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РЕГУЛИРАНЕ НА ПАЗАРА НА ЦЕННИ КНИЖА НА ГЛОБАЛНО НИВО

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SECURITIES MARKET REGULATION ON GLOBAL LEVEL

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Abstract

The subject of this paper is the current capital market problem from the legislation aspect, especially the stock exchanges where long-term financial instruments are traded. A review of the capital market legal framework, the capital market function, the key institutions that act on global and national level, the way of their establishment and the processes of their interactions are given.

In the paper, a comparative approach has been made regarding the characteristics and legal regulations of the stock exchanges in highly developed economies with regard to the Macedonian Stock Exchange legislation. The paper`s aim is to give a legal regulations overview regarding the capital market function, especially the stock exchanges operation with securities and the trading manner in the securities issue, as an actual long-term financing source.

Keywords: *capital market legislation, stock exchange, securities & securities issue*
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1. Introduction

Management of the company needs to consider a variety of questions when entering the securities market: transaction structure and financing; historical track record; corporate governance and management and the typical cost of the various alternatives of entering the finance market.

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The importance of securities regulation increased in recent years because investors can buy securities anywhere in the world. Investor confidence is the key in securities markets and securities regulation address this through regulation of issuer disclosure and accounting and audit standards. Regulation is designed to address asymmetries of information between issuers and investors, clients and financial intermediaries and between counterparties to transactions; and to ensure smooth functioning of trading and clearing and settlement mechanisms that will prevent market disruption and foster investor confidence. (Carvajal & Elliot., 2007)

Securities issuers are obliged to meet certain criteria in order to protect potential investors. A comparative analysis of the legal framework of securities markets, the functioning of the capital market, the key institutions that act on the world and the national level, the way of their establishment and the processes of their interactions are made.

The IOSCO Objectives and Principles of Securities Regulation constitute a valuable tool to evaluate the strengths and weaknesses of a regulatory framework. The principles cover all the regulatory issues mentioned above, which are divided into eight different categories (Carvajal A., Elliot J., 2007):

- Principles 1–5 concern the structure and effectiveness of the regulator;
- Principles 6 and 7 consider the role and structure of self-regulatory organizations;
- Principles 8–10 examine the enforcement program and activities of the regulator;
- Principles 11–13 examine the regulator’s cooperation with domestic and international counterparts;
- Principles 14–16 concern the regulatory regime for issuers;
- Principles 17–20 concern the regulatory regime for collective investment schemes;
- Principles 21–24 concern the regulation of market intermediaries;
- Principles 25–30 consider the regulation of the secondary markets.

Stock exchanges are already acting as SROs and the SRO structure needs to be strengthened further. The objective for promoting intermediaries like stock exchanges as SRO is that since they have a better feed on the ground reality, they should take care of the micro aspects of regulations. The several inherent conditions of self-regulation are: (Securities and Exchange Board of India, 2005)

✓ Self-regulation becomes the responsibility of the market and may result in greater acceptance of rules by the members of SRO;

✓ It also provides market players with greater flexibility to respond to securities market;

✓ It avoids duplication of responsibility: It is observed that over the years that if the regulatory body gets into micro regulation, it loses sight of the fundamentals, which in turn results in duplication of responsibilities; and

✓ Besides, SROS are expected to have a better understanding of the ground realities.

For any organization/body like a stock exchange to function effectively as an SRO, it is necessary for it to enforce compliance of bye-laws, rules and regulations laid down by itself. Further, these SROs should be able to enforce and establish rules, which prevent manipulative trade practices and permit just and equitable principles of trade.

METHODOLOGY

To achieve the object of this paper, the securities market legislation data has been collected. The methodological approach in the paper preparation is multidisciplinary. Apart from theoretical research, the analytical and comparative method is applied. The secondary information is mostly from websites, books, journals, etc. Macedonian and foreign literature were used in the preparation of the work.

ANALYSIS AND DISCUSSION

Regulation of the securities market in the United States & United Kingdom

The United States securities market represents one of the largest sources of capital in the world. Securities regulation in the United States is the field of U.S. law that covers transactions and other dealings with securities. The term is usually understood to include both federal and state level regulation by purely governmental regulatory agencies, but sometimes may also encompass listing requirements of stock exchanges and rules of self-regulatory organizations like the Financial Industry Regulatory Authority.

The laws and rules that govern the securities industry in the U.S. derive from a simple and straightforward concept: all investors, whether large institutions or private individuals, should have access to certain basic facts about an investment prior to buying it. To achieve this, the Securities and Exchange Commission requires public companies to disclose meaningful financial and other information to the public, which provides a common pool of knowledge for all investors to use to judge for themselves if a company's securities are a good investment.

The Securities and Exchange Commission is an independent federal authority that regulates securities trading in the U.S. and it was the first federal agency dedicated to the regulation of financial markets. Only through the steady flow of timely, comprehensive and accurate information can people make sound investment decisions. (U.S. Securities and Exchange Commission, 1999)

The Securities Exchange Act was signed June 6th, 1934, and created the Securities and Exchange Commission (SEC). It was response to the original problem with the Blue Sky Laws. Investor confidence had been shattered by the crash, and several more acts were passed with the intention of rebuilding it. These included the Public Utility Holding Company Act (1935), the Trust Indenture Act (1939), the Investment Advisors Act (1940) and the Investment Company Act (1940). The enforcement of all of these acts was left to the SEC. (Beattie, 2017)

The SEC also oversees other key participants in the securities world, including stock exchanges, broker-dealers, investment advisors, mutual funds, and public utility holding companies. (U.S. Securities and Exchange Commission, 1999)

In October 2000, the Securities and Exchange Commission issued the Regulation Fair Disclosure regulation (Reg FD), which required publicly traded companies to disclose material information to all investors at the same time. Reg FD helped level the playing field for all investors by helping to reduce the problem of selective disclosure. In 2010, the Dodd–Frank Wall Street Reform and Consumer Protection Act was passed to reform securities law in the wake of the financial crisis of 2007–2008.

In the United Kingdom, the HM Treasury is responsible for the overall institutional structure of regulation in the field of financial stability, and the legislation which governs it. The Financial Services and Markets Act (FSMA), which came into force on 1 December 2001, sets out the statutory framework for the regulation of the financial markets, and provides for the establishment of the Financial Services Authority (FSA) as the single statutory regulator directly responsible for the regulation of deposit-taking, insurance and investment businesses.

The responsibility for the regulation of the financial matters was shared by several organisations, namely the Bank of England, the Securities and Investments Board (which became the FSA), Self-Regulating Organisations (SROs - Self-regulatory organisations include the Investment Management Regulatory Organisation, Personal Investment Authority, and Securities and Futures Authority), the Department of Trade and Industry Insurance Directorate, the Building Societies Commission, the Friendly Societies Commission and the Registry of Friendly Societies.

The Financial Services and Markets Act 2000 imposed four statutory objectives upon the FSA:

✓ Market confidence: maintaining confidence in the financial system;

✓ Financial stability: contributing to the protection and enhancement of stability of the UK financial system;

✓ Consumer protection: securing the appropriate degree of protection for consumers; and

✓ Reduction of financial crime: reducing the extent to which it is possible for a business carried on by a regulated person to be used for a purpose connected with financial crime.

The Financial Services Act 2010, which was passed by Parliament on 8 April 2010, gave the FSA the additional statutory objective of "Contributing to the protection and enhancement of the stability of the UK financial system" and removed the public awareness objective.

Securities regulation in Germany

Securities law as a distinguished field of law did not exist in continental Europe prior 1980. Due to the pressure to implement European directive into national law did securities eventually emerge from the shadows. While a US securities regulation system has already been advanced in the sixties the European system has not been able to catch up such a lead.

The German securities markets are basically divided by law into two different markets: a regulated market (Regulierter Markt) and a regulated unofficial market (the “Regulated Unofficial Market”; Freiverkehr). These markets differ in terms of approach to the regulation of trading, listing and continuing obligations.

The Regulated Market is the most regulated of the German markets in terms of listing requirements and continuing obligations. The least regulated market is the Regulated Unofficial Market. The market segmentation referred to above applies to all Stock Exchanges. The main Stock Exchange in Germany is the Frankfurt Stock Exchange (Frankfurter Wertpapierbörse- FWB). The FWB established two market segments on January 1, 2003. These two segments are the General Standard (the “General Standard”) and the Prime Standard (the “Prime Standard”).

The Stock Exchange Act (BörsG), the Securities Trading Act (WpHG), the Securities Prospectus Act (WpPG53) and the Securities Acquisition and Takeover Act (WpÜG54) are the main sources of federal securities law in Germany that is passed by the federal legislator.

Most important regarding oversight of capital markets and enforcement of its governing rules is the Securities and Trading Act, which regulates the scope of function and the duties of the German Federal Financial Supervisory Authority (BaFin). The BaFin, as an executive authority, has a restricted power of rule-making while its primary task is in the field of securities law enforcement. The BaFin has certain fields in which it can enact ordinances and guidelines. Aside from this power to legislate it can act trough informal administrative means, as well as administrative acts (gm. § 35 I VwVfG6). (Fechner & Tipton., (2016)

Securities and other investment products may not be offered for sale to the public in Germany without a prospectus; and the publication of any such prospectus requires the prior permission of BaFin. For this purpose BaFin checks whether the prospectus contains the minimum information required by law and whether it has been written in a way that is readily understandable. BaFin also ensures that the prospectus contains no contradictory statements. The BaFin does not verify the respectability of the issuer nor does it examine the product itself. Issuers of investment products must make an explicit reference to that fact in their sales prospectuses. Offerors are expressly prohibited from making advertising statements that may give a misleading impression about the scope of BaFin's examination. (BaFin, 2018)

Regulation of the securities markets in Australia & in Japan

Financial regulation in Australia is split mainly between the Australian Securities and Investments Commission (ASIC) and the Australian Prudential Regulatory Authority (APRA). The Australian Securities Exchange has also played a role in regulating market conduct.

The supervision of securities exchanges in Australia is the responsibility of the following three parties:

1. The Minister for Financial Services and Regulation who has functions and powers to maintain market integrity and investor protection in a general sense;
2. The Australian Securities and Investments Commission (ASIC) as the statutory regulator which broadly oversees market supervision;
3. The exchanges which are the front line regulators of the markets.

This is generally known as a co-regulatory model, a combination of statutory and self-regulation, aimed at contributing to investor confidence and market integrity.

To facilitate the monitoring of trading activity, each equity market operator is required to establish a network connection into ASIC's Integrated Market Surveillance System (IMSS), and during the course of each trading day, provide a parallel data feed consisting of: (ASIC, 2018)

- all orders, trades, and quotes being processed and disseminated by the market’s trading engine, and
- all trading session and security price and status-related messages.

ASIC has developed a standard messaging protocol for the feed, based on FIX (Financial Information Exchange). This standard, called the Australian Market Regulation Feed, will help ensure that transmission of messages from each market operator to ASIC's IMSS has a consistent structure.

Market participants and other equity market stakeholders may also use the standard specification if desired.The standard is defined and governed by the following documents which will be of particular interest to business analysts, systems architects, and developers:

- Australian Market Regulation Feed - FIX Specification;
- Australian Market Regulation Feed - FIX Rules of Engagement;
- Australian Market Regulation Feed - FIX Message Sequence Guide;
- Australian Market Regulation Feed - FIX Certification Manual; &

- Australian Market Regulation Feed - FIX Specification Governance.

Australia currently has three operational stock exchanges, namely the Australian Stock Exchange Limited (ASX), the Stock Exchange of Newcastle Limited and the Bendigo Stock Exchange Limited, and a specialist futures exchange, the Sydney Futures Exchange Limited. For all intents and purposes, the ASX is Australia's only significant stock exchange. It operates Australia's primary national stock exchange for equities, derivatives and fixed interest securities.

The Japanese capital market is one of the world's most dynamic markets in terms of its depth, reach, sophistication, and connectivity. The securities market in Japan is governed by the Securities and Exchange Law which was first enforced in 1947. The Financial System Reform, dubbed the "Japanese Big Bang" that began in November 1996 brought about a number of changes to the regulation of the financial markets. The aim of the Reform was to rebuild the Japanese financial markets into a free, fair and global market comparable to the New York and London markets.

The Japanese securities market enjoys a well-built and efficient legal and regulatory framework as well as a sound business environment. The government regulator and SROs are committed to ensuring the transparency, integrity, and stability of the Japanese market.

The Japan Securities Dealers Association (JSDA) is an association functioning both as a self-regulatory organization and as an interlocutor between market participants and various stakeholders including the government authorities. Both functions work independently. The approximately 500 JSDA members consist of securities firms and other financial institutions operating securities businesses in Japan.

The main equity market in Japan is the Tokyo Stock Exchange (TSE) one of the oldest stock exchanges in the world, established in 1878. The TSE offers three markets: (Westlaw, 2018)

✓ The first section (for blue-chip companies with high liquidity) on the main board (First Section);

✓ The second section (for well-established medium-sized companies) on the main board (Second Section);

✓ Mothers (for emerging companies).

In addition to these markets, the TSE has been managing JASDAQ since July 2013 (for emerging companies), which was previously managed by the Osaka Securities Exchange. JASDAQ offers two markets:

✓ JASDAQ Standard.

✓ JASDAQ Growth.

The TSE also offers the TOKYO PRO Market, a market exclusively for professional investors established in June 2009. Listing and continuous disclosure requirements are less burdensome, as compared to the other markets; however, the number of listed companies is limited and this market is not active.

Regulation of the securities markets in Republic of Macedonia

Macedonian Law on securities, regulates: the manner and conditions for the issuance and trading with securities; the manner of and conditions for registration of securities, clearance and settlement of purchase and sale transactions with respect to securities, and execution of non-trade transfers and restrictions on the rights arising from securities; the manner and conditions for functioning of the capital market and of the licensed market participants; disclosure obligations of joint stock companies with special notification obligations, members of managing bodies, directors and certain shareholders; prohibited conduct with respect to operations with Securities; the status and authorities of the Securities and Exchange Commission of the Republic of Macedonia; manner and conditions for managing the bankruptcy and liquidation of licensed market intermediaries; and other issues with regard to securities. (Macedonian Stock Exchange, 2018)

The story of the Macedonian Stock-Exchange began in 1995. On September 13th the Inaugural Meeting of the Macedonian Stock Exchange took place. This is the official date of the establishment of the first organized securities exchange in the history of the Republic of Macedonia considering that the country had never before had a stock exchange. The Exchange was established as a joint stock company operating on a non-profit basis, with a founding capital of one million deutschmarks.

The new regulation on the securities market operations brought better re-sults in the 1998 trading. The introduction of the block transactions initiated the process of intensive ownership consolidation and concentration of the trading companies' shares in the hands of a smaller number of shareholders. In this year MSE published the Stock exchange manual. The international collaboration and the participation of foreign investments in the Exchange made a considerable growth in this year.

In 2005, The Macedonian Stock-Exchange was accepted as a corresponding member of the Federation of European Stock Exchanges (FESE). A software application called SEI-NET was introduced, as the official and only way of delivering informa-tion from the listed companies to the Exchange. The new Securities Law was passed, with which a further harmonization of the regulation in the securities industry with the EU Directives and the principles of IOSCO was made.

CONCLUSION

The role of securities markets increased globally and securities markets offer an alternative source of intermediation, reduce cost of capital, increase savings and investment. The world of investing is complex, fascinating, and can be very fruitful. But long term securities, such as stocks and bonds can lose value, because there are no guarantees.

The entire securities operation is carried out on regulated, organized stock exchanges where securities laws are respected, the rules of self-regulatory organizations and clearing houses, through which the settlement of securities transactions, are observed. Generally, strong links among financial markets requires some kind of standardization or convergence in regulations and there are differences between jurisdictions due to unique characteristics.

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