corporate governance
better companies, better societies

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LESSONS LEARNED SERIES

Bulgaria Launches Corporate Governance Code

On the brink of Bulgaria's accession to the European Union, a task force comprised of private and public experts was set up to develop a national Corporate Governance Code. Such best practice codes (not to be confused with a civil law corpus of laws) exist already in many countries; their adoption is recommended by the EU's Transparency Directive.

Codes are effective tools for helping companies improve their governance practices; provide clearer guidance for financial and non-financial disclosure; foster better engagement of minority shareholders; and, clarify the respective roles of managers and directors.

"A Corporate Governance Code was much needed for Bulgaria to support the business community's efforts to compete on the EU and international markets. It would give companies that wanted to apply better governance practices, the opportunity to distinguish themselves," said Bistra Boeva, of the University for National and World Economic Studies and co-chair of the task force. "Doing so would inspire investor and lender confidence."

The Forum had previously published a Toolkit (*Corporate Governance Reform Toolkit 2*), which provides extensive practical experiences from developed and developing countries on how to develop and implement corporate governance codes.

"Building on the global expertise we compiled in this toolkit, we provided the Bulgarian team with best practices and technical advice," said Marie-Laurence Guy, a senior projects officer with the Forum. "But we didn't draft the code for them. The code might have been structured differently and included higher standards if we would have hired an international consultant to draft it, but it would have resulted in a window dressing exercise. It's their code, not ours; local ownership makes for better enforcement."

Speaking: Bistra Ilkova, CEO, BSE-Sofia. Co-Chair of the BG CG Code Task Force. Sitting: Florian Fitchl, Country Manager, Sofia World Bank Office; Bogomila Hristova – Director, Investor Relations, Industrial Holding Bulgaria and Chair Person, Bulgarian Investor Relations Association; and, Vasil Velev, Chairman of the Bulgarian Industrial Capital Association.

"The Forum's expertise and experiences provided Bulgaria with practical, relevant, insightful counsel."

Prof. Bistra Boeva
Co-Chair, Bulgaria Corporate Governance Code Task Force

A corporate governance code must reflect the level of best practices that can be handled and implemented by a country's companies, with a certain level of measured aspirations to higher standards.

The code was launched on October 9, 2007 and quickly adopted by the Bulgarian Stock Exchange. The listing rules now

Global Corporate Governance Forum

The Global Corporate Governance Forum is an International Finance Corporation (IFC) multi-donor trust fund facility located in the IFC/World Bank Corporate Governance and Capital Markets Department. The Forum was co-founded by the World Bank and the Organisation for Economic Co-operation and Development (OECD) in 1999.

Through its activities, the Forum aims to promote the private sector as an engine of growth, reduce the vulnerability of developing and transition economies to financial crisis, and provide incentives for corporations to invest and perform efficiently in a socially responsible manner. The Forum sponsors regional and local initiatives that address the corporate governance weaknesses of middle- and low-income countries in the context of broader national or regional economic reform programs.

Donors to the Forum include the IFC and the Governments of Canada, France, Luxembourg, the Netherlands, Norway, Sweden, and Switzerland.

IFC
International Finance Corporation
World Bank Group

require companies to comply with the code or explain and disclose why they did not or could not comply with certain provisions. Non-listed companies are encouraged to follow the code's core recommendations in accordance with their abilities and ambitions.

"The Global Corporate Governance Forum welcomes the development of Bulgaria's new code, which sets higher standards than those in the country's current laws and regulations," said Philip Armstrong, the Forum's head. "Countries like Bulgaria must set corporate governance standards that go beyond mere legal requirements to encourage internationally acceptable rules of behavior and conduct for boards, directors, and companies. This is an essential precondition for attracting domestic and international investors' capital."

Ensuring Effective Support

- Why is a code needed?
- What are the issues to be dealt with?
- What can the code achieve?
- What companies should be targeted?
- How will the code be implemented and monitored?

Momentum counters the inevitable ups and downs of a project of this scale and nature. The code development process often takes more time than expected—at least a year. Even if forewarned, there is always the danger that task force members lose interest or get distracted by new priorities. Ensuring that all the key stakeholders stay involved and actively contribute to the process—this is the biggest challenge from the technical advisory perspective.

In Bulgaria, task force meetings were initially held in English and allowed for the participation of international experts from the Forum's Private Sector Advisory Group (PSAG). Yet, to get the drafting phase started, the team switched to Bulgarian to make the process more effective.

"Once the first full draft is completed, it is important to include public consultation," said Guy. "It offers the possibility for target users to provide feedback and to feel engaged in the process." In Bulgaria, this process turned out to be an excellent awareness-raising tool for corporate governance in general, generating extensive news coverage, online discussions, and conferences.

How a code is expected to be implemented needs to be discussed early in the process. The Bulgarian team chose to recommend the "comply or explain" principle and had the exchange agree to make the code part of its listing rules

PERSPECTIVES

"The Bulgarian Corporate Governance Code is a first step in the right direction and Bulgaria should vigorously continue its effort in improving the corporate governance framework. This should include full disclosure of significant beneficial ownership, related-party transactions and increased director professionalism."
Christian Strenger, Director DWS Investments; Member of the German Corporate Governance Commission; Deputy Chairman of the Forum's Private Sector Advisory Group

"The development of the Bulgarian Corporate Governance Code is a timely and welcome initiative. Codes are important tools encouraging private sector commitment to good corporate governance and facilitating the emergence of corporate governance culture. After the Bulgarian code is endorsed, it is of the essence to ensure that it starts being actively tested and implemented. Future efforts will thus be most valuable if focused especially on preventing related-party transactions, supporting the emergence of strong boards of directors and satisfying investor expectations on transparency and disclosure."
Elena Miteva, Economist, OECD

FACTORS FOR SUCCESS

- A clear rationale that will build support
- Well-selected task force members to ensure the right level of expertise and support
- A widely respected chairperson
- Private sector involvement to foster ownership and deepen commitment
- Sustain momentum to survive challenges
- International expertise to share best practices, offer feedback, provide objectivity
- Pro-active consultation process to engage stakeholders and raise awareness
- Explicit implementation and monitoring strategy

prior to the code's launch. This enforcement approach makes it mandatory for listed companies to disclose whether they are in compliance with the code's provisions, but offers the flexibility of providing an explanation when compliance has not been achieved.

"You can't wait for a code to be launched to decide how it will be enforced and monitored," Guy said. "If you don't have a clear plan on how to take things from there, goodwill and task force members will disperse, and little will happen." The process by which a code will be enforced, monitored, and updated should be presented in the code's introduction.

At the code's launch, Gian Piero Cigna, counsel, the European Bank for Reconstruction and Development, rightly stressed that, "The launch of the Bulgarian code is an important first step but not a final goal. It is now important to promote compliance and monitor implementation."

Next Steps

Best practice codes are much more flexible than laws and should be reviewed and updated regularly to address issues unforeseen during the drafting process and to remain relevant. Bulgaria's Financial Supervision Commission (FSC) has, therefore, asked that the task force remain as a Standing Corporate Governance Commission to monitor progress and update the code's content in 18 months so that it reflects changes in corporate practice and legislation.

PSAG member Christian Strenger has already offered to assist the commission in designing a corporate governance scorecard to help companies monitor code adherence.

The Bulgarian code is expected to inform the revision of the country's securities law. While some code provisions may be made legally binding, the law will also see that disclosure on code compliance is mandatory—thus enhancing enforcement.

Successful cooperation with the Forum on this project has furthermore led to a formal invitation by the FSC for the World Bank to conduct a Corporate Governance Report on the Observance of Standards and Codes.

The priority is now for Bulgaria's private sector to find an appropriate way to improve director professionalism and to institutionalize director training in accordance with the code's recommendations. ■

RESULTS

- Code launched October 19, 2007
- Extensive media coverage, broad public awareness
- Code endorsed by main business, investor, industrial associations
- Stock exchange requires listed companies to comply with the code or explain reasons for non-compliance
- Securities regulator to adopt code in legal revisions and make certain provisions mandatory

CORPORATE GOVERNANCE IS ABOVE ALL CARE FOR THE OWNERSHIP

Below is an extract of an interview by Chavdar Parvanov with Bistra Boeva, one of the leaders of Bulgaria's Corporate Governance Code Project, which appeared in the daily newspaper *Dnevik* on October 23, 2007.

ИНТЕРВЮ

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Корпоративното управление е преди всичко грижа за собствеността

Какви са очакваните ефекти от приемането на кодекса за управление? Ще се подобри ли общуването между бизнеса?

- Идеята е кодексът да предложи правила за действие, надхвърлящи установените правни норми, без да ги нарушава, и да даде възможност на бизнеса да усвои по-добре корпоративното управление чрез прилагане на принципите и формиралата се добра практика. Кодексът трябва да каже не само трябва, а как да стане това. Той дава практически указания и насоки за прилагане на принципите на корпоративно управление - нещо, което на нас понякога ни липсва. В този смисъл ефектът е ясен - подобряване на производителността по прилагане на доброто корпоративно управление в България.

Ще бъде ли той задължителен за публичните дружества в България и само към тях ли ще се ограничи насочеността му?

- Кодексът не е адресиран единствено към публичните дружества. Безспорно той има важно значение за тях, съобразен е с това, че те и по закон прилагат правила за добро корпоративно управление. Идеята обаче е той да бъде използван от всички, които считат, че могат да прилагат добрите норми на управлението - малък и среден бизнес, както и предприятията с държавно и общинско участие.

Държавните и общинските дружества са лидери в непрозрачността и неразкриването на информация. Кое пречи нормите и правилата да важат и за тях?

- Този проблем съществува не само в България. Някои държави като скандинавските например потърсиха възможността да прилагат нормите за добро корпоративно управление и в компании с държавно и общинско участие. По инициатива на отделни страни Организацията за икономическо сътрудничество и развитие прие и правила за прилагане на нормите на корпоративно управление в предприятия, притежавани от държавата и общините. Това даде основание на експертите и представители на законодателната власт преди години да предложат в Закона за публичното предлагане на ценни книжа (ЗППЦК) да бъде внесен текст, който да задължава предприятията, в които държавата и общините имат мажоритарен дял, да разкриват информация, така както го правят публичните компании. Оказа се, че това е трудно постижимо. Малко държавни и общински дружества се придържаха към този ангажимент, а и беше трудно да се следи дали те ги спазват. В резултат тази норма на закона беше премахната. Прави ми впечатление, че под предлог за секретност редица предприятия с държавно участие не разкриват информация.

Може ли да се реши този проблем, ако се предложат миноритарни пакети акции от държавните дружества на борсата?

проф. Бистра БОЕВА

един от ръководителите на проекта за Национален кодекс за корпоративно управление

Фотограф Анелия Николова

Преди броени дни България прие Национален кодекс за корпоративно управление, с което се нареди сред европейските страни, които се ангажират да насърчават добрите практики в това отношение. В кодекса са записани основните принципи и норми за добро корпоративно управление съгласно предписанията на ЕС и Организацията за икономическо сътрудничество и развитие. Те касаят разкриването на информация и отчетността на дружествата, правата на акционерите и заинтересуваните лица, както и работата на ръководните бордове. За очакваните ефекти от приемането на кодекса и на какво ниво е корпоративното управление в България потърсихме за коментар проф. Бистра Боева, един от ръководителите на проекта.

... Чавдар Първанов

What is the expected impact of the launch of the Corporate Governance Code? Will corporate disclosures improve?

The code offers rules of conduct that go beyond established legal regulations without violating them and provides an opportunity for businesses to adopt better corporate governance practices. The code not only says what must be done but also explains how to do it. It provides practical instructions and guidance for applying the principles of corporate governance. The effect will be clear – improved productivity due to the application of good corporate governance in Bulgaria.

Will the Code be mandatory for the publicly traded companies in Bulgaria and will it apply to them only?

The Code is not addressed to publicly traded companies only. Undoubtedly, though, it is of great importance to them given the fact that, by law, they must comply with rules of good corporate governance. The idea, however, is that the Code should be used by all who believe in the value of good corporate governance standards – small and medium-size businesses, as well as enterprises with state and municipal ownership.

State and municipally owned companies are leaders in the area of non-transparency and non-disclosure of information. What stands in the way of having the standards and rules apply to them, too?

This problem exists not only in Bulgaria. Some countries, such as the Scandinavian ones, have also sought to apply good corporate governance standards in companies with state and municipal ownership. At the initiative of its member-countries, the Organisation for Economic Co-operation and Development has passed rules for the application of corporate governance standards in state-owned enterprises and those owned by municipal governments. These rules serve as a foundation for the proposal made by experts and legislators years ago to add text to the Public Offering of Securities Act that would bind enterprises with a majority interest of the state and municipal governments to disclose information just as publicly-held companies do. It turned out, though, that this was difficult to achieve. Very few state and municipal companies complied with this requirement, and it was difficult to monitor whether they were in compliance. As a result, this regulation was revoked. I note that, under the pretext of secrecy, a number of enterprises with state ownership do not disclose information.

Can this problem be solved if state companies offer minority shares on the stock exchange?

This is one possible step. When the State is a co-owner of such an enterprise, it must comply with the corporate governance rules in light of its public status. Based on the practice existing in other countries, I think that this is not necessary if the State, in its capacity as a shareholder, takes upon itself the obligation to follow good corporate governance practices. However, we often find ourselves in the following conflict. On the one hand, the State, as a market regulator represented by the Commission for Financial Supervision, strictly monitors compliance with [the regulations of] the Public Offering of Securities Act and other legislative acts that concern corporate governance. On the other hand, the State as an owner does not always follow the good rules.

LEARN MORE

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Next issue:

The Forum's Leadership Program provides encouragement and support to those advancing the corporate governance agenda. The feedback to this program is guiding the Forum's development of the *Corporate Governance Leadership Training Resources* toolkit.