ABSTRACT

This study examines and compares the protection of shareholder rights contained in corporate governance codes in select countries around the world. Corporate governance codes are meant to provide shareholders with protection against expropriation. These codes are typically non-binding and are self regulatory in most countries with the requirement to disclose if any deviations are made. Governance codes are categorized into four distinct systems: the Anglo-Saxon System (USA, Canada, UK and Australia), the Germanic System (Germany, Netherlands, Switzerland, Sweden, Austria, Denmark, Norway and Finland), the Latin System (France, Italy, Spain and Belgium), and the Japanese System (Japan). This study reviews and compares the codes of ten countries within the four systems identified to determine the level of protection provided to shareholders.

Shareholder rights examined in this paper include the one share one vote rule, the ability to access information prior to the shareholders meeting, the requirement for corporations to provide agenda items with relevant documentation on their websites, the ability of shareholders to add items to the agenda, the ability of shareholders to nominate board and/or director positions, mechanisms for proxy voting and other provisions which provide protection for minority shareholders. The results of this study suggest shareholder rights are more protected by legislation in countries characterized by 'widely-held' firms and less protected under governance codes. On the contrary, shareholder rights are typically less protected by legislation in countries characterized by 'ultimately-owned' firms and more protected under governance codes.
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DEDICATION

This report is dedicated to my sons Jacob and Steven.
Sonya Hunt
Chapter 1

INTRODUCTION

1.1 Corporate Governance Codes

Many prolific corporate scandals have occurred around the world. In the US there were scandals involving Enron, WorldCom, and Tyco; in Europe there was Skandia, Parmalat and Swissair; and in the Netherlands there was Ahold. In light of these scandals there has been an ongoing movement towards the establishment of standardized Corporate Governance Codes (O'Shea 2005). Corporate Governance Codes provide a set of rules, guidelines and/or best practices (for a country) for the behaviour of directors of corporations, and act primarily as a protective measure to avoid potential conflicts of interest and subsequent scandals. Codes are typically non-binding and are self-regulatory in most countries with the requirement to disclose when and if any deviations are made. This is known as the "apply or explain" principle. These codes include best practices for board composition, selection, remuneration, and audit and information disclosure in order to protect the interests of shareholders.

Sixty-two countries currently have a set of publicized Corporate Governance Codes. Adoption of Corporate Governance Codes seems to have gained momentum since the year 2000, with eighty-five percent (85% or fifty-two) of the sixty-two countries adopting codes of governance after the year 2000 (See Table 1 below for the first ten countries to adopt codes and the complete listing in Appendix I - Corporate Governance Codes Around the World).
According to the study by Jeroen Weimer and Joost C. Pape (1999), "A Taxonomy of Systems of Corporate Governance", governance codes can be categorized into four systems: the Anglo Saxon System (USA, Canada, UK and Australia), the Germanic System (Germany, Netherlands, Switzerland, Sweden, Austria, Denmark, Norway and Finland), the Latin System (France, Italy, Spain and Belgium), and the Japanese System (Japan). This classification of codes has also been identified by scholars such as Scott (1985), DeJong (1989), Moerland (1995, a,b) and Reaz and Mohammed, (2007). A ‘system’ refers to country-specific framework of legal, institutional, and cultural factors through which stockholders and stakeholders can influence managerial behaviours (Reaz and Mohammed, 2007). These four systems originate from relatively rich and industrialized countries (Reaz and Mohammed 2007). This division of systems is used as a basis for comparison in this paper.

Corporate governance (codes) exists for one reason and one reason alone: to ensure shareholders’ values, as informed by knowledgeable agency, are transformed into company performance (Carver 2007). Codes are meant to provide shareholders with
protection from expropriation but, according to Carver (2007) in his article “The Promise of Governance Theory: Beyond Codes and Best Practices”, codes and piecemeal improvements serve a purpose, but are insufficient to engender superior or even adequate corporate governance. It is more beneficial to minority shareholders to have code material shifted into the regulatory arena for assurance of protection. There is a guarantee of regulatory compliance under the legislation, whereas corporate governance codes promote an honour system or an adoption of a best practice system.

1.2 Widely Held vs. Controlled Corporations

In their book “The Modern Corporation and Private Property”, authors Adolph Berle and Gardiner Means claimed that corporations in the United States were widely held by small shareholders (La Porta et al. 1999). This resulted in the separation of ownership and control and created agency problems between owners (shareholders) and directors (managers). Control was vested in a board of directors who hired managers with the delegated authority to manage the company and therefore, shareholders were unable to exert any direct influence over management (La Porta et al. 1999). In response to this, and to many corporate scandals occurring in the late 1990’s and early 2000’s, corporate governance codes have been developed to mitigate the agency problems inherent in this system as a means to protect the rights of shareholders.

More recent studies have discredited this ‘widely held’ viewpoint. La Porta et al. (1999) found that relatively few firms are actually widely held. This is in direct contrast to Berle and Means’ image of the modern corporation (which was primarily indicative of US
corporations). Outside the United States the presence of multiple large shareholders is very common (Gianfrate, 2007). Large publicly traded companies in Canada are typically owned by wealthy families who possess the majority of voting rights (Bozec and Laurin 2008). Germany is also typical of the world as a whole in that most large listed German companies have a large controlling shareholder (Edwards and Weichenrieder 2004). 67.48% of Italian trusts are family-owned with controlling shareholders (Gianfrate 2007). These findings are evidence that Berle and Means version of the widely held corporation is not the norm in the current globalized economy.

The agency problems suggested by Berle and Means resulted in conflicts between owners and managers. There is question about who is monitoring the controlling shareholder among corporations that are owned by a controlling shareholder. The agency problem becomes an issue of conflict between the controlling shareholder and any minority shareholders. A controlling shareholder has the potential means to expropriate wealth from minority shareholders (Bozec and Claude 2008) by paying themselves a higher salary (should the controlling shareholder also actively participate in management), by exploiting business relations between the company and other firms that are wholly owned by the company (through transfer pricing or investments at favourable rates) (Edwards and Weichenrieder 2004) or by making suboptimal investment decisions (Bozec and Claude 2008).

Pyramidal structures are another means of expropriation as they allow family owned corporations unlimited access to retained earnings of a firm it already controls (Almeida 2006) for potential use in further acquisitions. Therefore, in firms owned by controlling
shareholders such as in family or state owned firms, there is the question of the protection of minority shareholder rights. This typically arises because minority shareholders have little incentive to monitor their firms, creating a free-rider problem, which makes these minority owners more vulnerable to expropriation by the controlling owners (Nam and Nam 2005). The many corporate scandals that occurred after the year 2000, as noted above, have driven corporate governance in the area of board independence and audit committees. Are governance codes providing adequate protection of minority shareholder rights, however?

1.3 Shareholder Rights

A corporation’s shareholders, regardless of whether it is ‘widely held’ or ‘controlled’ are typically entitled to these basic rights: to vote at any meeting of the shareholders, to receive any dividends declared by the corporation, and to receive the remaining property of a corporation upon dissolution (Fasken Martineau DuMoulin LLP 2007). Some countries, like the United States, Canada and Japan, also enable investors to sue for wrongful acts. These rights can be significantly modified, or altered, in a ‘controlled’ corporation when there is limited protection for minority shareholders, however. This ‘modification’ is demonstrated in pyramid structures, dual-class shares, or other deviations from the one share, one vote structure resulting in a discrepancy between the voting rights and cash flow rights of majority shareholders.

What other means of protection are available to shareholders? The trend in the Anglo-Saxon system has been towards the implementation of strict independence requirements (for board members and audit committees); in the Germanic, Latin and Japanese systems
there has been the added emphasis on enhanced communications with shareholders, resulting in provisions to enhance shareholders ability to add agenda items for the annual meeting, and to nominate and/or to elect board members in some countries. There is an apparent need for a well designed shareholder access regime, as current literature would suggest (Bebchuk 2003).

1.4 Definitions

**Board Rights** – The number of seats reserved and/or controlled by each shareholder (Gianfrate 2007)

**Cash Flow Rights** – The fraction of a portfolio company’s equity value that different shareholders have a claim to (Gianfrate 2007).

**Civil Law (legal system)** – In this legal system a judge is bound by code and not by precedent as with the common law system (Yates 2006). The legal systems in many civil law countries are based around one or several codes of law, which set out the main principles that guide the law (Wikipedia Online 2008).

**Common Law (legal system)** – Common law is a system of law derived from England where a judge looks to prior case law (precedent) to base their decision(s) on. Determining law through following precedent in a legal decision is referred to as *stare decisis* (Yates 2006).

**Controlling Shareholder** – A majority shareholder owning > 50% of the total voting shares in a company.
**Dual-class Shares** – Dual-class shares are issued for a single company with varying classes which indicate the different voting rights and dividend payments.

**Management Rights** – The explicit right to appoint the CEO, Chairman, Honorary Chairman or Vice Chairman of a company (Gianfrate 2007).

**Minority Shareholder** - A minority shareholder is a shareholder owning less than 50% of the total shares in a company.

**Pre-emptive Rights** - The privilege of a stockholder to maintain a proportionate share of ownership in a corporation by purchasing a proportionate share of any new stock issued.

**Proxy Vote** – Proxy voting is the delegating of a member’s power to vote to another member so that they can vote in his/her absence, according to Wikipedia.

**Shareholder** - A shareholder, according to Mallin 2004, is ‘an individual, institution, firm, or other entity that owns shares in a company.’

**Shareholder Activism** – Shareholder activism is when shareholder(s) use an equity stake in a corporation as a means to influence management decisions. Proxy battles, publicity campaigns, litigation and negotiations with management are examples of shareholder activism. Black (1997) defines shareholder activism as proactive efforts to change firm behaviour or governance rules.

**Stakeholder** - A stakeholder can be any individual or group of individuals impacted by a corporation (company). Various stakeholders include the shareholders, employees, banks,
suppliers, customers, government, communities, and environmental groups that are potentially impacted or influenced by the activities of a company.

**Voting Rights** – The rights to control or make corporate decisions. Voting rights measure the percentage of votes that shareholders have to affect corporate decisions within the shareholders assembly (Gianfrate 2007).

### 1.5 Importance of this Study

The purpose of this study is to examine shareholder rights, contained in corporate governance codes, in terms of their ability to influence management. Management can be influenced through the addition of agenda items at the shareholders annual meeting, the appointment of board members, and improving shareholders access to information. Shareholder protection is contained in the corporate governance codes of ten countries within the four corporate governance systems: the Anglo-Saxon (shareholder) system, the Germanic (stakeholder) system, the Latin system and the Japanese system. (Shareholder rights are also contained in legislation, but because regulatory requirements are nationalistic they are not within the scope of this paper). A first order comparison will be at the block level, for those rights that are contained in the code, in order to identify trends in the provisions for shareholder rights and the treatment of minority shareholders (in each country code within each block). A higher order of comparison will be amongst the four blocks.
1.6 Study Objectives

1. To determine if there are similarities in the provisions for the protection of shareholder rights in the governance codes within the countries identified in each block (i.e.: Anglo-Saxon countries will all have similar minority shareholder rights).

2. To determine if there are similarities in the provisions for the protection of shareholder rights in the governance codes between each block (i.e.: Treatment of minority shareholders in the Anglo-Saxon system will vary from the treatment of minority shareholders in the codes in the Latin system).

1.7 Research Scope (Sample Size)

There are currently sixty-two corporate governance codes throughout the world. This study will compare and contrast shareholder rights and the treatment and/or protection of minority shareholder rights as contained within four corporate governance systems: the Anglo-Saxon system, the Germanic system, the Latin system and the Japanese system. A sample of three countries from each system is used for the purpose of this comparative study (with the exception of the Japanese system where there is only one code). The countries were selected based on their size and relevance to each system. I tried to include the most important countries within each system while maintaining a realistic scope of study.
1.8 Hypothesis

Based on my review of the literature and of the ten corporate governance codes, there appeared to be a correlation between ownership structure and the types of provisions contained in the corporate governance codes. Therefore, in terms of corporate governance codes around the world, my hypothesis is as follows:

**H1.** I expect that provisions for shareholder rights in countries characterized by 'majority held' firms are contained within their governance codes.

**H2.** I expect that provisions for shareholder rights in countries characterized by 'widely held' firms are not contained within their governance codes.

This paper is organized as follows. Chapters 2 through 4 present the relative literature on corporate governance, ownership structures and shareholders rights respectively. Research methodology is presented in Chapter 5 and empirical results follow in Chapter 6. The paper comes to a close in Chapter 7 with conclusions and limitations of this study.
Chapter 2
CORPORATE GOVERNANCE

2.1 Corporate Governance

Corporate governance is a practice that deals with the concerns that one or more parties involved with organizational decision-making may not behave in the best interest of the organization and associated parties (Reaz and Mohammed 2007). According to the OECD, corporate governance involves the relationships between a company’s management, its board, its shareholders and other stakeholders (Holmes 2006). The article “A Simple Aim and a Single Board”, attributes the growth of corporate governance to the failure of law-making systems to cope with corporate development (Owen 1994). It is apparent, given the highly publicized scandals of corporate giants like Enron, Tyco, WorldCom and Parmalat, that there is a need for a credible regulatory mechanism (Reaz and Mohammad 2007). The separation of ownership and management interests is the focus of corporate governance (Reaz and Mohammad 2007). The purpose of corporate governance codes is to propose guidelines, principles and practices to help foster healthy corporate cultures (Dey et al. 2005) and to further protect shareholders. Corporate governance practices have a significant impact on a country’s economic prosperity and the confidence of worldwide investors (Detomasi 2006).

2.2 International Corporate Governance Codes

Universal standardized codes of corporate governance do not exist; however, amidst a growing recognition of sound governance, different countries are addressing the issue of
corporate governance from various angles (Reaz and Mohammed 2007, Becht et al. 2005) through the issuance of corporate governance codes. Sixty-two countries currently have corporate governance codes. Although there are some commonalities amongst the codes, and literature indicates there is an increasing conformity internationally in the models and mechanisms relied on for corporate governance (Collier and Zaman 2005), there are distinct differences. Other literature outlines the dichotomous distinctions between corporate governance systems (codes) (Heugens and Otten 2007) as shareholder versus stakeholder models. One of the sharpest distinctions among business systems is in terms of the market, or shareholder, economies of the Anglo-American countries and the coordinated, or stakeholder economies typified by Germany and Japan (Heugens and Otten 2007).

Authors Heugens and Otten (2007) attempt to develop a fine-grained taxonomy of corporate governance logistics in their article “Beyond the Dichotomous Worlds Hypothesis: Towards a Plurality of Corporate Governance Logics”. They refer to codes as an ‘authoritative document with ‘soft-law’ status which outlines a comprehensive series of reforms or plainly speaking ‘documents of inspiration’. However, their findings are that “none of the investigated corporate governance systems can be classified as purely shareholder or stakeholder-oriented.” Corporate governance systems differ dramatically between nations with regards to their purpose, structure and function (Detomasi 2006). There is no single governance style followed around the world, though one can see that four divergent systems have emerged, based on common core principles (Pape and Weimer 1999; Reaz and Mohammed 2007). These four global governance
systems are: the Anglo-Saxon System, the Germanic System, the Latin System and the Japanese System. Each system provides different levels of protection to its shareholders and minority shareholders alike.

2.3 Anglo-Saxon System

The Anglo-Saxon model of corporate governance emphasizes the relationship between shareholders (the owners) and directors (the managers) (Pape and Weimer 1999; Mallin 2004). The corporate objective in this system is the maximization of shareholder wealth. The shareholder model is predominately found in countries with common law systems which inherently protect the rights of shareholders through legislation: the US has protection embodied in the Securities Exchange Act (1934), the Securities Investor Protection Act (1970), and the Insider Trading Sanctions Act (1984) just to name a few (Pape and Weimer 1999); in Canada shareholder protection is embodied in Canada’s Business and Corporations Act (2007/2008); and the UK has the Company Securities Act (1985, revised 1989), the City Code on Takeovers and Mergers and the Financial Services Act (1986) (Pape and Weimer 1999). Board structure in the Anglo-Saxon system is one-tier and comprised of both executive and non-executive board members, which are appointed and dismissed at the annual shareholders meeting (Pape and Weimer 1999).

The shareholder in the Anglo-Saxon system can exert substantial influence over managerial decisions with the democratic principle of ‘one share, one vote’. Stock markets play a much more active role in the Anglo-Saxon system than in other countries (Pape and Weimer 1999). Key metrics used are market capitalization and new equity
capital raised through public offerings as a percentage of the Gross Fixed Capital Formation (GFCG) (Paper and Weimer 1999). Ownership concentration is typically very low and according to the OECD (1997) the largest five shareholders in the UK and the USA hold an average of 20 to 25% of outstanding shares (Reaz and Mohammed 2007). In Canada, however, large publicly traded companies are typically owned by wealthy families (Bozec and Laurin, 2008). Another key aspect of this system is the active external market for corporate control known as the ‘takeover market’ (Pape and Weimer 1999). Mergers, tender offers, proxy fights and leveraged buy-outs are seen to act as a discipline on firm’s management. This takeover corporate governance mechanism is less evident in non-Anglo-Saxon countries (Pape and Weimer 1999).

2.4 Germanic System

The Germanic system is based on the stakeholder model of governance that views companies as partnerships between capital and labour (Mallin 2004). Pape and Weimer (1999) refer to this system as ‘autonomous corporate governance’ with various stakeholders exerting influence over managerial decision-making. The corporation in the Germanic System is not seen as a device to create shareholder value (Pape and Weimer 1999). This system is characterized by a two-tier board system, comprised of a management board and a supervisory board, which provides separation of management and the supervision of management (Pape and Weimer 1999). The one share one vote principle is not applicable in most countries in the Germanic system of governance (Pape and Weimer 1999). Concentrated ownership is most common in the Germanic System as documented by the OECD (1997), and the largest five shareholders hold 41% of the outstanding shares (Reaz and Mohammed 2007). This ownership structure enables
shareholders to directly influence managerial actions. Large banks are very influential stakeholders in Germanic corporations and hold large share blocks, unlike in the USA where such a practice is illegal. (Reaz and Mohammed 2007)

Shareholders are less protected by legislation in the Germanic System than in the Anglo-Saxon system. Countries in this system are able to list non-voting shares, limiting the voting power of individual shareholders. This lack of protection for minority shareholders has been recently addressed in Germany, however, with their revised corporate code (Cromme Code 2007) that explicitly states: “each share equals one vote” and furthermore that “no shares with multiple voting rights, preferential voting rights (golden shares) or maximum voting rights are tolerable”. Whether or not other countries within this system follow suit is yet to be seen. The Netherlands, Switzerland and other countries have the ability to limit the power of shareholders through other protective measures (Pape and Weimer 1999). The stock market plays a less active role in the Germanic system and it is rare to find a market for corporate control (Reaz and Mohammed 2007).

2.5 Latin System

The concept of the firm in Latin countries is somewhere between the Anglo-Saxon shareholder view and the Germanic stakeholder view, but is likely closest to the Germanic system (Pape and Weimer 1999). There is the option of a one-tier or two-tier board system; though a majority of firms have gone to the unitary system. Shareholders have the ability to both appoint and dismiss board members under the unitary system but require 50% majority of the voting rights to enforce this action (Pape and Weimer 1999).
Shareholders have more influence in the Latin system than in the Germanic System because shareholder sovereignty is an important concept; however their influence is not as decisive as in the Anglo-Saxon System (Pape and Weimer 1999). Directors can be removed by shareholders, at will, under the principle of *revocabilite ad nutum* in the French corporate system. The one share one vote principle is not applicable in the Latin system. The influence of shareholders in the Latin countries is characterized by financial holdings, cross-shareholders, government control and family control (DeJong 1989, Moreland 1995(a)). In France and Spain, for example, shareholding by banks is as important and as common as in Germany, yet Italy is somewhat similar to the Anglo-Saxon system where shareholding by banks is not common practice (Reaz and Mohammed 2007). The stock market plays a lesser role in the economy in the Latin System than the Anglo-Saxon system. However, there have been more hostile takeovers in this system then in the Germanic (Reaz and Mohammed 2007). Ownership concentration is relatively high in France, Italy and Spain with the percentage of shares controlled by the five largest shareholders on average 48% in France and 87% in Italy (Pape and Weimer 1999).

2.6 Japanese System

The cultural dimension of corporate governance is more predominant in Japan than any of the other systems we have looked at (Pape and Weimer 1999). Sense of ‘family’ and the importance of achieving consensus are vitally important in Japanese business culture. There is little emphasis placed on litigation in Japan (Reaz and Mohammed 2007). Family values pervade all characteristics of the Japanese governance system (Pape and Weimer 1999). The concept of *keiretsu*, or the large-scale presence of corporate
networks, is very prevalent in Japan. Japanese board systems are complex, featuring a board of directors, an office of representative directors and an office of auditors, each of whom have different responsibilities (Pape and Weimer 1999). There are some Anglo-Saxon traits within the board structure as the resulting board consists of both inside directors and outside members, which de facto resembles the one-tier board system (Pape and Weimer 1999).

Salient stakeholders in the Japanese system resemble the Germanic system with employees, shareholders, and Japanese banks playing critical roles and exerting much influence over management (Reaz and Mohammed 2007). Share ownership in Japan represents long-term business ties, the acquisition of new customers and the warding off of unwelcome outsiders (Pape and Weimer 1999). Stock markets play an important role in Japan’s economy and the Japanese stock market is the oldest in Asia (Reaz and Mohammed 2007); however there is no active market for corporate control (Pape and Weimer 1999). The ownership structure is marked by stable crossholdings between financial and non-financial companies, and ownership is therefore more widely dispersed than in the Germanic system and more concentrated than the United States (Reaz and Mohammed 2007).
Chapter 3

OWNERSHIP STRUCTURES

3.1 Widely Held Firms

Ownership structure is also a category within governance codes. Authors Adolph Berle and Gardiner Means (1932) claimed that corporations in the United States were widely held by small shareholders in their book "The Modern Corporation and Private Property". Control was vested in a board of directors who hired managers with delegated authority to manage the company and therefore, shareholders were unable to exert any direct influence over management (La Porta et al. 1999). This resulted in the separation of ownership and control and created agency problems between owners (shareholders) and managers. In response, corporate governance codes have been developed in order to mitigate the potential agency problems inherent in this system and to protect the rights of shareholders.

More recent studies have discredited this 'widely held' viewpoint. La Porta et al. (1999) found that relatively few firms are actually widely held, in contrast to Berle and Means image of the modern corporation (which was primarily indicative of American corporations). It is true that widely held firms are most common in countries with satisfactory protection: 90% of the large United Kingdom firms, 80% of the large American firms and 50% of large Japanese firms remain widely held; dispersed ownership (globally) is still rare (La Porta et al. 1999). The presence of multiple large shareholders is very common outside of the US (Gianfrate 2007). As previously noted,
in Canada large publicly traded companies are typically owned by wealthy families (Bozec and Laurin 2008). Many large European companies have prospered under family ownership which has been attributed to the view that families are committed long-term investors (Barontini and Caprio 2006). Germany is also typical of the world as a whole in that most large listed German companies have a large controlling shareholder (Edwards and Weichenrieder 2004). Marchica and Mura (2005) report that there is a decreasing trend in ‘widely held’ firms in the United Kingdom and in Italy 67.48% of trusts are family-owned with controlling shareholders (Gianfrate 2007). It is evident, in light of these facts, that Berle and Means’ hypothesized “widely held corporation” is not the norm in the current globalized economy.

La Porta et al. (1999) describe five types of ‘ultimate owners’ which include family or individual, the state, widely held financial institutions (i.e. banks, insurance companies), a widely held corporation, and miscellaneous (cooperatives, voting trusts, or groups without a single controlling investor). They further classify controlling in the terms of percentage of voting rights (they identify a 20% and subsequent 10% threshold).

3.2 Family Controlled (Majority Held)

La Porta et al. (1999) found that thirty percent (30%) of the firms in the richest countries were family controlled. The effect of family control in public corporations is a growing field of interest (Barontini and Caprio 2006). Large publicly traded companies have concentrated ownership worldwide (Bozec and Claude 2008, Edwards and Weichenrieder 2004) and in Canada, with voting rights in the hands of large shareholders (typically wealthy families). A positive viewpoint is that families are responsible
corporate citizens as they have a vested interested in the performance of the company. Families are long-term investors who are committed to the firms they invest in (Barontini and Caprio 2006) and are often involved with the management of the company either directly or indirectly by placing offspring in positions of power (CEO, Chairman, Honorary Chairman, Vice-Chairman) (Barontini and Caprio 2006, Bozec and Claude 2008). There is also empirical evidence that family control equates to positive market valuation (Barontini and Caprio 2006, Bozec and Claude 2008, Edwards and Weichenrieder 2004). This is, however, dependent on the percentage of cash flow rights to voting rights held by the largest shareholders. Pyramidal structures and multiple classes of stock are two ways of separating cash flow and control rights in a firm.

The number of shares each interest owns legally determines the ownership interests. As the number of shares typically equals the number of votes, majority ownership results in majority representation on the subsidiaries board of directors and consequently control over the investing, financing, and operating activities (Graham and Lefanowicz 1999). This puts controlling shareholders in the position to exert influence and obtain private benefits at the expense of minority shareholders (Edwards and Weichenrieder 2004). If the controlling owner participates in management and/or places family members in positions of power there is the possibility that they pay themselves higher salaries (Edwards and Weichenrieder 2004). There is also the possibility that entrenched management may inadvertently hinder a company’s performance by possibly not having the ‘best’ management in place. Entrenchment occurs when dominant (controlling)
shareholders have the power to use the firm in pursuit of their own interests (Bozec and Claude 2008).

3.3 Agency Problems

Agency problems, as portrayed by Berle and Means (1932), have resulted in the conflict between owners and managers. There is the question, in corporations that are owned by a controlling shareholder, about who is monitoring the controlling shareholder. The agency problem becomes an issue of conflict between the controlling shareholder and the minority shareholder (Graham and Lefanowicz 1999). A controlling shareholder has the means to potentially expropriate wealth from minority shareholders (Bozec and Claude 2008) as previously mentioned, by paying themselves a higher salary (should the controlling shareholder also actively participate in management), by exploiting business relations between the company and other firms that are wholly owned by the company (through transfer pricing or investments at favourable rates) (Edwards and Weichenrieder 2004) or by making suboptimal investment decisions (Bozec and Claude 2008).

Firms that are owned by controlling shareholders such as in family or state owned firms, have questions surrounding the protection of minority shareholder rights. Families may resort to control-enhancing devices that may ultimately reduce the value of a company (Barontini and Caprio 2006). La Porta et al. (1999) found that controlling shareholders had power over firms that were significantly in excess of their cash flow rights. The distinction between control rights and cash flow rights of controlling shareholders is at the centre of this agency problem (Edwards and Weichenrieder 2004). One way in which the ultimate owners can reduce their ownership below their control rights is by using
shares with superior voting rights; a second way is to organize the ownership structure of the firm in a pyramid; and a third way is to solidify control through cross-shareholdings – having the firm own shares in its shareholders (La Porta et al. 1999).

3.4 Separating Ownership from Control

The separation of ownership from control can be accomplished structurally through pyramids and dual class shares which separate voting rights and cash flow rights (Bozec and Claude 2008, Barontini and Caprio 2006). Twenty-six percent (26%) of firms with controlling shareholders are controlled through pyramids which allow them to acquire power disproportionate to their cash flow rights (La Porta et al. 1999). Minority shareholders bear the full costs of such measures (enabling controlling shareholders to expropriate from minority shareholders). La Porta et al. (1999) identify three ways in which an ultimate owner can reduce their ownership below their control rights:

1. Using shares with superior voting rights;
2. Organizing the owners’ structure of the firm in a pyramid;
3. Solidification of control through cross-shareholdings – having the firm own shares in its shareholdings.

The one share one vote rule provides minority shareholder with protection from dual-class shares.
Chapter 4

SHAREHOLDER RIGHTS

4.1 Shareholder Protection (Codes and Legislation)

The typical corporate governance framework views shareholders as principle owners and management as empowered to maximize shareholder wealth (Nam and Nam 2005). Shareholders entrust the board of directors to monitor management but should also be given the rights and opportunities to participate directly in monitoring their firms (Nam and Nam 2005). The focus on the controlling shareholders', in family-controlled enterprise, should be on providing minority shareholders with effective mechanisms for protecting their interests from abuses by the controlling owners or management (Nam and Nam 2005). Some countries have developed the necessary protection of shareholder and minority shareholder rights through laws and contract-enforcement mechanisms (Graff 2006) while others are more dependent on various governance devices (such as governance codes) to provide sufficient protection for shareholders. La Porta et al. (2002) found that the main benefit of enhanced shareholder protection is the higher valuation of the corporation. Their finding supports the quantitative importance of the expropriation of minority shareholders in many countries, as well as for the quantitative importance for the role of law in limiting such expropriation.

Countries vary in terms of the level of protection provided by legislation, and this is typically dependent on the foundation of the laws that are prevalent in that particular country. In a study conducted by La Porta et al. (1996) it was determined that the nature
and effectiveness of financial systems around the world could be traced in part to the
differences in investor protection against expropriation by insiders. This is reflected by
legal rules and the quality of their enforcement. Evidence indicates that legal rules
protecting investors and the quality of their enforcement differ greatly across countries.

Graff (2006) suggested that the legal system that countries have inherited from the past is
crucial to the analysis of economic growth; consequently, the legal system is identified as
one of the ultimate causes of economic development. La Porta et al. (1996) found, in
terms of protection for shareholders in the area of expropriation by insiders, that common
law countries (Anglo-Saxon) provided the best level of protection to shareholders, French
civil law (Latin System) provided the worst level of protection and German civil law and
Scandinavian civil law countries (Germanic System) were somewhere in the middle.

In another study by La Porta et al. (2002), “Investor Protection and Corporate
Evaluation”, the authors discovered that when shareholder rights are protected by law,
outside investors are willing to pay more because they recognize that better legal
protection equates to higher returns. This is in opposition to expropriation by the
entrepreneur controlling the firm. The legal systems that underlie, and in some cases
support corporate governance codes are beyond the scope of this paper. See La Porta et
al. (2002) for a comprehensive view on the relationship between legal origin (civil verses
common law) and investor protection. This study is focused on the level of protection
provided to shareholders under the corporate governance codes only and not under the
joint framework of legislation and code.
4.2 Shareholder Rights

OECD Principles (1999) identify basic shareholders rights as the ability to obtain relevant information on a timely and regular basis, to share in residual profits, to participate in basic decisions (participating and voting at shareholders meetings), and to elect board members and to fair and transparent treatment during changes of control. The focus of shareholders' rights in the governance of family-based corporations is on providing minority shareholders with effective mechanisms for protecting their interests from abuses by controlling owners or management (Nam and Nam 2005). The power to expropriate outside investors is moderated by the controlling shareholders financial incentives to not do so (La Porta et al. 2002). Is there more that can be done to enhance the rights of shareholders? Increased access to the ballot (Bebchuk 2003), the right to determine director's remuneration, the right to select and terminate board members, and to set the severance terms all enhance a shareholders ability to influence management decisions. However, the level of protection provided to shareholders and minority shareholders across the four systems differ significantly.

This paper is mainly concerned with shareholder rights in terms of: the one share, one vote rule, effective participation in decision making (which includes the requirement of companies to provide shareholders with adequate and relevant information in a timely fashion, the ability of shareholders to access information prior to the shareholders meeting and the ability of shareholders to add agenda items), the ability to nominate and elect directors, the mechanisms for proxy voting and the protection of minority shareholder rights across the realm of the four governance systems.
4.3 One Share One Vote Rule

Limited voting stock distributes voting rights to shareholders that are disproportionate to their cash flow rights. Variations on voting rights for common stock have been around since the late 1800’s occurring in 1898 when International Silver Co. issued common stock without any voting rights (Roberts 1991). When Harvard University Professor (William L. Ripley) addressed the Academy of Political Science at their annual meeting in 1925, he brought to the attention of investors the effects of non-voting stock, which resulted in an outcry. The New York Stock Exchange (NYSE), as a result, prohibited the listing of non-voting stock (also referred to as common stock) from 1925 to 1987, as it reduced shareholders voting rights (Roberts, 1991). This policy became known as the one share, one vote rule (Roberts, 1991) providing shareholders with protection. In 1988, the SEC adopted Rule 19c-4 prohibiting listed companies from disenfranchising existing shareholders; however, the rule was struck down by the Court of Appeals in 1990 (Roberts 1992). The new rules adopted in December 1994 prohibit companies listed on the NYSE, the AMEX, or the NASDAQ system from taking any corporate action or issuing any stock that has the effect of reducing or restricting the voting rights of existing common stock shareholders.

Dual-class shares are highly controversial and there is current debate as to whether the United Kingdom should adopt the one share one vote rule that is prevalent in the United States (Commission of the European Communities 2007). Shares with multiple voting rights are used as a way for controlling shareholders to maintain control. Shareholders who control a proportion of total voting rights much larger than their ownership rights
(and therefore dividend) have an incentive to extract value from the company at the expense of non-controlling shareholders. Such an incentive acts as a multiplier with respect to the general fact that parties in control of a corporation are in a position to enjoy private benefits of control that do not accrue to non-controlling shareholders (Commission of the European Communities 2007). Separation of cash flow rights from voting rights impacts widely held firms and controlled firms in different ways. In the case of a controlling shareholder (more prevalent in the Germanic and Latin system as well as in Canada), the one share one vote rule promotes value-increasing control transfers and deters value-decreasing control transfers more effectively than any other vote allocation (Burkart 2007). Widely held firms, which are more prevalent in the Anglo-Saxon system, employ the one share one vote rule to ensure an efficient outcome in bidding contests, as dual-class shares mitigate the free-rider problems, thereby promoting takeovers (Burkart 2007). Proponents of dual-class shares say the presence of controlling, unlisted stock somewhat counters any short-term financial focus as controlling shareholders are typically in it for the long-haul and minority shareholders are somewhat protected; whereas others see dual-class shares as an unfair system allowing small groups of shareholders to retain control while others are providing the majority of the capital (Burkart 2007).

### 4.4 Effective Participation in Decision Making

Shareholders have a fundamental right to vote at shareholders' meetings and all shareholders in a given class should be treated the same way (Nam and Nam 2005). Shareholders typically exercise their influence at the annual shareholders meeting subject to legislation. According to the OECD (1999), in order to enable shareholders to
effectively evaluate information and participate in decision-making they require (and should be provided with) adequate and timely information about agenda items. Shareholders should also be encouraged to ask questions, make comments, and raise issues at meetings to be able to exert influence over management (Nam and Nam 2005). In the article "The Case for Shareholder Access to the Ballot" by Lucian Bebchuk (2003), the purpose of increased shareholder participation is improved performance and values. According to the Commission of the European Communities (2007) there is a general consensus in the academic, financial, and multilateral regulatory community that the development of financial markets is one of the key preconditions for economic growth, and that internal financing and bank financing should be complemented by strong securities markets. In turn, the functioning of the latter critically depends on protecting shareholders against extraction of private benefits by insiders.

4.5 Election of Directors

There has been heated debate in the United States over the ability of shareholders to access the ballot (Bebchuk 2003) and this ‘right’ has been coined as the ‘holy grail’ of shareholders theory (Wutkowski 2008). A shareholders inability to exert any influence over management is at the heart of the agency problem (Berle and Means 1932); and it therefore makes intuitive sense that if shareholders are able to nominate and to elect directors, this will significantly diminish the agency problem and put the power back into their hands. The election of a new team can ensure change when change is needed and furthermore, might provide directors with strong incentives to serve shareholder interests better (Bebchuk 2003). The identities and the incentives of directors are extremely important because the corporate law system leaves a great deal of discretion in their
hands to oversee the management of the corporation (Bebchuk 2003). Directors are empowered to block high-premium acquisition offers and to set compensation (and incentives) for the firm's top executives (Bebchuk, 2003). The debate over the ability to nominate directors (proxy access) has had a long history in the United States and more recently in the United Kingdom. Direct proxy access could potentially bring fresh perspectives to the board of directors; however, there is the concern that shareholders may nominate directors who are potentially inappropriate for the board (Burkart 2003).

The business community wants to keep tight control, and protect the board from special interests while shareholder activists consider the proxy a key element of investor rights (Wutkowski 2008).

4.6 Proxy Mechanisms

Proxy voting provides shareholders with the ability to exert their influence over management activities. Major deterrents should not stand in the way of shareholder participation in the decision making at the shareholders meetings. Shareholders unable to attend a shareholders meeting should be able to participate through the designation of proxies or voting by mail (Nam and Nam 2005). The passive role of the small investor and the logistical difficulty in allowing large numbers of investors to exercise their rights has led to the proxy system of voting in the controlling shareholder scenario (DuMoulin Fasken Martineau 2007). Proxy voting allows small investors to delegate their rights to nominees who can vote on their behalf. This system can be abused, however, and in many countries proxy voting is regulated by corporate statute and/or securities legislation (DuMoulin Fasken Martineau 2007). In the United States the SEC has recently rejected a plan that would have led to the opening up of the ballot for shareholders to nominate
directors (via proxy voting) but has suggested some innovative alternatives to give shareholders more power through electronic shareholder forums and e-proxies (Wutkowski 2008). Current technology now makes it possible for shareholders to vote their proxy statements via the Internet.

4.7 Minority Shareholder Rights

Controlling shareholders have the ability to expropriate funds from minority shareholders by diverting shares of the profits from the firm prior to dividend distribution. This diversion can take the form of salary (when holding a management position), transfer pricing, subsidized personal loans, non-arms-length asset transactions and in some cases theft. Adequate shareholder protection can make expropriation so costly that cash-flow ownership hardly matters (La Porta et al. 2002). Parent expropriations may also be mitigated by contracts designed to strengthen minority shareholder rights (Graham and Lefanowicz 1999). Shareholder approval of major related-party transactions (Wutkowski 2008), pre-emptive rights in relation to new share issues, mandatory bid requirements and dissenters rights are particularly important for the protection of minority shareholders (Nam and Nam 2005). A shareholder’s access to a judicial venue to challenge the decisions of management, or the right to step out of the company to purchase their shares when they object to a fundamental change such as mergers, asset dispositions and changes in the article of incorporation (La Porta et al. 2002) further reduce the risk of expropriation. The rule of law plays an important part in the expropriation of minority shareholders. Typically common law countries protect minority investors better because corporate owners have less political influence (La Porta et al. 2002).
5.1 Methodology

This section outlines the methodology used in determining the provisions for shareholder rights and the treatment and/or protection of minority shareholders in the ten country codes identified. This approach was utilized in order to review the various aspects of shareholder rights and the treatment of minority shareholder rights within each of the country codes identified within the four systems of governance identified. Data was found on the ECGI web site available at (http://www.ecgi.org) as at February 1, 2008. ECGI is a non-profit organization which provides up-to-date information on corporate governance and is a scholarly site with academic integrity (Collier and Zaman 2005).

The site identifies all of the corporate governance codes from around the world from the date of conception and includes all subsequent updates. The most current version of each country code reviewed was utilized for this study. For countries with more than one code identified, the choice of code to use was determined based on a previous study (Collier and Zaman 2005) with the most recent version of the code utilized (Appendix I lists all of the sixty-two country codes). The ten corporate governance codes reviewed (the sample) in this study are included in Table 2 below:
Based on a methodical review of the above noted codes, the OECD Principles (1999) and a large number of other sources (including the Taxonomy of Systems of Corporate Governance by Pape and Weimer 1999) which contained qualitative data, seven characteristics of shareholder rights emerged. These characteristics help to quantify the level of protection provided to shareholders in the ten corporate governance codes observed. The characteristics examined included the following:
a. One share, one vote rule (whether or not the one share one vote rule applies)

(a) For the purpose of this paper in assessing the level of shareholder protection provided by country codes subscribing to the one share one vote rule it is deemed that shareholders would be considered well protected under this regime. In country codes not subscribing to the one share one vote rule it is deemed that shareholders are less protected.

b. Ability to access information prior to the shareholders meeting (to determine shareholders ability to evaluate information and effectively participate in decision making)

c. Requirement for corporations to provide agenda items with accompanying relevant documentation on their websites (to determine the ease of access shareholders have to information)

d. Ability of shareholders to add items to the agenda (to determine the level of influence shareholders have on management decisions)

(b),(c)& (d) In terms of determining whether shareholders rights are protected by country codes, providing shareholders with the ability to obtain and evaluate information in order to effectively participate in decision making it is deemed that the ability of shareholders to access information prior to the shareholders meeting (via the internet or other means of communication) and/or the ability of shareholders to add items to the agenda would be considered well protected. In country codes not providing its shareholders with the ability to obtain and evaluate information in this way, shareholders are considered less protected.
c. **Ability of shareholders to nominate and/or elect board/director positions** (to determine the level of influence shareholders have on management decisions)

(e) *In terms of shareholders rights' being protected by the ability of shareholders to nominate and/or elect directors it is deemed that country codes having this ability are considered well protected. Alternatively, country codes not having the ability to nominate or elect board members are considered less protected.*

f. **Mechanisms for proxy voting** (to determine level of encouragement for shareholder participation in decision making)

(f) *In terms of mechanisms for proxy voting, country codes providing shareholders with mechanisms for proxy voting such as website posting or other means are considered to be more protected (in terms of shareholder rights) than country codes that do not provide mechanisms for proxy voting.*

g. **Provisions for minority shareholders** (to determine the level of protection for minority shareholders)

(g) *In terms of provisions for minority shareholders, country codes providing shareholders with pre-emptive rights, regulatory restrictions on the use of dual-class shares, provisions for institutional shareholders and/or a judicial venue to challenge the decisions of management are deemed to be more protective of shareholders than country codes not providing such provisions for minority shareholders.*
Chapter 6

EMPIRICAL RESULTS

6.1 Anglo-Saxon System

The observations of shareholder rights in corporate governance codes based on the prescribed factors for the countries in the Anglo-Saxon System are summarized in Table 3 and are discussed below.

Table 3 - Shareholder Rights in Anglo-Saxon System

<table>
<thead>
<tr>
<th>SHAREHOLDER RIGHTS</th>
<th>CANADA</th>
<th>UNITED KINGDOM</th>
<th>UNITED STATES</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.1a One share, one vote rule observed?</td>
<td>NO</td>
<td>NO</td>
<td>*NO</td>
</tr>
<tr>
<td>6.1b Does the code identify a means for shareholders to obtain and evaluate information prior to the shareholders meeting?</td>
<td>NO</td>
<td>*NO (1,2,3)</td>
<td>NO</td>
</tr>
<tr>
<td>6.1c Does the code provide/mention recommendations to companies to list agenda items on their websites for ease of access?</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
</tr>
<tr>
<td>6.1d Does the code provide shareholders with the right to put agenda items forward at the annual meeting?</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
</tr>
<tr>
<td>6.1e Does the code provide shareholders with the right to nominate and/or elect board members at the annual general meeting?</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
</tr>
<tr>
<td>6.1f Does the code provide mechanisms for proxy voting such as website posting(s) or other means?</td>
<td>NO</td>
<td>YES (5)</td>
<td>NO</td>
</tr>
<tr>
<td>6.1g Does the code contain any provisions for the protection of minority shareholder rights?</td>
<td>YES (1,2)</td>
<td>NO</td>
<td>NO (1,2)</td>
</tr>
<tr>
<td>6.1h Does the code mention and/or contain provisions for institutional shareholders?</td>
<td>NO</td>
<td>YES (6)</td>
<td>NO</td>
</tr>
<tr>
<td>6.1i Does the code contain provisions for pre-emptive rights?</td>
<td>NO</td>
<td>NO</td>
<td>**NO</td>
</tr>
<tr>
<td>6.1j Are there regulatory restrictions on the use of dual class shares?</td>
<td>NO</td>
<td>NO</td>
<td>**NO</td>
</tr>
</tbody>
</table>

* NO = NO MENTION YES = MENTIONED (**'s IN BRACKETS ARE NOTES CONTAINED IN APPENDIX II)

6.1a One Share One Vote Rule Observed

Under the Anglo-Saxon model the one share one vote rule is not observed under any of the three country codes examined. The literature suggests, however, that the United States does subscribe to this notion and has for well over sixty years. Neither Canada nor the United Kingdom currently subscribe to the ‘one share one vote’ notion; however, (as per the literature) the United Kingdom has been pushing for reform to bring the ‘one
share one vote' principle to its twenty five member nations in order to provide this elevated level of protection to its investors.

6.1b Ability to Access Information Prior to the Shareholders Meeting

None of the three Anglo-Saxon country codes contain specific provisions to enable shareholders to access information prior to the shareholders meeting; however, although not explicitly stated, the United Kingdom’s code specifies that there should be a dialogue with shareholders based on the mutual understanding of objectives and that the chairman should maintain sufficient contact with the major shareholders in order to understand their issues and concerns. Furthermore, it is stated that the chairman should ensure that the views of shareholders are communicated to the board as a whole. I have interpreted that this facilitates the exchange of information between shareholders and directors prior to the annual general meeting.

6.1c Requirements for Corporations to Provide Agenda Items on Website

All three Anglo-Saxon countries had similar outcomes not requiring companies to provide relevant information (agenda items and other relevant documents) on their websites within the realm of their corporate governance codes. However, the US code does specify that listed company’s websites must include its corporate governance guidelines, charters of its most important committees, and annual reports on its website to ensure information is available in print to promote better investor understanding. The ability to put items forward and to take the floor enables shareholders to exert their influence over management which provides shareholders with more protection from expropriation.
6.1d Ability of Shareholders to Add Items to the Agenda

None of the three country codes under the Anglo-Saxon system contained any provisions for shareholders to add agenda items or to take the floor at the annual general meeting.

6.1e Ability of Shareholders to Nominate Directors

There are no differences in the Anglo-Saxon system country codes with regards to provisions for shareholders to nominate directors. Shareholders do not have this privilege under this regime; however, there has been ongoing debate in the United States for shareholders access to the ballot according to the literature.

6.1f Mechanisms for Proxy Voting

Neither Canada nor the United States governance codes provide mechanisms for proxy voting; however, the United Kingdom’s combined code does. The code states that for each resolution a proxy appointment form is to be provided to shareholders with the option to direct their proxy to vote either for or against the resolution or to without their vote. The code further requires companies to ensure that valid proxy appointments are properly recorded.

6.1g Provisions for Minority Shareholders

Neither the United Kingdom nor the United States corporate governance codes contain provisions for minority shareholders; however, Canada contains explicit provisions for the protection of minority shareholders. The code states that companies with controlling shareholders must ensure minority shareholders are protected. The significant shareholder must be prepared to accept responsibility to ensure that proper functions of
governance are carried out. The combined code in the United Kingdom does not contain provisions for minority shareholders in terms of pre-emptive rights, regulatory restrictions on the use of dual-class shares or judicial venue. There is, however, a mention of institutional investors in terms of dialogue with companies to ensure they carefully consider explanations for deviations from the code. Furthermore institutional shareholders are said to have a responsibility to make considered use of their votes and are encouraged to attend the annual general meeting.

6.2 Germanic System

The observations of shareholder rights in corporate governance codes based on the prescribed factors for the countries in the Germanic System are summarized in Table 4 and are discussed below.

### Table 4 - Shareholder Rights in the Germanic System

<table>
<thead>
<tr>
<th>SHAREHOLDER RIGHTS</th>
<th>GERMANY</th>
<th>THE NETHERLANDS</th>
<th>SWITZERLAND</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of Document (Code) and date of most current version (update/amendment)</td>
<td>German Corporate Governance Code (The Governance Code) Government-endorsed Committee Revised June 14, 2007 (revised biannually)</td>
<td>The Dutch Corporate Governance Code Principles of Good Corporate Governance and Best Practice Provisions Corporate Governance Committee December 9, 2003</td>
<td>Swiss Code of Best Practice for Corporate Governance Joint Committee July 2002</td>
</tr>
<tr>
<td>6.2a One share, one vote rule observed?</td>
<td>YES</td>
<td>NO</td>
<td>NO</td>
</tr>
<tr>
<td>6.2b Does the code identify a means for shareholders to obtain and evaluate information prior to the shareholders meeting?</td>
<td>NO</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>6.2c Does the code provide recommendations to companies to list agenda items on their websites for ease of access?</td>
<td>NO</td>
<td>YES</td>
<td>YES</td>
</tr>
<tr>
<td>6.2d Does the code provide shareholders with the right to put agenda items forward at the annual meeting?</td>
<td>NO</td>
<td>NO</td>
<td>YES</td>
</tr>
<tr>
<td>6.2e Does the code provide shareholders with the right to nominate and/or elect board members at the annual general meeting?</td>
<td>NO</td>
<td>NO</td>
<td>YES</td>
</tr>
<tr>
<td>6.2f Does the code provide mechanisms for proxy voting such as website posting(s) or other means?</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
</tr>
<tr>
<td>6.2g Does the code contain provisions for the protection of minority shareholder rights?</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
</tr>
<tr>
<td>6.2h Does the code contain provisions for institutional shareholders?</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
</tr>
<tr>
<td>6.2i Does the code contain provisions for preemptive rights?</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
</tr>
<tr>
<td>6.2j Are there regulatory restrictions on the use of dual class shares?</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
</tr>
</tbody>
</table>

*NO = NO MENTION YES = MENTIONED (#'s IN BRACKETS ARE NOTES CONTAINED IN APPENDIX III)*
6.2a One Share One Vote Rule Observed

The Netherlands and Switzerland do not observe the one share one vote rule. The German Corporate Governance Code does. The German code states that in principle, each share equals one vote and that no shares shall have multiple voting rights, preferential voting rights (golden shares), or maximum voting rights.

6.2b Ability to Access Information Prior to the Shareholders Meeting

All three countries reviewed in the Germanic system subscribe to the notion of providing shareholders with the ability to access and evaluate information prior to the annual shareholders meetings. The German code contains the requirement for all companies to post relevant information on their websites, including agenda items, to ensure shareholders are able to exercise their rights. The code further states that the company's treatment of all shareholders in terms of information must be equal and all new facts must be disclosed to shareholders without delay. The Dutch code states that both the management and supervisory board shall provide shareholders with all information it requires for the exercise of its powers at the annual general meeting. The Swiss code states that the company should use the shareholders meeting as a forum for communication so that it is well informed in discharging its function in decision-making. Companies are further required to provide concise explanations on agenda items and on motions put forward by the board.
6.2c Requirements for Corporations to Provide Agenda Items on Website

Both the German and Dutch codes explicitly state that companies are required to post agenda items on the company’s webpage. In Germany, the code requires the management board of companies to publish the reports, documents, annual reports and meeting agendas on the company’s internet site. It also requires companies to send out notifications of meetings via electronic means. The Netherlands code states that companies shall place on information required to be published on their websites and that provisions be made for shareholders to be able to follow meetings and presentations in real time by means of web casting or telephone with presentations presented on the website afterwards.

6.2d Ability of Shareholders to Add Items to the Agenda

Within the Germanic System, both the German and the Swiss code contain provisions for shareholders to exercise this right; however, the Dutch code does not mention the ability of shareholders to add items to the agenda. The code in Germany explicitly states that each shareholder is entitled to participate in the general meeting, to take the floor on matters on the agenda and to submit materially relevant questions and proposals. The Swiss code states that shareholders exercise their rights at the general shareholders meeting and have the right to make motions on items prescribed in the agenda. Shareholders also have the right to request information on company matters excluded from the agenda.
6.2e Ability of Shareholders to Nominate Directors

Shareholders under the German and Swiss code are provided with the ‘holy grail’ of shareholder rights in terms of the ability to nominate and elect board members. This right enables shareholders to exert their influence over management directly which provides shareholders with better protection from expropriation. The German code states that shareholders appoint the supervisory board; however, the supervisory board appoints management. The Swiss code explicitly states that shareholders alone are entitled to make decisions with regard to personnel matters at the top of the company level which include the electing and granting release to members of the board of directors (as well as auditors). Shareholders under the Dutch code, however, are not provided with this provision.

6.2f Mechanisms for Proxy Voting

Mechanisms for proxy voting are contained in the both the German and the Dutch code, but are not provided for in the Swiss code. The German code unequivocally states that the company shall facilitate the personal exercising of shareholders voting rights and to assist shareholders in the use of proxies. Shareholders are considered well protected under the code in terms of mechanisms for proxy voting. The Dutch code states that good corporate governance requires the fully-fledged participation of shareholders in decision making in the general meeting of shareholders. It further states that the company shall give shareholders the opportunity to vote by proxy and to communicate with all other shareholders.
6.2g Provisions for Minority Shareholders

Neither the Dutch code nor the Swiss code contain specific provisions for minority shareholders in terms of the one share one vote rule, pre-emptive rights or judicial remedies. The German code does contain provisions for minority shareholders such as pre-emptive rights and restrictions on the use of dual-class shares (due to German subscription to the one share one vote principle).

6.3 Latin System

The observations of shareholder rights in corporate governance codes based on the prescribed factors for the countries in the Latin System are summarized in Table 5 and are discussed below.

<table>
<thead>
<tr>
<th>SHAREHOLDER RIGHTS</th>
<th>FRANCE</th>
<th>ITALY</th>
<th>SPAIN</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of Document (Code) and date of most current version (update/amendment)</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>SHAREHOLDER RIGHTS</th>
<th>FRANCE</th>
<th>ITALY</th>
<th>SPAIN</th>
</tr>
</thead>
<tbody>
<tr>
<td>6.3a One share, one vote rule observed?</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
</tr>
<tr>
<td>6.3b Does the code identify a means for shareholders to obtain and evaluate information prior to the shareholders meeting?</td>
<td>NO</td>
<td>YES (2)</td>
<td>YES (4)</td>
</tr>
<tr>
<td>6.3c Does the code provide/recommendation to companies to list agenda items on their websites for easy of access?</td>
<td>NO</td>
<td>YES (3)</td>
<td>YES (3)</td>
</tr>
<tr>
<td>6.3d Does the code provide shareholders with the right to put agenda items forward at the annual meeting?</td>
<td>NO</td>
<td>NO</td>
<td>YES (4)</td>
</tr>
<tr>
<td>6.3e Does the code provide shareholders with the right to nominate and/or elect board members at the annual general meeting?</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
</tr>
<tr>
<td>6.3f Does the code provide mechanisms for proxy voting such as website posting(s) or other means?</td>
<td>NO</td>
<td>NO</td>
<td>YES (2)</td>
</tr>
<tr>
<td>6.3g Does the code contain provisions for minority shareholder rights?</td>
<td>YES (5)</td>
<td>YES (6)</td>
<td>NO</td>
</tr>
<tr>
<td>6.3h Does the code contain provisions for institutional shareholders?</td>
<td>NO</td>
<td>YES (7)</td>
<td>YES (5)</td>
</tr>
<tr>
<td>6.3i Does the code contain provisions for pre-emptive rights?</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
</tr>
<tr>
<td>6.3j Are there regulatory restrictions on the use of dual-class shares?</td>
<td>NO</td>
<td>NO</td>
<td>NO</td>
</tr>
</tbody>
</table>

* NO = NO MENTION  YES = MENTIONED (*'s in brackets are notes contained in Appendix II)
6.3a One Share One Vote Rule Observed

The Latin System is mostly comprised mostly of family owned corporations and none of the three countries reviewed subscribe to the one share one vote principle.

6.3b Ability to Access Information Prior to the Shareholders Meeting

The Italian and Spanish codes contain provisions for shareholders to access and evaluate information prior to the shareholders meeting which enable shareholders to exert their influence over management. This increases their level of protection from expropriation. The French code does not contain this provision. The Italian code states that the board of director’s shall use its best efforts for ensuring that access to the information concerning the materials for shareholders is timely and easy to access, so as to allow shareholders an informed exercise of their rights. The Spanish code specifies that companies should extend the period of advance notice of the meeting to enable shareholders, subject to legislation, to apply to include items in the agenda and to propose alternate motions sufficiently in advance of the shareholders meetings.

6.3c Requirements for Corporations to Provide Agenda Items on Website

The Spanish and Italian codes require corporations to post agenda items and other relevant documentation on a company’s website to enable shareholders to obtain and evaluate information prior to the shareholders meeting. Shareholders are then able to better exert their influence over the decision-making of the management team. Shareholders under the French system are not provided with this right. The Italian code requires that companies establish a specific section on its internet site that is easily
identified and accessed where information is available. The site must also contain procedures for participation, exercising of voting rights and documentation relating to the agenda of the shareholders meetings. The Spanish code states that the company must disclose the full content of all the motions to be submitted to the meeting of shareholders on its own web site for shareholders to access.

6.3d Ability of Shareholders to Add Items to the Agenda

Neither the French or Italian codes provide shareholders with the ability to include agenda items at the annual meetings. The Spanish code does provide shareholders with this right, however. The Spanish code states that shareholders have the right to apply to include items in the agenda of the convened meetings and the right to propose alternate motions sufficiently in advance of the shareholders meeting so that the board can define its position.

6.3e Ability of Shareholders to Nominate Directors

The country codes reviewed under the Latin System of governance did not contain any rules or recommendations on the ability of shareholders to nominate directors. This inability to nominate directors is disadvantageous to shareholders who are less protected from expropriation under this Latin system.

6.3f Mechanisms for Proxy Voting

Neither the French nor the Italian codes contain mechanisms or any mention of proxy voting. Alternatively, the Spanish code promotes active shareholder participation through proxy voting. The Spanish code explicitly states that the shareholders meeting
must provide the most efficient vehicle for such participation, enabling shareholders who do not attend the meeting to be represented and to voice their interests through proxy voting.

6.3g Provisions for Minority Shareholders

The French and Italian codes contain some provisions for the protection of minority shareholders; however the Spanish code does not. The French code specifies that corporations that are controlled by a majority shareholder has the responsibility to the other shareholders and must take particular care to avoid possible conflicts of interest, to secure transparency of information provided to market, and to take all interests into account fairly. However, there is no mention of pre-emptive rights or any restrictions on the use of dual-class shares. The Italian code requires minimum percentages to be fixed for the exercise of voting rights and the prerogatives of minorities. The Italian code also recommends that directors regularly assess the desirability of adapting such percentages in line with the evolution of the company’s size and shareholder structure. The Spanish code does not contain specific provisions for the protection of minority shareholders. There is no mention of pre-emptive rights or regulatory restrictions on the use of dual-class shares, and the code does not promote the one share one vote rule. However, there is mention of institutional shareholders. The code states that facilities should be provided to institutional investors (mutual funds, financial institutions, or other intermediaries) which represent the interests of numerous shareholders and investors, to enable them to contribute more actively in corporate decisions. Therefore, under the code, shareholders are provided with some protection of minority shareholders in this regard.
6.4 Japanese System

The observations of shareholder rights in corporate governance codes based on the prescribed factors for the Japanese System are summarized in Table 5 and are discussed below.

Table 5 - Shareholder Rights in the Japanese System

<table>
<thead>
<tr>
<th>SHAREHOLDER RIGHTS</th>
<th>JAPAN</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name of Document (Code) and date of most current version (update/amendment)</td>
<td></td>
</tr>
<tr>
<td>Corporate Governance Principles: A Japanese View</td>
<td></td>
</tr>
<tr>
<td>Japan Corporate Governance Forum 2003</td>
<td></td>
</tr>
<tr>
<td>6.4a One share, one vote rule observed?</td>
<td>NO</td>
</tr>
<tr>
<td>6.4b Does the code identify a means for shareholders to obtain and evaluate information prior to the shareholders meeting?</td>
<td>YES</td>
</tr>
<tr>
<td>6.4c Does the code provide/mention recommendations to companies to list agenda items on their websites for ease of access?</td>
<td>NO</td>
</tr>
<tr>
<td>6.4d Does the code provide shareholders with the right to put agenda items forward at the annual meeting?</td>
<td>NO</td>
</tr>
<tr>
<td>6.4e Does the code provide shareholders with the right to nominate and/or elect board members at the annual general meeting?</td>
<td>YES (2)</td>
</tr>
<tr>
<td>6.4f Does the code provide mechanisms for proxy voting such as website posting(s) or other means?</td>
<td>NO</td>
</tr>
<tr>
<td>6.4g Does the code contain provisions for minority shareholder rights?</td>
<td>YES (6)</td>
</tr>
<tr>
<td>6.4h Does the code contain provisions for institutional shareholders?</td>
<td>NO</td>
</tr>
<tr>
<td>6.4i Does the code contain provisions for pre-emptive rights?</td>
<td>NO</td>
</tr>
<tr>
<td>6.4j Are there regulatory restrictions on the use of dual class shares?</td>
<td>NO</td>
</tr>
</tbody>
</table>

*NO = NO MENTION YES = MENTIONED (*'S IN BRACKETS ARE NOTES CONTAINED IN APPENDIX V)*

6.4a One Share One Vote Rule Observed

The Japanese Corporate Governance Principles does not subscribe to the one share one vote principle.

6.4b Ability to Access Information Prior to the Shareholders Meeting

Japan’s code does contain recommendations to provide shareholders with the ability access to information prior to the shareholders meeting. The code states that the creation of shareholder value lies in continually developing good investment opportunities and in following through with those opportunities. Therefore, the code encourages executive managers to communicate with shareholders, investors and other people related with the
market and endeavor to create trust. Furthermore, the general meeting is meant to provide investors with an opportunity to participate in the decision-making process, to obtain information about the current state of the company and to evaluate the qualifications of the board.

6.4c Requirements for Corporations to Provide Agenda Items on Website

The code for Japan does not contain any mention of corporations providing agenda items on the company’s website.

6.4d Ability of Shareholders to Add Items to the Agenda

The Japanese code does not contain any provisions pertaining to the ability of shareholders to add items to the agenda.

6.4e Ability of Shareholders to Nominate Directors

The country code in Japan does contain provisions for shareholders to nominate directors. The codes states that the driving force behind the economies of advance capitalist countries is, in general, the large public stock corporation, which is owned by a multitude of shareholders; because it is essentially impossible for shareholders to directly manage the company, shareholders appoint the board of directors who are entrusted with management.

6.4f Mechanisms for Proxy Voting

The Japanese code does not contain mechanisms for proxy voting.
6.4g Provisions for Minority Shareholders

The Japanese code does mention provisions for minority shareholders in terms of providing a venue for litigation. The code contains recommendations for a Litigation Committee. A Litigation committee would be responsible for assessing whether to commence with litigation against directors or executives, against whom the company or the shareholders have made a claim, to hold them responsible for their conduct.
7.1 Conclusions

This qualitative study examines whether there are similarities in the provisions for shareholder rights as contained in the governance codes of ten countries within four distinct systems: the Anglo-Saxon System, the Germanic System, the Latin System and the Japanese System. I hypothesized provisions for shareholder rights in countries characterized by 'majority held' (concentrated ownership) would be contained within their governance codes. I further hypothesized provisions for shareholder rights characterized by 'widely held' firms would not be contained within their governance codes. My findings indicate that there are similarities in the provisions for the protection of shareholder rights in each system in most instances, but there are also some variances from the norm.

In the Anglo-Saxon System provisions for shareholder rights were not explicitly contained in the corporate governance codes of any of the three countries reviewed. In Canada however, the governance code did contain a provision for minority shareholder protection. Controlling shareholders in Canada (as contained in the code) are expected to accept responsibility to ensure proper governance is carried out to protect minority shareholders. The countries in the Anglo-Saxon System are typically governed under a common law system which provides more protection under legislation for its shareholders. These findings are consistent with my hypothesis. Canada is characterized
by more ‘majority held’ firms and therefore the provisions for shareholder protection are contained within their code; whereas the United States and the United Kingdom are characterized by more ‘widely held’ firms and the provisions for shareholder protection are absent from their codes.

The countries reviewed under the Germanic System contained more provisions in their codes for the protection of shareholder rights compared to the codes in the Anglo-Saxon System; however, there were variations in the provisions within each country. Countries under this system are typically governed under a civil law system which provides less protection for shareholders (as discussed in the literature). These findings are also consistent with my hypothesis. The countries in the Germanic system are characterized by ‘majority held’ firms and therefore provisions for the protection of shareholder rights are contained within their governance codes. Similarly, the Latin System contained provisions for the protection of shareholder rights within the corporate governance codes of all three countries reviewed: Spain, Italy and France. However, there were fewer provisions than in the countries under the Germanic System. The Latin System is governed under civil law and is mostly comprised of family owned corporations. Therefore these findings are also consistent with my hypothesis.

Japan’s corporate governance code contained provisions for the protection of shareholder rights, but they were fewer than in either the Germanic or Latin Systems. In terms of ownership concentration, ownership in Japan is more dispersed than the Germanic System and more concentrated than the Anglo-Saxon system. Therefore, in terms of the hypothesis, Japan is a bit of an anomaly.
7.5 Limitations of the study

This study was conducted based on the protection of shareholder rights as contained under the framework of corporate governance codes only. A further in-depth review of the legislation to determine the true level of shareholder protection under the joint framework of the codes and legislation would be pertinent.
REFERENCES


Nam, Il Chong and Sang-Woo Nam. *Corporate Governance in Asia: Recent Evidence from Indonesia, Republic of Korea, Malaysia and Thailand*. ADBI Publications, 2005.

O'Shea, Niall. “Governance: how we’ve got where we are and what’s next.” *Accountancy Ireland*. 37, 6, (Dec 2005): 33


## APPENDICES

### Appendix I - Corporate Governance Codes Around the World

**Listing of Governance Codes Around the World**

<table>
<thead>
<tr>
<th>Country</th>
<th>Year Issued</th>
<th>Most Recent Revision</th>
<th>Code Reference (Name)</th>
<th>Provenance</th>
<th>Updated Annually</th>
<th>Stock Exchange</th>
</tr>
</thead>
<tbody>
<tr>
<td>Argentina</td>
<td>2004</td>
<td>2004</td>
<td>Código de Mejores Prácticas de Gobierno de las Organizaciones para la República Argentina</td>
<td>Unknown</td>
<td>No</td>
<td>Unknown</td>
</tr>
<tr>
<td>Australia</td>
<td>2003</td>
<td>2007</td>
<td>Principles of Good Corporate Governance and Best Practice Recommendations</td>
<td>Stock Exchange ASX</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Austria</td>
<td>2002</td>
<td>2007</td>
<td>Austrian Code of Corporate Governance</td>
<td>Austrian Working Group for Corporate Governance</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Bangladesh</td>
<td>2004</td>
<td>2004</td>
<td>The Code of Corporate Governance for Bangladesh</td>
<td>Bangladesh Enterprise Institute (BEI)</td>
<td>Unknown</td>
<td>No</td>
</tr>
<tr>
<td>Belgium</td>
<td>2004</td>
<td>2004</td>
<td>Belgian Corporate Governance Code</td>
<td>Corporate Governance Committee</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Brazil</td>
<td>1999</td>
<td>2004</td>
<td>Code of Best Practice of Corporate Governance</td>
<td>Instituto Brasileiro de Governance Corporativa</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Bulgaria</td>
<td>2007</td>
<td>2007</td>
<td>Bulgarian National Code for Corporate Governance</td>
<td>The Bulgarian Stock Exchange</td>
<td>Unknown</td>
<td>Yes</td>
</tr>
<tr>
<td>Canada</td>
<td>2001</td>
<td>2006*</td>
<td>Beyond Compliance: building a Governance Culture</td>
<td>Joint Committee on Corporate Governance</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>China</td>
<td>2004</td>
<td>2004</td>
<td>The Code of Corporate Governance for Listed Companies in China</td>
<td>China Securities Regulatory Commission</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Denmark</td>
<td>2001</td>
<td>2003</td>
<td>The Norby Committee's report on Corporate Governance in Denmark; becoming Report on Corporate Governance in Denmark</td>
<td>Copenhagen Stock Exchange; becoming CSE Committee on Corporate Governance</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Estonia</td>
<td>2006</td>
<td>2006</td>
<td>Corporate Governance Recommendations</td>
<td>Financial Supervision Authority Tallin Stock Exchange</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Finland</td>
<td>2003</td>
<td>2003</td>
<td>Corporate Governance Recommendations for Listed Companies</td>
<td>HEX Plc, Central Chamber of Commerce of Finland; Confederation of Finnish Industry Employers</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>France</td>
<td>2003</td>
<td>2003</td>
<td>The Corporate Governance of Listed Corporations</td>
<td>MEDEF Association Francaise des Entreprises Privées (AFEP)</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Germany</td>
<td>2002</td>
<td>2007</td>
<td>German Corporate Governance Code (The German Code)</td>
<td>The German Committee on Corporate Governance</td>
<td>Yes</td>
<td>No</td>
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<tr>
<td>Greece</td>
<td>1999</td>
<td>1999</td>
<td>Principles in Corporate Governance in Greece: Recommendations for its Competitive Transformation</td>
<td>Committee on Corporate Governance in Greece</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Hong Kong</td>
<td>2004</td>
<td>2004</td>
<td>Hong Kong Code on Corporate Governance</td>
<td>Stock Exchange of Hong Kong; Hong Kong Tourism Board</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Hungary</td>
<td>2002</td>
<td>2007</td>
<td>Corporate Governance Recommendations</td>
<td>Budapest Stock Exchange; Hungarian Chamber of Commerce, Industry and Trade</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Iceland</td>
<td>2004</td>
<td>2005</td>
<td>Guidelines on Corporate Governance 2nd Edition</td>
<td>Iceland Stock Exchange; Icelandic Chamber of Commerce, Industry and Trade</td>
<td>N/A</td>
<td>Yes</td>
</tr>
<tr>
<td>India</td>
<td>2000</td>
<td>2000</td>
<td>Report on the Kumar Mangalam Birla Committee on Corporate Governance</td>
<td>Securities and Exchange Board of India (SEBI)</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Indonesia</td>
<td>2000</td>
<td>2007</td>
<td>Code of Corporate Governance</td>
<td>National Committee on Governance</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>Ireland</td>
<td>1996</td>
<td>1996</td>
<td>Corporate Governance, Share Option and Other Investment Schemes</td>
<td>Irish Association of Investment Managers</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Italy</td>
<td>2002</td>
<td>2006</td>
<td>Corporate Governance Code</td>
<td>Committee for the Corporate Governance of Listed Companies, Italian Chamber of Commerce</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Jamaica</td>
<td>2006</td>
<td>2006</td>
<td>Code of Corporate Governance</td>
<td>Private Sector Organization of Jamaica</td>
<td>No</td>
<td>No</td>
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<tr>
<td>Japan</td>
<td>1997</td>
<td>2001</td>
<td>Corporate Governance Principles: A Japanese View</td>
<td>Japan Corporate Governance Forum</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Kenya</td>
<td>2002</td>
<td>2002</td>
<td>Principles for Corporate Governance in Kenya</td>
<td>Private Sector Corporate Governance Trust</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Latvia</td>
<td>2005</td>
<td>2005</td>
<td>Principles of Corporate Governance and Recommendations on their Implementation</td>
<td>Riga Stock Exchange</td>
<td>No</td>
<td>Yes</td>
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<tr>
<td>Country</td>
<td>Year issued</td>
<td>Recent Revision</td>
<td>Code/Reference Item(s)</td>
<td>Provenance</td>
<td>Updated Annually</td>
<td>Stock Exchange</td>
</tr>
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<td>-----------------</td>
<td>-------------</td>
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<td>--------------------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------</td>
<td>-----------------</td>
<td>----------------</td>
</tr>
<tr>
<td>Lebanon</td>
<td>2006</td>
<td>2006</td>
<td>Corporate Governance Code for Small and Medium Enterprises (SME’s)</td>
<td>Lebanese Transparency Association (LTA)</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Lithuania</td>
<td>2003</td>
<td>2003</td>
<td>Corporate Governance Code for the Companies listed on the National Stock Exchange of Lithuania</td>
<td>National Stock Exchange of Lithuania</td>
<td>No</td>
<td>Yes</td>
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<td>Luxembourg</td>
<td>2006</td>
<td>2006</td>
<td>The Ten Principles of Corporate Governance of the Luxembourg Stock Exchange</td>
<td>Luxembourg Stock Exchange</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Macedonia</td>
<td>2003</td>
<td>2003</td>
<td>White Paper on Corporate Governance in South-Eastern Europe</td>
<td>Macedonia Corporate Governance and Company Law Project</td>
<td>No</td>
<td>No</td>
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<td>Mexico</td>
<td>1999</td>
<td>1999</td>
<td>Principles of Good Corporate Governance: Revised for issuers of Listed Securities</td>
<td>Malaysia Financial Services Authority (MFSA)</td>
<td>No</td>
<td>No</td>
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<tr>
<td>New Zealand</td>
<td>1994</td>
<td>1994</td>
<td>Corporate Governance in New Zealand: Principles and Guidelines</td>
<td>The New Zealand Securities Commission</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>Norway</td>
<td>2004</td>
<td>2007</td>
<td>The Norwegian Code of Practice for Corporate Governance</td>
<td>Norwegian Corporate Governance Board</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Pakistan</td>
<td>2002</td>
<td>2002</td>
<td>Code of Corporate Governance (Revised)</td>
<td>The Securities and Exchange Commission of Pakistan</td>
<td>No</td>
<td>Yes</td>
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<tr>
<td>Peru</td>
<td>2002</td>
<td>2002</td>
<td>Principles of Good Governance for Peruvian Companies</td>
<td>National Supervisory Commission of Company Securities</td>
<td>No</td>
<td>No</td>
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<tr>
<td>Poland</td>
<td>2002</td>
<td>2002</td>
<td>The Corporate Governance Code for Polish-Listed Companies (The Gdansk Code)</td>
<td>The Polish Corporate Governance Committee</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>Portugal</td>
<td>1999</td>
<td>2003</td>
<td>Recommendations on Corporate Governance</td>
<td>Joint Committee on Corporate Governance</td>
<td>No</td>
<td>No</td>
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<tr>
<td>Romania</td>
<td>2000</td>
<td>2000</td>
<td>Corporate Governance Code in Romania</td>
<td>International Centre for Entrepreneurial Studies, University of Bucharest</td>
<td>No</td>
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<td>Russia</td>
<td>2002</td>
<td>2002</td>
<td>The Russian Code of Corporate Conduct</td>
<td>The Co-ordination Council for Corporate Governance</td>
<td>No</td>
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<td>Singapore</td>
<td>2001</td>
<td>2005</td>
<td>Code of Corporate Governance 2005</td>
<td>Council on Corporate Disclosure and Governance (CCDG)</td>
<td>No</td>
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<td>Slovakia</td>
<td>2002</td>
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<td>Corporate Governance Code (Based on the OECD Principles)</td>
<td>Bratislava Stock Exchange</td>
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<td>Slovenia</td>
<td>2004</td>
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<td>Corporate Governance Code</td>
<td>Ljubljana Stock Exchange</td>
<td>No</td>
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<td>South Korea</td>
<td>1999</td>
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<td>Code of Best Practice for Corporate Governance</td>
<td>Committee for Corporate Governance</td>
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<td>Spain</td>
<td>2003</td>
<td>2003</td>
<td>2003 Report by the Special Commission to Foster Transparency and Security in the Market and in Listed Companies</td>
<td>Government-sponsored committee</td>
<td>No</td>
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<td>Sri Lanka</td>
<td>2006</td>
<td>2006</td>
<td>Draft Rules on Corporate Governance for Listed Companies</td>
<td>Institute of Chartered Accountants of Sri Lanka (ICASL) and Securities and Exchange Commission of Sri Lanka (SEC)</td>
<td>No</td>
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<td>Sweden</td>
<td>2001</td>
<td>2007</td>
<td>Swedish Code of Corporate Governance</td>
<td>The Swedish Corporate Governance Board</td>
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<td>Switzerland</td>
<td>2002</td>
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<td>Swiss Business Federation</td>
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<td>2002</td>
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<td>Taiwan Corporate Governance Best-Practice Principles 2002</td>
<td>Taiwan Stock Exchange</td>
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<td>Thailand</td>
<td>1994</td>
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<td>The SET Code of Best Practice for Directors of Listed Companies</td>
<td>The Stock Exchange of Thailand</td>
<td>No</td>
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<td>The Netherlands</td>
<td>2003</td>
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<td>The Dutch Corporate Governance Code: Principles of Good Corporate Governance and Best Practice (Tabaksblat Code)</td>
<td>Corporate Governance Committee chaired by Mr Morris Tabaksblat</td>
<td>No</td>
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<td>The Philippines</td>
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<td>ICD Code of Proper Practices for Directors</td>
<td>Institute of Corporate Directors</td>
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<td>Corporate Governance Guidelines</td>
<td>Central Bank of Trinidad and Tobago</td>
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<td>Corporate Governance Principles</td>
<td>The Capital Markets Board of Turkey</td>
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<td>Ukrainian Corporate Governance Principles</td>
<td>Ukrainian Securities Commission</td>
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Appendix II - Notes on the Anglo-Saxon System

**CANADA NOTES:**

1) Where a company is a public corporation, the fact that it may be controlled by a significant shareholder does not relieve the independent directors of their responsibilities to ensure that shareholders are protected. The significant shareholder must be prepared to accept their responsibility to ensure proper functions of governance are carried out.

2) Audit committees – Safeguards should ensure that the sharing of information is not used by the parent to disadvantage minority shareholders of subsidiaries.

3) Audit committee mandates should explicitly affirm that the external auditor is accountable to the board of directors and the audit committee, as representatives of the shareholders.

4) Composition of the board of a controlled corporation – The TSE should review and revise the definition of significant shareholder so that the intent of the existing guideline is met when a de facto control block exists that represents less than a majority of the voting shares. The Dey Report and the current guidelines define a significant shareholder as one with an ability to exercise a majority of the votes for the election of the board of directors. This definition means that a shareholder with the ability to exercise less than a majority of the votes, but with a big enough ownership position to exercise de facto control over the election of the board, is not a significant shareholder.

**UK NOTES:**

1) There should be a dialogue with shareholders based on the mutual understanding of objectives. The board as a whole has a responsibility for ensuring that satisfactory dialogue with shareholders takes place. The Chairman should maintain sufficient contact with major shareholders to understand their issues and concerns.

2) The board should keep in touch with shareholder opinion in whatever ways are most practical and efficient.

3) The chairman should ensure that the views of shareholders are communicated to the board as a whole. The chairman should discuss governance and strategy with major shareholders. Non-executive directors should be offered the opportunity to attend meetings with major shareholders as well.

4) The board should state in the annual report the steps they have taken to ensure that members of the board develop an understanding of the views of major shareholders about their company (for example through direct face-to-face contact, analysts, or surveys of shareholders opinion).

5) Board should use the AGM to communicate with investors and to encourage their participation. For each resolution proposed a proxy appointment forms should provide shareholders with the option to direct their proxy to vote either for or against the resolution or to without their vote. The proxy form and any announcement of the results of a vote should make it clear that a vote withheld is not a vote in law and will not be counted. Company should ensure that valid proxy appointments are properly recorded.

6) Institutional shareholders should enter into a dialogue with companies based on the mutual understanding of objectives. They should apply the principles set out in the Institutional Shareholders Committees “The Responsibilities of Institutional Shareholders and Agents – Statement of Principles” which should be reflected in fund manager contracts.

7) Institutional shareholders should carefully consider explanations given for departure from this code; should avoid box-ticking approach when assessing a company’s corporate governance.

8) Shareholder voting – Institutional shareholders have a responsibility to make considered use of their votes. They should make available to their clients information on the proportion of resolutions on which votes were cast and non-discretionary proxies lodged. Major shareholders should attend AGM’s where appropriate.
USA NOTES:

1) A company of which more than 50% of the voting power is held by an individual, a group or another company need NOT comply with the requirements of Section 303A.01, 04 or 05. A controlled company that wishes to do so must disclose this choice and the basis for the determination in its annual proxy statement or company’s annual report. Controlled companies must comply with the remaining sections.

2) Listed company’s websites must include its corporate governance guidelines and the charters of its most important committees (including at least the audit, and if applicable, compensation and nominating committees). Each company’s annual report on Form-K filed with SEC must state that the foregoing information is available on its website, and that the information is available in print to any shareholder who requests it. Making this information publicly available should promote better investor understanding of the company’s policies and procedures, as well as more conscientious adherence to them by directors and management.

*US does follow the one share one vote rule but it is not explicitly stated in the code.

**NYSE and Amex have made revisions to the voting rights of common shareholders not mentioned in the current code which have moved away from one share one vote to a more disenfranchising system.
Appendix III - Notes on the Germanic System

**GERMANY NOTES:**

1) German code presents essential statutory regulations for the management and supervision (governance) of German listed companies and contains internationally and nationally recognized standards for good and responsible governance.
2) Shareholders exercise their rights at the General Meeting and vote there.
3) In principle, each share equals one vote. There are no shares with multiple voting rights, preferential voting rights (golden shares) or maximum voting rights.
4) When new shares are issued, shareholders have pre-emptive rights.
5) Members of the supervisory board are appointed by the shareholders at the annual shareholders meeting; in enterprises with >500 or 2000 employees in Germany, employees are also represented on the Supervisory board which is then composed of employee representatives to 1/3 or ½ respectively.
6) Each shareholder is entitled to participate in the General Meeting, to take the floor on matters on the agenda and to submit materially relevant questions and proposals.
7) The Management Board shall publish the reports and documents, including the Annual Report, required by law for the General Meeting in an easily accessible way on the company’s internet site together with the agenda. The company shall send notification of the meeting by electronic means if the approval requirements are filled.
8) The company shall facilitate the personal exercising of shareholders voting rights. The company shall also assist the shareholders in the use of proxies. The Management Board shall arrange for the appointment of a representative to exercise shareholders voting rights in accordance with instructions; this representative should also be available during the General Meeting.
9) The company should make it possible for shareholders to follow the General Meeting using modern communications media (internet).
10) The company’s treatment of all shareholders in respect to information must be equal. All new facts made known to financial analysts and similar addressees shall also be disclosed to the shareholders by the company without delay.
11) Shareholders informed about financial position by consolidated financial statements. They may be additionally informed by means of half-year, interim or quarterly reports as well.

**THE NETHERLANDS NOTES:**

1) In formulating the code, the Committee has based itself on the existing legislation governing the external and internal relations of listed companies, including the legislation governing the mandatory application of the two-tier board system and the case law on corporate governance.
2) Shareholders may take legal action such as starting an inquiry or annual account procedure.
3) Good corporate governance requires the fully-fledged participation of shareholders in decision making in the general meeting of shareholders. It is in the interest of the company that as many shareholders as possible take part in the decision making. The company shall, in so far as possible, give shareholders the opportunity to vote by proxy and to communicate with all other shareholders.
4) The general meeting of the shareholders should be able to exert such influence on the policy of the management board and the supervisory board of the company that it plays a fully-fledged role in the system of checks and balances of the company.
5) The general meeting of a company NOT having a two-tier status may pass a resolution to cancel the binding nature of a nomination for the appointment of a member of the management board or of the supervisory board and/or a resolution to dismiss a member of the management board or of the supervisory board by an absolute majority of the votes cast. (IV.1.1)
6) Any decisions of the management board on a major change shall be subject to the approval of the general meeting of the shareholders.
7) Depository receipts for shares are a means of preventing a (chance) minority of shareholders from controlling the decision making process as a result of absenteeism at a general meeting of shareholders. Depository receipts for shares shall not be used as an anti-takeover measure.
8) The management board or where appropriate the supervisory board shall provide all shareholders (and other parties in the financial markets) with equal and simultaneous information about matters that may influence share price.

9) The management board and supervisory board shall provide the general meeting of shareholders with all information that it requires for the exercise of its powers.

10) If price-sensitive information is provided during a general meeting of shareholders, or the answering of shareholders questions has resulted in the disclosure of price-sensitive information, this information shall be made public without delay.

11) Provisions for all shareholders to follow meetings and presentations in real time by means of web casting or telephone with presentations posted on the company’s website afterwards.

12) The company shall place all information required to be published on their website.

13) Responsibility of institutional investors – shall act primarily in the interests of the ultimate beneficiaries or investors and have a responsibility to the ultimate beneficiaries or investors and the companies in which they invest, to decide, in a careful and transparent way, whether they wish to exercise their rights as shareholder of listed companies.

14) Institutional investors shall be prepared to enter into dialogue with the company if they do not accept the company’s explanation of non-application of best practice provisions of this code. The guiding principle in this connection is the recognition that corporate governance requires a tailor-made approach and that it is perfectly possible for a company to justify instances of non-application of individual provisions.

15) Code further requires Institutional investors to publish on their websites their policy on exercising voting rights for shares they hold in listed companies and how they’ve implemented their policy.

The Code specifies that the committee feels that the legislator has an important contribution to make – in some cases the legislation required to redress the balance between corporate bodies is absent, whereas in other cases existing legal rules actually obstruct this. In the committee’s opinion, legislation in the field of anti-takeover measures, facilitation of proxy voting, and cross-border voting are of greatest importance to corporate governance. Suggest that the legislator consider scrapping the obligation to apply the statutory two-tier rules as they impede corporate governance. Also claim that a fundamental change in attitude is required from many institutional investors who should make much more extensive use of their shareholder rights to take corrective action.

*The committee has scrapped the best practice provisions on proxy voting in the definite code as it is for companies not possible to apply the provisions as long as national and European legislators have not legally facilitated proxy voting by shareholders.

**SWITZERLAND NOTES:**

1) The question of capital structure and particularly the principle of one share one vote requested by investors are not part of the Swiss Code.

2) Corporate Governance in Switzerland is governed by Swiss company and stock-exchange law and have NOT been sufficiently taken into consideration.

3) As investors, shareholders have the final decision within the company.

4) The powers of shareholders are defined by statute. They alone are entitled to make decisions with regard to personnel matters at the top of the company level (electing and granting release to members of the Board of Directors and appointing the auditors), the final approval of accounts and policy on distributions to shareholders equity (dividends, increase or decrease in capital). They also determine the Articles of Association and their approval is required for decisions on mergers, de-mergers, changes in Articles.

5) Shareholders exercise their rights at the General Shareholders Meeting and have the right to make motions on items prescribed in the agenda. They may also request information on company matters not included on the agenda.
6) Institutional investors, nominees and other intermediaries exercising shareholders rights in their own name should ensure, as far as possible, that beneficial owners may exercise their influence as to how such shareholder rights are brought to bear.

7) Where registered shares acquired through custodian banks, the latter should invite the party acquiring the shares to apply for registration in the company's Register of Shareholders.

8) The company shall endeavour to facilitate the exercise of shareholders statutory rights.

9) The Articles of Association should be available in writing or in electronic form at any time.

10) The company should ensure that the General Shareholders Meeting is used as a forum for communication so that it is well-informed in discharging its function as the highest corporate authority. The Board of Directors should inform the shareholders in such a way they can exercise their rights in the knowledge of the essential basis of their decisions. The company should, when convening meetings, provide concise explanations on agenda items and on motions put forward by the Board of Directors. Requests by shareholders to place items on the agenda and motions made by them should, if received in time, be officially communicated.

11) The company should facilitate the participation of shareholders at General Meeting by clearly setting dates and time limits well in advance.

12) The organization of the meeting should enable shareholders to make relevant and concise comments on agenda items.

13) Arrangements should be made to ensure shareholder rights to information and inspection are met.

14) The Board of Directors should appoint a position for shareholder relations in order to inform shareholders on the progress of the company during the year.

15) In General Shareholders Meeting the will of the majority should be clearly and fairly expressed.

16) The Board of Directors should take steps to contact shareholders in between Shareholders Meetings. Should appoint a position for shareholder relations.

17) Companies with active major shareholders (including subsidiaries listed on the stock exchange) may adapt or simplify the guidelines. Such companies should implement in their own way an appropriate arrangement for the assessment of the external audit, a functionally efficient internal control system, the remuneration policy for members of the Board of Directors and Executive Management and the succession planning for the Board of Directors.

**SWX-Directive on Information Relating to Corporate Governance (SWX Swiss Exchange):**

- The following information on group structure and shareholders must be disclosed if listed on the SWX:
  - Group Structure – description of the issuers operational group structure; all listed companies belonging to the group; the non-listed companies belonging to the group.
  - Significant Shareholders – to the extent that the issuer is aware of them.
  - Cross-shareholdings – that exceed 5% of the capital shareholdings or voting rights on both sides.
  - Shares and Participation Certificates – number, type and par value; also main features such as entitlement to dividend payments, voting rights, preferential rights and similar rights.
  - Convertible bonds & options – outstanding and number of options issued along with indication of the duration, exercise price and subscription ratio.
  - Shareholder Participation Rights – voting rights restrictions and representation; statutory quorums; convocation of the general meeting of the shareholders.
  - Agenda – rules for adding items of shareholders, especially rules on deadlines.
  - Registration in the share register – rules on the deadline for registration in connection with attending the general meeting as well as rules on making exceptions.
### FRANCE NOTES:

1) Board of Directors represents all of the shareholders. It is collectively responsible for performance of its assignments to which it assumes by statute the essential responsibilities: it calls the meetings and sets the agenda, appoints and dismisses the chairman and chief executive officers, supervises their management, determines the annual accounts and reports on its action in the annual report.

2) Meeting of the shareholders is a decision making body.

3) Opportunity for genuine and open discussion with the shareholders.

4) Directors should attend the meeting.

5) When corporation is controlled by a majority shareholder (or group of shareholders acting in concert), the latter assumes a specific responsibility to the other shareholders, which is direct and separate from the Board of Directors. That shareholder must take particular care to avoid possible conflicts of interest, to secure transparency of information provided to market, and to take all interests into account fairly.

6) Rather than seeking to provide specific representation for minority shareholders, the best formula consists of appointing independent directors in controlled corporations in the proportions defined by this set of principles.

### ITALY NOTES:

1) Adoption of and compliance with this Corporate Governance Code are voluntary.

2) Board of Directors shall use its best efforts for ensuring that access to the information concerning the issuer that is material for shareholders is timely and easy to access, so as to allow shareholders an informed exercise of their rights.

3) The issuer shall establish a specific section on its internet site that may be easily identified and accessed where the information is available; should include procedures for participation and exercise of voting rights in the shareholders meetings as well as documentation relating to items on the agenda of the shareholders meetings.

4) Board of Directors shall ensure a person is identified as responsible for handling relationships with shareholders.

5) Board of Directors shall use its best efforts for ensuring that the shareholders receive adequate information about the necessary elements for them to take in an informed manner the decisions that are the competence of the shareholders meetings.

6) Reference the legal provisions protecting the rights of minorities that require minimum percentages to be fixed for the exercise of voting rights and the prerogatives of minorities, the Committee recommends that directors should regularly assess the desirability of adapting such percentages in line with the evolution of the company’s size and shareholder structure.

7) It is not the responsibility of the committee to take into consideration the behaviours of institutional investors. However, it is of the opinion that the acknowledgement by them of the importance of the corporate governance rules contained in the code may represent a significant element for the purpose of a more convinced widespread application of the principles of the Code by the issuers.
SPAIN NOTES:

1) One of the main objectives of corporate governance is to enhance the role of the Shareholders Meeting as the company's basic decision-making and oversight body and as the guardian of shareholders' interests.

2) The Shareholders Meeting must provide the most efficient vehicle for such participation, enabling shareholders who do not attend the meeting to be represented and to voice their interests through proxies.

3) On the occasion of Shareholders Meeting, the company must disclose the full content of all the motions to be submitted to the Meeting on its own web site regardless of other procedures established by law.

4) Other measures include extending the period of advance notice of the Meeting and enabling shareholders, subject to legislation requirements, to apply to include items in the agenda of the convened meeting and propose alternate motions sufficiently in advance of the Shareholders Meeting so that the board can define its position about whether or not they should be published, stating the reasons for non-inclusion; or implement the necessary systems for an electronic calculation of the quorum, and the granting of proxies and voting by post or electronic means.

5) Facilities should be provided to institutional investors (mutual funds, financial institutions, other intermediaries) which represent the interests of numerous shareholders and investors to enable them to contribute more actively in corporate decisions. Because of the growing importance of institutional investors' participation in companies' ownership structures, it is recommended that they define and disclose their policy on participation in the decisions of companies in which they have invested and that this definition be made known and notified to final investors.
## Appendix V - Notes on the Japanese System

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<th><strong>JAPAN NOTES:</strong></th>
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<td>1) The private property system is one which all property is recognized as being owned by someone who has the right to control that property, but who must also bear the responsibility for any consequences of that control. The owner must bear responsibility for all such eventualities, for better or for worse.</td>
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<td>2) The driving force behind the economies of advanced capitalist countries is, in general, the large public stock corporation, which is owned by a multitude of shareholders. Under this arrangement where there is such a vast number of people having ownership interest it is essentially impossible for shareholders to directly manage the company. Therefore, the shareholders in general meeting appoint the directors of the company, and the board of directors is entrusted with management.</td>
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<td>3) A company is the economic property of its shareholders. Even when the shareholders have a governance system in place, management that ignore economical or efficiency issues with respect to the use of precious economic resources will not be tolerated. A fixed set of regulations is required by the shareholders, and in order to secure these, transparency is of utmost importance. As stocks are publicly listed on the market, it is desirable that the management takes place under the watchful eye of the public. These kinds of regulations are particularly necessary for large-scale public companies.</td>
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<td>4) The shareholders enter into a contractual relationship with executive managers; it is through these obligations that the discipline by the shareholders is imposed.</td>
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<td>5) Significance of Investor Relations – the creation of shareholder value lies in continually developing good investment opportunities, and in following through with opportunities; executive managers must be active in providing information to the stock market; it is imperative that executive managers strive to communicate with shareholders, investors and other people related with the market and endeavour to create trust. (if the investors do not trust the executive managers, the value of the stock will not rise)</td>
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<tr>
<td>6) Addressing Shareholder Derivative Litigation – The litigation committee should assess whether to commence litigation against directors or executives in respect of whom the company or the shareholders have made a claim, to hold them responsible for their conduct.</td>
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<tr>
<td>7) The general meeting of the shareholders is important because it provides an opportunity for those people who have invested in the company’s shares to participate in the decision-making process, to take part in corporate governance, to obtain information about the current state of the company, to evaluate the qualifications of the executive board. It also provides an opportunity for the executive to report on the company’s achievements; If the executives are unable to answer ANY question from an investor at the general meeting of the shareholders, a full and accurate answer should be forthcoming on the company’s web page within a fixed period of time.</td>
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