be the state, managers of the company or non-executive or supervisory board members. In another 1.4%, 90%+ of the shares are held jointly by the management and non-executive members of the board of directors or members of the

supervisory board.¹² Combining these two categories shows that in 14% of all joint stock companies, over 90% of the shares are held by a single type of owner or are held in partnership with the management. In these companies, less than 10% of shares are held by other shareholders. These companies only have minimal shareholders, a supermajority owner and no minority shareholders.

The remaining 82.5% of joint stock companies have shareholders with a minority position in the company (holding at least 10% of the shares). For these companies, an important point of interest is the influence held by the minority shareholders:

- In 104 joint stock companies, the influence of the minority shareholder is limited because minority shareholders have restrictions on their voting rights - this represents 25% of all joint stock companies; and
- In 239 joint stock companies, the influence of the minority shareholder is not limited by restrictions on their voting rights - this represents 57.5% of all joint stock companies.

To summarize, in 42.5% of all joint stock companies, the rights of the minority position is either restricted or there are no minority shareholders. Slightly more than half of all joint stock companies (57.5%) have shareholders holding a minority position and these minority shareholders have full voting rights.

A stricter test of the influence of the minority position is to identify the extent that companies have at least 25% of shares held by more than one shareholder outside of the management. This is because minority shareholders with at least 25% of shares are empowered to block decisions of the general meeting of shareholders that require a supermajority vote.

A 25% - 49% stake is held by:

- The government in 8.2% of joint stock companies;
- Management in 7.2%;
- The Board of Directors in 3.8%;
- Outside investors in 7.2%;
- Employees in 32%; and
- PIOM 0.2% of all joint stock companies.

In a majority of cases where shareholders hold between 25% - 49% of shares, these shares have no restrictions placed on their rights. The percentage of companies in which shareholders with positions in this range have unrestricted rights varies slightly by class of investor.

Government: in 59% of joint stock companies in which the government holds between 25% - 49% of all shares, these shares are unrestricted. In 35% of these companies, the shares are restricted. Not enough information was provided in the remaining cases.

Management: in 53% of joint stock companies in which management holds a 25% - 49% position, these shares are unrestricted versus 33% restricted. In another 10% of joint stock

¹² Not enough information on the shareholders is provided by 3.4% of the companies.

companies, management along with the Board of Directors holds over 80% of all shares. Management and the Board of Directors have super-majority status in these cases.

Board of Directors: in 75% of all joint stock companies in which the Board of Directors holds a 25% - 49% position, these shares are unrestricted versus 6% restricted. In another 19% of joint stock companies, the Board of Directors and management (together) hold over 80% of all shares.

Outside investors: in 70% of all joint stock companies in which outside investors hold a 25% - 49% position, these share are unrestricted versus 27% restricted.

Employees: in 66% of all joint stock companies in which the employees hold a 25% - 49% position, these shares are unrestricted versus 34% restricted.

PIOM: there is only 1 case in which PIOM has between 25% - 49% of shares, and in this case there are no restrictions placed on shares.

Nearly a third of all minority shareholders holding between 25% - 49% of shares have relatively low influence on the company (meaning their rights have been restricted). The influence of shareholders holding between 25% - 49% of shares is more likely to be restricted when the government is the largest shareholder (47% of cases) and when employees are the majority shareholders (36%) than when outside investors are in this position. In 15% of these cases where individual investors hold majority stakes in companies, shares are restricted for the minority investor. When managers hold a majority stake in companies, the minority shareholder's shares are restricted in 23% of these cases. The relevant percentage when members of the board of directors hold a majority stake is 9%.

4 ■ SHAREHOLDER AGREEMENTS

In nearly 25% (103) of all joint stock companies, shareholders have signed agreements transferring rights attached to shares. Of these:

- 18% are in companies in which the government has a majority or super-majority position;
- 17% are in companies in which the management and board of directors has the majority position;
- 9% are in companies in which individual shareholders have the majority of shares; and
- 28% are in companies in which employees have a majority or super-majority of shares.

In most cases (70%), a majority of the employees signed these agreements. Shareholder agreements were generally signed between 1992 - 2001 during the period of privatization. This accounts for 40% of all agreements among the joint stock companies in this census. Another 28% were signed in 2001, another 25% in 2002. Relatively few were signed in 2003. For the most part, shareholders signed these agreements at the same time (80%). The majority of the agreements (62%) will expire at the same time. The largest group of agreements will expire in 2006. Although the duration of shareholder agreements was not measured by the census, a limit of 5 years is imposed by the Law on Obligations.

In signing the agreements, the shareholders gave to management the right to vote during Annual Meetings of Shareholders in 71% of the companies where agreements were signed. Other rights given to management include the right to appoint members of the board of directors (4.9%) and the right to transfer (sell or assign) their shares (6.8%).

Renewal of Shareholder Agreements

The agreements also restrict other rights not specifically mentioned in the interviews. A majority of the joint stock companies intend to seek renewal of these agreements when they expire:

- 34% "very likely";
- 18% "somewhat likely";
- 11% "somewhat unlikely";
- 29% "very unlikely"; and
- 9% 'do not know'.

Reasons For and Against Shareholder Agreements

Of the pool of respondents, 313 joint stock companies did not sign shareholder agreements with their shareholders. The main reason most companies did not request their shareholders to sign agreements is because “there is no need for them,” according to 36% of those companies that do not have agreements. Other frequent reasons for not having shareholder agreements include:

- The shares are held by few shareholders 11%;
- The company did not consider this when restructuring the company 6%; and
- Employees did not want to be represented by another person 5%.

Many company representatives (20%) did not give a reason for not asking shareholders to sign these agreements.

Of the total, 103 joint stock companies did sign shareholder agreements. Many directors (and other respondents included in this survey) believe that shareholder agreements improve the efficiency of management and the workplace. Employees are asked to sign shareholder agreements because they:

- Provide for better management of shares 31%;
- Make for a more efficient workplace 32%; and
- Protect shareholders from hostile takeovers 3%.

Others could not or would not state a reason (20%).

Shareholder Agreements and the General Population

The general population survey provides additional data on shareholder agreements.¹³ According to this survey, 41% of shareholders have signed shareholder agreements. This number represents 7% of the total population according to the survey. All together:

- 21% of these shareholders signed agreements between 1991 – 1999;
- 18% were signed in 2000;
- 14% were signed in 2001;
- 19% were signed in 2002; and
- 12% were signed in 2003.

¹³ Corporate Governance and Company Law Project, *Results from the Private Sector Attitudes Baseline Survey (June 2003)*.

The remaining 16% do not remember when they signed these agreements. Of the total, 63% do not know when the agreements will expire. We also asked respondents in the general survey:

How likely is it that you will renew the contract [shareholder agreement]?

The results indicate the following:

- 18% “very likely” to renew the contract;
- 33% “somewhat likely”;
- 10% “somewhat unlikely”;
- 26% “very unlikely”; and
- Another 12% do not know.

The general population survey contained relatively few shareholders, and of these 41% had signed these agreements. The survey asked reasons why shareholders would or would not renew the contracts. Given the low number of respondents fitting these criteria, the responses lack statistical significance. The general pattern shows that the main reason to renew shareholder agreements is general satisfaction or trust in the performance of the company. The main reason respondents may not renew the contracts is lack of trust in the company, or personal reasons they did not specify.

Government Ownership and Shareholder Agreements

There is no clear relationship between government ownership of the company and shareholder agreements. The overall rate for shareholder agreements is just under 25% of all companies. Those companies in which the government holds a majority stake are more likely than the average to have shareholder agreements. However, in those few cases in which the government holds a super-majority stake, the percentage of companies with shareholder agreements in place drops. The data on the influence of government majority and super-majority ownership of shares is not sufficiently clear to determine whether or not minority shareholders are especially vulnerable when the government holds a majority stake in the company.

Table 3: Government Ownership versus Shareholder Agreements

Data: All joint stock companies (N=416)

| Shareholder agreements? | Extent of Government ownership | | | | | Total |
|-------------------------|--------------------------------|---------|----------|----------|----------------|-----------|
| | None | minimal | minority | majority | Super-majority | |
| Yes | 22% | 17.6% | 30% | 40% | 31.3% | 103 (25%) |
| No | 78% | 82.4% | 70% | 60% | 68.8% | 307 (75%) |
| <i>Total count*</i> | 191 | 68 | 100 | 35 | 16 | 410 |

* 6 companies did not answer the question regarding shareholder agreements.

5 ■ AWARENESS OF THE 1996 COMPANY LAW

A new company law was passed by Parliament on April 30, 2004. Different versions of the revised company law were still under debate during the summer months of 2003, throughout the period that interviewers met with companies for the census. The data collected at that time showed that many companies were relatively uninformed about developments in the company law and the proposed changes to the company law released prior to the start of USAID's CG&CL project. The data also reveal the at that time lack of involvement of companies in the debates over the new company law. Lack of knowledge about the issues and other key concepts relating to the private sector appeared to be widespread among the public as well. A small group from the public and from shareholders was more aware of the developments in the company law and supported the proposed changes to the law. However, even shareholders appeared to be poorly informed about their role in the governance of their joint stock companies.

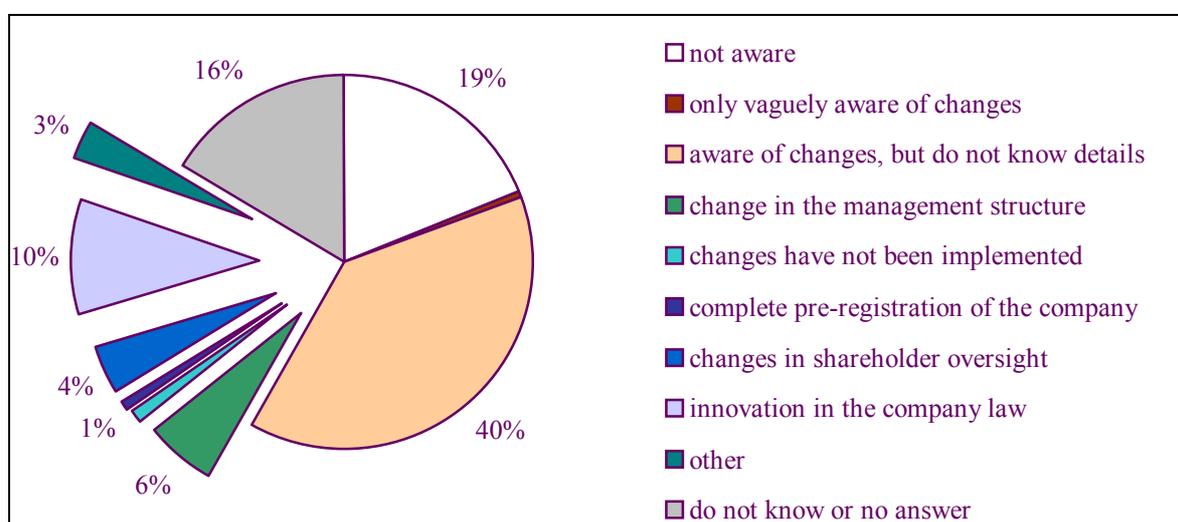
Awareness Among Companies of Changes to the Company Law

A majority of companies had little knowledge of the proposed changes to the company law when they were surveyed in June and August 2003:

- 35% did not know anything about changes in the company law under review (16% "did not know" and 19% were not aware of this discussion);
- 40% knew that changes were under discussion, but had no knowledge of the details; and
- Only 25% could mention at least one of the proposed changes to the company law.

Only 25% could mention any of the revisions. These respondents mentioned changes in the management of shares and the process by which companies are registered.

Figure 12: Awareness Among Companies of Changes in the Company Law
Sample: All joint stock companies (N=416)



Awareness of New Developments in the Company Law and Attracting Finance

Awareness of the company law is arguably more important for those companies that will come under external review from foreign investors. Among companies seeking foreign external investment:

- 33% had little or no knowledge of developments in the company law;
- 43.5% were aware of developments in the company law, but not of the details; and
- 30% were aware of some of the details.

In comparison, among those companies that have no plans for external investment:

- 37.9% had little or no knowledge of developments in the company law
- 39.1% had limited awareness; and
- 23% were aware of some of the details.

Companies seeking only domestic external investment were nearly identical to those not seeking external investment in their level of awareness of developments in the company law.

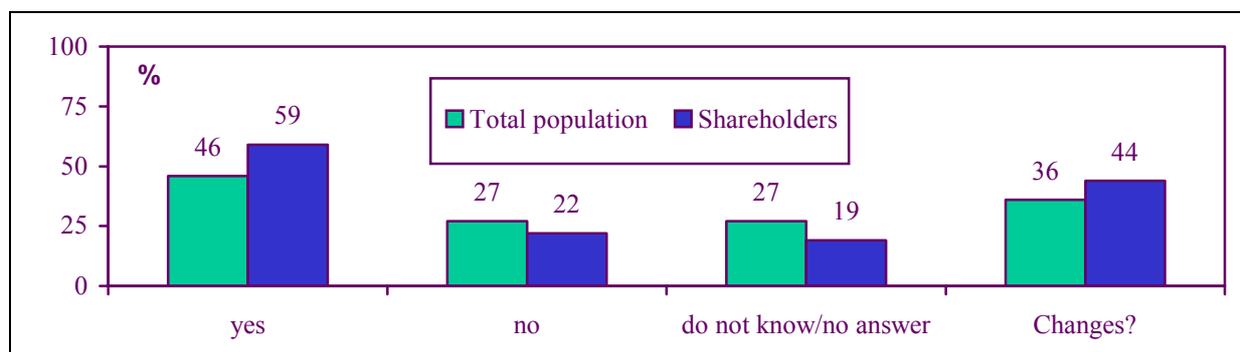
These results show that companies seeking foreign external investment were only marginally better informed than other companies in their understanding of changes to the company law. The difference between these two categories among companies with the highest level of awareness is only seven percentage points.

Awareness Among Shareholders of the Company Law

This next section presents findings from a general population survey on how well informed adults in Macedonia were about the market economy and proposed changes to the company law in 2003.¹⁴ The survey is representative of all adults in Macedonia, eighteen years of age and older. According to this data, less than one-half of the adult population was aware that Macedonia has a company law. Only one-third of those aware of the law, knew that there had debates over the company law. The good news is that shareholders (who have a stake in these issues) were more aware than the general public about the debates at that time.

¹⁴ Corporate Governance and Company Law Project, *Results from the Private Sector Attitudes Baseline Survey (June 2003)*.

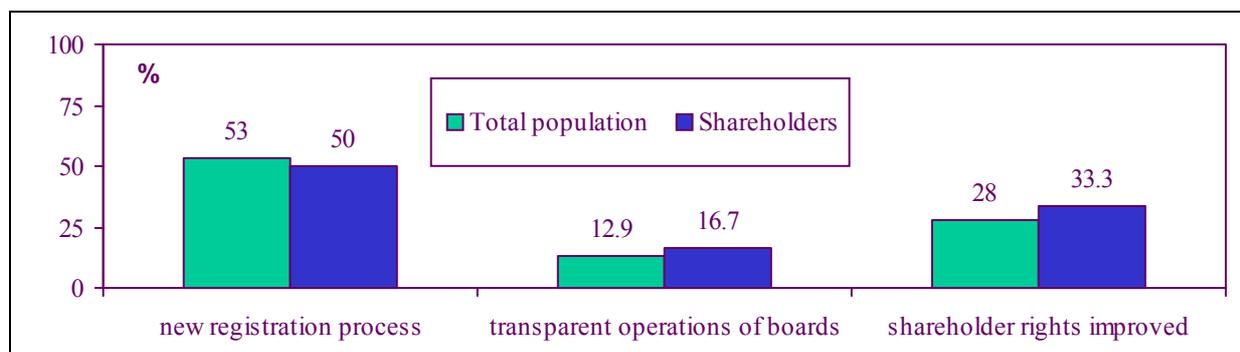
Figure 13: Does Macedonia Have a Company Law?
Data: General population survey (N = 800; N_{shareholders} =139)



In total 372 out of 800 respondents knew Macedonia has a company law. Of these, 36% knew about the debate over changes in the law. Respondents who own shares had a higher level of awareness of the debates over revisions to the company law (44%). Changes shareholders knew included:

- New registration process – among those aware that the company law will be changed, 53% of the general population, and 50% of the shareholders, mentioned this;
- More transparent operations of company boards – 13% of the total population, 17% among shareholders; and
- Shareholder rights – 28% of the total population, 33% among shareholders.

Figure 14: What Changes in the Company Law Are You Aware Of?
Data: Those aware of changes in the Company Law (N = 132; N_{shareholders} =96)



The Impact of Changes to the Company Law

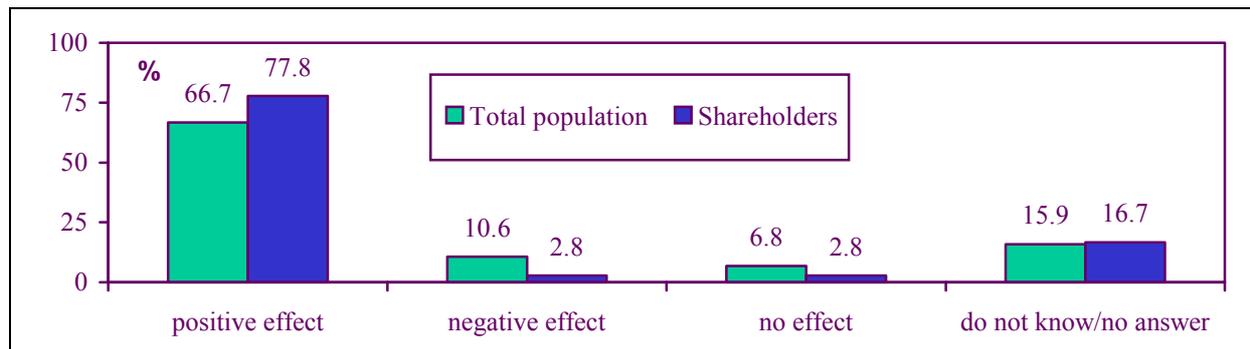
Among those aware of the changes:

- 67% believed changes in the company law will have a positive effect;
- 11% believed the revisions will have a negative effect;
- 7% did not believe this will have any effect; and
- 16% did not answer the question.

Shareholders were more positive than others about the overall effect on the economy from revisions to the company law. Shareholders were also better informed about the company law and the debate over revisions than others in the general population survey. They were particularly aware that new revisions concern the transparency in how the board of directors operates and stronger rights for shareholders. Shareholders were much more positive about these proposed changes than others. Presumably, shareholders were more aware than others of issues concerning the company law because it directly concerns them.

Figure 15: Do You Believe Changes to the Company Law Will Be Positive or Negative for the Economy

Data: General population survey (N = 800; N_{shareholders} =139)



6 ■ DECISION MAKING AND COMPLIANCE WITH THE 1996 COMPANY LAW

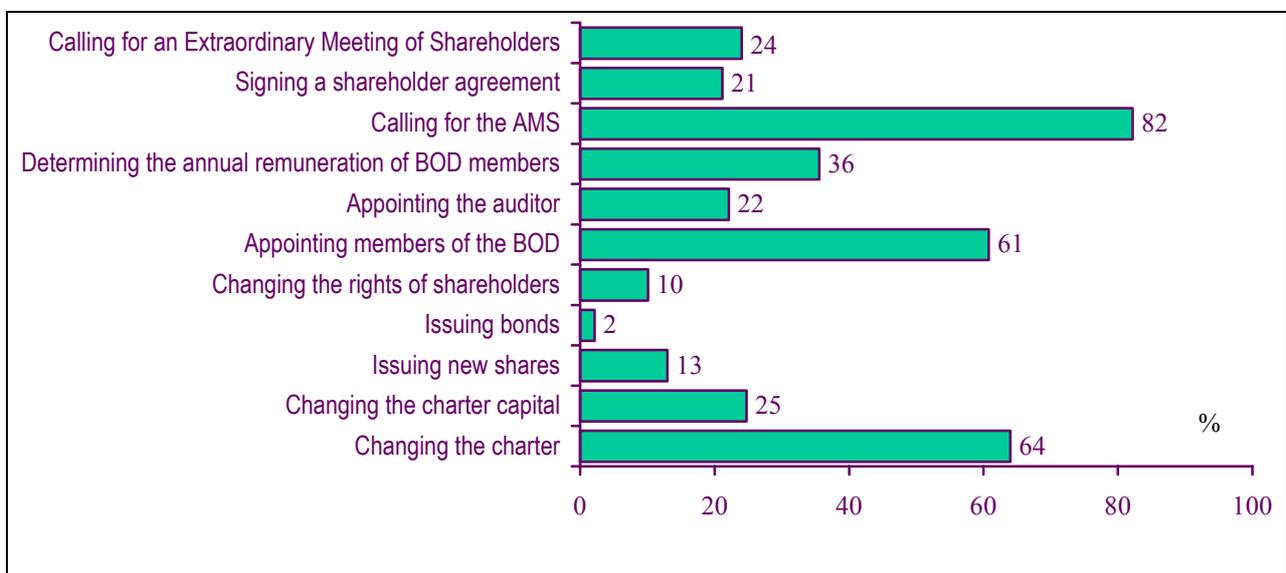
The representatives of joint stock companies were asked about decisions that were made by their companies in the previous five years. Respondents indicated which decisions their companies had made from a list provided to them in the interview. The representatives were also asked which company bodies were responsible for approving each of the decisions they made as a means to measure compliance with the company law.

Decisions Made by Joint Stock Companies

Decisions made most frequently in the previous five years include:

- Calling the Annual Meeting of Shareholders – 82% of joint stock companies;
- Changing the charter – 64%; and
- Appointing new members to the board of directors or supervisory board – 61%.

Figure 16: Types of Decisions Made by Companies in the Previous 5 Years
Sample: All joint stock companies (N=416)



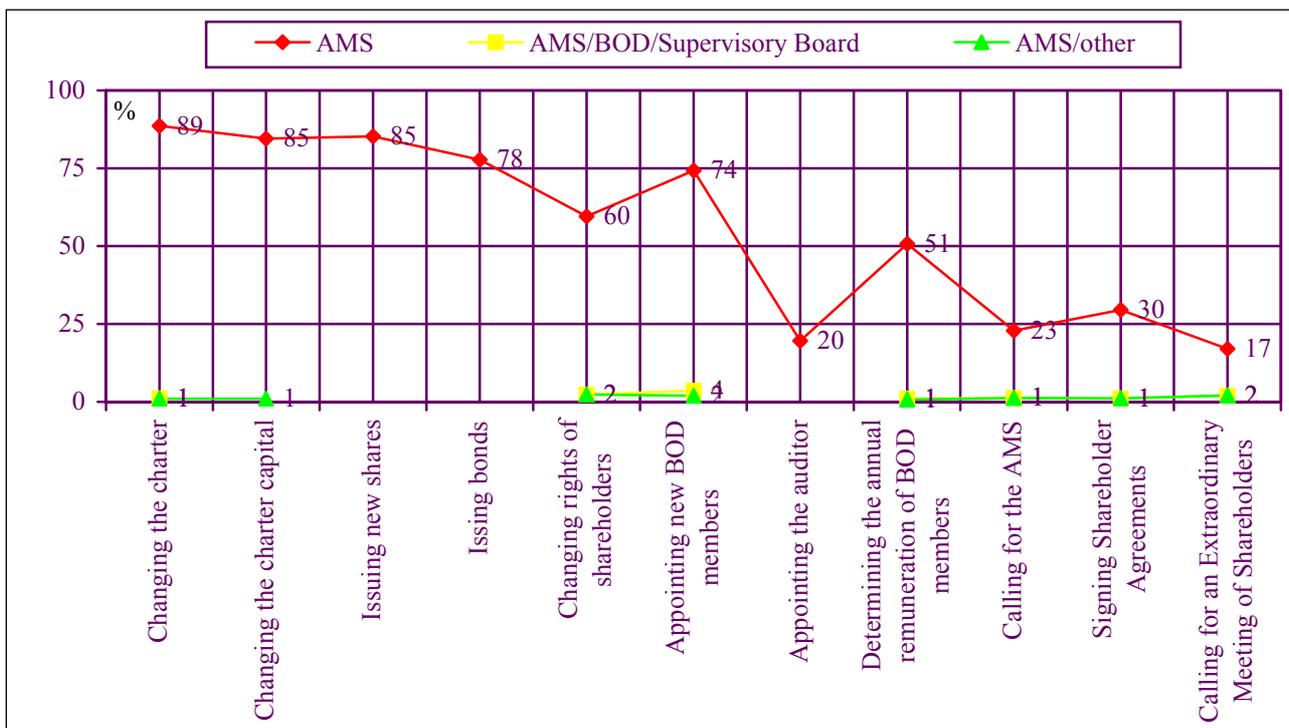
The general meeting of shareholders approved in a majority of the companies the following decisions:

- Changing the charter;
- Changing the charter capital (a decision made by few companies);
- Changing the rights attached to shares;
- Issuing new shares or bonds (decisions made by few companies);
- Appointing new directors to the board of directors or supervisory board; and
- Determining the annual remuneration of members of the board of directors or supervisory board.

Other decisions were not approved by the general meeting of shareholders in a majority of companies:

- Signing Shareholder Agreements;
- Calling general meetings of shareholders (annual and extraordinary); and
- Appointing the external auditor.

Figure 17: The Percentage of Decisions Approved by the General Meeting of Shareholders in the Previous 5 Years
 Sample: All joint stock companies (N=416)



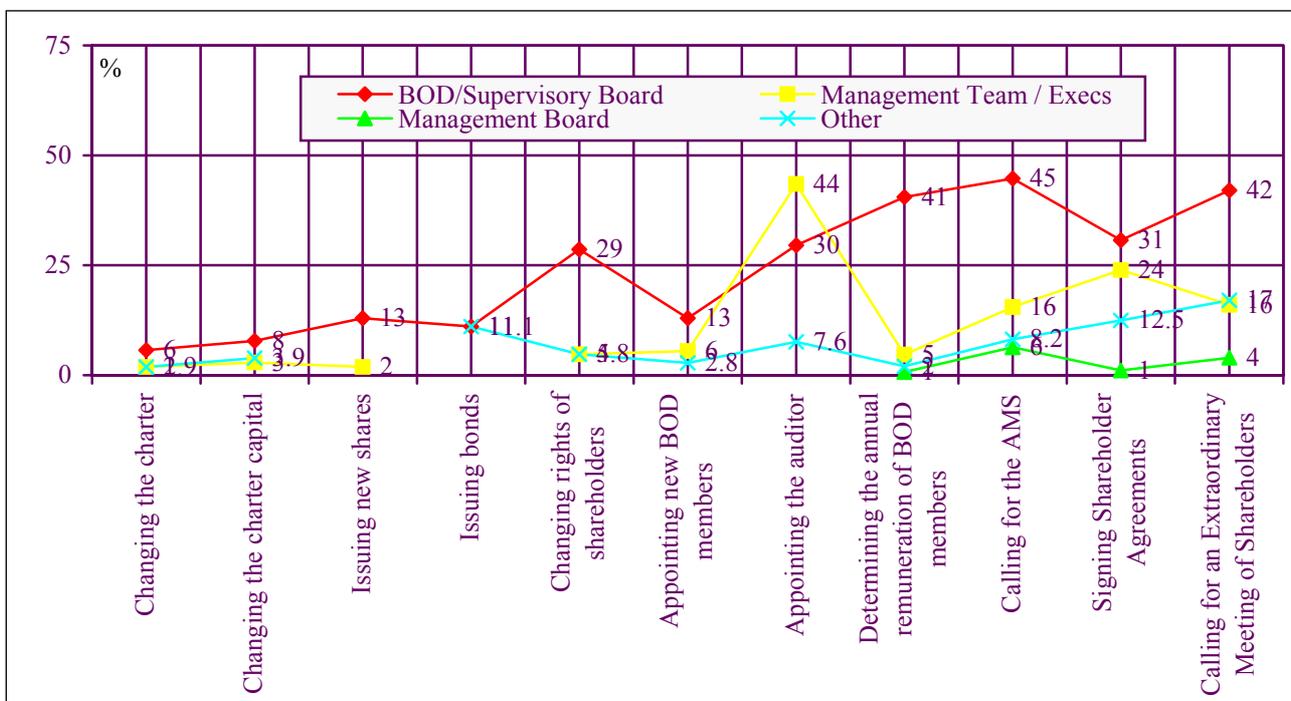
Decisions and Compliance with the Company Law

The census evaluated joint stock companies' current corporate governance practices against the 1996 company law that was in force at that time. Compliance with the law is determined by whether the general meeting of shareholders gave necessary approvals.¹⁵ A great majority of the decisions that must be made by the general meeting of shareholders were indeed made by the meeting according to the respondents. A majority of the companies had changes made in the charter and the charter capital, issued shares and bonds, and appointed directors when this was approved by the general meeting of shareholders.

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

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

Figure 18: The Percentage of Decisions Approved by Other Bodies of the Company in the Previous 5 years
Sample: All joint stock companies (N=416)

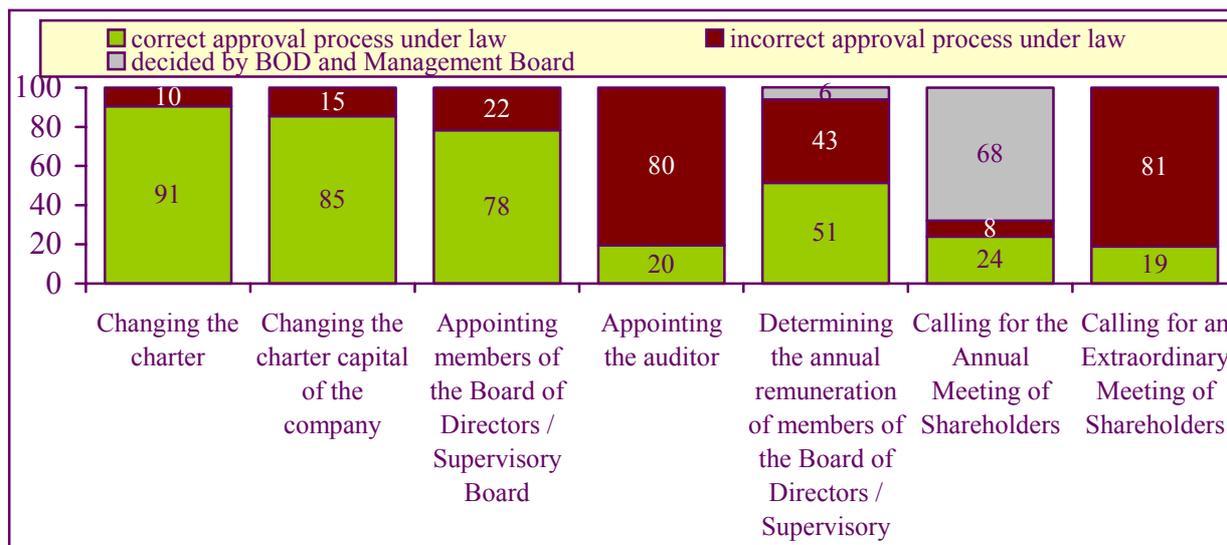


¹⁵ Other aspects of the decision-making process were not taken into consideration, such as quorum, notification and other requirements when these decisions were made.

Not all decisions must be made by the general meeting of shareholders. The general meetings of shareholders (annual and extraordinary) are never called by the meeting but by shareholders, the management, or the board of directors or supervisory board. Shareholder meetings were called by the board of directors or supervisory board (45% for the Annual Meetings of Shareholders; 42% for extraordinary meetings among the few companies that called for them). The management team along with the executive directors of the board of directors called the meetings in 16% of companies.

Figure 19: Evaluation of Decision-Making Under the 1996 Company Law

Data: All joint stock companies (N = 416)



Companies Seeking Foreign Investment and Compliance

The general meeting of shareholders of a large percentage of companies seeking foreign investment made three major decisions in compliance with the law:

- Changing their company charter 91%;
- Election of new members of the board of directors 77%; and
- Changing the charter capital 84%.

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

- Only 21% followed the correct procedure in appointing the external auditor by having the Annual Meeting of Shareholders approve this decision;
- 54% of companies seeking foreign investment followed the correct procedure when determining the annual remuneration of members of the board of directors or supervisory board;
- Only 76% of companies seeking foreign investment have held an Annual Meeting of Shareholders for 2003 as of July of that year (6.5% of companies seeking foreign

investment have never held Annual Meetings of Shareholders or 'do not know' if they have); and

- Only between 50% - 63% of the companies correctly notified shareholders of the Annual Meeting of Shareholders. Between 31% - 40% of the companies notified shareholders less than 21 days before the meeting in companies seeking foreign investment. However, the agenda was correctly sent along with the notification of the Annual Meeting of Shareholders in 96% of all joint stock companies.

Corporate Governance and State Ownership

Another concern stated in the OECD White Paper on Corporate Governance for South Eastern Europe is the corporate governance practices of companies in which the government is a majority shareholder. The data from Macedonia shows that the government has great opportunities to implement internationally accepted corporate governance standards in companies given its ownership interest in many Macedonian companies.

Most companies followed correct procedures for some key decisions, but some did not for other decisions:¹⁶

- Correct procedures were followed in deciding on changing the charter in 91% of cases where the government has a majority position, and in 75% of cases where it is the super-majority;
- Correct procedures were followed in the decision to change the charter capital in 75% of the cases where government holds a majority position. There is only one company in which the government holds a super-majority and the company decided to change the charter capital. The correct procedure was followed in this case;
- The decision to issue new shares was incorrectly decided upon in 56% of companies where the government holds a majority position. There is only one case where a company in which the government holds a super-majority issued new shares. In this case, the correct procedure was followed;
- The decision to change the rights attached to shares was incorrectly decided upon in 50% of cases where the government holds a majority share. In the one case where the government holds a super-majority position in a company that changed the rights attached to shares, the correct procedure was not followed;
- The selection of new members to the board was done correctly in 77% of companies where the government holds a majority position, and in 91% of cases where the government has a super-majority;
- Deciding upon the annual remuneration of board members was done incorrectly in 77% of companies where the government holds a majority position, and in both cases where the government is a super-majority and this decision was taken;
- Appointing the external auditor was incorrectly decided upon in 81% of companies where the government holds a majority position and in the one case where the government is a super-majority and the company appointed a new auditor;

¹⁶ These refer to circumstances that the general meeting of shareholders should approve decisions according to international corporate governance standards.

- Shareholders were notified less than 21 days before Annual Meeting of Shareholders in 11% of companies where the government holds a majority position, compared to 23% of companies where the government is the super-majority. In 17% of the cases where the government holds a majority position, the correct procedures were not followed for notifying shareholders of the Annual Meeting of Shareholders. This compares to 50% of companies where the government has a super-majority;
- The agenda was distributed correctly in nearly all cases where the government holds a majority (94%). This was less true where the government is a super-majority (69% correct);
- Less than 50% of shareholders attended the previous Annual Meeting of Shareholders in 34% of companies where the government is a majority. In 26% of these companies, at least 50% of the shareholders were represented by proxy at the last Annual Meeting of Shareholders. However, 57% of these companies did not answer this question or did not know the answer; and
- In 8% of companies where the government holds a super-majority, less than 50% of shareholders attended the last Annual Meeting of Shareholders. For 8% of these companies, a majority of shareholders were represented by proxy at the last Annual Meeting of Shareholders. Again, most companies (69%) did not answer this question.

7 ■ THE GENERAL MEETINGS OF SHAREHOLDERS

According to the 1996 company law, joint stock companies must hold an Annual Meeting of Shareholders not earlier than two months after the end of the fiscal year and not later than the end of May following the end of the fiscal year. In total, 62% of the joint stock companies have held an Annual Meeting of Shareholders at least once a year in the previous five years. In contrast, 29% of companies have held less than one per year and 6% have held no Annual Meeting of Shareholders (the remaining 2.4% did not answer the question).

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

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

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

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

Table 4: Percentage of Joint Stock Companies That Did Not Hold the Annual Meeting of Shareholders in 2003 By Status of Minority Position

Data: All joint stock companies (N=416)

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

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

FIGURE 20. Which shareholders are notified

Base: JSCs that held AMS (N = 390)



FIGURE 21. Method of notifying shareholders of AMS

Base: JSCs that held AMS (N = 390)

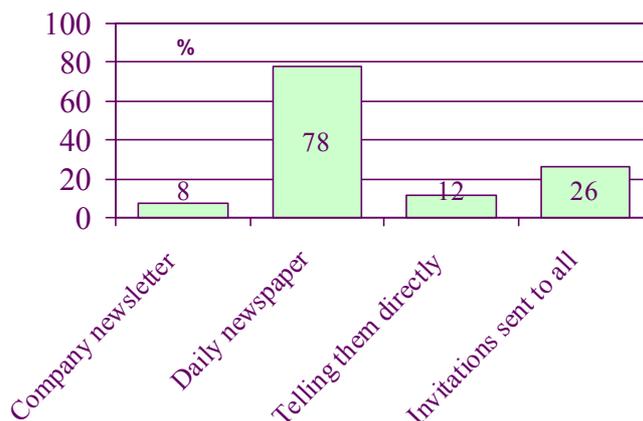
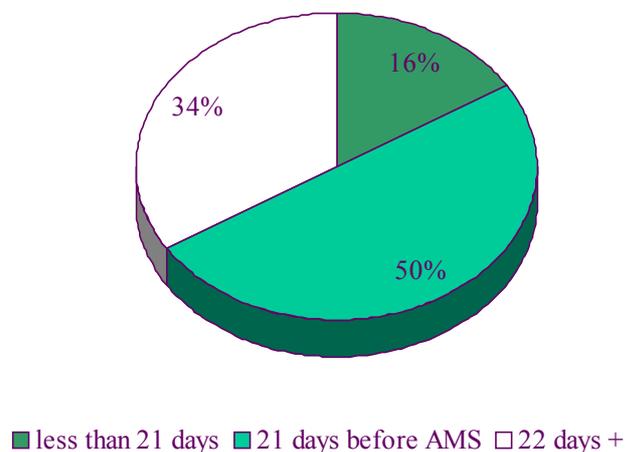


FIGURE 22. Days before AMS for notification

Base: JSCs that held AMS (N = 390)



Compliance with the Company Law

Companies generally organize their Annual Meeting of Shareholders in accordance with the 1996 company law. This is verified in the manner they notify shareholders of the Annual Meeting of Shareholders. Nearly 95% of the 390 joint stock companies that held an Annual Meeting of Shareholders notified all their shareholders of the annual meeting. In most cases, companies placed notifications of the annual meeting in daily newspapers (78%). Of those surveyed, 50% of the companies notified shareholders at least 21 days before the meeting (in compliance with the law), and another 34% did so well in advance of this, 22 days before or more. Only 16% failed to notify their shareholders according to the legally specified period.

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

Other findings are also positive:

In nearly all joint stock companies that hold the Annual Meeting of Shareholders, the agenda is provided along with the notification of the meeting (95%).

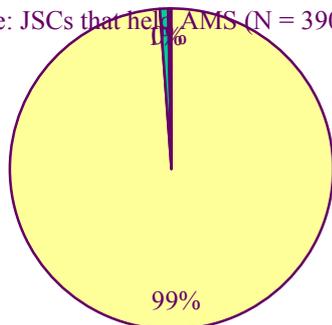
Shareholders may ask the company to add additional items to the agenda (92%).

Shareholders ask questions during the meetings and vote in nearly 99%.

Nearly all joint stock companies that held the Annual Meeting of Shareholders kept minutes of the meeting.

FIGURE 23. Were minutes taken during AMS?

Base: JSCs that held AMS (N = 390)



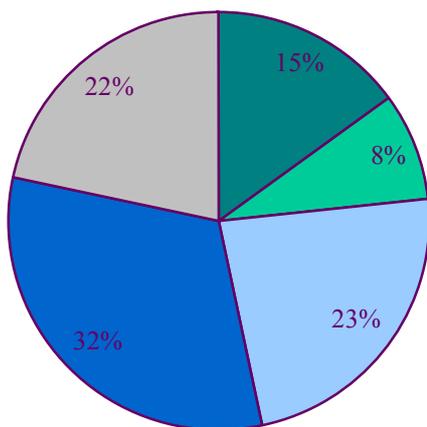
- Yes
- No
- do not know/no answer

However, this does not mean that all shareholders received these minutes. Figure 24 shows that many shareholders do not have firm expectations concerning the minutes for these meetings. A majority of shareholders (54%) rarely or never ask to receive copies of the minutes. Another 23% sometimes do. In total, 85% of the shareholders do not request the minutes as an expected and normal procedure following the annual meeting.

Reasons for this could be that shareholders are not aware of the importance of receiving these minutes or that they do not know they have the right to receive minutes. It may also mean that receiving minutes is not a standard practice or expectation for shareholders.

FIGURE 24. Do shareholders ask for minutes?

Base: JSCs that held AMS (N = 390)



- always
- usually
- sometimes
- rarely
- never

Quorum¹⁷

Over the previous 5 years, 26 companies did not hold any Annual Meeting of Shareholders. Another 10 'do not know'. The remaining 380 companies held annual meetings in at least once over the previous 5 years. Among these companies, nearly half of all shareholders (47%) "always attend." The remaining half (47%) "usually attend." In only 6% of the companies shareholders "usually do not" or "never" attend the annual meetings. This finding has to be considered along with the question of representation by proxy. Among those companies holding the annual meeting (380), the number of shareholders represented by proxy is:

| | |
|-----------|---------|
| < 50% | 14%; |
| 51% - 75% | 9%; and |
| over 76% | 11%. |

The most important data from this question is the high number of companies that chose not to answer it, 65%, the highest rate of item non-response in the survey.

¹⁷ Data from the Corporate Governance and Company Law Project, Results from the Private Sector Attitudes Baseline Survey (June 2003) asked shareholders about the effectiveness of Annual Meetings of Shareholders. Of the 139 respondents who own shares, 78% state they have not attended an Annual Meeting of Shareholders in the previous two years. Most (70%) stated they "were not getting the information they need to understand the duties and privileges of being a shareholder." And, 88% stated they are interested in receiving this information.

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

The Effectiveness of Annual Meetings of Shareholders

The respondents were asked to evaluate the effectiveness of Annual Meetings of Shareholders. Many report that these meetings are "very effective," (55%). Another 38% state they are only "somewhat effective," and 3% "not very effective." Among the 390 companies that held the Annual Meeting of Shareholders, 363 gave positive evaluations because the Annual Meeting of Shareholders is:

- An effective way of oversight and review of the issues and problems faced by the company;
- An effective decision making body; and
- Well organized and effective.

The main reason that the Annual Meeting of Shareholders is not effective, among the few who gave negative evaluations, is that shareholders lack interest and competence.

Despite this finding, directors of the joint stock companies included in this research place low levels of importance in providing training for shareholders. When they were asked to rate the importance of a list of services and products to be developed on corporate governance practices, directors indicated that trainings for shareholders:

- Has "little importance" 29%;
- Is "somewhat important" 33%; and
- Is "very important" 33%.

The remaining 4% did not have an answer to the question. When asked which services companies are willing to pay for, 91% stated they are unwilling to pay for such trainings.

8 ■ THE BOARD OF DIRECTORS

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

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

Profile of Board Members in One-Tier Boards of Directors

Overall, 92% of all joint stock companies with one-tier boards of directors have 1 – 3 executive directors. Most have 1 – 3 non-executive directors (49%) or 4 – 7 non-executives (43%). For many companies, the One-tier board of directors has 4 – 7 members (81%).

Table 5: Total Number of Board Members

Sample: One-tier boards (N=170)

| Total number of Board Members | Number of joint stock companies | % |
|-------------------------------|---------------------------------|-----|
| At least five | 148 | 87 |
| 6 | 80 | 47 |
| 7 | 66 | 39 |
| 8 | 19 | 11 |
| 9 | 16 | 9 |
| 10 | 6 | 3.5 |
| 11 | 3 | 1.8 |
| 12 | 4 | 2.4 |

A typical pattern emerges for most of the companies. Of those surveyed, 87% of the joint stock companies with one-tier boards have at least five board members. For most joint stock companies:

- 9% of the board members were appointed before 1998;
- 34% were appointed between 1998 – 2000;
- 38% were appointed between 2001 – 2000; and
- 11% were appointed in 2003.

Executive members are not appointed by the employees in approximately 59% of the companies. One executive member is appointed by employees in 24% of the companies. Employees appoint more than two executive members to the board in 18% of the companies.

Non-executive members are not appointed by employees in 59% of the companies. However, in 34% of the companies, employees elect two or more non-executive members to the board. In the remaining 8% of the companies, employees elect one member to the board. In half of the companies (52%), employees do not elect any of the board members, either executive or non-executive.

Further characteristics of the board members are displayed in the figure below. Board members are rarely suppliers or consultants to the company, the external auditor, or family members of directors of the company among companies with one-tier boards. In 69% of the companies, board members are shareholders of the company. In 62% of the companies, employees are on the board of directors. This does not necessarily mean that employees elect the employee representatives on the board.

Figure 25: Characteristics of Members of the Board of Directors

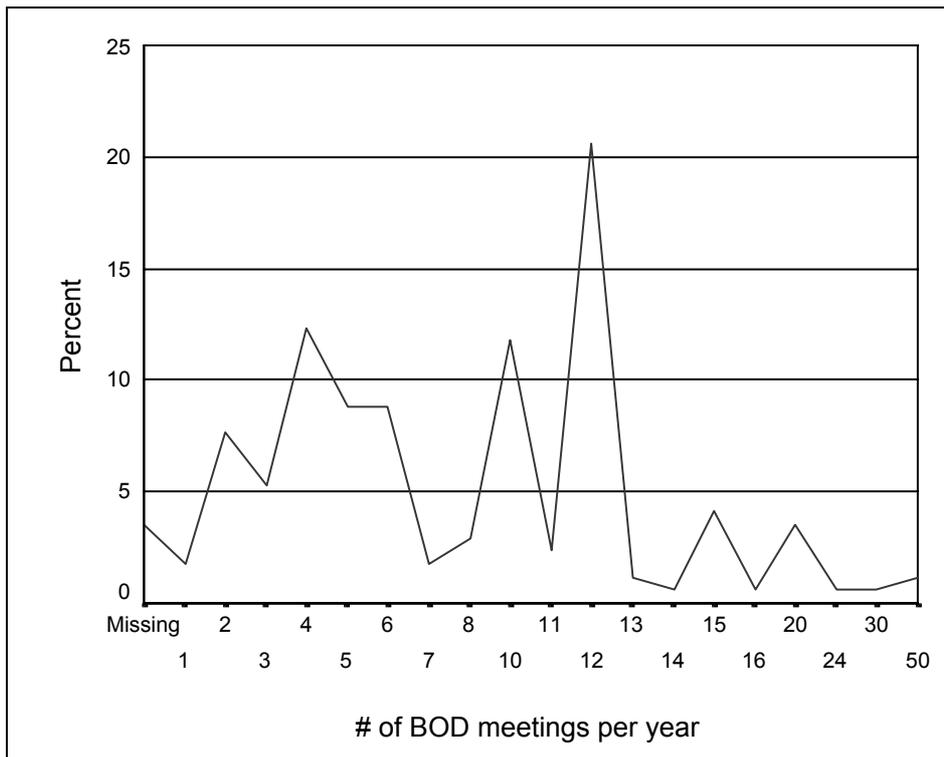
Sample. One-tier boards (N =170)



Meetings of One-Tier Boards

On average, one-tier boards of directors meet nine times a year. In 43% of the companies, the board meets 2 – 7 times a year, and in 39%, the board meets 7 – 12 times a year. The board meets monthly in 21% of all companies with one-tier boards. The frequency of board of directors meetings is displayed below.

Figure 26: Frequency of Board of Directors Meetings Each Year
Sample: One-tier boards (N=170)



On average, board meetings last:

- One hour 19% of companies with one-tier boards;
- Two hours 51%; and
- Three + hours 29%.

There is no relation between the number of board meetings and the average length of the meeting. The average length of the board meeting does not decrease if the company holds them more frequently. Executive members of the board attend all meetings in 86% of the companies. In another 9%, at least half of the executive board members attend. Non-executives attend less frequently. In 54% of the companies, all attend, and in 39% at least half attend. Board members vote during board meetings in 97% of the companies with one-tier boards. In most companies, board members always ask questions (61%) or at least usually do (34%). In all but four of these companies, minutes are kept of the board meetings.

In 61% of the cases, we interviewed the CEO or general director of companies with a one-tier board, or the deputy director (9%). In 8% of the companies we interviewed the chair of the board of directors. In their opinions, board meetings are:

- “very effective” 71%;
- “somewhat effective” 24%;
- “not very effective” 3%; and
- “not at all effective” 1%.

The remaining 1% did not answer the question. It may be expected that these executives would evaluate the board meetings positively. In the few cases in which the company representatives provide some criticism of the board meetings, the reasons given include:

- Board members lack of interest or lack of a sufficient level of information to be effective; and
- While board meetings provide sufficient oversight, effective decisions are not often made.

Most report that meetings of one-tier boards are well organized and effective, and that the agenda and supporting materials are well prepared.

9 ■ THE MANAGEMENT AND SUPERVISORY BOARD

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

A transportation company operating with 270 full-time employees. There are four members on the supervisory board. They meet four times a year, usually for two hours each time. Nearly all of the board members attend the supervisory board meetings. Supervisory board members frequently ask questions, and they always vote. Minutes are almost always taken. The management board in this company meets monthly. Four or five times a year there are joint meetings with the supervisory board. Management board members always vote, and minutes are taken.

Profile of the Supervisory Board Members in Two-Tier Boards

Table 6 provides the distribution for the total number of supervisory board members.

Table 6: Total Number of Supervisory Board Members
Sample: Two-Tier boards (N=224)

| Total number of supervisory board Members | Number of joint stock companies | % |
|---|---------------------------------|-----|
| None | 3 | 1.3 |
| 3 | 84 | 37 |
| 4 – 7 | 85 | 38 |
| 8+ | 9 | 4 |
| No answer | 43 | 19 |

Many supervisory boards have three members (37%) or five (22%). In total, 76% of joint stock companies with two-tier boards have at least five members on the supervisory board. The census asked respondents when these board members were first elected to the supervisory board. For companies that have at least five supervisory board members, the typical pattern is that:

- 7% of the supervisory board members were appointed before 1998;
- 33% were appointed 1998 – 2000;
- 26% were appointed 2001 – 2002; and
- 14% were appointed in 2003.

Employees are more likely to have elected directors to the supervisory board than they are to elect members to the board of directors in one-tier companies.¹⁸ Employees do not elect members to the supervisory board in only 27% of two-tier companies.

¹⁸ It is not clear why this would be true. Companies with two-tier boards are more likely to have higher numbers of employees than those with one-tier boards. The employees in companies with two-tier boards also own a higher

Similar to one-tier boards, two-tier boards rarely elect consultants or suppliers as directors on the supervisory board. Auditors and family members of the directors are also rarely elected. In contrast to the one-tier boards, employees and shareholders are not members of the supervisory board for a majority of two-tier boards (65% and 68%). Employees are on the board in 35% of companies, and shareholders are on the supervisory board in 33%.

Figure 27: Characteristics of Supervisory Board Members
Sample: Two-tier boards (N =224)



proportion of the company shares (38.5% versus 27.2%, on average, in one-tier companies). However, a higher proportion of companies with two-tier boards have signed shareholder agreements (30%) than those with one-tier boards (20%). There is no difference between companies with one- and two-tier boards regarding the strength of their minority shareholders. In both cases, 58% of all companies have "unrestricted" minority shareholders. (See chapter 4 of this report for an explanation of restricted versus unrestricted minority positions.)

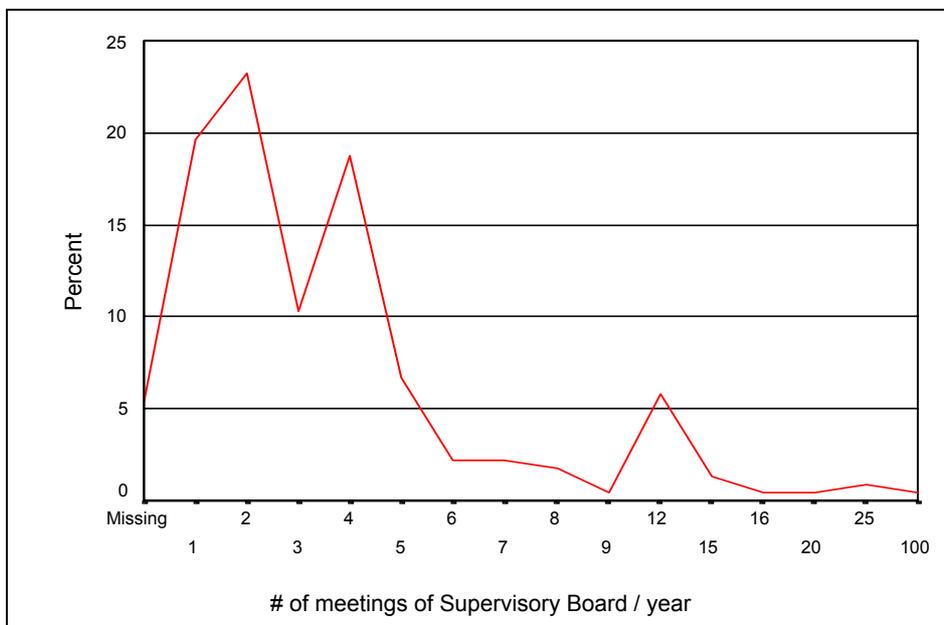
Meetings of the Supervisory Board

The supervisory board meets:

- Once a year – 20% of the two-tier boards;
- 2 – 6 times a year – 61%;
- 7 – 12 times a year – 10.3%; and
- 13+ times a year – 3.6%.

Another 5.4% of the companies with two-tier boards did not answer the question. The frequency of supervisory board meetings is displayed in the following figure.

Figure 28: Frequency of Supervisory Board Meetings Each Year
Sample: Two-tier boards (N=224)



Generally, board meetings last one hour (40%) or two hours (41%). In a few cases, board meetings last three or more hours (16.5%). The more frequently these companies hold supervisory board meetings, the more likely they are to be longer in duration. Twenty-three companies held between 7 – 12 supervisory board meetings per year and in 30% of these companies the meetings lasted 3+ hours. For those that held 13+ supervisory board meetings a year, in half of these companies the meetings lasted 3+ hours.

Members ask questions in most of the companies during supervisory board meetings (52% “always,” 31% “usually”). Supervisory board members vote in 93% of all two-tier boards and minutes are kept in most meetings (92%).

Evaluations of supervisory board meetings are high as might be expected given that the respondents are key people in the companies. In nearly all companies (92%), these meetings are at least “somewhat effective” because they:

- Enable effective decision making;

Figure 29: Frequency of Management Board Meetings Each Year
Sample: Two-tier boards (N=224)

