

CODES AND PRACTICES OF IMPLEMENTATION OF CORPORATE GOVERNANCE IN ROMANIA AND RESULTS REPORTING

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Corporate governance refers to the manner in which companies are directed and controlled. Business management was always guided by certain principles, but the current meaning of corporate governance concerns and the contribution that companies must have to the overall development of modern society. Romania used quite late in adopting a code of good practice in corporate governance, being driven, in particular, by the privatization process, but also by the transfer of control and surveillance of political organizations by the Board of Directors (BD). Adoption of codes of corporate governance is necessary to harmonize internal business requirements of a functioning market economy. In addition, the CEE countries, the European Commission adopted an action plan announcing measures to modernize company law and enhance corporate governance. Romania takes steps in this direction by amending the Company Law, and other regulations, although the practice does not necessarily keep pace with the requirements. This study aims on the one hand, an analysis of the evolution of corporate governance codes adopted in Romania, but also an empirical research of the implementation of corporate governance principles of a representative sample of companies listed on the Bucharest Stock Exchange (BSE). Consider relevant research methodology, because the issuer of the Codes of CG in Romania is BSE listed companies requesting their voluntary implementation. Implementation results are summarized and interpreted at the expense of public reports of the companies studied. Most studies undertaken in this direction have been made on multinational companies which respect the rule of corporate governance codes of countries of origin. In addition, many studies also emphasize the fair treatment of stakeholders rather than on models of governance adopted (monist/dualist) with implications for optimizing economic objectives but also social. Undertaken research attempts to highlight on the one hand, a misapplication of the principles of corporate governance in Romania at present, but also a lack of transparency in the dissemination and publication of information. They should promote a Board of Directors determined and would allow stakeholders access to information about the company. Research results can provide a basis for reconsidering the CG policies in Romania.

Keywords: Corporate Governance, Governance Code, Corporate Governance Principles, Annual Report, Governance models

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In **Europe**, the first corporate governance code was issued in 1992 Cadbury Code (Sir Adrian Cadbury was Chairman of the Board of Cadbury Company for 14 years). This was the basis for the Code of Corporate Governance and the London Stock Exchange has held *three basic principles of corporate governance* (Cadbury 1992: 16), namely: *transparency, integrity and responsibility*. Later, as a result of financial scandals that have destabilized the operation of the British system, to reconsider the importance of corporate governance; quality of implementation of recommendations contained in the Cadbury Code was discussed in a series of progress reports issued in the coming years.

In the EEC, information on "Corporate Governance in Europe" published in June 1995. Changes and improvements to the Codes of CG occur throughout this period so that in March 2010 adopted the Code „*ecoDa Corporate Governance Guidance and Principles for Unlisted Companies in Europe*” issued „*The European Confederation of Directors' Associations (ecoDa)*” (ECGI). This Code of CG includes a set of 14 principles that focus specifically on the protection of minority shareholders in the face of possible abuses by controlling shareholders. CG system in Europe is considered an insider system (Clark 2007: 10), characterized by the presence of active shareholders within the corporation and is in direct business relationship with the entity. Therefore, concentrated ownership is associated with the control, mission management stakeholders seeking interest groups, to increase added value for them. In addition, business strategy proclaims active involvement in the long term, the stakeholders.

In **Romania**, the need to implement the rules of CG was determined by the privatization process which required companies to improve management practices, on the one hand, and the transfer of control and surveillance of political organizations by the BD, on the other hand. With the advent of the first law of privatization (in 1991) empowered the State Council was replaced by Annual General Meeting (AGM) and was established and BD. CG implementation rules was a way to harmonize internal business requirements of a functioning market economy.

Codes of Corporate Governance in Romania

The first Code of CG in Romania was issued in June 2000 by the International Center for Entrepreneurial Studies and was the target of public companies listed on BSE. Code rules have not been so well received by the market on the ground that they had particular regard to the protection of minority shareholders. Subsequently, in 2008 issued the Code of Corporate Governance of BSE, which comprises 19 principles, namely:

- I: Companies will adopt *clear and transparent structure* of corporate governance that will adequately disclose the general public;
- II: Companies are obliged to respect *the rights of shareholders* and ensure their fair treatment;
- III: Companies will make every effort to achieve *an effective and active communication* with shareholders;
- IV: Companies are driven by a BD that *meets regularly* and makes decisions that allow them to fulfill their duties of an effective and efficient manner;
- V: BD is *a company responsible for its management and functions as a collective body*, based on an accurate and complete information;
- VI: The structure of a company's BD will ensure *a balance between executive and non executive members*, so no one person or group of people can not dominate, in general, the CA decision;
- VII: A sufficient number of BD members will be *independent directors*, meaning that they have or recently had, directly or indirectly, any business relationship with the issuer or persons involved, of such importance as to influence their objectivity views;
- VIII: BD has a membership that ensures its ability to *monitor effectiveness, analyze and evaluate the work of directors* as well as fair treatment of shareholders;
- IX: Election of Board members will be in a formal, rigorous and transparent;
- X: BD will assess whether it is possible composition of a Nominating Committee consisting of its members and composed mainly of *independent directors*;
- XI: Companies will provide the services of managers and executives with *a good professional and ethical profile* of a reliable remuneration policy, consistent with the strategy and long-term interests of these companies;
- XII: Corporate governance structures in place to ensure that *an adequate and continuous periodic reports on all important events on the company*, including financial situation, performance, ownership and direction;

- XIII: BD will adopt strict rules to protect society's interests in the areas of financial reporting, internal control and risk management;
- XIV: BD will take appropriate operational solutions to facilitate proper identification and resolution of situations in which a director has a material interest *in its own name or on behalf of third parties*;
- XV: BD of members will make decisions in the interests of the company and will not take part in debates and decisions that create *a conflict between their personal interests and those of society or of a subsidiary company controlled*;
- XVI: BD will determine, after consultation with the structures of internal control, approval and implementation procedures for transactions with the Company or *its subsidiaries parties*;
- XVII: Administrators and managers will maintain the *confidentiality* of documents and information received during their term;
- XVIII: Corporate governance structures must know and recognize *the legal rights of interested third parties* - stakeholders - and to encourage cooperation between this company and to create prosperity, jobs and businesses to ensure sustainability of financially sound;
- XIX: Where to adopt *a dualist management system*, the previous principles are properly applied, adjusting the dual system of uniform provisions in full conformity with the objectives of good corporate governance, information transparency and investor protection and market.

The situation presented, it appears that the 19 principles 14 principles aimed, directly, BD, powers and functions, with emphasis on the independence of non-executive managers. This situation is surely The World Bank made recommendations for our country as a result of a study undertaken for the period 2001-2006 in 17 countries in transition (McGee 2008: 22-51). The study focused on changes in practices CG, is analyzed how to comply with its principles. The results of the analysis revealed that Romania was ranked five, along with Bulgaria and Slovakia in terms of CG principles.

In these circumstances, the World Bank recommendations across Romania have followed two major directions:

- need to increase the role of BD and the need for the introduction of specialist committees to advise the board;
- meetings of the AGM of listed companies to take part and have their external auditors provide explanations on how shareholders have met the obligations set out in the investment contracts.

Based on these recommendations, but also fund measures to modernize company law and enhance corporate governance in CEE, announced by Directive 2006/46/EC (Directive 2006/46/EC), national legislation is amended in line with requirements EU to improve disclosure on corporate governance practices applied in companies. Short-term priorities of Community action in this area have included targeting: confirm *the collective responsibility of directors and improving information on applied corporate governance practices in companies*. According to *the plan of action, members of the administrative, management and supervision* of a company must act within *the powers* conferred upon them by law. Also, companies whose securities are admitted to trading on a regulated market and which have their registered office in the Community are required to submit *an Annual Statement on the CG* when the company applies the corporate governance provisions other than those set by national whether these provisions are set directly into a corporate governance code under which the company or any corporate governance code which the company may decide to apply.

For the system of corporate governance adopted to contribute to improving the company's value creation potential, it is not sufficient to cover only the concern of *legal and financial dimension* CG (separation property or function of the management), it is important *managerial* dimension of

value creation is an effect of applying *a set of skills* in a context based on discipline and accountability.

In this regard, the Companies Law no. 31/1990 made some changes, of which the most important concerns about the GC:

- By constitutive act or decision of the AGM may provide that one or more members of the BD *must be independent*;
- GM may decide to create *independent advisory committees* charged with conducting investigations and making recommendations for the board, in areas such as audit, remuneration of directors, managers, auditors and personnel management functions, committees will submit to the board regularly Reports on their activities;
- at least one member of each committee created to be *independent non-executive directors*; *audit committee and remuneration* shall consist only of *non-executive directors*;
- constitutive act may stipulate that companies stock is managed by a *Directorate (Managing Board) and a Supervisory Board* (the dual system of administration); Managing Board exercises its functions under the control of the Supervisory Board; Supervisory Board members *can not be simultaneously members of the Directorate and can not aggregate membership of the supervisory board of the company's employee*.

We note that the law requires companies are joint stock companies to create *advisory committees be independent*, or to use the dual system of administration, implicitly assumes an independent board, that the Supervisory Board.

In line with good governance practices reconsideration has been changed and the basic rules which guide companies currently in Romania, namely with the adoption OMPF 3055/2009 included is a new section (Section 11) for *internal control*, believed, moreover, *a pillar of corporate governance*. In that legislation insisting on *internal control purposes*, namely to ensure consistency of objectives, identifying key success factors to the entity's management and communication, real-time information on performance and future prospects. Whatever the nature or size of the entity, efforts to implement sufficient internal controls related to the application of *good practices*. In addition, a new statement included in national legislation provides that a separate section of the management report will present information on *corporate governance*. Aunt companies whose securities are admitted to trading on a regulated market will include information on the CG section to a statement will refer to: *corporate governance code that applies to the entity or who voluntarily decided to apply*; *since, according to national law, the entity is removed from the code of corporate governance that apply or who chose to apply*; *an explanation of it on the parts of code that do not apply and the reasons for not applying*.

BSE's Corporate Governance requirements. Case Study

Therefore, in accordance with the Code of the CG BSE in 2008, companies whose financial instruments are traded on a regulated market operated by the BSE will adopt and comply with a *voluntary basis*, the Code of Corporate Governance issued by BSE. In this sense, "issuers" are required to enclose the Annual Report, starting with the year 2009, "*Corporate Governance Compliance Statement*" – "*Comply or Explain Statement*" (CES). This statement is designed based on the 19 principles included in the BSE Code of Governance which in turn are developed 38 recommendations, according to the Corporate Governance Code Guidelines prepared by the Institute of CG of BSE, which provides suggestions implemented according to best practice internationally.

"*Comply or Explain Statement*" even start with the last principle stated in the Code of CG, namely: "*The issuer is administered under a dual system?*" Therefore, we believe that as accounting, is considered the going concern basis on which other principles are based, as in the

GC, if that principle in mind, a lot of other principles and recommendations should be easier to comply. Further, the “*Comply or Explain Statement*” required by BSE calls for issuers to develop a CG Regulations to be posted on their websites CG defining structures, functions, powers and responsibilities and leadership BD executive. In addition, the annual report should contain a separate section for CG to be described all the relevant events related to the CG, recorded during the previous financial year. Also require issuers to post on the BSE website updated memorandum, indicating the list of board members are independent members, members of executive management and the specialized committees and CV for each member of the BD and the executive management. Recommendation No. 8 “*Comply or Explain Statement*” requires that every issuer to disseminate in a section on its website on shareholder rights and the rules and procedures for participation in the AGM.

The main “concern” of CES balance between executives and aimed at non-executive (independent), so that no person or group of people can not dominate the decision making process of BD. It also recommended that the activity was BSE, BD to have the support of independent advisory committees to examine specific topics and advice on these topics BD (it is the Audit Committee, Remuneration Committee and Nomination Committee). CES concludes with the question: “*Issuer activities on social and environmental responsibility of the company?*” We see therefore that the emphasis is increasingly more on corporate social responsibility, both by government to assist all stakeholders, but also by a positive attitude towards society and environment in general. Romania's attitude and, in particular, the Exchange regarding the requirements of increasingly stringent on the CG follows, of course, bringing the European and international practices in this area.

To demonstrate that the adoption of codes and practices are the results of CG in Romania, we conducted a study of companies listed on BSE in category I and II (total of 65 companies).

Among *the most important findings*, we report:

- only three of the analyzed companies are managed under a dual system of administration (Carpatica SA, OMV Petrom SA, Prodplast SA);

- six companies have published “*The Comply or Explain Statement*” for the year ended December 31, 2010 (Azomureş SA, BRD GSG SA, Ropharma SA, Aerostar SA, Altur SA);

- 23 of the 65 companies analyzed, *the offices of president and general manager of BD* are owned by the same person;

- 21 companies make *no claim related to the CG*, just over 15 companies information to shareholders, while other companies (CEMACON SA, Comp SA, Farmaceutica Remedia SA, TMK Artrom SA, Terplast SA) presents only the information contained the opposite association GC Code requirements;

- 8 companies *have adopted codes of their CG* and post CG information in a separate section on their websites (Alro SA, Antibiotice SA, Azomureş SA, Transelectrica SA, Ropharma SA, Transgaz SA, Altur SA, Carpatica SA).

Reported findings from the study conducted lead us to conclude that *the principle of transparency* in our country - entered the first principle of CG Code: Cadbury Code - still more to the statement included in state codes CG. Consequently, the analysis that the other two basic principles of GC - *integrity and responsibility* - become quite difficult, as long as the dissemination and disclosure, which should promote a determined BD stakeholders to allow access to information about the company is limited.

Conclusions

Even if the failure of principles and recommendations contained in different codes GC is still punishable by law, however, compliance has the effect of self discipline listed companies. If we

consider the governance model adopted at the continental level in terms of study undertaken on the 65 companies listed on BSE, a weakness for 50% of the companies reviewed is that they are governed by the model tier (in a single Council meets both executive and non-executive managers), without the position of President to be separate from that of Managing Director. This does not just *increase the power improperly President-General Manager*, administrators can not take action only in a collegial manner. On the one hand, it is considered that directors should be an overall responsibility; on the other hand, their power could only peer, without being able to work towards disapproval of the conduct of the President. So long as *personal interest* overshadowing corporate social responsibility, investor confidence is destroyed and thus require reconsideration of the principles of CG, especially in terms of improved quality and transparency of financial reporting. We believe that restoring investor confidence in capital markets may be the consequence of a high degree of stringency *of corporate governance rules*. Negative findings drawn from the study may be the consequence of the adoption of a voluntary code CG. Imperative and mandatory adoption and implementation of codes of good practice could be a solution.

As political power, economic power must be limited by *separating the executive managers of non-executive managers*, and by dispersing ownership. Any shareholder has the tendency to abuse its power of control and lack of separation of the two categories of managers will lead undoubtedly *to a concern for personal interest, let alone the interests of the company*. In this respect, the dual structure of governance (either by separating the office of President of the General Manager, either by separating the Executive Board of Supervisory Board), that the legal obligation to publish the mode of remuneration of managers, the presence of independent directors, *transparency* in dissemination and publication of information in order to be allowed access to all information about the company stakeholders is a plurality of conditions for effective governance of companies, which will lead undoubtedly to optimize their economic and social objectives.

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