Corporate Governance in Transitional Economies The Case of Code of Corporate Governance

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Abstract
The role of corporate governance is manifested in: creating value for the corporation and supporting transparency; protecting shareholders' rights and ensuring their equal treatment, acknowledging the interests of all entities that develop relationships with the company, assuming responsibility by the Board of Directors, integrity and ethical behaviour, transparency in implementing internal and external control systems to certify the validity of corporate financial reports. In this review which is a collection of volume of research on corporate governance the significance of effective corporate governance is being evident. The aim of the review done is to check the effectiveness of corporate governance through the code of corporate governance in some company. Corporate Governance is a broad term defines the methods, structure and the processes of a company in which the business and affairs of the company managed and directed. Corporate governance also enhances the long term shareholder value by the process of accountability of managers and by enhances the firm's performance. It also eliminate the conflict of ownership and control by separately defines the interest of shareholders and managers. Corporate governance has come to the forefront of academic research due to the vital role it plays in the overall health of economic systems. The wave of U.S. corporate fraud in the 1990s was attributed to deficiencies in corporate governance. The recent 2008-2009 global financial crisis, triggered by the unprecedented failure of Lehman Brothers and the subprime mortgage problems, renewed interest in the role corporate governance plays in the financial sector. The development of a strong corporate governance framework is important to protect stakeholders, maintain investor confidence in the transition countries and attract foreign direct investment. Corporate governance concerns the design of decision-making structures relating to a firm's choice of new investment projects and the operation of its existing ones. In this paper we will se the process of implementation of code of corporate governance. The development of a strong corporate governance framework is important to protect stakeholders, maintain investor confidence in the transition countries and attract foreign direct investment. Corporate governance concerns the design of decision-making structures relating to a firm's choice of new investment projects and the operation of its existing ones. The purpose of this study is to contribute for Albanian state, central and Eastern Europe countries to understand the importance of the Code of corporate governance and its role in each organization.
Keywords:corporate governance, agency theory, ownership, shareholders, managers, Code, etc.

1. Introduction

Corporate governance generally refers to the set of rule-based processes of laws, policies, and accountability that governs the relationship between the investor (stockholder of a company) and the investee (management). Corporate governance attracted a great deal of attention in the aftermath of the Asian financial crisis of 1997-1998 and the early 2000s U.S. corporate scandals, like Enron and World Com. However, once the threat of global contagion financial crises passes, corporate governance was relegated to the back of academic research. The Organization for Economic Cooperation and Development provides another perspective by stating that "corporate governance is the system by which business corporations are directed and controlled. The corporate governance structure specifies the distribution of rights and responsibilities among different participants In the Corporation, such as the Board, managers, shareholders and other stakeholders, and spells out the rules and procedure for making decisions on corporate affairs. By doing this, it also provides the structures through which the company objectives are set, and the means of attaining those objectives and monitoring performance.

Corporate governance is the broad term describes the processes, customs, policies, laws and institutions that direct the organizations and corporations in the way they act, administer and control their operations. It works to achieve the goal of the organization and manages the relationship among the stakeholders including the board of directors and the shareholders. It also deals with the accountability of the individuals through a mechanism which reduces the principal-agent problem in the organization. Fine corporate governance is an essential standard for establishing the striking investment environment which is needed by competitive companies to gain strong position in efficient financial markets. Good corporate governance is fundamental to the economies with extensive business background and also facilitates the success for entrepreneurship. During the last two decades the research area in finance is primarily focus on the area of corporate governance. The separation of ownership from control is the core of the agency problems facing by the firms (Berle & Means 1932; Jensen & Macklin 1976).

The corporate governance problem has been gaining importance in transition economies. Economic growth in these countries has turned out to lower than expected. Privatization does not seem to have brought about the anticipated improvements in corporate efficiency. The state and "para - state" institutions such as privatization funds remain the largest shareholders of companies. Internal owners dominate in many companies, while the external owners do not have enough voting power to control the companies and thereby to ensure themselves appropriate returns. The capital markets are under-developed and do not facilitate the inflow of new capital as intended. Further, market transactions are often based on the abuse of inside information.

2. Corporate governance problem in the economic literature

Corporate governance importance arises in modern corporations due to the separation of management and ownership control in the organizations. The interests of shareholders are conflicting with the interests of managers. The principal agent problem is reflected in the management and direction related problems due to the differential interests of firm's stakeholders. There is not a single definition of corporate governance rather it might be viewed from different angles. Berle and Means (1932) and the even earlier Smith (1776). Zingales (1998) defines corporate governance as "allocation of ownership, capital structure, managerial incentive schemes, takeovers, board of directors, pressure from institutional investors, product market competition, labor market competition, organizational structure, etc., can all be thought of as institutions that affect the process through which quasi-rents are distributed (p. 4)". Garvey and Swan (1994) assert that "governance determines how the firm's top decision makers (executives) actually administer such contracts (p. 139)". Shleifer and Vishny (1997) define corporate governance as "the ways in which suppliers of finance to corporations assure themselves of getting a return on their investment (p.737)". OECD in 1999 defined corporate governance as "Corporate governance is the system by which business corporations are directed and controlled.

The corporate governance structure specifies the distribution of rights and responsibilities among different participants in the corporation, such as, the board, managers, shareholders and other stakeholders, and spells out the rules and procedures for making decisions on corporate affairs. By doing this, it also provides the structure through which the company objectives are set, and the means of attaining those objectives and monitoring performance." Oman (2001) defined corporate governance as a term refers to the private and public institutions that include laws, regulations and the business practices which governs the relationship between the corporate managers and the stakeholders. The Ministry of Finance, Singapore (CORPORATE GOVERNANCEC 2001) defines corporate governance as "the processes and structure by which the business and affairs of the company are directed and managed, in order to enhance long term shareholder value through enhancing corporate performance and accountability, whilst taking into account the interests of other stakeholders. Good corporate governance therefore embodies both enterprise (performance) and accountability (conformance)." (Fin, 2004, pp 13-14). La Porta, Silanes and Shliefer (2000, 2002) view corporate governance as a set of mechanisms through which outside investors (shareholders) protect themselves from inside investors (managers).

The corporate governance problem was first referred to by Berle and Means (1932) as the problem arising out of the separation of ownership and control in large corporations. Given their discretionary power, company managers may use company resources to their own advantage. Investors therefore cannot take their returns of cash flow from the company's projects for granted. There is no such problem in companies with concentrated ownership as large shareholders have both the incentive to be actively involved in monitoring management and to bear the costs, as they reap most of the benefits. However, ownership concentration also reduces capital market liquidity and hence investors' willingness to provide funds to companies in the market. In companies with concentrated ownership the agency problem takes on a new dimension in the sense of the expropriation of the rights of minority shareholders by the large shareholders. The large shareholders can make managers act in their interests and at the expense of the company's value, the minority shareholders and other stakeholders in the company. The fear of such expropriation by large shareholders reduces the willingness of the minority shareholders to invest funds in companies and thus has a negative impact on the capital market (LaPorta et al., 1996; Perotti, Modigliani, 1998). This could be the main reason underlying the relatively small capital markets in continental European countries and thus the non-active markets for take - overs (Lannoo, 1998). However, the capital markets in the Netherlands, Sweden and Switzerland are an exception.

In today competitive environment, having a loyal and satisfied customer increases revenues, reduces costs, builds market shares, and improves bottom lines. Managers have various incentives to manipulate earnings. Some incentives are provided by contractual arrangements based on accounting earnings such as bonus plan, debt and dividend covenants, etc. For example, DeFond and Jiambalvo (1994) find that sample firms accelerate earnings prior to lending covenants, and Holthausen, Larker and Sloan (1995) find that managers manipulate earnings downwards when their bonus are at their maximum. In some cases, earnings management is motivated by regulatory reasons. Previous studies find that managers would manipulate earnings to circumvent industry regulations and reduce the risk of investigation by anti-trust regulators (Collins et al (1995); Cahan (1992)). However, recent research has been focus more on incentives provided by the capital market.

A number of prior studies examine the existence of earnings management by identifying a situation where earnings management is likely to occur and estimating discretionary accruals. However, some recent papers test earnings management by examining the distribution of reported earnings (Burgstahler and Dichev (1997); Degeorge et al (1999); Brown (2001)). These studies find that the frequency of firms with small positive earnings (positive earnings changes or earnings surprise) is higher than expected, while the frequency of firms with small negative earnings (negative earnings changes or earnings surprises) is less than expected. Agency theory suggests that shareholdings held by managers help align their interests with those of shareholders (Jensen and Meckling, 1976). Furthermore, under the convergence-of-interest hypothesis, insider ownership can be seen as a mechanism to constrain the opportunistic behavior of managers and, therefore, earnings management is predicted to be negatively associated with insider ownership (Warfield et al., 1995).

Percent of Independent outside Directors on the Board There is a considerable literature regarding the effect of the composition of the board of directors (i.e., inside versus outside directors). Agency theory supports the idea that board independence should be denominated by outside director. Dunn (1987) highlighted that board dominated by outsiders is in a better position to monitor and control managers. Fama and Jensen (1983) argued that the role of the board of directors is to protect shareholder interests by monitoring managers. An important factor that may affect the board's ability to monitor the firm's managers is its composition and the percentage of independent directors on the board.

Debate continues on the most efficient corporate governance system in continental Europe. There probably should be no pyramid structures as they provide the owners with the wrong incentives and reduce the liquidity of capital markets. The latter in fact results from any increase in ownership concentration. The introduction of a mandatory take-over bid once a certain shareholder gains a determined threshold of a company's shares could reduce the direct control by large shareholders. The introduction of the one-share-one-vote principle could reduce the percentage of non-voting shares in a company's stock and cut the liquidity of the capital market. The trade-off between liquidity and control is thus yet to be found.

The Anglo-American corporate governance system differentiates the shareholders from the stakeholders with a well-developed external equity market system to monitor the manager. The additional protection and voice afforded a dispersed shareholders group in the Anglo-American model is the liquidity of the market to allow exit strategy in the event of weakening internal corporate governance. The well developed financial market in developed economies with rating agencies, market scrutiny and access to timely information is another layer of protection for the dispersed shareholders. A body of studies looks at whether a transition country's past legal heritage (German, French) influences the adoption of the current legal structure and corporate governance or whether the Anglo-American system is more prevalent (Pistor, 2000; Martynova and Renneboog (2009).

3. Corporate governance in Albania. The code of corporate governance.

The main purpose for drafting CG Code was to help businesses in implementing the code and principles of corporate governance to cope with the ongoing economic crisis and create an appeal and reliable environment for attracting investment in society. This code is prepared referring to some specific condition that Albanian market represent, first of all not having listed companies, not having an active stock exchange and not having a develop capital market.

Corporate Governance code is prepared from experts of IFC in cooperation with experts of ministry based in the best international practices adopted for unlisted companies and Albanian legal framework to be used from joint stock companies and limited liability companies. The Corporate Governance Code for Unlisted Joint-Stock Companies in Albania ("the Code") focuses on specificities of corporate governance for unlisted companies. Most unlisted companies are owned and controlled by single individual or coalition of company insiders (e.g. a family). Good governance of unlisted companies, in the context of CG Code, is not a question of protecting the interests of absentee shareholders. Rather, it is concerned with establishment of a framework of company processes and attitudes that add value to the business and help ensure long-term continuity and success.

The CG Code is only a best practice reference for unlisted companies in Albania, aimed at designing a framework of best practices being over and above the minimum legal requirements. Thus it is not a regulation that companies would be obliged to comply with. Also, it is not a soft-law document in relation to which companies will have to report if they comply with or to explain why they do not comply with it ("comply-or-explain" principle). Rather, it is an overview of the best practices in relation to governance of unlisted companies in the moment of its preparation, and it is intended to serve as reference and inspiration for Albanian companies to develop sound governance framework. CG Code is approved from Business Advisory Council and since its approval few companies have adopted it in their company policies. Still companies are not aware enough about the importance of such code. But the work with CG Code did not finish with its approval. Again IFC with the

Corporate Governance Institute of Albania offered to Albanian companies a tool scorecard in order for companies to be able and make a self assessment to their corporate governance issues. The Ministry of Economy supported such tool and the continuance of the work to help and support businesses and took over to endorse such tool to companies as a very important tool for the implementation of CG Code. There is still too much work to do from arising the awareness of businesses regarding the importance of corporate governance practices and the implementation of CG code, to the use of scorecards to make companies more transparent and accountable for investors, shareholders, stakeholders and community.

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4. Some examples of corporate governance.

Corporate Governance of Telecom Albania and Vodafone Albania.

The highest-ranking governance board of Telekom Albania, responsible to take decisions for important corporate issues (according to Law No. 9901, date of 14.4.2008, "On Traders and Trading Companies") is the "General Shareholders Assembly". The Supervisory Board has the responsibility to ensure that the Company's activities and operations are in compliance with all laws and regulations. It reviews and monitors any actual or potential situations of conflict of interest and compliance with the law. It receives from the Board of Directors all the notices of actual or potential conflict of interest or material interest they may have with the Company. In addition, the Supervisory Board supervises the activity of Board of Directors. The Supervisory Board consists of three members, who are appointed by the Shareholder's Assembly Meeting. The Supervisory Boards meets at least once every three months. As described in company's statue, the Board of Directors is responsible and defines the general policies and strategy of Telekom Albania as well as supervises operational management and the overall activity of the company. The Board of Directors consists of five members appointed by the Supervisory Board for a three-year term. They can each be reappointed. Board of Directors meetings are held at least once every three months. Wages and other compensation of Board members are defined according to General Assembly decisions.

The Chief Executive Officer (CEO) assumes the primary responsibility for operational management. The CEO is assisted and supported in this operation by the Internal Audit and Compliance Office. The code of conduct sets out what is expected of every single person working for and with Vodafone. It contains our Business Principles which are the foundation for how we do business everywhere we operate. A Code of Ethics in compliance with Section 406 of the US Sarbanes-Oxley Act of 2002, which is applicable to the senior financial and principal executive officers. Compliance with the UK Corporate Governance Code (formerly known as the Combined Code)

For the year ended 31 March 2015, and to the date of the 2015 annual report, the Company complied with the provisions and applied the Main Principles of the UK Corporate Governance Code (the 'Code'). A revised version of the Code was issued in September 2014, applicable to accounting periods beginning on or after 1 October 2014. Details of the UK Corporate Governance Code can be found on the FRC website. There are a lot of corporate in Albania that have implement the corporate governance in their company bur the corporate governance is at the beginning. Important is to much work for all the actors in market (Albanian economy for corporate governance). BKT (National Commercial Bank) sees the transparency to the shareholders, employees and other stakeholders as an important responsibility within the frame of applying the best practices on corporate governance principles. For this purpose, you may find in here all the updated financial and nonfinancial information related to BKT.

5. Conclusion

All the company will have success in their activity if they have a strong corporate governance code with all the fundamental principles. The findings of the most studies show that effective corporate governance reduces the ownership and control problems and draws a clear line between the shareholder and the manager. Important role has the implementation of principle publish on the code. The role of corporate governance is manifested in: creating value for the corporation and supporting transparency (Lamm,2010b); protecting shareholders' rights and ensuring their equal treatment, acknowledging the interests of all entities that develop relationships with the company, assuming responsibility by the Board of Directors, integrity and ethical behaviour, transparency in implementing internal and external control systems to certify the validity of corporate financial reports (Dobrotă, et al., 2011).

Transition countries that are more advanced in capital market development seem to be converging towards the English legal origin regime of corporate governance, in particular, Poland. Today all countries have their code of corporate governance and are implemented in all the companies. In Albania important is to do much in the field of corporate governance because we are in the beginning steps and implemented of corporate code in everyday work is very important.

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