



SLOVENSKI DRŽAVNI HOLDING, d. d.

RECOMMENDATIONS AND EXPECTATIONS OF SLOVENIAN SOVEREIGN HOLDING

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INTRODUCTION

The Slovenian Sovereign Holding Act (Official Gazette of RS, No. 25/2014, hereinafter referred to as: "ZSDH-1") entered into force on 26 April 2014. This Act regulates the status and the operation of Slovenian Sovereign Holding (hereinafter referred to as: "SSH") and the management of capital assets of the State. As stipulated by Article 4 of ZSDH-1, the objectives in managing state asset include increasing the value of assets, generating the highest possible returns for the owners and attaining other potential strategic objectives from assets which are defined as strategic by way of governance documents. The ZSDH-1 also defines the principles in managing state assets (i.e., the principle of responsibility and due care, the principle of independence, the principle of transparency and the principle of economy), and legal documents for managing state asset (these are: the State Assets Management Strategy, the Assets Management Annual Plan, the Asset Management Policy and the Corporate Governance Code for SOEs).

To a great extent, ZSDH-1 and the above mentioned legal documents concerning asset management regulate the subject matter that relates to the corporate governance of companies with capital assets of the State. Attaining corporate governance objectives and putting in practice the principles for the corporate governance of state capital assets dictate the need that some narrower issues, which do not pertain to statutorily defined documents regarding asset management due to their specific content and nature, be regulated by special legal documents. The publication of special legal documents, which are addressed to companies with capital assets of the state, is also envisaged by Article 32, Paragraph 4 of ZSDH-1.

By means of the Recommendations and Expectations of Slovenian Sovereign Holding (hereinafter referred to as: "SSH Recommendation and Expectations"), characterized by a predetermined and clear framework and public publication, SSH communicates to SOEs some specific recommendations and expectations which SSH anticipates to be observed by SOEs.

The number of individual recommendations and expectations from SSH Recommendations and Expectations is modified as the content of this document is usually revised once a year so that new recommendations and expectations are added in accordance with current issues, while recommendations and expectations of a general nature in terms of their content have been transposed into the Corporate Governance Code for SOEs.

When, in regard to an individual recommendation and expectation, it is not stipulated otherwise or when it is not otherwise clear from the context, SSH Recommendations and Expectations are addressed to:

- all companies with capital assets of the State regardless of the shareholding and the share of voting rights held by the State or SSH in a company and regardless of the legal organisational form of the company;**
- subsidiaries in a group in which the position of the mother company is held by a company with state capital assets.**

In accordance with Article 2 of ZSDH-1, companies with capital assets of the State are legal entities which are the issuers of securities owned by SSH, and companies which are the issuers of securities owned by the Republic of Slovenia and managed by SSH. In accordance with Article 19 of ZSDH-1, SSH is responsible for managing all capital assets owned by the Republic of Slovenia, except for assets in international financial institutions, capital assets in companies performing the service of general economic interest as a system operator for the transmission and distribution of natural gas and electricity, and in companies performing the service of general economic interest in relation to the organisation of the electricity market in the Republic of Slovenia, and of assets in the Bank Asset Management Company. Capital assets are equity securities or shareholdings.

SSH Recommendation and Expectations *per se* do not imply the exercise of rights of a shareholder in companies with capital assets of the State and as such do not impose any obligation on companies, regardless of a potentially preferred form of action of a recommendation or expectation. SSH Recommendations and Expectations have been adopted in good faith and their implementation shall contribute to raise the quality of corporate governance and performance of companies with capital assets of the State. Therefore, SSH expects that its addressees will act in accordance with the document. A company with state capital assets should observe this document by applying the “comply-or-explain” principle, and disclose how the said document has been observed in their Business Report. It should state justified reasons in cases when an individual recommendation and expectation has not been observed.

1. Three-year business planning of company/group/subsidiaries in a group

- 1.1 A company with capital assets of the State should prepare, adopt and submit to SSH draft business plans and final version of the adopted business plans in a timely manner.
- 1.2 If a company with capital assets of the State is a controlling company in a Group, a draft business plan is also prepared and its final version is also adopted for a group (consolidated) as well as for the selected subsidiaries in a group, as determined by SSH in its operational instructions. The draft business plan and the approved business plan should be submitted to SSH by the controlling company.
- 1.3 If not stipulated otherwise in operational instructions, a draft business plan should be prepared every year for the period of the next two business years (annual presentation). Draft business plans should be submitted to SSH not later than by 10 September.
- 1.4 A company should adopt business plans for the period of the next three business years (annual presentation), and, additionally, a quarterly/monthly presentation for the first next year – in accordance with SSH's operational instructions. The approved plans should be submitted to SSH not later than by 15 October.
- 1.5 An entire business plan (including other data and descriptive sections) should be submitted in a printed and electronic forms, in accordance with SSH's operational instructions.
- 1.6 A planned income statement, balance sheet (statement of financial position), performance indicators and indicators compliant with the applicable Criteria for Measuring Performance of SOEs shall be reported separately, in an electronic form and on unified forms which have been sent to a company by SSH.
- 1.7 SSH expects that the draft business plan will include at least the following:
 - planning of net operating income, gross operating income, EBIT, write-offs (amortisation and depreciation and similar) and net profit (for banks: net

income, net commission income and net profit or loss; for insurance companies: gross premiums written, net claims incurred and net profit or loss);

- total assets and equity,
- planning of all indicators of a company/group in accordance with applicable Criteria for Measuring Performance of SOEs,
- a presentation of all large investments planned,
- a short presentation of assumptions included in the preparation of a draft business plan,
- an indication of key goals of a company/group for the following financial year.

1.8 SSH expects that approved business plans will also include a direct comparison with the content and data from periodic reports for SSH and will include at least the following data for companies, Groups, and for individual subsidiaries (reasonably adapted for banks and insurance companies):

- revenue planning; an overview and demonstrations of main transactions with tables/graphs,
- a detailed presentation of the planned structure of sales by the type of transactions, and markets,
- a plan regarding the movement of the buying and selling prices (when applicable),
- a presentation of all larger investments planned: presentation, description and explanation
- a cost plan with the cost breakdown by types, descriptions and rationale, at least, and including the planned total sponsorship and donation costs,
- planning of potential acquisitions, sales,
- a plan of the number of employees, the structure and the movement in the number of employees,
- a presentation of risks identified for the planning period, particularly in regard to operational, legal, liquidity, currency and other market risks as well as a short presentation of measures for managing these risks,
- income statement projection,
- balance sheet projection with notes,
- in case of groups, consolidated financial statement projections; a consolidated balance sheet projection and a consolidated income statement projection,
- a plan including key financial data and indicators, return on assets (ROA), return on equity (ROE), and added value per employee,
- EBIT planning,
- EBITDA planning,

- the expected EBITDA margin,
 - a plan of all indicators of a company/group in accordance with applicable Criteria for Measuring Performance of SOEs,
 - a planned group structure and a presentation of the management,
 - a dividend amount planned to be paid-out,
 - results planned in regard to the achievement of non-financial goals of a company/group,
 - a short assessment of the future situation in the market and in regard to the competition (for the planning period) and a direct comparison with the competition (some comparable competitors in Slovenia and abroad should be included in the assessment) by presenting key financial data and indicators; it should be an integral part of the annual business plan,
 - a presentation of situation in regard to existing and planned new debt and a time plan for its repayment.
- 1.9 Data of confidential nature so defined by some special laws (for example, in the field of banking and insurance business) may be excluded from the draft business plan.
- 1.10 A company with more than one shareholder should adopt the Shareholder Communication Policy which, observing the principle of equal treatment of shareholders, enables shareholders to access information on company's operation in an extent that is greater than required by law.

Reasoning:

According to SSH, companies with capital assets of the State mostly have a properly developed business planning system which is why the Recommendation No.1 is mainly intended to provide information to SSH on the operation planned by companies and groups. SSH may carry out obligations imposed by ZSDH-1 only in this manner, which among other matters, also includes the production of Asset Management Annual Report under Article 30 of ZSDH-1, and pursue asset management goals defined Article 4 of ZSDH-1, together with the principle of diligence defined in Article 5 of ZSDH-1 and the principle of economy defined in Article 9 of ZSDH-1.

For the purpose of having a single record and a suitable programme for monitoring the business performance of companies, companies are expected to use suitable forms and

proposals needed for developing business plans (for parts envisaged by SSH), and to fully observe SSH's operational instructions.

SSH expects companies with state capital assets to observe the expectation on producing a three-year business plan and to submit data to SSH. Some data which form the part of a special statutory regime on protection of confidential data (banks and insurance firms, etc.) may be excluded from reporting. Companies, which are subject to legislation on equal treatment of shareholders, should develop an adequate system of communication with shareholders which should be regulated by the Shareholder Communication Policy. The said system should enable other shareholders to access information which are submitted to SSH in accordance with this Recommendation and Recommendation No. 2 on periodic reporting.

2. Periodic reporting on performance of company/group/subsidiaries in a group

- 2.1 SSH expects companies to produce the relevant periodic performance reports in a timely manner, and submit them to SSH. Such periodic reports shall be quarterly and monthly performance reports.
- 2.2 Companies with state capital assets shall prepare quarterly performance reports. If an SOE is a controlling company in a group, a quarterly performance report shall also be produced for the group (consolidated). Quarterly reports shall be prepared on a cumulative basis, specifically:
- Quarterly Report No. 1: for the period from 1 January to 31 March,
 - Quarterly Report No. 2: for the period from 1 January to 30 June,
 - Quarterly Report No. 3: for the period from 1 January to 30 September
 - Quarterly Report No. 4: for the period from 1 January to 31 December.
- 2.3 Companies in which SSH exercises 100% voting rights should also submit to SSH a monthly performance report for the parent company and for subsidiaries, to the extent as stipulated in the SSH operational instructions. Monthly performance reports shall also be prepared on a cumulative basis (1 January – 31 January; 1 January – 28 February; 1 January – 31 March; etc.).
- 2.4 The Periodic Report should be submitted to SSH not later than :
- 30 days following the reporting period for a parent company and subsidiaries in a group,
 - 60 days following the reporting period for a group (consolidated).
- 2.5 An income statement, balance sheet (statement of financial position), performance indicators and indicators compliant with the applicable Criteria for Measuring Performance of SOEs shall be reported separately, in an electronic form and on unified forms which have been sent to a company by SSH.
- 2.6 In addition to data referred to in 2.5., a quarterly performance report should also include:
- the presentation and the review of the business environment,
 - the short description of significant events,

- a short evaluation of the company's market position,
- a presentation of the structure of sales by the type of transactions, and by markets,
- a presentation of the number of employees, the structure and the movement in the number of employees,
- the total amount of costs incurred and presentation of the cost structure (labour costs, costs of material and services - by type, costs for sponsorship and donations, etc.),
- the total amount of donated monies,
- an indication of risks which have been realised and a short presentation of measures which have been implemented to manage these risks or which have been abandoned,
- the indication and presentation of newly obtained sources of financing and implemented investments, including the presentation of financial obligations with maturity dates and the methods for their settlement,
- the presentation of existing and new financial instruments (also derived instruments) which have been obtained in a reporting period,
- results which have been achieved in regard to non-financial goals of a company/group with an explanatory note on reasons for potential deviations from these goals,
- the income statement for the reporting period, a comparison with the profit or loss planned and the profit or loss generated in the previous year, including an explanatory note on potential deviations from plans,
- the balance sheet as of the last date of the reporting period, including the comparison of the current position with the position as of 31 December of the past year, including an explanatory note on reasons for potential deviations from the position planned by individual balance sheet items.
- the statement of cash flows,
- in case of a group, the consolidated financial statements; the consolidated balance sheet and the consolidated income statement,
- a clear organisational structure of a group,
- a competitor analysis (some comparable competitors from Slovenia and abroad should be included) with a presentation of key financial data and indicators. This analysis should be added to the report as one of the chapters once a year.

The above mentioned data should be sent in a printed and electronic form, in accordance with the SSH operational instructions.

- 2.7 Periodic reports must be understandable, they must refer to important issues; they must be reliable and consistent and they must enable a comparison between the goals set for the current period and those set for previous periods; they should provide a realistic and true view of the situation of a company/group/subsidiaries in a group. The reports should be reviewed by the management of a company who is responsible for accuracy, completeness and regularity of reports.
- 2.8 The requirement for reporting may exclude data of confidential nature in accordance with special laws (particularly in regard to banking and insurance business). Companies with more than one shareholder should adopt the Shareholder Communication Policy which, observing the principle of equal treatment of shareholders, enables shareholders to access information on company's operation in an extent that is greater than required by law.
- 2.9 Occasionally or when appropriate, SSH will organise a meeting with representatives of the company to discuss the reported data on the performance of a company or a group or subsidiaries in a group.

Reasoning:

The Recommendation No. 2 is intended for the provision of (additional) information to SSH on the performance of companies and groups. Only in this manner may SSH efficiently carry out obligations imposed by ZSDH-1, in particular, pursue asset management goals defined in Article 4 of ZSDH-1, together with the principle of diligence defined in Article 5 of ZSDH-1 and the principle of economy defined in Article 9 of ZSDH-1, and to verify the satisfaction of performance criteria for companies with capital assets of the State in accordance with Article 17, Paragraph 1 of ZSDH-1.

For the purpose of having a single record and organizing SSH's data for monitoring the business performance of companies, companies are expected to use suitable forms and proposals needed for developing business plans (for parts envisaged by SSH), and to fully observe SSH's operational instructions.

3. Commissioning of goods and services, sponsorship and donations

General

- 3.1 A company shall establish suitable platforms which will ensure that the company's operation as regards the conclusion of transactions which affect the company's expenses (commissioning of goods and services, sponsorship and donations) are transparent and provision should be made for effective suitable supervision over these platforms.
- 3.2 Companies are recommended to avoid concluding flat rate contracts unless a clear economical justification is given (for example, legal counselling to companies without their own legal department).¹
- 3.3 Companies should publicly announce information referred to in this Recommendation through their own web site. Announcements should be accessible on their web site for at least 5 years following their publication.
- 3.4 This recommendation does not interfere in any way with the company's obligations in accordance with regulations. In exceptional circumstances, a company may decide not to act in accordance with this Recommendation if a publication of the information could impose a serious threat to the position of the company in the market, if significant damage might be incurred to the company or because of any other serious and justified reasons. For the purpose of transparency it is expected that in such cases reasons for their exclusion shall be published.

Commissioning of goods and services

- 3.5 If the commissioning of goods and services is not regulated by way of the law regulating public procurement, the principle of transparency and economy, efficiency and effectiveness shall apply at the very least. Transactions for commissioning of goods and services shall be concluded by observing the principle

¹ The term "flat rate contract" shall mean contracts on rendering advisory services, as a rule, in which case the payment does not depend on the quantity of hours of service which have actually been performed during the period to which the payment refers to and it is considered that services have been rendered by the contractor being (constantly) available to the client for rendering certain services at the client's request.

of having in place the selection criteria which are determined in advance, in addition to having obtained comparable bids.

3.6 Immediately following the conclusion of a contract which has the legal nature of a contract of mandate (of a general, special or framework nature) or a contract with the legal nature of a service contract the subject of which is intellectual services, a company, in the capacity of an ordering party, must publicly publish data on the selected contractor and the type of the transaction (for example, a contract on legal or financial advisory services, the production of an opinion or an expert opinion).

3.7 Once a year, companies shall publish data on the total value of transactions referred to commissioning of services; the value of any transaction must be broken down by the type of transaction.

Sponsorships and donations

3.8 A company should regulate clear procedures for allocating sponsorship and donation contributions which shall be published on the company's web site. Criteria to be observed when allocating sponsorship and donation contributions must be laid down so that it is clear in advance to which category of entities and to which geographical area such contributions refers. Current goals, which are pursued by a company, must be defined, and new ones may also be stated to which a corporate sponsorship and donation policy should contribute.

3.9 Through raising the company's recognition and to improve the company's image and of its products and services, the primary aim of sponsorship policy is to contribute to the achievement of the company's business goals (increasing its profitability in particular, but also achieving other corporate business goals), which is subordinated to the complementary purpose of making a positive impact on the social environment (social responsibility). Sponsorship policy must reach a target market (target audience in a target geographical area) and sponsorship contributions must be allocated to entities whose connection with the sponsoring company may create a positive impression, response and attitude towards such companies and its products and services.

3.10 There must be no conflict of interest between a person making the decision on an individual sponsorship and donation contribution and the recipient of sponsored

funds and donations, when sponsorship and donation contributions are allocated. The Sponsorship Agreement must clearly lay down the obligations of a sponsored entity which, as a rule, shall include the indication of the sponsor's name and logo on posters, T-shirts, radio, TV, and similar, at the events and during the activities undertaken by the sponsored entity.

3.11 In agreement with the Supervisory Board, the Management shall set the highest amount to be allocated to an individual sponsorship and donation agreement, and the annual sum allocated for sponsored activities and for donations, which are to be presented separately. In this regard,

- sponsorship and donation contributions are not allowed for companies with capital assets of the State and in which SSH holds a majority shareholding or exercises dominant influence, and which have been financed 100% from public funds in the preceding financial year; a company referred to in this indent may only donate individual and token amounts so that the total annual amount of donated funds does not exceed 0.03% of the income generated by such company in the preceding financial year.
- In case of companies with capital assets of the State and in which SSH holds a majority shareholding or exercises dominant influence, and which have been financed for 80% from public funds in the preceding financial year, the total annual amount of donated funds must not exceed 0.1 % of the income generated by such company in the preceding financial year.²

The term "majority shareholding" (of SSH) shall have the meaning as defined by the law regulating companies.

The term "dominant influence" shall have the meaning as defined by the Corporate Governance Code for SOEs.

For the purpose of this Recommendation, public funds have been defined as funds which, regardless of their form, are allocated by a state authority or a board of a self-regulating local community to a public corporation or to an operator holding exclusive or special rights or authorisations or to an owner of infrastructure of public significance and

² Companies for which the Recommendation 3.11 applies in any event:

- Companies for which the first indent of Recommendation 3.11 applies in any event: KZPS, d. o. o., JP Uradni list d. o. o., Infra d. o. o., RŽV JP za zapiranje rudnika urana d. o. o., RTH, Rudnik Trbovlje Hrastnik d.o.o., DARS, d. d.
- Companies for which the second indent of Recommendation 3.11 applies in any event: DRI, d.o.o., Elektro Ljubljana, d. d., Elektro Maribor, d. d., Elektro Celje, d. d., Elektro Gorenjska, d. d., Elektro Primorska d. d.

transferred to them directly or indirectly through another public corporation. Public funds also include funds collected by these persons in the form of duties, levies and other charges paid by users of public infrastructure or of public services, specifically, in the amount with such duties, levies and charges represent income for these enterprises. If capitalised own products and services of an enterprise are necessary for rendering services which generate public funds, then revenues generated by a company through capitalised own products and services are considered to be public funds.

The term "public corporation", "exclusive rights", "special rights", "public authority" and "allocation of public funds" shall have the meaning as defined in the Transparency of financial Relations and Maintenance of Separate Accounts for Different Activities Act (Official Gazette of RS, No. 33/2011).

3.12 In regard to sponsorship transactions, companies should take into account the principle of balance (between the sponsored amount and the financial position of a company), the principle of objective eligibility of sponsorship activities in regard to the expected benefits for a company, and the principle of sufficient diversification. As regards sponsorship decisions, companies should take into account local customs, customs in a certain line of business and the conduct of comparable companies.

3.13 As regards donation transactions, the primary focus shall be placed on the social responsibility of a company, which is why no counter obligations are to be required from the recipient of donated funds (except for allowing the mention of an activity in certain media).

3.14 In order to achieve the greatest possible level of transparency, companies, which are not obliged to do so by the law, are recommended to state all transactions involving sponsorship and donations on a company's web site immediately after the agreement on transaction is concluded; such notice should include a short presentation of the transaction, the recipient of funds, the date of concluding the agreement, the duration of the agreement and the value of the concluded agreement.

Reasoning:

Recommendation No. 3 focuses on transparent and economic conduct in concluding transactions which refer to commissioning of goods and services and sponsorship and

donations. Transparency in this field forces decision-makers to make prudent decisions as regards company's expenses; it enhances the owner's trust and confidence in management bodies of a company and has a positive impact on decisions and the opinions of business partners and potential investors. As regards sponsorships and donations, different amounts are recommended to be allocated for sponsorship and donation contributions. The primary goal of the sponsorship policy is to positively contribute to achieving corporate business goals, particularly to increasing profitability. A subordinated goal of the sponsorship policy and a primary goal of donation is the socially responsible activity of a company which may be beneficial for a company in the long term. In case of companies which are mostly or fully financed with public funds, no significant benefits for a company are to be expected from sponsorships and donations, and besides, as regards public funds, other methods are applied to look after the public interest, i.e., through organisations created for that purpose, which is why, such companies are recommended to apply a different system for allocating sponsorship and donation contributions.

4. Cost optimisation

- 4.1 SSH expects the members of management and supervisory bodies to prudently oversee the levels of costs incurred by a company and to ensure that there is a proper balance between the costs and the generated revenue and business processes.
- 4.2 SSH expects that a company will carry out activities necessary for the optimisation of labour costs, taking into account the relevant dialogue with social partners. The activities which are required inter alia include the assessment of a relevant number of employees who are needed to carry out well-organised business processes in a company and relevant modifications of underlying contracts (including collective agreements) and other legal documents. Relevant measures which aim at labour cost optimisation should include all company levels, i.e., management bodies, employees and other persons who carry out work on the basis of other legal basis (for example, copyright agreement, service agreement).
- 4.3 SSH expects from the bodies of management and supervision to actively strive for the optimisation of labour costs, in accordance with their powers, and to optimise labour cost. It is expected that the implementation of this Recommendation will be suitably included in the Annual Plan of a company/group.
- 4.4 A company for itself, whereas a controlling company for the group and for all subsidiaries in the group, should publicly publish the information on the execution of payments, such as any Christmas bonus and the “13th month wage” and similar payments to employees and the holiday pay on their web site; this information should be published within 10 days following the execution of these payments and should include the indication of the total amount of individual type of payments, legal bases for payments and the methodology used for the determination of the sum paid out to individuals.
- 4.5 A company should publicly publish the full text of the binding collective agreements and agreements with representatives of employees that refer to the payment for the work carried out, for the company, whereas the controlling company in the group should do so for all subsidiaries in the group.

4.6 Cost optimisation shall also refer to the suitable organisational structure of the group and to the eligibility of establishing/existence of subsidiaries.

Reasoning:

To provide for stable operations of companies and to achieve suitable performance results, goals set and to meet expectations envisaged by SSH, the bodies of management and supervision must handle company's costs, including labour costs, with the greatest possible diligence, striving for their optimisation. The stability of companies' operations in which the State and SSH hold their shareholding is important not only from the aspect of ensuring adequate return for the owner but also from the point of view of the stability and the development of the Slovenian economy.

A prudent and responsible conduct pursued by the bodies of management and supervision and the associated efforts to adopt suitable measures in connection with the operation of a company/ group is a subject of regular assessment of the work carried out by the responsible bodies of a company and, therefore, the subject of the assessment made by the General Meeting/the company's founder when making a decision on conferring a discharge or declaring no-confidence.

The controlling companies in a group should pursue the goal of a lean organisation which means that the establishing / the existence of subsidiaries must be based on a SWOT analysis (and cost analysis).

5 Quality and excellence in operation of company/group

5.1 SSH expects from large state-owned companies to carry out self-assessment processes once every second year by observing the proven European EFQM excellence model.³ A company should develop and submit to SSH the relevant self-assessment report in the electronic form. A large state-owned enterprise which is a controlling company in a group should prepare such a report for the entire group and submit it to SSH.

5.2 The self-assessment report should include the following:

- short-term and medium-term goals desired to be achieved by the management of a company in regard to the quality and standards of business excellence (for example, improvements in individual fields of work, the target number of points achieved, participating in the competition to obtain the Business Excellence Prize of the Republic of Slovenia, etc.),
- self-assessment results,
- an action plan including measures and systems for improving quality and business excellence,
- standpoints by a supervisory board of a company made after the report has been discussed.

5.3 The report should be understandable and transparent and should refer to important and significant matters. In addition, the report should enable a comparison in regard to efficiency or inefficiency and effectiveness of a company as compared to previous years and they should present a current and realistic view of the position of a company/group in regard to the quality and business excellence systems.

5.4 SSH expects that the self-assessment report will be firstly dealt by the bodies of the supervision of companies which will take relevant standpoints and consistently oversee the implementation of measures and the company's action plan towards quality and business excellence.

³ For more on EFQM model see the following link: <http://www.efqm.org/>.

Reasoning:

The proven European model of business excellence – EFQM – by the European Foundation for Quality Management from Brussels provides a framework of management leading to constant improvement. This is a tool which integrates various elements of the organizational management systems in a company/ group (these are: leadership, HRM,⁴ sustainable development, partnerships&resources, and others) and enables a review of current advantages and growth opportunities. The model which promotes cooperation and innovation is used by more than 35,000 organisations, including the best and the most respectable organisations across Europe. By means of the nine model criteria, the cause-and-effect relationships can be understood and analysed. These nine criteria cover what an organisation does, how it does it and what are the results that the organisation achieves. The EFQM model is based on an assumption that excellent results in operation, with partners, employees and within the company are achieved by strong leadership which is a driver for policy and strategy, employees, partnerships and resources. The EFQM model of excellence provides a framework for assessing the efficiency of operations, identifying key advantages and their improvements, integrating and harmonising existing tools, procedures and processes and eliminating any duplication. It introduces a mind-set that promotes contemplative analysis and stimulates constant improvement. The results brought forth by the EFQM model show which measures really contribute to achieving results, what areas should be given more attention and which approaches must be abandoned.

In accordance with the Republic of Slovenia's Business Excellence Award Act (Official Gazette of the Republic of Slovenia, No. 22/98, as amended in Nos. 55/03, 83/03 and 92/07), the Republic of Slovenia has committed itself to encourage enterprises and individuals in the private and public sectors to use efficient business models that lead to a greater competitiveness of products and services and better performance of organisations. The aim for using efficient management models is to help the Slovenian economy in achieving global competitiveness.

By way of the above mentioned recommendation, the aim of SSH is to achieve constant improvement of operation of organisations as a whole in the direction of greater effectiveness, efficiency, competitiveness and sustainable development and in the final phase, in the quality and excellency. However, this constant improvement may only be achieved if companies are assessed and suitable measures are implemented on the basis of such assessments.

⁴Human Resource Management.

SSH will examine and analyse the information received from companies in detail, comparing them to other data and information and goals, and thus regularly and objectively monitor the performance of the operation of companies.

6 General Meeting of Shareholders of Company

SSH expects a company to consistently take into account all relevant statutory provisions and the recommendations mentioned below when convening and running General Meetings of shareholders. These recommendations shall apply to a one-person company by analogy.

Convocation of AGM

6.1 A management board of a company is expected to publish the notice on the convocation of the General Meeting as soon as possible, at least within the period of 14 days following the receipt of a request to convene the General Meeting when such request is submitted by a shareholder in accordance with the Companies Act (Official Gazette of the Republic of Slovenia, No. 42/06 and subsequent).

6.2 Prior to preparing material for the General Meeting, a company should examine the Platform of SSH for Voting on AGMs for an individual financial year; the said document is publicly published on the SSH's web site.

Accessibility of material and information for shareholders

6.3 A company should publish full explanatory material for the AGM agenda items on its web site as of the day of publication of the notice on the convocation of the General Meeting.

Questions raised by shareholders

6.4 When a company receives questions from a shareholder or shareholders or their request requiring it to provide an answer or explanation about company's operation, the company should reply as soon as possible and publicly publish well-founded, reliable, clear and comprehensive answers.

6.5 If a shareholder has addressed a question to a company and the question has not been suitably and publicly replied to by the company by the time the notice on the convocation of the General Meeting is published, an item discussing such a question should be included on the AGM agenda, or the discussion of such a question should be included in one of the already planned items on the AGM agenda.

Counter-proposals

6.6 A counter proposal of a shareholder should be published by a company on its web site within a period of two business days following its receipt, unless a counter proposal has been received by the company in the last two business days prior to the General Meeting.

Annual Report

6.7 A company should publicly publish the data on its operations not later than with six months following the end of a financial year.

6.8 A company should take a stand about its satisfaction of recommendations and expectations referred to in this document in the Corporate Governance Statement.

Instrument to discharge the management or supervisory board members

6.9 As a rule, the General Meeting decides on the conferring of a discharge only to those members of the management and supervisory bodies who carry out their function at the time of the General Meeting's decision-making.

6.10 A company which is organised as a limited liability company should not include the conferring of a discharge to the management and the supervisory bodies of the company on the agenda of the convened General Meeting, unless this is explicitly stipulated by Articles of Association or the contract of members. In this case, the following text should be added to the General Meeting Resolution on the conferring of a discharge: "*Claims related to liability for*

damages may also be enforced against persons who have been granted a discharge.”

Reasoning:

A standpoint has been established in the German theory and practice that a General Meeting decides about conferring a discharge only in regard to members of the management and supervisory bodies who continue to exercise their function at the time of the General Meeting's decision making. The term used in this Recommendation is generally used in the sense that a General Meeting may grant a discharge also to members of the management and supervisory bodies who no longer perform their functions at the time of the General Meeting's decision-making. However, situations must be prevented when the decision-making about the conferring of a discharge would lead to a situation that a General Meeting rejects the proposal for conferring a discharge to former members who do not hold any functions at the time of the General Meeting's decision-making.

7 Sustainable business

SSH expects that a large or a medium sized enterprise will incorporate all three aspects of sustainable business (economic, social and environmental) into its business strategy and/or into its business model by way of defining actual measures to be implemented by it in the pursuit of sustainable business (the controlling company should define such measures at the level of the Group of affiliated companies). In this process it shall set up goals, which have to be determined in a quantitative and/or qualitative manner, to be pursued in connection with individual aspects of sustainable business and individual measures, along with the time frame for their achievement. The sustainable business goals must be monitored and significant in nature (by type and scope) for the long-term achievement of the (fundamental) goals of an enterprise (and the Group). Such an enterprise shall put in place processes for identification, management and monitoring of the aspects of operations that (may) significantly contribute to the achievement of the goals for the sustainable development of the Republic of Slovenia. In these processes it shall identify the positive and negative effects of the aspects of sustainable business and define how the recognition of these effects affects its processes. Such negative effects shall also include any potential violation of human rights (of employees, suppliers in the supply chain, customers, users of services and other stakeholders) and any failure to ensure corporate integrity.

State of affairs

- 7.1 A company should identify its effects on the economy, on the environment and on society generally (i.e., positive and negative effects: in its operations, including in the entire supply chain and through the effects of its products and/or services).
- 7.2 A quantitative assessment of such effects shall be carried out whenever possible, or qualitative criteria shall be applied.
- 7.3 Its effects should be classified by their significance on the basis of a previously determined significance criterion.
- 7.4 In case of identified significant effects, it shall determine what condition should be assumed as the starting point.
- 7.5 A company shall define stakeholders which are greatly affected by its business operations and/or whether such stakeholders have a significant impact on the enterprise and shall include them in the process for preparing the basis for decisions.

Risk management and sustainable business development

7.6 A company shall make assessments of sustainability risks and set out responses to those risks, both in cases of opportunities and threats.

7.7 A company shall determine which negative effects will be reduced as a priority (and which positive effects will be developed) and draw up a time plan for remaining impacts.

Strategic directions and goals

7.8 A company shall determine strategic directions for sustainable business and together with the measurable goals for all of the three aspects of sustainability.

7.9 The Supervisory Board shall be informed of such directions and goals and its consent shall be obtained.

Decision-making

7.10 A company shall take into consideration the aspects of sustainable business during the actual decision-making process (including the internalization of environmental costs).

7.11 It encourages innovation for sustainable business (efficient use of resources by a company and users of its products and/or services; internal business processes and a business model).

Reporting

7.12 A company shall monitor the achievement of its sustainability goals in its annual reports on operations and inform the Supervisory Board about it.

7.13 It shall report on its sustainable business in its annual report.

Reasoning:

The ultimate objective of state-owned companies being managed by SSH is an effective, profitable, economical operation, creation of value, and in many cases, efficient management of individual assignments in the public interest. This must be achieved in a sustainable manner, by taking into account economic, social and environmental aspects.

Sustainability is development that satisfies the needs of the present without compromising the capacity of future generations to meet their own needs (the term is used at the national and at the global level).

Sustainable business is a contribution by companies for achieving sustainable development goals, by taking into account impacts of their operations on the economy, on the environment and on society generally. The term indicates the efforts towards sustainable business and not the state of affairs.

When making important business decisions it should be observed that their implementation does not cause damage to the nature (not only by operations and in the entire supply chain but also with the use of products and services throughout their life span, including at the end of their use), which is why the envisaged cost should also include any estimated (opportunity) costs of negative impacts to the environment (internalization of impacts to the natural environment and inclusion of externalities not yet registered in the books of accounts),

The Corporate Governance Code for SOEs includes provisions which refer to sustainable business and which should be considered by companies in connection with these recommendations (Recommendations 3.1, 3.3.2, and 8.1).

Through their business models, companies should contribute to the generation of value so that they enable and encourage sustainable development and take advantage of opportunities for creating sustainable value, developing new and innovative business models, which will contribute to strengthening their competitiveness.

When formulating and implementing a business strategy, a company shall consider environmental risks, which significantly affect their business environment in the short-term, medium term and long term, and introduce consideration of them into their risk management system. In this context, account should be taken of the fact that methodologies and tools for their consideration are in progress in the international arena.

As regards sustainable business, companies with state's capital assets should be a leading example to other companies. This means that they take into account all three aspects of sustainable business (economic, environmental and societal). In addition to successful and efficient performance in the long term, a particular focus should be placed on reducing negative environmental impact, cooperation with stakeholders and their inclusion, provision of corporate integrity (values, ethical conduct, mechanisms for preventing and zero tolerance towards corruption, a stimulating organizational culture).

These efforts are also pursued through international guidelines, specifically, the 2030 Agenda for Sustainable Development, with 17 goals which were adopted by world leaders at the SDG Summit in September 2015. Slovenia has fully committed itself to achieving all 17 goals of the 2030 Agenda which is the most comprehensive development call to action so far. Companies should analyse the above mentioned goals and determine their methods by way of which they may contribute to their achievement through their own operations.

8 Respect of human rights in business

SSH expects that all companies shall commit to respecting human rights in their business endeavours.

8.1 They should implement relevant principles from the National Action Plan of the Republic of Slovenia on Business and Human Rights which shall be acknowledged by signing the Commitment to Respect Human Rights in Business with the Ministry of Foreign Affairs of the Republic of Slovenia.

8.2 On the basis of this Commitment, companies shall prepare an action plan for its implementation and set the time periods for implementing individual commitments. The deadlines for implementing all commitments should not be longer than three years.

Reasoning:

As regards respect of human rights in business, companies with state's capital assets should also act as a leading example to other companies. This means that they shall commit to respect human rights in business and implement all relevant principles from the National Action Plan of the Republic of Slovenia on Business and Human Rights.

The National Action Plan of the Republic of Slovenia on Business and Human Rights (NAP) was adopted by the Government of the Republic of Slovenia in November 2018 and it is aimed at implementing the UN Guiding Principles on Business and Human Rights. The gist of the UN guidelines, on which NAP is based, are three principles: firstly, the obligation of the state to protect human rights; secondly, the responsibility of business enterprises to respect human rights and thirdly, the obligation of the state that in case of violation of human rights in business suitable legal remedies to victims are ensured for the victims. The Annex I to NAP includes the Guidelines on Corporate Human Rights Due Diligence. Human rights due diligence is a process which is carried out by business enterprises to detect, prevent and mitigate negative impacts on human rights, and includes reporting on measures taken to reduce such impacts. Such due diligence includes the following steps: commitment by companies to respect human rights in their operations, setting up a structure for implementing due diligence; the identification of relevant facts; the implementation stage of human rights risk management by establishing a mechanism for detecting the disrespect of human rights and a response protocol; and reporting on due diligence and respect for human rights⁵.

⁵ Source: Ministry of Foreign Affairs

By signing the Commitment to Respect Human Rights in Business, enterprises commit to respect human rights in their business operations and to prevent any potential negative impacts on human rights. They position this commitment among the enterprise's values, include it in ethical codes and other relevant internal documents. Large companies should appoint a Human Rights Officer who should monitor and oversee the respect for human rights, organize training sessions and establish a mechanism for dealing with cases of disrespect and implement human rights due diligence⁶.

With the aim of acting in accordance with international guidelines and considering their relevance for individual enterprises, large companies should also analyse the UN Global Compact, the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises.

Appendix: [Ministry of Foreign Affairs of the Republic of Slovenia \(web pages\)](#)

⁶ Source: *Ministry of Foreign Affairs of the Republic of Slovenia*

9 Recommendations for adopting Rules on Other Rights for members of a management body

The adoption of Rules on Other Rights, making the General Meeting familiar with such rights and definition of terms

- 9.1 By observing these recommendations, a supervisory body of an SOE should set rules to determine other rights in agreements for management services concluded with members of a management body for performing the duty of running the company and for managing its operation. The Rules on Other Rights should, among other matters, take into account the size, the activity, the complexity of operation and the financial standing of a company. In the Rules on Other Rights, the supervisory body shall not automatically define all rights determined in this recommendation nor its upper permissible ceiling laid down, but, following the principle of prudent consideration and acting for the benefit of a company, it shall assess the need for other rights and the appropriateness of including individual other rights into the Rules on Other Rights. The supervisory body shall also assess the permissible upper ceiling which is set within the scope of the recommended value.
- 9.2 With respect to the adopted Rules on Other Rights, specific rights shall be determined in an agreement for management services concluded with a member of the management body in which regard the said agreement shall not be a mere copy of all of these rules but such rights shall be separately determined in each specific contract concluded with an individual member of the management body, taking into consideration the characteristics of operations of a company in a certain period of time, whether the member is a body's President/Member and other relevant circumstances.
- 9.3 The decision by a supervisory body on the Rules on Other Rights should be explained in writing so that reasons for defining individual rules may also be reported to the General Meeting/the founder. The supervisory body should make the General Meeting/the founder familiar with the adopted Rules on Other Rights (including any amendments of such rules), except in case when a company operates without any specific supervisory body and for which Rules on Other Rights are adopted by the General Meeting/the founder. Considering these recommendations, if the General Meeting/the founder, which does not simultaneously act as the supervisory body, regulates other rights for members of management and supervisory bodies in a special Remuneration Policy, the

adopted Remuneration Policy shall present the framework for drafting the supervisory body's Rules on Other Rights.

9.4 For the purpose of this recommendation, the following terms have the following meanings:

- **Supervisory body of a company:** is a Supervisory Board or a Board of Directors, whereas in a limited liability company acting without the Supervisory Board, such capacity is held by the General Meeting of a company or by the founder.
- **Management body:** in a public limited company is a Management Board or a Board of Directors, whereas in a limited liability company, such capacity is held by one or several Directors/Managers.
- **Member of a management body:** in a public limited company is the President of the Management Board and a Member of the Management Board, whereas in a public limited company with one-tier management system, such capacity is held by an Executive Director (whereby this recommendation equally applies to Executive Directors acting as members of the Board of Directors as well as to those members who are not members of the Board of Directors); in a limited liability company, such capacity is held by a Director/Manager. A holder of procuration shall also be considered a member of the management body, if, by virtue of a specific contract, in addition to representing a company, management of business operations has been assigned to the holder of procuration and a contract comparable to the contract concluded with a member of the management body has been signed.
- **State-owned enterprise (SOE):** is a company in which the only shareholder or one of the shareholders are SSH and/or the Republic of Slovenia, apart from those which in accordance with ZSDH-1 are not under the corporate governance of SSH.
- **Other rights:** are earnings received by a member of a management body which includes benefits and entitlements (such as fringe benefits) and specific emoluments.
- **Benefits and entitlements:** are rights to use company-owned items for private purposes and payments by a company to third persons of which, as a rule, a member of the management body has a personal non-monetary benefit (for example, a company car for private use, the use of corporate credit cards, the payment for preventive medical examination, the payment for social, medical and other insurance policies, supplementary training, entertainment expenses).
- **Specific emoluments:** are holiday pay, retirement benefit, reimbursement of expenses related to holding a position, wage compensation paid by a company for a period of absence (for example, due to illness, annual leave, education), specific emoluments which are summarised from or determined with reference to a collective agreement or to the employer's general corporate policy, and all other allowances which are not included in any of

the following group of remuneration payments neither by their nature, nor by their definition, i.e., base salary, benefits, variable performance-based remuneration and severance pay.

Benefits and entitlements

9.5 At the discretion of a supervisory body and subject to the company's financial standing, size, complexity of operations and activity, the following benefits and entitlements may especially be considered other rights:

- the right to **use a mobile phone** also for private purposes, including the right to subscription, call charges and data charges;
- the right to **use a laptop and/or a tablet** also for private purposes;
- the right to **use a company car** also for private purposes (including the right for the payment of car running expenses - fuel costs for domestic and foreign business journeys and for private domestic journeys, fee for the use of vehicles in road traffic; the company shall also pay for the car registration, maintenance, technical and regular inspections of a company car, for motor vehicle liability insurance and comprehensive insurance).

This right shall be attributed in the following manner:

- in a large company carrying out complex operations, which also includes its organisational complexity (a member of a Group), with good financial standing and when the company itself or a Group generates more than 50% of its revenue by selling goods and services in competitive markets: the right to use a company car also for private purposes in the amount of a vehicle retail value of up to EUR 60,000.00 or EUR 70,000.00 (including VAT) in case of an eco-friendly car;
- in other large and medium-size companies with good financial standing: the right to use a company car also for private purposes in the amount of a vehicle retail value of up to EUR 40,000.00 or EUR 50,000.00 (including VAT) in case of an eco-friendly car;
- in other companies: the right to use a company car also for private purposes in the amount of a vehicle retail value of up to EUR 30,000.00 or EUR 35,000.00 (including VAT) in case of an eco-friendly car;

in which case a **company car** being also used for private purposes should not be **replaced** prior to three years or until the mileage of 150,000 kilometres is reached; exceptions may only be permitted in justified cases and with the consent of a supervisory body;

- the right to the **reimbursement of all costs for supplementary training and education** to enable more efficient performance of duties, up to the annual sum of EUR 10,000.00, including the right to wage compensation for such absence, if it lasts for up to 10 days per year. When assessing this right, a supervisory body shall take into account the characteristics of the

market and the industry in which a company or a group operates. The rules may also determine that in case of justified business reasons this right may be attributed in higher amounts and in a higher number of days; upon a proposal by a management body such decision shall be taken by a supervisory body in a resolution;

- the right for **preventive manager's health check-up**: in a company running complex business operations or carrying out a prolonged restructuring process of a complex nature, such right shall be attributed every year, whereas in other companies it shall be granted every second year;
- the right for the **payment of insurance premiums** (the supplementary pension insurance, accident insurance, supplementary health insurance, classic life insurance) with the exception of life investment insurance or any other potential insurance policy giving the right to pay out assets; a supervisory body should limit the sums paid for supplementary health insurance whereby tax legislation on tax relief should be taken into account;
- the right to **D&O liability insurance**;
- the right to **use a payment card** for certain expenses (for example, fuel costs for a company car, education-related expenses), including entertainment expenses, in accordance with the business and financial plan, ensuring the necessary traceability of expenses;
- the right to **reimburse the entertainment expenses** in accordance with the business and financial plan, ensuring the necessary traceability of expenses;
- the right to **reimburse costs for membership in professional organisations** which are connected with performing the duties of a management body's member, up to the maximum of EUR 1,500 per annum. When assessing this right, a supervisory body shall take into account the characteristics of the market and the industry, in which a company or a group operates, and business practice connected with such area of operation. The Rules may also determine that in case of justified business reasons this right may be attributed in higher amounts; in actual case, such decision shall be taken by a supervisory body in a resolution, upon a proposal by a management body;
- the right to the **reimbursement of expenses for legal protection** in case of lawsuits and reports lodged with respect to the management body member's performance of duties for a company in various legal proceedings by third parties (not by a company itself); in case when the liability is delivered by way of a final judgement, the reimbursement of costs is not permissible. A supervisory body may also stipulate that enforcing such right may include the advance payment of expenses for legal protection in which case the management body's member shall be obliged to repay such costs to the company in case when liability is finally ruled.

When expenses for legal protection are not charged according to the applicable tariff system and the management body's member freely negotiates such expenses, such agreement on expenses should be authorised in advance by a supervisory body.

9.6 The Recommendation No. 9.5 shall equally apply to rules which refer to the employment agreements and to the civil agreements assuming that a working week lasts for at least 40 hours. If a shorter working week has been agreed upon in the employment agreement, this condition is taken into account when assessing the granting of suitable other rights, that is, as regards the right itself as well as the rules on any limitations (for example, the highest permissible amount attributed to an individual right).

Specific emoluments

Specific emoluments regulated by Employment Relationship Act (ZDR-1)

9.7 The specific emoluments listed below, which are regulated by ZDR-1, may be included in the Rules of Other Rights (if not explicitly excluded, such rights apply by law). They shall amount up to the following highest sums:

- the right to a **holiday pay**: it shall be granted to a member of a management body under the same terms and conditions and in the amount as granted to other employees in a company. When the holiday pay is paid to employees in various sums, the holiday pay is determined in the amount of the lowest holiday pay paid to an employee with a full working time arrangement with the entitlement to receive the holiday pay in full;
- the right to the **retirement benefit**: with respect to terms and conditions for the retirement benefit's payment and its amount, the provision of ZDR-1 shall apply; more favourable terms and conditions regulated under a collective agreement or the employer's general corporate policy should not be considered by neither party;
- the right to the **reimbursement of expenses related to holding a position**: a member of a management body shall be entitled to be reimbursed for all necessary expenses incurred while holding or in relation with holding such a position; this right shall be granted under terms and conditions and in the amount which apply to other employees in a company, except when the amount to be paid to members of the management body is determined by a special regulation in a mandatory manner (for example, for public companies). Such expenses are: daily allowance for business trips, vehicle mileage expenses, reimbursement of accommodation expenses, reimbursement of expenses for travel to and from work, expenses for meals during work. If a member of the management body uses a company vehicle for private purposes, he/she is not entitled to the reimbursement for expenses for travel to and from work;

- the right to **wage compensation due to absence**: it should be granted to a member of a management body in cases, for the duration of absence and in the amounts which are granted to other employees in a company.

9.8 Acting at its own discretion, a supervisory body may exclude individual specific emoluments referred to in Recommendation No. 9.7 which are otherwise regulated by the Employment Relationship Act (ZDR-1).

9.9 The Rules on Other Rights shall stipulate not to include rights referred to in the Recommendation No. 9.7 in civil agreements. The law regulating contractual obligations applies to the right to the reimbursement of expenses for holding a position, although this issue may be regulated by parties in a different manner, provided that the right to the reimbursement of such expenses is suitably adjusted to the nature of a legal relationship employed (for example, a member of a management body who carries out the duties under a civil agreement should not be entitled to the reimbursement for expenses for meals during work). The member of the management body may be entitled to receive full payment at times of absence, however, another arrangement may also be agreed.

Specific emoluments: they are usually regulated by a collective agreement or the employer's general corporate policy and include all other allowances which by their very nature (basis) do not fall under none of the following groups of payments: base salary, benefits, variable performance-based remuneration and severance pay

9.10 Subject to the company's financial standing, the Rules on Other Rights may also include some specific emoluments which are usually regulated by a collective agreement or the employer's general corporate policy as well as all other allowances which by their very nature (basis) do not fall under none of the following groups of payments: base salary, benefits, variable performance-based remuneration and severance pay. These specific emoluments are as follows and are to be granted within the following amounts:

- **the jubilee premium**: under the same terms and conditions and in the amount as granted to other employees in a company.
- **special awards for holidays, for example Christmas benefit**: under the same terms and conditions and in the amount as granted to other employees in a company, unless a collective agreement, the employer's general corporate policy or a resolution by the management body defines such benefits as performance based allowances on account of the company's performance or the employee's performance, or this arises from other circumstances. For such allowances it is not important how they are named as this may be misleading; it is essential that the purpose for

granting them does not represent a benefit that may be considered a variable part of the remuneration;

- **the award for the employer's anniversary or the Employer Day:** under the same terms and conditions and in the amount as granted to other employees in a company, in accordance with a business and financial plan.
- the right to the **family separation allowance:** in cases and in the amount as granted to other employees in a company.

9.11 The following benefits should, however, be excluded:

- **other specific emoluments:** if the reason for regulating the right for such benefit in a collective agreement or in the employer's general corporate policy lies in a (actually or allegedly) lower salary of an employee or a (actually or allegedly) poorer material status of an employee; the Rules on Other Rights should stipulate that such rights are not included in an agreement for management services and they should be explicitly excluded from such agreement (if, in case of rights, such an agreement generally refers to collective agreement and/or to the employer's general corporate policy).

9.12 The Rules should stipulate not to include rights referred to in the Recommendation No. 9.10 in civil agreements.

Reasoning

General

The Slovene business practice as well as foreign business practices regulate other rights (benefits and entitlements, reimbursement of expenses, and similar rights) for members of a management body in a company under a standard section of a contract on management services. The German *Aktiegesetz*⁷ refers to other rights (named as “additional benefits” – *Nebenleistungen*) in Paragraph 87(1), explicitly mentioning them within the scope of remuneration to the Management Board of a public limited company. The law requires a supervisory body to take into account duties assigned to an individual member of the Management Board and their results achieved when making a decision on remuneration, as well as considering the financial standing of a company. A comparable provision is included in the Companies Act-1⁸, Article 270 (1) which sets the reimbursement of expenses and benefits within the scope of remuneration, stating that they need to be determined proportionally to duties carried out by a member of a management body, in accordance with the financial standing of the company and in line with the Remuneration Policy.

The Analysis prepared by SSH in July and August 2020 for the purposes of regulating other rights in the form of a recommendation for SOEs (hereinafter referred to as “the SSH Analysis on Other Rights, or the SSH Analysis”) has shown that other rights form an integral part of the SOEs’ Remuneration Policy. Such policy is adopted by supervisory bodies; other rights are included in agreements for management services concluded with members of the management body to regulate their rights and duties. The special feature of Slovene practice is that employment agreements are usually concluded with members of a management body and only rarely a civil contract is entered into. The regulation of other rights in employment agreements concluded with members of the management body follows this Slovene speciality: they are entitled not only to “standard” (non-monetary) other rights (benefits and entitlements), which would otherwise arise out of a civil contract, but also to individual types of (cash) payments based on labour law provisions which, as a rule, are paid in the amount which otherwise applies to other employees in a company (for example: the right to holiday pay).

A great part of SOEs, for which SSH acts as asset manager, are companies, in which the remuneration of members of management bodies and holders of a procurator is regulated by the Act Governing the Remuneration of Managers of Companies with Majority Ownership held by the Republic of Slovenia or Self-Governing Local Communities (hereinafter referred to as “ZPPOGD”)⁹. The SSH Analysis further shows

⁷ Aktiengesetz vom 6. September 1965 (BGBl. I S. 1089), das zuletzt durch Artikel 1 des Gesetzes vom 12. Dezember 2019 (BGBl. I S. 2637) geändert worden ist.

⁸ Companies Act (Official Gazette of RS, No. 65/09 – official consolidated text, 33/11, 91/11, 32/12, 57/12, 44/13 – CC Dec., 82/13, 55/15, 15/17 and 22/19 – ZPosS).

⁹ Act Governing the Remuneration of Managers of Companies with Majority Ownership held by the Republic of Slovenia or Self-Governing Local Communities (Official Gazette of RS, No. 21/10, 8/11 – ORZPPOGD4

that there are no essential differences in the regulation of other rights between companies to which the ZPPOGD applies and those companies to which the same Act does not apply. The differences in the regulation of other rights, in particular those which represent higher costs for a company, are shown mainly with respect to the size of a company, the complexity of their operations and the financial standing of the company. A general pattern may be determined with respect to rights which are attributed by considering the company size and the complexity of its operations: in principle, the Rules on Other Rights stipulated by large-size companies with more complex operations state several other rights (with regard to various forms of insurance policies, educational expenses), small-size companies, on the other hand, list less of such rights. The difference is also noticed in companies in which a member of the management body holds the office on the basis of a civil agreement, since in this case, smaller scope of rights, which are not based on labour law, applies (D d.o.o. is an example of such company).

The goal of SSH's Recommendations on other rights is firstly, to unify to a greater scale the regulation of other rights in SOEs, especially with respect to rights which may incur higher costs for a company, and secondly, to provide guidelines on the highest permissible amounts. It is also highly important to eliminate any doubts on the correct application of ZPPOGD and to achieve a common understanding of ZPPOGD by SOEs. The recommendations on other rights will also contribute to greater transparency, as they will be publicly available. In addition, the recommendations will have a preventive nature as they should prevent, or at least minimise any eventual future mistakes or excessive future actions.

SSH has publicly published a legal opinion expressed by Dr. Luka Tičar on its web site. The opinion has clarified certain dilemmas with respect to the entitlement of members of management bodies of companies, which are liable to comply with ZPPOGD, to certain types of remuneration. Legal standpoints referred to in this legal opinion have also provided the basis for preparing SSH's recommendations on other rights. The Court of Auditors has found as particularly questionable the entitlement of members of management bodies to those specific emoluments which can neither be classified as benefits and entitlements under ZPPOGD, Article 6, nor as rights explicitly listed in the ZPPOGD, Article 3, thus not being classified as basic remuneration, a variable part of the remuneration for operational performance nor as a severance pay. These are allowances which refer to various payments by a company to members of management bodies arising out of the labour-law based employment status of the same persons. The said legal opinion has finally clarified this dilemma and it has become clear that members of management bodies may also be entitled to those specific emoluments (that is, to other rights in a broader sense of the term).

The recommendations, which as regards their contents, are considered guidelines for formulating rules on other rights to be adopted by a supervisory body (or to formulate a Remuneration Policy to be adopted by the General Meeting), should be understood in

in 23/14 – ZDIJZ-C).

the manner that they do not require it a necessity to automatically include all of the listed other rights into the Rules which are to be adopted by supervisory bodies. Moreover, it is recommended, that supervisory bodies should be especially prudent when regulating (selecting) types of rights within the Rules on Other Rights. Supervisory bodies must adjust the Rules on Other Rights to the specific characteristics of a company as well as to the tasks and duties carried out by an individual member of the management body.

Adoption of Rules on Other Rights, making the General Meeting familiar with the Rules and definition of terms

The SSH's recommendations for adopting the Rules on Other Rights with respect to members of management bodies (hereinafter referred to as "the Recommendations on Other Rights or the Recommendations") regulate only one segment of remuneration received by members of management bodies, specifically, other rights; it has to be pointed out that a broad understanding of the term is applied in the Recommendations. The document does not include only benefits and entitlements (as a rule, referred to in ZPPOGD, Article 6) but also specific emoluments. The Recommendations define benefits and entitlements as non-monetary rights, that is, the right to use company-owned items also for private purposes and payments made by a company to third persons, of which, as a rule, a member of the management body has a certain personal non-monetary benefit. It arises from this definition "*a contrario*" that the use of company-owned items, which are not also used for private purposes (for example, the use of a company's car for business purposes only), and payments made by the company to third persons, which do not provide a member of the management body with any definite personal non-monetary benefit (for example, he/she and his/her business partners attend a business lunch whose cost is covered from the entertainment expenses budget), are not considered other rights under Recommendations (and as such, they are not considered remuneration); as a result, it is not necessary to regulate them in the Rules on Other Rights, nor in the agreement for management services concluded with a member of the management body or in the civil contract. The decision on material costs incurred by a company exclusively for the purpose of carrying out its operations (which are thus not considered remuneration to a member of the management body) falls under the responsibility of the management body based on the corporate authority for leading the company, and is not under the authority of the General Meeting or a Supervisory Board to make this decision.

In accordance with Recommendations, specific emoluments are defined as the following allowances: holiday pay, the retirement benefit, reimbursement of expenses related to holding a position, wage compensation due to various types of absence (for example, due to illness, holiday leave, education), specific emoluments which are specified in an agreement for management services by summarising or by providing a reference to a collective agreement, or to the employer's general policy, as well as all other monetary payments, which are not included in any of the following group of payments neither by their nature, nor by their definition: base salary, benefits, variable performance-based remuneration and severance pay. Specific emoluments thus particularly refer to the employment status of a member of the management body on the basis of the labour law,

which is why, in principle, they are not appropriate when the member of the management body holds such position on the basis of a civil agreement. The differentiation between one and another is justified by real circumstances: in the first case, the member of the management body is employed with the employer as an employee, whereas in the other case, he/she is not. Such members are quite often employed by another company and hold employee's rights in that company.

The Companies Act (ZGD-1) envisages that, as a matter of principle, remuneration on the "Say on Pay" basis may be regulated by the General Meeting of a company in the form of Remuneration Policy for Members of Management Body. It also includes an option of regulating other rights. The SSH Recommendations on Other Rights may therefore be taken into consideration by the General Meeting/the founder when such policy is to be adopted by the General Meeting. When the General Meeting does not adopt the Remuneration Policy applicable to members of the management body, the Recommendations provide that such policy is adopted by a Supervisory Board even in case when such policy has already been adopted by the General Meeting, so that other rights are to be determined within the scope of the above mentioned Remuneration Policy; or the Supervisory Board at least adopts the Rules on Other Rights under ZPPOGD and makes the General Meeting familiar with the adopted rules.

As a rule, the Rules on Other Rights form an integral part of the Remuneration Policy applicable to members of management bodies, but not necessarily; the Rules on Other Rights may also be adopted as an independent document – this is not essential for the correct implementation of the Recommendation No. 9.3. The Recommendation No. 9.3. requires from a supervisory body to adopt the Rules on Other Rights and to make the General Meeting familiar with the document. The General Meeting is made familiar with the Rules on Other Rights only once, i.e., after its adoption, and later only in case of any amendments to the Rules. By law, actions in compliance with Recommendation No. 9.3. are mandatory for a company to which ZPPOGD applies. The Recommendations are addressed to other companies on the "comply or explain" principle.

The Rules on Other Rights must, among other matters, take into account the size, activities, the complexity of operations and financial standing of a company. The above stated criteria are partially included in the Recommendation on Other Rights (in case of the right to use a company car for business and private purposes), however, a more detailed consideration of other rights is made by a supervisory body by taking into account the characteristics of a specific company. The supervisory body does not automatically regulate all rules on other rights stated in the Recommendation, neither does the supervisory body follow the upper ceiling determined in the Recommendation, but, following the principle of prudent judgment and acting to the benefit of the respective company, it assesses the need to include individual other rights into the Rules on Other Rights and makes a judgement on the still permissible upper ceiling which is quoted within the recommended amount.

Benefits and entitlements

On the basis of the SSH Analysis, SSH Recommendations define the types of benefits and entitlements which are permissible to be included in the Rules on Other Rights, subject to defined criteria. As a matter of fact, the Analysis has shown that companies do not make up unusual rights but act reasonably in the selection of the types of rights and choose rights which are considered standard in their business practice. Similarly, no significant exaggerations have been found with regard to the amounts paid as benefits and entitlements. Some benefits and entitlements do not need to be specifically mentioned as products with unreasonable prices are not offered on the market at all (for example, insurance premiums since the price calculated by insurance companies contains certain formulas which take into consideration previous pay-outs of insurance sums and the necessary risk assessment).

Benefits and entitlements explicitly limited by SSH include:

- the right to use a company car also for private purposes,
- the right to the reimbursement of all expenses in connection with education for more efficient implementation of duties,
- the right to the reimbursement of membership fees in professional organisations.

In the Rules, a supervisory body may additionally limit some benefits and entitlements, for example, the value of a mobile phone to which a member of the management body is entitled to.

Certain benefits and entitlements are presented in the Recommendation in a descriptive manner and by reference to a business and financial plan in which entertainment expenses and costs are defined.

In accordance with the definition of benefits and entitlements, individual recommendations on other rights explicitly stipulate that they refer to the use of company-owned items (a car, a mobile phone, a computer) for private purposes. Using these items only for business purposes is not considered remuneration paid to a member of a management body, which is why there is no need to regulate business operations of a company and its operating costs by way of the Rules on Other Rights. In fact, this would be disputable from the point of view of law on corporate governance since the decision-making on operating costs falls under the responsibility of the management body and not the supervisory body, even less within the authority of the General Meeting.

A special example of entitlements is the employee's right to supplementary training which the Employment Relationships Act (ZDR-1) defines as the employee's duty and at the same time, under certain assumptions, the employer's obligation to provide such supplementary training. The Income Tax Act stipulates that employer's payments for supplementary training of an employee, when such training is connected with employer's business operations, including training sessions organised within the scope of activities for promoting health at work, are in compliance with the Act which regulates occupational

health and safety (within the meaning of the said Act), and are not classified as entitlements. Irrespective of the above stated and in line with the established practice, it is recommended to regulate the right to education and supplementary training to be granted to members of a management body firstly in the Rules on Other Rights and then in an agreement for management services. In specific cases, the highest recommended amount of EUR 10,000.00 may be significantly low, especially when it can be expected that members of the management body should attend expert seminars and/or similar events abroad. The Recommendation takes these circumstances into consideration and advises that higher amounts should be decided by a supervisory body upon the management body's proposal and specified in a special resolution.

Irrespective of the above stated, small and medium-size companies and companies with poorer financial standing should particularly be cautious about expenses for supplementary training so that expected highest amounts shall be significantly lower than the recommended annual sum of EUR 10,000.00. As specified in Recommendations 9.1. and 9.2., considering relevant circumstances, this is the duty of a supervisory body.

As regards the size of a company, the complexity of its business operations and by taking into consideration its financial standing, the recommended upper ceiling of the permissible amounts of other rights are increased only in case of the right to also use a company car for private purposes. When determining the upper values, the recent corporate practices have been taken into account, which in SSH's opinion, are considered reasonable. Considering the SSH's Recommendation on Sustainable Development, the Recommendation on Other Rights also includes an incentive for companies to buy environment-friendly cars. In practice, small-size companies and companies with poorer financial standing are expected to acquire vehicles in the value substantially lower than EUR 30,000.00 (closer to EUR 20,000.00).

It is explicitly recommended that rules should not include the right to the payment of a life-insurance investment premium, or any other such insurance policy which gives the right to pay out assets. The fact is that this type of insurance policy, by way of which monetary sums are deposited as an investment that may be cashed in, actually includes payments; these, however, are already included in basic income. As a matter of fact, it is mandatory for liable companies to follow this Recommendation, or else they would exceed permissible amounts of basic remuneration as required by ZPPOGD. Other companies are recommended to follow this Recommendation.

Specific emoluments

Specific emoluments are mostly connected with an agreement for management services concluded with managers and are, as a rule, not compatible with civil contracts. An exemption refers to the reimbursement for holding the position, for which civil contracts are mandatory under the Code of Obligations, except when the parties involved regulate reimbursement of expenses in another way.¹⁰ In this part, the SSH Recommendation

¹⁰ (Official Gazette of RS, No. 97/07 – official consolidated text, 64/16 – CC Dec and 20/18 – OROZ631). See for comparison Article 776, Paragraph 1, which stipulates as follows: “*The mandator must reimburse*”

allows the parties in the civil contract to make a reference to the application of company rules which, however, need to be adjusted to the nature of the relationship employed (for example, the right to the reimbursement of expenses for meals during work need to be excluded).

The wording used in the SSH's Recommendation on Other Rights when referring to specific emoluments is often used within the context of "*rights under terms and conditions and in the amount which apply to other employees in a company*". In principle this means that the most favourable rules, which apply to employees in an individual company in connection with an individual right, shall be taken into consideration. It may be ZDR-1, a collective agreement applicable to a specific field of industry, a corporate collective agreement, or the general employer's internal corporate policy, or even individual resolution adopted by a management body.

As already explained above, the legal opinion given by Dr Luka Tičar has provided the final answer to the question about the eligibility of members of a management body to receive specific emoluments in companies which are liable to apply ZPPOGD. When members of the management body are employed in a company (based on an employment agreement for the management personnel), they are entitled to rights under ZDR-1 pursuant to the law itself, as, in this part, their legal status is equal to the status of every other employee in a company. When a supervisory body makes a decision not to confer such rights, those rights must be explicitly exempted. A different treatment applies to rights specified in a collective agreement and the general employer's corporate policy. In such cases, the parties of the employment agreement for the management personnel must, as a rule, explicitly agree on including such rights in the employment agreement (subject to the scope of validity of a legal document), when they agree on their inclusion thereof. As regards the right to the retirement benefit, the limitation of this right with regard to its extent is envisaged as stipulated by ZDR-1; this means that the more favourable extent of this right as provided under a collective agreement should be excluded (in some industries, for example in the electricity industry¹¹, subject to the years of service at an employer, the retirement benefit is much higher than under ZDR-1). The reason for such recommendation lies in the comparability of the retirement benefit for members of management bodies of all SOEs, irrespective of the industry, although this right is based on the employee's status. SSH believes that, as regards this right, it is more important to ensure the comparability of the retirement benefit payable to directors in various SOEs rather than the comparability of an individual director as an employee with other employees in the same company. Again, those persons, who do not work on the basis of an employment agreement, are excluded, since retirement, based on which the retirement benefit is to be paid, refers to the employee's status.

the mandate recipient for all the necessary costs the latter had in performing the mandate, together with interest charged from the day they were paid, even if through no fault of the latter the latter's efforts were in vain."

¹¹ See Article 74 of the Collective Agreement for Electricity Industry of Slovenia (Official Gazette of RS, Nos. 41/17 and 109/20).

In principle, the Recommendations on Other Rights allow the following specific emoluments, which are, as a rule, regulated in a collective agreement or the employer's general corporate policy: (a) jubilee premium under terms and conditions and in the amount which apply to other employees in a company; (b) extra holiday bonuses, for example Christmas benefit, under terms and conditions and in the amount which apply to other employees in the company, except when such allowances are defined by the collective agreement, the employer's general corporate policy or by a management body's resolution as performance based allowances on account of the company's performance or the employee's performance, or this arises from other circumstances. For such allowances it is not important how they are named as this may be misleading; it is essential that the purpose for granting them does not represent a benefit that may be considered a variable part of the remuneration; (c) the award for the employer's anniversary or the Employer Day: under the same terms and conditions and in the amount as granted to other employees in a company, in accordance with a business and financial plan; (d) the right to the family separation allowance: in cases and in the amount as granted to other employees in a company.

The Recommendations envisage that the rules on other rights should exclude (or do not include) the following allowance: other specific emoluments, if the reason for regulating the right for such benefit in a collective agreement or in the employer's general corporate policy lies in (actually or allegedly) lower salary of an employee or (actually or allegedly) poorer material status of an employee. As a matter of fact, the SSH's Analysis on other specific emoluments has not found that SOEs have included the said rights in the Rules on Other Rights or in contracts concluded with members of management bodies, but this issue must have been addressed for consistency reasons. This subject-matter could be relevant in particular in case of a general reference to rules which apply to employees.

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