

CORPORATE GOVERNANCE POLICIES AND TRANSPARENCY IN THE REPUBLIC OF SLOVENIA

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Abstract:

The Corporate Governance Policy is the framework for the corporate governance of particular public company. The deed is drawn up by the supervisory board and the management board in order to commit to and publicly disclose how they will supervise and run the company. The article analyses how Corporate Governance Policies have been drawn up in annual reports of the prime listing and selected companies of the standard listing of the Ljubljana Stock Exchange. The annual reports for 2010, 2011 and 2012 have been scrutinized and the results commented. Article shows the perspectives for the further development of transparency principle in the Republic of Slovenia.

Keywords: annual report, corporate governance, corporate governance policy, disclosure, transparency

1. Introduction

The Republic of Slovenia (RS) has been putting in order corporate governance of public companies by implementing the Regulations and Directives of European Union (EU), as well as Its Recommendations and other acts of soft law. (Djokic 2013). In accordance with the Slovenian Company Law (ZGD -1 NPB7 2013) public companies in RS may choose a two-tier corporate governance system by appointing a management board and a supervisory board or a one-tier management system by appointing a board of directors. As a rule, public companies (PC) use a two-tire system of corporate governance.

General deed with the name: Corporate Governance Policy (CG Policy) has been introduced in RS in 2009. The content of the CG Policy was explained by the Slovene Corporate Governance Code (SCGC). SCGC was jointly adopted by the Ljubljana Stock Exchange Inc., the Slovenian Directors' Association and the Managers' Association of Slovenia on 8 December 2009 and entered into use on 1 January 2010. ('Kodeks upravljanja javnih delniških družb' 2009 – Slovenian CG Code 2009)

The aim of this article is to analyse the practice of some of the public corporations, listed in the prime and standard quotation of the Ljubljana Stock Exchange in Slovenia, when publishing their CG Policy. We are interested in determining, whether the selected public corporations followed the SCGC 2009 provisions about the CG Policy in the following years 2010, 2011 and 2012, and how strict, or better, how complex are their explanations of CG Policies.

2. Basic legal background concerning CG Policy

2.1 Slovenian Corporate Governance Code 2009 (SCGC 2009)

SCGC was signed after the amendment of the Companies Act in 2009 (ZGD-1-UPB3 2009). This Code introduced the term and content of the CG Policy in the content of the obligations and duties of management and supervisory boards (their commitments) as well as described its basic understandings.

The Corporate Governance Policy is the framework of corporate governance drawn up by the supervisory board and the management board, wherein they commit to and publicly disclose how they will supervise and run the company.

According to the SCGC 2009, the CG Policy is adopted for a specific future period and updated as frequently as needed for it to always reflect the company's latest governance policy. It contains the date of its latest update and is available on the company's website. (SCGC 2009, point 2/1)

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The management board works together with the supervisory board in drawing up and adopting a CG Policy, thereby laying down the major guidelines of corporate governance as compliant with the company's long-term objectives. The CG Policy is communicated to the stakeholders by being published on the corporate website. (SCGC 2009, point 2)

In drawing up the CG Policy, the management board cooperates with the supervisory board, whereby it takes account of the company's development needs and its specificities, such as its size and area of business. The supervisory board takes part by drawing up its own activities schedule for each financial year and by defining the issues to be dealt with. These include the required frequency and form of communication with the management board, the role of the supervisory board in assessing risk management systems, and the procedure of drawing up general meeting resolutions, particularly the proposed appointments of supervisory board members. In drawing up the CG Policy, the management board and supervisory board may make reference to other public documents. (SCGC 2009, point 2/1)

The supervisory board monitors the company throughout the financial year, takes an active part in drawing up the CG Policy and in establishing the corporate governance system, carefully evaluates the work of the management board and performs other tasks pursuant to the law, company regulations and the SCGC. (SCGC 2009, point 8/1)

The CG Policy defines the company's corporate communication strategy, which dictates high quality standards with respect to the drawing up and preparation of accounting, financial and non-financial information. (SCGC 2009, point 20/1)

The CGP according to SCGC 2009 consists of:

- a description of all the prime governance guidelines, taking into account the company's set objectives, values and social responsibility;
- an indication as to which CG Code the company abides by;
- an outline of the company's groups of stakeholders, its communication strategy and cooperation with individual groups of stakeholders (creditors, controlled undertakings, suppliers, customers, employees, the media, analysts, state bodies, the local and wider community);
- the procedure of informing controlled undertakings and shareholders of the group's strategy and corporate governance standards;
- the policy of transactions between the company and related companies, including their members of management and supervisory boards;
- the commitment that the supervisory board will set up a system of detecting conflicts of interest and independence in members of the supervisory/management board, and measures to be applied in case of circumstances that have a material effect on their status in relation to the company;
- the supervisory board's commitment to assess its efficiency; an intent to set up supervisory board committees, if needed, and an outline of their tasks;
- a clear system of division of responsibilities and powers among members of managerial and supervisory bodies;
- rules governing the relationship between the company (including related companies) and members of its management/supervisory board, who are not subject to statutory provisions on conflicts of interests;
- a definition of the company's communication strategy, including high quality standards for drawing up, and the disclosure of, accounting, and financial and non-financial information;
- the protection of the interests of the company's employees, which are achieved by defining the manner, content and standards of their work as well as by ensuring an adequate level of ethical conduct in the company, including discrimination prevention.

Following the above explanations it is clear that a CG Policy is a document which represents the strategic outlook of corporate governance of a particular company for the

future. It regulates the commitments of management and supervisory bodies regarding the future activities of the companies in this field. It is an orientation for the shareholders, stakeholders, investors, interested public and others about the ways and techniques of the company governance that will be used and executed in the future in order to attain company's goals and realize the declared achievements of the company in the future.

2.2 Slovenian Companies Act 2009 (ZGD-1-UPB3 2009)

2.2.1. Corporate Governance Statement instead of the Corporate Governance Policy

Contrary to the above understanding of the CG policy, the Companies Act seeks from the public companies to report about corporate governance in the past. There are no provisions regarding CG Policy. The Law speaks and regulates Corporate Governance Statements (CG Statement), instead.

According to the Law, the company makes a detailed account of its governance practice in the CG Statement. The CG Statement is drawn up pursuant to the Companies Act in the framework of the companies' business reports.

Article 70 of the Companies Act requires listed companies to disclose their corporate governance practice, either in a separate document or under the business report section in the annual report (CG Statement). A mandatory separate part of such a disclosure is the company's declaration of compliance with the Code. (ZGD-1-UPB3 2009)

Article 70, paragraph 1 speaks about the content of the business reports and says the business report shall comprise at least a fair presentation of the development and results of the company's operations and its financial position, including a description of the essential risks and uncertainties to which the company is exposed. In paragraph 2, the same Article speaks that a fair presentation shall be a balanced and comprehensive analysis of the development and operating results of the company and its financial position corresponding to the extent and the complexity of its operation. To the extent necessary to understand the development and operating results of the company and its financial position, the analysis shall contain the key accounting, financial and, when necessary, other indicators, ratios and other factors, also including information concerning environmental protection and employees. The analysis shall include appropriate reference to the sums provided in the financial statements and the necessary additional clarifications.

When concerning the Corporate Governance Statement, Article 70 ZGD-1-UPB3 2009 states in paragraph 5 that Companies whose securities are traded on the regulated market shall include the corporate governance statement in their business reports.

The CG Statement shall be included as a special section of the business report and shall include at least the following:

Reference to - the corporate governance code applicable to the company, by indicating information on the code's accessibility to the public;

- the corporate governance code which the company decided to use of its own free will, by indicating information on the code's accessibility to the public; and
- all appropriate governance data that exceed the requirements of this Act by indicating the point of public access to their governance practice;

The information on the scope of deviations from corporate governance codes under the first indent of the preceding point. In this case it should be explained which parts of the governance code are not considered and why. If the companies employ no governance code provisions, they should state the grounds for their decision.

2.2.2. Corporate Governance Policy vs. Corporate Governance Statement

As we may see, the CG Policy in RS is not a term that would be expressly used or explained by the Companies Act. Talking about the future strategic plans and commitments, concerning corporate governance, ZGD-1- NPB7 speaks about the Remuneration policy and the

way a Corporate Governance Statement should be communicated to the shareholders. (ZGD-1-NPB7 2013, Article 294,297a). It does not expressly mention the CG Policy. It uses the term CG Statement instead.

Company Act uses and understands the term of CG Statement in the framework of the comparative understanding of this institute worldwide. (Djokic 2009) A CG Statement is an explanation of the behaviour and relations concerning corporate governance of the public corporation for the past period. It is a part of the reporting system and the financial statements provided in the framework of the annual reports and business reports of the corporations. CG Statements cover the past and CG Policies cover the future orientation. A part of the CG Policy is also a Remuneration Policy of the corporation.

3. Recent corporate governance researches about CG Statements and CG Policies in RS

3.1 Ljubljana Stock Exchange Analyse in 2012 (LJSE Analyse 2012)

At the end of 2012, the Ljubljana Stock Exchange on its website published a research analysing the compliance of statements on corporate governance with the Code's provisions. ("Analiza razkritij odstopanj v izjavah o skladnosti s Kodeksom upravljanja javnih delniških družb," 2012)

This particular LJSE Analysis of the Corporate Governance Statements 2012 includes the disclosure of the explanations from the SCGC 2009 of the corporations, included in the prime listing of the Ljubljana Stock Exchange, for the years 2010 and 2011. LJSE Analysis shows that in the first listing public corporations showed the biggest deviations from the following SCGC 2009 principles, when:

- definition of goals in the company's statute;
- using information technology to inform and implement sessions of the supervisory board;
- the principle regarding payment to the members of the supervisory board;
- appointing an audit and personnel commission;
- disclosing benefits given to the members of the management and supervisory board.

The LJSE Analysis showed that in certain cases, companies still fail to disclose all deviations, consider them irrelevant or interpret them in different ways. This attitude should be changed as soon as possible because it destroys the very intent of the "comply or explain" principle in Slovenia. This principle is effective when a high level of transparency is achieved through authentic and complete disclosures including specific explanations of deviations, alternative practices and reasons for it. (ibidem, pg. 3)

The LJSE Analysis also stated that the general level of corporate governance in Slovene companies is relatively good. Overall harmonisation of CG Statements with good practices of corporate governance has improved recently. The total number of deviations is now lower, while the proportion of quality deviation explanations is significantly higher. It is important to note that a deviation in itself is not a negative element as far as quality corporate governance is concerned. It can also be an alternative path a company took in order to implement a certain Code recommendation or achieve its own goal. (ibidem, pg. 3)

3.2 Analysis of business reports for the years 2010, 2011 and 2012 and CG Policies

A research by Stevanovic (Business Report Analysis – BR Analysis 2013) reviews business reports of the companies, listed in prime and standard quotation of the Ljubljana Stock Exchange for the years 2010, 2011 and 2012 (Stevanović 2013, pg. 35)

This research brings new results about the CG Policy, especially on the field of the transparency issues and the role of the supervisory boards in practice.

Stevanovic 2013 has scrutinised the fulfilment of principles 2, 8 and 20 of the CS GC 2009 in the practice of the above entities as the indicators of the practical realisation of the CG Policy issues of the public companies.

The content of the analysed principles, 2,8 and 20 SCGC 2009 is the following

Principle 2: The management board works together with the supervisory board in drawing up and adopting a CG Policy, thereby laying down the major guidelines of corporate governance as compliant with the company's long-term objectives. The CG Policy is communicated to the stakeholders by being published on the corporate website.

Principle 8: The supervisory board monitors the company throughout the financial year, takes an active part in drawing up the CG Policy and in establishing the corporate governance system, carefully evaluates the work of the management board and performs other tasks pursuant to the law, company regulations and the Code.

Principle 20: The CG Policy defines the company's corporate communication strategy, which dictates high quality standards with respect to the drawing up and preparation of accounting, financial and non-financial information.

The research sample totals 23 companies. The samples were divided into two parts. The first part represents the prime quotation of the most profitable companies with the highest traded shares: Gorenje, d.d., Velenje, Intereuropa, d.d, Koper, Krka, d.d., Novo mesto, Luka Koper, d.d., Koper, NKBM, d.d., Maribor, Petrol, d.d., Ljubljana, PS Mercator, d.d., Ljubljana, Telekom Slovenije, d.d., Ljubljana, Zavarovalnica Triglav, d.d.

The second group of companies represents the standard quotation of companies with a higher level of transparency: Abanka Vip, d.d., Aerodrom Ljubljana, d.d., Delo prodaja, d.d., Iskra Avtoelektrika, d.d., Istrabenz, holdinška družba, d.d., Kompas Mejni turistični servis, d.d., Mlinotest živilska industrija, d.d., Nika, d.d., Pivovarna Laško, d.d., Pozavarovalnica Sava, d.d., Probanka, d.d., Sava, d.d., Terme Čatež d.d., Unior, d.d. (Stevanović 2013, pg.35).

3.3 BR Analysis 2013 results concerning the CG Policy

Analysis results indicate that 29 % of the companies in question did not fully implement Principle 2. In their statements for reports for the years 2010, 2011 and 2012, those companies put forward the reasons for not complying with the principle. The majority of the companies usually state that failing to abide by Principle 2 is due to the fact that they are implementing their corporate governance policy, but do not have it written down in a separate document. Moreover, it became evident that certain companies do not clearly state their reasons for not implementing the principles of the Code. Several annual reports stated that a company did not have a corporate governance policy. This is an invalid reason as it fails to properly explain non-compliance. However, it is true that the Code is intended for companies and for directing their operation and harmonising both form and clarity of business reports for greater transparency. Although the guidelines of the Code are not binding, a concrete explanation for non-compliance must be provided. In my view, if companies fail to cite strong reasons for non-compliance with the Code's principles, it means they are not applying the principles according to the law. (Stevanović 2013, pg. 69)

As for Principle 8, it seems that companies are increasingly aware of the Code's principles as well as the significance of including CG Statements in their annual reports. In 2010, 29 % of the companies did not fully abide by Principle 8. However, they outlined the following reasons: we do not have a CG Statement; this is irrelevant for the company etc. Nevertheless, analysis of subsequent business reports shows that the companies started applying Principle 8 more consistently. The proportion of companies somehow abiding by the Code rose as well (37 %) and they also stated good reasons for non-compliance. Companies most commonly state that they do not disclose declarations to the public, they do, however, deposit them at the company's headquarters. Furthermore, some companies also argue that they find such declarations irrelevant because they operate in line with other principles. Such statements are particularly common for companies from the financial sector (banks) as they have to abide by the Banking Code as well. (Stevanović 2013, pg. 71)

The research reveals that until 2010, Principle 20 has not been consistently applied. 62 % of the analysed companies managed to harmonise their communication strategy with the principle. The remaining companies either only just started introducing it into their operation or failed to reveal the information according to the principle for the purpose of personal data protection. Annual reports for 2011 and 2012 show that the proportion of companies providing information rose. 66 % of the companies harmonised the transparency of operation with the principle and provided information both in the annual report and on their websites. The remaining companies argued that they failed to comply because they were developing a communication strategy using programmes to be integrated into their operation. Certain companies refuse to comply completely because they do not publish non-financial information in order to protect personal and corporate information. (Stevanović 2013, pg. 72)

4. Final remarks and conclusions

CG Policy and CG Statements are two types of documents used to explain in more detail the corporate governance of corporations. Both documents are regulated in RS and generally bring more and greater transparency in the life of public corporations.

The ways how these deeds are presented in the public are very important for the improvements of their content and understanding in order to be realized in the future. The executed researches, published in this article, show the steps that should be taken in order to deliver the necessary improvements.

Moreover, the importance of supervisory boards in the preparation of a CG Policy and CG Statement in public companies should be stressed. When reviewing annual reports, the supervisory board can direct and dictate the disclosure of data and influence the transparency of corporate operations and decision-making by shareholders. The supervisory board plays a key role in supervising the drawing-up and publication of corporate strategic documents and annual reports on corporate operations and in the drawing-up of proposals for decision-making at general meetings of joint-stock companies. By virtue of such role and powers, the supervisory board also participates in the preparation of the statement on corporate governance, the remuneration policy and the overall CG Policy of a company. The SCGC 2009 expressly states in points 2, 8, 20 and others its role and importance in the preparation of all the important documents which should improve corporate governance in advance (CG Policy), as well as the reports about the consequent results of the company operations for past periods. (CG Statement)

In addition to the specific results, it is important to underline the vital significance of constant monitoring of the practical execution of the principles of corporate governance in general. This is not valid and true only for Slovenia, but also for Eastern European and other European countries in general. These kinds of researches could provide not only an insight into the present status, but also show the deficiencies to be remedied. The researches could also be useful for the prognoses of the dynamics of the improvements to be effected in reality. We can see that we could not expect the improvements to be delivered in 5 years. The companies and countries could follow the regulatory obligations or recommendations formally, but this does not mean that the improvements are implemented in practice. Corporate governance is a demanding area, asking for the years to pass to understand the roles of a particular management body of the company and to be able to use the knowledge for an overall improvement of the economic results of companies.

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