

Centre for Asian Legal Studies

Independent Directors in Asia

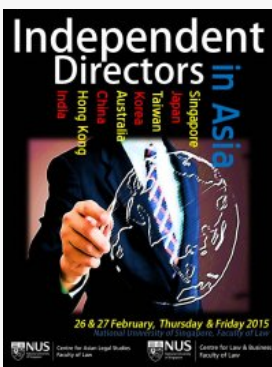
26 & 27 February, Thursday & Friday 2015
 National University of Singapore, Faculty of Law

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Welcome & Overview

Welcome to the webpage for the Independent Directors in Asia conference, which will be held at [NUS Law](#) on 26-27 February 2015.

This Conference builds upon an extremely successful conference organized by Professor Harald Baum from the [Max Planck Institute for Comparative and International Private Law](#) on 17-18 July 2014 in Berlin. At the [Berlin conference](#) it became abundantly clear that although there is a significant literature on independent directors generally, the vast majority of it views the issue through an Anglo-American (Western) lens. While independent directors (in various forms) have been transplanted into all of Asia's leading economies, there has been no detailed comparison *within* Asia of the role that independent directors play (or should play) in Asia's leading economies. The goal of this conference is to extend on the findings from the Berlin conference to produce a book to fill this gap in the literature.

I welcome you to explore this webpage to learn more about the Conference and our book project.

Best regards,

Dan W. Puchniak

Associate Professor

DIRECTOR OF CORPORATE LAW, CENTRE FOR LAW & BUSINESS
 EXECUTIVE BOARD MEMBER, CENTRE FOR ASIAN LEGAL STUDIES

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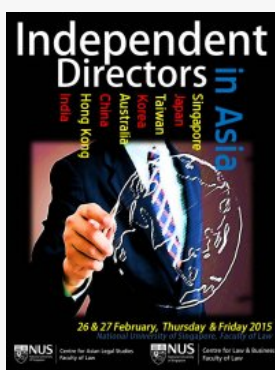
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Conference Programme

Thursday, 26 February 2015 (Day 1)

8.30am	Transport pick-up from Amoy Hotel Meet in Amoy Hotel lobby at 8:25am
9:00am - 9:30am	Registration Lee Sheridan Conference Room, Eu Tong Sen Building
9:30am - 9:35am	Welcome and Introduction Andrew Harding DIRECTOR ASIAN LAW INSTITUTE CENTRE FOR ASIAN LEGAL STUDIES FACULTY OF LAW, NATIONAL UNIVERSITY OF SINGAPORE
9:35 am - 9:45am	Opening Speech Dan W. Puchniak CENTRE FOR ASIAN LEGAL STUDIES, EXECUTIVE COMMITTEE MEMBER CENTRE FOR LAW & BUSINESS, DIRECTOR FOR CORPORATE LAW FACULTY OF LAW, NATIONAL UNIVERSITY OF SINGAPORE
9:45am - 10:30am	Independent Directors in India Board Independence in India Umakanth Varottil , NATIONAL UNIVERSITY OF SINGAPORE Vikramaditya Khanna, UNIVERSITY OF MICHIGAN (UNABLE TO ATTEND)
10:30am - 10:45am	Morning Tea Break (Outside Lee Sheridan Conference Room)
10:45am - 11:30am	Independent Directors in Singapore Puzzling Compliance Requiring Explanation Dan W. Puchniak , NATIONAL UNIVERSITY OF SINGAPORE Luh Luh Lan , NATIONAL UNIVERSITY OF SINGAPORE
11:30am - 12:15am	Independent Directors in Hong Kong The Controlling Shareholder Conundrum Vivienne Bath , UNIVERSITY OF SYDNEY
12:15pm - 1:20pm	Lunch (Staff Lounge @ Block B)
1:20pm -	Independent Directors in China

2:05pm	A Venerable Institution with Considerable Room for Reform Xin Tang , TSINGHUA UNIVERSITY
2:05pm - 2:50pm	Independent Directors in Taiwan Lost in Transition Hsin-Ti Chang , NATIONAL TAIPEI UNIVERSITY Yu-Hsin Lin , CITY UNIVERSITY OF HONG KONG Ying-Hsin Tsai , NATIONAL TAIWAN UNIVERSITY
2:50pm - 3:05am	Afternoon Tea Break (Outside Lee Sheridan Conference Room)
3:05pm - 3:50pm	Independent Directors in Korea Korea's Mandatory Independent Directors: Expected and Unexpected Roles Presented by: Kon Sik Kim , SEOUL NATIONAL UNIVERSITY Kyung-Hoon Chun, SEOUL NATIONAL UNIVERSITY (UNABLE TO ATTEND)
3:50pm - 4:35pm	Independent Directors in Japan Japan's Gradual Reception of Independent Directors and Persistent Reluctance to Them: An Empirical and Politico-Economic Analysis Souichirou Kozuka , GAKUSHUIN UNIVERSITY Manabu Matsunaka , NAGOYA UNIVERSITY Gen Goto, UNIVERSITY OF TOKYO (UNABLE TO ATTEND)
4:35pm - 4:45pm	Group Photo
4:50pm	Transport back to Amoy Hotel
6:00pm	Amoy Hotel pick up Meet at 5:55pm in Amoy Hotel lobby
6:30pm	Singapore Explorer Boat Ride Conference Dinner (by invitation only) Din Tai Fung Marina Bay Link Mall 8A Marina Boulevard #B2-05 Singapore 018984 Short (20 minute) stroll from Din Tai Fung through Gardens by the Bay to meet private shuttle bus
9:15pm	Bus to Amoy Hotel
Friday, 27 February 2015 (Day 2)	
9:10am	Transport pick-up from Amoy Hotel Meet in Amoy Hotel lobby at 9:05am
9:30am - 9:35am	Welcome Remarks Tan Cheng Han CHAIRMAN OF NUS CENTER OF LAW AND BUSINESS FACULTY OF LAW, NATIONAL UNIVERSITY OF SINGAPORE
9:35am - 10:20am	Independent Directors in Australia The Rise of Independent Directors in Australia: Adoption, Reform and Uncertainty Fady Aoun , UNIVERSITY OF SYDNEY Luke Nottage , UNIVERSITY OF SYDNEY
10:20am - 11:05am	Independent Directors in Russia Aleksandr Molotnikov, LOMONOSOV MOSCOW STATE UNIVERSITY (UNABLE TO ATTEND) Dmitry Kopylov , LOMONOSOV MOSCOW STATE UNIVERSITY
11:05am - 11:25am	Morning Tea Break (Outside Lee Sheridan Conference Room)
11:25am - 12:10am	The Rise of the Independent Director in the West -Understanding the Origins of Asia's Legal Transplant- Harald Baum , MAX PLANCK INSTITUTE FOR COMPARATIVE AND INTERNATIONAL PRIVATE LAW

12:10pm - 1:40pm	Lunch (Staff Lounge @ Block B)
1:40pm - 2:15pm	Theoretical Framework: The Role of Independent Directors Georg Ringe , COPENHAGEN BUSINESS SCHOOL & OXFORD LAW SCHOOL
2:15pm - 3:00pm	Case Studies of Independent Directors in Asia Bruce Aronson , HITOTSUBASHI UNIVERSITY
3:00pm - 3:20pm	Afternoon Tea Break (Outside Lee Sheridan Conference Room)
3:20pm - 4:05pm	Independent Directors in Asia: A Historical, Contextual and Comparative Approach Kon Sik Kim , SEOUL NATIONAL UNIVERSITY Dan W. Puchniak , NATIONAL UNIVERSITY OF SINGAPORE
4:05pm - 4:50pm	Authors & Editors Publication Round-up
5:00pm	Transport back to Amoy Hotel

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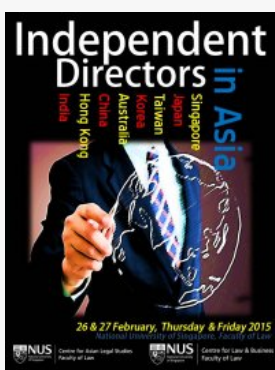
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Speakers' Profiles

Fady Aoun UNIVERSITY OF SYDNEY



Aoun, Fady BEc (Hons), LLB (Hons) (Sydney) is a lecturer at law at Sydney University. He teaches Corporations Law and Intellectual Property. His research and teaching interests are mainly in corporations law and intellectual property.

Bruce Aronson HITOTSUBASHI UNIVERSITY



Professor Aronson is a professor of law at Hitotsubashi University's Graduate School of International Corporate Strategy. He received his undergraduate degree from Boston University and his J.D. from Harvard Law School in 1977. Professor Aronson was a corporate partner at the law firm of Hughes Hubbard & Reed LLP in New York (1989-2000) and a professor of law at Creighton University (2004-2013). His experience in Japan includes research at the University of Tokyo (2000-2002, 2004), the Bank of Japan (2010), and Waseda University (2011-2013). His main area of research is comparative corporate governance with a focus on Japan. He also acts as an advisor to the law firm of Nagashima Ohno & Tsunematsu.

Vivienne Bath UNIVERSITY OF SYDNEY



Vivienne Bath is Professor of Chinese and International Business Law at Sydney Law School, University of Sydney, Director of the Centre for Asian and Pacific Law and Chair of the China Studies Centre Research Committee at the University of Sydney. Her teaching and research interests are in international business and economic law, private international law and Chinese law (particularly Chinese investment and commercial law).

She has first class honours in Chinese and in Law from the Australian National University, and a Master of Laws from Harvard University. She has also studied in China and Germany. She is admitted to practice in Australia, New York, England and Hong Kong and, prior to joining Sydney Law School, was a partner of international law firm Coudert Brothers. Representative publications include: Bath, V, 'Foreign investment, the national

interest and national security - foreign direct investment in Australia and China,' (2012) 34 Sydney Law Review 5-34); Bath and Nottage (eds), *Foreign Investment and Dispute Resolution Law and Practice in Asia*, Routledge, 2011, and Bath, V, 'ASEAN: The Liberalization of Investment through Regional Agreements,' in Trackman and Ranieri (eds) *Regionalism in International Investment Law*, Oxford University Press, 2013. Professor Bath speaks Chinese (mandarin) and German.

Harald Baum

MAX PLANCK INSTITUTE FOR COMPARATIVE AND INTERNATIONAL PRIVATE LAW



Dr. Harald Baum is Senior Research Fellow and Head of the Japan Law Department at the Max Planck Institute for Comparative and International Private Law, Hamburg; Professor at the University of Hamburg; Research Associate at the European Corporate Governance Institute, Brussels.

Harald graduated from Freiburg University in 1977 and received his doctorate and Habilitation from the University of Hamburg in 1984 and 2004 respectively; admission to the Hamburg bar in 1981. He joined the Institute in 1985; in 1990-91 he was guest researcher at the Kyoto University (AvH / JSPS postdoctoral fellowship); in 2005 Visiting Professor at the University of Tokyo. He serves as a Vice-president of the German-Japanese Association of Jurists and is, among others a Member of the Advisory Board of the Australian Network of Japanese Law, of the Académie Internationale de Droit Comparé, the European Law Institute, the German Society of International Law and the German Society of Comparative Law.

Harald has authored and edited numerous books and articles on business law, corporate governance, and capital markets in Germany, the EU, Japan, and the U.S. He is the executive founding editor of the *Journal of Japanese Law*.

Hsin-Ti Chang

NATIONAL TAIPEI UNIVERSITY



Hsin-Ti, Chang is a professor of law at National Taipei University, where she teaches Company Law, Securities Regulation, and Law and Economics. Professor Chang holds a LL.M. and J.S.D. degree from University of California at Berkeley Law School, U.S.A. and a LL.B. degree from National Taiwan University. Before her academic career, she was a practicing lawyer in Taiwan specializing in business and securities transactions. Her research focuses on various topics on corporate law, securities regulations and law and economics. She has published many articles in law reviews and journals in those areas of interest. Her most recent three papers are regarding the staggered board, remuneration committee, and shareholder's inspection right

Andrew Harding

NATIONAL UNIVERSITY OF SINGAPORE



Andrew Harding is Professor of Law and Director of the Centre for Asian Legal Studies at NUS. His work has related mainly to constitutional issues in SE Asia, but also to comparative law and law and development. He has published extensively on Malaysia. His latest book, *The Constitution of Malaysia: A Contextual Analysis* (Hart Publishing, Oxford, 2012), is part of the series *Constitutional Systems of the World*, of which Professor Harding is also co-founding-editor. His book *Law, Government and the Constitution in Malaysia* (MLJ, Kuala Lumpur, 1996) is a leading text on the subject. With Professor HP Lee he co-edited *Constitutional Landmarks in Malaysia: The First 50 Years, 1957-2007* (Kuala Lumpur, LexisNexis 2007). He has published numerous articles and book chapters on the Malaysian Constitution and Malaysian law.

Kon Sik Kim

SEOUL NATIONAL UNIVERSITY



Professor Kim teaches corporate law and securities regulation at Seoul National University. A graduate of SNU, he has an LLM from Harvard and a JD and a PhD from University of Washington. He has published numerous articles and books including two textbooks on corporate law and securities regulation.

Dmitry Kopylov

LOMONOSOV MOSCOW STATE UNIVERSITY



Dmitry Kopylov read for his undergraduate degree in law at M.V. Lomonosov Moscow State University from which he graduated summa cum laude. While a student, he served a two - year internship in the Moscow office of Linklaters LLP. He subsequently took a master's degree in corporate law from the University of Cambridge. He is currently a PhD student at M.V. Lomonosov Moscow State University. His dissertation explores the institute of share repurchases in Russia through the prism of foreign legislative experience. While working on his dissertation, he published a number of articles on Russian corporate law.

Souichirou Kozuka

GAKUSHUIN UNIVERSITY



Souichirou Kozuka (PhD, Tokyo) is Professor of Law at Gakushuin University, Tokyo. He specializes in commercial law, corporate law and maritime law and researches in comparative law studies. His English recent publications include: "Reform After a Decade of the Companies Act: Why, How, and to Where?", *Zeitschrift für Japanisches Recht*, Nr.37, S.39-50 (2014); "Policy and Politics in Contract Law Reform in Japan" (co-authored with Luke Nottage), in: *The Method and Culture of Comparative Law* (Maurice Adams & Dirk Heirbaut (eds.)), pp.235-253 (2014). He is a correspondent of UNIDROIT and Associate Member of the International Academy of Comparative Law (IACL).

Luh Luh Lan

NATIONAL UNIVERSITY OF SINGAPORE



Lan Luh Lan has a PhD (Business Policy) from the National University of Singapore (NUS) and a LLM (First Class) in Commercial Law from the University of Cambridge. She currently holds a joint position with both the NUS Business School and Law School. She specializes in company law, corporate finance law and corporate governance. She has published in both internationally-ranked management and law journals such as the *Academy of Management Review*, *Harvard Business Review*, *Journal of Public Policy and Marketing*, *Journal of Business Law*, and *Singapore Journal of Legal Studies*. She was a contributor to Walter Woon on *Company Law*, rev 3rd ed (2008) and *Woon's Corporation Law*. She teaches Corporate Law and Finance, Corporate and Securities Law and Corporate Governance at both the undergraduate and graduate levels, including the joint-degree UCLA-NUS Executive MBA programme. She was the Assistant Dean at NUS Business School (2008-09) and is currently the Deputy Director of the Centre for Law & Business.

Yu-Hsin Lin

CITY UNIVERSITY OF HONG KONG



Dr. Yu-Hsin Lin's research focuses on corporate governance, director independence and securities litigation. She approaches these topics from empirical and interdisciplinary perspectives. Dr. Lin's scholarship has been published in international journals, including *New York University Journal of Law & Business*, *San Diego International Law Journal*, and *George Mason Journal of International Commercial Law* etc. Dr. Lin holds a J.S.D. degree from Stanford Law School and had been a visiting scholar at Harvard Law School. Prior to joining City University of Hong Kong, she was an assistant professor at National Chengchi University, College of Law in Taiwan. Before her academic career, she was a practicing lawyer specializing in business and securities

transactions

Manabu Matsunaka
NAGOYA UNIVERSITY



Manabu Matsunaka is Associate Professor of Law at Nagoya University. His main research areas are law on hostile takeovers and corporate governance of Japanese listed firms. Recently he is intensively researching about board composition in Japanese firms and roles of Kansayaku (statutory auditor). Before Nagoya University, he was an assistant professor at Osaka University (2008-2009) and an associate professor at Niigata University (2009-2010). Further information is available at <http://www.law.nagoya-u.ac.jp/~m-matsunaka/index.html>

Luke Nottage
UNIVERSITY OF SYDNEY



Luke Nottage (BCA, LLB, PhD VUW, LLM Kyoto) specialises in corporate governance, contract law, arbitration, and consumer product safety law, with a particular interest in Japan and the Asia-Pacific. He is Professor of Comparative and Transnational Business Law at Sydney Law School, founding Co-Director of the Australian Network for Japanese Law (sydney.edu.au/law/anjel), and Associate Director of the Centre for Asian and Pacific Law at the University of Sydney. Luke's books include Product Safety and Liability Law in Japan (Routledge, 2004), Corporate Governance in the 21st Century: Japan's Gradual Transformation (Elgar, 2008), International Arbitration in Australia (Federation Press, 2010), Foreign Investment and Dispute Resolution Law and practice in Asia (Routledge, 2011), Consumer Law and Policy in Australia and New Zealand (Federation Press, 2013) and Asia-Pacific Disaster Management (Springer, 2014). He has (had) executive roles in the Law Council of Australia, the Australian Centre for International Commercial Arbitration, and the Asia-Pacific Forum for International Arbitration. Luke has also consulted for law firms world-wide, ASEAN, the EC, the OECD, the UNDP and the Japanese government, and is founding Managing Director of Japanese Law Links Pty Ltd (www.japaneselawlinks.com).

Dan W. Puchniak
NATIONAL UNIVERSITY OF SINGAPORE



Dr. Dan W. Puchniak is an Associate Professor in the Faculty of Law at the National University of Singapore and is currently a Visiting Fellow in the Commercial Law Centre at Harris Manchester College, Oxford University. He specialises in company law with an emphasis on comparative corporate law in Asia. Dan has published widely on comparative, Asian, Japanese and Singapore corporate law and governance and is regularly invited to present his scholarship and lecture at leading law schools around the world. Dan has received numerous domestic and international awards for his academic research and teaching. Most recently, his article on derivative actions in Asia was awarded the Best Paper Prize at the annual Corporate Law Teachers Association Conference. He was also recently placed on the National University of Singapore Annual Teaching Excellence Award Honour Roll as recognition for receiving the university wide NUS Annual Teaching Excellence Award three times. Also, he was recently selected by the Open Society Foundations to be a Fellow and Visiting Professor in the Department of Law at the University of Yangon. Dan is currently the ASEAN Convener for the Australian Network for Japanese Law and a member of the Editorial Board for the Max Planck Institute's Journal of Japanese Law. Prior to entering academia, Dan worked as a corporate commercial litigator at one of Canada's leading law firms.

Georg Ringe
COPENHAGEN BUSINESS SCHOOL & OXFORD LAW SCHOOL

Wolf-Georg Ringe is Professor of International Commercial Law at Copenhagen Business School. He also teaches at the University



of Oxford, Faculty of Law, where he holds a permanent visiting professorship. In Oxford, he is a Research Fellow at the Institute of European and Comparative Law and an associate member of the Oxford-Man Institute of Quantitative Finance.

He has held visiting positions around the world, most recently a visiting professorship at Columbia Law School in spring 2014. Professor Ringe is the general editor of the new Journal of Financial Regulation, which will be published by Oxford University Press starting in 2015. He has been advising both the European Commission and the European Parliament on issues of European company law. Professor Ringe teaches various courses in the field of corporate and business law, and his current research interests are in the general area of law and finance, comparative corporate governance, capital and financial markets, insolvency law and conflict of laws.

Tan Cheng Han

NATIONAL UNIVERSITY OF SINGAPORE



Tan Cheng Han is a Professor of Law and Chairman of the Centre for Law & Business at the NUS Faculty of Law. He is a Senior Counsel and served as the Dean of the NUS Faculty of Law until 2012. Prior to joining academia, Professor Tan was a partner in Drew & Napier's litigation department. His current appointments include being Chairman of the Singapore Media Literacy Council, Chairman of the Advisory Committee on Move-On and Filming Orders; Advisor to the Singapore Tae Kwon-do Federation, a Commissioner of the Competition Commission of Singapore, a member of the Appeal Advisory Panel to the Singapore Minister for Finance, a member of the Military Court of Appeal in Singapore and a member of the Governing Board of the International Association of Law Schools in the US. Professor Tan has also been a Visiting Professor at the East China University of Political Science and Law, National Taiwan University and Peking University.

Professor Tan's recent publications include: (1) The Law of Agency (Academy Publishing, 2010); (2) Unauthorised agency in English Law, in The Unauthorised Agent: Perspectives from European and Comparative Law (Cambridge University Press, 2009); (3) Change and Yet Continuity: What Next After 50 Years of Legal Education in Singapore?, The Singapore Journal of Legal Studies (2007).

Xin Tang

TSINGHUA UNIVERSITY



Tang Xin is a law professor of Tsinghua University School of Law, Beijing, China, his interests include the fields of corporation law, securities regulation and comparative corporate governance. Apart from his work on campus, he also provides expert services for China Association of Public Companies and Shanghai Stock Exchange.

Ying-Hsin Tsai

NATIONAL TAIWAN UNIVERSITY



Born in 1971, Taipei City, Professor Ying-Hsin Tsai received her Bachelor of Laws and Master of Laws from NTU, a second Master of Laws from the University of Tokyo, and a Doctor of Laws from the University of Tokyo. Professor Tsai has practiced as a lawyer with commercial law as expertise. Her research has focused on corporate law, maritime law, payment systems, international business law, and the regulation of financial institutions. Professor Tsai is a widely published author of articles on corporate law and maritime law in both Chinese and Japanese.

Umakanth Varottil

NATIONAL UNIVERSITY OF SINGAPORE

Umakanth specializes in corporate law and governance, mergers and acquisitions and corporate finance. While his work is



generally comparative in nature, his specific focus is on India and Singapore. He has co-authored two books on Singapore law and practice, published articles in international journals and founded the Indian Corporate Law Blog. He has also taught on a visiting basis at the Fordham Law School, New York and at various law schools in India. He is the recipient of several academic medals and honours. Prior to his foray into academia, Umakanth was a partner at Amarchand Mangaldas, a pre-eminent law firm in India. During that time, he was also ranked as a leading corporate/mergers & acquisitions lawyer in India by the Chambers Global Guide.

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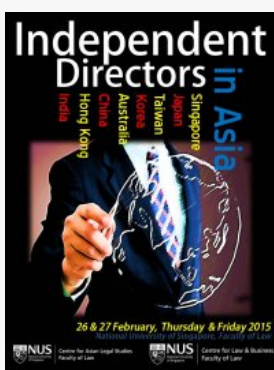
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Abstracts

Independent Directors in India

Board Independence in India (Version 2.0)

Vikramaditya Khanna

Umakanth Varottil

Board independence has become a critical centerpiece in the corporate governance debate. Many argue that enhancing board independence is likely to improve firm performance, reduce corporate wrongdoing and result in a host of other benefits. Others suggest that the current working of the board and the definition of independence are such that achieving these benefits is not likely to be easy or, perhaps, realistic. Although these debates rage in Anglo-American scholarship - at both theoretical and empirical levels - their importance has become more global as scholars and practitioners from around the world discuss whether board independence might serve a useful function in their countries.

However, there are important differences between Anglo-American firms and firms from elsewhere. For example, Anglo-American firms are generally considered widely held, with no controlling group, while firms in the rest of the world are thought to be largely controlled firms. Although the distinction between controlled and dispersedly held firms is useful for many purposes, we argue that it may be too coarse for the purpose of evaluating, and even defining, board independence. For instance, it is clear that not all controllers are the same: they could range from single controllers to groups consisting of multi-generational family members or even non-family members. Board independence likely operates differently in each scenario. Further, institutional conditions vary dramatically across the world, which is also likely to influence the functioning and value of board independence. Indeed, the factors emphasized in defining independence are likely to vary across these differing contexts. These types of concerns, amongst other things, raise questions about how easily one can transplant the independent director concept to other parts of the world.

Given this background, in this paper we explore the application and evolution of board independence in India, where concentration of shareholdings in public companies is the norm, what effects it has had, and how one might make the best use of the board independence concept in the Indian environment.

In particular, we examine how the concept of board independence came to India, how the different ownership and institutional conditions in India may influence one's views on the functioning and value of board independence, and how the definition of independence may emphasize factors differently across varying ownership and institutional contexts. Following India's liberalization in the early 1990s, the first foray

into board independence came in the form of a voluntary code recommended by the Confederation of Indian Industry, which was later on adopted in a revised form by the Securities and Exchange Board of India (SEBI) as a mandatory requirement. This phase, which we refer to as Version 1.0, was influenced by developments around the world, thereby displaying signs of a legal transplant. However, we argue that Version 1.0 provided formal independence requirements, and that considerable doubts existed as to the functional impact of independent directors.

We also discuss the most recent set of reforms to corporate law in India which are moving away from the earlier conception of board independence imported into India and towards greater functionality by adapting the concept to the environment in India, a development we refer to as Version 2.0. A new legislation, the Companies Act, 2013, provides extensive powers and responsibilities and imposes significant liabilities on independent directors that transform their role to one that emphasizes monitoring. Interestingly, this transformation in India is not the result of international developments, such as the global financial crisis, that called into question the role of independent directors, but the result of internal systemic shocks due to local corporate governance scandals. Although these steps are positive, much is still required before board independence becomes more effective in India. We conclude with some suggested reforms that may further push the board independence concept towards greater effectiveness in India.

Independent Directors in Singapore

Puzzling Compliance Requiring Explanation

Dan W. Puchniak

Luh Luh Lan

At first blush, the story of the rise of independent directors in Singapore appears conventional, if not mundane. In 2001, in the wake of the Asian financial crisis, Singapore needed to bolster its corporate governance. It did what every responsible, well governed, country in Asia was supposed to do: look to the West (or, more precisely, to Anglo-America) for corporate governance solutions.

At that time, the American independent director stood out as perhaps the most recognizable global symbol for good corporate governance. Independent directors were (and still largely are) credited with transforming American boardrooms from inept managerial clubs into effective managerial monitors. In the United Kingdom, the London Stock Exchange was thriving as its dispersedly held American-style Berle-Means type companies embraced independent monitoring boards. At the same time, the United Kingdom had also emerged as a global beacon for good corporate governance. Its implementation of independent directors, through its market-driven "comply or explain" Code of Corporate Governance (UK Code), was the avant-garde of corporate governance reform. From this perspective, Singapore's decision in 2001 to implement a UK inspired Code of Corporate Governance (2001 Code), which required the adoption of American-style independent directors on a "comply or explain" basis, appears highly conventional. In reality, however, it was anything but.

In fact, as this Chapter reveals, Singapore's adoption of American-style independent directors made it a corporate governance outlier. As explained in detail in this Chapter, the widely held belief that the American concept of the independent director has been transplanted around the world is a myth. In reality, only a small handful of jurisdictions have adopted the American concept of the independent director (i.e., where directors who are independent from management *only*-but not substantial shareholders-are deemed to be independent). Instead, most jurisdictions have merely adopted the term "independent director" from the United States, while significantly modifying the American concept by requiring directors to be independent from management *and* significant shareholders in order to be considered independent. This modification is critical as it alters the core function of the "independent director" from being a corporate governance mechanism designed primarily to monitor management on behalf of dispersed shareholders to one designed primarily to monitor controlling shareholders on behalf of minority shareholders.

At least from the perspective of agency theory, in most jurisdictions it makes perfect sense to modify the American concept of the independent director by requiring independence from significant shareholders. This is because most jurisdictions, aside from the United States and United Kingdom, tend to be dominated by corporations with controlling block-shareholders. In such corporations, the controlling block-shareholder can effectively monitor (and, if need be, replace) underperforming

management or manage the company themselves-making American-style independent directors functionally redundant. On the other hand, directors who are independent from management *and* significant shareholders (i.e., the *Un-American* concept of independent directors) can potentially add significant value in a block-shareholder environment by monitoring controlling-shareholders and thus mitigating private benefits of control.

It is against this backdrop that Singapore's status as a corporate governance outlier becomes glaringly visible. Listed companies in Singapore have highly concentrated block-shareholding structures, which have become even more concentrated as Singapore's wealth has reached world leading heights. This raises the first puzzle which this Chapter seeks to solve: Why would Singapore's highly-skilled regulators deviate from the seemingly logical and well-trodden path of other controlling shareholder jurisdictions by transplanting the American concept of the independent director into Singapore's controlling-shareholder environment?

Puzzling as this decision may be, the response of listed companies in Singapore to it presents an even more intriguing puzzle. Rather than shun the 2001 Code's seemingly ill-defined and functionally irrelevant American-style independent directors, listed companies in Singapore embraced them with vigour. Shortly after the 2001 Code had gone into force, an overwhelming 96 percent of Singapore listed companies reported full compliance with the Code's recommendation that one-third of the board be composed of American-style independent directors. Not long after that, 98 percent of Singapore listed companies reported full compliance, with almost half of all directors in Singapore reportedly being "independent". These extraordinary statistics raise the second intriguing puzzle that this Chapter seeks to solve: Why did listed companies in Singapore embrace seemingly functionally irrelevant American-style independent directors; and, what role (if any) have these directors played in Singapore corporate governance?

To add a final twist to this bemusing regulatory tale, after more than a decade of near perfect compliance, Singapore has recently decided to abandon its promotion of American-style independent directors. The 2012 Code of Corporate Governance (2012 Code), which went into full force at the start of 2015, requires independent directors to not only be independent from management but also from shareholders holding more than 10 percent of the company's shares. This raises the final puzzle that this Chapter seeks to solve: Why after more than a decade of near perfect compliance has Singapore decided to abandon American-style independent directors; and, what impact (if any) may this have on the future of corporate governance in Singapore?

Ultimately, this Chapter will offer solutions to these three puzzles and in doing so explore the comparative corporate law lessons that can be derived from this intriguing tale of the rise of independent directors in Singapore.

Independent Directors in Hong Kong

The Controlling Shareholder Conundrum

Vivienne Bath

At the end of 2013, The Stock Exchange of Hong Kong was the sixth largest stock exchange in the world by market capitalisation, and the second largest exchange in Asia. It is particularly important as a market for shares of Chinese and China-related companies. Due to its significance as an international market, many companies listed on the Exchange and trading in Hong Kong are incorporated outside Hong Kong - particularly in China, but also in the Cook Islands, Bermuda and the Cayman Islands. As a result, regulation of listed companies falls primarily under the Exchange and the Hong Kong regulatory authorities rather than under the Hong Kong corporate law regime. In 1993, the requirement to have at least 2 independent directors on a listed company board was introduced. Ten years later, this was increased to a requirement to have at least 3 independent directors, and in 2012, this was increased to a requirement that at least one-third of the board of directors be independent non-executive directors.

The major issue for Hong Kong companies has been the dominance of the controlling shareholder. Companies listed in Hong Kong are often majority or factually controlled either by a family grouping or, in the case of many significant Chinese companies, a majority state-owned enterprise. There is therefore significant potential for conflicts of interest between the controlling shareholder and the minority

shareholders in relation to company operations (particularly where there are transactions between related companies), the remuneration of management and related issues, which the independent directors are expected to mitigate through, among other things, their important roles on company committees, particularly the audit and remuneration committees.

There are mixed views on the success of these independent directors in relation to the controlling shareholder issue and generally in relation to corporate governance of Hong Kong listed companies. Some studies indicate that there is a positive correlation between the presence of independent directors on boards and standards of corporate governance, monitoring and supervision, although a lower correlation may be apparent in the case of family-owned companies. Some commentators take the view that the introduction of independent directors in the United States was essentially designed to deal with the need to monitor management in companies with dispersed shareholdings and it is ineffective as a method of dealing with the controlling shareholder problem. A related argument is that there is a high level of minority protection in Hong Kong due to a superior judicial system rather than the use of independent directors. Others consider that independent directors do play a positive role, particularly when compared to alternative structures, but that their efficacy is significantly hindered by a number of factors, including the current non-cumulative voting system (which guarantees that the controlling shareholder can choose the so-called independent directors), the definition of independence and the weakness of regulatory review and monitoring in relation to the independence of the directors. Questions have also been raised about the quality of the persons selected as independent directors, the number of positions held by some directors and the fact that the main remedy of independent directors who are dissatisfied with the actions of their board has been to resign from office.

This chapter will look at the independent director requirements in Hong Kong, focusing on the regulatory structure that imposes them, the content of the requirements, the functional alternatives available in terms of corporate regulation and the practical issues that have arisen in relation to the implementation and the operation of the independent director system in Hong Kong.

Independent Directors in China

A Venerable Institution with Considerable Room for Reform

Xin Tang

The independent director institution for listed companies was established in China in 2001 by the securities market regulator (the China Securities Regulatory Commission, or CSRC) in order to raise the level of corporate governance in these public companies. Presently, almost all of the 2,600 listed companies have made at least one-third of their board members "independent." Although a number of empirical studies challenge the proposition that the introduction of an independent director regime would improve corporate performance, the CSRC has endorsed the institution as an important way to "promote the standardized operation of listed companies" and, in particular, to safeguard "the lawful rights and interests of small and medium shareholders." In consideration of the features of China's capital market and corporate governance, including the capital structure of listed companies (majority shareholding of the state and sometimes families, dispersed retail investors and inactive institutional investors), market constraints and market culture (undeveloped market mechanisms, weak market ethics), and legal system (poorly defined fiduciary duties of directors and controlling shareholders, enforcement problems), it is an understandable and pragmatic way to design the independent director as one of the governance monitoring institutions, rather than merely advisers to the boards of listed companies. However, with respect to these same features, it is doubtful whether the institution can accomplish its assigned function without strong support of other monitoring devices. On the basis of a review of current laws and practice of the independent director in China, this Chapter will try to propose reforms in three critical fields of the institution, namely nomination, discipline, and compensation of the independent directors.

After a brief description of the shareholding structure of listed companies and evolution of the independent director regime in China, this Chapter analyzes the core of China's independent director regime by examining exactly how independent these directors actually are. It appears that the process of nominating and electing

independent directors in Chinese companies falls short of advancing their true independence or good corporate governance. As such, a mandatory cumulative voting system to elect directors and a combined model of election of directors and supervisors should be introduced in listed companies. In addition, a compulsory requirement of having at least one independent director elected by minority shareholders should also be considered. This new framework would encourage institutional investors to participate more in the nomination and voting process. Restrictions on the shareholding limits for independent directors should also be eased. In addition, more outside supervisors should also be introduced into the board of supervisors to work side by side with the independent directors-further strengthening independent monitoring within Chinese listed companies.

In terms of public and self-regulatory organizational enforcement, under the current accountability mechanisms in place for China's independent directors, the CSRC's administrative sanctions and the securities exchanges' disciplinary mechanisms present a real risk for those who fail to fulfill their duty of supervision and wrongfully sign problematic disclosure documents. It is suggested that when determining the liability of independent directors, their diligence in the overall period of their performance should be considered, and different standards of diligence and prudence should be adopted based on the specific facts of each case. China's stock exchanges should also play a major role in the disciplinary actions of wrongdoing independent directors.

Finally, the incentive structure for independent directors in China should be reformed to supplement the punitive measures used to ensure that independent directors fulfill their duties. Currently, independent directors in China receive a relatively low level of compensation, and only in the form of cash. The low level of compensation for these directors may lead to the unsatisfactory effect of making independent directors akin to cheap decorations which merely improve the appearance-but not the function-of Chinese corporate governance. As such, listed companies should be encouraged to pay their independent directors with both cash and stocks to achieve at least three purposes: increasing independent directors' overall compensation, avoiding too much burden being placed on the company themselves, encouraging the independent directors to focus on long

Independent Directors in Taiwan

Lost in Transition

Hsin-Ti Chang, Yu-Hsin Lin and Ying-Hsin Tsa

Historically, Taiwan's Company Act was influenced heavily by Germany and Japan. As a result, Taiwan's internal corporate governance has traditionally followed a two-tier board structure where the board of directors serves a managerial function, while the statutory supervisors serves a monitoring function. However, in 2002, following Enron and the enactment of Sarbanes-Oxley Act, this appeared to change as America's use of independent directors as a cure for corporate governance ills went global.

In this new global environment and in response to local corporate scandals, Taiwan embarked on a series of reforms to strengthen board independence. In 2006, in the face of scholarly debate, Taiwan granted public companies the ability to choose between a one-tier or two-tier board structure, with the former requiring independent directors and an audit committee. More recent efforts to reform Taiwanese corporate governance suggest a continued trend towards promoting the use of one-tier boards and, consequently, independent directors. This can be seen in a number of recent amendments including the introduction of mandatory compensation committees for all listed companies (2010), the extension of the board independence requirement (requiring at least one-fifth of board members to be independent) to all listed companies (2013), and the requirement that all large listed companies have an audit committee (to be phased in by 2017). This Chapter examines the challenges and problems that have occurred, particularly with respect to the use of independent directors, during this watershed regulatory transition from a two-tier board to a one-tier board system.

More specifically, this Chapter begins by placing the rise of independent directors in Taiwan into context by discussing Taiwan's post-Enron corporate governance reforms. It identifies potential problems arising out of the reform, which created three different types of internal governance structures for listed Taiwanese companies. In particular, the problematic overlap between the monitoring function of independent

directors and the monitoring function of statutory supervisors is highlighted. The Chapter goes on to examine the post-reform function of the board in three critical areas, which are fraught with conflicts of interest: the determination of executive remuneration; control over mergers and acquisitions; and, approval of self-dealing transactions. Then, the Chapter focuses on the effectiveness of independent directors in Taiwan's post-reform context. This inquiry examines the definition of "independence" under the current law. It reveals that the current law and regulations only provide a nominal ex ante check on independence. Ultimately, it concludes that with the absence of ex post substantive judicial review of director independence, independent directors in Taiwan are at risk of being manipulated by controlling shareholders and used as conduits for the extraction of private benefits of control while ostensibly appearing to protect minority shareholders from such abuse.

This Chapter then proceeds to draw on the literature exploring the regulation of independent directors through the use of reward (compensation) and punishment (liability) strategies. Upon reviewing recent court decisions on independent directors' liability, it finds that the court tends to reduce or exempt independent directors in Taiwan from liability for breaching fiduciary duties, especially in securities fraud cases. Furthermore, the Securities and Futures Investors Protection Center (which is a unique Taiwanese government-sponsored non-profit organization that actively files securities class actions against public companies) also appears to intentionally mitigate independent directors from liability through its policy of disposing of cases via negotiated settlements which aim to spread liability among various actors. Taiwanese independent directors are further insulated from liability by D&O liability insurance, which now covers independent directors in 70% to 85% of listed companies.

The problematic flipside of Taiwanese independent directors being insulated from liability is that they are relatively well compensated-especially those on the audit committees of large listed companies. In addition, and perhaps most importantly, strong social ties between "independent" directors and controlling shareholders appear to vitally impair their ability to act as a mechanism for mitigating private benefits of control. Given the lack of ex post judicial review of director independence in Taiwan, social ties are likely to continue to hinder the impartiality of independent directors. In light of the fact that ex post judicial review is unlikely to develop in Taiwan in the near future, scholars have urged stock exchanges and government authorities to further review and monitor the substantive independence of independent directors by scrutinizing listing applications and imposing mandatory disclosure rules. Even if the stock exchange and government follow these suggestions, it still appears that the use of independent directors in Taiwan will likely remain "lost in transition" for the foreseeable future.

Independent Directors in Korea

Korea's Mandatory Independent Directors: Expected and Unexpected Roles

Kyung-Hoon Chun

Pursuant to recommendations made by the IMF in the aftermath of the Asian financial crisis in the late 1990s, Korea adopted various reforms to its corporate governance system. One of the significant reforms was to enhance board independence. Unlike in many other jurisdictions where the listing rules or other types of "soft law" promote the use of independent directors, current Korean law requires all large listed companies to fill a majority of their board seats with "outside directors" who are independent from management and major shareholders. This mandatory regime was designed to enhance the monitoring function of the boards in large listed Korean companies.

Many of the detailed regulations governing independent directors (such as those concerning the qualifications and nomination/election process) are generally similar to the United States and other leading jurisdictions. Independent directors are required to be independent from the company and its major shareholders in all respects including ownership, kinship, employment, and business relations. In this regard, Korean law does not provide a positive definition of or qualifications for independence, but instead provides a long list of reasons for disqualification. In the case of large listed companies, candidates who wish to be elected as an independent director must be nominated by the company's nomination committee composed of a majority of independent directors.

Arguably, making independent directors mandatory has increased diversity and transparency in Korean boardrooms and, in turn, improved the monitoring function of Korean boards. In particular, as independent directors have been sued and held liable in a number of derivative suits, they now have an incentive to monitor and prevent wrongdoing by management (or controlling shareholders). This is the role that the legislature likely expected independent directors would fulfill.

After 15 years in operation, however, we are now witnessing a unique reality concerning independent directors in Korea. Increasingly, companies fill their independent director quota with retired government officials, such as high-ranking prosecutors or tax officers. While professors and lawyers are increasingly being tapped to become independent directors, it is becoming progressively more difficult to find businessmen or career bankers serving as independent directors in large listed companies. Such a trend is even more pronounced in large business groups. This is strikingly different from other jurisdictions, where most of the independent or non-executive directors in large listed companies are CEOs, CFOs, or high level executives of other large companies. This trend in Korea may suggest that many companies want their independent directors to play a "relational role," especially in terms of providing a channel of communication with the government. The prohibition on legal lobbyists under Korean law appears to have created a market for independent-director-cum-lobbyists—a role for independent directors that was certainly not anticipated by the legislature.

Ultimately, this Chapter analyzes the rules governing independent directors in Korea and compares them with those in other jurisdictions. Such a comparison reveals that the black letter law governing independent directors in Korea has more similarities with other leading jurisdictions than differences. Also, this Chapter illuminates the uniqueness of Korea's independent directors (in particular, their past and present careers) and explores the causes and implications of this unique reality on Korean corporate governance. This Chapter concludes by suggesting that the uniqueness of Korea's independent directors is further evidence that the unique political and cultural environment of each country often causes legal transplants to evolve in idiosyncratic and unanticipated ways.

Independent Directors Japan

Japan's Gradual Reception of Independent Directors and Persistent Reluctance to Them: An Empirical and Politico-Economic Analysis

Souichirou Kozuka, Manabu Matsunaka and Gen Goto

Japan has become infamous for its stubborn resistance to the global rise of independent directors. Indeed, Japan arguably has relied less on independent directors than any other developed economy. In the early 1990s, as the American independent director started to go global after the Cadbury Report recommended the use of nonexecutive directors in the UK, Japanese boards remained dominated by executive directors. Furthermore, Japan's directors were not only almost uniformly executives, but these executives were in many cases senior employees who had spent their entire careers working for the company on whose board they sat. At least until the early 1990s, far from being seen as problematic, these lifetime employee directors were praised as one of the key elements of "Japanese style management", which seemed to be successful at that time.

Then, in the early 1990s, Japan's economic bubble burst, followed by the disclosure of many compliance-related scandals and the non-performing loan problems. A wave of corporate governance reforms, which have now spanned over two decades, ensued. Initially, in the 1990s, the focus on reforming Japanese boardrooms was primarily on improving their existing *Kansayaku* (statutory auditors) system—not on transplanting Anglo-American independent directors into them. In fact, it was not until the early 2000s, after a decade of economic advancement had widely been declared "lost", that Japan began to consider the reception of independent directors into its boardrooms. However, Japan's attempt to ostensibly introduce American-style independent directors into its boardrooms in the early 2000s was remarkably unique from the reforms undertaken in other jurisdictions. This "reform" provided an option for large companies to choose a one-tier board structure that required a minimum of two outside (but no independent) directors. Tepid as it was, less than 3% of the listed companies in Japan ultimately selected this one-tier board structure.

The stubborn resistance of post-bubble Japan to the adoption of independent directors should not, however, be mistaken for a lost decade of reforms to Japanese boards. To the contrary, by the beginning of the 2000s, Japan's idiosyncratically large boards had shrunk dramatically. The idea of distinguishing executive and non-executive directors gradually permeated, partly facilitating, and partly resulting from, the emergence of the practice of public companies appointing "executive officers"-in spite of the fact that such a position was not formally recognized in the company law. It is against this backdrop of the gradual transformation of Japan's conception of corporate governance over almost two decades that the most recent salvo to increase the outside monitoring role of boards in Japan must be understood. The gradual transformation included the gradual shift in the focus of corporate governance reform from prevention of compliance-related corporate scandals to the improvement of performance of listed firms. Because the primary responsibility of Kansayaku resides in the discovery and prevention of illegal activities within the company, the reception of non-executive, independent directors has become unavoidable due to such a shift in the reform focus. Indeed, without such context, the significance of the 2014 reform to Japanese boards may well be misunderstood.

After some years of debate, in 2014, the Japanese parliament passed a bill to reform the boards of listed companies. Although the final bill stopped short of requiring listed companies to have one or more outside directors, it requires those listed companies that have no outside directors to explain at the general meeting of shareholders the reason that appointing an outside director would be damaging to the company. Essentially, Japan has adopted a UK-style "comply or explain" approach-with significant pressure to "comply," as explaining why a listed company cannot have a single outside (not even independent) director on its board would seem to be difficult. Likely in response to this requirement, the ratio of listed companies appointing at least one outside director rapidly increased after September 2012 when the content of the 2014 reform bill materialised and accelerated even more after shareholder meetings in 2014. Most recently, this trend has been further stoked by the Japanese government and Tokyo Stock Exchange launching discussions to consider the adoption of a UK-style "comply or explain" code of corporate governance, which appears likely to require two or more outside directors on the boards of listed companies.

The 2014 reform might appear to those outside Japan as a further confirmation that corporate governance reform in Japan is converging with the US/UK model of corporate governance after all. However, because any significant corporate governance reform, if not law reform in general, is embedded in the social context of the reforming jurisdiction, one must drill down beneath the text of the reform bill and examine the reform process from empirical and politico-economic perspectives. The idea of requiring independent directors on the board has always been strongly advocated by powerful international institutional investors, who over the past two decades have come to own a significant percentage of shares of Tokyo Stock Exchange listed companies. Intriguingly, both the DPJ (who enjoyed a brief hold on power and was believed by many observers to be anti-business elite) and the LDP (who has quickly regained the control of the Parliament as a re-born reformist party) supported the proposal-but their support appears to have likely been on different grounds. In spite of this, the original proposal to make it mandatory to include even a single outside director on the board of listed companies in Japan failed. This Chapter uses empirical and politico-economic lenses to reveal the dynamism of the gradual transformation in the conception of corporate governance and reform debates in Japan.

Independent Directors in Australia

The Rise of Independent Directors in Australia: Adoption, Reform and Uncertainty

Fady Aoun and Luke Nottage, University

Australia has a tradition of surprisingly large non-institutional blockholders in companies listed on the Australian Securities Exchange (ASX). This has arguably impacted on the roles and composition of boards. As explained in Part B of this Chapter, there has been some longstanding tension between those preferring a narrower view of directors' roles and duties (focused on corporate performance) and those advocating a broader view (including more emphasis on risk management, which may favour smaller shareholders with less information about their firm's

activities). Nonetheless, there has been a shift since the early 1990s away from executive boards towards "monitoring" boards, with fewer members and more independent directors, who are expected moreover to maintain minimum standards across a variety of roles.

Yet this transition has not been rapid or particularly smooth (Part C). Following the corporate excesses of the late 1980s, in 1992 the ASX suggested the introduction of mandatory requirements for independent directors. Following business opposition, it then proposed a UK-style "comply-or-explain" regime in 1994, but eventually had to settle on an even weaker disclosure regime from 1996. Only after a wave of much more serious corporate failures from around 2001, including one (One.Tel) harming very influential blockholders, did the ASX implement (from 2004) a requirement for listed companies to adopt a majority of independent directors on an "if not, why not" basis. Minor revisions were made in 2007, but somewhat more stringent standards were implemented from 2014. The latter changes occurred in the shadow of some post-GFC legislative initiatives and case law that generally expanded the scope of duties owed by directors (including independent directors), even though for various reasons Australia did not suffer major bank failures or a recession.

As explained in Part D, the cornerstone remains these ASX "Principles and Recommendations", underpinned by Listing Rules (which furthermore mandate an audit committee since 2004, and a remuneration committee since 2011 albeit only for the largest 300 companies, each requiring a majority of independent directors). There are comparatively and increasingly detailed criteria for assessing independence, such as whether the director has direct (or, since 2014, "family") links with a "substantial" (5%+) shareholder. This factor differs from the US and appears to be derived from the UK, but it makes more theoretical sense in Australia given its significant blockholder tradition. Another interesting development has been a compromise reached in the 2014 ASX Principles regarding length of tenure, partly influenced by developments further afield including in Singapore and Hong Kong.

Nonetheless, there is still only weak empirical evidence in Australia of positive effects from independent directors, with respect to enhancing risk management and particularly corporate performance overall (Part E). A controversial econometric study published in 2013 concluded that over \$69 billion in corporate value had been destroyed over 2003-2011 by the (largely) "if not, why not" ASX requirement for a majority of independent directors on listed company boards. The authors were particularly critical of the ASX's view that major shareholders (or nominees etc.) would lack independence as directors, arguing that they instead have incentives to monitor management better. However, this criterion was not changed significantly in 2014, with one concern being that a relaxation might disproportionately benefit large over smaller shareholders.

There has also been little impact on policy-makers and regulators from a few other academic papers in Australia, which have recently queried the received wisdom about independent directors from a variety of perspectives. Though speculative, a subconscious "status quo bias" may be at work, as well as interest group politics - there is now a large (and well-networked) anointed group of incumbent independent directors, as well as various professional associations involved in "training" them. This lack of public discussion is unfortunate, as many problems remain to be properly explored from theoretical, empirical and comparative perspectives (Part F), in order to potentially improve corporate governance in Australia and impact on developments abroad - especially in the Asian region.

Independent Directors in Russia

Aleksandr Molotnikov and Dmitry Kopylov

This article focuses on independent directors in Russia. It begins by providing a brief overview of the Russian economy and its place in the world and Asian economy. The introductory part of the article also contains a description of noteworthy features of the Russian corporate governance landscape. One of them is the prevalence of concentrated ownership structures in Russian companies, in many cases the sole or majority shareholder being the Russian state. The article proceeds by tracing the evolution of the concept of independent directors in Russia over the last twenty years and analyzes the legal regime pertaining to this concept. This analysis is followed by an overview of empirical research related to independent directors in Russia. The final part of the article questions the effectiveness of independent directors as a solution to corporate governance problems faced by Russian companies. Because of the domination of concentrated ownership structures in

Russian companies it is the minority shareholders (not the shareholders as a whole) that need to be protected from actions of the controlling shareholders. For this reason we are skeptical about the effectiveness of independent directors as a means of addressing corporate governance problems caused by such an ownership structure. However, we argue that the addition of independent directors to the boards of directors of Russian state-owned companies may help solve the "absent owner" problem because independent directors are likely to fulfill the monitoring function better than the relevant state organs.

The Rise of the Independent Director in the West -Understanding the Origins of Asia's Legal Transplant-

Harald Baum

In a mere two decades independent directors have risen from obscurity to ubiquity in Asia. The same observation could be made about the rise of the independent director in United States and United Kingdom a few decades ago. The two jurisdictions are commonly credited with creating the concept of the independent director and exporting it around the world. All of Asia's leading economies appear to have transplanted the concept of the independent director from the US-UK origin. This Chapter provides a historical and comparative analysis of the rise of the independent director in the United States and United Kingdom.

Basically-and allowing for some simplification-it can be said that the concept of independent directors and the related model of a "monitoring board of directors" originated in the United States from the 1970s onward, though it underwent some modifications thereafter. Before, for the first half of the twentieth century, inside directors-from within the company's rank and file and employed by it full time-dominated the corporate boards. A managerialist model of corporate governance dominated. Boards played a passive role; their members were chosen and dominated by the CEO and had little incentive to challenge him.

Two watershed events sparked a dramatic change in the 1970s. The first event was the sudden and completely unexpected financial collapse of Penn Central, a major railway company, and the second was, somewhat surprising, an academic publication: Melvin Eisenberg's influential book *The Structure of the Corporation*, published in 1976. According to Eisenberg, the board's essential function was to monitor the senior management and for this the board needed to be truly independent from the executives. Today, in the United States, the reliance on independent directors as a panacea for corporate governance ills has reached its zenith. In 2013, in US public companies, 85 percent of directors were independent and 60 percent of boards had only one non-independent director-the CEO.

Around 25 years ago, the concept of independent directors was picked up and somewhat refined in the United Kingdom. From there it started to conquer the European Union as a fundamental corporate governance principle and a "must have" governance tool. On the supra national level, the OECD Principles of Corporate Governance of 2004 recommend to assign important tasks to independent board members. Only fairly recently, in the wake of the GFC, has the concept of the independent director come slowly under closer and critical scrutiny in Europe.

The empirical support for staffing boards with independent directors remains surprisingly shaky given the ubiquitous reliance on independent directors. Some of the empirical studies undertaken over the last 30 years, which employ a wide range of quantitative research methods and statistical analysis, find no correlation between board independence and performance, others find a negative correlation, especially with regard to super-majority independent boards, and a few, mostly older studies, find a positive correlation. The only definitive statement that can be made about these wide ranging empirical studies is that they are clearly unclear. It does seem that the empirical evidence leans towards indicating that there is no obvious benefit to including independent directors on boards. It also suggests that too much independence may be a bad thing.

Theoretical Framework: The Role of Independent Directors

Georg-Ringe

This chapter seeks to develop a framework for and to re-evaluate the Western corporate governance concept of 'board independence', in order to prepare the ground for its evaluation in the Asian context. Independent or outside directors had long been seen as an essential tool to improve the monitoring role of the board. Yet the recent financial crisis shed doubts on their effectiveness: it has become clear that independent directors did not prevent firms' excessive risk taking; further, these directors sometimes showed serious deficits in understanding the business they were supposed to control, and remained passive in addressing structural problems.

A closer look reveals that under the surface of seemingly unanimous consensus about board independence in Western jurisdictions, a surprising disharmony prevails about the justification, extent and purpose of independence requirements. These considerations lead me to question the benefits of the current system. Instead, this chapter proposes a new, 'functional' concept of board independence. It would redefine independence to include those directors that are independent of the firm's controller, but, at the same time, it would require them to be more accountable to (minority) shareholders.

Independent Directors in Asia: A Historical, Contextual and Comparative Approach

Kon Sik Kim and Dan W. Puchniak

This Chapter will pull together the major themes and findings from the jurisdiction-specific Chapters in the book. As such, this Chapter will evolve based on the information presented in the jurisdiction-specific Chapters at the conference.

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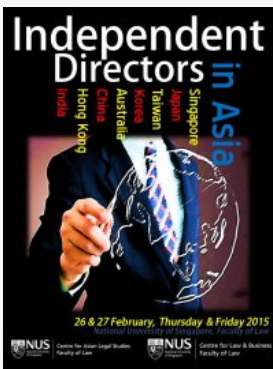


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