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Enforcement of Corporate Governance Rules

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CORPORATE GOVERNANCE IN SERBIA

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“Dead letter” or not?

Corporate Governance in today's Serbia is characterized by a good regulatory framework which basically consists of two laws – Company Law and Law on Securities and other Financial Instruments Market. The first of the two laws mentioned, is the regulatory basis for establishing the relation between the ownership and management structure and regulates issues such as: 1) scope, implementation and protection of shareholders rights, 2) structures, obligations and liabilities of the managing bodies, 2) judicial and other forms of protection. The interesting novelty introduced by this Law, which concerns the possibility of implementing certain shareholders rights in certain cases foreseen by the law through a non-contentious business, is also a significant contribution to increasing efficient implementation of shareholders rights, this time through the support and active role of judicial bodies.

Concerning the Law on Securities and other Financial Instruments, its direct linkage with elements of corporate governance is reflected in the provisions which concern the regulation of the issue of the obligation of public companies to keep the public informed, the liability to provide true and accurate data in the prospectus, and the issue of insider information and liability for abuse of the latter.

A good regulatory basis for the development of corporate governance will certainly be more complete once the codex of corporate governance is in place, which the BSE is currently preparing for companies with securities quoted at one of the official BSE markets.

However, the weaknesses and impediments to the development of corporate governance in Serbia remain: poor enforcement of law provisions, underdeveloped judicial practice, lack of corporate culture and corporate interest (management) for the development of corporate governance, and furthermore, an underdeveloped stock market and usually an insufficiently educated and often “destructive” shareholders' structure. These factors, in conjunction with others not mentioned here, make an environment in which a good regulatory framework in practice remains just a “dead letter”.

When seeing good corporate governance as something which primarily concerns public shareholding companies, who see their interest in upgrading it in the first place by increasing their “appeal” for potential (mainly institutional) investors, then it can safely be said that the next step which needs to be taken in Serbia is incentivating the establishment of shareholding companies. In fact, at this point of time, the majority of public shareholding companies (that appeared in the privatization process), aim to fulfil requirements for “closing” and “re-directing” their operations in the shortest possible term away from open market and public eyes into closed – private channels. At the same time, there is hardly any interest on behalf of existing private companies for the

IPO. Thus the ensuing conclusion is that instead of having a “going public” process, in Serbia we have a “going private” process which is clearly manifest.

The causes of such a state of affairs are certainly varied and unfortunately also include a certain disinclination of companies towards the alternative idea of raising the capital needed on the capital market and relying on mostly “expensive” funding sources through bank loans. This certainly not only “closes the door” to enter the local market for many institutional portfolio investors, but also widely impacts the preservation of relatively high operating costs, and slows the growth of the economy on the whole.

It seems that some of the key reasons that brought to this are the unwillingness to expose business operations to the public, a fear of losing autonomy, uncertainty and lack of information about “going public”, but also a huge reluctance to surrender part of the capital to the dispersive shareholders structure. The last reason also lies to a great extent in the frequent bad experiences of shareholding companies, the actions of shareholders (almost always those who have acquired their shares for free, as they were distributed in the privatization process of a company), who have often acted to the detriment of the company under the guise of protecting the rights of minority shareholders.

Therefore, maybe one of the first steps towards corporate governance development should include gaining clear awareness about and accepting the concept of minority shareholders, mainly portfolio investors in a market economy, whose interests are not in conflict with the interests of the company, of other owners and the jointly appointed management, but who are part of the common interest of all these structures to incentivate the development and growth of the company and its profitability.

The role of the state in overcoming these problems, which is a precondition for the development of corporate governance, is certainly of the utmost importance. State strategy directed to the development of the capital market as an alternative model of funding economic development, could to a large extent help to establish good foundations for the development of the interest of the companies involved in the process. One of the ways could include IPO of at least a share of the capital in those companies in which the state is one of, or the only owner of capital. In this way, based on tangible examples, the economy could become aware of the benefits that ceding part of the capital to the public investors and getting market exposure could bring to the companies themselves in the development of their business. At the same time, this would be one of the safest ways to expand the circle of domestic and international investors on the local market capital, and to engage a surplus of free funds of the population into the development of the local economy.

Only when the first step has been taken, and interest has been created among companies to participate and position themselves as best as they can on the market, can we expect progress in the development of corporate governance, because until then, none of the beautifully conceived plans will be practically implemented by anyone, anywhere.