

NEW TECHNOLOGIES: ONE OF THE KEY STRATEGIC FACTORS OF THE SERBIAN CORPORATE GOVERNANCE PRACTICE HARMONISATION WITH EU REQUIREMENTS¹

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Abstract

New technologies have been changing the world for centuries. Innovations have been the strongest tool for development and recovery of world economy. Today information is the most valuable asset and global markets and global companies are depending on relevant data and information security. Tech-intelligent processes are fundamental for the European corporate governance environment. The stability of corporate governance as a system with the prime aim to protect investors and take care of stakeholders linked to public companies is based on quality of information and relevant access. When corporate governance is good, then also the process of collecting and disseminating information is good as well. This paper presents the potentials of information technology to be used for better corporate governance and to help Serbian companies to position themselves on European capital markets. Public company as well as of capital markets can be controlled in more efficient way by using IT. Shareholders rights and activities, board of directors` duties and responsibilities, settling of disputes, disclosure and transparency, stakeholders` protection and other important issues in corporate governance can be provided and organized in a better way. This paper mostly deals with tree main segments of corporate governance policy: protection of shareholders rights, effective board of directors and efficient resolution of disputes. Proper use of technology and right policies and procedures for information security can help public company to improve the efficiency of corporate governance by supporting diligence, restrict abuse and reduce corruption and bribery. Destructive nature of any dispute arising within or out of company has potential to spoil reputation of company and the trust of investors. On the other hand, the dispute, can be solved and even be a tool for better relationship between parties in a dispute in the future. If discovered at the early beginning, the dispute can be handled effectively by mediation. There, information technology and communication can be of great help.

Key words: Corporate Governance, Information Technology. Shareholders, Board of Directors, Mediation

INTRODUCTION

Information and communication technologies are an important cohesive factor in developing global economy and binding up capital markets. Corporate governance as a foundation stone of these markets has its place in the process of creation of new capital flows. Financial instrument markets are connected in their existence with relevant information and their dissemination, so that information technologies contribute to the efficiency of their organization and functioning.

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Keeping and processing relevant information, an easy access to important data by an endless number of beneficiaries in real time and effective transfer of information to all interested persons, are the characteristics which new technologies bring about and make them a factor of cohesion.

If Serbia follows this way than has to be aware that the European Union has already applied new technologies in a great deal in many areas including corporate governance (E-Europe). It is logical that the process of integrating capital market into the European system has to be founded on harmonization of infrastructure with the existing standards. Also adjusting of the behaviour of shareholders and directors concerning IT application is imperative. If public companies wish to protect themselves from competition and provide an effective approach to external capital proper use of IT is of utmost importance. Global markets involve many new disputes and cross-borders disputes are the most complicated among them. State system for dispute resolution is not useful in a such situations so effective out- of-court system is needed. When provided in a cheap, quick, non-formal and out of public way with help of internet and other similar tools it can be a good protector of investors, consumers and other stakeholders.

CORPORATE GOVERNANCE AND TECHNOLOGICAL DEVELOPMENT

Numerous problems arise on the capital market regarding application of new technologies. A part of the problem refers to the very trade of securities during electronic transfer where numerous issues arise (identity, irrevocability, trust and integrity of the document, etc)⁴. Another problem addresses the relations within joint stock companies whose shares are on the stock exchange. The third group of problems refers to relations among relevant entities on the capital market. The fourth group of problems treats destructive elements on the capital market which in certain segments tend to limit its development, while in some other segments they tend to act illegally and abuse technological innovations. Problems do not end by such listing.

Corporate governance has not been well developed in Serbia, nor is the capital market. Reasons for that are numerous. In this paper we would highlight the current situation, reasons which caused such situation and future perspectives, starting from a hypothesis that application of modern technologies, especially information technologies, can contribute greatly to faster changes in terms of improving corporate governance and effective functioning of the capital market and protection of investors. Technological changes have to entail inner organisation of the company whose shares are traded on the capital market (internal aspect) as well as other external component systems of corporate governance, which are present on the capital market and make a very complex function of monitoring (primary markets by prospectus⁵, secondary markets by loyal and competent intermediaries and by efficient market for corporate control⁶).

REGULATING THE ISSUE

Regulations in Serbia support application of technological innovations in economic activities. Company law, Code of corporate governance of the Serbian Chamber of Commerce (the Code), Code of corporate governance of the Belgrade Stock Exchange, regulations on the capital market, tax and other regulations relevant for structure and processes of corporate governance, contain numerous terms which, in order to improve management of public companies and appropriate monitoring mechanism present on the capital market (activities of the Commission for Securities, Central registry,

⁴ Gururajan R, Ryle A, Hafeez-Baig A.(2004), Legal and Regulatory Issues of Implementation of Electronic Signatures, p. 3-6. <http://conf.isi.qut.edu.au/auscert/proceedings/2004/gururajan04legal.pdf>

⁵ Must be taken into account that Prospectus does not only refer to the issuing of new securities but to offering of the existing securities, too. (Suggested changes in the law on securities).

⁶ Hopt J. K. (2007) Modern Company and Capital Market Problems: Improving European Corporate Governance After Enron, <http://ssrn.com/abstract=356102>, p. 487

intermediaries, analysts, rating agencies, etc) direct entities towards more intensive use of information technology and other similar means of information transfer.

It has to be concluded that application considerably lags behind the quality of the envisaged solutions. It is evident that a significant effort is required so as to implement technological information in internal structure of public companies as well as in a network of synergy effects of all participants on the capital market.

Good Bill on e-commerce creates safe legal atmosphere as an incentive to development of e-commerce in Serbia. It should respond to challenges of the increasing e-commerce on the Internet and offer safe solutions for e-commerce in domestic and international operations. Adequate regulations in this field are important for Serbian integration in the informatics society. Law can provide a set of legal rules which regulate the terms and conditions of information society services rendering, define the obligations of information spreading to the users, determine the idea of commercial message, determines the rules in terms of signing contract in electronic form, define the responsibility of person who offers services of the information society and set the system of monitoring over these rules.

In e-commerce the law should regulate the process in which various kinds of information and communication technology are used in business operations among the business entities, information providers, civil administration and consumers enhancing transparency and control of business transactions. Application of new technologies should reduce administration and costs, provide effective storing and keeping of information and easier and cheaper operational activity. This approach will improve the relationship between company and its creditors, distributors, consumers and other stakeholders. Safety and privacy are the two very important aspects of e-business.

E-commerce is so called three-tier architectures (web client/server middleware) which increase the problem of safety and privacy of the data provided by the participants in the transaction⁷. New technologies contribute to increasing competitiveness and improving interactive communication. Beside legal rules which determine the very process of e-commerce, there is a whole range of other legal issues such as: regulations regarding electronic signature, protection of intellectual property (the Internet as «the world's biggest copy machine»⁸), protection of privacy of the data, etc. In international transactions there is a whole range of issues in terms of conflict of law.

Secrecy of the data, as an important challenge for corporate governance also in developed countries, has been legally protected in Serbia by the Law on protection of the personal data recently. These regulations determine the conditions for collection and processing of the personal data, human rights and protection of rights of the persons whose data are being collected, etc. Having in mind the international potential of new technologies, it is worth mentioning that the data can be taken out of the Republic of Serbia without special limitations and brought into the member state of the Convention on protection of persons in automatic processing of personal data of the Council of Europe. Also, in order to provide more effective control of the system for protection of privacy of the data, the authority of the Commissioner for Information of Public Importance and Personal Data Protection has been introduced as an independent state authority. Unfortunately, low level of respect of such an important field has been evident in practice.

In 2004 the Law on electronic signature was passed in Serbia. It created a legal basis for functioning of electronic and qualified electronic signature. This law regulates the use of e-signature in legal operations and other legal activities and in business. It regulates rights and responsibilities regarding electronic certificates. Also, it refers to communication among state authorities, among authorities and beneficiaries, provision and developing of decisions in e-form in administrative, court and other procedure at state authorities.

⁷ Nasir M A (2003), Legal Issues Involved in E-Commerce, p. 9. http://www.acm.org/ubiquity/views/v4i49_nasir.html

⁸ «Its the World's Biggest Copy Machine, « PC Week, January 27, 1997.

Monitoring over the implementation of this Law and the work of certification bodies has been envisaged. It should be kept in mind that no significant move has been done so far in terms of implementation of the system.

More complex enterprise, in comparison to passing regulations, is the creation of trust in reliability of electronic transactions. Apart from legal rules which regulate the use of electronic signature and establishment of trust among the participants, the important part of the problem lies in liberalisation in telecommunication sector⁹. We should be realistic enough in our expectations, for a legal rule would be effective if it is supported in real life. Here, it means the state in technology and the degree of development of the very market and civil administration (Creation of legal framework for development of information and communication market).

CURRENT SITUATION IN SERBIA AND FUTURE PROSPECTS

Weaknesses of Serbian economy and capital market have been numerous and evident for more decades. Often they have been a result of a lack of strategic orientation. At this moment there are two important assumptions. First, it can be assumed that there is a clear goal in terms of future development. Stabilisation and Association Agreement as a basic document towards EU membership after it has been signed with the European Union clearly directed further development (provided that terms and conditions of this agreement are fulfilled and the process of accession is successfully ended). According to that, the main activities of the state are directed towards fulfillment of clearly defined political, economic and legal conditions, which essentially change the state and society and adjust it to the EU standards. Another assumption is that the process of change could be faster if adequate new technologies were applied.

Activities regarding adjusting of the legal system, by their nature, are reflected to functioning of the capital market and management of public companies. In order to understand the complexity of the current situation on the capital market and corporate sector in Serbia, we have to look back at some facts from the recent history and identify key reasons for insufficient development of corporate governance and capital market.

Continuity of stock exchange operations in Serbia was interrupted by forced termination of operations on the Belgrade stock exchange after the World War II, because that «temple of capitalist economy» was not suitable for socialist state. In the late 1980s Serbia opened doors to market economy again and revived the activities on the Belgrade stock exchange. Process of transition, technological advances and integration of capital markets in Europe in the 90s went round Serbia. Economic sanctions imposed by the UN which lasted for almost a decade and climaxed in bombing of Serbia, left destroyed economy, high rate of unemployment, grey economy, high level of corruption and organised crime, unfair privatisation, lost trust in banks and capital market and other negative traits in Serbian society. That was a fundament on which market economy should have been built, including the most sensitive financial sector. Establishment of legal and institutional framework of market economy and democratic society started in the year 2000. The speed of these changes is conditioned by the degree of implementation of contemporary technologies and standardization. Technical and technological solutions offer possibility for market opening to a wider pool of investors.

Currently, characteristics of Serbian capital market refer to a narrow space for full affirmation of corporate governance and expansion in implementation of new technologies in the process of strengthening business activities on organised market. Since capital market is very sensitive to situation in economy, many analysts emphasize a variety of structural issues such as: inconsistent legal system, weak judiciary system (not independent enough) and undeveloped mechanism of Alternative

⁹ Dempsey J. (2002) Legal Regulations of the Electronic Signature in the Developing Countries (<http://www.e-trgovina.co.yu/pravo/gipi.html>)

Dispute Resolution, irresponsible and unprofessional management, disrespect of law, non-transparent business activities, destructive influence of corruption and organised crime, undeveloped capital market and undeveloped practice of public companies takeover, etc.

Research made by International Financial Corporation (IFC)¹⁰ show that corporate sector in Serbia has the following characteristics: concentrated ownership, connections between ownership and control, huge holding structure, active process of re-organisation, lack of strong, active and independent bodies. Such ownership structure shows that corporate power is in hands of a single shareholder or a smaller group of shareholders (insider domination), while in practice it is evident that there are frequent abuses of such power on the account of minority shareholders and that mechanisms of control do not provide effective protection of the investors. That is one of the main reasons why there is a small number of companies (three on A list and one on B list) on the organised market in Serbia (there is only one organiser, the Belgrade stock exchange) which comprises stock exchange operations and over the counter market. The relationship between the ownership and control, being the key issue in all public companies, is a very specific. Direct interference of a majority owner in managerial activities is predominant, thus resulting in weak structure of responsibilities and control, as well as weaker demand for implementation of advanced technological solutions for better information transfer and communication. Stronger activities of the market and the competition would bring about changes. The main abuse in business transactions (mostly through interrelated persons) is caused by low quality (not enough or too much information) and non-transparent information system. Technological solutions which are envisaged by the Code of corporate governance of the Serbian Chamber of Commerce are directed towards diminishing abuses in terms of transferring relevant information. Also they can give their contribution to more transparent insight into complex ownership and business structures which affect business prospects of a particular public company (improvement of quality of consolidated accounting). Technologies can help in re-organising such huge holding structures in order to adjust them to changes which Serbian economy has been exposed to.

Decades of socialist economy followed by economic isolation caused the lack of regulations which derives from business operations and adequate judiciary practice. On the other hand, regulations have been overwritten from the countries in the region and the attempt to apply them in the economy which lags behind causes numerous problems. The role of supervisory bodies is not defined, the role of commissions of the board of directors and secretaries of the public company is not clear, and that indeed is a basis for a more effective communication. Serious problems have arisen, but first steps towards their resolution have been taken.

Improvement of corporate governance in Serbia went through the reform of company law (which was hard for there was nothing legal rules could rely on due to the lack of business and judiciary practice resulting from the economic paralysis caused by economic sanctions), which was not complete. That reflected in criticizing business structures for being abstract, unclear and inapplicable (however critics could be addressed to business entities for not using dispositions of such rules and putting effort in building up appropriate autonomous regulations and applying information technologies). The report of the EU Commission for the year 2008 [2] emphasizes the need to improve solutions of the company law so it was the reason for adoption of new legislation concerning company law and capital markets. The same report points out insufficient degree of development of information systems, which refers to a problem of wider use of information technologies and lack of more serious pressure in terms of mandatory use of information technologies (it remains at a recommendation level).

In treating the issue of corporate governance, our law as well as the Code of corporate governance, starts from solutions incorporated in the OECD Principles of Corporate Governance and recommendations given by the EU Senior expert group. Adoption of all uniform models of documents (e.g. electronic model of power of attorney, etc.) is a condition for harmonisation with the regulations and practice of the EU countries and at the same time with capital markets of the member countries

¹⁰ Corporate Governance (2011) IFC, Belgrade, p. 21-22

and companies which do business on these markets. Our law adopts directions of development of the EU law in terms of new instruments of corporate governance (independent general managers, cumulative voting, protection of minority shareholders, etc.) and application of new technologies both in functioning of the state authorities and business entities, especially public companies (assembly of the shareholders or video-conferences of the board of directors, public relations via web page and other ways of application of modern technologies in order to provide effective and more transparent business operations.

The biggest step forward in building up corporate governance in legal terms was made by the Code. With the help of legal rules, recommendations ('apply and explain') and suggestions, the Code tries to establish basis for creating better practice. Instructions and recommendations for efficient application of information technologies occupy a significant place within the Code rules.

When institutional framework is concerned, there is a minimum of necessary institutions (Securities Commission, commercial courts, market organisers, brokerages, banks, Central registry, etc) but their activities are not connected enough. Technological binding in the same information system would contribute to better functioning of each particular institution and their cooperation.

The need for improving corporate governance is evident and Serbia must act in a timely manner through company law (internal corporate governance) and capital market law (external corporate governance) reform.

SHAREHOLDERS RIGHTS AND INFORMATION TECHNOLOGIES

Impact on Shareholders Position

New technologies should help public companies to be successful in a long run by providing more efficient functioning of corporate governance by encouraging shareholders to effectively use their rights¹¹. Separating ownership from the function of management and control and its diversification (great number of shareholders), respecting and executing rights of the shareholders becomes one of the most important issues of corporate governance and the foundation stone of the investment process.¹²

It should be kept in mind that the shareholders are not homogeneous group and among them conflicts of interest arise (in relation minority-majority, institutional and non-institutional, domestic and foreign, shareholders employed with a company and those who are not, etc). Protection of shareholders' rights goes between the rules which are cogent in nature and those which are dispositional, that is between regulations and self-regulations. Good protection of shareholders' rights entail legal and organisational instruments of incentive and monitoring in order to achieve the desired behaviour of all participants. Application of information technology can contribute significantly to more effective protection of both basic rights of the shareholders and higher level of more complex managerial enterprises.

Minimum shareholders' rights assume that there is a method of safe registering of ownership, and then secure transfer of shares. A typical example of effective application of new technologies in Serbia is the establishment of the Central registry for securities, custody and clearing. With the assistance of modern technologies, this considerably improved previous state in which there were huge abuses (especially in subscribing shares in the process of privatisation). That provided efficient functioning of financial market in Serbia.

¹¹ Nathan R. (1996) Corporate Governance at the Speed of Light, p. 1 (<http://www.catalaw.com/logic/doc/m-corp.gov.html>).

¹² Kim K. Nofsinger R.J (2007), Corporate Governance, Pearson, p. 3.

Central registry keeps unique evidence on owners of all securities (and other financial instruments) which are issued on the territory of the Republic of Serbia and the rights of the third parties over these securities. The Registry represents a clearing house which is engaged in clearing and balancing of assets and liabilities in securities and money (rolling settlement). In order to become a member of the Central registry it is necessary to pay 40 000 Euro on the account of the guarantee fund, and the members are as follows: brokerage companies, accredited banks, custody banks, fund management companies and foreign legal entities that are engaged in clearing and balancing, market organisers, the Republic of Serbia and the National bank of Serbia. Central registry communicates with its members via e-communication through sending SWIFT messages. Technical procedures for work and electronic exchange of the data between the Central registry and its members are defined in the User manual of the Central registry. Central registry undertakes its business operations according to international principles and rules accepted by the international organisations to which it belongs¹³.

Transferring the function of management from the shareholders to the members of management brings about the need to give a shareholder right to elect and replace the management. The right of the shareholder to be paid dividend, which is the main engine of the capital market, should not be ignored, for the final purpose of investment in the company is represented by the participation of the investor/shareholder in the profit of the company.

On-line Communication

Application of information technology can contribute to more effective realisation of the basic rights of the shareholders thus contributing to finding solutions for the issue of «rational apathy of shareholders».

New technologies can significantly contribute to effective shareholders assembly, material distribution, accepting agenda, discussing and exercising voting power of all shareholders (particularly important for cross-border shareholders).

The Internet and other technologies provide opportunity for everyday interactive communication between the public company and the shareholders¹⁴. That is a big step forward in terms of surpassing traditional ways in which shareholders meet once a year. (more often only in case of emergency assembly), rarely exchange opinions among each other, analyse financial reports once or several times a year depending on the law-abiding obligation to submit financial reports.

Public companies in Serbia must publicise a lot of information about its financial condition and business transactions as well as many information which are of utmost importance for investors and are required by Capital Markets Law to be publicly revealed. Serbian company law has imposed an obligation on public company to use internet and other electronic instruments for effective communication with shareholders.

Interactive communication through on-line forums on the Internet provides instantaneous access of great number of shareholders and an opportunity to find answers on questions they are concerned with in a more effective way. Members of management can also be involved in the exchange of information and attitudes and give suggestions for which they can easily find out if they can obtain support or not. New technologies provide on-line dispute resolution which may arise among the shareholders, or with the management, and especially conflict resolution procedure. Also, this on-line method can be used in the voting procedure. Advantages of on-line communication, voting, access to information and judiciary activities lie in the fact that all shareholders are in an equal position, and entail all

¹³ ANNA, CEECSDA, ISSA, ECSDA and EACH

¹⁴ Nathan R. (1996) Corporate Governance at the Speed of Light, p. 1 (<http://www.catalaw.com/logic/doc/rn-corp.gov.html>).

shareholders no matter whether they are cross-border or employed with the same public company. Technologies bring extraordinary possibilities to corporate governance providing considerable growth in information liquidity, increase capability of the shareholders to actively participate in the process of making strategic decisions thus protecting their own interests more effectively. At the same time, competition has been created among companies to provide better forms of communication with investors, improving their chances in access to capital markets which are founded on information.¹⁵ In order to provide effective exercising of rights of the shareholders to participate in the work of the assembly, take part in discussions, give suggestions, ask questions and get answers, a certain technical and technological connection is required between the shareholders and the public company. The Code gives recommendation to public companies to provide contact details on the Internet page of the company.

The obligation to inform and communicate with the shareholders, especially where there are a huge number of shareholders, exposes public company to huge expenses. The use of new technologies can reduce these costs in a great deal, for it is possible to send piles of documents important for assembly sessions and decision making to an endless number of e-mail addresses (financial reports, auditor's report, supervisory board report, board of directors report regarding business operations of the company, as well as reports on corporate governance).

Instruction containing explanation on the rights of shareholders and the way in which these rights can be exercised should be clearly visible on the web page of the company (should be placed on a special part of the web page separate from business information about the company). The web page of the company should contain information on the time and venue of the shareholders assembly. It is necessary to establish additional systems of communication in order to encourage shareholders in terms of cost benefit.

Sessions are summoned by sending notice in writing to shareholders, which provides opportunity for e-mails and mobile communication. However, one should be aware of a low level of information culture development so that at this stage communication cannot be reduced to the Internet or e-communication but it should be followed by traditional communication. The notice given to the shareholders (including the members of the board, the external auditor, etc) can be sent effectively, cheaply and automatically to all shareholders via e-mail.

The Code offers an interesting solution which requires the public company to provide participation of the presidents of the commissions for appointments, fees and auditing via implementation of modern means of communication (teleconferencing and other audio and visual communications).

The Internet technology provides opportunities for the investors to find out about the rights of any kind and class of shares prior to purchasing shares, and particularly about the existing voting rights, as well as voting rights which are given by shares publicly offered.

Custody banks provide specific ways of protecting the rights of the shareholders. Here technological opportunities help in establishing full communication not only between custody bank and shareholders but between the shareholders themselves, thus reducing the risk of being uninformed, i.e. so called «the prisoner's dilemma». The same situation can be applied to any person which is the owner of the account of shares on his/her behalf and on the account of the legitimate owner.

The code allows the public company which has no more than ten shareholders to hold phone assemblies (no physical presence required). In order to organise such session, the public company should have on its disposal appropriate technical capacities which enable communication among the shareholders (i.e. their representatives). Rules for voting in absence should be applied.

¹⁵ Lefebvre R. (2008) Corporate Governance in Canada's Capital Markets, p. 5.

New Voting Procedure and the role of institutional investors

The application of information and other technologies is very important in voting in absence. It is necessary that a company provides, at its own expense, technical possibility to its shareholders or their representatives (teleconferencing and other audio-visual communication equipment) to participate in the work of assembly and vote without being physically present there. Persons who participate in this way in the work of the assembly are considered to be present in the assembly. It is crucially important to check the identity of the persons who vote in absence.

Instruction for voting in absence should be placed on the Internet page of the public company. Voting in writing is also one of the important possibilities of exercising the shareholders' rights. Instruction should be given on the Internet page (especially important in checking out identity of the voters) thus providing effective insight in the procedure. Application of the Internet technology would make withdrawal of votes given in writing very efficient.

Public company should provide on its Internet page relevant information and instructions on voting via power of attorney. Power of attorney could be given in a special form enabling shareholders to give it in electronic way.

Public company should remove any obstacle in order to provide easier and simpler participation of the shareholders with the residence abroad, in the work of the assembly. Modern technologies provide the same opportunity to this group of shareholders. It is good if the board of directors establishes a special commission for protection of such shareholders and provides on-line communication with that category of shareholders. This procedure should be governed by rules and such rules should be announced to the investors.

Voting should be organised with the assistance of technology which provides clear identification of the voters (if voting is not secret), scope of their voting right and safe way of votes counting which guarantees correctness. When there is a huge number of voters and huge number of shares with voting power it is necessary to adjust voting lists to computer processing in order to provide efficiency, speed and correctness.

Technology can play a significant role in the process of separating voting procedure in essentially separate issues (e.g. it is necessary to separate decisions on salaries, dividends, approving board of directors' report, report of an external auditor, supervisory body report, etc).

The company should have commission for voting (one minority shareholder representative member) and it is important that public company puts a report on its Internet page on the work of that commission after each session (including explanation given by the member who has not wanted to sign the report).

Development of investment and pension funds has led to strengthening of institutional shareholders. Their main duty is to act in the best possible interest on behalf of their investors which brings them in a bit controversial position: on the one hand they have obligations towards their investors (diversification of risk and maximisation of returns) and on the other they have obligations towards company in which they possess shares.

Institutional shareholders have to decide in a transparent way whether they would exercise their shareholders rights. If they estimate that it is useful to exercise their shareholders rights then institutional shareholders actively influence management in the public company. Their pressure on management encourages growth of the scope and quality of relevant information offered to the shareholders. That procedure is directed towards independent and non-executive members of the board of directors.

On the other hand, the Code of corporate governance imposes obligation to institutional shareholders to publish their policy of exercising voting right on their Internet page at least once a year. Also, they should publish report on whether they have voted in the assembly every three months and if so, they should announce how they voted.

The board of directors in the public company is obliged to publish explanation given by the institutional shareholders on the company's web page regarding the way they voted on each issue in terms of evaluating corporate governance, and especially in situations in which they do not agree with the activities of the company.

Investment shareholders make indirect pressure on public company by prescribing certain standards of reporting which company has to fulfil as a pre-condition for their investments¹⁶. Such pressure is made by stock exchanges as well, securities analysts, rating agencies and specialised journals. This resulted in the need for direct communication between the public company and information beneficiaries. Control by the shareholders could be enhanced by serious liability (actions against directors and auditors) and special investigation (do detect misconduct).¹⁷

BOARD OF DIRECTORS AND ITS COMMITTEES IN IT WORLD

Tech savvy approach

Board of directors is a fundamental pillar of internal corporate governance system. In tech intelligent approach in creating structure and processes in public company, from directors is expected to devote enough time and diligence to information and communication technology. The complex relationships within the board (independent and dependent directors, executives and non-executive, employed or unemployed directors etc) as well as between directors and shareholders, is not easy to balance. Conflicts of interests can arise everywhere. Principal agent problem, as one of the fundamental issues in corporate governance, can be treated much more effectively by application of advanced information and communication technologies. That system can provide a better communication, allow for the ease of oversight of organization risk management and help in minimizing the risk linked to different conflict of interests.

The board of directors is centrally positioned in corporate governance system. It is responsible for directing, definition of strategies, company's business priorities and control. Efficient and safe functioning of IT system is an important board's activity.

There are many critical information and communication technology issues important for board members activity and responsibility. The most important thing in application of new information and communication technology is to use it properly to support the board activity. The board must organize information system in accordance with the whole business strategy of a company and take a good oversight over the use of IT. It is not an easy task because a lot of knowledge is needed to understand the quality of particular IT.¹⁸ There are many risks linked to that application and board is responsible for it, especially CIO (Chief Information Officer).

Board of directors, elected by shareholders' assembly, acts in line with company's interests, shareholders' rights; supervises work of general managers and other executive board members and

¹⁶Nathan R. (1996) *Corporate Governance at the Speed of Light*, p. 1.

¹⁷ Hopt J. K. (2007) *Modern Company and Capital Market Problems: Improving European Corporate Governance After Enron*, <http://ssrn.com/abstract=356102>, p. 486

¹⁸ See *The Tech Intelligent Board, Priorities for Tech Savvy Directors as they oversee IT Risks and Strategy*, S survey conducted by Delloite Touche Tohmatsu in conjunction with Corporate Board Member , (guide have been taken from corpgov.delloite.com on 1st September 2013.

monitors financial control system. It should be efficient, professional and independent. According to Serbian company law there are two governing systems on disposal to shareholders of a public company to apply. Both of them are similar to European practice: one tier and two tier.

New technologies may help this Board's work become more efficient aiming at protection of public company's interests and long-term shareholders' interest. This is achieved by numerous technical solutions allowing for a high level of continued communication and data disclosure, storing and automatic processing of information, as well as its transfer.

IT has found its place in every segment of corporate governance concerning board practice, both in control process and incentives and penalties mechanisms implementation. Responsibility of board members is a pillar of good corporate governance. They sign and guarantee for financial reports. A study conducted in Canada shows that: companies with good corporate governance have a strong sense of commitment and a 'culture of compliance', and board members have a strong sense of independence, diligence, competence and ethics. Technologies can stimulate development of such characteristics.

Integrity of board members and trust of investors in their work, as well as quality of oversight play an essential role in economic life. Corporate governance should support a more efficient resource usage (particularly of ITs that generate changes) and control of costs, risks and harmonisation. Administrative system (single, double, mixed) defines IT communication and control system (connection with executive board and internal control).

Talking about place and role of board in corporate governance system, one should have in mind that this body's make-up is not homogeneous. It is particularly dangerous if a member (non-executive and independent as a rule) is cut off from information. This is where IT come to the scene and become prominent through transparent and efficient data disclosure system. Intranet communication board is an example of good practice.

Good corporate governance has to provide directions for executive bodies in charge of running daily company's business. This operational advantage provides a high level of company's resources control. Comprehensive informing has its full sense when it aims at prevention of personal interests in the first place and outflow of company's resources and at shareholders' damage. Well-established information system and clearly defined responsibilities of the board within the system are a guarantee of a higher level of responsibilities towards shareholders when performing their assigned duties. This system enables a company guide executive bodies to perform their tasks in good faith and company's interest. This implies a high level of information and good communication system among shareholders and executive and boards of directors. The board is responsible of taking care of harmonisation system functioning between behaviour and legal, i.e. contractual responsibilities, as well as of information system security. Improved protection of stakeholders' interests is an important part of this strategy by efficient information and active role in corporate governance process.

Owner is detached from management function, which is a characteristic of public companies and soft spots and implies appointment of experts in charge of achieving company's set objectives. Efficient control of their work, primarily of business financial results, is a principal agent. Protection process is initiated by selection of adequate persons. New technologies can be applied here. Concretely speaking, they may search databases (on line head hunting), or be used for e-learning, professional education and development, personnel retaining (full information and motivation), etc.

Public company has to have a general manager (this is board's presidents by the law unless someone else is appointed), who is always executive board's president and company's representative. It is not good for corporate governance to have a same person as board's president and general manager (executive board's president). Concrete solution has in any case influence on information system structure, both within the executive board and between board of directors and executive boards.

General Manager is, at interior level, in charge of calling executive board's sessions and chairing them. He/she is also responsible for all activities and minutes taking. He/she is accountable to board. Public company has to have an executive board responsible for implementation of board's decisions. The most sensitive issues, board deal with, are entrusted to expert commissions. There are following commissions in line with Serbian regulations: commissions for appointments, reimbursement commission and auditing commission. Growing importance of IT underlines the need for a public company's commission in charge of them.

Chief Information Officer (CIO) and Control Bodies

Risk management is one of the most important components of corporate governance and a key challenge for the board members. Their duty is to inform shareholders, and investment-related public on risks a company is exposed to, as well as on a strategy to reveal, master and control them. Risks in modern business operations, particularly for public companies come from all directions. Application of Internet and other advanced technologies is one of risk sources, but, at the same time, one of efficient tools to remove them. Risk management related to new technologies (IT Risk Management), no matter whether they come from natural occurrences or events (earthquakes, fires or man-made ones), requires knowledge of IT and their importance for concrete company's business operations. Such a situation imposes need for a CIO within a company, a special manager in charge of information system protection and application strategy. Beside a director, who is chief executive body (Chief Executive Officer/CEO) and a financial director (Chief Financial Officer/CFO), a modern public company should employ Chief Information Officer/CIO). His/her task is to create and implement IT risk management strategy (security and disaster recovery)¹⁹.

This strategy covers numerous fields depending on application of technologies on them: harmonisation with regulations, data and privacy protection, data transfer, financial statements, disclosure of frauds, intellectual property protection, etc. Aiming at efficient IT risk management and budgeting, CIO's strategy had to comprise the following as the most important:

1. Business Continuity Planning/Disaster Recovery Planning
2. Information Security and Data Integrity
3. Sourcing and Outsourcing
4. Performance Measurement
5. Regulatory Non-compliance
6. IT Strategy and Spends
7. IT Management Infrastructure

Public company needs to have a body dealing with control function; this is an optional choice between a supervisory board (elected by the stakeholders' assembly) or internal auditor, i.e. board of auditors (elected by the board among independent members of board or assembly if they are not sufficient). Concrete options dictate communication systems. Internal body reports to the assembly, and preferably to AB and external auditor.

Company's secretary is a mandatory body. He/she should ensure governance is in accordance with procedures. He/she is responsible for Book of Stakeholders. He/she prepares stakeholders and AB's sessions. Minutes taking and keeping, as well as of other documents in line with the Law. He/she organises work and follows implementation of decision taken by the assembly, supervisory board and board of directors. His/her role to enable and follow communication and data disclosure systems and update Internet pages is a very significant one.

¹⁹ Chandiramani R. S (2008) Information technology and corporate governance (<http://www.expresscomputeronline.com>)

Internet Boards as a Challenge for Managers

Numerous Internet forums and chat rooms have become a spot where a great number of people from all over the world exchange information. Places specialised in corporate and investment-related topics offer real-time data on companies and their activities. These data might have influence on securities prices movement in the capital market. The problem may arise if they are incorrect and presented with an objective of gaining illegally and unfairly certain profit or inflict damage to another capital market participant.

The board should have adequate strategy for efficient usage of such information boards available to investment-related public, as well as for fighting against possible attacks. This activity should be a part of overall risk management system's strategy caused by application of new technologies²⁰. Intranet also enables all employees and other stakeholders express their stands. Independent board's members are to have a particularly significant position within this system.

People of unknown identity, as a rule, stand behind the provided information. They are sometime people closely related to the company (behind 'nicks') owning authentic information. They try to blow the whistle and hence point at illegalities and unethical behaviour within a concrete company. The information is sometimes true to life and sometimes biased, trying to inflict damage to a company, in competition's or one's own interest.

The fact is that more and more dissatisfied employees (or former employees) use such spots to express their opinions and criticisms. They sometimes tend to put false statements based on rumours and not facts. Most laws in developed countries (as well as in Serbia) protect employees' right to talk and present data related to illegalities in business operations, particularly facts referring corruption. Such spots are ideal since people are anonymous and hence free to talk. This information is good for capital market efficiency that should react in an adequate way. However, this freedom of speech is occasionally abused and becomes an instrument to hurt other people's rights. Information manipulation is a serious threat to capital market. This huge destructive potential of every public place, in which information is exchanged, requires that companies should seriously face the issue. These processes management should be a part of overall risk management system caused by new technologies. Securities commission should approach this issue in the same way. Its basic function is control over capital market participants and taking care of its efficient and legal functioning.

Securities analysts also acknowledge importance of such Internet spots for exchange of information. Their experience and knowledge helps them recognise those with good quality information among anonymous persons. Ignorant investors could be easily manipulated and hence threat for them is much greater (made to either sell or buy securities).

Such spots and information flow have positive influence on capital market as a source of data on illegal and unethical conduct within a company and might point at initial difficulties public company is facing. Comments at such spots described Enron's crash (Yahoo! Enron message board). The other side of the story says that numerous examples prove there are many ill intentions when giving statement on certain companies, i.e. desire to achieve certain financial profit. There is a great number of 'pump and dump' activities at those online discussion forums, and dump, unfounded attacks on company's reputation, presentation of insider info by employees, etc. A growing number of legal actions has been undertaken to prevent such cases.²¹

²⁰ Carson J, Felton J. (2003) New technology issues for corporate governance: internet message boards p.1. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=920100

²¹ Carson J, Felton J. (2003) New technology issues for corporate governance: internet message boards p.187-188. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=920100

MEDIATION OF CORPORATE GOVERNANCE DISPUTES IN A TECH-SMART WAY

Disputes linked to corporate governance are numerous and if neglected can harm public company. Twenty percent, out of all disputes company law related, settled by International Chamber of Commerce, were disputes concerning corporate governance.²² Corporate governance disputes mostly involve shareholders and board members. Misunderstandings between shareholders, between shareholders and directors, or between company and outsider stakeholders, disputes always can be very dangerous for public company, its reputation on capital markets and its long term success. Most of disputes with civil nature can be solved out of court and a lot of them can be mediated properly. Mediation can be used not only to resolve conflict situations, but also as a tool to manage the different relationships.²³ For Serbia alternative dispute resolution models are new as well as corporate governance is. Mediation is recently regulated by law²⁴ and practice is still “under construction” but awareness of it is rising among participants in capital markets arena. Disputes related to corporate governance structure and processes are good for application of negotiation and mediation. It is because in corporate governance all is about distribution of power and balance of interests. The same is with process of mediation. There are many approaches in mediation but it is obvious that is not possible to mediate between two parties in a dispute, without taking into consideration power and interests of them both.

Alternative dispute resolution models, including mediation have come into practice as an alternative to, public, not enough efficient and costly, court system. Disputes concerning corporate governance have to be solved at the early beginning, without complicated procedure and huge costs. That has to be done very quickly and the issue has to stay away from the public because investment community is very sensitive to negative publicity. In EU those method of settling disputes are more and more popular²⁵ and on line possibilities, cheap and efficient are on disposal to parties in dispute. FIN NET is on line available network of centers for mediation in different countries and it will be described later.

If there is a dispute between shareholders and directors than it has to be solved through mediation (court procedure is always available as the last resort, during the process of mediation or later²⁶). In the same time there is a possibility that mediation can result with minimizing the level of dispute or even with win-win solution. Mediation is not bounded by legal requirements and the proposal for settling a dispute can be based on different issues (business relation and other). In mediation parties can explore that specific feeling of justice and fair play so important for any human being. Mediator as neutral independent person, expert in subject of dispute can be the one leading them to solution acceptable for both of them.

But one has to be aware that in a group of many potential conflicts linked to corporate governance phenomenon, cross border disputes as a result of globalised market, are among the most complicated for settling. Those disputes will rise progressively with the rise of number of relationships and transactions between citizens of Serbia and EU. So, the analyses of the efficiency of alternative disputes resolution through internet communication, will start with the assumption that what is good for the most complicated disputes would probably be good for other disputes as well. Advanced information and communication technologies can provide a lot of solutions to that complex situation. Arguments for that conclusion can be extracted from many real situations in European practice where

²² Runesson M.E. Guy L. M. Mediating Corporate Governance Conflicts and Disputes, IFC, Global Corporate Governance Forum, Focus 4, p. 5.

²³ Runesson M.E. Guy L. M. Mediating Corporate Governance Conflicts and Disputes, IFC, Global Corporate Governance Forum, Focus 4, p. 7.

²⁴ Law on Mediation Official gazette 18/2005.

²⁵ See EU Regulation 524/2013, regulating on line *consumer dispute resolution*.

²⁶ Good thing is that mediation is not available only before the court process but during the procedure also.

cross-border disputes are numerous as result of internal market and free movements of goods and services. One of them taken from FIN-NET consumer guide will be presented as a good example.

“You are buying shares via your foreign online broker. The formulation of your order appears to be wrong, and you modify it before confirming it. Later you discover that the first, wrongly formulated order has also been executed on the market even though you did not confirm it. You try to contact your broker by phone in order to cancel the first, non-confirmed execution. Your broker is not available, but a colleague of his promises to take care of the cancellation. There is, however, no cancellation and you are liable to pay for both executions”

The question rising from this case is where a complaint would be sent. It reveals the complexity of the situation and the need for efficient instruments for resolution of cross-border disputes. FIN-NET is the cooperation network between registered, independent and reputable national alternative dispute resolution bodies for financial services. This network covers European Economic Area by providing guidance for consumers who consider making a cross-border complaint. Members of FIN-NET have the obligation to handle cross-border complaints, according to its rules and with the same diligence as they care domestic complaints and taking into account the Commission Recommendation 98/257/EC on principles put on those who are in charge for settlement of consumer disputes (out-of-court procedures)²⁷ That process must be in accordance with some common standards: transparency, necessary information, adversarial procedure, legality etc.

Out-of-court complaint procedure, concerning financial service, exists in Serbia, like in many countries which are members of the European Economic Area. National Bank of Serbia provides mediation service when financial conflicts arise between financial organization and consumer.

CONCLUSION

New technologies change the world and remove barriers on capital markets integrating it. That process uncovers a whole range of issues among which legal ones can be found as well. State courts and judiciary system, being traditionally conservative areas, resist to these changes more than those who offer services of alternative dispute resolution. On the other hand, the life dynamics which depends on technological changes requires proper adjusting.

As a result of law facing the dynamics of economic development and harmonization with EU law, legal rules have been created which regulate electronic communication, data bases and their protection, electronic communication and trade, electronic governance, application of IT in many corporate governance activities, etc.

The main issue which IT specialists, investors, lawyers and directors have to deal with is the application of IT in capital market, public companies and judiciary as well as regulation of relations which are caused by new technologies. Application mainly refers to storing, keeping, selecting, processing and distribution of information. Not much has been done in valuation and rational resolution of complex legal and business issues.

Capital market is a space homogenous enough and it would be very useful to unite it in legal and IT sense. Corporate governance as a pillar of that market must be tech smart as well. It would entail on-line communication and exchange of electronic documents among all participants on the market (the Commission, intermediaries, courts, analysts, etc) as well as the data base available via Internet which would contain relevant regulations, judiciary and arbitration practice, e-education, etc. It would mean creation of 'an intelligent' system which would help in obtaining legally relevant information. It would be the space in which double, non-harmonised and contradicted regulations would be cleared away. It

²⁷ Financial Dispute Resolution Network, ec.europa.eu/internal_market/fin-net/how-en.htm, September 2013.

would enable shareholders to use and protect their rights through advanced technology tools. Board members in 21st century must be tech-intelligent to perform their duties properly. Also they must be skilful in negotiation and mediation to prevent from conflict or if rise to settle it efficiently and out of public. Mediation has to be the starting point in solving disputes in company and with outsiders, taking into consideration all three dimensions of problem: emotional, commercial and legal. Better corporate governance in public company means better oversight and fewer disputes.

Regulations in corporate governance in Serbia follow the regulations of the developed countries. An important segment of that process is the intention to incorporate adequate use of the Internet and other information technologies in the system, thus providing faster development. Of course, one should be aware of certain systemic technical and technological limitations of Serbian economy and civil administration.

New technologies can help Serbia in the process of EU integration. Moreover, their application has become an imperative for the development. For Serbia they mean faster exit from the crisis of the capital market and undeveloped corporate sector. Being left behind the technological process would lead to new isolation. If Serbia took over contractual responsibilities to harmonize its legal, economic, political and other systems, then it is logical that we should follow such trend in application of new technologies.