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CORPORATIONS AND CORPORATE GOVERNANCE SYSTEMS

Mr Davor Kolenda¹

Independent University of Banja Luka

Abstract: Corporate governance as a framework, or as the corporation's constitution, is the fundamental instrument in the process of managing corporations, which are its significant element and at the same time the locus of all activities, processes and interests happening within the corporate governance system. Hence, corporate governance is the product of developed market capitalism, whose most exposed representatives are the corporations themselves. In this paper, particular attention will be paid to corporations, and the forms of their integrations as well as acting corporate governance systems analyzing them by comparative method. The main tasks of corporate governance are concerned with acquiring and maintaining the competitive position of the corporation.

The aim of this paper is to scientifically explain the possibilities of corporate governance models in acquiring and maintaining the competitive position of the corporation in the turbulent global market in the future.

Key words: *corporation, governance, systems, competitive advantage.*

INTRODUCTION

It is indisputable that corporate governance has the closest direct connection with competitive advantage of corporations. The main areas of corporate governance are connected to the relations of power, influence, authority and responsibility in the governance of complex business systems. Corporate governance is determined by numerous issues such as: who and why controls the corporation, in whose interest and how to manage a corporation, who and how controls a corporation, what are the relations of owners and managers, majority and minority shareholders, how are the rights of minority shareholders protected, what is the corporation's relationship to the public and to potential investors and how it expresses social responsibility and sensitivity of corporations.

¹ e-mail: kolendadavor@hotmail.com

The development of good corporate governance is a *sine qua non* for companies that want to obtain additional capital, archive and develop competitive advantage, survive the turbulent global market and develop the economic growth model.

The most important of these issues will be discussed hereafter in this paper.

CORPORATION AND CORPORATE GOVERNANCE

"All our products will go through three phases: There's vision, patience, and execution."

Steve Ballmer

"Corporation: An ingenious device for obtaining profit without individual responsibility."

Ambrose Bierce

Corporate governance as a framework, or as the corporation's constitution, is the fundamental instrument in the process of managing corporations, which are its significant element and at the same time the locus of all activities, processes and interests happening within the corporate governance system. Hence, corporate governance is the product of developed market capitalism, whose most exposed representatives are the corporations themselves. In this paper, particular attention will be paid to corporations, and the forms of their integrations as well as acting corporate governance systems analyzing them by comparative method.²

² For details:

- 1) Sadžak, M., *Korporativno pravo europska razina*, Pravni savjetnik, Sarajevo, 11/2001., p/ 5/9.
- 2) Sadžak, M., *Pravni i organizacijski aspekti holdinga u Europi*, HGR, 10/1997., p. 1171-1177.
- 3) Sadžak, M., *Korporacijska mobilnost u EU I*, Pravni savjetnik, Sarajevo, 2/2002., p. 25-33.
- 4) Sadžak, M., *Korporacijska mobilnost u EU II*, Pravni savjetnik, Sarajevo, 2/2002., p. 15-24.
- 5) Sadžak, M., *Interesne skupine u sustavu korporativnoga upravljanja*, RRiF, Zagreb, 9/2006., p. 98-99.
- 6) Sadžak, M., *Participacija, ekonomska/industrijska demokracija*, I. dio, Prizma, 2/2007., Sarajevo, p. 64-77.
- 7) Sadžak, M., *Participacija, ekonomska/industrijska demokracija*, II. dio, Prizma, 3/2007., Sarajevo, p. 60-77.
- 8) Sadžak, M., *Usporedba sustava korporativnoga upravljanja u zemljama Triade*, FEB, 10/2008., p. 55-65.
- 9) Sadžak, M., *Političke vs. poslovnih organizacija u BiH*, Prizma, 11/2012., Sarajevo, 2010.
- 10) Sadžak, M., *Europsko poduzeće*, Synopsis, Sarajevo, 2000.

The area of corporate governance determines the system of management and control of the corporation.³ Although the common definition says, that corporate governance determines the ways in which financial input suppliers in the corporation ensure returns on their investment, i.e. that the idea of corporate governance is primarily related to the control of managers by shareholders, our opinion is that the definition should be extended to all interest groups.

The basic request towards the modern corporation is to create wealth for its stakeholders, but in a responsible way.

Conceptual definitions of corporations and corporate governance

The term corporation⁴ derives from the Latin word *corporatio*, meaning "unification, unifying" or from the Latin word *corpore*, meaning "connecting, alliance or merging, integration".⁵ We would give a wider definition according to which, a corporation is a specific, historic form of a social organization (*universitas personarum*), which is formed to achieve different social aims.

There are various approaches to interpret corporations, thus corporations are viewed as:

- historical, collective (*corporation aggregate*) form,
- Private Company - *universitas personarum*, "artificial creation" – because it is formed as a new legal entity,
- Organizational fusion of physical and legal entities,
- Locus of various interests,
- Economic or business entities,

11) Sadžak, M., *Europski menadžment. Europsko poduzeće u globalnoj ekonomiji*, Synopsis, Zagreb/Sarajevo, 2006.

³ Cadbury, A. (2002). *Corporate Governance and Chairmanship*, London, Oxford University Press, p. 2.

⁴ It is necessary to highlight that the term *corporation* is used within the English corporate system as a synonym for organizations which fulfill various (social) aims, whereas the term *company* is used as a synonym for business organizations. Within the American system of corporate governance there is only one term, and that is *company*.

⁵ One of the relevant, although prevalently oriented towards business organizations, definitions of a corporation is: The most common form of business organization, and one which is chartered by a state and given many legal rights as an entity separate from its owners. This form of business is characterized by the limited liability of its owners, the issuance of shares of easily transferable stock, and existence as a going concern. The process of becoming a corporation, call incorporation, gives the company separate legal standing from its owners and protects those owners from being personally liable in the event that the company is sued (a condition known as limited liability). Incorporation also provides companies with a more flexible way to manage their ownership structure. In addition, there are different tax implications for corporations, although these can be both advantageous and disadvantageous. In these respects, corporations differ from sole proprietorships and limited partnerships. For detail see: <http://www.investorwords.com/1140/corporation.html#ixzz1jEfCbBD1>

- Trade association,
- Stable form of integrations of business projects,
- Managing and communication system, among corporation members,
- Heterarchical-hierarchical form,
- Complex enterprise, often in the form of a holding- concern,
- Corporation as a form of organization which owns and produces corporative culture,

A corporation is the best way for making business, in the context of continuity, etc.

Corporate governance is a frequently used term, however it sometimes causes dilemmas among those who use it. There are various and often contradictory interpretations of the term corporate governance, which is not surprising, providing the wide range of content, issues and problems it is dealing with, i.e. which are involved in the system of corporate governance. Although the definition of corporate governance systems is complex, we will provide a few definitions which will relatively or adequately define corporate governance.

Thus, corporate governance is a set of mechanisms which ensures appropriate balance between the rights of shareholders ... and the needs of the board and management to guide the business of a corporation and governing that business.

Corporate governance represents ways in which financial inputs suppliers in a corporation ensure returns on their investments without endangering its long-term prosperity and survival.

Corporate governance represents the (effective) mechanism of realization and protection of the (projected) company goals.

Corporate governance is the legal-economic system of governing (in the broadest sense) a company.

The role of corporate governance is the establishment of an efficient governance system (management and control) of companies.

Briefly, corporate governance is a form of authoritative governance of a company.

Below we present a corporation model according to Berle / Maensu,⁶ and after that the historic development of corporations and corporate governance through several phases. For the sake of conciseness and clarity this will be presented through tables, Table 1.⁷

⁶ Per: D. Tipurić, *Nadzorni odbori i korporativno upravljanje*, Sinergija, Zagreb, 2006., p. 22.

⁷ B. A. Cvetkov, *Korporativni biznis*, knjiga na ruskom jeziku, Nestor-Istorija S. Petersburg, 2011., p. 151.

Picture 1: Corporation model according to Berle/Maensu

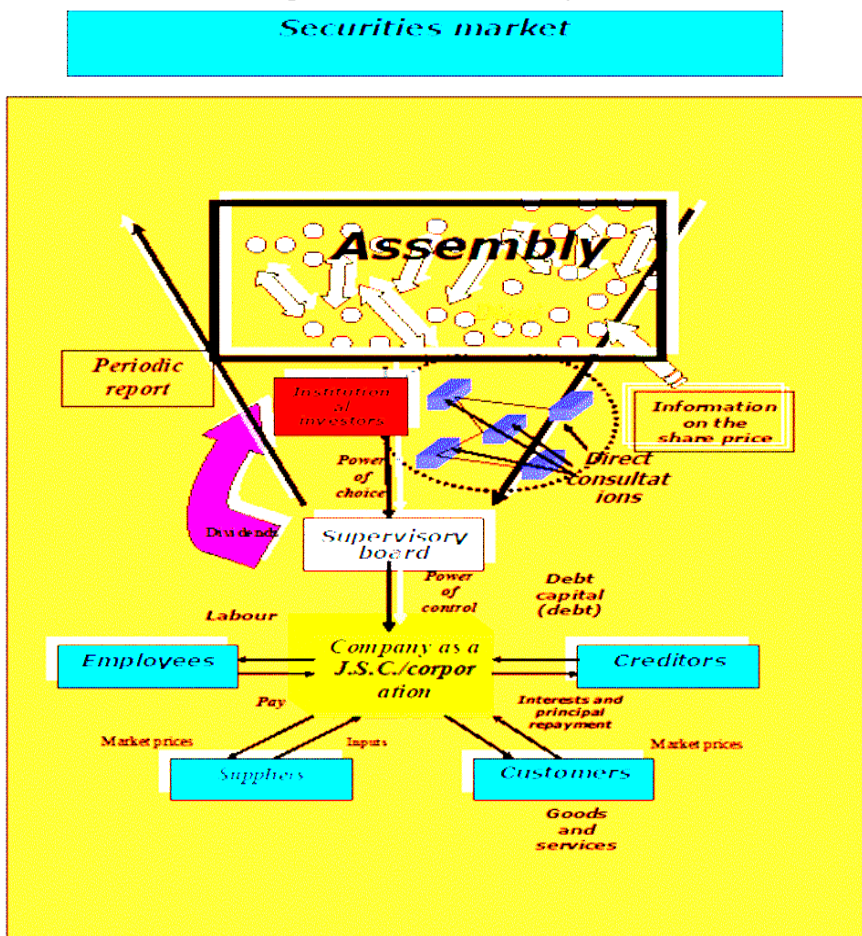


Table 1: Historic development of corporations and corporate governance

	Appearance when/where	Legal status	Limited liability	Centralized governance	Free share transfer
Simple or absolute partnership	VIII.-V. c. BC Ancient Greece	No	No	No	No
Limited partnership (without legal entity status)	976. year Venice -Italy	No	Partially	Partially	No
Companies (with legal entity status)	Beginning of the XVI.c. W. Europe	Yes	No	Yes	No
Limited partnership (with legal entity status)	Beginning of the XVI. c. W. Europe	Yes	Partially	Partially	No
Limited liability company	1892. year Germany	Yes	Yes	Yes	No
Joint stock company	XVII. c. W. Europe	Yes	Yes	Yes	Yes

Classification of corporations and corporate integrations/alliances

Considering the complexity of the corporate forms and classification possibilities according to various criteria, as well as the fact that corporations often take different fusions and alliances, we have decided to show the most important criteria according to which modern corporations can be classified.

Table 2: Classification of corporations according to types

Classification criterion	Corporation type
Sector affiliation – core business forms	- Industrial (raw material, processing or agricultural); - Financial (Finances, banking, investments); - Commerce; - Media
Range and geographical distribution	- Local; - Regional; - Interregional; - National (federal); - International
Type of ownership	- State; - Mixed; - Private
Number of sectors in which they operate	- Various sectors; - One sector
Market position	- Monopoly; - Oligopoly; - same as other companies on the market
Organizational type	- Horizontal; - Vertical; - Conglomerate
Organization character	- Hierarchical; - Network; - Cyclic
Management structure	From line structure to tensor structure
Legal form	- Partnership; - Company; - Unitary enterprise; - Cooperation
Ways of ensuring resources	- Own resources; - Financing through financial funds; - Financing through bank credits; - State incentives
Level of economic and financial power	- Powerful; - Weak

The development of modern economy has long been in the phase of globalization, i.e. „large scale“ which often cannot cover individual corpo-

rations, but there is a need for their alliance. Of course, the process merging companies has a variety of forms and volumes.

Table 3: Integration processes of corporations

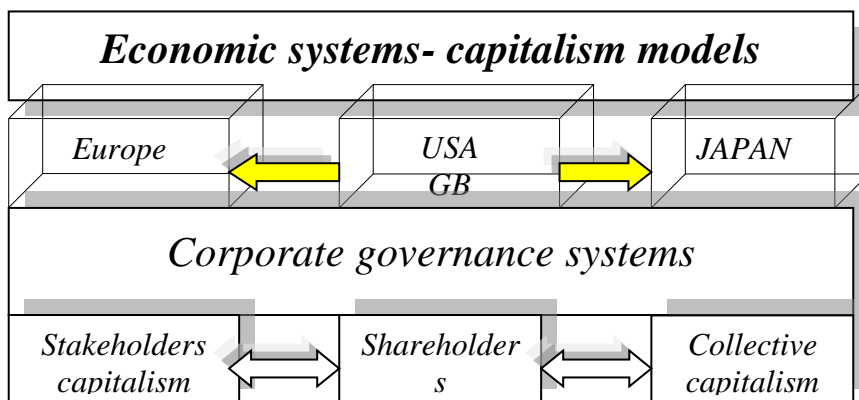
Classification criteria	Integration forms
Central element of integration	<ul style="list-style-type: none">- Industrial (raw material, processing or agricultural);- Financial (Finances, banking, investments);- Commerce;- Financial – deliberate;- Trade-finance
Range and geographical distribution	<ul style="list-style-type: none">- Local;- Regional;- Interregional;- National (federal);- International
Type of ownership	<ul style="list-style-type: none">- State;- Mixed;- Private
Number of sectors in which they operate	<ul style="list-style-type: none">- Various sectors;- One sector
Market position	<ul style="list-style-type: none">- Monopoly;- Oligopoly;- same as other companies on the market
Organization form of integration	<ul style="list-style-type: none">- Horizontal;- Vertical;- Conglomerate
Organization character	<ul style="list-style-type: none">- Hierarchical;- Network;- Cyclic
Management structure	From line structure to tensor structure
Legal form	<ul style="list-style-type: none">- Legal subject;- not completely a legal subject-just partially
Ways of ensuring resources	<ul style="list-style-type: none">- Own resources;- Financing through financial funds;- Financing through bank credits;- State incentives
Aims of integration forming	<ul style="list-style-type: none">- Mutual material benefit;- Mutual financial benefit;- Information exchange;- Scientific innovation exchange
Integration character in relation to ownership and governance rights	<ul style="list-style-type: none">- Symmetric – equal;- asymmetric – unequal
Integration stability	<ul style="list-style-type: none">- Long-term integrations;- Short-term integrations like consortium

Character of mutual relations among the integration	- Relations "One on One"; - Relations "many versus one"; - Vertical integration; - horizontal integration; - annular integration
Structure of integration members	- Local; - mixed-international
Economic and financial power of the integration	- Intense; - Weak
Control type	- Inner and latent; - Official
Used reporting system	- Consolidated reports; - Unconsolidated reports

CAPITALISM MODELS AND CORPORATE GOVERNANCE SYSTEMS

Considering the reality, it is necessary to highlight that corporate governance systems are positioned within various models of capitalism and market economy, so it is necessary they are analyzed within that context. Picture 2 shows three main economic centers in the modern world (Triadisation leaders), as well as the interactions and interdependencies their capitalism models and corporate governance systems have.⁸

Picture 2: Capitalism models and corporate governance systems within the Triadisation



There are also other attitudes according to which capitalism models are divided as follows:

- 1) Shareholders capitalism or Anglo-Saxon,
- 2) Bank capitalism or German continental,
- 3) State capitalism, and
- 4) Family capitalism.

⁸ Per: M. Milisavljević, *Savremeni strategijski menadžment*, Megatrend, Beograd, 2005., p. 534.

It is necessary to consider, that with every mentioned capitalism model there may exist, even simultaneously, different corporate governance systems.⁹ One of the best examples is Switzerland, what is logical, considering the need and the system of corporate governance and corporations, to act more efficient within the existing capitalism models.

Table 4: Capitalism models and corporate governance models

Capitalism models and corporate governance systems	Countries
Shareholders capitalism or Anglo-Saxon, monistic corporate governance system	USA, G. Britain, Canada, Switzerland
Bank capitalism or German continental/dual corporate governance system	Germany and most continental European countries especially Switzerland
State capitalism, different corporate governance systems	Former fascist regimes: Germany, Italy and Japan, and today: Japan, Canada, India, Russia, China, Switzerland
Family capitalism, different corporate governance systems	Asian countries and L. America, as well as Italy, Sweden, France, Canada and Switzerland

CORPORATIONS AND CORPORATE GOVERNANCE SYSTEMS IN THE FUTURE

There will certainly be a lot of discussions on the reform of corporate governance systems, i.e. about increasing the efficiency of decision making, and corporations themselves. Many „players“, institutions or interest groups are getting more involved in the process of corporate governance. Favorised management, will have to share its power of decision making with significant shareholders, but also other interested and involved actors-interest groups. In this context, there is the need for a greater power balance, which now moves from managers to other interest groups. ***Managed corporations*** are substituted by ***governed corporations***. The table below shows the Managed (present) and the Governed Corporations with paradigms and praxis of the board of directors.

⁹ It is necessary to emphasize that the following corporate governance systems exist in today's business: Anglo-Saxon – monal, continental – dual, French option model which enables to choose between the modal and dual system, and mixed systems existing in Switzerland: the corporate governance model is a model called ***Verwaltungsratmodell – Advisory Board model***. Bockli calls this type "*Mischtyp: monistisches System mit starken dualistischen Elementen – mixed type, monistic system with elements of the dual system.*" The ***fundamental characteristic of the corporate system is the hybrid structure, or mixed structure – Mischtyp, a combination of monal and dual corporate governance***. There is also the Japanese corporate governance model, whose ***main characteristic is the mixture of the monal and dual corporate governance system with specificities, i.e. it is a multistage form and it is a independent-specific form***. Details: P. Witt P, *Corporate Governance-Systeme im Wettbewerb*, Gabler, 2003.

Tabel 5: Managed vs. Governed Corporation

Managed (present) corporation	Governed (future) corporation
The role of the Board of Directors is to hire, monitor and when necessary change the management	The role of the Board of Directors is to encourage effective decision-making and to change bad (business) politics
Characters of the Board of Directors	Characters of the Board of Directors
<ul style="list-style-type: none"> - Enough power to control the CEO and evaluation process - Independence, in order to assure fair CEO evaluation, and that director are not compromised in conflict situations or co-opted by the management - Procedures in the board which enable outside directors to evaluate managers fairly and effectively 	<ul style="list-style-type: none"> -Enough expertise to allow the board to improve the process of decision making - Incentives in the context of strengthening the commitment to the committee, as the creation of corporate value - Procedures that accept open debate and information for board members, and accept shareholder's worries
Politics	Politics
<ul style="list-style-type: none"> - Separating the CEO and the presidency (or the leading outside director) - Board meetings without the CEO - sub-board of independent directors to evaluate the work of the CEO - Independent financial and legal consultants of outside directors -Explicit criteria for the evaluation of the CEO's results 	<ul style="list-style-type: none"> - Defining fields of expertise that must be presented on the board (key activities and finances) <ul style="list-style-type: none"> - At least 25 spent days - Significant (big) package of stocks for directors - Devised critics for the new (business) politics proposals <ul style="list-style-type: none"> - Regular meetings with majority shareholders - Free information access for all board members, given by all employees

In the future, the focus will certainly be on the management and Board of Directors, because they are the central place and nucleus of all important events for corporate governance in corporations. After all, it is not a coincidence that one of the synonyms for American corporate governance systems is Board-system. According to eminent professors of the Harvard University, in the future the Board of Directors should:

- 1) Have clear majority of outside directors;
- 2) That independent directors elect the Lead Director;
- 3) In addition to regular meetings of the Board of Directors, Independent Directors should have regular meetings without the presence of other members of the Board, directors;
- 4) Independent directors are also responsible for all procedures of the Board of Directors;
- 5) The Board of Directors has the main responsibility in the election process of the new director;
- 6) The Board of Directors should pay attention in the second important task, and that is the election of the CEO;

7) The alternation of directors should be in accordance to the law and other legal directives;

8) It is desirable that that directors of the board know the affairs and procedures of the company they are governing;

9) The synergy between the CEO and the Chairman is essential, if these two functions are separated.

Also, the corporate governance systems will go through specific evolution processes, so in the future, corporate governance systems will be more mixed or hybrid, because the globalization has already opened electric processes in the field of corporate governance. Considering that the existing systems are getting inappropriate in many segments, through Table 6 we will show the evolution process of actual corporate governance systems towards corporate governance systems in the future.

Table 5: Managed vs. Governed Corporation

Actual corporate governance systems		Corporate governance systems in the future
Continental – dual	Dominant	Present
Continental – dual	Dominant	Present
Option model	Rare	Frequent
Governing council model	Rare	Present
Mixed-hybrid model	Rare	Dominant

CONCLUSION

In the future, corporate governance systems will, exactly because of the further adaptation and „tuning“ deep or in its inner content, lead to the development of different concepts, some sort of „soft divergence“, as a result of asserted existence of cultural and other differences on global level, as well as within existing corporate governance systems. The dominant approach will be cross-cultural, and in the organisational-operational sense, mixed and hybrid systems will be favoured, which will through their adaptability be able to meet the needs of the corporation set by the new reality, i.e. their market environment in the most efficient way.

That new reality is a merciless struggle in the race to take over competitive advantage, which will lead to a development that will keep the corporation on the market and at the same time attain the goals, wishes and interests of all stakeholders.

KORPORACIJE I SISTEMI KORPORATIVNOG UPRAVLJANJA

Mr Davor Kolenda

Apstrakt: Korporativno upravljanje kao radni okvir, ili kao ustav korporacije, je svakako temeljni instrument u procesu upravljanja korporacijama, koje su u biti njegov suštinski element i istovremeno lokus susreta svih aktivnosti, procesa i interesa, koje se dešavaju unutar sustava korporativnog upravljanja. Dakle, korporativno upravljanje je proizvod razvijenog tržišnog kapitalizma, čiji su najekponiraniji predstavnici same

korporacije. U ovom radu će se posebna pozornost posvetiti raznim korporacijama, ali i oblicima njihovim integracija, te također djelujućim sustavima korporativnog upravljanja, analizirajući ih komparativnom metodom. Osnovni zadaci korporativnog upravljanja u osnovi tiču se pitanja stjecanja i održanja konkurentske pozicije kompanija na određenom tržištu.

Cilj ovog rada je da na naučno zasnovan način objasni mogućnosti modela korporativnog upravljanja u stjecanju i održanju konkurentske pozicije korporacija na turbulentnom globalnom tržištu u budućnosti.

Ključne riječi: *korporacija, upravljanje, sistemi, konkurentska prednost.*

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