

## THE BUSINESS MANAGEMENT OF DISTRESS SITUATIONS

*Carmen Valentina RĂDULESCU<sup>a\*</sup>, Răzvan Cătălin DOBREA<sup>b</sup>, Sorin BURLACU<sup>c</sup>*

<sup>a</sup> *The Bucharest University of Economic Studies, Romania*

<sup>b</sup> *The Bucharest University of Economic Studies, Romania*

<sup>c</sup> *The Bucharest University of Economic Studies, Romania*

---

### ABSTRACT

*The article we developed in the pages that follow represents a review of what business management is like in crisis situations, in economic distress for corporations. We will evaluate the internal code as the backbone of a corporation and work our way upwards to how the shareholders and stakeholders should use the internal code to manage the company and address defensive measures as tools and protect themselves against using too many specialists, running too many shareholder meetings and protecting against „poisoned pill” procedures. We will try to highlight the main findings available in the real world.*

**KEYWORDS:** *Business Management, Crisis Management, Poisoned Pill.*

---

### 1. INTRODUCTION

The internal code stipulates how often the board has to meet and how the agenda is prepared and by whom. Any special arrangements regarding the vote of directors will be detailed in the internal code. It specifies the rules by which individuals wishing to be elected will be accepted by the General Meeting of Shareholders. Typically, such elections take place after nominations for the election (re-election) for the board are presented by the nomination committee. Internal code indicates the procedures for selecting board and corporate officers and can highlight the terms by which their services can be stopped. These may include deadlines, an age limit or the conditions under which a director may be reshuffled for his or her fault. In some companies with immediate and increased board competencies, a director is dismissed as a director who is unmotivated from two consecutive meetings. Other examples of cases for which a director may be removed from office are also those of changing the state of the director (for example, when a CEO from another company resigns) or a specialized (national, federal or federal) committee is guilty of illegal acts that may discredit the corporation (Bartelsman et al., 2009; Bartelsman et al., 2010; Bloom & Van Reenen, 2007).

### 2. USING THE INTERNAL CODE TO MANAGE THE COMPANY

The internal code can specify the level of compensation for directors, including annual fees, fees for participation in board meetings and specialized committees' premieres by stock-option scheme, insurance and travel expenses and daily allowances for business.

The internal code can cover structural details and operational Additional, such as:

- The number of directors who will attend a board meeting;
- Number of "internal" and "external";
- The duration of the mandates of directors;

---

\* Corresponding author. E-mail address: cv\_radulescu@yahoo.com

- Board committees and their tasks;
- Details of annual shareholders meetings;
- Conditions under which shareholder reports will be prepared;
- How the directors will vote and how the votes will be counted;
- Election and duties of corporate officers and directors.

The optimal number of directors who should be elected to represent shareholders is a subject that is often debated. Some boards work effectively with 7 or 8 executives, like others with more than 20 executives. There is a consensus that 12 to 15 board members are most effective for an organization. Many people claim that less than 12 executives can give the chance to create control over the company by a small group of people (interest group) and where there are more than 15 executives distribute business development inefficiently. This is one of judgment that corporations must do.

The internal code may be changed by a majority vote of the board of directors, unless they are subject to shareholders' votes, as specified in the company's statutes and state laws. Incorporations should give special consideration to the internal code. In addition to this situation is the correct implementation of the process of governance, internal code comes into play when there are conflicts in driving mode.

The annual shareholders' meeting is a major event for private-open corporations. These meetings are scheduled at a convenient date towards the end of the fiscal year and after the completion of the annual audit. The President (chairman) of the board presents the financial results of operations completed and accepted answer questions raised by shareholders and other guests. The degree of harmony or disagreement with these meetings invariably reflects the perception participants about safety and attractiveness of corporate operational results.

The board must communicate with the company's shareholders when they need their approval for certain actions undertaken by the company's general management. This communication is accomplished by sending letters containing present the mandate statement to each shareholder. These statements are brought to their attention shareholders about the position board on one or more issues and requesting the position adopted by shareholders on the same issues by voting. That is why the mandate statement highlights issues such as the election of candidates for the post of directors, the approval of the sale of part of the assets and of the merger or the sale of the company. In this statement, the Board is required to provide some details on executive compensation, such as salaries, bonuses and stock options / rewards in stocks. The mandate statement also includes a ballot in the form of a view or letter through which the shareholder shows its support for corporate governance proposals. These statements are returned to the Company, giving directors the right to vote in the Board in accordance with the shareholders' vote. Occasionally, this service is carried out by companies independent of the corporation that runs the vote of support, out of the desire for total transparency.

## **2.1 Major considerations in relation to the internal code**

An important question for embedding in shaping the company's internal code is how much flexibility should be given to shareholders to summon extraordinary shareholders' meetings and submit his intention to vote. For example, the internal code should stipulate the distance between notification of a meeting and the actual meeting (Martinet, 1986). On the one hand, the shareholders own business and should have the opportunity a- express their opinions and vote on issues they consider important. On the other hand, corporations often have to deal with the minority voices who want to discuss subjects that are not widely shared. Such proposals reflect a political and social agenda or may come from individuals trying to take control of the company or majority shares at a low value in the idea of following their own interests. In most cases, these proposals are not considered to be in the interest of the majority shareholders.

It is important, however, not to generalize on the motives or powers of either the board of directors or the dissident shareholder. History offers many examples of irresponsible or illegal behavior on either side. What is important is that there must be a set of rules that represent and protect the interests of all shareholders.

## 2.2 Defensive measures

Between 1980 and 1990, there was a period when hostile takeovers were feasible. Buyers, surnamed *Raiders* were either strategic buyers, to understand competitors or financial buyers were, to understand an individual or groups of individuals they were looking for a quick profit. Target companies were underperforming, with poor stock market capitalization, with readily quantifiable assets and sometimes holding units easy to sell. The Free Raiders used various financial instruments, including "junk" bonds and / or assets held by a company for hostile takeover bidding. The practice of hostile takeovers was justified as a way to eliminate company management and / or unblock the company's capitalization by shareholders. In many cases, the raiders were trying to take control of the company with a substantial discount. Usually they did not buy the whole company, but enough to have control of it. If they were successful in taking control, the minority shareholders were put in the position of no longer having the right to express their opinion on the governance of the respective company.

Defensive measures have been developed in response to the practice of hostile takeovers and critics remain divided over their usefulness. Some argue that defensive measures serve to protect the installed management and board of non-performing companies at the expense of shareholders. Those with an alternative view argue that the measures are not outlined to protect management, but shareholders, by giving control to board transactions. In this situation, supporters of defensive measures believe that shareholders are assured that they will get the best price per share if the company were to be sold. Both arguments are strong. Of course there are managers and boards, installed and bad and the threat of hostile takeover can make them more accountable to the interests of shareholders. Alternately, raiders are not always "good boys" who pursue the interests of consumers.

Defensive measures most often used by corporations when in case of an attack are:

- Limitations of extraordinary meetings;
- Classified terms;
- "The poisoned pill".

## 2.3 Highly skilled specialists

Prior to the occurrence of hostile offerings, the Boards were elected to the General Meetings of Shareholders held annually, and members were mandated for one year or until the next meeting where their successors were elected. This last sentence is a technical term included in internal codes to ensure that the board will not be reduced to a non-lucrative environment unless new board members are elected in time. Under this elective protocol, the raiders have inferred the idea that they can choose a "friendly" board by simple majority vote and as a result, it can control a corporation with only 51% of the shares available.

To make control more difficult for any group, many private corporations hire specialists as directors. Members are divided into several classes, usually 3 or 4, as well as high school ones. Classes for a given board contain the same number of directors and are mandated for 3 or 4 years. If they are mandated for 3 years, it would take 2 years for a pickup group to take over the board's overall control and 3 years for a four-year board. The process expands the take-off time and makes the fight harder, giving shareholders a better handle on the issues raised by the dissident group.

## **2.4 The Poisoned Pill**

The "poisoned pill" is a complicated way of having to deal with potential hostile takeovers. The pill is so effective that it has never been triggered. Moreover, it has been successfully used in legal disputes. The poisoned pill is a board-based plan that gives shareholders the right to buy company shares at very low prices, well below their market value. These rights can be activated if a hostile buyer accrues a certain percentage of the company (usually in the range of 10 - 20% of the shares on the market). New Shares Issued to Shareholders existing would dilute the actions of the hostile buyer.

Intention of putting 'poison pill' at hand is not to prevent a transaction to take place but to ensure that the process is under the control board. Several studies show the following result: companies with "poisoned pill" provisions have higher sales prices for the company than those who do not, the obvious reason being the mere threat of its existence, basically the paid price being a consensual one.

## **3. BUSINESS MANAGEMENT – NECESSITY OR NORMALITY?**

Every corporation has its own starting point through the adventure called business, so it is possible that the core vision of the founders / shareholders may no longer coincide during certain stages of its development, with changes arising from the funding of certain divisions or projects until the restructuring of the form or distribution of corporate capital by introducing a new relationship between equity and debt through borrowing (Hsieh & Klenow, 2009; Hubbard, 2003; Jorgenson et al., 2008; Syverson, 2004; van Ark et al., 2008). Creating new classes of shares, issuing new shares, selling assets or selling the company are major moves in the corporate governance model. Two Classes of Shares were used in Facebook listing: A and B. Class A has a 10-times higher voting power than Class B shares. The Facebook founder, Mark Zuckerberg, holds 28.8% of Class A shares and a power of vote of 57.1% of rights (by empowering 57.1% of Class A shares). Class A shares by sale become Class B shares, so Mark Zuckerberg will remain 9.1% of his current shares (Class A) after a certain period and the other shares have gone through at least one sale / purchase flow, then will have the majority vote in the company being a minority shareholder. This situation is unique and has as a starting point the Google listing where Sergey Brin and Lary Page hold 30% of the corporation (Class A shares) but are not majority in the decision and have the great competitive advantage of being two distinct personalities.

A corporation operates like an aquarium in which any sudden movement can lead to waves that can create long-term problems. The board of a listed corporation must learn from this principle and make connections between the corporate action or response and the pressure created, which in turn needs to be stressed through some resource-time-consuming procedures.

Since the new millennium intensified trade union movements in organizations, movements began to occupy much of the working time of a board corporate thereto added movements M & A (Mergers & Acquisitions - M & A) or acquisitions (more or less hostile) that have often been executed through work processes that rely on ever-increasing loans and collateral that does not meet the cost of the loan. Discontent with shareholders can be done by appointing the same people in the executive board as it tends to create the impression of power captured by the few and well connected (first board with CEO and after a while the feeling of clotting becomes centered on the CEO and his people who form the board). The same feeling of disaffection can also be brought about by the fact that some members of the Board are part of several boards and the feeling that they cannot give 100% of the attention is present, plus the issue of insider trading is increasingly present among those involved in the boards of several companies by playing more than one long-term book.

Returning to M & A, the merger appears feeling of job insecurity, the CEO and their company need to be concerned for the changes to streamline the new corporations created. The two boards are "consolidated" into one by removing the "weak or failing" (the least connected in this case).

In the case of hostile takeover, we have to deal with two parts: those who want to take (a hostile) corporation and those who want to stay in position. The former can be persuaded to give up an additional bonus granted in exchange for actions already taken (the greenmail procedure).

These are just cases of external pressures that may arise, but it should be borne in mind that any external pressure on corporate governance can come from three elements:

- Shareholder (versus board);
- Hostile takeovers;
- New regulations emerged.

### **3.1 Shareholder activism**

The activism among corporations arose at the beginning of the 20th century, when human rights were violated in the workplace. In the beginning, this phenomenon has grown in the US by highlighting the problems that have arisen in the unsafe and unhealthy conditions of food and drug manufacturers, created and maintained by greedy capitalists (sometimes monopolists) who, in the desire to obtain high profit, have violated any procedures and compliant practices. Federal and state laws have been set up as required and new regulatory bodies have emerged, such as the Federal Drug Administration, so the minimum standards of work have been created.

Labor relations have begun to be treated as a key element to highlight the elimination of slavery (through the implementation of a maximum program - 40 hours of normal and minimum payment) or the exploitation of children and the provision of minimum sanitary conditions at the place of the work.

Unions are created to protect employees, which are borne as a principle and working framework by the letter of the law, but in their absence the legal support for the employee allows him a legal framework, plus valorization and worthy to work and progress.

Another concept that has been widely debated was that transparency has been implemented as mandatory in the executive board, from minor employment decisions to stock options enabled by the CEO or other senior executives. Insider activities have it easier to unmask and activities to create financial flows without real foundation demarcated and almost neutralized (see Enron's case).

Fight for vision occurs between shareholders and board when that happens the strategy outlined by the board not be consistent with the future of corporate shortsightedness shareholders as financial documents or as a takeover or merger may benefit guaranteed (Bodislav, 2016; Bodislav, 2012). When the Board issues the next deputy to the General Assembly of Shareholders and it is in contradiction with what shareholders want, there is a public scandal in which board members are advantaged because they have the corporation's war ammunition budget. As an example, we have Hewlett's purchase Packard Corporation and Compaq in 2002, which was rejected by a large number of shareholders but following a struggle between board and CEO versus shareholders during which all the proxy statement) the HP Board and CEO of Compaq was approved by the court.

Another way of activism is the processes initiated by corporations as a result of an error on a whole group of "partners". Partner in the present case means a client, employee, supplier, competitor, any commercial relationship in any way or any negative result created by the products marketed to them. Engage in such processes, but without a commercial relationship, we have environmental organizations.

#### 4. CONCLUSIONS

The activism among corporations arose at the beginning of the 20th century, when human rights were violated in the workplace. In the beginning, this phenomenon has grown in the US by highlighting the problems that have arisen in the unsafe and unhealthy conditions of food and drug manufacturers, created and maintained by greedy capitalists (sometimes monopolists) who, in the desire to obtain high profit, have violated any procedures and compliant practices. Federal and state laws have been set up as required and new regulatory bodies have emerged, such as the Federal Drug Administration, so the minimum standards of work have been created.

Labor relations have begun to be treated as a key element to highlight the elimination of slavery (through the implementation of a maximum normal program of 40 hours and minimum wage) or the exploitation of children and the provision of minimum sanitary conditions at the place of the work.

Unions are created to protect employees, which are borne as a principle and working framework by the letter of the law, but in their absence the legal support for the employee allows him a legal framework, added value and worthy to work and progress.

Another concept that has been widely debated was that transparency has been implemented as mandatory in the executive board, from minor employment decisions to stock options enabled by the CEO or other senior executives. Insider activities have it easier to unmask and activities to create financial flows without real foundation demarcated and almost neutralized (see Enron).

Fight for vision occurs between shareholders and board when that happens the strategy outlined by the board not be consistent with the future of corporate shortsightedness shareholders as financial documents or as a takeover or merger may benefit guaranteed (Brynjolfsson et al., 2008; Foster et al., 2006; Foster et al., 2008). When the Board issues the next deputy to the General Assembly of Shareholders and it is in contradiction with what shareholders want, there is a public scandal in which board members are advantaged because they have the corporation's war ammunition budget. As an example, we have Hewlett's purchase Packard Corporation and Compaq in 2002, which was rejected by a large number of shareholders but following a struggle between board and CEO versus shareholders during which all the proxy statement) the HP Board and CEO of Compaq was approved by the court.

Another way of activism is the processes initiated by corporations as a result of an error on a whole group of "partners". Partner in the present case means a client, employee, supplier, competitor, any commercial relationship in any way or any negative result created by the products marketed to them. Engage in such processes, but without a commercial relationship, we have environmental organizations.

#### REFERENCES

- Bartelsman, E., Gautier, P., Wind, J. (2010). Employment Protection, Technology Choice, and Worker Allocation. *Tinbergen Institute Discussion Paper* 2010-042/3.
- Bartelsman, E., Haltiwanger, J., Scarpetta, S. (2009). Cross-Country Differences in Productivity: The Role of Allocation and Selection. *National Bureau of Economic Research Working Paper* 15490.
- Bloom, N., Van Reenen, J. (2007). Measuring and Explaining Management Practices across Firms and Countries. *Quarterly Journal of Economics*, 122(4), 1351–1408.
- Bodislav, D. A. (2016). Business Intelligence for Decision Making in Economics, in Dunis, C., Middleton, P., Karathanasopolous, A., Theofilatos, K., Bodislav, D.A., *Artificial Intelligence in Financial Markets*, London: Palgrave Macmillan, 125-158.
- Bodislav, D. A. (2012). Oligarchy versus Democracy and regulation versus deregulation under the globalization effect, *Theoretical and Applied Economics*, 5(5), 33-46.
- Brynjolfsson, E., McAfee, A., Sorell, M., Zhu, F. (2008). Scale without Mass: Business Process

- Replication and Industry Dynamics. *Harvard Business School Working Paper* 07-016.
- Foster, L., Haltiwanger, J., Krizan, C. J. (2006). Market Selection, Reallocation, and Restructuring in the U.S. Retail Trade Sector in the 1990s. *Review of Economics and Statistics*, 88(4), 748–758.
- Foster, L., Haltiwanger, J., Syverson, C. (2008). Reallocation, Firm Turnover, and Efficiency: Selection on Productivity or Profitability? *American Economic Review*, 98(1), 394–425.
- Hsieh, C. T., Klenow, P. (2009). Misallocation and Manufacturing TFP in China and India. *Quarterly Journal of Economics*, 124(4), 1403–1448.
- Hubbard, T. (2003). Information, Decisions, and Productivity: On-Board Computers and Capacity Utilization in Trucking. *American Economic Review*, 93(4): 1328–1353.
- Jorgenson, D., Ho, M., Stiroh, K. (2008). A Retrospective Look at the U.S. Productivity Growth Resurgence. *Journal of Economic Perspectives*, 22(1), 3–24.
- Martinet, A. C. (1986). *Management Strategique: organization et politique*, Paris: EdMcGraw-Hill.
- Syverson, C. (2004). Market Structure and Productivity: A Concrete Example. *Journal of Political Economy*, 112(6), 1181–1222.
- van Ark, B., O'Mahony, M., Timmer, M. (2008). The Productivity Gap between Europe and the United States: Trends and Causes. *Journal of Economic Perspectives*, 22(1), 25–44.