

CODEX OF CORPORATIVE MANAGEMENT IN ECONOMY OF REPUBLIC OF SERBIA

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Sažetak: *Kodeks korporativnog upravljanja (u daljem tekstu: Kodeks) obuhvata pravila o upravljanju i nadzoru nad upravljanjem u društvima kapitala. Ovaj Kodeks kako se u preambuli kodeksa ističe svrstava našu zemlju u uređene zemlje koje imaju sopstveni nacionalni kodeks korporativnog upravljanja. Kodeks ima dosta uopštenosti i određen je nizom originalnih rešenja koja doprinose razvoju autonomnog prava i prakse dobrog korporativnog upravljanja. Institucionalizacijom ove prakse i njenom promocijom u okviru privrednih komora doprineće se jačanju autoriteta prava, prepoznatljivosti prakse dobrog korporativnog upravljanja, dizanju vela netransparentne prakse i prava i otvaranju vrata kulturi prava i vladavini prava. Samo je to put razvoju prava i institucija koje ga primenjuju. Samo je to put oslobađanja prava iz okova tvrdih ograničenja i političkog omeđenja. Slobodno određeno pravo vodi prema oslobođenoj privredi. U takvom radnom okruženju dominira i vlada praksa dobrog korporativnog upravljanja, odgovornog samo svojim investitorima. Samo je to put seobe privrede iz voda političke privrede u vode tržišne i konkurentne privrede.*

Ključne reči: - Kodeks. - Privreda.- Korporacija. - Kotirana akcionarska društva. Privredna komora Srbije. - Sud časti.

Summary: Codex of corporative management (in further text: Codex) contains rules of management and of supervising management in corporations. As pointed out in the preamble of the Codex, this Codex places our country in the group of regulated states that have their own national codex of corporate management. Codex is characterized by generality and is defined by a whole set of original solutions that are a contribution to development of autonomous laws and practice of good corporative management. Institutionalization of this practice and its promotion within chambers of commerce contribute to the following: strengthening of the authority of law, recognition of quality corporative management practice, more transparency within both practice and law, and towards opening of doors that lead to the culture of legal rights and the rule of law. Nothing but this will lead us towards development of legal framework and institutions that implement it. Nothing but this will free the law from rigid boundaries and political limitations. A law that is freely defined leads to a free economy. Such a business environment is dominated and ruled by quality management practice, answerable only to the investors. That is the only way for an economy to transform itself from a political pawn into an economy that is both market-oriented and competitive.

Key words: - Codex. - Economy. - Corporation. - Listed joint stock companies - Serbian Chamber of Commerce. - Court of honour.

1. INTRODUCTION

‘He who knows nothing but the words of law, does not really know it until he is able to grasp the mind and the meaning of the law.’¹

The main responsibility for adequate behaviour lies within economy itself. Shareholders’ longterm interests – as well as an economy’s decision to be an ethical society – these must have

¹ V. Bogišić, excerpt from the Codex preamble

the utmost importance. Corporative culture is a reality that exists within every single organization.²

Whether we are aware of this corporative culture, whether we are satisfied with it – different subjects within the same business environment have different answers towards those questions. For subjects in an economy corporative culture is exactly the same thing as personality is for any single individual. In this regard, corporative culture can be compared with flow of things within an organization. This flow can be directed towards Quality, where all the efforts result in positive effects and organizational development, but it can also be a major stumble block that makes realization of company's objectives considerably more difficult.

In corporative culture education seminars today we regularly ephasize poor examples characteristic of previous periods when it was believed that company's management can – using slogans, messages and proclamations- spark up the changes and create an ambient that would lead to increased efficiency and productivity. At the same time, we know that corporative culture cannot be created with 'storytelling.' It is necessary to include all the resources and to carefully monitor what happens. Those employed in business organizations in any given economy³ have both the right to express their opinion, as well as the wish to do so. Modern corporations and modern management setups require their employees to declare their position on basic issues related to their work and the business activity of the whole organization.

Corporative culture is a unique configuration of values, norms, believes, standpoints and behaviour types that exist within an organization and that has a very strong influence on the way this organization functions.

2. CORPORATE CULTURE

Corporate culture is the key factor to achieve outstanding and longlasting performance and it is absolutely omnipresent: it is either working for you, or it is working against you. It is made of values that are rooted within the primary source of competitive advantages of an organization. As professor Vujic stated: „Business ethics that regulate dealings with customers, shareholders and employess is opposed to the „petrified” principles of continuous learning process that requires continual work”.⁴

3. SOCIAL RESPONSIBILITY

Social responsibility of both individuals and of organizations means continuous care for adhering to laws, to national and international standards, and to adequate business manners, in the interest of all individuals and groups that depend on this organization's activities. Social responsibility includes environmental care, and it can be achieved by implementing ethical decision-making process. Corporative sustainability codex describes our principles and expectations regarding sustainable and socially-responsible growth. The specific form of this codex is defined by the standards implemented in every single economy subject.

² MTK, Department of political and business practice, The Basic Principles of Corporative Management / excerpt from MTK presidium commentaries

³ See: Z. Stefanović, Statutory corporate law, Belgrade, 2006, pp 43-44

⁴ Vujic Vidoje, “New Business and Social Responsibility of a Manager”, *International Journal of economics and law*, vol. 2, no. 4, Faculty for education of the executives, Novi Sad, 2012, pp.146.

Corporative management represents the owners' – shareholders' needs, their concerns for the interests of management, interests of shareholders, interests of employees, interests of creditors, and, last but not least, interest of the state.

In order for us to be able to speak of corporative management as a positive social issue, the following predispositions must be complied with: efficient law framework, developed corporative practical work, unprejudiced state-civil service apparatus, efficient chamber of commerce and high-quality judicial protection.

Disregard of regulations on the part of corporations is absolutely unacceptable. It could destroy companies, ruin people's jobs and pension plans, undermine people's trust towards national economy and interfere with economic development.

Codex of Corporate Behaviour (CCB) is of the opinion that answers lie in strict adherence to law, in selfregulation and continual efforts of all the interested parties. Government, in particular, must rigorously implement existing laws and encourage selfregulation within the framework of national economy. Law makers and accountaning boards should clarify and simplify as much as possible the existing proceduress, so that any cover-up attempt becomes significantly harder. Any possible new laws should be carefully discussed in order to avoid creating obstacles towards economic development. Corporative boards must insist on ethical behaviour and strict selfregulation. Executive directors must prevent any situation in which short-term market pressures might lead to unethical behaviour or distorted reports.

Codex of behaviour contains general principles of organizaton and general rules of behaviour, and it helps the employees to behave in appropriate and adequate manner when faced with ethical and legal issues. Codex of team work offers guidelines for behaviour of management and all other employees in all levels. Codex of corporate sustainability describes our principles and expectations regarding sustainable and socially-responsible business practice. Its concrete form is shaped by standards implemented in the general business environment.

4. CODEX OF CORPORATE MANAGEMENT OF THE SERBIAN CHAMBER OF COMMERCE

The Serbian Chamber of Commerce codex of corporate management⁵ is based on the company law. The regulations that define this codex are classified into autonomus regulators of corporate relations. Company management is faced with the new regulations from the Company law. Without any experience whatsoever, faced with the possibility to create less rigid forms of regulatiosn through autonomuous legal acts, the chamber of commerce used this opportunity to partly regulate its needs by adopting the Codex of corporative management.

The codex preable contains explanations regarding the legal aspects of the codex, it explains the normativ approach, and the subjects falling under its jurisdiction. Preamble also offers the explanation why it is necessary to invervene with autonomous acts in the area of shareholder – management relationship. In the same way, it also clarifies the purpose of social responsibility.⁶

The codex of corporative management applies to all listed joint-stock companies that are members of the Serbian Chamber of Commerce. A listed joint-stock company⁷ is any open shareholders company whose shares are traded in any market whatsoever (on the stock market, free market, official or unofficial market, on the first, second, or any other market).

⁵ "Sl. glasnik RS", No. 1/2006.

⁶ Social responsibility of any individual or organization means strict adherence to laws, national and international standards, and good business manners in the interest of all those individuals and groups that depend on the activities of the very organization

⁷ Act 4. Codex of corporate management

It is recommended that other corporations should adopt the Codex as well, in the degree that the codex can apply to them. In this case, certain regulations specific of listed joint-stock companies are applied in accordance with the specific type of the given corporation.⁸

The codex regulations are in their nature guiding or explaining, interpretive or helping in nature, and only if they are supported by a legal basis are they impretive as well.⁹ Still, this does not mean that those rules are not obligatory. On the contrary, being in their nature as stated above, these rules are obligatory for corporations on which the codex applies. Choosing some other codex or arbitrary deviation from this codex brings in turn an obligation to explain the reasons and motives behind this deviation. These explanations might even not be acceptable for the shareholders.

In such environment where even 'hard law regulations' often are not strictly adhered to, this type of 'soft law regulations' so to say can often seem quite powerless and imperfect. Still, we do not introduce these laws only because there is a need for Serbia to adapt into the mode of current times, but most of all because there is a need to help business practice of corporate management organizations (most of all in listed and open joint-stock companies), to make the whole process more transparent because they find themselves in a certain triangle: shareholders (investors) – management – supervising bodies.

Quality corporate management means quality regulations, both legal as well as autonomous regulations. Still, this alone is not enough.

Adequate implementation of these regulations in both judicial and autonomous practice, stable and nourishing interpretation of these regulations, nurturing of the shareholders' type of culture in general, creating an environment that as a whole offers positive climate for investors, investors' trust, all these issues are building blocks of business environment where law – legal and autonomous – and the implementation of that law – business and judicial application – stand firmly hand in hand, and these relations do not get broken by political changes or by personnel shifts.¹⁰

The preamble of the codex states: 'Quality corporative management comprises not only the shareholders' interests, even if that is indeed the primary interest that sets any investment process into motion. Quality corporative management also presumes adequate participation and protection of other interests as well, interests that are both relevant and legitimate: interests of creditors, employees, management, clients, of the corporation in the sociological meaning of the word.'

Further, the preamble of the codex points out the goal of this codex and explains this goal in detail: The goal of this codex is to make all the above interests transparent and institutionally represented.

The institutional capacity for protection and promotion of those interests and its bearers in open companies has changed radically in the last years, both regarding legal framework as well the business interpretation. The shareholders' position has changed with the very fact that from being 'uneducated' they more and more become professional investors (institutional investors dominate the investment map); hence their position has become more important. Therefore, this position seems to be increasingly professional. Bicameral management model (board of directors and supervising board) increasingly gives way to a single-board model. Further, the structure of this board changes (independent and non-executive directors within management more and more play the supervising role for professional investors instead of separate supervising bodies); the scope of independent bodies within a company broadens further

⁸ Ibid., act 5.

⁹ Ibid., act 7.

¹⁰ II part act.1. Preamble, Codex of corporate management

(independent remuneration committees, committees for appointments and audit), transparency broadens (availability of acts and documents, obligatory reports regarding vital business events, transparency in financial reports, minority shareholders' rights are getting stronger.

In these conditions, any codex such as this one should contribute – with its principles, recommendations and guidelines - to the clarity of the idea behind any law and to the clarity of the goals of any new legal framework.

Content of the Codex

The Codex was adopted in 2005 and it contains 345 acts divided into 8 parts.

Part one contains general regulations regarding the codex and the corporations' relations towards the codex.

Part two, The chapter on shareholders meeting and the shareholders' rights is divided into five paragraphs and it contains: shareholder' rights, convening the meeting of shareholders, voting, voting rights, voting in absentia, voting in writing, voting by proxy, voting contracts, overseas voting, voting mode, working mode, quorum and voting majority, committee for voting, telephone sessions and institutional shareholders.

Part three, The part on Board of directors is divided into seven parts and it contains: Goals and duties, connected companies, how to defend from hostile takeovers, members of the board, Executive and non-executive members, Independent members, The Chairman of the board, election and dismissal, Election preconditions, Election process, Voting system in election of members, Dismissal of a member, working mode, keeping the members of the board regularly informed, Board meetings, Decision-making, Work evaluation, Committee for appointments, Remuneration Committee, Committee for audit, remuneration of the members of the executive and board of directors, conflict of interest.

Part four, The chapter on the supervising body is divided into seven paragraphs and it contains: Goals and duties, types and composition of the supervising body, how to elect and how to release members of this body, how to keep the members of the body regularly informed, how this collective supervising body should work in a corporation and how to avoid conflict of interest.

Part Five, This part on informing the public is divided into three chapters and contains: corporations' internet sites, reports on corporative management and financial reports.

Part six, Audit of financial reports contains: regulations regarding auditor and certified auditor.

Part seven, Violation of codex contains: regulations on violation of codex and the court of honour jurisdiction.

Part eight, Transitory and final acts contain: regulations on the start of implementation and the deadline for accepting the codex.

Codex of the corporate management comprises the regulations on management and management control within corporations.¹¹

The main goal of the Codex is implement quality business manners into corporative management. These should establish the balance of power and influence within the corporation, to create a lasting and consistent system of management control, to protect the investors'

¹¹ Act 1. Codex of corporative management

interests. All this would enable the corporation to achieve economic success which would, in turn, provide economic growth in the country as a whole.¹²

Implementation

Codex of corporative management applies on all listed joint-stock companies that are members of the Serbian Chamber of Commerce. Listed joint-stock company is any open joint-stock company that has its shares traded in any kind of market (stock market, free market, official or unofficial market, first, second or any other market.) Being a member of the Serbian Chamber of Commerce means that you accept this codex and no further statement in this regard is necessary.

Legal rules, recommendations and suggestions

The Codex contains three types of regulations:¹³

- legal rules that are in the Codex often worded differently than in the Law, but this does not alter the meaning or the correct interpretation of the Law. Legal rules within the Codex can be recognized by the following words: ‘must,’ ‘must not,’ ‘is obliged to,’ etc.
- recommendations or the so-called ‘implement and clarify’ type of regulations. Any individual should accept and abide by these regulations, and if he does not do so or does not do so in the manner described in this Codex, he must put forward an explanation, i.e. reasons justifying the deviation from the Codex. ‘Implement and clarify’ types of regulations can be recognized within the Codex by the following words: ‘should;’ and
- suggestions representing the regulations that an individual does not have to abide by, nor is he obliged to put forward any explanation for deviation from these regulations, but these regulations are still regarded as desirable manner of behaviour within corporate management of listed joint-stock companies; suggestions can be recognized within the Codex by the following words: ‘may do,’ ‘could do,’ etc.

Consequences in cases of violation or lack of adherence

In case of violation of the rules of this Codex, the following can file a case at the court of honour: the chamber of commerce, a member of the chamber of commerce, state authority or a citizen whose rights had been damaged. All this keeping in mind that it is not only about violating business ethics and good business manners, but violating the obligatory acts of the Serbian Chamber of Commerce.¹⁴

In case a listed joint-stock company (a member of the Serbian Chamber of Commerce) already had already adopted some other corporate codex of behaviour before this Codex is adopted, this company must within three months from the day this Codex comes into force file a Statement of Acceptance of this Codex or correct its existing codex according to Act 5 from the first Chapter of the Codex.¹⁵

¹² Ibid., Act 3.

¹³ Ibid., act 7.

¹⁴ Ibid., act 342.

¹⁵ Ibid., act 345.

5. CONCLUSION

By engaging the most qualified individuals to develop the Codex of Corporate management, the Serbian Chamber of Commerce wanted to create an autonomous law that will enable implementation of general ethical principles and protection of all the individuals defined by the 'corporate' laws. Quality corporative management includes adequate representation and protection of all the other interests that are both relevant and legitimate: the interests of creditors, employees, management, clients, society within the scopes of the basic meaning of this word, keeping in mind companies' social responsibility.

Codex rules, represented as recommendations, suggestions or legal rules, enable us to be consequent in our behaviour and to establish quality business manners within corporate managers, considering that all the mentioned forms can take any of the following names: 'ethics,' 'must not do,' 'is obliged to,' 'can do,' 'should do,' etc.

BIBLIOGRAPHY

1. Z. Stefanović, Statusno privredno pravo, Beograd, 2006.
2. Zakon o privrednim društvima ("Sl. glasnik RS", br. 125/04).
3. Kodeks korporativnog upravljanja ("Sl. glasnik RS", br. 1/06).
4. Vujic Vidoje, "New Business and Social Responsibility of a Manager", *International Journal of economics and law*, vol. 2, no. 4, Faculty for education of the executives, Novi Sad, 2012.