

CORPORATE GOVERNANCE: AN ASIA-PACIFIC CRITIQUE EDITED BY LOW  
CHEE KEONG [Hong Kong: Sweet & Maxwell, 2002. xli + 613 pp.  
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Low Chee Keong has done a commendable job in assembling this book on corporate governance in the Asia-Pacific. The book consists of chapters written by different practitioners and scholars from diverse jurisdictions. There is a good mix of theory – which provides the framework and direction for understanding corporate governance – and description. The description of corporate governance practices found in the country studies is valuable insofar as they provide the reader with information about the corporate governance mechanisms in the countries concerned.

The book is divided into three Parts. Part A (Overview) contains chapters that provide the reader with a map to corporate governance. In the Introductory chapter, Low Chee Keong presents the issues that have arisen in corporate governance, as well as the public and private sector initiatives that have come about as a response to corporate governance problems. The reader is thus acquainted, at an early stage, with the oft-cited McKinsey Study, the OECD Principles, the International Corporate Governance Network (ICGN), the Commonwealth Association for Corporate Governance (CACG), the Global Corporate Governance Forum, the Pacific

Economic Cooperation Council (PECC) and so on. The web references contained in this chapter are of great value to the reader intending to look further into international initiatives. The two chapters by market practitioners involved in developing corporate governance scoring are also valuable: “Leading Corporate Governance Indicators” by Stephen M Davis and “Calibrating Corporate Governance Practices: Corporate Governance Scores” by George Dallas and Nicholas Bradley. These two chapters develop the parameters of good corporate governance. The Dallas and Bradley chapter is especially significant for the authors are Managing Directors in the Risk Solutions group at Standard and Poor’s (London) and they demonstrate the methodology used by S & P in the scoring corporate governance.

The country studies in Part B contain substantial amounts of information about the countries covered: Australia, Hong Kong, New Zealand, the People’s Republic of China, Singapore, Malaysia, the United Kingdom, and the United States of America. Save for China, the rest are all common law jurisdictions. The jurisdictions especially hard hit by the Asian economic crisis – Thailand, Indonesia, South Korea – do not appear. This is unfortunate, especially as South Korea provides a salutary example of how opposition from entrenched interests can be overcome and reforms brought about.

The chapters in Part B are, in the main, more descriptive than critical. They are useful to the reader attempting to get acquainted with the state of corporate governance in the covered countries. While they are – without exception – informative, the potential weakness of a purely descriptive account is the absence of a cogent narrative that makes the chapter a compelling read. This is especially so when an author attempts to set out a comprehensive list of rules or institutions pertaining to corporate governance. In such a case, the reader is presented with a laundry list of matters that challenges his attention span. Against this setting, those chapters that take a somewhat different approach stand out. In “Corporate Governance in Australia: The Evolving Legal Framework and Empirical Evidence” (ch 6) by Robert Baxt, Ian Ramsay and Geof Stapledon, the authors first provide an overview of corporate governance mechanisms, giving particular attention to the board of directors. They then examine the empirical evidence which provide the context of corporate governance: ownership concentration, directors’ shareholdings, board structure and composition, and CEO remuneration. This background, together with how the courts tightened the standards of directors’ duty of care, helps illuminate the directors’ duty of care, as presently codified in Corporate Law Economic Reform Program Act (which legislation came into effect in March 2000). James D Cox’s “Corporate Governance in the United States: the Evolving Role of the Independent Board” (ch 13) contains an interesting narrative of how the legal standards of directors duties have evolved over time in the US. Cox discusses the intellectual debates which shaped the evolution, as well as the on-going efforts to bring about boards that are

independent in actuality, not only nominal independence. Mark Mobius' account – "Corporate Governance in Hong Kong" (ch 7) – is a highly readable account of the corporate governance loopholes to be found in Hong Kong. It is also a recommended read – for the author lays bare the weaknesses and points the road ahead for Hong Kong.

Part C ("The Way Ahead") is, to this reviewer, the most interesting portion of the book – for it is the most intellectually engaging. There are five chapters in this Part:

Chapter 14 – Corporate Governance at a Crossroads by Michael Bradley, Cindy A Schipani, Anat K Sundaram and James P Walsh;

Chapter 15 – The Uncertain Prospect of Global Convergence in Corporate Governance by Douglas M Branson

Chapter 16 – Corporate Criminal Liability in Australia: An Evolving Corporate Governance Technique;

Chapter 17 – Corporate Governance in East Asia: Prospects for Reform by Gordon Walker; and

Chapter 18 – Enhancing the Governance of Public Listed Companies in East Asia by Low Chee Keong and Selwyn Mar.

Especially noteworthy are Chapters 14 and 15. Chapter 14 begins by chronicling the changes affecting the conduct of businesses. It then discusses contemporary corporate governance scholarship: the contractarian vs. communitarianism debate, the attempted resolution in American Law Institute's Principles of Corporate Governance (1994) section 2.01, and comparative corporate governance, with particular focus on the German and Japanese governance systems. While acknowledging the difficulties with the contractarian paradigm, the authors foresee globalization moving organizations in the industrialized world toward this model. In the last section entitled "Voids at the Intersection of Sovereign Boundaries", the authors identify the conditions necessary to overcome problems with developing an infrastructure premised on the contractarian paradigm. The avenues discussed - coordinating laws across systems, harmonious integration, and unification – are all problematic in different ways and could have been more fully explored. Nonetheless, the authors are to be commended for ably summarizing the state of contemporary corporate governance scholarship and the discussing the on-going debates and tensions involved.

In Chapter 15, Douglas M Branson takes issue with the US scholarship that predicts global convergence toward the US standards. He critiques the methodology employed by these scholars ("the existing scholarship is highly inbred, ignoring work of scholars at lesser-known institutions or in other fields, and cites almost exclusively work by a few scholars at a handful of elite institutions" – narrow and unrepresentative sample – extreme lack of cultural understanding etc.) Branson points to the difficulties inherent in attempts at transplanting laws and institutions into

foreign jurisdictions; he points also to the obstacles to global convergence, especially the lack of political accountability and the prospect of rent-seeking. Branson makes a number of valid points. Embedded capitalism means that economic prescriptions must be sensitive to the political and social context in which the prescriptions are to apply. Societies in which communitarian values dominate have to be dealt with differently from societies where individualism reigns supreme. Inherent in contractarianism is the potential to destroy the social cohesion currently existing in local communities; the ramifications of a US style corporate governance model need to be considered. It is insensitivity to the local conditions and the ramifications on the ground that creates backlash against American economic prescriptions. A number of Branson's criticisms invite responses. For one, the rise of the multinational enterprise does not necessarily signal irrelevance of national regulation, something posited by Branson. These enterprises still need capital; insofar as they seek to raise capital from capital markets, they will need to comply first with the rules of the stock exchanges and second, the rules of the regulators having oversight of the capital market in question. And insofar as these enterprises have operational facilities, the labor laws of the jurisdictions in which the operations are located will apply. All in all, however, Branson's piece is provocative and a very interesting personal view on the question of convergence in corporate governance standards.

One source of frustration for this reviewer is the editing standards of the publisher. It needs improvement. First, the book does not have an index. A book of this nature – addressing common issues faced by a whole host of countries – should surely have an index; the reader should be able to identify where the issues are discussed in the book. The absence of an index thus diminishes the usefulness of this book as a reference. Second, there is no system for numbering subdivisions within chapters. The contents page shows two levels of subdivision; in the text, they are represented by differently sized headings. Subdivision numbering helps indicate the grouping and progression of ideas. The absence of subdivision numbering – and accordingly an outline – makes reading the more descriptive pieces difficult; the reader is wondering how the information presented link up and would have to look back to the contents page to discern the progression of thought. Third, a couple of the oversights cannot but make one wonder about the value-add provided by the publisher. One example is Figure 4.5 (a graph for country risk vs. firm risk) containing a glaring typographical error – two regions of underachievers, one of which should be *overachievers*. This is an error which a responsible publisher would not have missed.

All in all, this reviewer has found the book highly informative. It is a book to be recommended not only to one seeking knowledge of corporate governance practices in the Asia-Pacific, it can also be recommended to one attempting to understand the global corporate governance issues and the state of the debate.

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