

Book Review

Corporate Governance in Asia

Dan W. Puchniak, Harald Baum, & Luke Nottage, eds., *Independent Directors in Asia: A Historical, Contextual and Comparative Approach* (Cambridge: Cambridge University Press, 2017) pp 634. Hardcover: \$155.00.

Since the institution of independent directorship was invented in the US several decades ago, it has played an increasingly important role in corporate governance throughout the world. Particularly in Asia, many jurisdictions have adopted the institution to improve corporate governance and investor protection.

Although the economic importance of Asia has been rapidly rising, there has been a dearth of corporate governance research on Asia that is internationally recognized. This book, as an exception to that trend, pioneers the scholarship and already has drawn attention among world-renowned scholars. To the best of my knowledge, this compilation is the first to comprehensively explore, through rigorous analyses, various independent director systems in leading jurisdictions of Asia (China, Japan, India, Korea, Singapore, Hong Kong, and Taiwan). Indeed, this book breaks new ground and makes enormous contributions by dispelling long-standing myths about the institution of independent directors in Asia, as well as providing new perspectives.

First, this book explains that many of the leading jurisdictions in Asia have more independent directors than corporate governance scholars and practitioners have generally perceived. For instance, in most of Singapore's listed companies, independent directors account for a majority of board members, which marks an unusual phenomenon outside the US. In this respect, this book shows that, in terms of the ratio of independent directors on corporate boards, Asia's corporate governance "scores" appear higher than the conventional view has generally assumed.

Second, although the leading jurisdictions in Asia adopted the independent director system from the US (or indirectly imported the general concept of the independent director from the US via the UK), this book demonstrates that directors' "independence" in Asian jurisdictions is not monolithic. In addition, this book expounds that independent director institutions in Asia vary widely in terms of both the "forms" that independent directors take and the "functions" that independent directors perform. When evaluating the quality of a jurisdiction's corporate governance, market professionals (e.g. institutional investors and shareholder advisory firms) and international organizations tend to assume that independent director systems across jurisdictions resemble the system in the US. The varieties of independent directors in Asia that this book explores, however, disprove this notion of a "standardized" US-style system.

Third, this book explicates that Asian jurisdictions implement either "mandatory," "recommended," or "comply or explain" independent director regimes, and suggests why the

choice of the type of regulation can potentially impact the effectiveness of a jurisdiction's independent director system. In addition, this book examines features of independent director institutions in Asia such as the composition of boards of directors. For instance, while Korea requires large listed companies to have a majority of directors from outside, China requires listed companies to reserve a third of their board for independent directors. By contrast, Japan's attitude toward the independent director system has traditionally been lukewarm. Nonetheless, this book elucidates Japan's recent enthusiasm about establishing a more serious institution of independent directors. In addition, regarding certain jurisdictions, this book discusses the role and potentially substitutable functions of (statutory) supervisors for independent directors.

Fourth, in terms of pedagogy, this book's chapters strike a sound balance between theory, practice, and examples. While the jurisdiction-specific chapters provide in-depth examinations of the independent director systems in particular jurisdictions, the theory-oriented chapters put forward holistic, comprehensive, and organized discussions of the various types of independent directors in Asia. The combination of these chapter types enables readers to more systematically comprehend the similarities and differences between independent director systems among major Asian jurisdictions.

Fifth, this book thoroughly examines how unique legal, market-based, and socioeconomic factors of different jurisdictions can affect the features and contours of the independent director systems they adopt. As analytical tools to scrutinize idiosyncratic independent director systems in different jurisdictions, this book suggests several factors: (1) shareholder ownership structure; (2) legal origins; (3) types of shareholders; (4) functional substitutes; (5) political economy; and (6) cultural norms. The book convincingly illuminates how the mixture of these six factors makes each jurisdiction's independent director system unique, deviating from the US-style independent director system.

For instance, if the classification of law and finance theory is used, the legal origins (one of the six factors) of Asia's seven major jurisdictions largely fall into the categories of German civil-law (Japan, Korea, and Taiwan), English common-law (India, Singapore, and Hong Kong), or transition economies (China, though it can also be viewed as being influenced by other legal origins). This book attempts to consider legal origins in a more dynamic sense than much of the extant literature. In other words, this book does not limit the analysis of legal origins to the origin of the entire legal system of a jurisdiction, but also contemplates the origins of particular legal provisions as a means for further understanding and exploring a jurisdiction's corporate governance.

In addition, emphasizing the ownership structures of the US (relatively dispersed shareholder ownership) on the one hand and the leading jurisdictions in Asia (mostly controlling shareholder ownership) on the other, this book elucidates the different roles played by independent directors. In other words, it shows that, in jurisdictions where controlling shareholders are dominant business players, an independent director system should be established to monitor major shareholders as well as management.

Moreover, this book suggests that, in the context of independent director systems, a large "convergence" of corporate governance works at the level of "labelling" but not very well in terms of "forms and functions." Put differently, the book attempts to clarify that "forms and functions" of the leading Asian jurisdictions differ markedly from those of other Asian

jurisdictions and the US. This view provides a new perspective on the “convergence” debate in comparative corporate governance scholarship.

Based on the explanation of sharp distinctions among independent director systems in Asian jurisdictions, as this book implies, if independent director systems in Asia are evaluated by the mere “have or have-not” standard, the quality of specific jurisdictions’ corporate governance may be misjudged (usually overstated). Indeed, the quality of a particular jurisdiction’s independent director system depends on diverse, complex, and interrelated factors; thus, the simple standard of “have or have-not” tells little about the system’s features.

Overall, this book represents a milestone in comparative corporate governance scholarship on Asia. As a seminal work that delineates the various independent director systems in Asia, this book will substantially resolve problems arising from the lack of detailed information and rigorous scrutiny on the region. Market gatekeepers (including shareholder advisory firms) as well as retail and institutional investors will benefit from the greatly improved analytical instruments that this book presents. Also, this book offers foundations for further research on new phenomena in Asian corporate governance. For instance, as seen in the case of Vanke-Baoneng (a fully fledged takeover case in China), hostile takeover attempts have just begun in China. It is too early to speculate whether a massive wave of takeovers will ensue in China. Nonetheless, among many other factors (e.g. regulatory issues on hostile takeovers), independent directors of potential target corporations in China will play a critical role in such takeover wars, even if such wars do not emerge in public. In this respect, the in-depth analysis of independent director institutions that this book presents—not only in the China chapter—will provide useful guidance for further research.

Last but not least, the book’s editors and authors are leading corporate law and governance scholars in the region. Individually in their chapters and collectively in the book, they provide thorough jurisdiction-specific examinations of independent director systems as well as holistic approaches and analytical frameworks to help readers understand Asian jurisdictions in detail and as a whole. I hope that, based on this book’s tremendous academic contributions, follow-up studies will explore other unknown or ignored aspects of independent director systems in Asia and throughout the world.

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