RELEVANCE OF CORPORATE GOVERNANCE MODELS IN COMPANIES DEVELOPMENT, IN CONTEXT OF THE GLOBAL CRISIS

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Abstract
Although the existing confusion regarding the concept of corporate governance persists, its role on sustainable maximize corporate values and providing high performance is undeniable.
Moreover, the test of a corporate governance effectiveness model is the measurement in which it succeed to achieve the main objective, namely, that the company's perspective to maximize value to shareholders.
In the economic crisis, it requires that by those systems in which companies are managed and controlled has to interact directly with social responsibility and business ethics held by those entities. It is expected that corporate managers have an efficient economic behavior, different from that of members of governments and economic decline that records do not meet current socio-economic situation.

Keywords: *model, corporate governance, company, social responsibility, business ethics*

Introduction

Although they are related, business management, corporate responsibility and corporate governance should not be confused. All components of corporate governance, consisting in norms, rules and codes are important for successful market economies.

Corporate governance can be defined in a variety of ways, but generally refers at the mechanisms by which a business enterprise organizes it process of management, control and direction. Over the past decade, interest in the role that corporate governance plays in economies, and particularly in capital markets, has increased in the European Union and its Member States.

Important European changes, such as: adoption of the unique currency, economic globalization, the complex process of privatization and, more important of all, the free flow of capital, goods, services and people across EU borders increased the interest of investors and issuers in understanding the role of corporate governance in arising their business, in lowering the barriers in development of the unique European market.

The main contribution of this paper is to bring together the several different literatures on corporate governance, finance, law, institutions and development so as to examine recently available empirical evidence concerning corporate governance, competition and influence of economic crisis in emerging markets.

An analysis of available data has highlighted that some emerging economies have become relevant players in the global economy - and even more so in selected regional and national contexts - and that some EMNCs[1] may by now claim the status of real "global players." The motivations for the corporate decision to internationalize via overseas investment are largely similar to those of OECD to seek market access, resources, and capabilities and justify the gamble of operating in foreign territories rather than exporting from the home country. Nonetheless, the international business environment has changed, product cycles are shorter, time-to-market imperatives faster, regionalism and economic liberalization processes more widespread, and network alliances of increasing importance, and firms are pushed to internationalize via direct investment much earlier in their lifecycle.

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[1] Enterprises have amassed sufficient capital, knowledge and know-how to invest abroad on their own and earn the status of emerging multinationals (EMNCs),
http://www.oecd.org/document/33/0,3746,en_2649_33731_36223265_1_1_1_1,00.html

Important cases of failure occurred in corporate governance have bring to attention areas of particular concern in the field, giving to those interested important cases to study, for the development and refinement of corporate governance standards. Developed industries and complex business forms arising lately pointed to severe conflicts of interest by brokers and analysts, underpinning the introduction of principle V.F. covering the provision of advice and analysis into the Principles.

The Enron/Worldcom failures pointed to issues with respect to auditor and audit committee independence and to deficiencies in accounting standards. The Parmalat and Ahold cases in Europe also provided important corporate governance lessons leading to actions by international regulatory institutions such as IOSCO[2] [www.iosco.org] and by national authorities. In the above cases, corporate governance deficiencies may not have been causal in a strict sense. Rather, they facilitated or did not prevent practices that resulted in poor performance.

1. Diversity in models of corporate governance - culture, ownership and law

Depending on their cultural inheritance and especially the legal provisions, in UE Member States appears a higher diversity in corporate governance codes of practices, structures and types of applying. This rich diversity complicates corporate governance comparisons between nations. The codes that have been registered in Member States in the last years express similarities which worth mention: they reveal that as reliance on equity financing increases and shareholdings broaden in Europe, a common understanding is emerging of the role that corporate governance plays in the modern European corporation.

Nowadays, specific academic literature regarding corporate governance focuses on the impact of national and business-culture on corporate governance systems. It is to mention here co-operative relationships and consensus and market processes in their corporate governance frameworks.

Mostly known differences in the EU Member States which applies corporate governance rules, models and codes are those arisen in Germany and United Kingdom, typical examples of differences in culture.

Often characterized as more market-oriented, The United Kingdom is, with a higher value placed on competition, differently based from Germany which is often characterized as traditionally valuing co-operation and consensus. The German emphasis on co-operation and consensus has been pointed to as underpinning the role of employee co-determination and works councils within the German corporation, and the rights given employees of certain sized companies to information about the economic and financial situation of the company and major plans for organizational changes, such as mergers.

The degree to which Member States have relied on equity markets for corporate finance has also varied significantly throughout EU Member States, although in all Member States equity financing appears to be gaining in importance. For example, in the Netherlands, bank lending has been a far more important source of financing, traditionally, than the stock markets. With less traditional reliance on equity markets for financing, shareholding has been fairly concentrated.

In this case of common interests, despite the main differences existing in corporate governance way of applying, important are international institutional investors which apply the same tests of security and rate of return in every business they are interested in. Therefore, they could be considered a real decisional force for governance convergence, a force which could change for better or for the worse the process of clear corporate governance. Convergence of this kind is getting to obtain new corporate governance standards, since these investors look for the same levels of board effectiveness, transparency, accountability, and financial probity no matter where they investment is placed.

[2] https://www.iosco.org/webmeth_pub/index.cfm

The downside is that they may thereby overlook opportunities in countries where their investment could earn both an acceptable return and make a considerable contribution to that country's development; in effect, where their investment could be socially and economically most productive.

2. Relevant changes in corporate governance during the economic crises. New models requirements

The financial crisis revealed severe shortcomings in corporate governance. When most needed, existing standards failed to provide the checks and balances that companies need in order to cultivate sound business practices.

In 2008, the OECD launched an ambitious action plan to develop a set of recommendations for improvements in priority areas such as remuneration, risk management, board practices and the exercise of shareholder rights. These recommendations also address how the implementation of already-agreed standards can be improved. This work was published in 3 phases[3] [www.oecd.org]: Corporate governance lessons from the financial crisis - a first overview of corporate governance shortcomings and the resulting challenges; corporate governance and the financial crisis: key findings and main messages -follow-up analysis providing the basis for the recommendations; conclusions and emerging good practices to enhance implementation of the Principles - recommendations to help companies and governments to overcome corporate governance weaknesses and support a more effective implementation of the OECD Principles on Corporate Governance.

The crisis that struck in 2008 forced governments to take unprecedented action to shore up financial systems. As economic recovery takes hold, governments will want to withdraw from these extraordinary measures to support financial markets and institutions. This will be a complex task. Correct timing is crucial. Stepping back too soon could risk undoing gains in financial stabilization and economic recovery. It is also important to have structural reforms in place so that markets and institutions operate in a renewed environment with better incentives.

The crisis has highlighted pervasive principal-agent problems which need to be corrected by improvements to corporate governance. Two issues stand out. First, CEOs and other top executives, notably including those charged with credit risk assessment and management, are rarely controlling shareholders of large financial institutions. They are shareholders' agents who have all too often failed to act in shareholders' interests.

The high exposure of shareholders' funds to risk and the very high levels of compensation unrelated to performance, paid out of shareholders' funds, point to the need to ensure better accountability for management decisions to the principals, *i.e.* the shareholders. This requires clear reporting responsibility and accountability of the CEO and management team to the Board of Directors.

The management should not controlled the all activity of the company, that's why The Board must be independent and motivated to act in the interests of shareholders. The "originate-to-distribute" business model that has increasingly replaced the traditional "originate-to-hold" model has allowed too many decisions to be taken by people or institutions rewarded for completing a transaction, *i.e.* by collecting a fee, commission or bonus, while transferring the risk to someone else.

Even many of the investors who make the capital allocation decisions on which the chain of transactions depends, *e.g.* hedge funds, pension funds and insurance companies, are themselves merely agents for the ultimate risk holders. These include pensioners, insurance policyholders, mutual fund owners and hedge fund investors who are not in a position to influence decisions. If the Board is acting effectively on behalf of the shareholders, it will align key executive and board

[3] http://www.oecd.org/document/48/0,3746,en_2649_34813_42192368_1_1_1_1,00.html

remuneration with the longer-term interests of the company and its shareholders (aligned with OECD Principles of Corporate Governance and the FSB Principles for Sound Compensation Practices).

Commission and other staff compensation are best left to management and regulatory intervention should be avoided. However, recognition of income from fees received from outside parties for origination of assets that will have an extended life should depend on the ultimate performance of the assets. Such fees would include those for underwriting bonds, originating loans and establishing CDOs. Ideally, they could be put in escrow and drawn over the life of the loan. At minimum, even if the fees are fully paid up front, recognition of the revenues and associated income can be deferred over the life of the asset much as interest on a standard mortgage is spread over its life.

Complex and fast changing of political and economical situation during the actual crisis has revealed the new landscape for corporate governance, new keys to act in those circumstances.

Some of the key elements in corporate governance arisen are leading to the question if those companies are prepared for the requirements of new governance guidance. A short list of the most recent developments and new board responsibilities in the corporate governance will refer to:

- the board is responsible for determining the nature and extent of the risks it is willing to take in achieving its strategic objectives;
- enhanced role for the senior independent director and, of course, more emphasis on the role of chairman, not ignoring the role of managers;
- diversity, including gender, to be taken into account for new board appointments;
- proposing, at every 3-5 years, an external evaluation of the board;
- an annual report in which to be specified every way of improvement of the corporate governance model applied.
- further guidance on the design of performance-related remuneration, taking in account challenging performance criteria, excluding any form of payment or reward for non-performance managerial activities;

3. The primordial role of internal audit to a successful model in corporate governance

The current economic crisis has led many investors to raise serious concerns about the accountability and responsiveness of some companies and boards of directors to the interests of shareholders, and has resulted in a loss of investor confidence. During this recession, the leadership at some of the nation's most renowned companies took too many risks and too much in salary, while their shareholders had too little say. By creating a large public demand for reforms, the current crisis offers another opportunity to improve governance arrangement.

Corporate governance is a combination of processes and organizational structures implemented by the Board of Directors to inform, direct, manage, and monitor the organization's resources, strategies and policies towards the achievement of the organizations objectives. The internal auditor is often considered one of the "five pillars" of corporate governance, the other pillars being the Board of Directors, management, audit committee and the external auditor.

Recent events have highlighted the critical role of boards of directors in promoting good corporate governance. In particular, boards are being charged with ultimate responsibility for the effectiveness of their organization's internal control systems. An effective internal audit function plays a key role in assisting the board to discharge its governance responsibilities.

A primary focus area of internal auditing relating to corporate governance structures is helping the Audit Committee inside the Board of Directors perform its responsibilities effectively[4]. This may include reporting critical internal control deficiencies, informing the Audit Committee

[4] Suciu A., Morariu G., Stoian F., Internal Audit and Corporate Governance, University Publishing House, Bucharest, 2008, pp.185-190

privately on the capabilities of key managers, suggesting questions or topics for the Audit Committee's meeting agendas and coordinating carefully with the external auditor and management to ensure the Audit Committee receives effective information.

Corporate governance includes structures that govern together relations between those who invest resources and those who monitor and manage business in that country. These relations are both formal, defined by rules and regulations as well as informal, materialized in business practice, ethical codes, etc. In such approach, transparencies in relationship with investors, as well as the quality of financial reports addressed to them, are primordial factors that may significantly influence the decision of undertaking a certain level of risks associated to financial investments.

Through the review of an audit procedure is to ensure that the committee has sufficient authority and resources to perform its duties. The membership of the committee is being verified to ensure that members have the necessary skills and experience, the size of the committee is appropriate and members are independent from management. Further considered the individual meetings to ensure papers are distributed in advance, members attend every meeting where possible, and new board members receive sufficient induction to the committee. Particularly, audit is interested in highlighting the Strategy Committee’s role in relation to strategic planning; ensuring members are informed of main strategic targets and corporate planning process.

The success of implementing corporate governance depends upon reliability allocated to corporate operators, being required cooperation and responsibility. In nowadays crisis business climate, corporate governance has become a reality, taking in account the fact that it assures a certain level of reliability, requested for an adequate functioning of a market economy, lowering the informational risk and the cost of capital, as well as efficiently resources consumption. The importance of corporate governance for Financial Investment Companies has led to specific regulations inspired from national law system as well as implementing the standards regarding auditing, their main role concretizing in specific ways to communicate between auditors and officials in order to gain principal aspects of the financial aspects[5].

Conclusions

In the present situation of an unbalancing economic crisis, corporate governance must promote transparent and efficient markets, must comply with rules and regulations, clearly segregating responsibilities between regulators and operating entities.

From this approach, Financial Investment Companies must adopt clear and transparent corporate governance structures, establishing adequate functions, abilities and responsibilities for management and the Board of directors. Furthermore, in their annually report, Financial Investment Companies must insert special paragraphs to describe relevant events related to corporate governance, as well as explications to inadequate application of recommendations from the Bucharest Stock Exchange Corporate Governance Code[6].

Relations between issuers of securities and investors should remain clear and transparent; this should be a fundamental requirement for promoting an adequate level of informational efficiency for Romanian stock market. Therefore, specific laws and regulations require Financial Investment Companies to respond at investors’ informational needs by reporting all the significant changes and events that may cause relevant changes in the field (changes in control possession or in managerial structures, changes in stock prices, financial condition depreciation, etc.).

Of a main importance in having a functional corporate governance nowadays is to verify, periodically, all those sources of information that could influence actual status of the company, these include interim reports, Board of directors’ reports, audit or reviewing reports, changes in rights

[5] http://www.pakistaneconomist.com/issue2002/issue22/f&m3.html

[6] Danescu, T., Spatacean, Ovidiu. *Corporate Governance- Applied principles for companies listed on a regulated capital market*, Financial Audit Magazine of August, 2008, edited by Romanian Financial Auditors Chamber

attached to securities, litigious events or bankruptcy procedures initiation, off-balance sheet with significant impact upon financial condition.

As such, corporate governance structures should assure correct and operating dissemination of all material aspects related to Financial Investment Companies, including financial statements, property rights and governance policies.

Dissemination and transparency respond to reporting requirements applied to Financial Investment Companies, related to relevant aspects, such are: financial and operational results, development strategies, management objectives and philosophy, property rights and voting rights of shareholders, remuneration policies regarding management and the Board of directors, transactions involving related parties, risks and uncertainties with significant impact upon entities, etc.

Disclosure and presentation of financial and non-financial information should comply with high quality financial reporting standards and dissemination tools should provide equal, efficient and operative access to all users, especially investors. Information produced by financial reporting system should be subject of internal audit process, in an independent, objective and professional manner, to assure management and Board of directors that financial statements reflect in all material aspects, a true and fair view of financial position and performances. Internal auditors should also test the efficiency and reliability of internal controls, in aspects that may have relevant impact upon financial statements.

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