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Prim ministru  
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## **Corporate Governance in State Owned Enterprises**

### **I. Background**

There is strong and widely recognized correlation between corporate governance practices and economic development (EBRD Transition Report 2013). As such, the introduction and implementation of proper corporate governance practices in state owned enterprises should greatly facilitate the government's endeavors to support long term economic growth in Romania.

The adoption and implementation of Government Emergency Ordinance 109/2011 (OUG 109/2011) concerning corporate governance practices in SOEs was a positive decision taken by the Romanian state in this regard. Since 2011 there have been several examples of state owned enterprises which reported consistently improved financial performance following the correct implementation of OUG 109/2011 (for example: Transelectrica, Romgaz, Maritime Ports Administration, Bucharest Airports – but only until May 2014).

Nevertheless, the application of the corporate governance principles in SOEs has raised a series of concerns, namely:

- The selection process of the board members and managers in the state owned enterprises has often lead to questionable politically driven appointments;
- General Managers are generally not selected following a transparent and competitive procedure, and are usually appointed from among board members;
- Fixed remunerations are limited to levels which may not be competitive;
- Independent boards and professional managers are still not appointed in many companies (e.g. Timisoara Airport, Salrom, CE Oltenia, Administratia Canalelor Navigabile)
- Lack of sanctions for the authorities and companies which fail to implement the provisions of OUG 109/2011 limit its effectiveness as a tool to improve corporate governance;
- We are witnessing a setback in corporate governance implementation in 2014, with no significant board appointments so far and changes of boards which had previously been properly appointed in accordance with OUG 109/201 (ex. Bucharest Airports)

## **II. Status**

The setting up of an inter-ministerial Committee for monitoring the implementation of OUG 109/2011 is a good step. The implication of interested stakeholders, representatives of minority shareholders of the most important SOEs and IFIs in the works of the committee should be endorsed by the Government.

Parliamentary approval process for OUG 109/2011 and OUG 51/2013 is currently blocked in the commissions of the Chamber of Deputies. Consultations regarding amendments have already taken place between the Ministry of Justice and representatives of the business environment, alongside the international financial partners of Romania (IMF, World Bank and the European Commission)

## **III. Recommendations**

The current priority should be to continue the legislative process for enacting OUG 109/2011 into a law. This process should be focused on setting up a framework for enforcing proper implementation in companies which are still not fully respecting the provisions of OUG 109/2011.

The provisions agreed with the business environment and international financial partners should be submitted as amendments to existing projects in the Parliament.

The changes we believe will strengthen the reform process of SOEs and will lead to increased economic benefits for Romania are:

- IPO's for larger State Owned Companies
- Separation of ownership and policy making responsibilities within Ministries
- Mandatory public quarterly financial statements reporting for all SOEs
- Set up a team at the Ministry of Finance level that will monitor implementation and enforce fines for non-compliance – this operative responsibility could be performed under the coordination of the OUG 109/2011 Inter-ministerial Committee
- Set clear deadlines for selection of board members and managers
- Implementation of proper incentive schemes from boards and executive managers including share options for listed companies
- Changes to OUG 109/2011 should be approved as soon as possible:
  - ✓ Companies performing activities of “national interest” shall not be exempted anymore from application of the OUG 109/2011

- ✓ Interference with management decisions coming from the tutelary authority shall be sanctioned with nullity;
- ✓ Management decisions contrary to the interest of the SOE can be annulled in court by a shareholder/any interested person;
- ✓ Shareholders resolutions taken without observance of the provisions regarding board composition and experience of board members can be annulled in court;
- ✓ The independent expert in charge with organizing the selection process of the board and managers must provide a report that certifies the compliance during the selection process with the provisions of OUG 109/2011 and with the best practices as regards the selection process;
- ✓ Shareholders resolutions related to the selection process taken without observance of the legal provisions shall be sanctioned with nullity;
- ✓ The managers, regardless of the fact that they are appointed from the board or from outside the board, shall be appointed following a separate selection procedure for this position, carried out after the appointment of the board of directors
- ✓ Resolutions of the board taken without observance of the legal provisions regarding the selection process of the executive management shall be sanctioned with nullity
- ✓ Board and management remuneration with stock options shall be allowed;
- ✓ Listed SOEs will be obliged to grant a variable remuneration which shall include a stock options component;
- ✓ Access to GSMs documentation shall not be restricted to the public;
- ✓ SOEs shall publish on their internet page quarterly accounting reports for the public;
- ✓ Any shareholder may initiate a court action for cancelling legal documents concluded against the interest of the SOE (e.g. contracts detrimental to the company);
- ✓ Any shareholder may ask indemnification, in the name and on behalf of the SOE, for damages caused to the state owned company by the public tutelary authority or the state owned enterprise who holds the majority participation or a controlling participation;
- ✓ Court actions for indemnification may be initiated by shareholders and shall be exempted from any legal stamp duty;

- ✓ The Ministry of Public Finance shall monitor the implementation of the Ordinance by the public tutelary authorities and the state owned companies. The procedure shall be set by order of the Ministry of Public Finance;
- ✓ Ministry of Finance may apply fines to the companies and ministries for failure to observe the provisions of OUG 109/2011;
- ✓ The tentative to determine or the determination of a member of the management bodies by a civil servant or public dignitary in order for such person to take a decision against the interest of the state controlled company shall be a criminal offense