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The Corporate Governance Principles under the New Macedonian Company Law

Summary

In his article the author, dr Goran Koevski, tries to answer several questions related to the enactment of the new 2002 Company Law and corporate governance principles introduced by it. First of all he gives the reasons for drafting the new version of the law with emphasising that the transparency was not one of the positive features of both the previous law and the entire company law regime in the Republic of Macedonia.

Next, the author explains the features and principles of the new drafting approach to the extent they differ from the previous ones, and he lists the main goals of the new law. Some of the main objectives of the new law are: promotion of investment (both foreign and domestic); increase the transparency of the legal system; and further growth of the private sector.

The second part of the article highlights the corporate governance issues in general, with special emphasises on some of the basic stakeholders' rights and obligations.

Key words: *corporate governance; company; company law; shareholders; stakeholders; employees; board of directors; managers; capital; control*

Introduction

The current ownership and voting structure in Macedonian companies derives mainly from the privatisation process, which commenced at the beginning of 1990s. However, being part of former SFR Yugoslavia means that Macedonia had self-management system in its enterprises. It indicates that in the previous system workers were supposed to be both owners and employees of their companies. Moreover, privatisations often resulted in the distribution of a significant share of companies' equity to their employees, but, in most cases, they did not pay for them or they paid with substantial discount. Hence, employees remain not fully aware of their rights as shareholders.

The result of the overall privatisation process in Macedonia has been that most joint stock companies have: a) wide - spread shareholding structure; b) employees as dominant shareholders; c) separation of ownership and control; and d) control concentrated in the hands of the previous nomenclature thanks to the abuse of the proxy voting device.

A proper capital and voting structure is deemed as not operative in the present Macedonian legal and institutional framework, primarily because the shareholders' meetings have often turned out to be nothing but conventions composed of intimidated and not sufficiently informed and educated employee-shareholders[1)].

This is the result partly because the employees are not considered and treated as genuine investors by their management. Thus, a substantial change in attitude is still needed to develop an effective equity culture and an important way of encouraging informed shareholders participation.

The attitude change includes transformation of enterprises from social units to profit-making entities based on clear property rights and corporate governance structures. It is the first step to clearly distinguish the roles and rights of stakeholders (employees primarily) from those of shareholders.

Hence, in the present post-privatisation process[2)], Macedonia is tending towards creating capital and voting structure model where ownership and control are concentrated and consolidated in the hands of interested outsiders (so called "strategic investors"). This means that market for ownership control continuously should be replaced with market for corporate control[3)] in order viable competitive market for goods and services finally to be established.

1. Intimidated, because when unemployment rate in Macedonia is around 35%, then it seems quite logical the employees to prefer to protect their labour rights rather then their shareholders' rights, the protection of which is very vague.
2. The deadline for the completion of privatisation process in Macedonia is drawn for the end of this year – 31st December 2003.
3. This means that instead of companies where the shareholders, that became owners by incident, don't know why and how to run the company, the ownership and control to pass to someone who knows how and is interested to use the company assets in a way to create profits on one, and more work for the employees on the other hand. Unfortunately, this process prolongs the Macedonian transition and is primarily due to the chosen privatisation model.

1. Company Law Reform in the Republic of Macedonia

Republic of Macedonia, as an independent state, enacted its first Company Law in 1996[4] (hereafter referred to as "1996 CL") which in its essence was not very successful combination between the German and French company law model[5] on one hand, and not very critically acceptance of what is known as a EC company law (directives and regulations) on the other hand.

When drafting the 1996 CA law, Macedonian legislator accepted the wide-known legal concept of company nature i.e. the company as a legal organisation of an enterprise. In this respect, the enterprise is seen as company as a going concern where at least two groups, the shareholders and the employees have long-term interests[6].

However, besides its positive theoretical values, many shortages appeared on the surface while applying this Law. This Law was amended for twelve times, where some of the amendments were quite extensive and substantial, but, unfortunately, it was never published in its clarified (final) version in the Official Gazette of Macedonia. As a result, the implementation and enforcement of 1996 CL was very difficult in practice and an inference can be drawn that transparency was not the main feature of this Law. The company law reform was more than necessary.

Furthermore, many principle questions arose before launching the reform: dispersed versus consolidated share ownership; establishing business environment that stimulates creation and development mainly of small and medium sized companies instead of large corporations; defining criteria for distinguishing open (public) versus closed (private) limited companies; the scope of stakeholders participation in corporate governance bearing in mind the historical heritage; how to define the role of the state in terms of corporate governance of state-owned assets (utilities and infrastructure); highly "rule-based" versus "self – regulatory" system based on general principles in order to ensure compliance on corporate governance issues in an inexperienced country such as Macedonia; etc.

It was clear that Macedonia needed new Company law, the main features of which would have been simplicity, enforceability and legislative coherence[7]. Company law reform in Macedonia started with the new Company Law that was enacted on July 1, 2002 and should take effect in July 2003 (hereafter referred to as "2002 CL"). The new Company Law is clearly drafted, easy to use law that streamlines company registration and contains important corporate governance provisions that meet OECD, EBRD, European Un-

4. This Law was published and amended in several editions of the Macedonian Official Gazette: 28/96, 7/97, 21/98, 37/98, 63/98, 39/99, 81/99, 37/2000, 31/01, 50/01, 6/02, 9/02 and 61/02.
5. Adopting foreign company law and corporate governance models that appear to be superior is not sufficient and recommendable for Macedonian transition economy.
6. More about the company's nature see: Paillusseau Jean, "The Nature of the Company", in Drury R. Robert & Peter G. Xuereb ed. (1991), "European Company Laws - A Comparative Approach", Darmouth, Aldershot, Brookfield USA , Hong Kong, Singapore and Sydney, pp. 19 - 40.
7. See: "General Principles of Company Law for Transition Economies prepared by the OECD's Centre for Co-operation with Non Member Economies", September 1996, pp. 11-12.

ion company law directives and other international standards systematized and recommended in what is widely known as "soft law".

It is very important to stress out that the 2002 CL does not follow some certain company law model, because the drafting committee followed the principle that variances and contrasting levels of economic development and national legal systems between OECD and transition economies on one hand, and transition economies themselves on the other, should necessarily lead to differences in national company laws[8].

The main goals to be achieved by 2002 CL are: accelerated development and growth of private sector; improvement of legal and institutional environment for business and investment; promotion of investment both foreign and domestic; enlargement of transparency of the legal system; etc.

However, while most of the new Company Law provisions were drafted to meet international standards, the work is still not done and completed. It is envisaged that some of the articles governing company operations and corporate governance principles will need additional work.

Before I start to elaborate the main corporate governance issues in Macedonia, I would like to present my understanding of corporate governance notion because, in my opinion, the corporate governance is by far and large the main issue to be understood and developed within the both business and research community in Macedonia. In addition, corporate governance is becoming very important incident even in the most developed world economies with long-time corporate tradition. As a good example, we can mention Germany, which was treated as an "underdeveloped" country with respect to international standards for corporate governance not that long ago[9].

Traditional corporate governance principles concentrate on defining and regulating the relationships between the shareholders, management and board members. However, recent concepts of corporate governance expand the narrower traditional definition. The new concepts encompass broader principles of fairness, transparency, accountability and responsibility and require support from a broad base of stakeholders, not just of those directly connected to the company.

Hence, corporate governance as a notion encompasses all kinds of investments in exchange for promises of future returns, based on either explicit or implicit contracts. These contracts are entered into by the investors and the company represented by its governing bodies. The term "investor" itself comprises the equity owners, debt owners, workers, suppliers, even the management (all known as "stakeholders"). Legal organisation of the enterprise itself should be founded in a way that it should establish an institutional equilibrium between different interested groups (the stakeholders) as well as to develop mechanisms for protection of respective rights of these stakeholders.

8. Furthermore, a recent evaluation of Macedonia, made by the European Commission, recommends that the Commission supports the economic and social growth of Macedonia, instead of rigorous insisting European standards to be accepted in the national legislation.
9. See: "DSW newsletter from Germany's No. 1 Shareholders' Association", January 2002.

In a negative way, corporate governance system may be defined as "a complex set of socially defined constraints that affect expectations for how authority in firms will be exercised – and thus how the system affects the willingness to make investments in corporations in exchange for promises."[10)]

Finally, the term "corporate governance" refers to the legal and actual distribution of responsibilities between company organs.

2. Main corporate governance questions related to shareholders and minority shareholders as owners of the company under the Macedonian 2002 CL

Existence of minority shareholders makes the corporate governance more perplex and less flexible, and the management has to comply with certain strict corporate procedures and rules imposed by law.

Although the minority shareholders are often deemed as a "thorn" from the majority shareholders' and board members point of view, the lawmakers in many countries focus on drafting certain rules, the purpose of which is to protect this separate group in the company or, even better, to solve this tension and often lack of co-operation between majority and minority shareholders.

In this occasion we would like to mention some of the traditional rights conferred to shareholders in 1996 CL that were taken over by the 2002 CL:

- Shareholders representing 1/10 of the entire share capital are entitled to petition the court for an order to compel the company and its organs to hold annual meeting (article 352, paragraph 4 of 1996 CL or article 274 of 2002 CL);
- 1996 CL empowers shareholders to place items on the agenda on already convened annual meeting if they hold at least 10 % of the entire share capital (article 358 of the 1996 CL or article 281 of 2002 CL);
- In principle one common outstanding share - one vote on each matter voted on at a shareholder meeting is accepted by the 1996 CL. However, there are few exceptions. The first one is when common shares are given multi-voting power in order economic or public interests of the Republic of Macedonia to be protected (article 232, paragraph 4 of 1996 CL). Very blurred concept that was abandoned with the 2002 CL in order simplicity of voting structure, especially in developing capital market, to be ensured. The second exception is when preferential shares are conferred with contingency voting rights. This is the case when dividend arrearages are not paid to preferential shareholders in a specified time period (article 375, paragraph 2 of TCA) or when preferential shares are convertible in common shares (article 217, paragraph 4 of 2002 CL)[11)];

10. I.J. Alexander Dyck, "Ownership Structure, Legal Protections, and Corporate Governance", Annual World Bank Conference on Development Economies, The World Bank, Washington D.C. 2001, pp. 292.

- Although cheaper and faster, except in the limited liability companies, both Macedonian Company laws do not authorise or permit shareholder's by written consent;
- Group voting is provided in both 1996 CL (article 371) and 2002 CL (article 298) in order equitable treatment of all shareholders of same class to be ensured. This means that where board or shareholders meeting decisions adversely affect or dilute respective shareholders' class rights, they should be treated fairly and equally. Thus, the affected classes are given opportunity to participate in decision taking process by group voting, even with super-majority votes;
- Shareholders under both CLs are given pre-emptive right to subscribe for new shares or convertible bonds, always when company issues shares of same class in proportion with the existing equity interest in the company, unless the shareholders waive this right with a super-majority of the outstanding common shares (article 392, paragraph 3 of 1996 CL or article 225 of 2002 CL);
- Issuing and allotting company's shares to employees on preferential terms is good incentive to keep and attract key employees to become interested shareholders in the company. This concept is widely known as an "Employee Stock Option Plan ("ESOP"). This possibility, as an option, is given in article 233 of 1996 CL and article225, paragraph 7 of 2002 CL;
- It should be noted that companies can not be managed by shareholders referendum i.e. the shareholders have to understand that they don't entirely control the ongoing company's affairs. However, shareholders have a right to participate and be informed in decisions concerning essential corporate changes. Thus, for some resolutions to be taken even super (qualified) majority is required: amendments of the company's charter; the authorisation for capital increases and decreases; voluntary dissolution; mergers; sales of all or substantial part of the company's assets, or entire or part of the enterprise or undertaking, or other transactions that can effect with sale of the company; etc.;
- One of the ways to attract small investors and to enlarge their confidence to invest their money as minority shareholders is to ensure their right to be able to initiate legal and administrative proceedings against majority shareholders and the management. Therefore, under the 1996 CL shareholders on their disposal have different actions such as personal (individual) action to contest that decision taken at the general meeting is void (article 378 of 1996 CL). Shareholder can bring a personal action if she/he can show that the duties which the company or the management owe to him/her were breached (articles 320, paragraph 4 and 333 of 1996 CL). Unfortunately, the derivative action was not provided in 1996 CL;

11. Contingency voting rights are those which arise upon happening of a stated contingency (non-payment of cumulated dividends, for example). Once the contingency is over, a class of shares with contingent voting rights usually reverts to its former voting status. More about contingency voting rights see: Henn G. Narry and John R. Alexander, (1995) "Law of Corporations and other Business Enterprises", Third Edition, Hornbook series, St. Paul Minn, pp. 498 - 499.

Some of the rights provided for minority shareholders in 2002 CL, as an envisaged improvements compared to 1996 CL are:

- The principle of speedy registration and strictly limited power of trade registry judges is introduced in the 2002 CL as a step-stone towards introduction of 'one-stop shop' system;
- Re-enforcement of the contract freedom principle in company law matters. Namely, the 2002 CL gives great deal of freedom to company promoters by adoption of numerous default instead of mandatory rules. This is specially the case with the limited liability companies as one of the most important engines of growth of transition economies (article 99 of 2002 CL). However, mandatory rules are adopted to protect primarily minority shareholders and the creditors;
- Independent and dematerialized registration of share ownership at the Central Securities Depositary for all joint stock companies, regardless their size or number of shareholders. This is deemed as a secure tool for investors' rights protection on one hand and avoiding abuses in the registration process on the other hand. However, this process is still in progress in Macedonia[12)];
- The transferability restrictions that managers put on employees' shares by various abusive contracts such as shareholders' agreements were lifted by 2002 CL. The genuine role of shareholder agreements is to enable groups of shareholders, who individually may hold small number of outstanding voting shares, to act in concert so as to constitute some effective majority at least to neutralise the majority voting machine. In Macedonian twisted share-democracy mirror this right was abused. Namely, in 1996 CL, article 292 provided that shareholders between themselves may enter into written agreement to entrust the exercise of all, or some of their rights arising from the shares to one or more representatives for a specified period of time. This provision does not designate any of the existing insiders as person/s that should be given the power to be representative/s. In practice it appeared that only the existing directors and managers inside company used or, better, misused this possibility. This is especially if we address on article 368 of the 1996 CL, where paragraph 3 strictly prohibits and declares void the agreements that impose on shareholders to exercise their voting rights under guidelines or instructions of the company, the board of directors, the managing board, or the supervisory board. What happened in Macedonia? This two conflicting roles were merged in the very same person/s – the directors or managers, and there are still cases where one director exercises more than 90% of the voting rights at the shareholders assembly. This is why 2002 CL does not regulate these agreements and leaves it entirely to the contract freedom of the interested parties;
- In addition, the shareholders' voting possibilities by providing effective and secured procedures to vote *in absentia* as well as for proxy voting were improved. This means that impediments of administrative or other nature (presentation of

12. For example, 149 not yet fully privatized joint-stock companies, until now, did not submit their share registers to the Central Securities Depositary.

documents that are difficult and costly to obtain, such as notarised documents proving the ownership) were significantly reduced. The possibility third person to exercise shareholder's voting right - proxy voting is still provided by the 2002 CL. However, the 2002 CL forbids a company manager to receive a power of attorney (proxy) from employee – shareholders to vote the employee's shares (article 285 of the 2002 CL). In addition, this proxy statement is valid for only one shareholders' general assembly, and can be revoked at any time regardless the form (as notarised document) it was initially issued;

- As a direct consequence, the very first shareholders association, as forum throughout individual shareholders can become more active in the corporate governance debate and in the monitoring of companies, was established. It is indicative, however, that the first shareholders association in Macedonia was established in the late 2001, while the joint-stock companies existed since 1989;
- 2002 CL gives very detailed provisions in providing all shareholders (regardless controlling or minority) with sufficient, reliable and timely information regarding issues on the agenda on the general shareholders meetings by drafting very precise rules for convening and notifying shareholders about the assembly, either annual or extraordinary;
- Facilitating the establishment of active monitoring and control mechanisms is essential in order to prevent abusive changes either in the capital equity structure or in the control structure. That is why the 2002 CL pays special attention to procedures for approval of major transactions, squeeze-out procedures, major and related party transactions (special majority requirements are determined for the general meeting voting). The takeover rule existed even in the previous 1996 CL (article 569 of 1996 CL), but was inconsistent with the provisions of the Law on Takeovers of Joint Stock Companies[13)];
- Even when share registration is efficient, shareholders do not have easy access to information on the ownership and control structure of the company they invest in. Joint stock companies are usually required to maintain certain records and books that are available for inspection by their shareholders. By books and records the lawmaker usually means: the company's articles and memorandum of association; board of directors resolutions; minutes of the shareholders' meetings; written communications to shareholders; names and addresses of current directors and officers; the most recent annual report and account; ownership and voting structure of the company (major shareholders, the owners of large blocks of shares and others that control or may control the company, shareholder agreement; significant cross shareholdings; etc. - article 200 of 2002 CL). Under article 201 of 2002 CL every shareholder has right to inspect and copy these documents. However, the shareholders' inspection right must be exercised in good faith and for proper purposes;
- Preferred shares have a priority over the common shares in respect of dividend payment. The priorities during company's liquidation were not explicitly ex-

13. See: "Official Gazette of the Republic of Macedonia" no. 4/2002 and 37/2002.

pressed in the 1996 CL. This ambiguity was clearly solved under the provisions of 2002 CL (article 217, paragraph 2 of 2002 CL). The percentage of share capital represented by preferred shares is limited to 49%;

- The 2002 CL through its article 269 constitutes a new shareholders' right – the derivative or class action. Namely, this right of minority shareholders derives from and is exercised on behalf of the company because the wrongdoers control the company and hence preventing the normally authorised organ to sue in the name and behalf of the company itself. In other words, class action is introduced as a legal tool against the members of the company's managing organs, that can be brought in court by the board members or shareholders in order to seek damages on behalf of the company for violation of duties and obligations that board members owe to the company;
- Cumulative voting is introduced in 2002 CL (article 250) for election of members of the board of directors in joint stock companies with more than 300 shareholders, in order minority shareholders to be able directly to obtain information about the company's business successes and failures;
- Redemption and appraisal rights for shareholders who do not approve reorganizations, transformations, major transactions (acquisitions and dispositions of more than 50% of company's book value property are deemed as similar to reorganisations) and changes in the company charter with potential to substantially change the nature of the shareholders' investment (article 511 of 2002 CL);
- The 2002 CL introduces few very important moments in shareholders democracy: the first one is the 'evidence day' for participation at the general meeting which is determined as the day specified in the company's charter or the day of dispatching the notice for the meeting (article 282 of 2002 CL); the second very important days are the 'dividend pay-day' or the day of effective payment of dividends and the 'evidence day for shareholders entitled to receive dividends' (article 236, paragraph 2 of 2002 CL), because so far in Macedonia, under the 1996 CL, we have had situations where dividends were declared but effectively never paid;
- Previous ambiguous notion of "represented share capital at the moment of taking decision" as a benchmark for determining the quorum needed for taking decision on the general meeting, was replaced with the more precise quorum formulation "all shares entitled to vote on the particular item put on agenda on the general meeting"(article 286, paragraph 1 of 2002 CL);
- The 2002 CL gives more strict rules as of what should be deemed as continuation and what is newly convened general meeting, which was very much abused under the provisions of the 1996 CL;
- Some parts of the 1996 CL were completely redrafted by the 2002 CL. For example, the mergers and divisions part, and the part related to connected companies are outlined in more simple and clear way;

3. Main corporate governance questions related to stakeholders

As we already mentioned, the stakeholder interest group encompasses the employees, creditors, investors and suppliers. These are the resource providers and all contribute to the success of the company.

- Employees are the main stakeholders in the company. However, in the most SEE transition economies the legacy of the previous socialist system has blurred the roles of employees and owners of companies which causes tremendous difficulties in corporate governance process. This is in particular the case where employees are already significant shareholders and granted with excessive decision rights as stakeholders that frequently block the ongoing restructuring and governance process. Thus, it is necessary to introduce new rights of the employees as stakeholders, and not merely as employees. However, my personal attitude, contrary to the prevailing ones in Macedonia, is that informing employees should not imply to systematically consult or involve them or their representatives in the decision taking process. On the other hand, as we mentioned above, the 2002 CL provides for employee stock option plans or possibility for employees to be elected as members of the board of directors with a restriction that they can never constitute a majority in the board (article 262, paragraph 4 of 2002 CL). However, the power to elect employees as board members is given to the owners i.e. the general meeting of shareholders, and not to the employees themselves;
- Furthermore, employees should have access to effective redress mechanisms in case their rights are violated. These redress mechanisms should ultimately include third party mediation and arbitration, as an alternative, less costly and less lengthy tool for dispute resolution as compared to the very slow, costly and inefficient court system. Unfortunately, the situation with employees labour rights protection in Macedonia is not that good as it should be in economy that prefers to be deemed as one that enters post-privatisation phase of its transition;
- Next very important issue in stakeholders' protection is providing secure mechanisms for protection of creditors' rights as the second crucial stakeholders in the companies. Although new Bankruptcy Law has been adopted and revised on several occasions[14)], the adverse social and political consequences of effective bankruptcies have delayed the establishment of adequate procedures. On the other hand, bankruptcy mechanisms in some cases were abused to facilitate undue transfers of capital control.

4. Transparency and disclosure as a significant principle of corporate governance

Transparency and disclosure is a central pillar of effective corporate governance practices. Without access to regular, timely, reliable and comparable information, investors will

14. See: "Official Gazette of the Republic of Macedonia" no. 55/97, 53/2000 and 37/02.

not be able to evaluate corporate prospects and make informed investment and voting decisions.

However, transparency and disclosure ranks amongst the weakest areas of corporate governance in South Eastern Europe, because they are still typically based on national accounting standards and companies rarely understand that disclosure is an asset rather than a burden.

In this occasion, I can just address some of the main features of the transparency and disclosure principles under 2002 CL:

- Adoption and full implementation of International Financial and Accounting Reporting Standards (article 419 of 2002 CL);
- After the end of each financial (calendar) year the board of directors or the managing team must prepare annual account and financial report (article 432 of 2002 CL). These accounts and reports, with some exceptions, must be submitted to independent auditors (article 434-435 of 2002 CL). When the accounts and reports are audited, the managing team submits them along with the auditor's report to the board of directors or supervisory board if elected. The board of directors or supervisory board examine the annual account, the report, and the proposal for the allocation of the profit. Thereupon the board of directors or supervisory board must prepare its own report for submission and approval of the general meting. Non-audited accounts and reports can not be submitted and approved by the general meeting (articles 431 – 437 of 2002 CL). Last, but not least, the annual account should be filed at the Central Registry for Annual Accounts (article 420, paragraph 9 of 2002 CL);
- Ongoing disclosure should be significantly improved in Macedonia. These information, among other things, should include: a) nomination of management and board members, their resume, the internal distribution of functions among board members, reasons for resignation when this occurs; b) management and board members remuneration policy and its application; c) corporate governance policy; d) significant questions concerning employees and stakeholders; e) related party transactions; etc.;
- The remuneration of board members should be reasonable and determined by the decision taken at the general meeting of the owners-shareholders (article 246 of 2002 CL);

5. The role of the boards in successful corporate governance system

Efficient boards have a critical impact on the success of a company. The board is usually defined as the centre of the corporate governance system of a company, as it is both the link between the shareholders, stakeholders and managers and between the company and the outside world.

However, in most SEE countries, including Macedonia, boards represent forums where managers have acquired significant power over companies and are repeatedly accused of abuse and expropriation of company assets.

In practice, boards do not yet play a central and strategic role, as their functions are not clearly distinguished from those of management. The presence of truly independent board members is still an exception.

Empowering the boards in Macedonia is prerequisite so that they fulfil their essential functions.

In this respect the 2002 CL has undertaken the following steps:

- In order flexibility to be achieved a single-tier board structure was introduced with a collegial executive organ (managing team) which in some cases can be with a single member team. This system replaced the previous one where the possibility of choice between one-tier and two-tier board system was offered (the French model). The principal constraint of the board of director is the right of the shareholders meeting to elect the board members for a period of office of one year with unlimited right to be re-elected (articles 244 – 264 of 2002 CL);
- For the first time, the board of directors can be delegated with some power initially but not exclusively conferred to the shareholders' general assembly: power to issue additional authorised but still not issued shares up to a certain percentage (article 214, paragraph 3 of 2002 CL); to declare and pay dividends (article 236, paragraph 1 of 2002 CL); to make minor changes in the company's memorandum and articles of association; etc. in order to ensure and improve the flexibility in company's operations (article 296 of 2002 CL);
- The duties of the board members are set completely different as compared to 1996 CL. Instead of the previous extensively and vague drafted obligations, the 2002 CL defines the board members and managers duties of care, loyalty and conflict of interest disclosure much more precisely (articles 265 – 267 of 2002 CL);
- Hence, the awareness of the board members that they should act, and be loyal to the best interest of the company itself and treat all shareholders (regardless controlling or minority) in a fair and equitable manner is enhanced and improved;
- Companies should understand that articles of association are the instrument where boards' main functions and responsibilities should be clarified and detailed, since there is not always a clear distinction between the role of the board and the role of management and some boards only perform primarily procedural or representative tasks (article 199 of 2002 CL). In addition, collective as well as personal liabilities of board members should be clarified besides the range of sanctions, including criminal ones that are provided by other legislation;
- Clear distinction between the board members and managers is drawn by 2002 CL. Anyhow, big issue in Macedonia arose with the possibility provided by article 262, paragraph 4 of 2002 CL that managers can become minority board members;
- The condition of independence should be precisely defined for independent board members. Having a significant number of independent board members is crucial for monitoring management. This is even more the case in the Macedonian context where managers are often connected to the controlling share-

holders and/or political parties. Thus, article 252 of 2002 CL requires that in joint-stock companies with more than 300 shareholders, out of mandatory seven members, at least two should be independent directors (article 248, paragraph 3 of 2002 CL);

- While in most large companies in the developed countries there are specialized committees within the boards designed to clearly single out the importance of some specific board functions, this notion is still unknown in Macedonia. Namely, some of these committees are provided in 2002 CL (article 260 of 2002 CL). However, there is lack of knowledge in practical functioning of these committees;
- A possibility for holding conference by telephone and/or visual linked board meetings is introduced by article 258 of the 2002 CL;

6. Enforcement and implementation, the weakest areas of corporate governance in Macedonia

There is a wide-spread opinion that Macedonia is a regional leader in legislative and institutional reforms related to Company Law and other related legal and economic areas.

However, business and legal professionals are becoming only recently accustomed to the patterns of rights and remedies common to the organisation of companies. On the other hand, historically common law countries seem more pro-shareholder oriented and offer better protection for the violation of the rights of minority shareholders and in these countries the law enforcement seems better than in continental countries[15]. Thus, it is especially important for the law to make the consequences of breach of legal requirements clear and specific, rather than relying on general principles of law.

In Macedonia, lot of enforcement and implementation impediments can be detected:

- The judiciary has had difficulty in dealing with the rapid growth of commercial litigation that has occurred over the transition period. This is due to the insufficient opportunities for training, lack of experience and precedent, and shortage of resources[16]. As a direct consequence of these circumstances, long delays and questionable judgements arose;
- The sanctions against board members and managers should be effectively enforced to deter future breach of duties and wrongdoings;

15. While in the US bringing derivative action by the shareholders is very frequent, in continental Europe this is not the case and derivative action is not generally permitted. In continental Europe the suits of the minority shareholders are rarely successful because the minority has to prove that the board or the majority shareholders have exceeded their power and discretion and the courts are usually reluctant and not sufficiently educated to interfere with the board decisions. See more: Cunningham A. Lawrence, "Global Corporate Governance", Aspen Law & Business, December 1998.
16. Here, it should be pointed out that the former commercial courts system was abandoned, and specialized commercial departments within basic courts were established, which, in my opinion, was a big political mistake.

Conclusion

Since the practical implementation of the 2002 Company Law is postponed for July 2003, instead of conclusion, we can mention the ongoing Corporate Governance and Company Law Project in Macedonia, sponsored by the US/AID, the main objective of which is to introduce better corporate governance standards in Macedonia especially through the improvement of enabling environment, business development, and public education and capacity building.

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Резиме

У овом чланку аутор покушава да одговори на неколико питања у вези са усвајањем новог Закона о привредним друштвима из 2002. године и у вези са начелима корпоративног управљања, које тај закон уводи. Најпре се објашњавају разлози нове верзије закона, наглашавајући да транспарентност није врлина претходног закона, као ни целог македонског права привредних друштава. Такође, аутор објашњава особине и начела новог приступа нацрту у мери у којој се разликују од претходних, као и што набраја основне циљеве новог закона. Неки од главних циљева новог zзакона су подстицање инвестиција (како страних, тако и домаћих), повећање транспарентности правног система и даљи развој приватног сектора. Други део чланка осветљава корпоративно управљање уопште, уз указивање на главна права и обавезе акционара.

Кључне речи: *корпоративно управљање, компанијско право, акционари, чланови, запослени, управни одбор, директори, капитал, контрола*