THE LEGISLATIVE REFORM ON CORPORATE GOVERNANCE

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Abstract:
The legislative reform on corporate governance consist of two main parts. The first one is refered to the compliance of domestic legislation on corporate governance with the OECD priciples. The second one is refered to the compliance of domestic legislation on legal entities with the requirements of the community Aquis.
The draft of the law covers the OECD priciples on corporate governance, the means of development of legislative framework toward European Community standards and the best practice in the European Community member states.
The milestones of this reform are, except for the OECD priciples, the European Community norms, particulary the European Community recommandations, the present legislative framework on legal entities and the reforms that have been recently implemented the the West- and Esteuropean member states.

Key words: *Corporate Governance; the legislative reform on legal entities; OECD principles, annual financial statements, joint-stock company*

JEL classification: *G34, K22, M41, M42*

Introduction

Starting from a desideratum that has its origin in the depth of the history, the idea of an European union has been materialized and continuously strengthen. It has grown from the state of a simple idea to the materialization into a coherent set of rules applicable to the community lea gal environment.

The community law has been gradually established and developed. Over the of development of European communities, it has got its own characteristics. It does differentiate from both domestic law of each member state and international public law that legislate the relationships between countries and international organizations.

The community law consists of legal norms enclosed to the constitutive treaties of European Community with subsequent amendments (the primary community law) as well as the legal norms enclosed to the acts issued by the primary institutions while exercising their competences assigned by these treaties (derivative community law, secondary law).

Over the development of European communities, there has been established a set of legal provisions that have been put into practice by special purpose institutions. Such set of rules have governed the subsequent evolution of European community.

The sum of community achievements that have met a certain level of development transposed within an hierarchical structure of community legislation represent the community aquis. Although, at the community level the phrase <<community aquis>> is commonly used, it is not defined by the community law. In these circumstances it is the liability of specialty literature to make the terminological distinction of these terms.

The community aquis can be defined as the sum of community law enclosed to the primary community law (the constitutive treaties of European Community and subsequent amendments), the derivative community law (the legal norms issued by the primary institutions while exercising their competences assigned by the treaties), the

complementary community law (the conventional acts concluded between the member state for putting into practice of treaties) as well as the general principles of law.

The milestones of this reform are, except for the OECD priciples, the European Community norms, particulary the European Community recommandations, the present legislative framework on legal entities and the reforms that have been recently implemented the the West- and Esteuropean member states.

The first wave of changes of the Company Law adapted to OECD standards

The general regulation concerning companies was substantially changed at the end of year 2006, through the Law nr. 441/2006 to change and complete the Law nr. 31/1990 concerning companies and the Law nr. 26/1990 concerning Trade Register, in order to harmonize it with the Community rules in this domain and to adapt it to the standards from European Union concerning the decision transparence and shareholders' protection.

The adaptation of the internal legislation to the OECD standards concerning corporate governance, piece of the legislative reform, has introduced in the first wave (December 2006) the next news[1]:

- the remodeling of the Board of Administrators structure: the system **"one-tier"** has been chosen, making difference between executive and non-executive attributions in the council.
- defining **the executive and non-executive attributions**; fixing the legal framework of "responsibility towards society of the executive and non-executive "administrators";
- setting the criteria which define **"the independence of a non-executive administrator"** (taken from the European Commision Recommendation nr. 2005/162/EC from 15 february 2005, concerning the role of non-executive administrators of listed companies);
- the review of the regulation of **"the administrators' status"** (establishing the duty of care, the obligation of loyalty towards the society, adopting "business judgement" rule);
- the clarification of the institution of **"overlapping mandates"** (difference between overlapping mandates administrator – physical person and administrator – legal person)
- the improvement of **sharholders' protection.**
- the clarification of regulation concerning **"the financial auditors nomination"** (it has been chosen the ordinary general meeting to decide the nomination)
- the improvement of the legal framework of **"the action of compensation introduced by minority shareholders"** (establishing of a percentage of shareholding which can introduce the action, setting the time in comparison with the existence of the shareholder quality does exist.)

The second wave of changes of the Company Law adapted to the OECD standards

Six months later only, it has been imposed the necessity of further amendments of companies' legislative framework. It has been adopted and published in the Official Gazette #446 from June 29, 2007 the Government Emergency Ordinance #82 from June 28, 2007 that amends and complete the Law #31/1990 on company law as well as other legislative acts.

The necessity of changing the Companies Law was based on the following arguments:

[1] www.just.ro

- the existence of some orders of the Law nr. 441/2006 concerning some transitional periods which had as purpose the preparation of the business environment for the implementation of the new order. Though it was not appreciated initially as imposing the grant of an assimilation period and preparation of the application, it was proved after that it was difficult to put it in practice immediately;
- a part of these regulations are imposing obligations for which is necessary the Board of Administrators or the General Assembly to adopt some decisions, in this situation being necessary to pass through procedure stages, meant to assure the demands for decision transparence;
- the referral to a number of inconsistances of the norm, which could have a significant negative impact about the business framework;
- the observed deficiencies and other similar problems reported by the business framework – the receiver of this legal text;
- the recommendations done by companies in the next period after the entry into force of the law (the necessity of the clarification of some paragraphs in order to assure the unitary interpretation – eg. defining fusion, the way of the financial auditor and iternal auditor nomination)
- the recommendation formulated by the Group of States against corruption (GRECO) in its last Evaluation Report about Romania, concerning the esatablishment of new incompatibilities in the performance of administrator, manager, censor, auditor function and in reaching the quality of founder, which are reported at the conviction of committing acts punishable by the law in order to prevent money laundering.

2010, the year of the third wave of changes and completion concerning the Law nr. 31/1990 for companies

In the year of 2010, were issued new documents concerning changing and completion of companies legislation, chronologically: Government Emergency Ordinance nr. 43 of 13.05.2010[2], the Government Emergency Ordinance nr 54 from 23.06.2010 concerning some measures against tax evasion[3].

Following OUG 43/2010, in a period of maximum 30 days of disolvation, the liquidators will be named. They will have the next obligations:

- to bring in a period of maximum 60 days of nomination a report concerning the economical situation of the company;
- to request the open of the simplified insolvency procedure, if the debitor fullfils the conditions to open this procedure;
- in a period of 6 months of nomination, to submit at Trade Register a report concerning the stage of liquidation operations;
- at the age of one year provided for the liquidation, he will have to submit a new report with the juridical instance decision to prolong the term of liquidation, if necessary.

OUG 90/2010 changes some legal aspects concerning the financial states submission and the merge and the splitting of the company.

Romania started a process of reforming the accounting system, benefiting from the support of some states of the EU (France, Belgium, Great Britain). The road chosen by

[2] Government Emergency Ordinance nr. 43 of 13.05.2010, published in the Romanian Official Gazette, the first part, nr. 316 of 13 May 2010, for changing some normative documents, looking for reducing or administrative simplification of some authorizations/procedures following the measures assumed by Romanian Government in the Simplification Plan afferent to Understanding Memorandum between European Community and Romania, signed at Bucharest and Bruxelles at 23 June 2009 (OUG43/2010)

[3] Government Emergency Ordinance nr 54 from 23.06.2010, published in the Romanian Official Gazette nr 421 from 23 June 2010

Romania in harmonizing the accounting system began with the Accounting Law no. 82/1991, and the subsequent modifications and completions, as well as the regulations concerning its application reflected the complicated road towards joining the European Union and the accumulations achieved by the development of the accounting profession. From the point of view of the accounting regulation level, we can state without making any error that at this point, Romania is in perfect accordance with the European requirements in the area of financial reporting, as country that has recently become member of the European Union. The Accounting regulations in accordance with the European directives (approved through the Ordinance of the Ministry of Public Finance 1752/2005) insures the general reporting framework in strict correlation to the requirements of the European directives of this field until the end of year o 2009. Sarting with the first of January 2010 enterd into force the Ordinance of the Ministry of Public Finance nr 3055 for the approval of accounting regulations with European Directives published in the Official Gazette nr 766 of 10 November 2009.

Conclusions

The amendment of Companies Law has been welcomed within the economic environment. It has imposed to around 11.500 Romanian joint-stock companies to implement the principles of corporate governance, has regulated more coherently the organization and decision process of General Assembly of Shareholders, the management of joint-stock companies, the rights of minority shareholders, the potential abusive exercise of voting rights by shareholders, the procedure of merger and spin-off of companies, the dummy companies.

A part of the business framework still hostile in front of these changes, firstly through the criticism of the interdiction of overlapping an administrator/ manager mandate with a work contract and secondly through the criticism of joint-stock companies managers' to insure himself for professional responsability. From debates it is known the critics are not founded because the Romanian joint-stock companies, the unique receivers of the new rule of corporate governance, need to adapt at them. The permissive attitude towards these principles, global present in corporations, will allow to Romanian enterprises to compete to European corporations or from other developed countries. The manager control and the power separation in the joint-stock companies framework represents the most important objective of corporate governance.

The law of companies recently changed has solved many problems which we hope will facilitate its interpretation and application in practice.

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