

CORPORATE GOVERNANCE AFTER 20 YEARS IN SLOVENIA

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Abstract

The implementation of corporate governance in the Republic of Slovenia is particularly important due to the transformation of the equity ownership company system and, consequently, corporate governance, which has been evolving since Slovenia's independence 20 years ago. The implementation of EU directives and regulations brings about positive legal effects in corporate governance following 2004. Positive assessments are provided of the development of Slovenian codes of corporate governance. However, studies, findings and analyzes show some negative phenomena, which should be overpassed in the search of effective corporate governance model in the future. Some tools and methods (disclosure and transparency, auto evaluation, legal actions, etc.) are scrutinized to introduce the improvements and enable better results of corporate governance in Slovenia.

Key words: *corporate governance, privatization, disclosure and transparency, revision, legal actions, equity.*

JEL classification: K22;

Review

Received: February 07, 2013 / Accepted: May 07, 2013

1. INTRODUCTION

The implementation of EU directives and regulations brings about positive effects in corporate governance in the Republic Slovenia (RS) following its accession to the European Union (EU) in 2004 (Bohinc 2010; Kocbek et al 2010; Djokic 2011). RS complied with all the amendments of EU regulation regarding company law, accountancy, financial reporting and revision (ZGD-1-UPB3 2009). Legal analyses also give positive assessments of the development of Slovenian codes of corporate governance (Djokic 2010).

Still the questions remains: What purpose take the legal resources integrated into the Slovenian legal order in accordance with the European requirements and recommendations? Which goals are being pursued in the area of corporate governance and supervision while 'learning by doing'? Are we aware of the significance of legal instruments used for the development of corporate governance? When and how are we going to create sustaining social and responsible corporations, according to the future trends? After 20 years, it is reasonable to question corporate mentality, consciousness and values that were shaped through constant changes and adjustments RS faced in this period of time.

2. TWENTY YEARS OF CORPORATE GOVERNANCE

The RS traces its corporate governance beginnings to the 1990s when the country initiated ownership transformation of companies. (ZTLR et al 1992) Companies with the social capital as an equity source have been on the basis of a law transformed into the companies with the equity capital in private ownership. Corporate governance of companies in the RS has been implementing for 20 years (Djokic, 2011a).

It seems that the redistribution of both social and national capital and, consequently, power and control in the country, influenced the governance. The basic interest currently observed in the society is to amass capital and control of the companies. Media scandals suggest that corporate

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assets and funds are not spent on the development and progress of a corporation, but to acquire or increase the ownership of managers as inside corporate owners or groups of home owners or to acquire premiums on the share sale to the outside corporate owners (Finance 2006-2011).

3. PHENOMENA, FINDINGS AND STUDIES RELATING POST PRIVATIZATION OF THE SOCIAL CAPITAL OF COMPANIES IN SLOVENIA

The transformation of the legal basis of governance 'from labor to capital' has taken its toll. Administrative procedures were implemented and completed successfully, but with no significant added value. Nontransparent corporate pyramid structures and other 'negative aspects' of corporate governance during the secondary privatization period 2000–2010 did not contribute to the development of corporate governance (Damijan, Gregorič, and Prašnikar 2009).

What is permissible in a developed legal system of the global economy is not necessary positive or beneficial in light of long-term and effective operation of joint stock companies. Besides that RS involves a specific national environment and corporate governance system, previously based on different equity ownership grounds.

The key role of managers is to ensure successful and effective operation of a corporation. If a corporation does not do business, it cannot perform its activities and fulfill its existential goals.

If managers are using the assets of a company as a legal entity for financing or acquiring equity capital of the corporation, the results tend to be harmful for the company. In case a corporation as a legal entity is not run in a way to profitably manage its assets (through profitable business), but its funds are being used for realizing insider equity takeovers instead, the corporation as a joint stock company is subject to property damage (damages and loss of profit). The value of property of the company is decreasing and its ongoing and future business is either questionable or already lost; thus, the corporation cannot remain competitive and, as a result, cannot fulfill the conditions to conduct business effectively.

After 20 years, it seems that in RS the property transformation has not been exploited to the utmost so as to increase operation effectiveness of joint stock companies. Instead, processes, administrative procedures and corporate governance leverage were used to create equity owners who, in the process of acquiring the ownership, did not expend their own capital, but used the assets and funds of joint stock companies for the purpose (Djokic 2011, 2011a, 779-786).

3.1 Studies and research findings on corporate governance

Even without taking a look at any scientific research and studies, everyday life and media reports already suggest that legal instruments and institutes are being used contrary to the interest and goals of corporate operation and successful existence of a corporation as economic and legal entity on a long term. Nevertheless, some studies and research findings have been executed, which help to justify the assessment of the situation in the RS regarding corporate governance.

Individual economic researches show how managers managed credits and corporate funds. In addition, the data sent a warning about significant discrepancies between the effects of corporate governance and actual managing which does not guarantee long-term effectiveness of corporate operation.

To illustrate the situation, the following research findings may be indicated (Prašnikar et al., 2010):

- Cvelbar et al 2010 researched the area of productivity and ownership. The central thesis suggested that certain ownership structures in a specific situation increase productivity. The aim was to analyze the relation between productivity and ownership as well as to establish which ownership types can boost productivity during the time of crisis. The following ownership structures were classified as more effective: dispersed ownership, cap companies, financial holding companies with undefined ownership. The research data also show that dispersed ownership creates positive impact on productivity as it is improving despite the crisis, and that it provides better fundamental conditions in large as well as in 'blue chip' companies. Large stake owner companies and MBO companies proved to

be part of the less effective ownership structures. However, large owners have shown greater potential for productivity growth in small companies, while their indebtedness was high as a result of managers' buyouts by credits. Such companies have felt the impact of debt as early as in 2008 (Ibid.).

- Czerny et al 2010 explored how investments influence tangible assets, presuming that fixed capital formation increases both productivity and competitiveness. The authors analyzed the influence of ownership structures upon fixed capital formation and the effects of internal resources and turnovers on fixed capital formation (Ibid.).
- Bole et al 2010 dealt with the relations between the increase of financial debt of companies and their investments. The research presupposed that prior to the economic and financial crisis, the total debt of Slovenian companies (as % of GDP) increased significantly from 50% in 2004 to 80% in 2008. The study aimed to analyze the differences in financial indebtedness with regard to the ownership structure in place and identify the connection between increased debt and the kinds of assets. The authors established that in the period 2006–2009, financial debt in MBO companies increased by 74%, with the same trend observed in 2009 as well. In addition, the profit of those companies in 2008 declined by 99% and reached a negative point in 2009. While short-term financial investments are on the decline, long-term financial investments are on the increase (Ibid.).
- A research conducted by Ojsteršek et al 2010 from the Faculty of Economics on investments in tangible and intangible capital in Slovenian industry for the period 2006–2009 suggests that financial indebtedness of Slovenian companies during the upturn in the economy increased significantly, thus boosting the financial leverage. As a result, companies will need time to conduct financial restructuring. In the period 2007–2008, merely 43% of the increase in debt was intended for additional financing of operation; most of it was earmarked for additional financial investments and investment properties. Companies that were subject to management buyouts suffered profound consequences; for this reason, their strategic and financial restructuring will be extremely difficult (Ibid.).

3.2 Regulatory framework, practice and court actions

Besides findings, the discrepancies between the regulatory framework, standards and principles and their execution in the practice are demonstrated also by studies and research from 2007 to 2010 funded and performed by the Slovenian Directors' Association (SDA, 2009)

However, almost no court actions regarding the described anomalies, took place in the previous 20 years of the existence of corporate governance in Slovenia. Criminal prosecutions and/or actions (claims) for compensation (damages) among the corporate stakeholders were very rare. The court cases therefore have not suggested the possible ways or present results in relation to media reports and phenomena of corporate governance in RS, yet.

In this context, one may question whether more frequent enforcement remedies, such as: actions and/or claims for compensations (damages), regular and extraordinary audits and revision processes in the corporations, would contribute to the development of good practices in corporate governance.

Legal options for the exercise of shareholders or creditors rights have existed in Slovenian regulations for a long time. After 2000, minority stockholder rights and the responsibilities of managers and supervisors were enacted; the operation of financial services was regulated; the Securities Market Agency's functioning was regulated as well (Djokic 2011, 219) .

Nevertheless, legal remedies were usually not pursued as there were no active (injured) parties applying for compensation so as to prove the existence of criminal offences, and no stockholders claiming their rights. Such a situation suggests that during the period of 20 years time, corporate governance did not work de facto, but only and exclusively de jure.

3.3 The Role and importance of legal and other remedies

As far as enforcement of legal and/or court remedies in “the corporate governance cases” are concerned, it is possible to consider them in the a) past or b) future context:

- a. If legal remedies were pursued more often even in the past, more managing bodies could be found either liable for damages or criminally responsible. This would indicate that there exist negative, criminally prosecutable or otherwise unfavorable phenomena in the area of corporate operation and governance, all of which suggesting that corporations as legal entities are being subject to abusive practices. Court practice could not necessarily realize the limitations of the abuses of corporate governance system in the past. However, the existence of the phenomena would most certainly be proven. The reactions against such phenomena could help in building higher moral values and standards, regarding the execution of the responsibilities of the management bodies of the companies. To this end, the operation of courts should be organized in a way to allow rapid and preferential treatment of various statutory actions or actions for damages in respect of corporate governance.
- b. It is essential that the functions and tasks of individual company bodies be performed carefully and responsibly. If standards and principles of good and effective corporate governance come into practice in the past, legal remedies will not be needed. The development of good and effective corporate governance cannot be based only on written rules and standards. Effective corporate governance is demonstrated by actual implementation of the rules in practice which must promote the objectives of the corporation. It is necessary to address the detected errors or anomalies and improve the system with a view to make it good and effective (Djokic, 2010).

Legal remedies for the execution of the corporate goals, are extreme measures. They show that something is already very wrong in the governance of the corporation and should be taken as final act. They are also expensive and time-consuming. Are there any other ways to overpass the existing problems of Corporate Governance in Slovenia? The facts that good operation yields positive results and that effective corporate governance meets the goals of corporations should be recognized and become generally acknowledged, much earlier, before they become detrimental for the corporations.

From this point of view, the disclosure and transparency principle regarding corporate information must be used as a means to increase the shareholders and public awareness and ensure better, positive supervisory incentive for corporate governance (Djokic 2011b). The disclosure and transparency principle will represent also the pressure to the management bodies, to perform their duties more diligently and liable. Corporate interest is going to become more recognizable and transparent. By that it should be faster and easier for the stockholders or other interested parties to seek their wright and court protection.

The other measure that in Slovenia could bring positive results is the specified auto evaluation of the management bodies. Presuming that managers and supervisors are qualified and professional enough, their work combined with the work of their professional associations can contribute to better supervision of the corporation. It is advisable that auto evaluation of a management bodies on this stage is substantiated by regular exchange of opinions or value judgments by professional associations. The auto evaluation documents should also be selectively reviewed or open to the supervision.

It is crucial time for Slovenia to develop an effective corporate governance model which is going to encourage also an economic development in the country.

4. Effective future model of Corporate Governance in Slovenia

The intellectual challenge of corporate governance is finding the right mix of instruments, answering whether and to what degree mandatory of fall-back law is needed and if it is needed, what the role of the European Union should be (Hopt 2010, 8).

The present situation is calling Slovenia to become more aware of the importance of competent and effective corporate governance model. There is no systemic and analytical examination of corporate ownership structures in place in order to assist the development of potential and ef-

fective corporate governance models in RS. In addition, examinations and researches are merely a domain of academic domains or projects.

The creation and use of an economically successful model, should be supported by the use of different legal techniques of regulators and others, involved in the regulatory process. Soft law and obligatory provisions, enacted by laws should be used and combined (Djokic, 2013). In a country where close personal and business connections are obvious to everybody, the use of the disclosure and transparency principle could encourage corporate governance bodies to be more professional and effective. The Corporate Governance Code realisation should be monitored and judged, as well. The goal should be to enable social peace and sustainable development of the Slovenian corporations, on a long term.

5. CONCLUSION

The media reports, researches and annual report reviews of public corporations in Slovenia constantly worn, the practice exercised by joint stock companies and other companies is not in line with the written rules. According to the trend identifiable in the RS throughout the twenty years since its independence, companies do not favor publishing corporate information on the basis of the recommended standards for effective corporate governance; the transparency of corporations is rising due to the binding provisions which stipulate that corporations must implement concrete legal instruments, such as the corporate governance statement.

In view of this, it is necessary to devote special attention to the actual implementation of the written rules in practice. The implementation of corporate governance in the RS is particularly important due to the transformation of the equity ownership company system and, consequently, corporate governance, which has been evolving since Slovenia's independence 20 years ago. Twenty years is a short period of time compared to other (Western) countries. For this reason, the practice of corporate governance is extremely important for its future development. Furthermore, the majority of Slovenian corporations are not of public nature; thus, they are not bound to implement the rules and standards that are formally in place for public companies. Some researches suggest that the formal development of transparency in Slovenian public corporations needs more time. Consequently, it is relevant to consider for how long and how does this area develop in private companies. From the legal perspective, it is important to explore both legal and technical possibilities for the development of effective practices of governance of companies (not only corporations) with a view to include the development of corporate governance and supervision as its constituent elements, for the benefit of general progress and encouraging business results of business entities in the RS.

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