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NATIONAL EXPERIENCES REGARDING CORPORATE GOVERNANCE – „PROPER PRACTICE" CODES

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This paper is about the principles of proper governance codes, which even tough have blossomed in all parts of the world for more than a decade, the degree in which companies adopt the codes vary in different countries, and the decision to adopt a certain code does not automatically guarranty efficient corporate governance. The paper trys to identify the mechanisms needed for implementing the codes and that will lead to higher efficiency.

Key words: corporate governance, proper practice codes, efficient management

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1.Introduction.

In 1978 the first country which issued a code of proper governance was the United States, the second country was Hong Kong in 1989, then the pace of issuance increased, especially after 1992 when the UK Cadbury Report was issued. By mid 2008, in 30 years, 64 countries have issued 196 separate codes of proper governance, some countries having more than one code of proper governance (The most notable being the United Kingdom and the United States with 25 codes each) others having only one code (such as Argentina or Austria) issuers of which are joint investors, employers associations, professional associations and governments, stock markets and their regulators[381]. It seems that there is a link between the development of capital markets and the number of codes issued. Countries with capital markets not only larger but deeper, have more codes of proper governance, proper governance need increases with increasing numbers of public firms because agency problems occur between dispersed owners, and managers or between majority and minority shareholders. Spreading codes for proper governance in the world was aided by stimulating international entities such as the World Bank and Organization for Economic Cooperation and Development (OECD), which began to emphasize the need to improve corporate governance institutions in general and in particular to help countries to grow and develop.

2. General principles.

General principles of proper governance structure refers to: a balance between executive and non-executive directors, a clear division of responsibilities between the chairman and chief executive, need to provide timely and quality information to management, formal and transparent procedure for appointment of new executives, balanced and understandable financial reporting and internal control system to maintain a good quality.

On how the codes are implemented once are developed and adopted as a guiding principle of government has identified two mechanisms for implementing the code - mandatory or voluntary regulation. Classic examples of two alternative approaches to implement codes are law-for

[381] Aguilera,Ruth& Cuervo-Cazurra,A.(2009), *Codes of Proper governance,* în An International ReviewVol 17, Issue3, p376-387

example, Sarbanes-Oxley Act of 2002, the U.S. and an approach “to comply or explain”-for example, the UK Combined Code in 2003. Although most of Proper governance Codes have similar problems, the specific content of codes for proper governance varies significantly across countries, by capturing the needs of different corporate governance systems. Implementation of codes increased over time, firms tend to adopt a growing percentage of codes recommendations despite their voluntary nature.

Although proper governance codes have been developed worldwide for more than a decade, the extents to which companies adopt codes vary across countries, and the decision to adopt a code does not give an automaticall guarantee of effective corporate governance. Thus in the UK British companies listed on London Stock Exchange met to a large extent Cadbury Report recommendations, the degree of compliance with the UK Combined Code is developing over time. Regarding the assessment of compliance with the provisions of the German Code of Proper governance for a significant proportion of companies complying with these provisions, almost half of them are already implementing the full German Code as the company’s guiding principle. Extending the analysis shows a high level of acceptance of recommendations of codes and a marked willingness to comply in the future, institutional environment and, in particular, capital market development resulting in large part the degree of monitoring compliance with the code, even if just for informal and legitimation.

3. Experiences regarding corporate governance.

All studies of proper governance stress the importance and growing interest shown for this area. Codes of proper governance became a central issue in politics and scientific research. To a fad that would disappear once the new ideas appear, codes of proper governance have increased relevance and continue to spread worldwide. Has also made a considerable progress on understanding the various code of proper governance worldwide, companies adopting codes, and code impact on performance.

From what was shown most codes tend to agree with the mechanisms that support more effective governance, and Board with independent members and the creation of committees, however, cross-national differences are significant. For example, the codes vary greatly because they are developed to address corporate governance issues that are specific to a particular country. Whereas such codes issued in different countries actually have different recommendations, comparing their adoption and effectiveness in improving corporate governance throughout the country faces severe limitations because it used different standards.

Another interesting aspect is that the issuers would outline codes; codes are issued by the stock exchange of countries, executives of associations, employers associations, investors and investor associations, professional associations or governments. These different types of issuers have different objectives and therefore codes that will create separate targets. Thus, recommendations on best practice Board considered the behavior largely dependent on the issuer. Similar applicability of proper governance vary dramatically as issuers, speaking directly to the debate between the effectiveness of regulations mild versus harsh legislation. The government and the stock exchanges have the power to impose penalties for non-compliance practices. In contrast, investors and investor associations have only the power to impose practices through shareholder activism at meetings, while other borrowers - associations of principals, professional associations and employers associations - have a limited ability to persuade companies to follow the recommendations codes.

It should not be neglected the importance of transnational institutions for the creation and dissemination of proper governance. Such transnational institutions like the World Bank and OECD have actively promoted proper governance by helping developing countries understand how to improve corporate governance practices. These trans-national issuers by promoting a common set of practice, regardless of country characteristics, may indirectly contribute to the

convergence of codes across national governance practices. In other words, it moves to a particular model of corporate governance (eg, Anglo-Saxon or Continental), but to a model of governance more generally global.

It must be noted that the recommendations contained in Codes of proper governance have evolved over time as some corporate governance issues are resolved other problems occur instead. This development problem that the codes treat was treated with revision of previous codes and new codes addressing governance issues new and different. This co-evolution of corporate governance issues and content codes emphasizes another source of differences across countries and codes developed in each country. Countries with sophisticated capital markets require more advanced codes recommendations, while countries with small capital markets probably require simpler code addressing basic problems.

Research concerns the causes of corporate failures after the crisis of the `80 in Britain, manifested by Sir Adrian Cadbury, have resulted in the Cadbury Report in 1992. Subsequently, other reports have come in support of Lord Sir Adrian Cadbury Report, outlining the idea of critical weaknesses that manifest themselves in top management. Cadbury Code, issued in 1992, established the first basic rules of running a company take the form of 19 recommendations to achieve increased efficiency while nediscrimonatoriu behavior to shareholders.

The Paul Rutteman report was published in 1993 that consider how to implement the recommendations of Cadbury, concluding that any stock exchange listed company should report on internal control.

Published standards of public life by Lord Nolan in 1994 reiterate the need for developing an ethical public sector; Nolan code representing a solid set of seven principles that should guide public life.

Richard Greenbury report in 1995 contained a code of proper practice wage determination and disclosure of directors, while establishing the need for a remuneration committee, to avoid poor performance and even establish compensation mechanisms for their enforcement. In the same year Ronnie Hampel report was to amend and improve certain references from Cadbury Report on the structure of boards, the role of director's nonexecutive role of shareholders.

Based on the recommendations provided by the Cadbury report and other observations on corporate governance, published in 1998 *the combined code* has become a mandatory requirement for listed companies' shares.

Charlie Mc Creevy launches the *„explain or apply principle"*, that companies are obliged to justify any deviation from corporate governance codes.

In October 1998 the finance ministries of member countries of the G7 called for transparency, quality, consistency and comparability of information on capital markets, bringing the Organization for Economic Cooperation and Development (OECD), in collaboration with the international regulatory bodies to complete by May 1999 drawing up a code of principles for sound management of firms. In 1999 the OECD published its corporate governance principles, recognized by the Financial Stability Forum as one sin the 12 basic standards for sound financial systems. These principles formed an essential part of the Collection of Standards and Codes conducted by the World Bank and International Monetary Fund. International Organization of Securities Commissions with other private sector bodies as the International Corporate Governance Network (ICGN International Corporate Governance Network) has adopted these principles. In addition to many national codes on corporate governance principles have been a reference point. Revision of OECD principles made in 2004, was born from the need to adapt to economic and political change, following consultations with officials and non-OECD countries, members of various professional bodies and business representatives from trade unions and civil

society, additions being particularly information related to transparency and board responsibilities and remuneration of the administration board[382].
Corporate governance systems have specific features of developing economies how they apply their culture. Thus, if German corporate governance model is based on the internal control system is centered on the existence of strong shareholders, based on high concentration of capital, as manifested by shareholders that are linked by common corporate interests, while at the same time take part in both its management and control („insiders"), being focused on the banking system, banks exercising strong influence and control over the companies, in contrast to Anglo-Saxon model is characterized by dispersion of capital, the chief financier stock market, transparency of information, lack of involvement of public authorities in the economic environment, the significant role of accounting existence of a stable economic environment, high levels of liquidity, customary law system, common law.
Corporate governance system in North America is a traditional model that is based on three levels and two legal relationships: a legal relationship is established between shareholders and directors, under a contract of mandate (agency in common law) and the second is legal established between directors and managers, managers have the authority derived from that of administrators In this model, called model maximizing shareholder income, the entire company is focused on risk capital provider, which is also the residual income claimant. Shareholders select the board of the Company. Decision making system based on: Actions means a vote and elect management board decisions are assumed to maximize the value of shares held by shareholders. Share value is based on the present value of the projection of future dividends, the net profit derived. These models to Japanese corporate governance system is distinguished by its features, the main feature being that the groups of „keiretsu" - groups representing economic results from the combination of several companies through cross holdings (English cross equity) firms within the meaning representation Grouping the boards of other entities[383], containing one or more central entities (eng.core members) class with small affiliated companies. Characteristic of these types of groups is given multidimensional cooperation between entities that are part of the pool. In this context frequently encounter dialing mechanisms for funding the banking entity in the group, or to transfer employees from the same landing value of the group, or the existence of an entity specializing in the marketing of products made in the group (specifically trade houses called Japanese „sogo sosha") observing the strong influence of Japanese culture.
Examination of issues of corporate governance convergence is both relevant and necessary, is interesting to study the principles that can justify, primarily Anglo-American model, with a shareholder orientation and the foreign financing and, secondly, the continental European model Japanese and characterized by a greater orientation toward policy makers and funding from the inside.
Convergence of corporate governance refers to the tendency of corporate governance models, specifically national or supranational, to merge their practices and theoretical perspectives. Complete convergence implies that national differences would disappear and eventually a universal model of corporate governance be adopted.
Although there argue that convergence is manifested by the Anglo-American model, these voices argue, would be superior to its alternatives, the specific failures of the Anglo-American corporate governance, corporate success in the party concerned, interior-oriented systems and economic

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[382] OECD,(2004), *Principles Of Corporate Guvernance*, ediția revizuită, disponibil la http://www.oecd.org.html

[383] Muşetescu, R.(2006) „*Integrarea globală a pieţelor financiare şi impactul asupra guvernanţei corporative a firmelor locale*" Jurnalul Economic, p 73-90

development in regions outside the Anglo-American states that would be difficult to transfer to a private practice of corporate governance from one context to another and expect ca aceasta să funcţioneze eficient. Also introducing mechanisms such as the U.S. takeover of management discipline in Germany or Japan would be extremely disruptive for managerial incentives and screening systems present there.

Although manifestations of convergence differences remain for decades, the trend is to consider globalization as a convergence of corporate governance. Arguments both pro and against convergence there certainly is that, in essence, although convergence would create the conditions for efficiency should be based on the need for diversity. Other factors outside the economic legal and they are in deeper social norms underlying various governance structures. Thus culture is beyond the law and economic systems, cultural diversity teaching against convergence. Model of corporate governance around the world have drawn as culture to give a much more accurate and useful. However, the idea that legal structures and economic rules that the Constitution corporate governance systems are the culture, and therefore justified the possibility that corporate governance models differ between cultures, could be related to cultural relativism. As far as cultural relativism claims that different values may be held by different groups, it involves imposing constraints on the values of a group to another group. This concept is closely related to the actions and arguments of moral relativism that works, however, at both individual, and group (cultural and / or national).

We can identify in corporate governance, above legal and economic structures, a set of values, attitudes and / or fundamental beliefs. Understanding this basic morality may therefore provide penetration into corporate governance structures, moral principles and philosophies that can be most easily identified with the most prominent models of corporate governance from the Anglo-American model, followed by continental and Japanees models.

Not be said that corporate governance failures necessarily follow these patterns in Anglo-American or European countries - there are too many differences between companies and the above theoretical discussion was limited to traditional extremes. Yet in some ways, the morality that underpins corporate governance can be seen now in successful companies. Although specific reference to corporate governance annual reports focus specifically on issues management, there are other aspects of these reports involve broader perspective on corporate governance.

We can conclude that business and morality are not always considered ordinary partners. Few would suggest, however, that business relations would be possible without some minimum of trust and fairness. Similarly, it is not unreasonable to argue that directors have certain moral obligations to those who provide funding, regardless of their legal requirements and enforcement capacities. In turn, the corporation may be seen as a mechanism that contributed significantly to society in the past and has the potential to continue to do so, all over the world. Despite differences in approaches to both theoretical and the practical application of corporate governance in different jurisdictions, there is a certain extent a common morality of corporate governance. Successful operation of the corporations is generally considered beneficial because it provides different socio-economic „goods". The four „virtues" of corporate governance responsibility, accountability, clarity and transparency are accepted as characteristics of good corporate governance not only in the 30 OECD countries, but in others as well.

A closer examination of the principles that support corporate governance patterns prevailing Anglo-American and the Continental European / Japanese suggests that differences in the relationship between corporations and society. Differences in underlying models of corporate governance lead to the question whether it is appropriate consider the convergence of these models.

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