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MECHANISMS OF CORPORATE GOVERNANCE IN KOSOVO

Metë BEQIRAJ
Kosovo Energetic Corporation J.S.C., Pristina, Kosovo
E-mail: *m_beqiraj_1@hotmail.com*

Summary: Public Enterprises (PE) in Kosovo are of strategic importance for the country, employing about 14,000 workers and the impact on the economy over 20% of GDP over the past 5 years. Corporate Governance (hence CG) in Kosovo is a new concept and is in the process of continuous development and improvement. The aim of the research is to analyse the mechanisms of CG and its legal framework in PEs. CG in Kosovo as a result of the challenges of transition is closely related to the consolidation of the rule of law, ownership structure, as well as professional and institutional capacities. The basic hypothesis is that the weaknesses of the CG mechanisms affect the quality of the CG. Methodology: The research sample will be 17 NP 100% owned by the government. The research method will be combined primary data with secondary ones such as annual reports, analysis of the legal framework and mechanisms of CG. For primary data I conducted a survey with key actors in the CG. Results of the survey will identify strengths and weaknesses in the nature and enforcement mechanisms at CG and in this way to strengthen policy dialogue that will identify reform priorities that lead to improved performance CG and economic.

Keywords: corporate governance, mechanisms, public enterprises

1. Introduction

Empirical studies confirm that companies with good CG standard are valued higher in financial markets (McKinsey, 2002). Promoting CG has become a global movement developing wide array of standards, codes and criteria for evaluation. For investors, one of the most important aspects when making investment decisions is the level of implementation of the principles of CG (information disclosure, protection of shareholders rights and equal treatment of all shareholders and other stakeholders) and profit that provides return on their investment. PE has multiple and contradictory objectives, influenced by excessive political interference and lack of transparency, considered the main problems facing PE in Kosovo.

2. External mechanisms of CG

External mechanisms include: 1) The market for corporate control 2) legal infrastructure 3) protection of small shareholders and 4) Conditions for competition.

2.1 The market for controlling the corporate

One of the most effective mechanisms for corporate control is the managers' market, which forces managers to operate effectively because they can always be replaced by other more effective managers. In case of CG in PE of Kosovo, the role of the market for corporate control of the company is performed by Board of Directors (hence BD).

2.2 Legal and institutional basis

Law on PE (Law no. 03/L-087, 2008), as amended and supplemented on 20.04.2012 (Law no. 04/L-111) is a foundation for the form of management, reporting and ownership, for all PE's. According to the law, the Government is obliged to supervise the management of these enterprises and report to Assembly on an annual basis. Kosovo's legislation is largely in line with the EU because of the considerable technical assistance provided by the United Nations (UN) and the EU in recent years. However, the level of implementation of this legislation is less advanced. According to the Law on PE, Article 4, item 4.1, all PE's shall be organized as a joint stock company (JSC) in accordance with applicable laws on commercial companies (Law no. 02/L-123).

2.3 Protecting the interests of shareholders

Law on PE, Article 13 stipulates that PEs are subject to the same legal treatment as private enterprises. Law on PE, Article 12 stipulates that all shareholders shall be treated equitably. According to the law, an equal market for all stakeholders is intended, and this is in conformity with the principles of the OECD (2005) and it poses a challenge for the government to implement it in the future.

3. Internal mechanisms CG

Internal mechanisms of control are: 1) The Board of Directors 2) Compensation of Management 3) Concentration of ownership 4) Relationships with stakeholders 5) Financial transparency and disclosure of relevant information (corporate reporting).

3.1 Composition of Board of Directors

Law on PE (Law no. 03/L-087) defines the model as a one-tier board, known as the Anglo-American model. According to the Law on PE, Article 15, paragraph 15.1 the Board of Directors (BD) of a PE shall consist of five or seven directors. All directors, except one, shall be selected by the government and each such selected director shall have a 3-year term. The other director will be Executive Director (ED) of the PE and shall be selected by the Board of PE based on Article 21 of this Law. According to the Law on PE, Article 17, paragraph 17.2 all directors, except the DE, shall be independent. Article 37, paragraph 37.1 stipulates the establishment of Policy and Monitoring Unit of the PE (PMUPE) within the Ministry in order to support the Minister and the Government in exercising the responsibilities for PE which were conferred upon them by this law. In 17 PE analysed, BD counted 97 members, of whom six are women (19.6%) and 91 men (93.81%). Based on research findings, only 2 out of 17 PE distributed dividends for the government, while 15 other PE are not financially viable.

3.2 Remuneration of PE Directors

Law no. 04/L-111 on Amending and Supplementing the Law no. 03/L-087 PE Article 12 (1) limits the performance incentive remuneration which is determined after the annual audit of the financial statements and the publication of reports on the performance of the regulatory offices. This compensation (bonus) is now paid to directors, an amount up to 50% of the basic fee referred to in paragraph 2 of this article. Research results points out that BD have illegally distributed bonuses before the end of calendar year and without assessing their performance. Members of the Board of PE in the past four years gained 3 million on behalf of salaries and bonuses (Newspaper Zëri, 09.05.2014).

Office of the Auditor General (OAG) in its report (August 2014) found that total compensation for members of the BD for the period between 2009 and 2012 was 2,439,710 €. From this value for BD meetings was € 1,691,304, compensation for € 204.268 audit committees, compensation for other committees and retroactive payment € 528.368 payment of members of BD € 15.770, whereas bonuses allocated in this period were in the amount of € 1,207,139. Total compensation and bonuses for BD for the period 2009-2012 was € 3,646,849. From the analysis of the OAG report it can be seen that the total payments to other committees from PE for the period 2009-2012 was € 528.368 (OAG, 2014).

3.3 Concentration of ownership in PE

In the case of Kosovo, the ownership structure of PE of Kosovo is focused on only one shareholder (the government, as 100% shareholder), which does not imply the existence of the market for corporate control, and therefore reflects the composition of BD which has a key role in CG of PE. PE in Kosovo continues to have low performance and delay in providing quality services to citizens. PE have been consistently followed by a series of negative phenomena such as mismanagement, corruption, weak and non-professional boards, political interference, non-transparency, having too many staffers and militants of rulers, budget deficit, etc. This made PE not attractive to investors. Kosovo's government has made it clear to the introduction of the private sector in these sectors. Privatization of state-owned shares in certain PE has moved very slowly, which at the current level of their management and financial sustainability means relatively low quality of CG of PE in Kosovo. Moreover, it is rightly to assert that the best solution for PE in Kosovo is privatization and most effective way to improve the performance of these PE.

3.4 Relations with interest groups

PE should recognize the importance of relations with interest groups, for the sound and financially stable companies. State ownership policy should fully recognize the PE responsibilities towards stakeholders and lay down demands that they report on relations with other stakeholders. It is necessary for PE to continue active cooperation with all stakeholders in order to create jobs, prosperity and the preservation of financial stability of the company.

3.5 Reports based on Law on PE

The law obliges all PE to submit every 3 months certain reports. Based on research, from the total number of 17 PE analysed, only 13 of them possess internet website. It is also noted that the maintenance of existing web-pages is insufficient. Results of the survey show that there are few relevant information to current and potential shareholders and other interested parties. From 17 PE that were analysed, only nine have published: mission, vision, annual business plan, organizational chart, financial statements and independent auditors' report, etc., for 2010-2013 periods on their website. PMUPE has published annual reports for the 17 PE and the external auditor's report on its website for the year 2010-2013 for all PE, but this site is poorly maintained and not all the reports can be opened. Whereas in 2014 there is no reporting conducted, although the law requires 75 days after the end of the calendar year to report to the Assembly.

4. Conclusions

Among the achievements of the Kosovo government worth of highlighting is the provision of legal and institutional framework, which largely meet the standards and principles of the OECD and other international experiences, but their implementation in practice remains a challenge. Weak enforcement of legal provisions and non-qualitative supervision of PE activity by the shareholder shows that there are delays in the delivery of quality services to citizens. It should reflect the positive effects of greater transparency and greater public access to information on the operation of the PE. Research analysis shows that the government as a shareholder is not that much interested to improve the performance of PE and political interference are highly influencing the appointment of directors and management. PE are responsible for the procurement of goods and services that are in fact the most corrupted practices in terms of tenders abuses by certain political groups and the governors who, beyond a shadow of a doubt, are a cancer to the health of PE in Kosovo.

CG in PE of Kosovo has made progress over time but more efforts should be done and focus on enhancing the quality of the board of directors, whose members should be professionally trained, have better information about the company's operations, and should have greater independence and not be subject to political influence, because strengthening the role of the board of directors would allow high efficiency and win the company's reputation. These results reflect that the concept of CG in Kosovo is in the beginning stage. It is evolving and not well understood or applied. Research results show the need for raising awareness about the importance of the CG and its implementation.

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