The Transnational Diffusion of Corporate Governance Best Practices: the Russian Code of Corporate Conduct

Final

19.08.2011

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I

Abstract

This thesis analyzes the influences on the formation of the Russian Code of Corporate

Conduct 2002 in terms of transnational diffusion of corporate governance best practices,

taking into account both foreign and domestic pressures. I conduct a systematic analytical

comparison of the Russian code with the foreign practices, represented by the German,

American and British codes as well as the OECD Principles, and with the Russian law. The

results of the analysis show that the Russian code is a hybrid of international and national

practices, where international ones prevail. Applying the literature on diffusion of corporate

governance best practices, I provide the possible explanation of these findings and discuss the

implications for policy makers.

Key words: Russia, Corporate Governance, codes, Comparative Corporate Governance



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1. Introduction

In a broad perspective, the return on assets is perceived as the main concern of capital providers; however, this process may result in agency costs due to managerial entrenchment (Agency Type I, Shleifer and Vishny, 1986; Berle and Means, 1932; Jensen and Meckling, 1976) and ownership concentration (Agency Type II, Villalonga and Amit, 2006), where minority shareholders are more at risk. Focusing primary on the relationship between shareholders and stakeholders (Shleifer and Vishny, 1997), corporate governance is characterized by two dichotomous models: "the shareholder-model" which prevails in the US and the UK, and "the stakeholder-model" which prevails in most of the European continent, Latin America and Japan (e.g. Freeman, 1984; Gregory, 2001; Gregory and Simmelkjaer, 2002; Reaz and Hossain, 2007; Yoshikawa, Tsui-Auch, Lai Si and McGuire, 2007). While the shareholder model has a dispersed share ownership (e.g. Coffee, 1999; La Porta, Lopezde-Silanes, Shleifer and Vishny 1998; Pagano and Volpin, 2005), in the stakeholder model, the large publicly traded corporations are to a significant extent run by control groups with substantial equity interests in the firm (e.g. Del Brio, Maia-Ramires and Perote, 2006; Gregory, 2001). Furthermore, the wave of corporate scandals that occurred in the last decade, such as Enron and Arthur Andersen in the US, and Marconi in the UK (Buck, 2003), and the low confidence of shareholders triggered the issuance of new regulatory modes of corporate governance practices: the codes of corporate governance. Such codes suggest best practices concerning executive remuneration, the independence of non-executive directors, the



formation of board committees, the position of shareholders and the role and position of the auditor (Cadbury Code, 1992).

The body of research on codes covers the worldwide diffusion of these corporate governance best practices (Aguilera and Cuervo-Cazurra, 2004; Haxhi and van Ees, 2010) and generally considers the Anglo-American best practices as the source of inspiration and possible convergence for most of these practices (Aguilera and Cuervo-Cazurra, 2009; Haxhi and Aguilera, 2012). Several studies (e.g. Aguilera and Cuervo-Cazurra, 2004; La Porta et al., 1999) have argued that the diffusion of codes can be explained by the external influences, such as internationalization and the competition for capital. On the one hand, good governance in a particular country may attract domestic and foreign investment that can be seen as a stimulus towards an adoption of a good practice. On the other hand, since corporate governance practices are embedded in the national institutional context (Aoki, 2001), both formal (national legislation and judicial system, financial system) and informal (such as culture) institutions, and the national business system influence the creation and adoption of codes at country level (Aguilera and Cuervo-Cazurra, 2004; Haxhi and van Ees, 2010; Licht, Goldschmidt and Schwarz, 2005).

The influence of international corporate governance practices with respect to their country-level adoption may be even bigger in transition economies, with weak financial and legal institutions (McGee, 2008). As a typical example of a transition economy with a large investment potential, due to its reserves of natural resources, the Russian Federation, is aiming to improve corporate governance practices; nevertheless, Russia is still ranked very low with respect to transparency (34th out of 35 countries, Haigh, 2001). In 2002, in order to



improve country's image and further attract foreign investment, the Russian government, through the Federal Commission on Securities Market, issued the Russian Code of Corporate Conduct (McCarthy and Puffer, 2003). A few studies touched, directly or indirectly, upon the Russian Code; however, their main focus was on the system of corporate governance, national law, culture or historical influences in the Russian context (McCarthy and Puffer, 2002; McGee, 2008; Black, 2000; Buck, 2003; Bebchuk and Roe, 1999). Moreover, Roberts' (2004) research on the Russian code mainly focused on the influences of the financial system and the Anglo-Saxon versus Continental-European systems on the code; however, the research on the Russian code and how it is influenced by international corporate governance best practices are scarce and limited in number.

In this respect, the aim of the current thesis is to research, in the light of different theoretical perspectives, the influence of national (business system and institutions) and international corporate governance best practices on the Russian Code of Corporate Conduct. More particularly, in this exploratory study, I will compare the content of the Russian code with several influential national (e.g. Germany, the UK and the US) and international (e.g. OECD) codes, as well as with the Russian national legislation. For this purpose, I will, first, conduct a systematic analytical comparison of the relevant documents (codes' and legal provisions), and second, in a first exploratory attempt, I will discuss and explain these similarities and differences in the light of institutional approaches. Therefore, the main research questions of the thesis are:

(1) What is the level of similarity, in terms of content, of the Russian code with international corporate governance best practices? (2) What may explain these similarities and differences?



The contribution of this study is twofold. First, in a broader perspective, this similarity of the Russian code with the (inter)national practices may serve as an indicator of the level of contagion or 'resistance' of the Russian national business system facing constant external pressures to adjust to international best practices, expressing an ongoing transnational process of diffusion of corporate governance best practices around the globe. And second, by trying to explain and analyze the content of the codes and legal documents, the current study aims to shed the light on the process of code creation in Russia, and broader on transition economies.

The current thesis is structured as follows: first, the literature review will cover the main studies on comparative corporate governance as well as the background of the corporate governance and the Russian business system; then, the method section describes the approach and the data used for the research; furthermore, the analysis part includes the comparison of codes and laws, while the results part describes the finding; and finally, the discussion and concluding sections contain the explanation of the findings, limitations, implications for the policy makers and suggestions for the future research.

2. Literature review

2.1 Corporate governance and diffusion of codes of best practice

The demand for investment creates problems as to how to divide the capital between the market participants. As such, corporate governance plays a vital role in determining where, in what form and at what cost capital is provided by outside investors (Shleifer and Vishny, 1997). In addition, corporate governance is aimed at determining separation of ownership and control in corporations to help to protect investors' rights (de Jong et al., 2000). The OECD defines corporate governance as:

Procedures and processes according to which an organization is directed and controlled. The corporate governance structure specifies the distribution of rights and responsibilities among the different participants in the organization – such as the board, managers, shareholders and other stakeholders – and lays down the rules and procedures for decision-making (European Central Bank, 2004).

Much of the research in the field of corporate governance is based on an agency theory (Jensen, 1986; Fama and Jensen, 1983). By applying the principal-agency theory to the corporate governance, scholars single out two different types of corporate conflicts: the classic *owner-manager conflict* (Agency Problem I, Berle and Means, 1932; Jensen and Meckling, 1976; Villalonga and Amit, 2006; Enriques and Volpin, 2007), which can be mitigated by various mechanisms used by the large shareholders in order to monitor the managers (Shleifer and Vishny, 1997); and the *ownership concentration conflict* (Agency Problem II, Shleifer and Vishny, 1986; Anderson and Reeb, 2003), where large shareholders



use their controlling position to extract private benefits by infringing upon minority shareholders' interests.

According to Aguilera and Jackson (2003), the main concern of corporate governance is the relationships between stakeholders as well as the structure of their rights and responsibilities. In this respect, the research on corporate governance distinguishes between two models: "the shareholder-model" that is typical for the UK and the USA, and "the stakeholder-model" spread in Europe, Japan and Latin America (e.g. Freeman, 1984; Gregory and Simmelkjaer, 2002; La Porta, Lopez-de-Silanes, Shleifer and Vishny, 1998; Yoshikawa, Tsui-Auch, Lai Si and McGuire, 2007). While the Anglo-American model(or "the shareholder-model") of corporate governance is characterized by a dispersed share ownership, active markets for corporate control, focus on short-term returns, strong shareholders rights, flexible labor markets and financing through equity (e.g. Aguilera, 2004; Coffee, 1999; Pagano and Volpin, 2005), the Continental-European model (or "the stakeholder-model") demonstrates the focus on long-term returns, concentrated ownership and rigid market for corporate control (e.g. Aguilera and Jackson, 2003; Del Brio, Maia-Ramires and Perote, 2006).

The problems of managerial entrenchment (Agency Problem 1) and concentrated ownership (Agency Problem II) resulted in the wave of corporate scandals including the collapse of Enron and Arthur Andersen in the USA and the failure of Marconi in the UK (Buck, 2003). Those events together with the insecure position of shareholders triggered the appearance of new regulatory modes of corporate governance practices – the corporate governance codes.



The formation of corporate governance codes helps to defend the rights and legal interests of shareholders, employees, creditors, partners and others (Shleifer and Vishny, 1997). The code of good governance is defined by Aguilera and Cuervo-Cazurra (2004) as "a set of best practice recommendations regarding the behavior and structure of the board of directors of a firm" (Aguilera and Cuervo-Cazurra, 2004, p. 417). Codes include provisions, regulating the relationships between shareholders and top management, auditing and information disclosure, the composition of the board of directors, and nomination, dismissal and remuneration of members of the board of directors and managers (Cadbury Code, 1992). Most codes of good governance use "comply-or-explain" principle; that means that while compliance with the code's provisions is voluntary, the disclosure of the reasons for noncompliance is mandatory (Haxhi and van Ees, 2010). The companies are not forced by law to comply with the code, but by their reputation on the market and their attractiveness for stakeholders. The worse the reputation, the fewer investors will invest their capital into the company putting the company at risk of being de-listed. Nevertheless, countries differ in their approach to compliance with the code. For example, in the Netherlands and Germany the "comply-or-explain" principle is amended by law, while in the UK the code implementation is enforced by the stock exchange (Haxhi and Aguilera, 2012). The Public Company Accounting Reform and Investor Protection Act, better known as the Sarbanes-Oxley Act, issued by American Securities Exchange Commission in 2002, is an example of a legally binding code where all the provisions are mandatory by law (Gregory, 2007).

First codes of corporate governance appeared in the US in the late 1970-1980s.As a result of transition from the conglomerate merger movement towards predatory hostile



takeover behavior of managers and the shareholder rights movement, a report called 'The Role and Composition of the Board of Directors of the Large Publicly Owned Corporation' was issued by the Business Roundtable in 1978 (Aguilera and Cuervo-Cazurra, 2004). However, one of the most respected and influential codes was conceived in the UK in 1992 – the Cadbury Committee Report: Financial Aspects of Corporate Governance. The trigger for the code was "the perceived low level of confidence both in financial reporting and in the ability of auditors to provide the safeguards which the users of the company reports sought and expected" (Cadbury Report, 1992; Paragraph 2.1). The emergence of the Cadbury Code of Corporate Governance (1992) led up to unprecedented creation of corporate governance codes around the world: as of 2010 more than 80 countries issued their own codes of best practice (European Corporate Governance Institute, 2011).

Even though the corporate governance practices vary around the world, there are some *external influences* as globalization and market liberalization that stimulate convergence of effective corporate governance systems (Aguilera and Jackson, 2003). Several studies investigate the diffusion of these corporate governance best practices (Aguilera and Cuervo-Cazurra, 2004; Haxhi and van Ees, 2010) and consider the Anglo-American best practices as the source of inspiration for legislators around the world (Aguilera and Cuervo-Cazurra, 2009; Haxhi and Aguilera, 2012). Some scholars (e.g. Aguilera and Cuervo-Cazurra, 2004; La Porta et. al., 1998) argue that the diffusion of codes is caused by internationalization and competition for capital between countries, as companies with good corporate governance become attractive for investors, therefore promoting economic growth of a country; so the external influences may be caused by the foreign investors (e.g. Roberts,



2004; McCarthy and Puffer, 2003; Aguilera and Cuervo-Cazurra, 2004; Aguilera and Cuervo-Cazurra, 2008; Aguilera and Cuervo-Cazurra, 2008). In this respect, Aguilera and Cuervo-Cazurra (2004) argue that it is important to know the issuing body of the code: for example, if the issuing body is a stock exchange, the issue of the code might have been pressured by investors. The same view was supported by La Porta et al. (1999), providing evidence that foreign direct investment and the corporate governance practice are connected and influence each other. Similarly, studies by Filatochev et. al. (2007) and Fernandez-Rodriguez et. al (2004) prove that the implementation of codes of corporate governance positively affects the stock price as well as the direction of foreign direct investment and the entry-mode decision of multinational corporations. In addition to that, the spread of corporate governance codes was encouraged by transnational organizations, such as the World Bank and the Organization for Economic Cooperation and Development (OECD) that encouraged countries to adopt best governance practices (Aguilera and Cuervo-Cazurra, 2008; Roberts, 2004). The OECD even issued its Principles of Corporate Governance that was supposed to be a basis for the development of codes by other countries and evaluation of corporate governance by the World Bank (Aguilera and Cuervo-Cazurra, 2008). Furthermore, adopting international best practices can reinvent the legal system and increase the protection of shareholders' rights in countries with weak institutions, such as countries in the phase of a transition to a market economy (McGee, 2008). In this case the code can be a good supplement to the national law, reducing the legal flaws in shareholders' rights' protection, provide means to hold the managers and directors accountable, increase the disclosure of



information to shareholders or improve corporate governance (Aguilera and CuervoCazurra, 2004).

A considerable amount of the comparative research on codes of best practice is descriptive, rather than explanatory (Gregory, 2001; Gregory and Simmelkjaer, 2002; Coombes and Wong, 2004; Gregory, 2007). However, some studies go beyond the differences and similarities and not only compare the codes, but also try to find the reasons for adoption of this or that specific good practice by a country or a company, in other words they investigate the internal influences on the code formation. The scholars usually use an institutional approach for that purpose (e.g. Aguilera and Cuervo-Cazurra, 2004; Haxhi and van Ees, 2010; Enrione, Mazza and Zerboni, 2006; Haxhi and Aguilera, 2012; Licht, Goldschmit and Schwartz, 2005), building on papers by Whitley (1994), North (1991) or Williamson (2000). Despite the benefits of internationalization pressures, it is not always easy to adapt to the international standards, because "governance practices are embedded in the broader institutional environment" (Aoki, 2001). Aguilera and Jackson (2003) argue that national institutions are crucial for understanding the variation of codes from country to country. Aguilera and Cuervo-Cazurra (2004) and Aoki (2001) also conclude that characteristics of national institutions can influence the creation of national standards for corporate governance, be an internal pressure for the code-issuing process or influence the code formation.

Most scholars, investigating the reasons for the code formation, focus on the influence of financial, legal or informal institutions (such as culture) on the diffusion of codes (e.g. Aguilera and Cuervo-Cazurra, 2004; Haxhi and van Ees, 2010; Licht, Goldschmit and



Schwartz, 2005; Enrione, Mazz, Zerboni, 2006). For example, Aguilera and Cuervo-Cazurra (2004) in their paper focus on the influence of *financial* and *legal* institutions on the adoption of the code, coming to a conclusion that the diffusion of codes is triggered by a need of raising the efficiency of corporate governance, while the adoption of the code brings legitimation. Haxhi and van Ees (2010), by extending previous work of Aguilera and Cuervo-Cazurra (2004), and Hofstede (1997), investigate the influences of national culture on the worldwide diffusion of corporate governance practices, using the cultural dimensions, such as individualism, uncertainty avoidance, power distance and masculinity. Thus, "national cultural characteristics affect the worldwide diffusion of corporate governance guidelines" (Haxhi and van Ees, 2010). Similarly, Licht, Goldschmit and Schwartz (2005) argue that national culture is highly reflected in national law and corporate governance guidelines. Gregory and Simmelkjaer (2002) find that even though the codes demonstrate the tendency to resemble each other, the difference between the codes can be found due to the differences in the national law, while Coombes and Wong (2004) argue that the code of corporate governance and the national law should support each other. Finally, several studies investigate the influence of institutional actors on the adoption and the issue process of the code of corporate governance, such as law-makers, model makers, market makers and governance enactors researched by Enrione, Mazza and Zerboni (2006) or capital pressures, management and state researched by Haxhi and Aguilera (2012).

The external influences of international corporate governance can be even bigger in transition economies due to weak financial and legal institutions (McGee, 2008). However, Reaz and Hossain (2007) argue that it is difficult to implement western models for the



transition economies due to their poor corporate governance; therefore some translation into a hybrid model is needed. Russia, being a typical example of a transition economy, is an interesting case due to specificity of the national business system and culture, weak legal and financial institutions one the one hand, and strive for foreign investment, on the other.

2.2 Russian business system and national institutions

According to Aoki (2001), corporate governance practices are embedded in national institutions. Formal (national legislation and judicial system) and informal (culture) institutions influence the adoption of the corporate governance code by a country (Cuervo, 2002; Roberts, 2004; Aguilera and Cuervo-Cazurra, 2004). In this respect, by applying the frameworks of Whitley (1994) and Williamson (1994) this chapter provides the analysis of Russian national business system and formal and informal institutions.

2.2.1 Business system

After 70 years of communism, central planning, perestroika and glasnost Russia finally ended up on a stage of privatization. By the end of privatization more than 70% of the enterprises were accumulated by managers and all the economic power was concentrated in hands of oligarchs, who have created industrial and financial conglomerates through



negotiating fruitful deals with the government¹ (Braguinsky and Yavlinsky, 2000). This all resulted in numerous violations of shareholders rights, such as asset stripping, minimal transparency, setting up personally owned shadow companies and deleting names from shareholders' registers or simply hiding the information about shareholders' meetings (McCarthy and Puffer, 2002). In the end Russia turned out to be ranked 34th out of 35 countries in a survey conducted by PricewaterhouseCoopers on transparency (Haigh, 2001).

Such actions together with high levels of underground economy and corruption discourage the investments – both domestic and foreign - that Russian companies need. It should be mentioned that the main trigger of the Russian economy is the export of mineral resources, including oil, gas and metals² (Braguinsky and Yavlinsky, 2000). The energy sector is also the main source of finance for other industries and for Russian government – that is why the government still exercises a large ownership position and control over it (Black, 2000). A strive for financial resources is one of the biggest problems for Russia. If the country had enough capital, it could be used for plant and equipment modernization and restructuring of the industry sector, meaning less dependence of the country on the export of raw materials (McCarthy and Puffer, 2003). That is why the policy of the

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¹The struggle between the political and private forces takes place mainly around the possession of these resources as well as the control over the country's power plants and the governmental budget inflows (Braguinsky and Yavlinsky, 2000). This provoked the formation of oligarchic groups that have built up empires owing banks, factories, trading companies and mass media due to their links with political organizations and the government (McCarthy and Puffer, 2003).

²Energy sector accounts for almost half of the country's industrial output (McCarthy and Puffer, 2003) that was equivalent to 46% of Russia's hard currency exports in 1996. In the mid-1990s out of 50 largest PSOEs 32% were acting in oil and gas sector (with the two biggest players of Russian economy: UES Russia with U.S.\$22,8 billion in annual sales, and Gazprom with U.S.\$22,5 billion in annual sales), 34% in metal industry and 10% in chemical and petrochemical industry (Braguinsky and Yavlinsky, 2000).

Russian government nowadays is under the pressure from FDIs, primarily the biggest of them: Germany, the US and the UK (Frye, 2000). In addition to that, Russian economic development is influenced by international institutions as the World Bank, the European Bank of Reconstruction and Development, the International Monetary Fund and the World Trade Organization (WTO) – especially as one of the country's main objectives within the last decade has been a membership in the WTO (McGee, 2008). This pressure pushes Russia in the direction of the Anglo-American agency-theory based model; however its development requires strong institutions that Russia obviously lacks so far (Roberts, 2004). If the situation changes, Russia could strengthen the institutions and adopt good corporate governance in the companies in order to improve the investment climate.

2.2.2 Formal and informal institutions

2.2.2 (A) Capital market

Russian companies need capital, but the capital market in the country remains underdeveloped. Most companies rely on their own funds, their profits or personal reserves instead of bank credits, bond or equity issues; however equity funds are not yet well established in Russian companies (McGee, 2008). In addition, the commercial banking system is weak and does not allow a firm to rely on this channel of finance³. The banking sector of Russia is highly concentrated and can be characterized by strong

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³The volume of private sector credit equaled only 21% in 2005, while in the US it was 222% (Beck et. al. 2006).

governmental involvement and dominant governmental ownership⁴ (McCarthy and Puffer, 2003).

In 1990-s the Federal Commission of Russia attempted setting up a *capital market* resembling the Anglo-American system (McGee, 2008). According to this strategy, an effective semi-governmental organization (SGO) was created and became a central player on the equities market. The market was relatively small and the government always preferred banks as the main source of capital towards equities, as the equity market was not that easy and direct. However, over time banks got more and more power becoming strategically more attractive for the government⁵. Strengthening of the positions of Russian banks and the Russian Central Bank as participants of the equities market pushed the capital market closer to German-style capital market, dominated by powerful banks (Frye, 2000).

Nowadays, Russia has an underdeveloped *stock market* represented by the Russian Trade System (RTS), where an amount of firms traded on a regular basis is very small. There are basically several large players on the market with the majority from the natural resources sector⁶ (Buck, 2003). Most Russian companies prefer not to deal with weak Russian institutions and increase their market share by listing on an international

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⁴Sberbank— state-owned bank, gives out some loans, but preferably to a limited number of the most powerful companies (McCarthy and Puffer, 2003), that accounted to 3-4% of the total amount of loans (Braguinsky and Yavlinsky, 2000). Sberbank also holds about 32% of the assets of the banking sector (McGee, 2008).

⁵The Protocol of May 29, 1997 gave the Russian Central Bank a license to oversee bank activities on the equity market. Later on new licensing regulations were accepted in order to simplify the procedures and the banks and brokers got the right to participate in the corporate equities market (Frye, 2000).

⁶For example, 33% of the total capitalization on RTS in September, 2006, was raised by Gazprom – the national state-owned monopoly from energy sector (McGee, 2008). In 2003 there were only 60 firms represented on the national stock exchange on the regular basis, 57 of them had American Depository Receipts quotations in New York (Buck, 2003).

stock exchange⁷ (Black, 2000; Black 2001). As for the corporate financial structure, the *limited debt* can be emphasized, which again is a result of a lack of financial resources. The amount of outside financing has been growing rapidly within the last years, especially *bond financing*, some of which are used to finance the rising amount of M&A transactions (McGee, 2008).

Thus, today Russian banks and financial markets cannot provide real investments to companies. Bond and stock markets are still quite small and illiquid, that together with information asymmetries results in the increase in costs of external funds for companies. As for capital markets, they are segmented and insider-oriented, hence are not able to provide an effective risk-sharing mechanism to Russian economy (Braguinsky and Yavlinsky, 2000).

2.2.2 (B) Stakeholders and ownership

During the privatization the shares were distributed unevenly and the majority of them got into the hands of *managers* and *workers*. This resulted in insiders' domination in the structure of ownership and a significant managerial control in Russia (Lazareva and Rachinsky, 2007). Due to their ability to persuade workers either to sell their shares or to vote in favor of managers the managerial control has a tendency to become more and more concentrated. Not

⁷Such companies as Vimpelkom, MTS, Yukos Oil and others have already recognized the benefits of listing abroad, demonstrating the emergence of the new trend among large Russian companies. Being concerned by this fact FFMS already obliged the firms to place at least 30% of their issue on domestic market (McGee, 2008, McCarthy and Puffer, 2003).



only on the company level, but also on the aggregate level the *ownership* became very concentrated, while about 40% of the assets belong to a small number of business groups (about 22), usually controlled by oligarchs ⁸ (Guriev and Rachinsky, 2005). Thereby, managers either control shareholders or are affiliated with large shareholders (McGee, 2008), that is why the main conflict of interest here is between *large blockholders* and *minority shareholders* in contrast to normal Anglo-American model, where the conflict is between managers and shareholders. That is why the main problem in Russia is the infringement of minority shareholders' rights by different means, such as outright theft, asset stripping, dilution of shares, information asymmetries or transfer pricing. Most corporate scandals are based on abuse of minority shareholders (Frye, 2000). In addition, ownership concentration results in extra costs, such as cost of monitoring the managers, low liquidity if the company's stock and limited possibilities for diversification.

There are also wars for control between other layers, such as large shareholders, firms' insiders and outside raiders, the state and the private business. While the abuse of minority shareholders' rights has a decreasing tendency, the involvement of the state into business is only rising (Braguinsky and Yavlinsky, 2000).

However, there is a reverse side of tooncentration of ownership. Because of weak national legal institutions that are supposed to protect the shareholders' rights ownership, concentration plays a role in the main mechanism of corporate governance in Russia (McGee, 2008). Strong concentrated ownership secures the power from expropriation by management

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⁸About 30-35% of companies are members of groups of firms. According to the survey of Lazareva and Rachinsky (2007) about 18% of these firms was usually firm's suppliers, and about 18% - their customers.

or large owners. Interests of a large shareholder are in line with that of other shareholders, and with maximization of the share price in particular. So he exercises tight control and monitoring of the management.

2.2.2 (C) National law and legislation

The corporate governance development in Russia started with the emergence of both self-regulatory organizations and increasing governmental involvement into the business. The self-regulatory organizations include the Corporate Governance Association, the Association for the Protection of Shareholder Rights, Club 2015 (a group of prospective national businessmen supporting transparency), the Russian Association of Industrialists and Entrepreneurs which was a lobbying group for big business, a political organization Delovaya Rossiya, involving 17% of important Russian businessmen, and the Russian Institute of Directors (McGee, 2008; McCarthy and Puffer, 2002). There were also activists of movement for Western shareholders' rights among directors of Hermitage Capital Management and Prosperity Capital Management. As for governmental forces aimed at the creation of good corporate governance in Russian, they included president Putin and Prime Minister Kasyanov, Ministry of Finance, Ministry of Economic Development, Deputy Minister of the Presidential Administration Dmitry Kozak and Federal Commission for the Securities Market (FCSM) chaired by Igor Kostikov. All these groups cooperated on a legal framework that could provide adequate corporate governance in the country.



The 1986 Law on Private Cooperatives marked the formation of post-soviet capitalistic law in Russia, legalizing private cooperative business. Later on the Law on Individual Labor Activity allowed the small business activity and the Law on Soviet State Enterprises (1989) proclaimed competition and dealing with foreign partners as well as creation of joint ventures. The 1990 Law on Property provided the people with private ownership rights. Finally, managers, employees and other residents were allowed to gain shares in enterprises by the Law on Privatization of 1992. Two of the central laws concerning the corporate governance followed: the 1996 Law on Joint Stock Companies (JSC) that strengthened the shareholders rights and let them get the dividends payments (however, the law was fairly abused throughout history) and the Law on the Securities Market of 1996 that as well aimed at protection of minority shareholders' interests. In 2000 the tax reform followed in order to decrease the flat tax for firms and individuals aimed at provoking a higher level of disclosure and transparency. All these laws were supposed to create a legal base for ownership, creation, operations of enterprises as well as protection of property rights in order to improve the corporate governance in the country (McGee, 2008).

There were other positive shifts in the private sector, such as appearance of international and national ratings of Russian companies, taking into consideration the corporate governance levels and risks⁹. The reaction of investors on those ratings was obvious and it provoked companies to search for opportunities of improvement of their

⁹In 2000 Troika Dialog Bank, dealing with 30% of investors in Russia, started to publish Corporate Governance Lineup, evaluating the top 70 companies in Russia (McCarthy & Puffer, 2003). Other ratings came from Standard&Poor's, including the special rating on corporate governance, and UBS-Warburg (Buck, 2003).



corporate governance¹⁰. In addition, the fact that major Russian companies wanted or started to be listed on international stock exchange, mostly on the NYSE (e.g. MTS, Vimpelkom, Yukos, Wimm Bill Dann, Gazprom, Rosneft), worked as a trigger for the better corporate governance in them, because they had to comply with standards of Sarbanes-Oxley Law, adopted in August, 2002 in the US (Jack, 2003).

One of the strongest influences was caused by large international auditors that entered the Russian market in late 1990-s, such as the Big Four, that were hired by biggest Russian companies to improve their credibility in the international arena (McGee, 2008).

Moreover, some parallel events, such as the OECD's Corporate Governance Roundtable (is conducted twice a year since 1999) and conferences hosted by the American Chamber of Commerce in Russia, stimulated the formation of new legislation, emphasizing the need of enforcement and adequate legal system (Polkovnikov, 2005). In 2002 the Code of Corporate Conduct was issued in order to solve those problems and become a template for Russian companies to adopt.

2.2.2 (D) Judicial system and enforcement

Whilst the Russian legislation is one of the closest to that of Western countries among the countries with transition economies, its judicial system lags behind (Black, Kraakman and

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¹⁰For example, Yukos Oil adopted GAAP accounting standards and increased its transparency and disclosure to minority shareholders, Wimm-Bill-Dann (major Russian food producer) was one of the first companies to create the code of corporate conduct that helped to raise its share price by 16% on the IPO in 2002 (Puffer and McCarthy, 2003; Wimm-Bill-Dann confessions, 2002).

Tarassova, 2000). Governmental bureaucracy, ineffective system of courts and "shadow justice" together with weak enforcement of property rights are the main problems in Russia (McCarthy and Puffer, 2003). So far the case of illegal judgment is a common practice in some regional courts. The arbitration practices have just begun taking place. That is why most large residents after losing lawsuits in Russian courts turn to international ones in order to protect their rights (McGee, 2008).

One of the central problems of Russian corporate governance is the abuse of minority shareholders. As I have already mentioned, the Law on JSC was aimed at the provision of protection of minority shareholders' rights as well as the Code of Corporate Conduct (2002). However, in comparison with American practice where the code is mandatory, or the German one, which is based on the "comply or explain" principal, Russian Code is voluntary and disclosure is on "comply or explain" basis only for listed JSC (Buck, 2003). Low enforcement results in gross violations of legislation. That is why there is a passionate discussion between the government and regulatory bodies about the importance of enforcement of laws in Russia (Black, 2001).

Weak enforcement is expressed in a lack of power of the Federal Commission that is a regulatory body for controlling the corporate governance in Russia. The only tool that it could use in case of a violation of shareholder rights is turning the firm to the state courts that are inefficient and corrupted. In addition, dealing with such companies as Gazprom, Moscow City Telephone System or Norilsk Nickel, where infringing on the minority shareholders' rights often takes place, the Federal Commission is at a disadvantage. Some of these companies have political power due to ties or connections with the government, so this could



be a constraint for a commission to work in such environment. Thus, even owners of large stakes are sometimes not able to influence the decisions of insiders (Buck, 2003). The Federal Commission had nothing else to do than collect the information and publicize the facts in the media so as to drive the plummet of the stock price (Frye, 2000).

As it was mentioned before, there is no strong legal enforcement in Russian; however the business in Russia relies on *private enforcement teams* such as organized crime and corrupted police and government officials (Braguinsky and Yavlinsky, 2000). Privatized firms are mostly governed by managers, parallel economy structures or bureaucrats (just as during the final stage of the planned economy). Insiders not so much rely on laws and the judicial system, but on the parallel economy structures. In fact in the country where there is no legal enforcement of protection of private property rights, paradoxically appeared another parallel even stronger enforcement – something like a miniature totalitarian economy based on informal property rights, protected by insiders, gangsters and bribed government officials (Braguinsky and Yavlinsky, 2000).

2.2.2 (E) Social institutions and culture

According to Bernard Black (1990), national law is not the main force of forming national corporate governance. In contrast, socio-economic institutions and national culture can have a much bigger impact on corporate governance by blocking some governmental reforms. Especially in countries like Russia, where law is based on a civil code – not on a judge-based case law as in most developed countries - there is a strong institutional support for relational



shareholders. Powerful groups of insiders from large firms can often easily influence the corrupted legislators and laws or even lobby their interests to the government (Braguinsky and Yavlinsky, 2000).

Cultural context and institutions affect the formation of corporate governance in the country and its business environment (Puffer and McCarthy, 2003). Examples of such countries as France, Germany or the USA show that their corporate governance systems clearly reflect national traditions and values. McCarthy and Puffer (2002) argue that in case of Russia its own cultural influences, including its institutions, traditions and values, will even greater impact the development of national corporate governance in the future. Trevor Buck (2003) supported the view that any Russian institution should interact with national culture.

Hofstede (1980) argues that culture is a quintessence of the ideas, values, norms and meanings shared by members of a society that are transmitted through families and communities. Such values and ideas arise from institutions, such as school system, religion, family relationships and others and are highly dependent on history of the country (Buck, 2003). Due to the uneasy historical development, modern Russian corporate governance is influenced by such factors as low ethical values in society, high power distance and uncertainty avoidance, low trust and reliance on personal networks (Elenkov, 1998; Robertson, Gilley and Street, 2003; Naumov and Puffer, 2000).



2.2.3 Motivation for the research

Taking into consideration the information provided above, the conclusion can be made that the code can be influenced either by external pressures, such as globalization and rising competition, internationalization and foreign direct investors or diffusion of best practiceof corporate governance (Filatochev et al., 2007; Aguilera and Cuervo-Cazurra, 2009; La Porta et al., 1998; Aguilera and Jackson, 2003; Aguilera and Cuervo-Cazurra, 2004) – or by internal pressures, such as national institutions and elements of the business system (Enrione, Mazza and Zerboni, 2006; Haxhi and van Ees, 2010; Licht et al., 2005; Haxhi and Aguilera, 2012). Therefore it would be interesting to look at the influences on the formation of a code of corporate governance in one country. There have been a number of studies of a similar kind, such as (e.g. Aguilera et al., 2006; Jackson, 2003); however, few studies were done on the Russian corporate governance and the Russian Code of Corporate Conduct (2002) in particular.

Most research in Russia has been aimed at investigating Russia's national law, the structure of corporate governance and culture as well as historical and international influences on them (Mobius and Filatov, 2001; Dolgopyatova, 2004; Polkovnikov, 2005; Direktorovich and Ogorodov, 2001; Yakovlev, 2005).

Thus, Yakovlev (2005), Mobius and Filatov (2001), Dolgopyatova (2004) and Polkovnikov (2005) focus on the *national law* of Russia, analyzing international influences on Russian law from the Continental-European and Anglo-American law. It should be mentioned that the findings of the scholars are sometimes contradictory to each other. While



some authors (Brada and Singh, 1998; D'Souza et al., 2000; Polkovnikov, 2005) argue that Continental-European lawis being transplanted to transition economies and Russia, in particular, due to the institutional context, underdeveloped financial markets and increasingly concentrated ownership. Dore (2000), Roberts (2002) and Directorovich and Ogorodov (2001) find that Russia is developing in the direction of an Anglo-Saxon model of corporate governance. Similarly, the studies on the structure of corporate governance in Russia also have contrasting findings: while Direktorovich and Ogorodov (2001) found similarities between the Russian and the Anglo-Saxon model of corporate governance, such as the organization of the stock exchange. Mobius and Filatov (2001) tend to disagree because the Russian investment model is organized through a borrowed bank capital, like in Germany. In addition, Yakovlev (2005) finds elements of both systems in the Russian corporate governance structure. McCarthy and Puffer (2002), McGee (2008), Black (2000) and Buck (2003) research the international influences on the Russian corporate governance structure and economy as well as its cultural influences on business. Bebchuk and Roe (1999) investigates the historical influences on Russian corporate governance.

Even though all of those papers extensively cover the problems and development of corporate governance and related topics and some of them touch upon the Russian Code of Corporate Conduct (2002), none of them focuses on the code in particular. This provides the motivation for the current research on the Russian code in order to investigate the influences on its formation. Similar research has been conducted by Roberts (2004), who compared the Russian system and the code with Anglo-American and Continental-European models in the context of financial markets. The paper briefly covers the Russian Code of Corporate



Conduct (2002) concluding that it resembles the Anglo-Saxon model of corporate governance; however other possible influences on the code were not included into the paper.

Since the influences on the formation of the Russian code are under researched, it provides a possibility to conduct an analysis of the code covering the possible influences from various sides. In this respect the main research questions of the thesis are: (1) What is the level of similarity, in terms of content, of the Russian code with international corporate governance best practices? (2) What may explain these similarities and differences?

The main contribution of the study consists of the two parts. Firstly, the similarities and differences between the Russian code and national and international practices will provide the possibility to conclude whether the national business system is resistant towards international influences or resembles and borrows the elements of the foreign corporate governance systems, demonstrating the diffusion of corporate governance best practices across countries. Secondly, the analysis and possible explanations of my findings will contribute to the literature on the Russian code, and broader on transition economies.



2.2.4 Conceptual Model

According to the literature, there can be external and internal pressures on the code formation (e.g. Aguilera and Cuervo-Cazurra, 2004). The external influences are triggered by globalization and internationalization and result in convergence of best practices around the world (Aguilera and Jackson, 2003). Since Anglo-American best practices are widely known as an icon in the field of corporate governance (Haxhi and van Ees, 2010), British and American codes will be included into the current comparison of codes. For that purpose, one of the most influential and earliest codes used as a template to follow by other countries, according to Aguilera and Cuervo-Cazurra (2004) and Aguilera et. al. (2006) - the Report of the Committee on the Financial Aspects of Corporate Governance or "Cadbury Committee Report" (December 1992, reissued in 1996) issued by the Financial Reporting Council and the London Stock Exchange – was chosen to represent the UK in the present study. However, since the Cadbury Committee Report is quite an old one and there could have been changes in the corporate governance of the UK before the Russian code was issued in 2002, another code - The Combined Code on Corporate Governance (July 1998), issued by the Financial Reporting Council – will be included into the study, being the last British combined code issued in the UK before the appearance of the Russian code, therefore correcting the present study.

In order to track the influences of American corporate governance practices on the Russian code two documents were chosen: firstly, the Report of the NACD Blue Ribbon Commission on Director Professionalism in its last version of 2001, issued by National Association of Corporate Directors, which is an influential organization in the USA 'The Transnational Diffusion of Corporate Governance Best Practices: the Russian Code of Corporate Conduct'



consisting of the board members and educating the board members; and secondly, the Principles of Corporate Governance (May 2002) – a White Paper from The Business Round Table, an association of CEOs of leading US companies. Both documents are voluntary and cover the best practices used by top American companies. Since the documents are comprised by such corporate governance actors as the board members and the CEOs, they reflect the practices used by major companies in the US and are highly influential for American businesses (BRT Principles, Foreword; NACD Report, p.2). The documents also differ from each other – while the NACD Report is more focused on directors and boards (especially board-independence from management), the BRT Principles represent the board evolution (Millstein, 1998) – therefore complementing each other. Both BRT Principles and the NACD Report are included into the comparative studies of codes by Gregory (2007), the Partner of Weil, Gotshal & Manges LLP.

It is common practice for countries to orient at the well-known best practices used in the world. Another source of inspiration for countries during the issuance process is the Continental-European model (or "stakeholder-model") used widespread in Germany, Japan and Latin America (Franks and Mayer, 1994; Aguilera and Jackson, 2003). Historically Germany has caused an impact on Russia's economy (mutual trade and foreign investment) and legislation (Russian law is extensively borrowed from German one) (Polkovnikov, 2005). In addition, the German Corporate Governance Code, issued by "Cromme Commission" (February 2002), serves an icon of Continental-European law (Cromme, 2005). Due to these reasons the German code will be included into the present



comparison of codes as one of the most famous representatives of the Continental-European system.

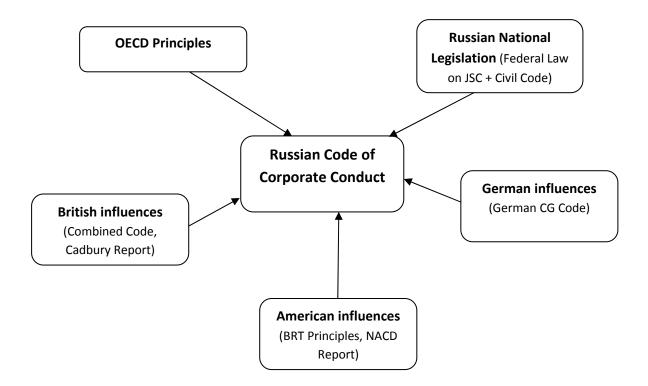
As it has been mentioned before, the transnational diffusion of codes of best practice was stimulated by international organizations, such as the World Bank and the Organization of Economic Cooperation and Development (Roberts, 2004; Aguilera and Cuervo-Cazurra, 2009). The OECD even developed the "OECD Principles of Corporate Governance" in 1999 that should serve as guidelines for other countries in the creation process of new codes (Coombes and Watson, 2001). Moreover, according to McGee (2008), Roberts (2004) and McCarthy and Puffer (2003), the OECD Principles became the core of the Russian Code of Corporate Conduct (2002). In this respect, the OECD Principles of Corporate Governance (April 1999), based on the Millstein Report, will be added to the comparison of codes in order to investigate its influence on the Russian code.

Besides the external pressures for the adoption of the code there can also be internal pressures. Internal pressures on the code formation can be caused by national institutions (Aguilera and Cuervo-Cazurra, 2004). That is why the current research would be incomplete without the national legislation. In order to track the influence of the Russian national law on the Code of corporate conduct, Russia's Federal Law on Joint Stock Companies (December 1995, amended in 1996), Article 103 of the Russian Civil Code (November 1994) and the Federal Law on the Securities Market (April 1996) will be included into the comparison as the main laws regulating the functioning of the joint stock companies in Russia (Black, Kraakman, Tarassova, 2000; Polkovnikov, 2005; McGee, 2008; McCarthy and Puffer, 2002). And certainly the Russian Code of Corporate Conduct



(April 2002) itself issued by the Federal Securities Commission is closing the list of the documents for this study. The documents' influence on the Russian Code is illustrated in Figure 1 below.

Figure 1. Conceptual model of possible influences on the formation of the Russian Code of Corporate Conduct





3. Method and data sources

The current research is aimed at analyzing the transnational processes of diffusion of corporate governance best practices of the Russian Code of Corporate Conduct (2002). It is a very specific and interesting case as Russia is a country with a transition economy, has relatively undeveloped institutions and capital markets, and has quite recently set-up corporate laws (McGee, 2008). An analytical comparison of documents will be used as a method for the current research. In order to find out to what extent international practices were borrowed and adopted by Russian legislators during creation and development of the Russian Code of Corporate Conduct, the Code's main provisions will be compared with that of the Western ones¹¹ that could have influenced the Code formation, the worldwide known best practices recommended by the OECD¹² and the Russian national legislation¹³, previously described in the conceptual model of the current thesis. In case similarities are found, it would mean that for the creation of the Code, Russian legislators turned to international experiences and proven best practices, or to the national law due to the specific characteristics of the national business system.

As the current research focuses on the formation of the Russian Code of Corporate conduct and the possible influences during its creation, all the documents used for the comparison were issued before April, 2002 – the date of issue of the Russian code.

All the Codes or Principles used were included in their last – amended or revised –

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¹¹The Western Codes include: "Cadbury Committee Report" (1992/1996), The Combined Code of Corporate Governance (1998) of the UK, the "NACD Report" (2001) and the "BRT Principles" (2002) of the US and the German Corporate Governance Code (2002).

¹² The OECD Principles of Corporate Governance (1999).

¹³ The national legislation includes: the Federal Law on Joint Stock Companies (1995), the Federal Law on Securities Market (1996) and Article 103 of Russian Civil Code (1994).

version, earlier than the indicated date. All documents used for the comparison are available on the Internet: the codes on the OECD site, the legal documents on the Russian governmental on-line legal library.

Due to extensiveness of the Russian Code (10 Chapters on 86 pages or 91 pages in English) and the fact that some chapters have some common parts, the analysis will be organized in accordance with Standard & Poor's Corporate Governance Scores (2002): a combination of four key components and 16 corporate governance criteria used by Standard & Poor's to score the level of corporate governance of Russian companies (Feinberg, 2000; McGee and Preobragenskaya, 2005; Standard & Poor's Corporate Governance Scores and Evaluations, 2004); the list of criteria is provided in the Table 2 in the Appendices. The selection will help to avoid inconvenience due to differences in structures between codes and to touch upon the most important points of corporate governance. Main issues discussed include enforcement, relationships and the power of balance between shareholders and stakeholders, between the board of directors and management, compensations of the board members and managers, the usage of committees, disclosure of corporate information, secretary obligations, conflicts of interest, the dividend policy and anti-takeover measures. The whole list of components and provisions compared can be found in Table 1 in the Appendices.

Differences and similarities will be found by comparing the codes and the documents solely with the Russian Code of Corporate Conduct. The main suggestion is that the Code could be influenced by one or more documents from my list above. Therefore the similarities are evaluated according to the binary system, where "1"



indicates that the code or the law contains the same or very similar provision compare to the Russian Code, and "0" indicates that the code or the law has either different provision, or does not mention it at all in comparison with the Russian Code of Corporate Conduct (2002). The results of the comparison will be evaluated according to the number of points each of the countries (or documents) will score. Afterwards the percentage of influence of each item on the Russian code will be given. Calculating the number of zero-cases indicates the dissimilarities of the Russian Code with *all* the rest of the documents; it will give us the percentage of the provisions that were not influenced by any of the items from the data set.

The systematic analysis and the comparison of the codes with explanations can be found in the Analysis section below in accordance with the order in Table 1 (Appendices); all the similarities between the documents are marked in bold italics. Each section of the Analysis part contains a table with the scoring for the section; some provisions in a table are highlighted with grey color in case they have already been included into another section and calculated, thereby avoiding the double-counting.

4. Analysis and Findings

4.1 Scope, enforcement and objective of the codes

The results of the comparison of the application scope of the codes demonstrate that all the codes have the same provisions. In other words, they all are applicable to listed joint stock companies. The enforcement practice of the Russian Code, the OECD Principles and the US codes are alike (voluntary), while the objective of the code resembles the OECD principles and the German Code, because the main aim of both codes was to provide companies with access to capital. The number of points is maximal for the OECD Principles (see Table 1).

Table 1. Scope, enforcement and objective

Table 1

Scope, enforcement and objective

Provisions	Russia	Russian national legislation	The OECD principles	The UK	The US	Germany
Scope: Joint stock companies, encouraged to all companies	1	1	1	1	1	1
Enforcement: Voluntary	1	0	1	0	1	0
Objective: Improve companies' performance, transparency, competitiveness and access to capital	1	0	1	0	0	1

It should be pointed out that some changes took place after that: in 2002 in the USA the "Sarbanes-Oxley Act" was issued – a legally binding document that enforced the companies to comply with the new norms, stipulated in the Act (The Economist, 2007); and in 2004 the new amendment to the Russian Federal Law on Securities Market obliged the listed companies to comply with some of the provisions from the Russian Code of Corporate Conduct (mainly concerning disclosure), and in case of noncompliance –



explain the reasons for that (Federal Law on Joint Stock Companies, Amendment N 04-1245, December 2004).

4.2 Shareholders

4.2.1 Shareholders versus Stakeholders model

Since the introduction to the Russian code of corporate conduct (2002) one can get an impression that the emphasis is put on protection of shareholders' rights. Throughout the whole text of the code its main goal is pretty clearly defined – to attract foreign investors (introduction). The statements provoking increase of the shares' value and protection of shareholders' interests can almost be found in every chapter. This focus on investors (shareholders) reminds us of the Anglo-Saxon model, where the primary importance is assigned to the shareholders' protection (especially of the minority shareholders) from the strong management, where the ownership structure is dispersed. The introduction to the Russian Code defines the corporate governance as:

Corporate governance affects the performance of economic entities and their ability to attract the capital required for economic growth. Improvement of corporate governance in the Russian Federation is vital for increasing investment in all sectors of the Russian economy from both domestic sources and foreign investors...Standards of corporate governance should be applied to ensure adequate protection of the interests of all shareholders, regardless of the size of their holdings.



The greater the level of shareholders' protection achieved, the more investment capital will be available to Russian joint stock companies (Introduction).

This view goes in line with the definition of corporate governance stipulated in American BRT Principles:

...the CEO, the senior management team and the board of directors can interact effectively and respond quickly and appropriately to changing circumstances, within a framework of solid corporate values, to provide enduring value to the shareholders who invest in the enterprise (BRT Principles, p. 6).

Similar orientation can be found in the UK Combined Code that stipulates that the chairman of the board and independent directors should act in the best interests of shareholders (Combined Code, Provision D.1.1), and the OECD Principles, where the emphasis is put on generation of long-term value for shareholders. The only different approach to the company's orientation was indicated in the German code. Due to the principle allowing employees to be members of the Supervisory Board up to one-third in case the number of employees is more than 500 or one-half in case it is 2000 (German Corporate Governance Code, Foreword), German companies can take into account the interests of the stakeholders (employees) while supervising the company's functioning.

As for the Russian Law on Joint Stock companies – it does not contain any provision concerning the protection of stakeholders. The focus of the Law is solely the protection of shareholders' rights with an emphasis put on the protection of minority shareholders (see the paragraph "Protection of minority shareholders' rights" below).



On the other hand, it is not clear whether the Russian Code focuses exclusively on the shareholders' model. According to the 1st item of the 4th article of the Corporate Code of Conduct (2002), the main aim of the board of directors should be realization of shareholders' interests, whilst the 2nd item stipulates that the aim is the maximization of the company's profits. Both of these items are in line with the view of the UK or the US codes (see Table 1, Appendices). However the 7th article urges the directors to act in the best interests of the whole joint stock company, but not exclusively in the interests of shareholders; this view is very much in line with the German Code of Corporate Governance.

The findings concerning the orientation of the code on the shareholders or the stakeholders model show that Russian Code of Corporate Conduct (2002) was influenced by both international and national systems that sometimes were not adequately adapted. Nevertheless, the Code has a tendency to focus on interests of shareholders versus interests of stakeholders, that is in line with all the codes, except the German one, that allows stakeholders (employees) to be members of the Supervisory Board representing the interests of stakeholders (German Code of Corporate Governance, Foreword). The results of the comparison with points are illustrated in Table 2 below.

Table 2. Shareholders versus stakeholders model

Table 2 Shareholders vs. stakeholders model

Provisions	Russia	Russian national legislation	The OECD principles	The UK	The US	Germany
Shareholders model	1	1	1	1	1	0
Stakeholders model	0	0	0	0	0	1



4.2.2 Protection of shareholders' rights and the general meeting of shareholders

As for the rights of shareholders, the Russian code emphasizes that shareholders should have an opportunity to exercise their rights, including voting rights. In addition, the code provokes "equal treatment of shareholders owning an equal number of shares of the same type (category)", which coincides with the Federal Law on Joint Stock Companies that stipulates: "All owners of ordinary shares exercise the same rights, such as the right to vote, the right to participate in the general shareholders' meeting and the right to get the dividends" (Art. 31).

The list of shareholders' rights is supplemented with equal access to the information and equal protection of shareholders' rights (Ch. 1), possibly borrowed from the OECD Principles (see Table 1, Appendix). Basically, voting rights, participation in an Annual Shareholders' meeting and access to information are more or less the provisions for all foreign codes; however the list of shareholders' rights mentioned in OECD Principles is the most complete.

In addition, both the Russian Code (Ch. 2, Provision 1.1.1) and the UK Combined Code (Provision D.2.4) contain the provision concerning the 20-day notice of the general meeting (in the Russian code it is even recommend to make it a 30-day notice so that the shareholders would have a chance to attend the meeting).

The results concerning the provisions protecting shareholders' rights show that Russian Code has the most in common with the national Law on Joint Stock Companies (1996) and the OECD Principles (1999) that proves the influence of these documents of



the formation of the Russian Code while providing the protection of rights for shareholders. More detailed comparison of differences and similarities is provided in a Table 3 below.

Table 3. Protection of shareholders' rights and the general meeting of shareholders

Table 3

Protection of shareholders' rights and the general meeting of shareholders

Provisions	Russia	Russian national	The OECD	The UK	The US	Germany
		legislation	principles			
Participation in general meetings	1	1	1	0	0	1
Equal treatment of shareholders owning an equal amount of shares of the same type/category	1	1	1	0	0	0
Equal protection of rights	1	0	1	0	0	0
Voting rights	1	1	1	1	1	1
Access to information	1	1	1	1	1	1
General Meeting: Annual	1	1	1	1	1	1
20 (or even 30) days' notice	1	1	0	1	0	0
The right to get dividends	0	1	0	0	0	0

4.2.3 Voting practices

The Russian code suggests an unique principle of voting in comparison with other documents from our sample – the cumulative voting. In accordance with the Code, the elections of the board members should be carried out through cumulative voting, which is supposed to be the measure for the protection of the rights of minority shareholders (Russian Code of Corporate Conduct, Ch. 2, Paragraph 3).

As for the other practices, the voting procedure is either not specified as in OECD Principles, The US codes or the UK codes, or should be conducted according to a "one 'The Transnational Diffusion of Corporate Governance Best Practices: the Russian Code of Corporate Conduct'



share / one vote rule" as in the Federal Law on Joint Stock Companies (1995) (Art. 49-50) or the German code (Provision 2.1.2). Even though the principle of "one share / one vote" was emphasized in the Law, there is also a notification that in some cases there can be exceptions, stipulated in the Federal Law. An exception is the election of the members of the board of directors or the cases of voting for the shareholders owning privileged cumulative shares. However, their voting rights are limited by the Law on Joint Stock Companies (Art. 59).

It should be mentioned that Russian Code encourages equal treatment of shareholders owning the same number of shares of the same category (type), which is in line with the national Law on Joint Stock Companies (Art. 31-32) and the OECD Principles (Principle II). The permission to vote in person and by proxy can be found in the Russian Code (Ch. 2, Paragraph 3), the German Corporate Governance Code (Provision 2.3.3) and the UK Combined Code (Provision D.2.1).

In addition to that, the Russian code has some specific provisions concerning the independent monitoring and transparency of the vote-calculating process and it has a provision that the results should be announced before the end of the general meeting of shareholders (Ch. 2, Provision 2.4.2). Those provisions cannot be found in other codes and are aimed at increasing the transparency and honesty of the voting process.

The results of the analysis show that the Russian code was mostly influenced by national law to regulate the voting practices for shareholders, as cumulative voting is not used in foreign practices. The results of the comparison are illustrated in Table 4 below.



Table 4. Voting practices

Table 4 Voting practices

Provisions	Russia	Russian national legislation	The OECD principles	The UK	The US	Germany
In person or via proxy	1	1	1	1	0	1
Equal treatment of shareholders owing an equal number of shares of the same type/category	1	1	1	0	0	0
Transparent and independent monitoring	1	0	0	0	0	0
Announcement of the results before the end of the meeting	1	0	0	0	0	0
Cumulative voting	1	1	0	0	0	0
"One share - one vote" principle	0	1	0	0	0	1
Disproportionate control should be disclosed	0	0	1	0	0	1

4.2.4 Protection of minority shareholders' rights

Minority shareholders' rights and their protection are almost not covered in the Russian Code of Corporate Conduct. However, the cumulative voting practice and the presence of independent directors (up to one-fourth) on the board are aimed at raising the level of rights protection for all the shareholders, including the minority ones (Russian Code of Corporate Conduct, Ch. 2, Paragraph 3; Ch. 3, Provision 2.2.3). Independent directors should be included into the board of directors according to all codes from the current comparison (see the section "Structure of the board" below). In the OECD Principles it is even emphasized that "independent directors are to be included into the board in order to protect the minority shareholders from controlling shareholders" (Principle VI.E.). In addition, the minority shareholders are mentioned in the section concerning anti-takeover measures: "It is not recommended to relieve the entity taking over the company of the



responsibility to offer to buy out shareholder's common stock ... this action may significantly impair the interests of minority shareholders" (Russian Code of Corporate Conduct, Ch.6, Provision 2.3).

This provision is a copy of Article 75 of the Russian Law on Joint Stock companies. Overall, the minority shareholders' rights are extensively covered and protected by the Law on Joint Stock Companies (1975) by various provisions (see Table 1, Appendix). An assumption can be made that the Russian Code was supposed to support the Federal Law on the Joint Stock companies (1995) in terms of minority shareholders' protection. The results of the comparison of means of shareholders' rights' protection can be found in Table 5.

Table 5. Minority shareholders' rights

Table 5

Protection of minority shareholders' rights

Provisions	Russia	Russian national legislation	The OECD principles	The UK	The US	Germany
Cumulative voting	1	1	0	0	0	0
Take into consideration the opinion of minority shareholders while nominating the directors	1	1	1	0	0	0
Recommendation to avoid the possibility to relieve the entity (taking over the company) from a buy out offer	1	1	0	0	0	0
Inclusion of independent directors into the board	1	0	1	1	1	1
The decision of issuance of a large amount of shares should be approved by at least 3/4 of votes	0	1	0	0	0	0
Shareholders have effective means of redress	0	1	1	0	0	0
Chairman of the board and the CEO are NOT separated	1	0	1	0	1	0



4.3 Stakeholders

Even though it was discussed above that the Russian code has a tendency towards the shareholders' model, there was an attempt in the Code to take into account the interests of stakeholders. However, their participation is far more limited than the in German code. In particular, the Russian code stipulates that the statutory rights of interested persons (including the employees) must be taken into account and the corporate governance practice should "encourage active cooperation between the company and interested persons with the view to increasing the assets of the company and the value of its shares and other securities, and to creating new jobs" (Russian Code of Corporate Conduct, Ch. 1, Paragraph 6). Moreover, the board of directors should take into consideration the interests of employees, government and municipal bodies and creditors (Russian Code of Corporate Conduct, Ch.3, Provisions 3.1.5, 6.1). This is a unique provision that cannot be found in foreign codes of corporate governance. It is also mentioned in the "Ethical standards" section that the company needs to improve the conditions of labor (Russian Code of Corporate Conduct, Ch. 3, Provision 4.12), while "members of the board should act in the interests of entire company" (Russian Code of Corporate Conduct, Ch. 3, Provision 3.1.1).

The highest level of similarity with the Russian code can be found in the provisions stipulated in the OECD Principles concerning the rights of stakeholders: "The corporate governance framework should recognize the rights of stakeholders established by law or through mutual agreements and encourage active cooperation between



corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises" (Principle IV).

The only notion that is not mentioned in the Russian code compared to the OECD Principles is the participation of stakeholders in corporate governance; providing stakeholders with access to corporate information (OECD Principles, Principle IV). The UK and the US codes do not focus on the stakeholders' rights, however, in both – the Cadbury Report (Paragraph 2.7) and the BRT Principles (p. 3) – there is a notion that the statutory rights of employees should be taken into account. The BRT Principles even emphasize that in order to enhance the shareholders' value and raise the company's reputation it should "treat its employees well, serve its customers well and foster good relationships with suppliers".

The German Code of Corporate Governance and the Russian national law are incompatible with the Russian code as the first one contains a special provision allowing employees' representation on the Supervisory Board (Foreword), which is a major possible privilege, and the second one does not include any provisions concerning stakeholders' involvement into the corporate governance process.

The results concerning the comparison of the rights of stakeholders and their involvement into the management of the company demonstrates a remarkable similarity between the Russian Code and the OECD Principles (see Table 6 below).



Table 6. The rights and interests of stakeholders

Table 6

The rights and interests of stakeholders

Provisions	Russia	Russian national legislation	The OECD principles	The UK	The US	Germany			
The rights and interests of stakeholders ("interested persons"/employees) should be taken into account	1	0	1	1	1	1			
Cooperation between the stakeholders and the company	1	0	1	0	0	0			
Participation of stakeholders in the CG process	0	0	0	0	0	1			
Create new jobs	1	0	1	0	0	0			
The interests of employees should be taken into account	1	0	0	1	1	1			
The interests of the government should be taken into account	1	0	0	0	0	0			
The interests of municipal bodies should be taken into account	1	0	0	0	0	0			
The interests of creditors should be taken into account	1	0	0	0	0	0			
The need to improve the conditions of labor	1	0	1	0	0	0			

4.4 The board of directors and management

4.4.1 Structure of the board

The structure of the Russian board is a hybrid of a one-tier (Anglo-American model) and a two-tier type (Germany) with a tendency to the latter one. It is difficult to say which structure it resembles the most as it incorporates both elements that are sometimes contradictory to each other.

The Board of Russian joint stock company consists of the Board of Directors (Supervisory Board) and the Management Board, which is a copy of the German structure.



In fact the responsibilities of the Board of Directors are pretty much the same as of the Supervisory Board in Germany, including "general management of the company's operations... supervision and control (of executive bodies)" (Russian Code of Corporate Conduct, Ch. 3). It also approves the candidate for the post of the director general and his/her remuneration and the employment contract (Ch. 1, Paragraph 3.4). According to the German Code: "The Supervisory Board appoints (and dismisses), supervises and advises the members of the Management Board and is directly involved in decisions of fundamental importance to the enterprise" (Foreword, Provisions 5.1.1-5.1.2).

In both codes the directors are elected by the general shareholders' meeting, are accountable to shareholders and liable to the company for damages in case of a failure to perform their duties (German Code of Corporate Governance, Foreword 5.1.2, Provision 3.8; Russian Code of Corporate Conduct, Ch. 3). In addition to that, the board of directors is responsible for the strategic planning of the company's performance (Russian Code of Corporate Conduct, Ch. 3, Provision 1.1). The same provision can be found in the OECD Principles (Principle IV), the UK Combined Code (Supporting Principle A.1), the NACD Report (p.3) and the Federal Law on Joint Stock Companies (Art. 66). As for the Management Board, according to the Russian code: "The Management Board is responsible for managing day-to-day activities of the company ... setting goals and objectives and implementation of the company's strategies and policies" (Chapter 1, Paragraph 4; Chapter 4).

This provision is very similar to the one stipulated in the German Code: "The Management Board is responsible for managing the enterprise" (Foreword), it "develops



the strategy of the enterprise, coordinates it with the Supervisory Board and ensures its implementation" (Provision 4.1.2).

So, according to the Russian code, the Management Board, represented by executive bodies, should be busy with managing day-to-day activities of the company and strategy implementation, reporting to the board of directors and the shareholders and be liable for damages. Overall, it must be admitted that the Russian code and the Federal Law on Joint Stock Companies specify the same structure of the board and mostly the same responsibilities, specified in Table 7 below. Further details can be found in Table 1 (Appendix).

Table 7. The structure of the board

Table 7 Structure of the board

Provisions	Russia	Russian national legislation	The OECD principles	The UK	The US	Germany		
One-tier board	0	0	0	1	1	0		
Two-tier board	1	1	0	0	0	1		
The board is accountable to shareholders	1	1	1	1	1	1		
Members of the board are elected by shareholders	1	1	1	1	1	1		
Members of the management board are accountable to the board of directors and the general meeting of shareholders	1	1	1	1	1	1		
The Board functions:								
Management	1	1	1	0	0	0		
Control	1	0	1	0	0	0		
Supervision	1	1	0	0	0	1		
Strategy development	1	1	1	1	1	0		
Liable for damages	1	1	0	0	0	1		
Approval of deals for a sum more than 10% of assets	1	0	0	0	0	0		
Approval of the candidate, the contract and remuneration of the director general (CEO)	1	0	1	1	1	1		
The Managerial functions:								
Management of day-to-day activities	1	1	0	0	0	1		
Set goals and objectives	1	0	0	0	0	1		
Approval of deals for a sum more than 5% of assets	1	0	0	0	0	0		
Strategy implementation	1	1	0	0	0	1		
Liable for damages	1	1	0	0	0	1		

4.4.2 Composition of the board

In compliance with the Russian Code of Corporate Conduct (2002) there are three types of directors – executive, non-executive and independent directors. The composition of the



board is unique compared to the rest of the documents from our list; however some elements are similar to foreign practices (Table 1, Appendices).

First of all, according to the Russian code, executive directors may not exceed one-fourth of the total number of members on the supervisory board (Russian Code of Corporate Conduct, Ch. 3, Provision 2.2.1), while the Management Board consists solely of executive bodies (Russian Code of Corporate Conduct, Ch. 3, Provision 2.2.3). The same principal is specified in the Russian Federal Law on Joint Stock Companies (Art. 66.2). Due to this provision we may conclude that the supervisory body is not totally separated from management.

Second of all, the board of directors should be comprised of at least one-fourth of independent bodies of the total number of the board members, or should consist of at least three independent directors (Russian Code of Corporate Conduct, Ch. 3, Provision 2.2.3). The Law on Joint Stock Companies does not include any provisions concerning independent directors while the German Code of Corporate Governance (2002) specifies a totally different structure that does not correlate with the Russian one. As for the minimum amount of independent directors on the board in Western codes, the OECD Principles (1999), the BRT Principles (2002) and the Cadbury Report (1998) stipulate that the majority or the sufficient amount of the board members has to be independent (Annotation to Principle V.A.4, Principle VI.E; p.14; Paragraph 1.3), while the UK Combined Code (1998) specifies that at least half the board should be independent, excluding the chairman, or in case the company is small – than at least two independent nonexecutive directors (Provision A.3.2). Comparing the provisions, the conclusion can be made that overall the



rules for the number of independent directors on the board, covered in the Russian code, are softer for large companies and stricter for small companies, than in the UK.

When we look at the composition of the board, it becomes clear why the name of the board is the "Board of Directors", as in the USA or the UK, and is not called 'Supervisory Board', as in Germany. According to the Russian structure proposed in the Code, the board of directors may consist of executive, non-executive and independent directors, which is contradictory to the board's functions. Main functions of the board are control and supervision as well as the rights to appoint and dismiss the executives from the management board. That is why in Germany, for example, the Supervisory Board is separated from the Management Board, limiting the maximum possible number of executives in the Supervisory Board to two former managers; and half of the board or one third is employees, while the rest of the board consists solely of independent members. In contrast, in a one-tier structure there is a recommendation that the majority of the board members should be independent (BRT Principles, p.14) or at least half of the board (the UK Combined Code, Provision A.3.2). The provisions concerning the inclusion of the independent directors on the board of the Russian code are softer than in Germany and much closer to Anglo-American restrictions. The Russian code even points out: "members of the managerial board may serve as members of the board of directors" (Ch.3, Provision 2.2.1). This combination of rules makes the supervisory function of the Board of Directors in Russian companies totally senseless. Nevertheless, it should be pointed out that there is a comment on the conflict of interests in Chapter 3 (Provision 1.4.3) of the Russian code, that can be assessed as an attempt to draw a line between executives and non-executives



stating that managers who serve in the board of directors should "refrain from voting on the terms and conditions of employment contracts pertaining to the director general and members of the managerial board".

So, from the comparison above it can be concluded that the creators of the Russian code turned to international practices while working on the provisions (see Table 8 below), especially concerning the presence of independent directors on the board; however all the foreign provisions were adapted to the national environment.

Table 8. Composition of the board

Table 8

Composition of the board of directors

Provisions	Russia	Russian national legislation	The OECD principles	The UK	The US	Germany
Executive, non-executive, independent	1	0	1	1	1	0
Executive directors up to 1/4	1	1	0	0	0	0
Non-executive directors at least 1/4	1	0	0	0	0	0
Provision concerning the presence on the board of a sufficient amount of independent directors	1	0	1	1	1	1
At least 3 independent directors	1	0	0	0	0	0

4.4.3 Definition of independence

As for the definition of independence, the Russian code gives quite an extensive description of an independent director, giving the whole list of possible relations with the company that should be avoided (see Table 1, Appendices), that are very similar to those stipulated in the UK Combined Code (Provision A.3.1). Such items as independence from the managerial board, prohibition of business and employment ties with the company or



reciprocal directorships are present in the OECD Principles (Principle VI.E), the UK Combined Code (Provision A.3.1), the NACD Report (p.11) and the BRT Principles (p.14). However, the highest level of similarity was indicated between the Russian and the UK Combined Codes concerning the approach to the "independence", even though the amount of years' limitations differ (see Table 9 below).

Table 9. The definition of independence

Table 9

Definition of independence

Provisions	Russia	Russian national legislation	The OECD principles	The UK	The US	Germany
Does not serve on the managerial board	1	0	1	0	0	0
Independent from officers and affiliated persons	1	0	1	0	0	0
Independent from major business partners of the company / business relationship with a company	1	0	1	1	1	1
Is not the representative of the government	1	0	0	0	0	0
Has not been an employee (or the officer)of the company over the last 3 years	1	0	0	1	0	0
Has not been a member of the board for 7 years or more	1	0	0	0	0	0
Is not an officer of another company in which any of the officers of the company is a member of the appointments and remuneration committee of the board of directors (reciprocal directorship)	1	0	0	0	1	0
Is not an employee of the company or the managing organisation	1	0	1	1	1	1
Has not served on the board for a specific amount of years	1	0	0	1	0	0

One interesting (unique) provision included into the Russian code concerning the independent directorship stipulates that an independent director cannot be a representative



of the government (Ch. 3, Provision 2.2.1). This is an important issue for Russia, where governmental interference into the business is constantly rising (McGee, 2008).

4.4.4 Separation of the CEO (the director general) and the chairman of the board

Some Western codes, such as the German Code of Corporate Governance (2002) or the UK Cadbury Report (1996), emphasize that the chairman of the board and the CEO should not be the same person or even connected in the past (Provision 5.4.3; Paragraph 4.9); these codes contain statements provoking the straight separation of these two bodies. Only the US codes and the OECD Principles have no restrictions concerning the case, highlighting that the CEO can serve as a chairman of the board, being "a bridge between management and the board", however emphasizing, that "it is critical that the board has independent leadership" (BRT Principles, p.15). This seems applicable to the Russian situation, as it is not directly covered in the Russian code, though the code does not contain any restrictions for the chairman of the board and the director general (fulfilling the obligations of the CEO) to be exercised by the same person, even though it distinguishes between the two roles (Chapter 2, Provision 3.3). The results of the comparison on the provisions concerning the separation of the CEO (the director general) functions and the chairman of the board illustrate that the view of the Russian code is more or less in line with the American view and with the OECD Principles (see Table 10 below).



Table 10. The separation of the CEO (the director general) and the chairman of the board

Table 10

Separation of the CEO and the Chairman of the Board

Provisions	Russia	Russian national legislation	The OECD principles	The UK	The US	Germany
The roles of the CEO (the Director General) and the Chairman of the Board are NOT separated	1	0	1	0	1	0

An interesting fact is when the Code does not encourage the separation of the CEO and the chairman of the board; the Russia's Federal Law on Joint Stock Companies (1995) crosses the line with the separation of both bodies by prohibiting the same person to hold the post of director general and the chairman of the board of directors (supervisory board) at the same time (Art. 66.2).

4.4.5 Compensation

The remuneration of the board of directors according to the Russian code is quite unique. Firstly, Russian Code of Corporate Conduct advises that the amount of remuneration has to be the same (equal) for all types of directors, including executive, non-executive and independent directors (Ch. 3, Provision 5.1.1), which could not be found in any of the foreign codes. Usually, the remuneration has to reflect the individual performance of directors or be linked to the long-term interests of the company. Such provisions can be found in the OECD Principles (Principle VI.D.4), the Cadbury Report (Principle B.1) or the German Corporate Governance Code (Provision 5.4.5).



Secondly, according to the Russian Code the directors are involved into the decision-making process concerning their own remuneration (Ch. 2, Provision 5.1.2), even though indirectly. The Code suggests that the criteria for determination of the directors' compensation should be developed by the human resources and remuneration committee, and subject to the approval of the board of directors – not to the approval of the general meeting of shareholders as in the German Code (Provision 5.4.5) or Russia's Federal Law on the Joint Stock Companies (Art. 64, 65). The same provision as in the Russian Code concerning the directors' remuneration can be found in the OECD Principles:

It is considered good practice in an increasing number of countries that remuneration policy and employment contracts for board members and key executives be handled by a special committee of the board comprising either wholly or a majority of independent directors. There are also calls for a remuneration committee that excludes executives that serve on each other's remuneration committees, which could lead to conflicts of interest. (Annotation to Principle VI.D.4)

The UK Combined Code (1998), in contrast to the Russian Code and the OECD Principles, even prohibits the directors to participate in the decision-making concerning their own remuneration. It was explained in the Russian Code of Corporate Conduct that the provision allowing the directors to decide their own remuneration was included, because the criteria of compensation influences the performance of the board of directors much, so they should have a possibility to participate in its determination (The Russian Code of Corporate Conduct, Chapter 3, Provision 5.1.1-5.1.2). These rules are aimed at motivating the directors to raise the transparency. However, the means of compensation



are not specified and no long-term remuneration as equity components, including restricted stock or stock options, as in American or German codes (BRT Principles, p.25; Provision 5.4.5), were mentioned.

Speaking about the compensation of managers and the director general (CEO analogue), all the terms, conditions and fees require the board of directors' approval; the employment contracts and the amount of remuneration should be proposed by the human resources and remuneration committee (Russian Code of Corporate Conduct, Ch. 3, Provision 4.10.2; Ch. 1, Provision 3.4.3). Again, the same provisions can be found in the OECD Principles (Annotation to Principle VI.D.4). All other documents allot the responsibility of determining the amount of remuneration of executives to the board of directors or the general meeting of shareholders (see Table 1, Appendices).

The amount of remuneration, according to the provisions of the Russian code, has to reflect the contribution and qualifications of managers; it is mentioned that rewards should be share-price related and competitive as well as performance related and have a variable incentive component, using the combination of short-term and long-term incentives (Russian Code of Corporate Conduct, Ch. 4, Provision 5.1.2). Similar views are contained in the UK Combined Code (Provision B.1.1 and B.2.2), in American NACD Report (p. 24) and in the German Corporate Governance Code (Provision 4.2.2).

Overall, the system seems copied from the OECD Principles and the Anglo-American provisions; however still superficial and brief, giving a lot of opportunities for



the committees and the board to make their own decision focusing on the company's interests (see Table 11 below).

Table 11. Compensation

Table 11 Compensation

Provisions	Russia	Russian national legislation	The OECD principles	The UK	The US	Germany
Remuneration of the board members						
Same for all types of directors	1	0	0	0	0	0
Determined by the human resources and remuneration committee	1	0	1	0	0	0
Remuneration is approved by the board of directors	1	0	1	0	0	0
Remuneration of managers						
The approval of the board of directors is required	1	0	1	1	1	1
The amount of remuneration and the employment contracts should be proposed by the human resources and remuneration committee	1	0	1	0	0	0
Individual performance related	1	0	0	1	1	1
Competitive/motivational	1	0	0	1	0	1
Variable	1	0	0	0	0	1
Corporate performance related	1	0	1	1	1	0
Should have an incentive component (long-term)	1	0	1	0	1	0

4.5 Committees

Russian code of corporate conduct (2002) suggests that the board of directors should form committees for consideration of the most important issues. Therefore, the board of directors can delegate the question on strategic development of the company to the strategic planning committee, the financial control and disclosure to the audit committee, decisions on human resources and compensation to the personnel and remuneration committee and conflict of interest to the committee for settlement of corporate conflicts or



ethics committee. In addition to that, a risk management committee can be formed (Russian Code of Corporate Conduct, Ch. 1, Provision 3.3). Such practice is popular among all the European, British and American countries; however this list mostly resembles the US prescriptions with audit, corporate governance and compensation committees as well as the risk management committee (BRT Principles, p.16-17). Furthermore, the whole list of committees that can be or should be formed can be found in the OECD Principles (Principle VI). Just as the American BRT Principles (p. 12, 18), the OECD Principles (Principle VI) or the UK Combined Code (A.1, C.3), the Russian Code of Corporate Conduct also requires total independence of all members of the audit committee and the human resources and remuneration committee in order to provide independent judgment. The committees should also be chaired by an independent director in order to provide an independent leadership (Russian Code of Corporate Conduct, Ch. 8, Provision 1.3.1; Ch. 3, Provision 4.10.1). The German code also contains the principle that dictates that the committees should be chaired by a non-executive director (Provisions 5.3.1-5.3.3).

It should be mentioned that the Russian code is the only one to restrict the participation of directors in multiple committees (Ch. 3, Provision 4.7), when in Western codes this rotation is not prohibited and only the same restrictions for the chairmen of committees are mentioned (German Corporate Governance Code, Provision 5.3.1; The BRT Principles, p.17).

As for the audit committee, the description of its responsibilities differs a little bit from that of the other countries in our comparison. It is mentioned that the members of the



committee are supposed to have enough financial expertise, fulfill its main functions as control of financial operations, make a choice of an independent auditor for the firm as well as cooperate with the revision committee, controlling and auditing service and the auditor of the company (Russian Code of Corporate Conduct, Ch. 8, Provision 1.3.1). The existence of the revision committee and controlling and auditing service is unique in comparison to the other countries. However, the same provisions can be found in the national law and the Law on Joint Stock Companies (1995) in particular. The members of the revision committee (analogue of the audit committee) and controlling and auditing service are both elected by the board of directors from non-executive members that do not have any relationship with management or the supervisory board – just as in the Russian Code of Corporate Conduct (Ch. 8, Provision 1.3.1; Ch. 3, Provision 4.10.1). The requirements for the members include financial and auditing diplomas, experience and perfect reputation. Main responsibilities of the committee are control and the inspection of all accounting data. It is not clear though how the functions of the audit committee and the revision committee differ from each other. Probably both parties should cooperate in fulfilling their obligations. The revision committee is obviously closer to Russian mentality as it was stipulated in the national law long ago before the new "auditing committee" name was copied from Western codes, while the functions are similar.

Full list of the results for the comparison of the committees' composition and responsibilities is described in Table 12.



Table 12. Committees

Table 12 Committees

Provisions	Russia	Russian national legislation	The OECD principles	The UK	The US	Germany
Committees on:						
Strategic planning	1	0	0	0	0	1
Audit	1	1	1	1	1	1
Human resources and remuneration/compensation committee	1	0	1	1	1	1
Settlement of corporate conflicts	1	1	1	0	0	0
Risk management	1	0	0	0	1	0
Ethics	1	0	0	0	0	0
Composition						
Audit committee:						
Comprised exclusively from independent directors	1	1	1	1	1	0
Headed by an independent director	1	1	1	1	1	1
Independent audit organization (external auditor)	1	1	1	1	1	1
Human resources and remuneration committee:						
Comprised exclusively from independent directors	1	0	1	1	1	0
Headed by an independent director	1	0	0	1	1	1

4.6 Disclosure

4.6.1 Disclosure and the corporate governance guidelines

Russian code, just as all previous Western codes, has a chapter about disclosure. According to Chapter 7 of the Code, the annual report is to contain a section where the compliance with the Code's recommendations is specified and in case of deviations the reasons for failure to follow the recommendations of the code should be explained in the annual report (Russian Code of Corporate Conduct, Ch. 7, Provision 3.3.6). Same provision was found in the Cadbury Report, that requires listed companies to include into



the report whether the company complies with the code or not and provide reasons in case of noncompliance (Paragraph 3.7). In accordance with the Russian code, the annual report should be prepared by management and the director general just as according to the German code, the BRT Principles and the Russian Law (see Table 1, Appendices). Russian Code of Corporate Conduct (2002) stipulates that all shareholders should get equal, free and unhindered access to information on time (Ch. 1, Provisions 5.1, 5.2). Same provisions can be found in the OECD Principles: "The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters..." (Principle V).

Equal treatment of shareholders is stipulated in the German Corporate Governance Code: "The company's treatment of all shareholders in respect of information shall be equal" (Provision 6.3).

4.6.2 The content of disclosure

It is interesting that the Russian code (2002) has stricter rules for disclosure of information about the members of the board of directors and the managerial board. The Code requires disclosure of all the information concerning the members of the board of directors, the director general and the management board (Ch.7, Provision 2.1.2). An interesting fact is that the same provision is required by the Russian Law, the Federal Law on Securities Market N39 (1996) in particular. The Law stipulates that the above mentioned information should be specified in the emission prospectus (Art. 22) and the criteria of disclosure



should be determined in the charter (Art. 30). Other (foreign) codes and principles do not have such strict provisions. For example, according to the UK Combined Code, each non-executive director has to be identified and terms and conditions of nominating non-executive directors are to be specified. Moreover, the chairman, the deputy chairman, the chief executive, the chairmen and all members of the committees are subject to disclosure (Provisions A.1.2). Elements of these provisions can be found in the OECD Principles (Principles V.A.8, V.A.3) and the BRT Principles (p.22).

In addition to the above mentioned elements, the Russian code requires disclosure of the major shareholders, owing 5% of shares, even though according to the Russian Federal Law on Joint Stock Companies (1995) this provision contains a claim to disclose the information about the shareholders, owing 20% of shares (Art. 6, 4), as well as disclosure of the facts of cross-ownership (ownership of shares in other companies).

The remuneration of the board members, the director general, the management and officers of the company is also subject to disclosure in the Regulation on Information Policy (Russian Code of Corporate Conduct, Ch. 7, Provision 3.3.3). The remuneration policy is subject to disclosure according to the OECD Principles (Principle V.A.4), the UK Combined Code (Provisions A.3.1, A.3.2), the NACD Report (p.12, p.22) and the German Corporate Governance Code (Provision 6.6) as well. Speaking about the composition of the annual report, the Russian Code of Corporate Conduct (2002) stipulates that it should provide information about the company and its financial position, economic parameters, ownership and management structure, factors that could influence the share price. It is also advised that the quarterly report should be issued disclosing all the necessary information



about the company. All the corporate conflicts (conflicts of interest) and ethical standards are subject to disclosure to the shareholders in the annual report (Ch. 1, Paragraph 5).

One of the closest provisions to the Russian Code can be found in the OECD Principles (Principle V.A). The criteria of the financial information disclosure is also stipulated in the Russian Law on Joint Stock Companies (1995), where the list of financial disclosure includes: the annual report, the annual accounting report, the issue prospectus and information about the general meeting of shareholders (Art. 92). Thus, the disclosure provisions of the Russian Code have a lot in common with the national law represented by the Federal Law on Joint Stock Companies (1995) and the Federal Law on Securities Market (1996); however some similarities between the Laws and the Western Codes, such as the OECD Principles, can be found. The list of the provisions on disclosure and their comparison with other documents is presented in Table 13 below.

Table 13. Disclosure

Table 13 Disclosure

	Disclosure					
Provisions	Russi a	Russian national legislatio n	The OECD principle s	The UK	The US	German y
The guidelines of disclosure						
The compiance with the Code is specified or the reasons for noncompliance explained in the annual report	1	0	0	1	0	0
The annual report is prepared by management and the director general / CEO	1	1	1	0	1	1
Equal access to information	1	0	1	0	0	1
Free access to information	1	1	0	0	0	0
Unhindered access to information	1	0	0	0	0	0
The information should be provided timely	1	0	1	0	0	0
The content of disclosure						
Information concerning the members of the board of directors	1	1	1	0	1	0
Information concerning the director general / CEO	1	1	0	1	0	0
Information concerning the management board members	1	1	0	0	0	0
The criteria for disclosure should be determined in the charter	1	1	0	0	0	0
Major share ownerships	1	0	1	0	0	1
The remuneration of the board members	1	0	1	1	1	1
The remuneration of the director general	1	0	1	0	1	1
The remuneration of the management and officers	1	0	1	0	1	1
The financial position of the company and economic parameters	1	1	1	1	1	1
Ownership and management structure	1	1	1	1	1	0
Conflicts of interest	1	0	1	1	1	1
Ethical standards	1	0	0	0	0	0

4.6.3 The corporate secretary

One of distinctive features of the Russian Code of Corporate Conduct is that the whole chapter of the code is devoted to the corporate secretary (Ch. 5). A corporate secretary is a



person whose main goal should be to track the accuracy of all procedures and operations, keep and provide access to all the documents of the company in order to protect the interests of shareholders – that is why this post is so important for the company. The corporate secretary is elected by the board of directors and his main responsibilities are: preparation and holding of the general meeting of shareholders and the meetings of the board of directors, assistance of the board in information flows, providing the transparency of information for shareholders and keeping the documents of the company (Russian Code of Corporate Conduct, Ch. 7).

The post was probably adopted from the UK codes; however it was conferred to a broader range of powers (see Table 14). In the UK Combined Code the secretary mainly serves as an organizer of information flows within the board and its committees and between the senior management and non-executive directors (Provision A.5), while in the Russian code the secretary is empowered to conduct other activities as mentioned above. The secretary function is very important for a company, especially a Russian company, as it reinforces the transparency and disclosure, assigning this post to a person with high reputation, enjoying respect and trust of shareholders, directors and employees.



Table 14. The Corporate Secretary

Table 14 Corporate Secretary

Provisions	Russia	Russian national legislation	The OECD principles	The UK	The US	Germany
Corporate Secretary	1	1	1	1	0	0
Prepare and hold the general meeting and the voting process	1	1	0	0	0	0
Provide the information flow to the board and the shareholders	1	0	0	1	0	0
Keep the company documents	1	0	0	0	0	0
Assist the Chairman of the board at the board meetings	1	0	1	0	0	0

Other documents either do not mention such a post, or mention it very briefly (see Table 1, Appendices).

4.7 Regulation of corporate conflicts

The section describing the provisions concerning regulations of corporate conflicts is briefly described in the last chapter (Ch.10) of the Russian Code. All the principles are aimed at providing guidelines for companies to follow in conflict situations, though do not suggest any specific measures. The body responsible for the settlement of the conflicts is the director general; however the board of directors can also be involved into resolving the conflicts that are under its authority (Russian Code of Corporate Conduct, Ch. 10, Provision 2.1.2). This view correlates to some extent with the American BRT Principles that put the CEO and the senior management in charge of monitoring the compliance with



the corporate governance and ethical standards (p. 12), and the OECD Principles that provide the board of directors with responsibilities to resolve the corporate conflict situations (Principle IV.D).

In addition, the Russian Code of Corporate Conduct (2002) suggests that a special conflict resolution committee can be formed. Same suggestions are given in the OECD Principles (1999): "Boards should consider assigning a sufficient number of non-executive board members capable of exercising independent judgment to tasks where there is a potential for conflict of interest" (Principle VI.E.1).

It should be pointed out that there was also an attempt to correct the board structure in the Russian Code: particularly, as the members of the managerial body can serve on the board (in contrast to the Supervisory Board of the German code), these members should avoid voting when it concerns their own employment contracts (Ch. 3, Provision 1.4.3).

The results of the comparison of the conflict resolution measures show the most similarity of the Russian Code provision with that of the OECD Principles and the US BRT Principles - that scored the biggest amount of points (see Table 15).



Table 15. Conflict of interest

Table 15 Conflict of interest

Provisions	Russia	Russian national legislation	The OECD principles	The UK	The US	Germany
The body responsible for the regulation of corporate conflicts						
The director general / CEO	1	0	0	0	1	0
The board of directors	1	0	1	0	0	0
Conflict resolution committee	1	0	1	0	0	0
The executives on the board should avoid voting on the topics concerning their employment contracts or remuneration	1	0	0	0	0	0

4.8 Anti-takeover measures

In case of a takeover Russian Code of corporate conduct advises that the shareholders' interests should be the main focus, including the minority shareholders: "It it not recommended to take anti-takeover actions that are contrary to the interests of shareholders or may have an adverse material effect on the interests of the company and its shareholders" (Ch. 6, Provision 2.2)

Same recommendation can be found in the German code: "... the Management Board and the Supervisory Board are obliged to act in the interests of the shareholders and of the enterprise" (Provision 3.7); and the UK Combined Code: "The chairman should ensure that the views of shareholders are communicated to the board as a whole" (Provision D.1.1).

The Russian Code of Corporate Conduct also stipulates that the company should avoid actions aimed at protecting the interests of executive bodies and members of the



board of directors (Ch. 6, Provision 2.2). This point resembles the provisions stipulated in the OECD Principles: "Anti-takeover devices should not be used to shield management and the board from accountability" (Principles II.E.2).

Both – the German (Provision 3.7) and the Russian code (Ch. 6, Provision 2.1.2) – contain provisions allowing (obliging) the board of directors (or the Supervisory Board) to communicate their position to the shareholders.

Although, there is a provision in the Russian code that cannot be found in other foreign documents, but is stipulated in the Russian Federal Law on Joint Stock Companies (Art. 75): Chapter 6 (Provision 2.3) of the Russian code recommends not to relieve the entity taking over the company from an offer to buy out the shareholders' common stock in order to avoid impairing of the interests of minority shareholders.

To sum up, the results of the comparison show that the provisions of the Russian Code of Corporate Conduct probably relied on the experience of other countries while creating the part on anti-takeover measures, even though some provisions are stipulated in the national law (see Table 16).



Table 16. Anti-takeover measures

Table 16 Anti-takeover measures

Provisions	Russi a	Russian national legislatio n	The OECD principle s	The UK	The US	German y
Anti-takeover devices protecting the managerial board and the board of directors should not be used	1	0	1	0	0	1
Shareholders' interests should be prioritized	1	0	0	1	0	1
The board of directors should communicate its position to the shareholders	1	0	0	0	0	1
The entity taking over the company should not be relieved from an obligation to offer a buy out of the shareholders' common stock	1	1	0	0	0	0

4.9 Dividends

Chapter 9 of the Russian Code of Corporate Conduct (2002) contains provisions concerning the dividend policy of a company. It is worth mentioning, that other (foreign) codes do not have provisions concerning the dividends. Usually, the payment of dividends is specified in the state corporate law. In case of Russia it is specified extensively in the Law on the Joint Stock Companies (1995) in Article 42. The procedure and the timelines of payment, as well as the calculation of the amount of dividends are specified in the Law (see Table 1, Appendices).

As for the Russian Code of Corporate Conduct (2002), it seems that it contains mostly supporting principles aimed at raising the protection of shareholders' rights and transparency. For example, the Russian Law on Joint Stock Companies (1995) specifies that the amount of dividends payable is decided by the general shareholders' meeting, however cannot exceed the amount proposed by the board of directors (Art.42). The



Russian Code of Corporate Conduct (2002) adds to that principle: it recommends developing a transparent and understandable mechanism of the dividends' amount determination and the payment procedures and including it into the By-Law on Dividend Policy (Ch.9, Provision 1.1.2).

The Russian Code also includes an important supplement to the Russian Law on Joint Stock Companies. The Law specifies that if the dividends were not paid on time, any shareholders can demand the dividend from the company within 3 years after the violation of his rights (Art. 42). The Russian Code adds the principles that could strengthen the rights of shareholders and provide a better protection for them or compliance of the company with the timelines:

It is recommended that companies provide for special sanctions to be applied to the director general (managing organization, manager) as well as members of the company's managerial board in the event of incomplete or untimely payment of declared dividends (Ch.9, Paragraph 3).

As we can see, the provisions on the dividend policy are almost not covered in the foreign codes from our comparison list. However, the Russian Federal Law on Joint Stock Companies (1995) covers all the procedure of payment, the rules and ways of calculation that should be used. Though, in case the Law has some flaws, Russian Code of Corporate Conduct (2002) is aimed at supporting and correcting the Law (Table 17).



Table 17. Dividends

Table 17 Dividends

Provisions	Russia	Russian national legislation	The OECD principles	The UK	The US	Germany
There should be a transparent mechanism of the dividend amount calculation and the payment procedure	1	1	0	0	1	0
The procedure should be clearly communicated to the shareholders	1	1	0	0	0	0
There should be a possibility to use sanctions in case of noncompliance with the dividend policy of the company	1	1	0	0	0	0

4.10 Total results

As it was explained in the "Method" section, the following system was used in order to compare the codes and documents: in case the provision can be found both in the Russian code and in another foreign or national document, one point will be given to a document that has the similar provision; in the opposite case it would score zero points. In order to calculate the level of similarity between the documents, I summed up the amount of points the UK, the US, the German codes, the OECD Principles and the Russian Law scored at all criteria. All the cases of repeats (marked with grey in tables 1-17 above) were accounted for and excluded from the total sum. If the provision from the Russian code was not found in any other code or law from my comparison (all the documents except the Russian code scored zero points), I calculated the amount of those cases; the total amount of such "zero-cases" provides the percentage of the Russian code that was not influenced by any document from our list.



As a result of the calculation process of the points for each country or document at all criteria, specified in Table 1 in Appendices, I got the total score provided in Table 18 below. The final results represent the level of similarity between the documents and give an opportunity to evaluate the level of influence of each document (or country) from my list on the Russian Code of Corporate Conduct (2002).

Table 18. Total score and amount of influence

Table 18

Total score and amount of influence

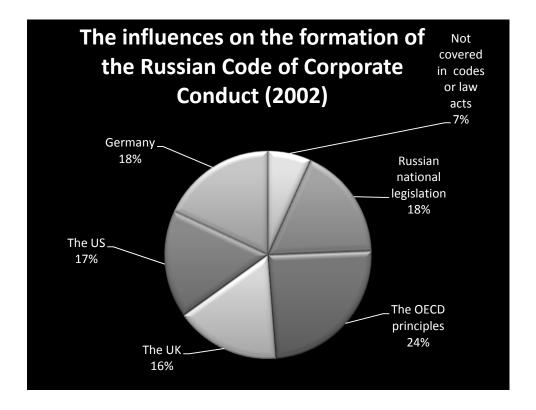
Total influence	Not covered in codes or law acts	Russian national legislation	The OECD principles	The UK	The US	Germany
Total percentage	6,7%	17,6%	24,4%	16,4%	16,8%	18,1%
Total score	16	42	58	39	40	43

According to my findings, the strongest influence on the formation of the Russian Code of Corporate Conduct (2002) was caused by the OECD Principles, that scored 58 points or 24,4%. The weaker influence was caused by international practices, including German, American and British practices, estimated as 18,1%, 16,8% and 16,4%. Russian national legislation influenced the choice of the Code creators at an amount of 17,6%. The total score of all the codes is illustrated on Figure 2. It should be mentioned, that according to my findings, 6,7% of the code was not influenced by any of the documents from my comparison list, that led me to a conclusion that the Code was either influenced by other international best practices, that were not included into my comparison, or that those provisions of the Russian



code were worked out by national legislators under the pressure of the national business system.

Figure 2. The influences on the Russian Code of Corporate Conduct of 2002 (%)



5. Discussion

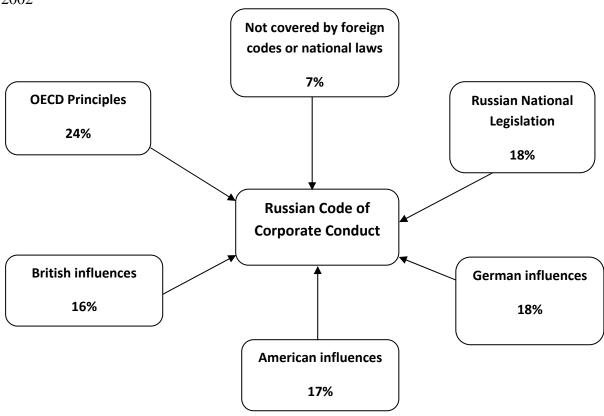
5.1 Discussion

The theoretical background on codes of corporate governance suggests that there can be two types of influences on the code formation: external (international) influences on the country, such as transnational diffusion of corporate governance best practices due to globalization and rising competition for capital between countries and pressures from investors and transnational organizations – on the one hand (Aguilera and Jackson, 2003; Aguilera and Cuervo-Cazurra, 2004; La Porta et. al., 1998; La Porta et. al. 1999); and internal (national) influences, such as national institutions, including financial, legal and social institutions and culture - on the other hand (Aoki, 2001; Aguilera and Cuervo-Cazurra, 2004; Licht, Goldschmit and Schwartz, 2005; Haxhi and van Ees, 2010). Some scholars argue that the external influence of international best practices in respect to their adoption can be even stronger in countries that are in a phase of transition to a market economy (Kozarewski, 2006; Meyer, 2006; McGee, 2008). Russia is a typical example of a country with a transition economy, an underdeveloped financial market, poor corporate governance and weak legal institutions (Frye, 2000). In the light of new governmental goals such as membership in the WTO and increase in foreign investment, Russia was pressured by transnational organizations (the WTO, the Word Bank, and the OECD) to issue a code of corporate governance in order to increase the transparency and protection of shareholders (Braguinsky and Yavlinsky, 2000). In order to find out to what extent the Russian Code of Corporate Conduct, issued in 2002, was influenced by transnational



diffusion of corporate governance best practices or remained resistant to them due to a rigid business system and national institutions, the current research was conducted. After the systematic analytical comparison of the Russian code provisions with that of the German, the US and the UK codes, the OECD Principles and the Russian law acts, the results on the level of similarity between the documents were obtained. The findings of the conducted comparison demonstrate that the Russian Code of Corporate Conduct (2002) is the combination of international best practices and national law, while 7% of the Code was not influenced by any documents included into the current research (see Figure 3 below).

Figure 3. The influences on the formation of the Russian Code of Corporate Conduct of 2002





There can be several reasons for my findings. The influence of the OECD principles on the Russian Code is the major one (24%). This influence was caused by several forces. On the one hand, one of the Russia's main economic objectives at the time of the Code creation was the membership in the World Trade Organization (WTO) (McGee, 2008). That is why the country was pressured by international institutions, such as the World Bank, the European Bank of Reconstruction and Development, the International Monetary Fund and the WTO to increase the corporate governance standards. On the other hand, Russia was striving for the financial resources (Frye, 2000), and according to Aguilera and Jackson (2003) the competition for capital is one of the main reasons of the diffusion of corporate governance best practices. Therefore, the rising need for financial resources could have provided the pressure of foreign direct investors on the Russian governmental policy. Furthermore, Aguilera and Cuervo-Cazurra (2004) argue that it is important to know the issuing body of the code. In case the code is issued by a stock exchange the code's formation may have been pressured by foreign investors. In Russia's case the issuing body was the Federal Commission on Securities Market that together with Russia's need for capital prove that foreign investors could have facilitated the government to take some actions in order to raise the transparency and the protection of shareholders' rights and therefore secure the foreign investors. The OECD Principles in this case are the most recommended practice in the field of corporate governance, being a template for other countries to adopt (Aguilera and Cuervo-Cazurra, 2009; Roberts, 2004). That is why these principles were put into the core of the Russian Code of Corporate Conduct (2002), influencing the majority of the provisions of the future code. Finally,



according to McCarthy and Puffer (2003) the OECD actively participated in the Russian code creation and since 1999 have organized a Corporate Governance Roundtable twice a year, hosted by American Chamber of Commerce in Russia that also explains some similarity between the Russian code and the OECD Principles.

The lack of financial resources can also explain the influences of the German (18%), British (16%) and American (17%) codes on the Russian code. These countries have been major investors in Russia for a long time (ROSSTAT, 2010), that is why they had their impact on Russian economy and legislation. While investigating the Code of Corporate Conduct, one may notice that British-American influences can be seen in such parts as shareholders' rights orientation, the composition of the board (mainly the provisions on independence of directors) and disclosure – one of the most important parts for listing. Taking into account that the Russian stock market is underdeveloped, it is not a surprise that Russian companies aim at international stock exchange in search for capital. Main targets of the companies are the New-York Stock Exchange and the London Stock Exchange (Black, 2001). Cases of corruption, fraud and rights violations happened a lot, so international agencies and auditors in the US and the UK started conducting ratings of Russian companies (Standard & Poor's, Troyka Dialog), because in terms of low levels of transparency and shareholders' rights' protection international investors felt insecure to invest in the country. As a result, the Russian Code of Corporate Conduct was issued in 2002 in order to ensure the investors of the reliability of Russian companies. In addition, Anglo-American input into the Russian code can be proved by the participation in the formation of the code of such American organizations as the United States Agency for



International Development and the American law firm Coudert Brothers (Federal Commission for Securities Market, official web-site).

On the other hand, the Russian business system is not easily adaptable to the Anglo-American law due to differences between the financial and legal institutions. To some extent, the German provisions are closer to the Russian system. German listing rules require less transparency which is more appealing to Russian companies due to weak institutions and low enforcement. Moreover, Russia and Germany have a lot in common, such as state involvement into economy, strong banks and concentrated ownership; as well as active mutual trade and geopolitical ties (Braguinsky and Yavlinsky, 2000). Due to these reasons, some provisions concerning the structure of the board of directors, such as functions of supervision and control, and elements of disclosure were transplanted to the Russian Code. In addition, throughout history Russian legislators have been turning to German law to borrow some practices (Mobius and Filatov, 2001); that explains the German influences on the Russian code formation through national law.

The scholars argue that some national institutions can show resistance towards the process of diffusion of codes best practices due to specificity of the national business system (Whitley, 1994), legal (Licht, Goldschmit and Schwartz, 2005) and financial institutions (Aguilera and Cuervo-Cazurra, 2004; Enrione, Mazza and Zerboni, 2006). As some international practices are not always the most suitable or easily adaptable to Russian environment, some provisions from the national law were included into the Russian Code of Corporate Conduct (2002). As the research demonstrated, Russian legislation influenced the code to the extent of 18%. Here we see the effect of



"institutional embeddedness" mentioned in papers by Williamson (2000), North (1991) and Aguilera and Curvo-Cazurra (2004). In case of Russia, the problems of highly concentrated ownership and insider-managerial control are reflected in the Federal Law on Joint Stock companies (1995), which contains two types of voting systems – "one share / one vote" principle and cumulative voting (Art. 31-32). Russian code stipulates only cumulative voting in order to protect minority shareholders and to solve the blockholdermanagerial conflict, and therefore correct weak legal and corporate governance mechanisms in this sphere. Such mechanism of supporting or correcting the law, described by Aguilera and Cuervo-Cazurra (2004) as typical for transition economies, can be seen throughout the whole Russian code. For example, the audit committee of the Code (Ch. 1, Paragraph 3.3) is an analogue of the revision committee from the Law on Joint Stock Companies (Art. 85). Although, the Code also adds other obligatory committees such as the human resources and remuneration committee and the strategic planning committee. This supporting principle can also be seen in the chapter about dividends. While national Law contains some basic principles concerning the payment of dividends (Art. 42), the Code puts an emphasis on facilitating the transparency of the calculation process of dividends, adds recommendations concerning the use of sanctions (Chapter 7, Provision 1.1.3) aiming at strengthening the means of protection of shareholders that are limited by law. Same findings can be mentioned about the approval of deals – while Russian Law requires the board's approval of transactions for 25% of the assets (Art. 39), the Code requires approval of the board of directors in case of transactions for 10% of the assets and



the approval of the management board in case of transactions for 5% of the assets (Ch. 2, Provision 2.4.2), therefore providing stricter requirements.

Sometimes the Russian code provides a combination of national law and international practices. For example, the composition of the board of directors is copied from the Federal Law on the Joint Stock Companies (Art. 66, Paragraph 2) in terms of the percentage of executive directors on the board, while the Code supplements it with an international provision of including the independent directors on the board (Ch. 3, Provision 2.2.3). By these measures the Code can correct flaws in the law, especially in case of Russia where the courts are corrupted and the enforcement is weak (Braguinsky and Yavlinsky, 2000).

Even though the code was mostly influenced by the above mentioned forces, about 7% of the Russian code turned out to be unique. According to Haxhi and van Ees (2010) and Licht, Goldschmit and Schwartz (2005) national culture and social institutions can have an impact on the code of corporate governance and its issue. Thus, specific features of the Russian code reflect the national institutional environment. First of all, the Code constantly puts an emphasis on ethics and ethical standards (Ch.7, Paragraph 2; Ch. 3, Paragraph 4). It is not surprising as the Russian culture is characterized by low trust and low ethical values (McCarthy and Puffer, 2002), probably due to its historical development (perestroika, privatization, revolutions and governmental control in times of the Soviet Union) while it was not always easy to comply with the law and cases of law violations and corruption were normal in the society. That is why the Russian Code of Corporate Conduct emphasizes the importance of ethical behavior. Some other provisions



are supporting the same principle, such as transparent and independent monitoring of voting processes and announcement of the results before the end of the meeting, aimed at increasing the level of transparency and attracting domestic and foreign investors. Even the post of a corporate secretary was created to ensure the transparency of all processes by providing constant monitoring of them (Russian Code of Corporate Conduct, Ch. 7).

In addition to the above mentioned unique features, Russian Code of Corporate Conduct (2002) also contains the provisions on protection of interests of stakeholders, including the government, creditors and municipal bodies that cannot be found in foreign codes. It is not surprising if we look at the components of the national business system. As it was mentioned, there is a strong trend of governmental interference into the economy and business in Russia (Braguinsky and Yavlinsky, 2000; McGee, 2008; Frye, 2000). National banks are also very strong due to the governmental support. That is why the Code provisions protecting the state were probably caused by the structure of Russian financial institutions.

To sum it up, the conducted research showed that the Russian Code of Corporate Conduct (2002) is a mixture of international practices and national law. The international influences can be explained mainly by investors' pressure and Russia's competition for capital, while the influence of the national law was caused by financial, legal and cultural institutions.



5.2 Practical implications for the policy makers

The findings of the current research have some implications for policy makers. Firstly, they show that countries with a transition economy, due to their specific historical development and business systems, tend to turn to international best practices in order to improve their corporate governance because they often have poorly-developed national institutions. Secondly, in case of the Russian Code of Corporate Conduct (2002), the international practices were not always easily adaptable to the national environment that caused the mixed style of the code (e.g. the code demonstrates shareholders' orientation as in the US and the UK codes or the OECD Principles; however, also includes the provisions concerning the interests of stakeholders as in the German code). As a result, some provisions of the Russian code are inconsistent and vague: for example the supervisory function of the board of directors, transplanted from the German code, does not correlate with its mixed composition (does not consist solely of independent members) as in the UK or the fact that the director general (the CEO) and the chairman of the board are not separated as in the US. On the other hand, the code sometimes contradicts to the law: for example, while the Russian code recommends the creation of an audit committee, borrowed from international practices, it does not explain how an audit committee should cooperate with the revision committee, required by the national law (the Federal Law on Joint Stock Companies, 1995), that has some similar functions; or if the revision committee should be replaced by an audit one. In this respect, the conclusion can be made that in case of an adoption of international practices by a country those practices should be better adapted to the national environment, more precise and understandable for



companies and legislators. In contrast, the Russian code represents a mix of foreign corporate governance practices simply imposed on the national business. Obviously, this method can result in negative consequences, as it can make the code simply useless and difficult to comply with for companies. However, it can also result in positive consequences, such as provide freedom for companies to adjust or become a "window dressing" for investors.

5.3 Limitations and suggestions for future research

The findings of the present thesis contribute to the literature investigating the codes of countries with transition economies; however leave some room for the future research.

It should be pointed out that the current study has some limitations, in particular a limited data set. Firstly, a limited number of codes and countries were used in the comparison, and secondly a special time frame was used: all the documents taken for the research dated till 2002 - before the formation of the Russian Code, in order to trace the influences on the Code formation. The possible extension of the study could take into account other international practices for the comparison. For example, the codes of neighboring countries or countries with a similar historical background could be included into the comparison, such as Asian or Eastern European codes. Another area for the future research could be the investigation of the development of the corporate governance in Russia after the Code was issued. The code of best practice is a soft law. Enforcement of the code is one of the most discussed problems in Russia nowadays (Buck, 2003). Due to



Russian mentality most scholars tend to propose that the enforcement of the code is highly recommended for Russia in order to raise the corporate governance standards in the country (McCarthy and Puffer, 2002; Black, 2001). The governmental policy is also developing in the direction of strengthening the control over businesses. Taking these facts into consideration, it would be interesting to look at the process of development of corporate governance in Russia after the issue of the Russian Code of Corporate Conduct. In particular, findings on how many companies comply with the Code, which provisions of the Code were already enforced by law and what is the impact of this enforcement could be valuable.



6. Conclusion

The aim of the current study was to research the main influences on the Russian Code of Corporate Conduct (2002) and find the reasons for these influences. In particular, I tried to investigate if the creation and adoption of the Russian code was influenced by foreign codes as a result of transnational process of diffusion of corporate governance best practices, described by Aguilera and Cuervo-Cazurra (2009), La Porta et. al. (1998) and Aguilera and Cuervo-Cazurra (2004), or by national business system and institutions, specified in papers by Aoki (2001), Haxhi and van Ees (2010) and Licht, Goldschmidt and Schwarz (2005). For that purpose an analytical comparison of the Russian code with the codes of the most influential countries in the area of corporate governance (that are also major investors in Russia), such as Germany, the USA and the UK, and the international icon of corporate governance best practice - the OECD Principles - was conducted. In addition, in order to track the national influences, the federal acts and the articles of the Civil Code, regulating the activity of the joint stock companies, were also included into the comparison of the practices. The findings of the analysis are based on identified differences and similarities between the documents. The level of similarity indicates the influence of the document from my comparison on the Russian code. Applying the literature on transnational diffusion of corporate governance best practices, I provide the possible reasons for those influences.

The results of the conducted research show that the main impact (24%) on the Russian Code of Corporate Conduct (2002) was caused by the OECD principles due to several reasons. Firstly, Russia was in need of financial resources, and according to 'The Transnational Diffusion of Corporate Governance Best Practices: the Russian Code of Corporate Conduct'



Aguilera and Jackson (2003) the competition for capital is a main trigger of diffusion of best practices and code adoption. Moreover, the issuing body of the Russian code was the stock exchange that in compliance with the view of Aguilera and Cuervo-Cazurra (2004) may be a result of foreign investors' pressure. Secondly, one of Russia's main goals was a membership in the WTO. Thereby, Russian government experienced some pressure from transnational organizations so that it would increase the corporate governance standards in the country (McCarthy and Puffer, 2003). As the OECD Principles are the most recommended international best practice for countries to orient at (Roberts, 2004; Aguilera and Cuervo-Cazurra, 2009), the Principles were not only taken into consideration (and some of them adopted) by Russian legislators, but the OECD itself also actively participated in the process of the code formation.

The other influences on the Code were exerted by German, American and British practices in the amount of 18%, 17% and 16% accordingly. The main reasons for these percentages are: Russia's strive for investment (targeting of Russian companies at the UK and the US stock exchange; Black, 2001); the historical influences of the relationships between those countries and Russia (such as their influence on the legislation and trade with German causing the highest influence; Braguinsky and Yavlinsky, 2000; ROSSTAT, 2010); and similarities in the financial structure with Germany, such as concentrated ownership, governmental interference into the economy and big share of banks in the national business (Mobius and Filatov, 2001).

About 18% of the Code was influenced by Russian national legislation. That can be explained by the two reasons. First of all, international practices are not always



applicable to the national business environment due to the specific features of the business system and institutions (Enrione, Mazza and Zerboni, 2006; Aguilera and Cuervo-Cazurra, 2004; Licht, Goldschmit and Schwartz, 2005). In case of Russia, such specific features include concentrated ownership, weak institutions and an underdeveloped capital market. Second of all, the Code is designed in a special way so as to support the national legislation and correct the flaws in laws, which according to Aguilera and Cuervo-Cazuura (2004) is a common practice, especially for countries with a transition economy. In addition to that, sometimes the combination of the national approach and the international practice takes place which is the transplantation and adaptation of international practice on the Russian Code.

Finally, 7% of the Russian code is unique, meaning that no similarities between the Russian code and the rest of the documents from our comparison were found. Aoki (2001) argues that corporate governance practices are embedded in the national institutional context. Furthermore, Haxhi and van Ees (2010) and Licht, Goldschmit and Schwartz (2005) provide the support that national culture and social institutions can have an impact on the formation of corporate governance standards. Thus, 7% of the Russian code that showed no similarities with other documents from the present comparison, represent the specific provisions that were included into the Code in order to solve institutional problems in Russia. Such provision include the provision to improve ethical values (meaning decrease the corruption levels and increase the transparency in particular), increase the trust between economic entities and protect the interests of the



government, banks and municipal bodies in terms of rising state interference into economy of the country.

The findings of the current research contribute to the literature on the corporate governance in transition economies and to the investigations of the Russian Code of Corporate Conduct of 2002. The results indicate that facing constant international economic and political pressures, Russia has to adjust to international standards in order to develop and increase its competitiveness. In this respect, Russian legislators chose to turn to international experience in order to create a code that would assure the investors of better levels of transparency and shareholders' protection; however while some foreign provisions were adapted to the national environment, others were simply imposed on. As a result, the Code looks like a mix of different practices that sometimes are inconsistent or contradictory to each other and to the national law.

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8. Appendices

8.1. Table 1. An international comparison of selected corporate governance guidelines and codes of best practice

Table 1. An international comparison of selected corporate governance guidelines and codes of best practice

Table 1. An intern	rnational comparison of selected corporate governance guidelines and codes of best practice						
Countries	Russia	Russian national legislation	The OECD principles	The UK	The USA	Germany	Comments
Document title	Russian Code of Corporate Conduct (April 2002)	Federal Law on Joint Stock Companies N 208 (December 1995; amended in 1996, 1999, 2001, 2002), Civil Code of Russian Federation (November 1994), Federal Law on the Securities Market N 39 (April 1996)	OECD Principles of Corporate Governance (April 1999)	"Cadbury Report" (December 1992; reissued in 1996), The Combined Code on Corporate Governance (July 1998)	"NACD Report" (November 1996; reissued in 2001), "BRT Principles" (May 2002)	German Corporate Governance Code (February 2002)	N/A

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edoos	Joint stock companies, encouraged to all companies	All the <i>joint stock</i> companies in the Russian Federation	Listed companies, encouraged to all companies	Listed companies, encouraged to all companies	Listed companies, encouraged to all companies	Listed companies, encouraged to all companies	Same for all
Enforcement	Voluntary; Disclosure: "comply or explain" basis for listed companies (after 2004)	Mandatory (hard law)	Voluntary	Disclosure: comply or explain; The Combined Code is mandatory for listed companies	Voluntary (before the SOX Act was issued in 2002)	Comply or explain basis; some passages are mandatory under the national law	The Russian code, the US code and the OECD Principles are voluntary (till 2002 SOX Act in the US; till 2004 amendment of the Russian Law on Securities Market, that obliged listed companies to comply with the Code or explain the reasons for noncompliance).
Objective	Improve companies' performance, transparency, competitiveness and access to capital; the emphasis is put on increasing the investment (from foreign and domestic sources) into Russian economy (Foreword)	Law on JSC: Specifies setting up, reorganization, liquidation procedures, the legal status of joint stock companies and the rights and obligations of shareholders (Art. 1); Law on Securities Market: specifies the disclosure rules for listed companies, regulates the functioning of the securities market (Art. 1)	Improve companies' performance, competitiveness and access to capital (Introduction); "assist OECD and non-OECD governments in their efforts to improve the legal, institutional and regulatory framework for corporate governance in their countries" (Preamble)	Improve quality of board governance; improve governance-related information available to equity markets; improve investor confidence by raising standards of corporate governance (The Combined Code, Preamble)	Improve quality of board governance; improve governance-related information available to equity markets; improve competitiveness of corporations (BRT Principles, Foreword)	Improve companies' performance, competitiveness and access to capital; improve quality of governance-related information available to equity markets; make the CG system transparent and available (Preface)	The main aim of the Russian code is to raise the transparency and encourage investment, that is in line with the German code and the OECD Principles.



Shareholders' interestsoriented. Cited: "Standards of corporate governance should be applied to ensure adequate protection of the interests of all shareholders, regardless of the size of their holdings. The greater the level of shareholders' protection achieved, the more investment capital will be available to Russian joint stock companies" (Introduction). "Corporate governance practice should provide for the efficient control over the financial and business operations of the company in order to protect the rights and legal interests of shareholders" (Chapter 1, Paragraph 7). To sum up, even though the Code includes the provisions concerning shareholders' interests, the emphasis is constantly put on creation of value for shareholders (see the section "The rights and interests of stakeholders" below).

Shareholders' interestsoriented. The law specifies the *rights of shareholders* and does not include provisions concerning the stakeholders.

to shareholders' interests-orientation. Cited: "Good corporate governance should provide proper incentives for the board and management to pursie objectives that are in the interests of the company and shareholders" (Preamble at. 2); "...policies that diverge from the primary corporate objective of generating long-term economic profit so as to enhance shareholder value in the long term" (Perspective 21).

Mixed, with a tendency

interestsoriented. Not covered directly, but: "The chairman should ensure that the views of shareholders are communicated to the board as a whole"; "The senior independent director should... develop a balanced understanding of the issues and concerns of major shareholders" (Combined Code, Provision D.1.1). "All directors must take decisions objectively the interests of the company" (Combined Code, Supporting Principle A.1).

Shareholders'

Shareholders' interests-oriented. Cited:"...the CEO, the senior management team and the board of directors can interact effectively...to provide enduring value to the shareholders who invest in the enterprise" (BRT Principles, p. 7), "The objective of the corporation is... as to enhance corporate *profit* and shareholder gain" (NACD Report, p. 3).

Stakeholders' interests-oriented. In companies, having more than 500 or 2000 employees, employees are represented in the Supervisory Board to one-third (Foreword). The purpose of the Code is "to promote the trust of international and national investors, customers, employees and the general public in the management and supervision of listed German stock corporations" (Foreword).

Despite the fact that Russian code contains some of the provisions concerning the stakeholders' interests, the emphasis in the Code is still put on the protection of the rights and interests of shareholders and importance of value creation for them. This view is similar to all the rest codes from the list, except the German code, which allows employees of the company to be members of the Supervisory Board. As for the Russian Law, it does not contain any provisions concerning the stakeholders, therefore focusing exclusively on shareholders.



The code encourages all shareholders to exercise their rights of participation in general meetings, equal protection and voting rights and the access to full and accurate information about the company (Chapter 1). The general meeting should be conducted at least once a year, all the shareholders should be informed about the time and place of the general meeting at least 20 days in advance (or even 30 days in advance) (Chapter 2, 1.1.1).

All owners of the ordinary shares exercise the same rights, such as the right to vote, the right to participate in the general shareholders' meeting and the right to get the dividends. Privileged and cumulative shares do not provide the voting rights, except the specific cases, stipulated in the Law on JSC (Art. 31-32). The general meeting of shareholders should be conducted at least once a *year*, all the shareholders should receive a 20-day notice about the time and place of the general meeting (or in case agenda contains the question of reorganization, even a 30day notice) (Law on JSC, Art. 52.1).

"The corporate governance framework should protect and facilitate the exercise of shareholders' rights". The rights include access to information, participation and voting on general shareholder meetings, election and removal of the board members, sharing the profits of corporation and equal rights' protection (Principles II and III).

voting rights positively" and "register their votes on a regular basis whenever possible", get the access to reports and accounts as well as to their boards at the **Annual General** Meeting (Paragraph 6.7, Cadbury Report). The general meeting should be annual, all the shareholders should be informed about the time and place of the general meeting at least 20 days in advance (Combined Code, D.2.4).

Shareholders should "use their

"Shareholders have the right to elect representatives (directors) to look out for their interests and to receive the *information* they need to make investment and *voting* decisions (BRT Principles, p. 7).

exercise their rights and vote at general meetings (Provision 2.1.1). Each shareholder is entitled to participate.

Management should publish Annual Report, corporate documents and all the necessary information on the corporate website as well as send it by post (Provision 2.3.1).

Shareholders can

The highest level of resemblance was found between the Russian code, the Russian Law on Joint Stock Companies and the OECD Principles. The shareholders' rights are more or less the same for all codes. A 20- (or a 30-) day notice can be found in the Russian code, Russian Law and the UK Combined Code.





The decision on issuance

Protection of minority shareholders' rights

The protection of minority shareholders' rights is almost not covered in the Code, except the notion that usage of cumulative voting practice is aimed at protection of the rights of minority shareholders; and the provision stipulating that the *opinion of minority* shareholders should be taken into consideration while nominating the directors (Ch. 3, Provision 2.3). In addition, see the section "Anti-takeover measures" and inclusion of independent directors into the board in section "Composition of the board" below.

of a large amount of ordinary shares (more than 25% of placed ordinary shares) placed under open subscription can be made only by general meeting and should be approved by at least three-fourth of shareholders' votes (aw on JSC, Art. 39). The holders of 2% of shares have the right to bring forward the question for the agenda of the general meeting and include themselves into the candidate list for the election of governing bodies at annual and extraordinary shareholders' meetings (Law on JSC, Art. 53). Any shareholder can turn to court in case of misconduct of a manager or a director and sue them on behalf of the company for damages (Law on JSC, Art. 71). Moreover, the post of the chairman of the board of directors (supervisory board) and the director general cannot be held by the same person (Law on

"Equitable treatment, including minority and foreign shareholders... Minority shareholders should be protected from abusive actions by or in the interest of controlling shareholders... and should have effective means of redress" (Principle III.A). In addition, independent *directors* are to be included into the board in order to protect the minority shareholders from controlling shareholders (Principle VI.E)

Not covered, but see the amount of independent directors on the board in section "Structure of the board of directors" below. Not covered directly, but the codes emphasize the importance of shareholders' interests and stipulate that the majority of directors (BRT Principles, p.14) or any director (NACD Report, p.11) should be independent.

but in order to protect the shareholders' interests all the members of the **Supervisory Board** should be independent and only two former members of the Management Board shall be members of the Supervisory Board (Provisions 5.4.1-5.4.2). In addition, the obligations of the chairman of the board and the CEO of the company cannot be fulfilled by the same person or anyhow connected in the past (Provisions 5.4.3-5.4.4).

Not covered directly,

Just as in most international practices, Russian code contains the provisions concerning the amount of independent directors on the board in order to protect minority shareholders. In addition, cumulative voting is also aimed at protection of shareholders' rights. It should be mentioned, that the protection of minority shareholders is covered more extensively in the Russian Law on Joint Stock Companies, while the Code is only supporting the Law.



	JSC, Art. 66.2).			



	persons (including
	employees) must be taken
	<i>into account</i> and the
	corporate governance
	practice should "encourage
S	active <i>cooperation</i> between
Jer	the company and interested
γοι	persons with the view to
kel	increasing the assets of the
sta	company and the value of
of	its shares and to <i>creating</i>
sts	<i>new jobs</i> " (Chapter 1,
ere	Paragraph 6); the board of
int	directors should <i>take into</i>
pu	consideration the interests
s a	of employees, government,
The rights and interests of stakeholders	municipal bodies and
e ri	creditors (Chapter 3,
Į.	Provisions 3.1.5, 6.1). The
	company needs to <i>improve</i>
	the conditions of labor
	(Chapter 3, Provision 4.12).
	"Members of the board

The rights of interested persons (including

should act in the interests of

entire company" (Chapter 3, Provision 3.1.1).

The *rights and interests* of stakeholders established by law or through mutual agreements are to be respected. The Principles encourage free communication and *cooperation* between corporations and stakeholders to create wealth, jobs and sustainability, and participation of stakeholders in the corporate governance process, providing them with a timely access to sufficient information (Principle IV). The board "should take into account the interests of stakeholders" (Principle IV).

Not covered directly, but: "...reports...are important to a wider audience, not least to employees whose interests boards have a statutory duty to take into account" (Cadbury Report, Paragraph 2.7).

its employees, customers, suppliers and other constituencies in a fair and equitable manner. The company is obliged to "treat its employees well, serve its customers well, foster good relationships with suppliers" in order to raise its reputation and enhance the shareholder value (p. 3, p.31, BRT Principles).

The company is

responsible to treat

In Germany employees have the representation on the Supervisory Board that equals one-third in companies with more than 500 employees and half the board in companies with more than 2000 employees (Foreword).

The highest level of similarity concerning the provisions on the protection of stakeholders' interests takes place between the Russian Code and the OECD Principles. An interesting fact is that the Russian code is the only one to mention such stakeholders as the government, municipal bodies and creditors, whose interests should also be taken into account.

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Not covered



Structure of the board of directors

Two-tier (see comments). The board of directors (or the **supervisorv board**) is accountable to shareholders. It "should exercise general management of the company's operations, have wide powers of supervision and *control* (of executive bodies), and be liable for a failure to perform its duties" (Chapter 3). It is also responsible for approval of the candidate, the contract and remuneration of the director general and developing the strategy of the company (Chapter 1, 3.4, Ch. 3, 1.1). Members of the board are elected by shareholders. The management board is accountable to the board of directors and the shareholders and responsible for "managing day-to-day activities of the company...setting goals and objectives and implementation of the company's strategies and policies"; they are *liable for* damages (Chapter 1. 4, Chapter 4).

Two-tier/unitary.

The board of directors (or the supervisory board) manages the company except the questions that are under the competence of the general meeting of shareholders; the directors are *liable for damages*. It is responsible for the strategic planning, organization of the general meeting of shareholders and financial issues. In the companies with more than 50 shareholders the board of directors should be elected by the general meeting of shareholders (Law on JSC, Art. 66). The management and the implementation of the strategy of the board can be exercised either by the management board and the director general, or solely by the director general. The management board and the director general are accountable to the board of directors and the general meeting of shareholders, are liable for damages and can be appointed or dismissed by the general meeting of shareholders (Law on JSC, Art. 66).

Unitary.

"The board should ... retain full and effective control over the company and monitor the executive management" (Cadbury Report, Provision 1.1). "The board's role is to provide entrepreneurial leadership of the company", assess and manage the risks.: The board should set the company's strategic aims ... and review management performance"; the members of the board are responsible for appointing and removing executive directors and determining their remuneration (Combined Code, Supporting Principle A.1).

Not specified (two-

tier/unitary).

"The corporate

governance framework

should ensure the

strategic guidance of

the company, the

effective monitoring of

management by the

board, and the board's

accountability to the

company and the

shareholders" (Principle

IV). The full list of the

board's obligations can

be found in Principle

VI.D.

Unitary.

"The board delegates to the CEO - and through the CEO to other senior management ... **Directors monitor** management on behalf of the corporation's shareholders" (BRT Principles, p.7). The responsibilities of the board include: "selecting a successful corporate management team, overseeing corporate strategy and performance, and acting as a resource for management in matters of planning and policy" (NACD Report, p.3). Other duties of the board of directors include "selecting, monitoring, evaluating, compensating, and - if necessary - replacing the CEO" (NACD Report, p. 3), "nominating directors and committee members and overseeing effective corporate governance"

(BRT Principles, p. 10).

Two-tier. "The Supervisory Board appoints (and dismisses), supervises and advises the members of the Management Board and is directly involved in decisions of fundamental importance to the enterprise" (Foreword; Provisions 5.1.1-5.1.2). The representatives are elected by shareholders. "The Management Board is responsible for managing the enterprise" (Foreword), it "develops the strategy of the enterprise, coordinates it with the Supervisory Board and ensures its implementation" (Provision 4.1.2), "ensures appropriate risk management and risk controlling" (Provision 4.1.4). The Management Board and the Supervisory Board are liable to the company for damages (Provision 3.8).

Both the Russian code and the Russian Law requires a company to create the board of directors (the supervisory body) and the executive body (the director general or the management board). On the one hand, due to the functions of supervision and control provided to the supervisory board, the structure of the Russian board of directors reminds the German one: on the other hand, while the German Supervisory Board is comprised exclusively from independent directors (no more, than 2 executives) and employees (1/3 of the board), that provides the independent judgment, Russian code dictates far less strict requirements for the board independence (see "Composition of the board of directors), that are typical for the US and the UK codes. This makes the supervisory function of the Russian board of directors questionable. While the structure of the board is closer to the German one, the responsibilities of the board of directors are similar to all the rest codes from the list, corresponding a hybrid of

international provisions.







Separation of the CEO and the Chairman of the Board	The code distinguishes between the two roles of the chairman of the board and the general director (general manager), but allows that both positions can be held by the same person (Chapter 1, Chapter 3).	The person holding the post of the director general should not be the chairman of the board of directors (the supervisory board) (Art. 66.2).	It is recommended that the countries with a unitary board structure could strengthen the independence of the board by separating the role of the chairman of the board and the CEO. In the countries with the two-tier board system this could be considered by the company taking into consideration the traditions in the country (Principle VI.E).	Separated. "Chairman's role should in principle be separated from that of the chief executive" (Paragraph 4.9, Cadbury Report). "No one individual should have unfettered powers of decision" (Principle A.2, Combined Code).	Both codes allow that the positions of the CEO and the chairman of the board of directors can be exercised by the same person, but it is emphasized that the board should have independent leadership (p. 6, NACD Report; p. 15, BRT Principles)	The chairman of the Supervisory Board should be separated from the chairman of the Management Board (cannot be exercised by the same person) (5.4.3, 5.4.4)	The Russian code, the OECD Principles and the US codes allow that the CEO (the director general) and the chairman of the board of directors may not be separated, even though they distinguish between the two functions and encourage an independent leadership. In contrast to that, the Russian Law on Joint Stock Companies prohibits that the functions of the director general and the chairman of the board of directors can be exercised by the same person; probably as this provision is mandatory by law, the legislators did not put an emphasis on it in the Russian code.
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Compensation

The amount of compensation should be the same for all types of directors (Chapter 3, Provision 5.1.1). It is determined by human resources and remuneration committee and then approved by the board of directors. The compensation policy can also be incorporated into the internal corporate documents (Chapter 3, Provision 5.1.2). The amount of compensation should be disclosed on an annual general meeting of shareholders. Remuneration of managers (including director general) should be variable, competitive, share price and performance related and have a longterm incentive component. It is determined by human resources and remuneration committee and should be approved by the board (Chapter 4, Provision 5.1.2).

The compensation of the members of the board of directors should be approved by the general meeting of shareholders (Law on JSC, Art. 64). The board of directors should recommend the amount of remuneration of the members of the revision committee and the auditor and the amount of dividends payable to shareholders (Law on JSC, Art. 65). After that the amounts should be approved by the general meeting of shareholders.

The remuneration of directors should be linked to the long-term interests of the company and the shareholders. The remuneration policy can be developed either by the board, including executives, or by a remuneration committee, consisting wholly or mostly from independent directors (Principle VI.D.4). The executives' remuneration should be determined by the board or the remuneration committee.

performancerelated, of a sufficient amount. but not more than necessary (Combined Code, Principle B.1). No directors should be involved in deciding their own compensation (Combined Code. Principle B.2). The remuneration of nonexecutives should be determined by the board of directors or the shareholders, should reflect time commitment, but should not include share options (Combined Code, Provisions B.1.3-B.2.3). Remuneration of executives should be linked to the corporate and individual performance.

The remuneration

should be

The amount of compensation is determined by the board of directors and should be disclosed in a proxy statement (NACD Report, p.7). Directors should get a compensation in the form of longterm equity (restricted stock) and cash, or solely in the form of equity. A significant ownership stake helps to align the interests of directors with that of the shareholders (BRT Principles, p.25). The compensation of managers should be performancerelated and linked to the long-term interests of

shareholders.

The Supervisory Board should get fixed as well as performancerelated remuneration (long-term), and should be *specified by* resolution of the General Meeting or in the Articles of Association (Provision 5.4.5). Compensation of the Management Board should be determined by the Supervisory Board and be of an appropriate amount, consisting of a fixed salary and variable components (e.g. stock options) (Provision 4.2.2). The remuneration should be appropriate individually and in total.

It can be seen that Russian legislators followed the recommendations of the **OECD** Principles concerning the remuneration of the board of directors, such as the determination of the compensation by the human resources and remuneration committee and approval by the board of directors. It is interesting that while some codes prohibit the directors' participation in determining their own remuneration, the Russian code recommends that the directors should be involved into the process of their own remuneration determination and approval. As for the remuneration of managers, the Russian code's provisions are similar to the UK and the US codes. however quite superficial and brief, giving a lot of opportunities for the committees and the board to make their own decision. In contrast the Russian Law on Joint Stock Companies does not correlate with the Russian code's provisions.



The board of directors should create committees, such as: the **strategic** *planning committee*, the audit committee, the personnel and remuneration committee, the committee of settlement of corporate conflicts; it may also create risk management and ethics committees (Chapter 1, Provision 3.3). It is advised that the human resources and remuneration committee includes only independent directors and headed by the member of the board who does not have any positions in the company, while audit committee should be comprised exclusively of independent directors and headed by an independent director (Chapter 3, Provisions 4.7.3 - 4.11; Chapter 8, Provision 1.3.1).

Committees

In case of a liquidation, the liquidation committee can be formed (Law on JSC, Art. 22); in case there are more than 100 voting shares in the company, the counting commission should be formed to count the votes and register the participants of the general shareholders' meeting (Law on JSC, Art. 56); revision committee (analogue of an *audit* committee) should be formed to manage and control the financial performance of the company. The members of the revisions committee are elected by the shareholders' meeting and should not be the members of the supervisory or the management board (Law on JSC, Art. 85).

For issues that could cause a conflict of interest, such as the board remuneration, nomination of board members and key executives, the review of related party transactions and transparency of financial reporting - the commissions of several nonexecutive directors can be formed (Principle VI.E.1). Remuneration committee can be comprised of *solely* independent directors or the majority of independent directors; audit committee can consist exclusively of independent directors (Principle VI.D.4)

establish an *audit* committee, consisting of at least three nonexecutive directors with the majority being independent; a nomination committee, consisting of majority of nonexecutive directors and chaired by a nonexecutive one; and a remuneration committee. including only or mainly nonexecutive directors and chaired by a nonexecutive director (Cadbury Report, Provisions 4.35, 4.42).

The board should

create a compensation, an audit and a nominating or governance committees (NACD Report, p.7). An audit committee should be comprised solely from independent directors (BRT Principles, p.12). A compensation committee should be comprised solely of independent directors (BRT Principles, p. 18). A finance or a *risk* management committees can also

be formed (BRT

Principles, p.16-17).

Boards should

In order to raise the efficiency of operations Supervisory Board can form committees on audit, compensation, strategy, investments and financing. "The committee chairman should report to the Supervisory Board. The chairman of the **Audit Committee** should not be a former member of the Management Board" (Provisions 5.3.1-5.3.3).

All the codes from the comparison encourage the creation of committees, especially an audit and a human resources and remuneration (or in some cases a nomination) committees, that should be comprised exclusively of independent directors (except the German Code) and headed by an independent director. The Russian Law on Joint Stock Companies obliges companies to create a revision committee instead of an audit one, that is similar in its functions to the Western analogues. The Russian code also contains the recommendations to create the committees on other issues, such as strategic planning (the same provision can be found in the German code), risk managements (also suggested by the US BRT Principles), resolution of corporate conflicts (same for the OECD Principles) and ethics.



Disclosure and corporate governance

The information should be fully and timely disclosed in the annual report prepared by management. The rules of disclosure and ethical standards are to be specified in the internal documents and the charter. The company should comply with the recommendations of the code. In case of incompliance the reasons for the failure to follow the code should be stipulated in the annual report (Chapter 7, Provision 3.3.6). Information about independent directors should also be included into the annual report. In addition, the company should disclose the information about the members of the board of directors and the managerial board, the director general, the shareholders owning 5% of shares, including the amount of remuneration payable to them (Chapter 7, Provisions 2.1.2, 2.1.4, 3.3.3). Providing an access of shareholders to all the necessary information is the responsibility of the corporate secretary. Corporate conflicts are also subject to a disclosure.

Information about independent directors, the director general and members of the management board should be disclosed in the emission prospectus (Federal Law on Securities Market N39). The company should disclose the financial information. provide the access to the annual report and the information about the company to financial authorities, shareholders, creditors and the media. The reports should be prepared by management and their authentity should first be approved by the revision committee and the auditor and then by the board of directors (or the director general in case there is no board of directors) (Art. 89). The shareholders should get the access to corporate documents, however an access to accounting information and management protocol can be provided only to shareholders owing no less than 25% of the voting shares (Art. 91). The golden share provides an access to any information.

The information concerning the board members and whether they are independent, major share ownership, governance structures and policies, the content of the corporate governance code, potential conflicts of interest, capital structures and company objectives are to be disclosed to shareholders (Principles V.A.8, V.A.3). The information on the remuneration policy for members of the board and key executives should be provided (Principle V.A.4)

should state in the report whether they comply with the Code and give reasons for noncompliance (Cadbury Report, 3.7). "The annual report should identify the chairman, the deputy chairman, the chief executive, the senior independent director and the chairmen and members of the committees" (Combined Code, Provision A.1.2). All independent directors are to be identified by the board, the terms and conditions of the appointment of nonexecutive directors should be available (Combined Code, A.3.1, A.4.4). Remuneration packages of individual directors and the chairman should be disclosed.

Listed companies

The corporate governance principles should be recommended to the board by the corporate governance committee. "Information about the board's structure and operations, committee composition and responsibilities, corporate governance principles and codes of ethics should be prepared by management and widely disseminated to shareholders" (BRT Principles, p.32). The board should disclose the definition of an "independent director" as well as any relationships that could compromise the director independence (NACD Report, p.12, p.22). **The** compensation of directors and executives should also be disclosed to the shareholders.

"The Management Board and the Supervisory Board shall report each year on the enterprise's Corporate Governance in the Annual Report"; the Annual Report should be prepared by the Management Board. Any conflict of interest should be disclosed in this report (Provisions 3.10, 5.5.3). The ownership of more than 1% of shares or purchase or sale transactions exceeding 5,000 euro are to be disclosed without delay (Provisions 6.6). The Corporate Governance report should also include compensation of the members of Supervisory Board. Compensation of members of the **Management Board** should be disclosed in the Notes of consolidated Financial Statements.

The Russian code, just as all the foreign codes, requires the companies to disclose their financial and the company information in their annual report, that should be prepared by management/the CEO/the director general; it also requires timely and equal access to information for shareholders, that is similar to the OECD Principles and the German code. Furthermore, the Russian code and the Russian law even add that the access to information for shareholders should be free and unhindered. In addition, according to the Russian code, the compliance or the reasons for noncompliance with the Code should be reflected in the annual report; same provision is specified in the Cadbury Report.



	mave equal, timely and cost-
	<i>efficient access</i> to
	information that should
	include <i>financial</i> position,
re	economic parameters,
nsc	ownership and
scle	management structure
The content of disclosure	(Chapter 1, Paragraph 5).
	The company should
,en	disclose any information
oni	that can be material to the
ت u	shareholders without delay.
4	It is advisable, that the
	company has an internal
	document (Regulation on

All the shareholders should

have equal, timely and cost-

Information Policy) that

would specify the rules of

disclosure.

The list of information to disclose includes the annual report, the annual accounting report, the issue prospectus, including all the necessary financial information and the information about the general meeting of shareholders (Law on JSC, Art. 92).

Equal, timely and costefficient access to information should be available to shareholders. The information should include material matters concerning financial situation, performance, ownership, and governance of the company (Principle V.A). All the financial information should be prepared in accordance with international standards of accounting and financial disclosure (Principle V.B).

transparency. The position of the Not covered company should directly. The timely be specified, the disclosure of financial financial and the information company should be honest information is to be and present a prepared by picture of the management (BRT company's affairs Principles, pp.8-9). (Cadbury Report,

The codes urge to

Provision 3.3).

treatment of shareholders in terms of information should be **equal**. The Consolidated Financial Statement should be prepared by the Management Board and examined by the auditor and Supervisory Board comply with international accounting standards. **Annual Financial** Statements should be prepared according to national regulations (Paragraph 6.3; Provisions 7.1.1-7.1.2).

The company's

The highest level of similarity concerning the content of disclosure can be noticed between the Russian code and the OECD Principles. Nevertheless, both the Russian code and the national law (Law on Securities Market) require that the criteria for disclosure should be determined in the company's charter. The Russian code also requires the disclosure of ethical standards, while other codes do not contain such a provision.





Conflict of interest	As the members of the managerial board can serve as the members of the board of directors, such members should avoid the voting concerning the terms and conditions of their employment contracts (Chapter 3, Provision 1.4.3). The director general and the board of directors should resolve the corporate conflicts. For that purpose a corporate conflict resolution committee can be formed (Ch. 10, 2.1.2).	Not covered	"Insider trading and abusive self-dealing should be prohibited" (Principle III.C). Any material interests should be disclosed. The board of directors is responsible for monitoring, managing and resolving the corporate conflicts (Principle IV.D).	It is recommended that nonexecutive directors should not participate in share option schemes and should not be pensionable by the company (Cadbury Report, Provision 4.13). In case the senior management is involved in supporting or advising the remuneration committee, the measure should be taken to avoid the possible conflict of interest (Combined Code, Supporting Principle B.2).	"Management and directors should never put personal interests ahead or in conflict with the interests of the corporation" (BRT Principles, p.2). <i>CEO and senior management</i> are responsible for compliance of the company with ethical and the corporate governance standards (BRT Principles, p.12).	No member of the Supervisory Board or the Management Board may pursue personal interests in their decisions (Provisions 5.5.2, 4.3.3). All the conflicts of interest should be disclosed to the Supervisory Board by the Management Board. Major Transactions require the approval of the Supervisory Board (Provision 4.3.4).	The results of the comparison of the conflict resolution measures show that the provisions of the Russian code are mainly similar to that of the OECD Principles and the US BRT Principles.
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Anti-takeover measures	The anti-takeovers measures that are contrast to the interests of the shareholders should not be taken. The company should refrain from any measures aimed at protection of the executive bodies and the members of the board of directors (Chapter 6, Provision 2.2). "The opinion of the board of directors with respect to the possible takeover should be communicated to shareholders" (Chpater 6, Paragraph 2). In order not to impair the interests of minority shareholders, it is not recommended to relive the entity taking over the company from an offer to buy out the shareholders' common stock (Chapter 6, Provision 2.3)	Any shareholder has the right to ask for a buyout of his/her shares in case of a reorganization , large transactions, etc. (Law on JSC, Art. 75).	"Anti-takeover devices should not be used to shield management and the board from accountability"(Principle II.E.2).	Independent directors should help in order to resolve the conflict of interest in case of takeovers (Cadbury Report, 4.6). The chairman of the board should ensure that the views of the board are fully communicated to the shareholders; a satisfactory dialogue between the board and the shareholders should take place (Combined Code, Provision D.1).	Not covered	The Management Board cannot take any actions that could prevent the success of the offer unless it is not entitled by the General Meeting or approved by the Supervisory Board. The Management Board and the Supervisory Board should act in the best interests of shareholders (3.7).	The recommendations of the Russian code concerning the anti-takeover measures look as a hybrid of international practices as it contains the similar elements, though some provisions are stipulated in the national law.
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Dividends	There should be a transparent mechanism of the dividend amount calculation and the payment procedure that should be clearly communicated to the shareholders. In case of a partly paid dividend or not a timely payment the company should consider in advance the sanctions it could use towards the director general and the managerial board (Chapter 7, 1.1, 3).	"The shareholders have rights to rule the company and get dividends" (Civil Code, Art. 48). The joint stock company has to pay dividends to all shareholders. The decisions concerning the amount of dividends payable and the form of payment should be made by the general shareholders' meeting. The amount of the dividend cannot be bigger than the amount recommended by the supervisory board. The time of payment is 60 days if it is not stipulated in the charter. In case the time is exceeded, any shareholder can demand the dividend from the company within 3 years after the violation of his or her rights (Law on JSC, Art. 42).	Not covered	Not covered	"The state corporate law stipulates that the board reviews and approves specific corporate actions, such as declaration of dividends" (BRT Principles, p. 5).	Not covered	The provisions on the dividend policy are almost not covered in the foreign codes from the comparison list; however, Russian Federal Law on Joint Stock Companies covers all the procedures of payment and calculation of dividends. Therefore Russian code supports the law, emphasizing the need of transparency and encouraging the protection of shareholders.
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8.2 The methodology used by Standard & Poor's for the assessment of the corporate governance level of Russian companies.

The four Key Components of the S&P study are:

- Ownership Structure;
- Relations with shareholders and shareholder rights provisions;
- Financial transparency and information disclosure;
- The structure of the board of directors (Feinberg, 2000; McGee and Preobragenskaya, 2005).

The 16 corporate governance criteria include:

- 1. Ownership structure and external influences;
- 2. Transparency of ownership;
- 3. Concentration and influence of ownership, external stakeholders;
- 4. Shareholder right and stakeholder relations;
- 5. Shareholder meeting and access to information;
- 6. Voting procedures;
- 7. Ownership rights and takeover defenses and stakeholder relations;
- 8. Transparency, disclosure and audit.
- 9. Content of public disclosure;
- 10. Timing and access to public disclosure;
- 11. The audit process;
- 12. Board and management structure and effectiveness;
- 13. Board structure and composition of the board;
- 14. Role and effectiveness of the board;
- 15. Independence of outside directors;
- 16. Senior executive and director compensation, committees (Standard & Poor's Corporate Governance Scores and Evaluations, 2004; McGee and Preobragenskaya, 2005).

