

SYSTEMS OF COMPANY MANAGEMENT IN MACEDONIA

СИСТЕМИ ЗА УПРАВУВАЊЕ СО КОМПАНИИТЕ ВО МАКЕДОНИЈА

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Abstract: *Successful management of companies depends on the corporate governance, i.e. on the supervision and control of the company. However, the choice of one of the systems of corporate governance (one-tier and two-tiered system) is really complex, and at the same time it is a key issue that every business entity faces at the beginning of its business venture. The basic criterion for distinguishing these two basic models of company management for corporate governance is the way of organizing management functions and oversight. Hence, the main goal of this paper is to analyze, first and foremost, the two management systems, and then to see the differences and common features that these models possess. Knowledge of this paper are the various models of corporate governance (one-tier and two-tier) through the prism and the development of corporate governance in the Republic of Macedonia. In this way, our intention with this paper is to help decision-makers in the companies (i.e. managers, directors, owners, shareholders) to choose the right and the best management model for their business entity.*

Keywords: *corporate governance, one-tier system, two-tier system, company, management.*

Содржина: *Успешното раководење со компаниите зависи од менаџирањето, односно од надзорот и контролата на компанијата. Но, изборот на еден од системите на корпоративно управување (едностепен и двоепен систем) е навистина сложено прашање со кое се соочува секој деловен субјект на почетокот на својот деловен потфат. Основен критериум за разликување на овие два модели на управување со компаниите е начинот на организирање на функциите на управување и надзор. Оттаму, основната цел на овој труд е да се анализираат најпрвин поединечно двата системи на управување, а потоа да се согледаат разликите и заедничките карактеристики кои ги поседуваат. Значи предмет на истражување на овој труд се различните модели на корпоративно управување низ призмата и развојот на корпоративното управување во Македонија. На овој начин, нашата интенција со овој труд е да им помогне на носителите на одлуки во компаниите (односно на менаџерите, директорите, сопствениците, акционерите) да го изберат вистинскиот потточна најдобриот модел на управување за својот деловен субјект.*

Клучни зборови: *корпоративно управување, едностепен систем, двоепен систем, претпријатие, управување.*

1. WHICH SYSTEM OF CORPORATE GOVERNANCE SHOULD WE CHOOSE?

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Today, the modern companies are facing perhaps the eternal dilemma - *which corporate governance system to choose, without making mistakes in the selection?* [1]

The practice of companies around the world shows that *there is no ideal and perfect model of corporate governance*, and hence this leaves the companies to choose whether to apply one-tier or two-tier system of corporate governance. [2]

However, *there is an unwritten rule and belief* that companies in the European countries increasingly apply the two-tier corporate governance system, while those belonging to the Anglo-Saxon legal system prefer one-tier system of corporate governance.

For *the companies in the Republic of Macedonia*, this issue is regulated by *the Law on Trade Companies*, within which foresees the possibility of choice of one-tier or two-tier system of corporate governance without imposing or favoring one of those two systems.

According to this Law, the authority of management and control system in one-tier system of corporate governance is the *Board of Directors*, while in the two-tier system of corporate governance, there is a clear separation between the *Management Board and the Supervisory Board*. [3]

Here, the governance and the management is entrusted to the Management Board, while the control and the supervision is in the hands of the Supervisory Board (or the controller) whose authorizations are connected with the supervision over the company's operations, particularly over the operations of the management bodies. [4]

2. ONE-TIER VERSUS TWO-TIER CORPORATE GOVERNANCE SYSTEM

In order to determine which model of corporate governance is better, we have to define and analyze separately the two types of corporate governance systems.

In *one-tier system of corporate governance* there is one single authority for management and control, and that is the Board of Directors.

The *Board of Directors* shall consist of at least 3 and a maximum of 15 members, who are elected by the General Meeting of Shareholders, and it is composed of Executive and of Non-executive members.

The *Executive members* have the task of running the company or managing the company in a way that would achieve the best effect for the company, while the *Non-executive members* are tasked to lead supervise and control the work of the Executive members.

The Board of Directors shall elect its *President* from the rank of its Non-executive members, by majority votes out of the total number of members of the Board of Directors. [5]

One of the Executive members of the Board of Directors can bear the title which is typical for the exercise of the office (general director, chief executive director, and other appropriate titles), and the other Executive members can bear the title which is typical for the exercise of the office entrusted to them as Executive members of the Board of Directors.

The Board of Directors, during the year, shall mandatory hold at least four regular meetings every three months, wherefore one is mandatory held within a time period of one month before the annual Assembly. These meetings are in order to make strategic decisions, planning, development, regulations for the company, etc. [6]

In one-tier system of corporate governance there is a functional and organizational separation of the roles of those who run the company's operations, from those who oversee their work. The Executive and Non-executive members of the Board of Directors have the same rights and responsibilities, but different powers to companies.

The *criticism* which refers to this corporate governance model is the possibility the Non-executive members to be influenced by pressures from the Executive members, and thereby be called into question their objectivity in carrying out their tasks.

Unlike the one-tier corporate governance system, in the *two-tier corporate governance system* there is a clear separation of administrative and supervisory function, i.e. there is *Management Board and Supervisory Board*.

The *Supervisory Board* is composed of the Non-executive members elected by the General Meeting of Shareholders, and their number should be odd (at least 3, and no more than 11 members), and it has the task of mediating between the owner and the management, and to supervise and control the operation of the Management Board on behalf of shareholders, which is actually the primary task.

The *Supervisory Board* can inspect and check the books and documents of the company, as well as the assets, in particular the treasury of the company and the securities and goods. The Supervisory Board can oblige certain members of the board, the authorized auditor or experts, to carry out certain expert matters of supervision.

The *Management Board* has at least 3 members appointed by the Supervisory Board, and at least 11 members, and is responsible for matters relating to the management of the company. The members of the Management Board representing the company can bear the titles General director or other title. [7]

The purpose of the shareholders is to hire people who are the most competent to conduct the affairs of the company.

The *President of the Management Board* shall convene and chair the meetings, and shall be responsible for keeping the minutes of the meetings and organizing other forms through which the Management Board operates and decides. If the President, for any reason, is not able to exercise his/her function, or if he/she is absent, the meetings of the Management Board shall be chaired by a member of the Management Board, appointed by the Supervisory Board. [8]

The *Management Board* shall manage the company, and within that framework, shall conduct the operations of the company at its own responsibility. The Management Board shall have the broadest authorizations in managing the company, undertaking all matters related to the management of the operations and the day-to-day activities of the company, and acting, in all circumstances, on behalf of the company, within the scope of operations of the company, except as to the authorizations explicitly granted to the Assembly and the Supervisory Board.

The *two-tier system of governance* in most countries where it is accepted is characterized by the formation of a *Committee by the Supervisory Board* in order to achieve greater success, objectivity and efficiency in the supervision and control of the corporation. [9]

So, the main objective of the one-tier system of corporate governance is to protect the interests of the owner (shareholder), while the two-tier corporate governance system purpose is to protect the minority shareholders by limiting shareholders who have effective control of management. [10]

3. WHAT ARE THE DIFFERENCES AND THE COMMON FEATURES OF THESE TWO MODELS?

Once we analyzed the one-tier and two-tier system of corporate governance, we arisen the question: *what are the differences and common features of these two models?*

The *main feature of the one-tier system of corporate governance* is the existence of a single authority to control and manage, who has the keyword in the company, and it is the *Board of Directors*.

The *Board of Directors* brings strategic decisions, leads the management of the company, and brings efficient and effective decisions. This body entrusts the daily operations of the company on certain executive board members who manage the company under the supervision of *Non-executive members of the Board of Directors*.

The *Non-executive members* are seconded to the management of the company, while the *Executive board members* are fully engaged in the direct control of the company.

On the other hand, *the main feature of the two-tier corporate governance system* is that there is a clear separation between the management and control. The management is entrusted to the *Management Board*, and the control is in the hands of the *Supervisory Board*. [11]

Despite the existence of different characteristics between these two models of corporate governance, they possess certain *common characteristics*, namely: [12]

Independent members - both one-tier system or the Board of Directors, and the two-tier system or the Supervisory Board, have an obligation in their composition to have an independent members in order to provide greater transparency, objectivity and impartiality in the performance of tasks, as well as protection of minority shareholders.

Cumulative voting - each company individually determined it as a possibility in its constitution, and under cumulative voting means voting members of the Board of Directors or Supervisory Board where the shareholder can give all voices during the election of members to Board of Directors or Supervisory Board, or can freely allocate the votes to one or more candidates, whereby he selects between majority and cumulative voting. This practically means that as a shareholder entitled to more votes in the company, their voices can give them to one candidate or cumulatively to more nominees, whereas candidates who received the most votes are elected as independent members.

Formation of Committees of the Board of Directors or Supervisory Board - these Committees have an advisory function, and they only give opinions and recommendations that assist in making a decision in the company. Commonly they formed three committees, namely: Audit Committee, the Remuneration Committee and the Commission for Revocation.

Statutory responsibility of the Board of Directors or the Management and Supervisory Board - it is a responsibility to perform the entrusted mandate and the results of that mandate entrusted by the members of which it is entrusted. The severest sanction of the members is the ability to be recalled from office on which are placed, whereby the decision on dismissal of members of the Board of Directors or the Supervisory Board is adopted by the Assembly of Shareholders, while the decision on dismissal of Executive members is adopted by the Board of Directors or by the Supervisory Board.

Liability for causing damage to the company by the members of the Board of Directors, i.e. the Management and Supervisory Board - all members are subject to liability for damages if they did not work and did not act as bona fide trader, since all of them are expected to be caring, active and reasonable exercise of entrusted powers. [13]

From all of this that we mention above, *we can conclude that* the system of corporate governance of companies possesses very different characteristics, but also there are some common characteristics that one-tier and two-tier system of corporate governance possess.

CONCLUSION

The laws of the legal systems envisage that the management of a company can be in a one-tier or two-tier system, where the company itself has the right to its own choice. The *purpose of these two models of corporate governance* is to enable the achievement of positive results in the company's operations.

If *one-tier system of corporate governance* is chosen, this means that the overall management, control and oversight of the company will be carried out by the Board of Directors, which is composed of Executive and Non-executive members.

The choice of the *two-tier corporate governance system* means the existence of a Management and Supervisory Board, and the Management Board manages the company and day-to-day operations, while the Supervisory Board controls, supervises and monitors the work of the members of the Management Board.

Despite the many differences between these two models, there are also *common features*, i.e. Independent Members, Cumulative Voting, Formation of Committees of the Board of Directors or Supervisory Board, Statutory responsibility of the Members of the Board of Directors or of the Management and Supervisory Board and responsibility for causing damage to the company by the members of the Board of Directors i.e. Management and Supervisory Board.

Our *conclusion* is that both of the two basic systems of corporate governance have their own positive and negative sides, and each company has to decide which of these two systems of corporate governance is better for its operation.

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