



Organisation for Economic Co-operation and Development
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A Flagship Regional Program of the Investment Compact for South East Europe

Investment Compact
South East Europe

THIRD SOUTH-EASTERN EUROPE CORPORATE GOVERNANCE ROUNDTABLE

"The responsibilities of the board and the role of stakeholders"

Meeting Hosted By

The Zagreb Stock Exchange



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Sponsored By

Deutsche Gesellschaft Für Technische Zusammenarbeit (GTZ)

and

The Global Corporate Governance Forum

Zagreb, Croatia

21-22 November 2002

Session 1: The responsibilities of boards in corporate governance

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ROLE AND FUNCTION OF SUPERVISORY BOARDS IN FEDERATION OF BOSNIA AND HERZEGOVINA

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1. Introduction

Corporate governance model in Federation of Bosnia and Herzegovina uses single-layer structure, where only supervisory board, as a governing body, has to be elected by firm's shareholders. This text will, mainly, deal with companies, which are subject to privatization, since, most of the time, these companies meet with various problems and obstacles.

Supervisory board in any company represents a link between its shareholders and Management. Responsibilities of Supervisory board are much higher than those of shareholders, but the Board has much wider rights towards the management, even though the law allows the bylaws of the company to regulate their rights and responsibilities in more details.

However, the role of Management in the company is continuously becoming stronger. The main reason is that, nowadays, any kind of business is becoming more complex, and the amount of necessary decision-making information is rapidly increasing. Secondly, members of Supervisory boards are mostly external and, usually, represent external shareholders (except for the case when workers have enough votes to elect their representative). Therefore, most of the time, they are not experts in that field, so they do not want to interfere much in Management's work. This is the reason why Supervisory board transmits some rights and responsibilities to the management.

Supervisory boards, also, functions as a body and in the best interest of all shareholders and has unlimited and united (with his personal property) responsibility towards all company's shareholders.

And lastly, it is important to say that Supervisory board in Bosnia and Herzegovina, besides above and below mentioned facts, have very strong power in the company, since it still makes the most important decisions, what will be discussed in the next part.

2. Rights and role of Supervisory board (legal framework)

Here are some of the most important duties of Supervisory board:

- It chooses the management (president of the Board signs a managerial contract with general director and approves the contract between the general director and his executive directors) based on presented business plan for the following term (4 years);
- It tracks the results of management's success (financial reports and other coefficients) monthly, quarterly, semiannually and annually, in order to see whether the management follows the proposed direction, and according to that makes proper conclusions, obligatory to management;
- It adopts all company's acts prescribed by law;

- It makes all kinds of decisions which are set by Company's law (the Law is not precise enough in this matter, therefore the role of management and Supervisory board often interfere);
- It adopts semiannual report and annual financial report with the external auditor's report and report of Auditing board, as well as business plan for the following year, and brings all up to the shareholders' meeting for adoption and approval;
- It proposes to the shareholders the way of distribution of profit, the use of retained earnings and covering the loss;
- It approves the offering of new shares (of existing class) up to the level of one third (1/3) of nominal value of existing shares;
- It carries out decisions made by shareholders.

Finally, Supervisory board consists of at least three (3) members, being that the number of members must be odd, and the decision is valid if agreed by majority votes.

This was the legal and theoretical part of Supervisory board role, but the next part will examine the functioning of Supervisory boards in the real world.

3. Supervisory boards in practice

As we know, Bosnia and Herzegovina is going through the process of transition from State owned capital to private hands, and most of the capital is being sold for vouchers, that State distributed to citizens. The result of voucher privatization is that ownership structure in privatized companies consists either of minority shareholders (citizens and employees), local powerful persons (who bought vouchers from people for small amounts of money) and Privatization investment funds. Since this process occurred in last two years, the corporate governance, especially supervisory board functioning has not reached the satisfactory level.

Based on a recent observation, we can determine some of the problems that are common for most of the companies:

- There is no established labor market for Supervisory board members (people who have experience in Supervisory board work);
- In most cases, there is no clear corporate ownership structure, what causes unclear vision and goals for particular company (strategic partners are present mostly in the companies privatized for cash or green-field investments);
- Many of State owned companies were unprofitable with valuable real estate in its assets, what was a good target for local powerful persons who prefer firm's liquidation more than further investment and long term business – they achieve those goals through Supervisory board they elect;
- Supervisory board cannot easily find a good manager, since there is no defined market for high skilled managers, and most of recently privatized companies need a new management team;
- Supervisory boards are not aware of their unlimited united responsibility towards all shareholders, and most of members of the board act as delegates of shareholders that gave a votes to them (especially in companies with dispersed ownership with shareholders of different interests);

- Human resource management in most companies is poor at all levels, where the management teams cannot be motivated enough – poor managerial contracts with no stimulating bonuses and other awards and benefits;
- Supervisory board often interfere into management's operational work, even more than Company's law prescribes, what disturbs the management efficiency – problem of distrust, suspicion and prejudice towards Management;
- After the process of privatization each firm needs changes and more devotion and hardworking, both by Management and Supervisory boards, but members of Supervisory boards have full time employment elsewhere and can not devote much time to the particular firm (the Law has recently lowered the number of Supervisory boards one person can be involved in - from 5 to 3).

It could be seen that some of the problems occur on micro level, but most of them are caused by undeveloped system of corporate governance at the macro level.

4. Conclusion and recommendations

Based on above-mentioned facts, here are some recommendations, which are meant to conclude this discussion:

- The main goal of Supervisory board must be to stop further sinking of the company – Supervisory boards elected by the State before the privatization were totally inefficient, the firms used to have workers' self management, and the firm's goals were set for the short-term;
- Almost each firm can do better with good management team, which will get full support and motivation from Supervisory board – after that it will be much easier to attract a strategic partner, who will inject more money;
- Privatization investment funds, as strongest institutional investors in Bosnia and Herzegovina can not be strategic investors by definition, but they can contribute to the process of firm's restructuring, by electing their best people in Supervisory board and Management of particular company;
- Supervisory board membership should be considered as a profession and some kind of association (NGO) should be created in order to gather and educate Supervisory board members.

Finally, it is important to say that all of above-mentioned problems cannot be solved themselves. Therefore, there must be a developed concept of corporate government restructure and development at the macro level and, off course, a good will by all participants in transitional process this country goes through.