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Enforcement of Corporate Governance Rules

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**The Global Corporate
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**Session 1: Progress in Corporate Governance in South East
Europe**

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Session 1: Progress in Corporate Governance in Romania

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GENERAL

- There is a slow but steady progress in CG in Romania.
- However, one major observation to be made is that improvement is not driven by explicit objectives related to CG, but are more “side effects” of the efforts to fully adopt the “*acquis communautaire*” in the process of EU integration. For example, adoption of IFRS is perceived more as an accounting issue, people do not fully understand the relation to transparency and disclosure and the implications for business decisions. For the time being, it is more the foreign investors who do appreciate and take advantage of the improved financial reporting standards.
- The general awareness of the public at large and of the decision makers remains low. The media tends to bring up CG related topics in connection with international scandals (ENRON, PARMALAT etc.). Certain progress in education – CG topics covered in some universities’ curricula.
- Some private initiatives dedicated to improving CG framework and practice ended with (at best) mixed results:
 - Bucharest Stock Exchange (BSE) initiative to promote a “plus” category for the listed companies that adopt a CG code - companies are not motivated.
 - Several initiatives to draft CG Codes – with no follow up;
 - Moderate activism of minority shareholders association;
 - Creation of the Corporate Governance Institute by the Stock Exchange – no visible results.
 - The BSE was transformed into a commercial company owned by the brokerage houses – what will happen with its initiatives related to CG in an environment most likely driven by commercial considerations?
- Lack of clear ownership: CG is missing a stakeholder that would consistently develop initiatives, promote standards and contribute to education and awareness rising.
- International exposure tends to be very efficient in raising awareness of the corporate sector. Peers example and pressure from business partners are more effective than domestic standards.

As we have not enough time for a comprehensive review of the situation (and the presentations of Mr. Karpf and Mr. Cigna covered most of the main aspects), I will focus my discussion here on two issues, both of them very new and having potentially a significant impact on the CG in ROMANIA.

- **Company Law amendments:** The Ministry of Justice initiated a few months ago a revision of the Romanian Company Law, the basic piece of legislation that sets the framework for CG. Presented as an effort to align the Romanian legislation to the EU Directives but also with OECD principles, the amended law will greatly improve the CG general legal framework:
 - Structure of the board – clear distinction between executive and non-executive function; clarifications related to executive functions; strengthening position for non-executive members; board special committees.
 - The statute of board members’ is better defined – an explicit obligation of loyalty towards the company, definition of non-executive member of the board, better definition of conflicts of interests.
 - Shareholders’ rights: a more balanced approach, aimed at ensuring protection of shareholders’ rights, easier procedures for enforcing rights, enlarging GSM competencies, etc.

- **Developments in enforcement:** We do have a first case where an investigation was started on suspect transactions (insider trading, price manipulation) on the Bucharest Stock Exchange. Two commissioners in the Securities Commission have been prosecuted. Although we do not have a final decision in the case, I am tempted to say that after all, the checks and balances that we have put into place started to function.