UNIQUE PRACTICE OF CORPORATE GOVERNANCE IN UKRAINE

Maryna M. Brychko
PhD candidate
Department of International Economics
SHEI "Ukrainian Academy of Banking
of the National Bank of Ukraine', Sumy

As part of an emerging system of corporate governance in Ukraine formally present all the necessary elements, but in reality the principle of separation of ownership and control is recognized. Like most developing countries the banking sector in Ukraine is dominated by high concentrated domestically-owned, state-owned and foreign-owned. Because of such nature of ownership, widely dispersed corporate ownership is not the rule but the exception. As a result, the key potential conflict of interest in developing, transition and emerging market countries like Ukraine tends to arise, not between managers and shareholders like the United States and the United Kingdom, but between controlling shareholders on one hand and minority shareholders (domestic and foreign), and other investors, on the other.

Corporate governance is an extremely new concept in Ukraine. Corporate governance in Ukraine has developed mostly on the basis of acts, presidential decrees, and Ukrainian State Commission on Securities and Stock Market regulations and rulings. The primary sources are the Civil and Commercial Codes (2003), acts "On Business Companies" (1991),"On Securities and Stock Exchange" (1991),"On State Regulation of the Securities Market in Ukraine" (1996),"On the National Depository System and Peculiarities of Electronic Circulation of Securities in Ukraine" (1997). Current Ukrainian legislation contains a number of provisions that constitute a good start in establishing effective corporate governance practices. However, the law gives preference to the legal form and ignores the substance. There are a number of loopholes that prevent giving corporate stakeholders effective protections. For example, in contrast to U.S. corporate legislation and shareholder-related legislation in other states, Ukrainian corporate law does not integrate fundamental concepts, such as

fiduciary duties. Due to flaws in the Ukrainian judicial system and the civil and labor laws, there are no adequate mechanisms to hold officers and directors of stock companies responsible for causing harm to the company.

The gaps in the Ukrainian legislation likely occurred because of several factors: the Ukrainian stock market has not been sufficiently developed, and circulation of securities occurs in negligible volume. More than two-thirds of all Ukrainian stock companies were established in the form of closed stock companies, shares of which, in accordance with Article 25 of the Act of Ukraine On Economic Companies, cannot be bought and sold in the market. Stock company charters often stipulate that a shareholder who wants to sell his shares offer them to the company or other shareholders first, and then only if the company or other shareholders expressly refuse the shares, can the shareholder sell to outsiders. In addition to the above-mentioned weaknesses, the appearance of big strategic investors in the Ukrainian market forms a new need to implement corporate governance principles. International creditors often require, in addition to paying off past debts and as a condition of the loan, that corporations improve their governance structures. However, this is only done on an individual basis through private agreements, and does not affect statewide legislation.

The banking sector is actually further developed than the general business sector. The concept of corporate governance in Ukrainian banks in fact got reflected in national legislation as well. The main documents on regulations that form the idea of concept of corporate governance in banks and contain information on setting corporate governing bodies in the bank are: the Civil Code of Ukraine, Banks and Banking Activity Act, Joint Stock Companies Act. All of the above mentioned documents do not contradict each other in a question of procedure of the governance formation. Shareholders are identified as these participants.

Brychko, M.M. Unique practice of corporate governance in Ukraine [Text] / M.M. Brychko // Проблеми і перспективи розвитку банківської системи України : зб. тез доп. XIV Всеукраїнської науково-практичної конференції, 27-28 жовтня 2011 р. : у 2 т. – Суми : УАБС НБУ, 2010. - Т. 2. - С. 97-99.