Independent directors and controlling shareholders around the world

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Keywords: independent directors; board of directors; board committees; board elections; monitoring board; controlling shareholders; executive remuneration; related party transactions; self-dealing

JEL Classifications: G34, K22

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1 INTRODUCTION

Independent directors originated in dispersed ownership systems in order to strengthen the monitoring role of the board, as widely shown by comparative law scholarship (Hopt, 2011). Over time, independent directors have become one of the key international standards and exist in most corporate governance systems around the world. However, corporate scholars generally focus on independent directors in the US and the UK, mainly considering diffuse ownership companies. As a result, the role and impact of independent directors in corporations with control shareholders are less frequently analyzed.

In this chapter, we examine independent directors as a legal transplant from dispersed ownership systems to other systems where controlled corporations are prevalent. Our main thesis is that independent directors have a different and relatively narrower role to perform in controlled corporations. We also argue that in the law and practice of controlled corporations independent directors often play an even weaker role than economic theory would predict. In order to prove our thesis, we explore differences in legal regimes applicable to independent directors across countries and in the role that the latter play in jurisdictions where controlled corporations dominate. We show, in particular, that several jurisdictions only pay lip service to the concept of independent directors as a central governance mechanism in listed companies.

2. THE INDEPENDENT DIRECTORS' ARCHETYPE

2.1 The Rise of Independent Directors in the US

The ownership of publicly traded companies in the US is mostly diffuse (Tirole, 2006), even though recent empirical studies offer evidence that it is less dispersed than expected and that many listed companies present one or more blockholders (Holderness, 2009). Independent directors are perceived as a means to strengthen the control over the management and to address potential conflicts of interests between managers and shareholders in the classic Berle & Means context of separation between ownership and control.

In his seminal work on independent directors in the US, professor Gordon extensively elaborated on the correlation between the rise of independent directors and the shift to the monitoring board (Gordon, 2007). While outside directors had been present in US corporate boards since the ’50s, it was only in the ’70s that independent directors were appointed. The collapse of Penn Central was determinative in this regard, as it showed the practical failures of the board. At the same time, corporate scholarship was strongly influenced by professor Eisenberg’s book *The Structure of the corporation*, which highlighted the monitoring of corporate management as the main function of the board in large corporations and the ensuing need to make the board independent from the executives (Eisenberg, 1976).

The “monitoring model” of the board and the idea that independent directors can improve board performance gained traction over the years, determining an increase in the number and functions of independents. However, the scandals which hit major US corporations like Enron at the start of this century highlighted that serious failures still existed in board monitoring of financial accounting and internal controls (Coffee, 2004; Gordon, 2007; Skeel, 2005). The regulatory response to these scandals was, once more, to increase the proportion of independent directors in the boards of listed corporations and to enhance their duties and functions.

The Sarbanes-Oxley Act extensively reformed accounting and financial disclosure regulation, mandating the establishment of an audit committee made up entirely of independent directors (Romano, 2009). Also, amendments to NYSE, NASDAQ and AMEX regulations stressed the role of independent directors in the board of listed companies. Those rules required listed companies to appoint a majority of independent directors to their boards and upgraded the standards of independence (Clarke, 2007). Moreover, also nomination and compensation committees became mandatory and should consist entirely of independent directors. However, new requirements of independence are only binding on diffuse corporations, while controlled ones (i.e. those where a single shareholder or a group of shareholders hold 50% or more of voting shares) are exempt (Bainbridge, 2012). As a result of these reforms, large US companies' boards comprise only one or two inside members and about 80-90% of independent directors (Blair, 2014)

Definitions of independence focus on the absence of financial and family ties between directors and the corporation. Conversely, they do not consider social and professional ties with the company and its managers, although those links may in practice affect the independence of directors (Fairfax, 2010). Moreover, since the new requirements on independent directors do not apply to controlled corporations, definitions of independence are silent as to business and personal ties with controlling and significant shareholders. However, they take account of stock ownership of independent directors excluding independence when a director owns more than 10% (Sarbanes-Oxley Act) or 20% (NASDAQ) of the shares in the concerned corporations (Clarke, 2007).

Also the role of independent directors in management oversight was enhanced. Independent directors have relevant powers in the audit committee, especially as to the hiring, overseeing and firing of outside auditors (Clarke, 2007). They also have a role in the review of related-parties transactions, which are assessed by the courts under the rigorous standard of "entire fairness" unless approved by independent directors, in which case the less stringent business judgment rule applies (Cox, 2003; Velasco, 2004). Independent directors have also a role as to shareholders derivative actions, since they may prevent shareholders from bringing those actions or terminate the same when promoted (Fairfax, 2010).

Furthermore, independent directors hold advisory functions as members of nomination and remunerations committees. Moreover, to the extent that independent directors constitute the large majority of members, their role tends to overlap with that of the board. As a consequence, in addition to monitoring the managers, independent directors hire the chief executive officer and other top managers, and set their remuneration. They also exercise the managerial functions retained by the board, particularly in the case of mergers and acquisitions (Bainbridge, 2012).

2.2 Independent Directors in the UK

The Cadbury Report in 1992 was the first to introduce the notion of non-executive independent directors in the UK, along the US model. The Report recommended listed companies' boards to include at least three non-executive directors, a majority of whom independent from the company (§§ 4.11, 4.12; Dabbs Garret, 2007). Those directors were tasked mainly with the monitoring of corporate management and the review of self-interested transactions. The Report also recommended the establishment of board committees including non-executive independent directors (§§ 4.42, 4.30; Moore, 2013).

After the Enron scandal, the role of independent directors was strengthened also in the UK. The Higgs Report in 2003 suggested raising the proportion of independent directors in the board and its committees (Nolan, 2005). These suggestions were reflected by the 2006 Combined Code on Corporate Governance, which recommended the board to include a balance of executive and non-executive directors expressing a preference for a majority of independent members (Principle A3; Davies, 2013). The Code also provided that directors appointed as independent should not have any family and business relationship with the corporation and should not represent significant shareholders (Principle B.1.1). This definition is more comprehensive than the US one, which does not consider the relationship with major shareholders; however, being included in a soft-law instrument, it is in fact less binding than the US standard (Moore, 2013).

The post-crisis revision of the Code marks a discontinuity from the US approach by relaxing the requirement of independence in favor of directors' expertise and knowledge. The Code now recommends boards and committees to be shaped in a way to ensure an appropriate balance of skills, knowledge and independence (Principle B.1). The Walker Review in 2009 suggested a similar change by emphasizing the need for expert, rather than just independent, directors (Moore, 2013). The new standard allows companies in need of strong expertise to lower the proportion of independent directors even below the 50 per cent recommended threshold, and to appoint directors having special skills and knowledge (Davies, 2013).

2.3 Scholarly Views

Economists have questioned the role and impact of independent directors. While some studies show a positive correlation between the presence of independent directors in the board and corporate performance (Krivogorsky, 2006; Peng, 2004), other studies find no convincing evidence that firms with a majority of independent directors outperform other companies (Fogel and Geier, 2007; Bhagat and Black, 2002; Dalton and Dalton, 2005; Klein, 1998). The post-crisis law and economics discussion offers additional insights.

Firstly, current definitions of "independence" appear as under-inclusive, as they only focus on the absence of family and business relationships, often ignoring social ties with the managers that could negatively affect directors' independence (Tung, 2011; Bainbridge, 2012, making reference to studies showing the impact of social dynamics on directors' independent judgment; Larcker and Tayan, 2013; Fairfax, 2010). On the other hand, strict standards of independence make it difficult for companies to select directors having sufficient expertise and knowledge about the individual firm (Kirkpatrick, 2009). Current standards limit the number of eligible directors and exclude candidates who have industry expertise but are not independent. Some scholars also argued that prevalence of independence over competence after SOX contributed to the financial crisis (Bainbridge, 2012; Hopt, 2011). Other studies emphasize the need for firm-specific knowledge and expertise in the relevant fields (especially accounting) rather than independence (Sharfman, 2009; Marchesani, 2005).

Secondly, the mechanisms for appointing independent directors are often deficient. To the extent that the top executives still influence the process for recruiting directors, independent directors have poor incentives to conscientiously perform their monitoring tasks (Wade, 2006). In other words, the co-optation mechanism by which the board is renovated does not assure real directors' independence if the board is not sufficiently independent from the CEO and/or leaves the latter in actual control of the nomination process.

Thirdly, poor performance of independent directors is also explained on grounds of information asymmetry. Independent directors have no direct access to corporate information, which they receive from insiders, i.e. from the same individuals that they should monitor. Information deficits are especially serious in firms with high information costs and affect the independents' capability to effectively perform their tasks (Cosenza, 2007; Tung, 2011).

Fourthly, independent directors having other occupations, either as CEOs of other companies or non-executive members of other boards, dedicate little time to their role (Gabriel, 2004). Moreover, some scholars criticize the mechanisms of independent directors' remuneration for they would result in poor alignment with the shareholders' interest.[1] Also the liability regime of independent directors would not incentivize them enough to spend time and energy in monitoring, given the extensive protection granted to directors under the business judgment rule (Fairfax, 2010; Marchesani, 2005).

Despite all these limits, which contribute to explain the diffuse frustration about their role in practice, independent directors continue to occupy the large majority of board seats in the US and in the UK and their presence is generally recognized as an indispensable feature of modern systems of corporate governance.

3. MAIN FEATURES OF OUR SAMPLE COUNTRIES

In the rest of this chapter, we focus on Continental European countries, Japan and the BRICs (Brazil, Russia, India and China). Our sample countries are heterogeneous with respect to several corporate governance variables that we analyze in this section. Diversity seems to derive from different political and cultural contexts (Roe, 2002; Dine and Koutsias, 2013), rather than different

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[1] In most cases, independent directors are compensated primarily by cash payments while receiving a very small amount of companies' shares. Some scholars argue that equity compensation would be a workable strategy for aligning independent directors and shareholders' interests; other scholars, instead, maintain that compensation by equity shares could make independent directors less prone to disclose corporate facts likely to lower the company's shares market price. As to this debate, see Cosenza, 2007; Clarke, 2007.

legal traditions (La Porta et al., 1999). However, the enforcement of legal norms may diverge across countries even when the relevant provisions are similar.

3.1 Corporate Ownership and Agency Costs

Concentrated ownership is the dominant form of corporate ownership around the world (La Porta, et al., 1999). Independent directors were exported from dispersed ownership systems to other jurisdictions, where controlled corporations are prevalent. This transplant has had an impact on their role, as different ownership structures affect the balance of powers within the corporation. In dispersed ownership companies, the primacy of managers raises potential conflicts of interest between the latter and the shareholders' class. Moreover, shareholders face coordination and rational apathy problems as to the exercise of their rights. In concentrated ownership companies, controlling shareholders (or dominant coalitions of shareholders) exert their power by appointing and removing directors and are therefore in a better position to control the managers' agency cost.

However, in the latter companies a different agency problem arises in the relationship between majority and minority shareholders, to the extent that the former may extract private benefits from the company to the detriment of minority shareholders (Johnson, et al., 2000; Dyck and Zingales, 2002; Gilson and Gordon, 2004; Gilson, 2006). This agency problem is aggravated by the divergence between cash-flow rights and control rights, which occurs when the largest shareholder is able to control a public corporation with a relatively small stake in its cash-flow rights, e.g. through a pyramid structure or dual class shares (Bebchuk, et al, 2000). Empirical studies show that relative firm value (as measured by the market-to-book ratio of assets) increases with the share of cash-flow rights in the hands of the largest shareholder (Claessens, et al., 2002).

Although controlled corporations are prevalent in our sample countries, some differences exist as to the level of ownership concentration, which is higher in some countries (such as Italy, Germany, Sweden, Portugal, and China; see Skog and Sjoman, 2013; Coutinho De Abreu, 2013) than in others (particularly the

Netherlands; see Nowak, 2013), and as to the type of significant shareholders. In most of our sample countries, controlling shareholders are either families or other companies (Pietrancosta et al., 2013; Autenne, 2013) or the State (particularly in Norway, China and India: see Sjåfjell and Kjelland, 2013; Liu and Pissler, 2013; Rajagopalan and Zhang, 2012). In some countries, however, other entities hold significant shareholdings, such as national pension funds and civil law foundations and associations in Finland (Mähönen, 2013); financial institutions, corporations and institutional investors in Japan (Nitta, 2008; Franks et al., 2012; Prowse, 1992) and coalitions of either legal entities or individuals linked by shareholders agreements in Brazil (Gorga, 2009; Nanova, 2003).

The public or private character of controlling shareholders has an impact on corporate governance, depending on whether the interests of private shareholders are pursued or those of the State. Other elements of diversity concern the definition of corporate goals and the design of internal corporate governance structures, as we show in the following paragraphs.

3.2 Corporate Goals

There is a strong correlation between the rise of independent directors in the US and the increasing focus on shareholder value as the ultimate corporate purpose (Gordon, 2007). The concept of "monitoring board" and the broad delegation of powers to the top managers support the belief that independent directors serve to protect and promote shareholder value, as measured by stock market performance (Jackson, 2011; Sundaram and Inkpen, 2004). However, the shareholder primacy model does not imply that the interests of other stakeholders are left unprotected. Rather, other mechanisms—either contractual or regulatory—are provided for that purpose (Hansmann and Kraakman, 2001).

While shareholder value is at the core of US corporate governance, concentrated ownership systems are heterogeneous in respect of corporate goals. In most European countries, shareholder value maximization is understood, either on legal grounds or in fact, as the main corporate purpose

(Charreaux and Desbrières, 2001; Davies, 2003; Ferrarini, 2003). However, in controlled corporations, the shareholder value norm also implies that controlling shareholders should avoid appropriating private benefits of control (Hansmann and Kraakman, 2001).

Other European countries follow a stakeholder approach, focusing on the promotion of stakeholders' interests and often ensuring the participation of non-shareholder constituencies – particularly creditors and employees – to corporate governance (Hopt and Leyens, 2004). This approach is well exemplified by the German rule that the corporation should be run in the "interest of the enterprise", which is defined as a combination of shareholders, employees, and other stakeholders' interests (Schmidt, 2003; Merkt, 2013). A similar approach is followed in the Netherlands and the Nordic countries, where maximizing "enterprise value", as a combination of shareholder and stakeholder value, is seen as the main corporate purpose (Hopt, 2011).

Also some non-European countries in our sample follow a stakeholder philosophy. Japanese corporate governance, in particular, is oriented to the promotion of firm value, which is understood as a mix of shareholders and employees' interest (Pejovic, 2010). Similarly, a stakeholder approach is followed in Brazil where corporations are asked to pursue the interests of shareholders, workers and the community (Eizirik and Weber, 2013).

Shareholder-oriented models help understanding the trusteeship role of independent directors (Armour, Hansmann and Kraakman, 2009). When a stakeholder approach is followed, boards operate in a multi-principal context, where the interests of other constituencies (like employees, consumers and financiers) must be taken into account and reconciled with those of shareholders (Belcredi and Ferrarini, 2013). In a similar setting, the goals that managers should pursue may become blurred and the monitoring of their actions by non-executive (supervisory) directors may be less effective for lack of a clear guidance. Moreover, if the interests of multiple stakeholders must be taken into account, other types of non-executive directors may be required, such as representatives of employees and the unions along the German model of co-determination (Schmidt, 2003; Merkt, 2013). When more constituencies are empowered to appoint members to the board – such as employees and banks as long-term financiers of the enterprise – the role of independent directors is squeezed as a result.

However, the dichotomy “shareholder value/stakeholder approach”, albeit important, should not be overemphasized. Firstly, this distinction is sometimes more formal than real, for corporate practices do not necessarily conform to the legal statement of corporate goals, depending on other factors which include economic culture, competitive setting, industry sector, etc. Therefore, a stakeholder orientation of company law does not necessarily predict that boards will not adopt a shareholder value philosophy in practice, particularly when institutional investors put pressure on them in that direction (Davies, 2003). Conversely, boards could follow a stakeholder approach even in systems inspired by the shareholder value philosophy, either because of the nature of the firm (e.g. a public utility) or its ownership structure (as in the case of corporations owned by the State).

Secondly, the boundaries between the shareholder value and stakeholder approaches are often blurred, to the extent that the same corporate actions may, in the long run, maximize both shareholder wealth and enterprise value (Davies and Hopt, 2013; Tuschke and Luber, 2012). Indeed, a distinction should rather be drawn between short-term and long-term strategies, while acknowledging that the latter can actually reconcile the shareholders’ interests with those of stakeholders.

3.3 Board Models

In the US and the UK, boards are organized along the one-tier model, consisting of both executive and non-executive directors (Eisenberg, 1997; Bainbridge, 2012; Davies, 2013; Moore, 2013). Countries where concentrated shareholdings dominate present greater variety. The unitary board (one-tier model) is found in Spain, Sweden, and India (Recalde Castells et al., 2013; Skog, Sjöman, 2013; Rajagopalan and Zhang, 2012), whereas the dual structure (two-tier model), consisting of a management board and a supervisory board, is found in Germany, Denmark and China (Merkt, 2013; Christensen, 2013; Zhao, 2009).

In most of the countries included in our sample – such as Belgium, France, the Netherlands, Switzerland, Austria, Norway, and Finland – companies may opt for either a one-tier or two-tier board model (Hopt and Leyens, 2004; Geens, 2013; Pientracosta et al., 2013; Nowak, 2013; Mähönen, 2013; Ahmadjian, 2012).

The proximity of executive and non-executive directors within the board might, in theory, explain why the need for independent directors was originally felt in one-tier systems. Conversely, the separation of executive and supervisory directors in two different organs could explain the resistance often found in two-tier systems to the concept of independent directors.

However, similar arguments can be seen as too formal, given that the proximity of executive and non-executive (supervisory) directors should not depend on whether they sit in the same or different boards. Indeed, in the practice of two-tier systems, the managers generally take part in the supervisory board's meetings, given that they have all the relevant information about the corporate business and performance. On the other side, it is the general practice of one-tier boards to delegate wide powers to their executive members who lead the firm's management team. As a result, non-executive directors mainly have a monitoring function and often perform the same through participation to board committees, which only comprise non-executive (mostly independent) members. This *de facto* separation between managerial and supervisory tasks is epitomized by the board "executive" sessions, where only the non-executive directors meet to discuss either the performance of the CEO or other management issues. Therefore, the internal organization of the unitary board largely reflects the two-tier model and its separation of management and supervisory powers (Davies and Hopt, 2013; Gilson and Milhaupt, 2005).

The taxonomy of board organization may be more complex than the one just described. Under Italian law, for example, companies can choose amongst three governance models: the unitary board (with a mandatory audit committee made-up of independent directors); the dual system consisting of a supervisory board and a management board; the "traditional" system, which consists of the board of directors (comprising both executive and non-executive directors) and the board of statutory auditors (Ferrarini et al., 2013; Ghezzi and Malberti, 2008).

Also in Portugal we find the requirement – similar to the one in force in Italy under the traditional system – for the appointment of internal (statutory) auditors, organized as a separate body and tasked with the control of both the financial accounts and the legality of managerial activity (Coutinho De Abreu, 2013). Similarly, in Japan the "traditional" model foresees a board of statutory auditors, appointed by the shareholder meeting and distinct from the board of directors. The main function assigned to corporate auditors is that of monitoring the lawfulness of company management (Nakamura, 2013). Also in Brazil companies are required to appoint a board of auditors, independent from the corporation and the controlling shareholders, and tasked with the control of financial statements (Eizirik and Weber, 2013).

No doubt, when the law provides for a board of auditors separate from the board of directors and made-up of independent members, the role of independent directors may be overshadowed as a result. Moreover, the need arises of clearly identifying the respective monitoring roles of statutory auditors, on one side, and independent directors, on the other (Ferrarini et al., 2013).

4. THE DEFINITION OF "INDEPENDENCE" ACROSS COUNTRIES

In all countries examined, the board should include some independent members. However, the notion of independence and the requirements for a director to qualify as independent are not uniform across the jurisdictions in our sample.

4.1. Continental Europe

A definition of independence is offered by the EU Recommendation on the role of non-executive or supervisory directors,[2] which requires independent directors to be «free of any business, family or other relationship with the company, its controlling shareholder or the management of either, that creates a

[2] European Commission, Recommendation on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board, 15 February 2005, in O.J. (2005), L-52/51.

conflict of interest such as to impair its judgment» (§ 13.1). In addition, annex II of the Recommendation sets a list of criteria that member States should adopt to assess independence of directors.

European countries generally comply with the Commission Recommendation. However, the multifarious combination of hard law and soft law at member State level, together with other features of local corporate governance, make the notion of independence diverge in practice amongst member States. In particular, while business and personal ties with the corporation and its managers are considered as impediments to independence in all EU jurisdictions, divergence is found in the definition of "independence from controlling shareholders".

In some jurisdictions, for example, the absence of business and personal relationships with significant shareholders is required for some, but not all, independent directors.[3] Other jurisdictions either offer a narrow definition of independence from "main shareholders"[4] or require an analysis of independence-in-fact.[5] Moreover, some codes refer to "controlling shareholders"[6] while others to "majority shareholders"[7] or "significant shareholders" holding more than 5% of the voting shares[8] or 10% of the same[9] (Davies and Hopt, 2013).

3 The Swedish, Finnish and Norwegian codes, for example, provide, respectively at sect. 8, § 15 and § 4.4, that all independent directors should be independent from both the company and the managers and at least two of them should be independent also from "major shareholders" (Mähönen, 2013; Skog and Sjöman, 2013). Similarly, the Austrian code requires independence from significant shareholders only for one or two members of the supervisory board and only in companies with a free float respectively above 20% or 50% (§ 53-54; Kalss, 2013).

4 In the Netherlands, for example, the Corporate governance code excludes independence for directors holding at least 10% of the shares in the concerned company, but does not consider the case of directors' business and personal relationship with significant shareholders (§ III.2.2; Van Bekkum et. al., 2013).

5 In France, for example, directors representing major shareholders of the corporation may be considered as independent, if those shareholders do not take part in control of the corporation (§ 9.5). Similarly, in Germany, business and personal ties with the corporation, its managers and controlling shareholders exclude independence only when they may result «substantial and not temporary conflict of interests» (§ 5.4.2: Ringe, 2013). In Italy, the corporate governance code does not refer directly to the relationship with major shareholders. Ties with them, however, should be taken into account when assessing the independence in fact, as suggested by the code (§ 3.C.1).

6 German Code, § 5.4.2; Danish Code, § 3.2.1; Greek code, § 2.3.

7 French code § 8.5.

8 Spanish Code § 5.5.i.

9 Dutch Code, § III.2.2; Belgium Code, § 2.4; Austrian code, C 53.

In addition, the independence requirements are generally subject to "comply or explain" and therefore non-binding for the board.[10] Consequently, the board may deviate from the standard of independence recommended by national codes, if an adequate justification is provided.[11]

4.2 BRICs

In other countries of our sample, the definition of independence includes similar criteria, such as the absence of personal and business ties with the corporation, its management and main shareholders. In Brazil, for example, independence is excluded if the director is a shareholder or is closely related to a significant shareholder, or if the director has been an executive, an officer or a relevant employee in either the corporation or its affiliates in the previous three years.[12]

However, some remarkable differences are found, particularly as to the relevance of directors' relationships with shareholders. In China, independence is defined by reference to family, social or financial connections with the corporation and its large shareholders—holding at least 1% of shares.[13] Similarly, in India cause 49 of the *Equity Listed Agreement*, setting the requirements for listed companies' boards, defines "independence" focusing on business and personal ties with managers, promoters, and the corporation. Independence is excluded, amongst others, if the director is a shareholder owning 2% or more of the voting shares (Khanna and Mathew, 2010). Only in Russia personal and business ties with shareholders are not taken into account in the assessment of independence.[14]

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10 An exception is offered by the Spanish code, providing that independence criteria are a necessary condition for a director to qualify as independent (§ II.10; Recalde Castells et al., 2013),

11 Pietrancosta et al., 2013 report that in France about 15% of independent directors do not fulfill all the requirements listed in the Code.

12 In addition, independent directors cannot receive from the concerned corporation any kind of compensation other than directors' fees, implicitly excluding the possibility of any other contractual relationship with the corporation for independent directors (Sternberg et al., 2011).

13 Independent directors are also required to have specific knowledge about listed companies and at least five years of experience in either law or economics (Clarke, 2006).

14 The Russian Corporate governance code defines independent directors as members of the boards having no business relationship with the corporation and not being a representative of the government (2.2.2). Therefore, except for cases where the government is a significant

4.3 Japan

The situation is quite different in Japan, where the emphasis is more on externality than independence. Indeed, the 2005 Company Act does not mandate the appointment of independent directors, but requires the presence of at least two "outside directors" in companies organized according the one-tier model.[15] The Security Listing Regulation, enacted by the Tokyo Stock Exchange, provides stronger requirements as to board's composition mandating all listed companies to appoint either an independent auditor or an independent director (rule 436-2). What distinguishes independent directors from outside directors under this regulation is the absence of conflicts of interests with respect to common shareholders, who being dispersed cannot affect the company's management (Ahmadjian, 2012; Kanda, 2012).

5. APPOINTMENT AND NUMBER OF INDEPENDENT DIRECTORS

In our sample countries, general meetings elect boards through majority voting. As a result, the appointment process is dominated by controlling shareholders or coalitions of shareholders. Moreover, independent directors only cover a minority of the board seats, which no doubt affects the role of independent directors and their effectiveness in boards.

5.1 Continental Europe

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shareholder, business and social ties with the shareholders do not impede a director to be appointed as independent (Perkins, 2003).

15 The corporate governance code defines outside directors as directors who have not served as executives, officers, auditors or employees the concerned corporation, have not provided any service or been major client or trading partner in the company (P. 4.2). However, this notion, introduced to reach proximity with the standard of "independent directors" (Goto, 2013), raised remarkable criticism, since it focuses only on business ties, but does not consider as impediments neither the personal ties with above individuals and nor the relations with significant shareholders (Nakamura, 2013).

In some European countries, special appointment rights are given to minority shareholders under cumulative voting or similar systems.[16] For the rest, board elections are still dominated by controlling shareholders or coalitions of shareholders, who select and appoint the large majority of board members.

As for the proportion of independent directors in European boards, the Audit Directive requires the appointment of at least one independent director who should also be a member of the audit committee. However, under the EU Recommendation on the role of non-executive or supervisory directors the audit committee should consist of a majority of independent directors (Davies and Hopt, 2013).

In general, national laws and/or corporate governance codes provide for a minimum number or a given proportion of independent directors in the board.[17] The German Code, however, only recommends the supervisory board to include «what it considers an adequate number of independent members» (§ 5.4.2). This approach reflects the German reluctance towards independent directors.

Data about the composition of boards over a decade show a moderate increase in the percentage of independent directors in listed companies' boards from an average of 29% in 2000 to 34% in 2010.[18] On the whole, the presence of independent directors in European companies is still far from the majority of the

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16 In Poland and Austria cumulative voting may ensure proportional representation to different groups of shareholders (Davies, and Hopt, 2013). In Italy, slate voting is mandatory for listed companies under art. 147-ter of Consolidated Financial Services Act, which reserves the appointment of at least one director to the slate winning the highest number of votes amongst those submitted by minority shareholders (Belcredi et al., 2013; Ferrarini et al., 2013).

17 The Italian Code, at § 3.C.3, recommends that listed companies appoint an «adequate number» of independent directors, but no less than two and, in the case of the star segment's listed companies, no less than one third of all directors (Ferrarini et al., 2013). The Spanish Code distinguishes amongst three categories of outside directors—proprietary (owning more than 5% of the votes), independent and other directors—and requires the same to cover at least one third of the board seats and, in any case, no less than two (§ 2.13). The Belgian Code requires a majority of non-executive directors of which at least three independent (§ 2.3). Other codes (Austrian code, § 53 and Finnish Code, recommendation 14) recommend boards to include a majority of independent directors or at least one third, in controlled corporations (French code, § 9.2).

18 In the majority of European States, independent directors cover about 35-40% of the board seats, with a lower proportion in Portugal and Denmark and a minimum percentage of about 5% in Germany (Ferreira and Kirchmaier, 2013).

board, with the exception of Finland where independent directors cover about 78% of the seats (Ferreira and Kirchmaier, 2013).[19]

5.2 BRICs

The proportion of independent directors is lower in other sample countries. In Brazil, only companies listed in *Novo Mercado* are required to appoint at least 20% of independent members to their boards. For all other listed companies, the Corporate governance code simply recommends the appointment of independent directors (Sternberg et al., 2011). Moreover, the election of directors by the shareholder meeting is strongly influenced by shareholder agreements and dominated by controlling shareholders, although minority shareholders owning at least 15% of the voting shares are entitled to appoint one director (Eizirik and Weber, 2013). Similarly in Russia, art. 66(4) of the Law on Joint Stock Companies requires all directors to be elected through a cumulative voting system (Perkins, 2003; Iwasaki, 2009). In addition, the corporate governance code recommends boards to comprise at least one-fourth of independent members and no less than 3 (§ 2.2.3; Deniz, 2012; Przybylowski at al., 2011).[20]

In India, clause 49 of the *Equity Listed Agreement* requires that at least half of the board members should be non-executive, including a variable number of independent directors. If the chairman is an executive director, a promoter or an individual related to a promoter of the company, independent directors should account for at least half of the board; otherwise, they should cover at least

19 The proportion of independent directors in Europe compares with a US increase over the same period (2000-2010) from 53% to 74% (Ferreira and Kirchmaier, 2013), and presently 90% of board seats (Blair, 2014).

20 The Russian rules on cumulative voting generally ensure the appointment of directors by minority shareholders (Iwasaki, 2008). Moreover, listed companies generally comply with the recommendation on the composition of boards and appoint on average 30% of independent directors (Ferreira and Kirchmaier, 2013).

one third of the board seats (Khanna and Mathew, 2010). Empirical studies reveal general compliance with that provision.[21]

In China, the Securities Regulation Commission issued a guiding opinion in 2001 suggesting all listed companies to include at least one third of independent directors in their boards and providing that, if boards committees are established, that proportion should raise to at least half of the board (Clarke, 2006). With the 2005 reform of Company law, the appointment of independent directors became mandatory for all listed companies (Zhao, 2011).

5.3 Japan

In Japan, independent directors may be appointed either under the traditional system (which includes a board of auditors) or under the new one-tier system (Nakamura, 2013). In principle, they should play a greater role in the latter system, which mirrors the US board and includes committees. However, the new model has been adopted by less than 3% of companies (Lin, 2010). The majority of Japanese listed companies (about 70%) comply with Tokyo Stock Exchange Rule 436-2 – which requires either an independent director or an independent auditor in each listed company – opting for an independent auditor. Therefore independent directors are present only in a minority of companies.[22] When present, they cover only a few board seats.[23]

Skepticism about the benefits deriving from the one-tier board and independent directors is sometimes grounded on the fact that large companies which stick to the traditional governance system (including Canon and Toyota) performed better than those (like Sony) which have adopted the one-tier model (Lin, 2010). Moreover, independent directors are not necessarily better than auditors at monitoring CEOs and conflicted transactions (Aronson, 2013). On the

21 About 87% of listed companies' boards have the required percentage of independent directors and almost all companies have an independent director with financial and accounting expertise (Rajagopalan, and Zhang, 2012).
22 See Consolidated Results of Independent Directors/Auditors Notifications, 2011, available at www.tse.org.jp
23 Almost half of the companies have either one independent director or auditor, while 12% of them have more than 3 independent members (Consolidated Results of Independent Directors/Auditors Notifications, 2011).

whole, culture and legal traditions may explain reluctance towards the adoption of US-like corporate governance (Pejovic, 2010), while foreign investors have made pressure to enhance transparency and disclosure rather than boards' independence (Lin, 2010; Gilson and Milhaupt, 2005).

6. FUNCTIONS OF INDEPENDENT DIRECTORS: (A) AUDIT COMMITTEE

6.1 General Remarks

Our sample jurisdictions assign monitoring functions to independent directors in areas where the risk of conflicts of interests is high. Independent directors typically join one or more committees, potentially contributing their professional expertise to the relevant activities in a relatively disinterested fashion. However, the types and functions of board committees vary across systems. Audit committees are often established, being either mandatory under company law or recommended by national corporate governance codes. Remuneration and nomination committees are generally found in Europe, but often absent in other jurisdictions of our sample. Moreover, the proportion and role of independent members in board committees change significantly across countries. However, jurisdictions are rather uniform in assigning advisory and preparatory functions to committees, rather than decision-making powers.

Independent directors have an important role to play in audit committees, also in the case of controlled companies, for several reasons. Firstly, participation to these committees offers a steady flow of information to independent directors, particularly through the internal audit function's reporting to them on the effectiveness and functioning of the internal control system (Eisenberg, 1997). Secondly, audit committees have access to the company's resources and documents necessary to monitor the financial statements and their compliance with accounting standards. Thirdly, audit committees have responsibility, especially in Europe, for the selection and monitoring of outside auditors, thus overcoming, partially at least, the problem of controlling shareholders selecting and dismissing the auditors (Coffee, 2006).[24]

Although audit committees are generally present in all our sample jurisdictions and include a number of independent members, there are differences as to role and powers assigned to independent directors sitting in them.

6.2 Continental Europe

European practices are rather uniform as a result of the 2005 Recommendation on the role of non-executive or supervisory directors and of the Audit Directive. Article 11.1 of the former recommends that at least a majority of the audit committee members are independent. The latter requires that an audit committee be established in all public-interest companies, including at least one independent member with specific competence in accounting and/or auditing. Indeed, independence and competence are viewed as necessary conditions for directors to perform the functions assigned to the audit committee—that is, monitoring of financial reporting, of the statutory auditors and of the internal control and risk management systems.

Currently, all member States have implemented the Audit Directive and independent directors generally sit in the audit committees of listed companies. However, their number varies across member States. While in some countries the appointment of only one independent director is recommended,[25] in most other countries a majority of independent members of the committees is suggested.[26] The proportion of independent members raises to two-thirds of the

24 This does not mean that independent directors are (or should be) the main defense against frauds by controlling shareholders. Other institutions, like the auditors and other gatekeepers, together with public enforcement of corporate law, are also and, to some extent, more conveniently relied upon to curb the agency costs of controlling shareholders (Ferrarini and Giudici, 2006).

25 See the German Code, § 5.3.2 (Merckt, 2013) and Portugese one, § II.1.3.1 (Cotinho De Abreu, 2013).

26 See the Danish Code, § 3.4.2 (Christensen, 2013); the Belgian Code, § 5.2/4 (Autenne, 2013); the Greek Code, § 1.4, and the Spanish one (Recalde Castells et al., 2013). Softer requirements of independence are set in Austria and Norway, where corporate governance codes foresee two different classes of independent director and recommend audit committees to comprise a

committee seats in France (Conac, 2013) and to the full committee in Finland (Mähönen, 2013).[27]

Audit committees are empowered to monitor financial reporting and the internal control and risk management system, but always in an advisory capacity and in preparation of the work of the full board. This should reinforce the (supervisory) board authority and accountability. However, in some jurisdictions, the audit committee's role is constrained by the fact that another corporate body (such as the board of statutory auditors in Italy and Portugal: see § 3.3) has monitoring and inspection powers that would otherwise overlap with those of the audit committee.

6.3 Japan

In Japan, the establishment of an audit committee, made up of at least three members and a majority of outside directors, is mandatory only in companies opting for the one-tier model. However, its powers and functions are substantially the same as those of the board of corporate auditors in the traditional system, i.e. controlling the lawfulness of business decisions, bringing liability suits on behalf of the corporation against executive and non-executive directors, convening the shareholder meeting in special cases, etc. (Nakamura, 2013).

6.4 BRICs

In India, clause 49 of the *Equity Listed Agreement* mandates all listed companies to establish an audit committee, which comprises a majority of independent directors. The same provision identifies two main functions for this

majority of directors independent from the corporation and its management board, but not from significant shareholders (Kalss, 2013; Skog and Sjoman, 2013).

27 The Italian Code requires the internal control and risk management committee to be made up of non-executive directors, a majority of which should be independent. However, if the relevant company is controlled by another listed company, the committee should consist entirely of independent directors (Ferrarini et al., 2013). Moreover, the Audit Directive was implemented in Italy by requiring that the board of statutory auditors—which is defined by the law as the audit committee for the Directive's purposes—consist entirely of independent members.

committee: the oversight of financial reporting and the selection of auditors (Varottil, 2010).

In Brazil, the establishment of an audit committee is mandatory only for banks and stock exchanges. However, listed companies generally set up audit committees consisting entirely of independent directors. Nonetheless, the functions and powers of these voluntary committees are far from being uniform and well defined, also considering that the Brazilian governance structure includes a board of statutory auditors (Eizirik and Weber, 2013).

The role of independent directors in Chinese audit committees is substantially negligible, as only a few specific tasks are assigned to independent directors, whose functions are not clearly defined in general (Liu and Pissler, 2013).

In Russia the establishment of an audit committee is mandatory for listed companies. The corporate governance code recommends the committee to consist entirely of independent directors or, at least, to be chaired by an independent director and include only non-executives (§ 1.3.1).[28]

7. (B) REMUNERATION AND NOMINATION COMMITTEES

7.1 Continental Europe

Independent directors have a role to play also in nomination and remuneration committees, particularly in Europe.[29] Following the Commissions' recommendation, nomination and remuneration committees are generally recommended by corporate governance codes, with the exception of Belgium, where the law requires large listed companies to establish a remuneration committee (Barontini et. al, 2013). Nomination and remuneration committees have only preparatory and advisory functions. The number of independent

28 The committee is tasked with the control of financial operations realized by the executive board and has unlimited access to corporate financial documents. However, as noted above, the role of this committee interferes with that assigned to similar bodies established on mandatory basis within Russian corporations (Stumpf, 2006).

29 On the development of European soft law as to executive remuneration over the last decade, see Ferrarini et al., 2010; Barontini et al., 2013

directors varies from a majority of the committee members[30] to at least one.[31] In some countries, however, the presence of independent directors is neither required nor recommended. The German Code, in particular, encourages the establishment of a nomination committee (no reference is made to a remuneration committee) comprising only shareholder representatives (§ 5.3.3). Similarly, the Austrian Code, while suggesting the creation of both remuneration and nomination committees, does not recommend companies to appoint independent directors to the same. Moreover, emphasis is put on directors' knowledge and experience in the recruitment and remuneration policy (§ 41-43).

However, in controlled corporations, controlling shareholders tend to make the core decisions as to executive remuneration and the selection of board candidates, often weakening the role of the relevant committees. In addition, controlling shareholders often run the hiring process either directly or through their representatives in the board. Consequently, the board's role is often reduced, in practice, to the ratification of the pay terms and conditions negotiated in advance by the controlling shareholders with the executives. Similarly, in controlled corporations, nomination committees submit to the board the names of candidates suggested to them by controlling shareholders, who will in the end approve the board proposals in the general meeting.

Indeed, independent directors of controlled corporations have an effective role to play in remuneration committees mainly to the extent that conflicts of interest may arise. For example, they might object to the pay package of an owner-manager that includes equity-based incentives by arguing that the manager is already sufficiently incentivized through its stockholding in the company (Ferrarini and Moloney, 2005). Thus, the role of independent directors becomes particularly relevant when the remuneration of directors constitutes a related-party transaction (Krüger Andersen and Kristensen Balshøj, 2013; on related party transactions see *infra,* § 8). [32]

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30 See French Code, §§ 15.1 and 16.1; Danish Code, § 3.4.2; and the Swedish Code as to remuneration committees.

31 Spanish Code, § 54.

32 However, in some countries, like France, directors' remuneration of is not listed amongst related-party transactions (Pietrancosta et al., 2013).

7.2 BRICs

In Brazil, the Corporate governance code recommends the establishment of a "human resources" committee, made entirely of independent directors, with advisory powers on directors' nomination and remuneration policy. This committee is functionally similar to the European nomination and remuneration committees, to the extent that it proposes candidate directors or suggests procedures to identify them. However, its influence on the selection of directors is practically limited, as controlling shareholders usually perform this task (Nelson and Weber, 2013).

Also the Russian corporate governance code recommends the establishment of human resources and remuneration committees, which make recommendations to the board on selection and remuneration of directors (§ 4.7). Rules on the compositions of both committees (§ 4.10.3) mirror those provided for the audit committee and described above (Perkins, 2003).

In China, the corporate governance code simply recommends the establishment of nomination and remuneration committees, comprising a majority of independent directors. Although remuneration committees are normally established, their influence on decisions about executive compensation is in fact modest (Lin, 2014).

7.3 Japan

In Japan, nomination and remuneration committees are mandatory only in companies opting for a one-tier structure and should be made up of a majority of outside directors (as already discussed). The nomination committee should propose a list of director candidates to the shareholder meeting, while the remuneration committee should decide on directors' remuneration (Nakamura, 2013). However, the establishment of these committees is not mandatory for companies opting for the traditional model.

8. (C) VETTING OF RELATED PARTY TRANSACTIONS

The vetting of related party transactions is regarded as a crucial function for independent directors in controlled companies (Enriques et al., 2009). Independent directors mainly perform this function either in audit committees or in special committees. However, their practical involvement in the assessment of related party transactions varies significantly across our sample jurisdictions, some of which foresee a role for independent directors in this area, while others do not.

8.1 Continental Europe

Some countries assign a relevant role to independent directors in this area. In Belgium, art. 524 of the Companies Code requires related party transactions to be reviewed by a special committee consisting of three independent directors and at least one independent expert. The committee's opinion is not binding on the board, which has the final say on the relevant transaction. However, if the committee's opinion is not followed, the board should publicly disclose the reasons for it. As reported by scholars, this information duty has been effective in deterring deviations from the committee's view (Geens, 2013).

In Italy, Consob Regulation No. 17221/2010, amended by Resolution 17389/2010, is in force providing for a complex regime of related party transactions. Two types of board approval procedures, depending on the relevance of transactions, are provided and in both procedures independent directors have a role. For the most important transactions, the opinion of a committee composed solely of independent directors is required and is binding on the board, unless a "whitewash" procedure has been adopted by the company in advance, requiring approval of related party transactions by the shareholder meeting whenever the committee issues a negative opinion. For less significant transactions, the prior assessment by a committee consisting of a majority of independent directors is required, but is not binding on the board, which has the final say (Ferrarini et al, 2013).

Other countries (Spain, see Recomm. 8; Greece, see § 1.5) assign to the audit committee an advisory function in the vetting of related party transactions, while the final approval of those operations is reserved to the board.

However, most other countries in our sample do not contemplate a specific role for independent directors in the vetting of related parties transactions. Some jurisdictions require directors to disclose conflicts of interests either to the board or to the shareholder meeting, which have the final say on conflicted transactions.[33] When approval by the (supervisory) board is required, independent directors may still have a role to play, particularly if their number is significant.[34]

8.2 Japan

Also Japanese law assigns no specific role to independent directors in the approval of conflicted transactions. For some self-dealing transactions involving directors (e.g. when the latter buy products from the company or sell products to the same or receive a loan from it), the Companies Act requires disinterested board authorization (Sec. 356 and 365; Enriques et al., 2009). Other related parties transactions, such as those with controlling shareholders, are addressed under the duty of loyalty of directors (Nakamura, 2013).

8.3 BRICs

BRIC jurisdictions generally address related party transactions by requiring disclosure from interested directors and letting the board to decide on

33 In France, the interested director must inform the board about her potential conflict of interest and the board decides on the transaction with her abstention from voting (Conac, 2013). Similar rules apply in Spain and Austria (Andersen and Balshøj, 2013). In Germany, rules on conflicts-of-interests address only transactions between the corporation and the members of supervisory and management boards. Other related-parties transactions are not regulated, save for the duty to disclose them under international accounting standards. This approach may admittedly result in under-enforcement with regard to related-parties transactions, with potential prejudice for minority shareholders (Baums and Scott, 2005).

34 The Dutch Code, for instance, recommends major conflicted transactions to be approved by the supervisory board, which consist almost entirely of independent directors (§ III.6.3).

them. Only the Russian system assigns independent directors specific tasks in the vetting of related party transactions at large corporations having more than 1,000 shareholders (Merezhko, 2005).[35] The other jurisdictions do not envisage a role for independent directors in this area.[36]

9. CONCLUDING REMARKS

As shown by our comparative analysis, independent directors have been exported to a great number of jurisdictions where the ownership of corporations is concentrated. However, this legal transplant has given rise to considerable divergence with regard to the definition of independence, the proportion of independent directors in the board, and their functions and powers. Variations do not only depend on differences between ownership structures, but also on other factors, such as politics, culture, corporate law tradition and governance structures. They also reflect different levels of engagement in corporate governance and different choices as to the tools needed to effectively control the management of business enterprises. Independent directors, after all, are just one of these tools, possible substitutes being the various gatekeepers (auditors, lawyers, financial intermediaries, etc.), shareholder activism, the market for corporate control, the regulators and private enforcement.

We now try to summarize the main outcomes of our comparative analysis. Firstly, independence requirements in concentrated ownership systems need to be wider than in diffused ownership, as they should also cover the relationship with controlling shareholders. However, our comparative analysis shows that the notion of "independence" in some countries focuses entirely on

35 The general rule is that boards are required to disclose related party transactions and to approve the same with the abstention of interested directors.

36 In Brazil, the approval of related party transactions is reserved to the board and is covered by the duties of loyalty and care (Nelson and Weber, 2013). A similar approach is followed in China, where art. 125 of Company law requires directors to abstain from voting when they are interested in a transaction. The relevant resolution is reserved to the board (Liu and Pissler, 2013). Also in India independent directors do not play a significant role in the approval of related party transactions. Although the Confederation of Indian Industry recommends related party transactions to be approved by the audit committee, presently this committee is only involved in the disclosure, rather than in the approval of those transactions (Varottil, 2010; Khanna and Mathew, 2010).

the absence of personal and business ties with the corporation and its managers. A similar concept is generally too narrow to cover the relationship with controlling shareholders, save for the case in which the latter also sit in the board. Moreover, definitions of independence, even when considering blockholders, may be under-inclusive to the extent that social ties are not relevant to exclude independence (similarly to what seen also for the US and the UK).

Secondly, the number of independent directors is, on average, lower when there are dominant shareholders, who tend to occupy the majority of board seats. However, a minimum number of independent directors is implicitly contemplated when board committees are required to comprise at least a majority of independent directors. Yet, the establishment of committees is not always mandatory, which may contribute to keep the average number of independent directors particularly low.

Thirdly, information asymmetries between the managers and independent directors are similar in concentrated and in diffused ownership, and the remedies available are also similar. On one side, directors' participation to board committees, particularly to the audit committee, gives them access to a flow of information from sources other than key corporate officers, such as the internal and external auditors, financial and legal advisors, etc. On the other, to the extent that there are efficient and liquid markets in the firm's securities, the prices made on these markets and the reports published by financial analysts with respect to the individual corporation provide independent directors with an additional flow of information, which is vital for the performance of their functions, including the monitoring of corporate strategies.

However, a difference could emerge between controlled and widely held corporations if the stock market is less liquid due to the presence of controlling shareholders (or for other reasons), which may aggravate the information asymmetry between the managers and independent directors. Moreover, if provisions about boards committees are only enabling in character, controlling shareholders might choose not to establish them precisely for constraining the information flow to independent directors.

Fourthly, the role of independent directors in controlled corporations is, in principle, different from that played by the same in widely held corporations. Controlling shareholders substantially perform some of the functions that independent directors exercise when shareholders are diffuse, such as the hiring and firing of managers, and setting their remuneration. Independent directors are often called essentially to ratify decisions already taken either within the company (by the outside directors representing the controlling shareholders in the board) or outside the same (for example, by the shareholders participating to a shareholder agreement).

This ratification function is aimed to protect minority shareholders from the agency costs of majority shareholders. When similar costs are potentially more serious, as in the case of related party transactions, independent directors should have a greater role in assessing the impact of similar transactions from the minority shareholders' perspective. Therefore, the role of independent directors in controlled corporations is for some issues narrower (to the extent that controlling shareholders are expected to do most of the work needed – for example, in the selection of the new CEO) and for other broader, as in the case of transactions between the company and its controlling shareholders.

However, our analysis shows that in many countries the role reserved to independent directors in listed companies is more modest than one would expect in theory. In some countries, like Japan, legislative reforms introducing independent directors were poorly successful. This is often explained by reference to the weight of national legal traditions and reluctance towards the adoption of US-like corporate governance, based on concepts extraneous to the Japanese society (Ahmadjian, 2012;Pejovic, 2010). In other countries, the role of independent directors is not clearly defined. In India, independent directors sit in the boards of listed companies, but do not enjoy powers distinguishing them significantly from other non-executive directors. Also in the Italian traditional system, the duties of independent directors are not easily distinguished either from those of other non-executive directors or from those of statutory auditors, who also perform monitoring functions. In China, the role of independent directors is substantially that of expressing opinions on issues upon which, however, the entire board will decide, often under the influence of controlling shareholders. In a similar scenario, the protection afforded by independent directors to minority shareholders vis-à-vis controlling shareholders is negligible.

In most countries and especially in Europe, the audit committee comprises independent directors. However, the cases in which independent directors also participate to the vetting of related party transactions, either in the audit committee or otherwise, are less frequent, which is not easily explained given that similar transactions may be a source of agency costs to minority shareholders.

On the whole, the weak regimes applicable to independent directors in many countries, particularly outside Europe, generate the impression that the relevant reforms were often adopted mainly as a signal to foreign institutional investors that modern corporate governance principles are adhered to also in the jurisdictions concerned. In other words, the mechanism of independent directors is often employed just to accommodate the investors' preference for «western-style corporate governance», rather than to perform specific functions (Gilson and Milhaupt, 2005).

Bibliography

Ahmadjian, Christina L. 2012. Corporate Governance in Japan, in Abdul A. Rasheed and Toru Yoshikawa, eds., The Convergence of Corporate Governance – Premise and Prospects, New York:Palgrave MacMillian, 117-36.

Andersen Krüger and Kristensen Balshøj. 2013. Directors' Conflicts of Interests: A Contribution to European Convergence, in Karsten Sorensen, Hanne Birkmose and Mette Neville, eds., Boards of Directors in European Companies, Reshaping and Harminising their Organization and Duties, Alphen aan den Rijn:Wolters Kluwer, 57-74.

Armour, John, Henry B. Hansmann and Reinier Kraakman. 2009. What is Corporate law?, in Reinier Kraakman et al., eds., The anatomy of corporate law – A comparative and functional approach, Oxford: Oxford University Press, 1-33.

Aronson, Bruce E. 2013. The Olympus Scandal and Corporate Governance Reform: Can Japan Find a Middle Ground between the Board Monitoring Model and Management Model?, *Journal Japanese Law*, 35:85-105.

Assonime Report. 2012. Corporate Governance in Italy: Compliance with the Corporate Governance Code and Directors' Remuneration (Year 2012), at www.assonime.it

Autenne, Alexia. 2013. Belgium - The Legal System of Corporate Governance, in Andreas M. Fleckner and Klaus J. Hopt, eds., Comparative Corporate Governance: A Functional and International Analysis, Cambridge:Cambridge University Press, 310-63.

Bainbridge, Stephen M. 2012. Corporate Governance after the Financial Crisis, New York:Oxford University Press.

Barontini, Roberto, Stefano Bozzi, Guido Ferrarini and Maria-Cristina Ungureanu. 2013. Directors' Remuneration before and after the Crisis: Measuring the Impact of Reforms in Europe, in Massimo Belcredi and Guido Ferrarini, eds., Boards and Shareholders in European listed companies, Cambridge:Cambridge University Press, 251-317.

Baums, Theodor and Kenneth E. Scott. 2005. Taking Shareholder Protection Seriuosly? Corporate Governance in the United States and Germany, *American Journal Comparative Law*, 53:31-75.

Bebchuk, Lucian A., Reinier Kraakman and George Triantis. 2000. Stock Pyramids, Cross-Ownership and Dual Class Equity: The Mechanisms and Agency Costs of Separating Control From Cash-Flow Rights, in Randall Morck, ed., Concentrated Corporate Ownership, Chicago:University of Chicago Press, 319-71.

Belcredi Massimo and Guido Ferrarini, eds. 2013. Boards and Shareholders in European Listed Companies, Cambridge:Cambridge University Press

Belcredi, Massimo and Guido Ferrarini. 2013. Corporate boards, Incentive Pay and Shareholder Activism in Europe: Main Issues and Policy Perspectives, in Massimo Belcredi and Guido Ferrarini, eds., Boards and Shareholders in European Listed Companies, Cambridge:Cambridge University Press, 1-67.

Belcredi, Massimo, Stefano Bozzi and Carmine Di Noia. 2013. Board Elections and Shareholder Activism: The Italian Experiment, in Massimo Belcredi and Guido Ferrarini, eds., Boards and Shareholders in European Listed Companies, Cambridge:Cambridge University Press, 369-427.

Bhagat, Sanjaj and Bernard Black. 2002. The Non-Correlation Between Board Independence and Long-Term Firm Performance, Journal Corporation Law, 27:231-68.

Blair, Margaret. 2014. Reframing the Role of Boards of Directors under a Team Production Model, in Jennifer Hill and Randall Thomas, eds., Research Handbook on Shareholder Power, Cheltenham: Edward Elgar Publishing

Charreaux, Gèrard and Philippe Desbrières. 2001. Corporate Governance: Stakeholder Value versus Shareholder Value, *Journal of Management and Governance*, 5:107-28.

Christensen, Jan, S. 2013. Denmark - Corporate Governance, in Andreas M. Fleckner and Klaus J. Hopt, eds., Comparative Corporate Governance: A Functional and International Analysis, Cambridge:Cambridge University Press, 364-92.

Claessens, Stijn, Simeon Djankov, Joseph Fan and Larry Lang. 2001. Disentangling the Incentive and Entrenchment Effects of Large Shareholdings, *Journal of Finance* 57:2741-71.

Clarke, Donald C. 2006. Independent Directors in Chinese Corporate Governance, *Delaware Journal Corporate Law*, 31:125-228.

Clarke, Donald C. 2007. Three Concepts of Independent Director, *Delaware Journal Corporate Law*, 32:73-111.

Coffee, John C. 2002. Understanding Enron: "It's about the Gatekeepers, Stupid!", *Business Lawyers*, 57:1403-20.

Coffee, John C. 2004. What Caused Enron? A Capsule Social and Economic History of the 1990s, *Cornell Law Review*, 89:269-309

Coffee, John C. 2006. Gatekeepers: The Role of the Professions and Corporate Governance, Oxford:Oxford University Press.

Conac, Pierre Henri. 2013. France – The Permanent Reform of Corporate Governance, in Andreas M. Fleckner and Klaus J. Hopt, eds., Comparative Corporate Governance: A Functional and International Analysis, Cambridge:Cambridge University Press, 444-503.

Cosenza, Elisabeth. 2007. The Holy Grail of Corporate Governance Reform: Independence or Democracy?, *Brigham Young University Law Review*, 1-54

Coutinho De Abreu, Jorge M. 2013. Portugal – Synopsis on Corporate Governance, in Andreas M. Fleckner and Klaus J. Hopt, eds., Comparative Corporate Governance: A Functional and International Analysis, Cambridge:Cambridge University Press, 788-821.

Cox, James D. 2003. Managing and Monitoring Conflicts of Interests: Empowering the Outside Directors with Independent Counsel, *Villanova Law Review,* 48:1077-96.

Dabbs Garrett, Allison. 2007. A Comparison of the United Kingdom and United States Approaches to Board Structure, *Corporate Governance Law Review*, 3:93-114.

Dalton, Catherine M. and Dan R. Dalton. 2005. Board of Directors: Utilizing Empirical Evidence in Developing Practical Prescriptions, *British Journal of Management*, 91-7.

Davies, Paul L. 2003. Shareholder Value, Company Law and Securities Market Law: A British View, in Klaus J. Hopt, and Eddy Wymeersch, eds., Capital Markets and Company law, Oxford:Oxford University Press, 261-88.

Davies, Paul L. and Klaus J. Hopt. 2013. Corporate Boards in Europe – Accountability and Convergence, *American Journal Comparative Law*, 61:301-75.

Davies, Paul, Klaus Hopt, Richard Nowak and Gerard von Solinge. 2013. Corporate Boards in Law and Practice, Oxford:Oxford University Press.

Deniz, Ozden. 2012. Reforming Corporate Governance in Developing Countries and Emerging market Economies, *New England Journal International Comparative Law,* 18:67-96.

Dine, Janet and Marios Koutsias. 2013. The Nature of Corporate Governance. The Significance of National Cultural Identity, Cheltenham: Edward Elgar Publishing.

Dyck, Alexander and Luigi Zingales. 2004. Private Benefits of Control: An International Comparison, *Journal of Finance*, 64:537-600.

Eisenberg, Melvin A. 1976. The Structure of the Corporation: A Legal Analysis, Boston and Toronto:Little, Brown and Company.

Eizirik, Nelson L. and Ana C. Weber. 2013. Brazil - New developments in corporate governance, in Andreas M. Fleckner and Klaus J. Hopt, eds., Comparative Corporate Governance: A Functional and International Analysis, Cambridge:Cambridge University Press, 1013-41.

Enriques, Luca, Gerard Hertig and Hidiki Kanda. 2009. Related-Party Transactions, in Reinier Kraakman et al., eds., The Anatomy of Corporate Law – A Comparative and Functional Approach, Oxford:Oxford University Press, 153-81.

Fairfax, Lisa M. 2010. The Uneasy Case of the Inside Director, *Iowa Law Review,* 96:127-93.

Ferrarini, Guido and Niamh Moloney. 2005. Executive Remuneration in the EU: The Context for Reform, *Oxford Review Economic Policy*, 21:304-23.

Ferrarini, Guido and Paolo Giudici. 2006. Financial Scandals and the Role of Private Enforcement: The Parmalat Case, in John Armour and Joseph McCahery, eds., After Enron - Improving Corporate Law and Modernising Securities Regulation in Europe and the US, Oxford:Hart Publishing, 159-215.

Ferrarini, Guido, Gian Giacomo Peruzzo and Marta Roberti. 2013. Corporate boards in Italy, in Paul Davies et al., eds., Corporate Boards in Law and Practice, Oxford:Oxford University Press, 367-428.

Ferrarini, Guido. 2003. Shareholder Value and the Modernization of European Corporate Law, in Klaus J. Hopt and Eddy Wymeersch, eds., Capital Markets and Company Law, Oxford:Oxford University Press, 223-57.

Ferreira, Daniel and Tom Kirchmaier. 2013. Corporate Boards in Europe: Size, Independence and Gender Diversity, in Massimo Belcredi and Guido Ferrarini, eds., Boards and Shareholders in European listed companies, Cambridge:Cambridge University Press, 191-224.

Fleckner, Andreas M. and Klaus J. Hopt, eds. 2013. Comparative Corporate Governance: A Functional and International Analysis, Cambridge:Cambridge University Press.

Fogel, Erik M. and Andrew M. Geier. 2007. Strangers in the House: Rethinking Sarbanes-Oxley and the Board of Directors, *Delaware Journal of Corporate Law*, 32:33-72.

Franks, Julian, Colin Mayer and Hideaki Miyajima. 2012. The Ownership of Japanese Corporations in the 20th Century, at http://www4.gsb.columbia.edu/filemgr?&file_id=7313030

Gabriel, Jonathan H. 2004. Misdirected? Potential Issues with Reliance on Independent Directors for Prevention of Corporate Fraud, *Suffolk University Law Review,* 38:641-59.

Garcia-Cruces Gonzalez, José A. and Ignacio Moralejo Menendez, I. 2013. Spain – Listed Companies' Governance, in Andreas M. Fleckner and Klaus J. Hopt, eds., Comparative Corporate Governance: A Functional and International Analysis, Cambridge:Cambridge University Press, 822-67.

Geens, Koen. 2013. Corporate boards in Belgium, in Paul Davies et al., eds., Corporate Boards in Law and Practice, Oxford:Oxford University Press, 119-74.

Ghezzi, Federico and Corrado Malberti. 2008. The Two-Tier Model and the One-Tier Model of Corporate Governance in the Italian Reform of Corporate Law, *ECFR,* 5:1-47.

Gilson, Ronald J. 2001. Globalizing Corporate Governance: Convergence of Form or Functions, *American Journal of Comparative Law*, 49:329-57.

Gilson, Ronald J. 2006. Controlling Shareholders and the Corporate Governance: Complicating the Comparative Taxonomy, *Harvard Law Review*, 119:1641-79.

Gilson, Ronald J. and Curtis J. Milhaupt. 2005. Choice as Regulatory Reform: The Case of Japanese Corporate Governance, *American Journal of Comparative Law*, 53:343-77.

Gilson, Ronald J. and Jeffrey N. Gordon. 2004. Controlling Controlling Shareholders, *University of Pennsylvania Law Review*, 152:785-843.

Goetzmann, William and Elisabeth Köll. 2007. The History of Corporate Ownership in China. State Patronage, Company Legislation and the Issue of Control, in Randall K. Morck, ed., A History of Corporate Governance around the World. Family Business Groups to Professional Managers, Chicago:University of Chicago Press, 149-84.

Gordon, Jeffrey N. 2007. The Rise of Independent Directors in the United States, 1950-2005: Of Shareholder Value and Stock Market Power, *Stanford Law Review,* 59:1465-568.

Gorga, Erica. 2009. Changing the Paradigm of Stock Ownership from Concentrated towards Dispersed Ownership? Evidence from Brazil and Consequences for Emerging Countries, *Northwestern Journal of International Law & Business*, 29:456-550.

Goto, Gen. 2013. The Outline for the Companies Act Reform in Japan and its Implication, *Journal of Japanese Law,* 35:13-37.

Hansmann, Henry and Reinier Kraakman. 2001. The End of History for Corporate Law, *Georgetown Law Journal,* 89:439-68.

Holderness, Clifford G. 2009. The Myth of Diffused Ownership in the United States, *Review Financial Studies*, 22:1377-408.

Hopt, Klaus J. 2011. Comparative Corporate Governance: The State of Art and International Regulation, *American Journal Comparative Law*, 59:1-72.

Hopt, Klaus J. and Patrick Leyens. 2004. Boards Model in Europe – Recent Developments of Internal Corporate Governance Structures in Germany, United Kingdom, France and Italy, *ECFR,* 1:134-68.

Iwasaki, Ichiro. 2008. The Determinants of Board Composition in a Transforming Economy: Evidence from Russia, *Journal of Corporate Finance,* 14:532-49.

Jackson, Katharine V. 2011. Towards a Stakeholder-Shareholder Theory of Corporate Governance: A Comparative Analysis, *Hasting Business Law Journal*, 2:309-92.

Johnson, Simon, Peter Boone, Alasdair Breach, and Eric Friedman. 2000. Tunneling, *American Economic Review*, 90:22-7.

Kalss, Susanne 2013. Austria - Legal Framework of Corporate Governance, in Andreas M. Fleckner and Klaus J. Hopt, eds., Comparative Corporate Governance: A Functional and International Analysis, Cambridge:Cambridge University Press, 274-309.

Kanda, Hideki. 2012. A Handbook on Practical Issues for Independent Directors/Auditors, at www.tse.org.jp

Khanna, Vikramaditya and Shaun J. Mathew. 2010. The Role of Independent Directors in Controlled Firms in India: Preliminary Interview Evidence, *National Law School of India Review*, 22:35-66.

Kirkpatrick, Grant. 2009. The corporate governance lessons from the financial crisis, OECD 2009 Financial Market Trends, at http://www.oecd.org/daf/ca/corporategovernanceprinciples/42229620.pdf

Klein, April. 1998. Firm Performance and Board Committee Structure, *Journal Law & Economics*, 41:275-301.

Kraakman, Reinier, John Armour, Paul Davies, Luca Enriques, Henry B. Hansmann and Gerard Hertig. 2009. The Anatomy of Corporate Law – A Comparative and Functional Approach, Oxford: Oxford University Press.

Krivogorsky, Victoria. 2006. Ownership, Board Structure, and Performance in Continental Europe, *International Journal of Accounting*, 41:176-97.

La Porta, Rafael, Florencio Lopez-de-Silanes and Andrei ShleiferSource. 1999. Corporate Ownership around the World, *Journal Finance,* 54:471-517.

Larcker, David and Brian Tayan. 2013. A Real Look at Real World Corporate Governance, Kindle Edition.

Lin, Chien-Chung. 2010. The Japanese Independent Directors Mechanism Revisited: The Corporate Law Setting, Current Status, and its Explanations, *Temple International & Comparative Law Journal*, 24:65-128.

Lin, Chien-Chung. 2012. The Chinese Independent Directors Mechanism under Changing Macro Political-Economic Settings: A Review of is First Decade and two Possible Models for the Future, *American University Business Law Review* 1:263-336.

Lin, Lin. 2014. Executive Compensation in Chinese Listed Companies: Problems and Prospects, *Journal Law Commerce* 32

Liu, Junhai and Knut B. Pissler. 2013. China - Corporate Governance of Business Organizations, in Andreas M. Fleckner and Klaus J. Hopt, eds., Comparative Corporate Governance: A Functional and International Analysis, Cambridge:Cambridge University Press, 156-207.

Mähönen, Jukka T. 2013. Finland – Corporate Governance: Nordic Tradition with American Spices, in Andreas M. Fleckner and Klaus J. Hopt, eds., Comparative Corporate Governance: A Functional and International Analysis, Cambridge:Cambridge University Press, 393-443.

Marchesani, Daniele. 2005. The Concept of Autonomy and the Independent Director of Public Corporation, *Berkeley Business Law Journal*, 2:315-54.

Merezhko, Andrey. 2005. Two Steps Forward and one Step back: Recent Developments in Russian Corporate Governance, *Studies in International Financial Economic and Technology Law*, 7:415-32.

Merkt, Hanno. 2013. Germany – Internal and External Corporate Governance, in Andreas M. Fleckner and Klaus J. Hopt, eds., Comparative Corporate Governance: A Functional and International Analysis, Cambridge:Cambridge University Press, 521-71.

Morck, Randall K., ed. 2007. A History of Corporate Governance around the World. Family Business Groups to Professional Managers, Chicago:University of Chicago Press.

Nakamura, Nobuo. 2013. Japan – Companies' Corporate Governance, in Andreas M. Fleckner and Klaus J. Hopt, eds., Comparative Corporate Governance: A Functional and International Analysis, Cambridge:Cambridge University Press, 233-71.

Nolan, Richard C. 2005. The Legal Control Of Directors' Conflicts Of Interest In The United Kingdom: Non-Executive Directors Following The Higgs Report, *Theoretical Inquiries Law*, 6:413-62.

Nowak, Richard G.J. 2013. Corporate boards in the Netherlands, in Paul Davies et al., eds., Corporate Boards in Law and Practice, Oxford:Oxford University Press, 429-510.

Osi, Carlo. 2009. Family Business Governance and Independent Directors: The Challenges Facing an Independent Family Business Board, *University of Pennsylvania Journal of Business Law*, 12:181-217.

Pacces, Alessio M. 2012, Rethinking Corporate Governance: the Law and Economics of Controlling Shareholders, London:Routledge.

Pejovic, Caslav. 2010. Japanese Corporate Governance: Behind Legal Norms, *Penn State International Law Review*, 29:484-521.

Peng, Mike W. 2004. Outside Directors and Firm Performance During Institutional Transitions, *Strategic Management Journal*, 25:453-71.

Perkins, Roswell B. 2003. The FCSM Corporate Governance Code for Russian Companies, *Transnational Lawyers* 16:75-110.

Pietrancosta, Alain, Paul-Henri Dubois and Romain Garçon. 2013. Corporate boards in France, in Paul Davies et al., eds., Corporate boards in law and practices, Oxford:Oxford University Press, 175-251.

Prowse, Stephen D. 1992. The Structure of Corporate Ownership in Japan, *Journal of Finance*, 47:1121-40.

Przybylowski, Michal, Maria Aluchna and Anna Zamojska. 2011. Role of Independent Supervisory Board Members in Central and Eastern European Countries, *International Journal Disclosure Governance*, 8:77-98.

Puchniak, Dan W. 2003. The 2002 Reform of the Management of Large Corporations in Japan: A Race to Somewhere?, *Australian Journal Asian Law*, 5:42-76.

Rajagopalan, Nandini and Yan Zhang. 2012. *Corporate Governance in India: Progress, Problems, and Prospects*, in Abdul A. Rasheed and Toru Yoshikawa, eds., The Convergence of Corporate Governance – Premise and Prospects, New York:Palgrave MacMillian, 93-116.

Recalde Castells, Andrés, Francisco Leòn Sanz and Nuria Latorre Chinier. 2013. Corporate boards in Spain, in Paul Davies et al., eds., Corporate Boards in Law and Practice, Oxford:Oxford University Press, 549-616.

Ringe, Wolf-Georg. 2013. Independent Directors: after the Crisis, *European Business Organization Law Review*, 14:401-24.

Roe, Mark J. 2002. Can Culture Constrain the Economic Model of Corporate Law?, *University Chicago Law Review*, 69:1251-69.

Romano, Roberta. 2009. Does the Sarbanes-Oxley Act Have a Future?, *Yale Journal Regulation*, 26:229-339.

Roth, Markus. 2013. Corporate Boards in Germany, in Paul Davies et al., eds., Corporate Boards in Law and Practice, Oxford:Oxford University Press, 253-364.

Schmidt, Reinhard H. 2003. Corporate Governance in Germany: An Economic Perspective, Center for Financial Studies Working Paper, n. 2003/36, at http://nbn-resolving.de/urn:nbn:de:hebis:30-10410

Sharfman, Bernard S. 2009. Enhancing the Efficiency of the Board Decision Making: Lessons Learned from the Financial Crisis of 2008, *Delaware Journal Corporate Law*, 34:813-51.

Sjåfjell, Beate and Cecilie Kjelland. 2013. Norway – Corporate Governance on the Outskirts of the EU, in Andreas M. Fleckner and Klaus J. Hopt, eds., Comparative Corporate Governance: A Functional and International Analysis, Cambridge:Cambridge University Press, 702-52.

Skeel, Davies A. jr. 2005. Corporate Shaming - An Essay for Bill Klein, *Berkeley Business Law Journal*, 2:105-17.

Skog Rolf and Erik Sjöman. 2013. Corporate boards in Sweden, in Paul Davies et al., eds., Corporate Boards in Law and Practice, Oxford:Oxford University Press, 617-52.

Sorensen, Karsten, Hanne Birkmose and Mette Neville, eds. 2013. Boards of Directors in European Companies, Reshaping and Harminising their Organization and Duties, Alphen aan den Rijn:Wolters Kluwer,

Sternberg, Lior, Richardo P.C. Leal and Patricia M. Bortolon. 2011. Affinities and Agreements among Major Brazilian Shareholders, *International Journal of Disclosure and Governance*, 8:213-28.

Stumpf, Colleen R. 2004. Diverse Economies – Same problems: The Struggle for Corporate Governance Reform in Russia and the United States, *Penn State International Law Review*, 24:897-922.

Sundaram, Anant and Andrew C. Inkpen. 2004. The Corporate Objective Revisited, *Organization Sciences*, 15:350-63.

Tirole, Jean. 2006. The Theory of Corporate Finance, Princeton and Oxford:Princeton University Press.

Tung, Frederick. 2011. The Puzzle of Independent Directors: New Learning, *Boston University Law Review*, 91:1175-90.

Tuschke, Anja and Marius Luber. 2012. Corporate Governance in Germany: Converging towards Shareholder Value-Orientation or not so Much?, in Abdul A. Rasheed and Toru Yoshikawa, eds., The Convergence of Corporate Governance – Premise and Prospects, New York:Palgrave MacMillian, 75-92.

Van Bekkum, Jaron, Steven Hijink, Micheal C. Schouten and Jaap W. Winter. 2013. Netherlands – Corporate governance in the Netherlands, in Andreas M. Fleckner and Klaus J. Hopt, eds., Comparative Corporate Governance: A Functional and International Analysis, Cambridge:Cambridge University Press, 648-701.

Varottil, Umakanth. 2010. Evolution and Effectiveness of Independent Directors in Indian Corporate Governance, *Hastings Business Law Journal*, 6:281-376.

Velasco, Julian. 2004. Structural Bias and the Need for Substantive Review, *Washington University Law Quartely*, 82:827-38.

Wade, Cheryl L. 2006. What Independent Directors Should Expect from Inside Directors: Smith v. Van Gorkom as a Guide to Intra-Firm Governance, *Washburn Law Journal*, 45:367-87.

Wymeersch, Eddy. 2013. *European corporate governance codes and their effectiveness*, in Massimo Belcredi and Guido Ferrarini, eds., Boards and Shareholders in European Listed Companies, Cambridge:Cambridge University Press, 67-142.

Zhao, Yuan. 2011. Review of the Incentive System of Independent Directors in China, 12 *Business Law International*, 12:215-33.

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