

BRUCE ARONSON/JOONGI KIM (eds.)

Corporate Governance in Asia. A Comparative Approach

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Even after decades, the corporate governance debate continues to flourish. This is equally true for Europe, the US and Asia, and last but not the least for Japan, which is the focus of interest of many of this journal's readers. However, whereas this debate is increasingly conducted on a global level, most of the general theory used has originated in the "West" and has been developed reflecting "Western" experiences. How major Asian jurisdictions respond to the pressure to adopt elements of US or European corporate governance models into their substantially different contexts and to adapt them to their local practices is still insufficiently understood. It is even more difficult to find a comprehensive textbook suitable for teaching these complex, though fascinating, issues in a classroom setting. In both respects the book at hand is a highly welcome addition to the existing literature. Combining foundational chapters on the general theory of corporate governance with country-specific chapters on Asia's leading economies, this book offers, for the first time, a comprehensive textbook ideally suited to teaching an introductory full-semester course on corporate governance in Asia. While primarily designed as a teaching tool, the book, at the same time, constitutes a valuable reference for a much wider audience, including academics, practitioners and policymakers, who wish to deepen their understanding of corporate governance in Asia from a comparative perspective.

The book is edited by two well-known experts in the field. Bruce Aronson, now, inter alia, an affiliated scholar at the US-Asia Law Institute of New York University School of Law and formerly professor of law at Hitotsubashi University's Graduate School of International Corporate Strategy, can build on many years of experience in teaching and researching corporate governance in Asia. The same applies to Joongi Kim, professor of law at Yonsei University, Seoul, and former chair of the Center for Good Corporate Governance Korea. For the country-specific chapters, the two editors have assembled an impressive team of contributors from leading Asian institutions (the book also including Australia into the rubric of Asia).

The book is structured into three parts. The four chapters of Part I (“Introduction and Models”) as well as the two concluding chapters of Part III (“Future/Conclusion”) are of foundational character and have been prepared by the two editors themselves. The eight chapters of Part II (“Asian Corporate Governance Systems”) are devoted to individual Asian jurisdictions, namely Australia, Hong Kong, India, Singapore, China, Japan, (South) Korea and Taiwan. The latter follow a common template meant to facilitate cross-jurisdictional comparisons. All chapters combine succinct introductory explanations with excerpts from important journal articles and other sources. The excerpts rarely cover more than a few pages, allowing the chapters to capture many aspects in limited space. While some instructors might prefer to challenge their students with longer readings, the sections of the book certainly make very reasonably calibrated assignments. Incidentally, the materials, which are carefully selected from a broad variety of sources, offer welcome guidance to further readings. Notes and questions further facilitate the use of the book for teaching purposes.

Part I (pp. 3–36) begins with a brief general introduction to comparative corporate governance (chapter 1). Basic questions such as an appropriate definition of the term, its purpose and the question whether good governance influences economic performance are touched upon. When using the book for an introductory course, at times some additional explanations may have to be given here. Table 1.1 (p. 9), based on traditional classifications of corporate governance systems according to purpose, ownership structure and monitoring, contrasts the US/UK shareholder system and the Japan/Germany stakeholder system. The editors add a third “controlling shareholder system”, which they consider characteristic of much of Asia (they expand on this in the final chapter). Subsequently, the focus turns to corporate governance in Asia and thus to the book’s central theme. This section nicely introduces the reader early on to quite a few facets of the analysis of corporate governance in the Asian context, such as the strong tendency to the latter from the law and development angle and the key issue of ownership structure. The first chapter concludes by setting out the aim and the approach of the book. Aronson and Kim concede that the traditional classification of corporate governance systems is somewhat stereotypical and rigid, but they nevertheless opt for using it as a starting point. At least for a volume primarily designed as a classroom tool, this is legitimate. Also, the authors’ plea in favor of contemplating major Asian legal systems together and intensifying cross-jurisdictional comparisons within Asia is convincing. After all, besides common historical roots shared at least by some of the jurisdictions that are examined, all eight to some extent today face similar pressure for reform.

Chapter 2 (pp. 37–64) and chapter 3 (pp. 65–93) introduce the reader to the US/UK models and to the German/European models, respectively. It becomes clear why traditionally these two are contrasted with each other, but the authors also highlight the differences within these broad categories. Both chapters use the same template as the country-specific chapters on Asia which follow, covering, after an introduction, purpose, board function, ownership structure, enforcement and recent developments.

In the last chapter in Part 1, chapter 4 (pp. 94–117), global theories on corporate governance are addressed. Familiarizing students with the debates on central issues – whether law matters, whether legal origins make a difference, whether legal transplants are at all feasible and whether overall convergence or persistence should be expected for the future of corporate governance – opens up additional perspectives on the Asian jurisdictions and certainly will enable stimulating classroom discussions. It is impressive how the editors manage to capture all this in roughly twenty pages.

Part II (pp. 121–352) comprises country-specific chapters on Asia's leading economies. While Australia, Hong Kong, India and Singapore (chapters 5–8) are common law jurisdictions, China, Japan, Korea and Taiwan (chapter 9–12) historically owe much to the German model. Contemplating these eight jurisdictions together illustrates, on the one hand, the large variety of corporate governance models which continues to exist in Asia notwithstanding all the debates on universal best practices. On the other hand, it becomes visible – and this makes this book particularly valuable beyond the concise portrayal of each individual jurisdiction – that many elements of “Western” corporate governance, such as shareholder derivative suits, independent directors or corporate governance codes, have found their way into Asian jurisdictions. The results, however, often differ both from the “Western” model as well as from the other Asian jurisdictions. While considerable economic, political and “ideological” pressure for convergence is hard to deny, it often produces new diversity. For instance, Indian corporate governance, as described by Umakanth Varottil, after formally converging to US/UK models in its initial phase of reform, has turned in recent years to explicitly recognizing the need to address local factors (p. 183). And as Dan Puchniak convincingly argues, even Singapore, which is often portrayed as a role model for good corporate governance according to presumed global standards, in many ways defies conventional wisdom about the US/UK model. One if not the key factor calling for adaption of such models in Asia is the prevailing ownership structure. This, for example, also applies to the Chinese, the Korean and the Japanese situations, where, respectively, state-owned enterprises, large family-owned conglomerates and widespread cross-shareholdings pose particular challenges for rule-makers.

The readers of this journal will be particularly interested in Bruce Aronson's chapter on Japan (pp. 267–296). He initially reminds the reader that Japan was the first Asian country to be included in the global corporate governance debate and the first which, after the burst of the bubble, became subjected to external pressure to improve its corporate governance based on the US model. Nevertheless, Japan's adoption of Western corporate governance concepts has remained controversial and overall slower than in other major Asian jurisdictions, even if changes have seemed to accelerate in the most recent years (p. 268).

The materials in this chapter are an excellent and handy collection of excerpts from the vast body of literature. Among the characteristics of Japanese corporate governance, the function and structure of the board, the astonishingly high numbers of shareholder derivative suits and the arguably excessive takeover-defense measures permitted by the Japanese courts are highlighted. The chapter concludes with an outlook on Japan's increasing turn to soft law against the backdrop of Abenomics.

The final Part III (pp. 353–404) starts with chapter 13, devoted to stock exchange competition as compiled by the editors (pp. 355–384). One might not necessarily expect this chapter here, but it definitely makes an interesting read and puts the spotlight on a topic which no doubt is of high relevance also for Asia. Chapter 14 then provides the actual conclusion of the volume (pp. 385–404). Returning to the "question of Asia", the editors highlight the common features shared by Asian countries. Indicated as such are a common economic model that originated in Japan, concentrated ownership, a general belief in a stakeholder system, a managing rather than monitoring board function, a preference for public over private enforcement and, last but not least, a common challenge on how to deal with the internal and external pressure to adopt "Western-style" corporate governance (p. 386). Some may take issue with some of these features for some Asian jurisdictions. However, it is exactly the facilitation of this discussion, by enabling the reader to hold Asian models up against both Western models and against each other, that constitutes the major contribution to academic literature made by this volume. To conclude, the editors deserve praise for creating this excellent teaching tool and for leading such a successful collaborative research effort.

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