8-2023

Asia’s moment: Contextualizing the rules of the corporate governance game

Dan W. PUCHNIAK
Singapore Management University, danwpuchniak@smu.edu.sg

Asia's moment: Contextualizing the rules of the corporate governance game

Dan Puchniak
Singapore Management University, Yong Pung How School of Law

Whether this century is Asia's century is still open for debate. What is clear now, however, is that understanding corporate governance in Asia *is* a paramount issue of global importance. Asia is forecast to account for an astonishing 70% of global growth in 2023.[1] India's stock market capitalization recently eclipsed that of the United Kingdom and France – something unthinkable at the dawn of the new millennium.[2] Asia is now home to three of the top four largest stock markets by market capitalization in the world – with only the United States (1) ranking ahead of China (2), Japan (3), and India (4). China *alone* now has more *Fortune* Global 500 Companies than the United States or all of Europe combined – with Asia now dominating every other region in this iconic American ranking of the world's most powerful corporations. Whether the purpose of companies is to maximize shareholder value or save the planet, success on a global scale is now, more than ever, unachievable without Asia.
Despite this, when it comes to determining what counts as "good" corporate governance globally, the United Kingdom and United States have set the rules of the game. Academia has reflected (or, perhaps, perpetuated) this trend as comparative corporate governance research has long been dominated by a propensity to use an Anglo-American lens to understand Asia.[3] This has produced erroneous theories and sometimes ill-suited policy prescriptions about how corporate governance in the diverse and dynamic economies of Asia work – an issue that can no longer be ignored.[4] The existential threat of climate change will become a reality if Asia's corporations are not part of the solution.
This is why the ECGI Blog decided to produce this Special Issue on corporate governance in Asia. Things are changing – fast. A decade ago, research comparing corporate law and governance *within* Asia was scarce. Intra-Asian research is now a burgeoning field of study. This is reflected in two posts in this Special Issue, one by Professor Umakanth Varottil (**The momentum for ESG in Asia: Less market, more government**) and one by me (**An Asian solution for the world's environment? Corporate governance in a non-Anglo-American world**). Both posts demonstrate that using an Anglo-American lens to understand jurisdictions in Asia misleads and that autochthonous solutions should be the bedrock of corporate governance reforms for Asia in the future.
The growing tensions between China and the United States have produced polarized positions that lack nuance. The two posts on China, one by Professor Lauren Yu-Hsin Lin (**Behind the scenes: The Chinese government's influence on businesses and its impact on valuation**) and one by Professor Sang Yop Kang (**Deciphering China's hostile takeover terrain: The diminished role of corporate governance**) illustrate that those who take unnuanced views of Chinese corporate governance do so at their peril. Professor Lin explains how a focus on the mere fact that a company has formally instituted a Chinese Communist Party committee into its corporate governance structure may tell us less about the level of political influence on the company than the detailed governance provisions in its corporate charter. Professor Kang explains how the distinctive features of China's corporate governance context may result in the development of an active market for corporate control in China producing more problems than solutions – the opposite of what viewing these developments through an American lens would predict.
The past year has seen Japan's stock market boom and a renewed interest in Japanese corporate governance following decades of economic malaise. Like China, an accurate understanding of corporate governance in Japan requires a nuanced contextual approach. Its unique corporate governance system often behaves in ways contrary to Anglo-American-cum-global conventional corporate governance wisdom – which produces unique problems and unanticipated solutions. Professor Gen Goto's post (**Japanese corporate governance: Quo Vadis?**) explains why counterintuitively Japan is still focusing on reforms that advance shareholders' interests in a world where the Anglo-American inspired trend is towards stakeholderism. He also illuminates how the "unwokeness" of Japanese society may put

sand in the gears of Japan Inc.'s will to address climate change. Professor Yupana Wiwattanakantang and her coauthors' post (**Can crafted equity indices bring about real changes in corporate social behaviour? Evidence from Japan's MSCI Empowering Women Index (WIN)**) illuminates a fascinating strategy by the Government Pension Investment Fund of Japan, the world's largest pension fund, to adopt the MSCI Empowering Women Index (WIN) with the goal of advancing gender diversity in Japanese corporations. Based on their empirical research, it appears the strategy has been successful, suggesting that Japan – a country more often associated with gender inequality – may have uncovered a surprisingly effective way to use equity indices to advance gender equality in listed companies.

For all its success, Korean corporate governance is understudied. With a GDP per person that recently eclipsed Japan, the economic miracle of Korea is astounding. Its global influence, whether through cutting-edge semiconductors or crowd-pleasing K-pop, make illuminating the governance behind its powerful corporations of global importance. Professor Joon Hyug Chung's post (**Korea's shareholder activism – A game-changing transformation since 2022**) details how an activist fund shook-up a Korean listed company, which was a K-pop producing powerhouse. This corporate governance episode gained a level of interest that is normally reserved for Korean blockbuster movies or TV dramas. According to Professor Chung, this episode illustrates how the tide in Korea "shifted with the introduction of the Korean Stewardship Code, making it difficult for asset managers to vote against proposals that clearly promote shareholder value, as their voting policies and results are disclosed". This portends a watershed rise in the power of shareholder activists in a country normally dominated by corporate groups (*chaebols*) and controlling minority shareholders – how this change plays out in the future, however, will be determined by Korea's unique corporate governance landscape. Professor David Schoenherr's post (**Can punishing managers in bankruptcy backfire?**) explains how a legal reform in Korea, which allowed managers to stay in control during bankruptcy proceedings, increased credit usage and investment. But, again, context is key. His empirical research suggests that this positive result only likely occurred due to Korea's corporate governance landscape being dominated by family-owned businesses with concentrated shareholding – and that the opposite result may have occurred in an economy, like the United Kingdom, which is dominated by dispersedly-held companies.

Last, but not least, Professor Hao Liang and Jun Myung Song's post (**Singapore's green finance efforts: Collective actions to drive sustainable growth and resilience**) explains how Singapore has emerged as a leader in promoting green finance in Asia by blending a United States-style bottom-up market-based approach with a European-style top-down government-based approach. Singapore's ability to position itself as a financial hub in Asia has resulted in it having one of the most dynamic economies in the world – with a GDP per person that is now higher than any G7 country. In today's world, where regionalization appears to be replacing globalization, could the Singapore model of green finance be the model for Asia? Only time will tell.

If this Special Issue on corporate governance in Asia has one message it is that *context matters*. Viewing Asia's dynamic and diverse engines of global economic growth through an Anglo-American lens never made sense to begin with – but now doing so is patently absurd. The shift in economic power towards Asia demands that its diverse and dynamic systems of corporate governance be understood on their own terms. Similarities that link many of Asia's diverse corporate governance contexts are evident: a pre-dominance of family-controlled and state-controlled companies, concentrated shareholding structures, government-based enforcement, shared corporate and legal cultures, growing economic interdependence and more. These commonalities suggest that it is long overdue for Asia to jettison Anglo-American based solutions. The time has come for Asia to set the rules for its corporate governance game.

---

[1] Thomas Helbling et al., *Asia Poised to Drive Global Economic Growth, Boosted by China's Reopening*

China, IMF Blog (May 1, 2023).
[2] Hinako Sato, *India outstrips France and U.K. in market cap to take fourth spot,* Asia Nikkei (June 20, 2023)
[3] Dan W. Puchniak, *No Need for Asia to be Woke: Contextualizing Anglo-America's 'Discovery' of Corporate Purpose*, 4 RED 14 (2022); Dan W. Puchniak, *Multiple Faces of Shareholder Power in Asia: Complexity Revealed* in, The Research Handbook on Shareholder Power 511 (Randall Thomas & Jennifer Hill eds., Edward Elgar, 2015).
[4] Gen Goto, Alan K. Koh & Dan W. Puchniak, *Diversity of Shareholder Stewardship in Asia: Faux Convergence*, 53 Vanderbilt Journal of Transnational Law, 829 (2020); Dan W. Puchniak & Umakanth Varottil, *Related Party Transactions in Commonwealth Asia: Complicating the Comparative Paradigm*, 16 Berkeley Business Law Journal 1 (2020); Dan W. Puchniak & Masafumi Nakahigashi, *The Enigma of Hostile Takeovers in Japan: Bidder Beware*, 15 Berkeley Business Law Journal, 4 (2018); Dan W. Puchniak & Kon Sik Kim, *Varieties of Independent Directors in Asia: A Taxonomy* in, Independent Directors in Asia: A Historical, Contextual and Comparative Approach 89 (Dan W. Puchniak et al. eds., Cambridge University Press, 2017); Dan W. Puchniak, *The Derivative Action in Asia: A Complex Reality*, 9 Berkeley Business Law Journal, 1 (2012).

By **Dan W. Puchniak**, Professor in the Yong Pung How School of Law (YPHSL) at Singapore Management University, the inaugural Co-Editor-in-Chief of the ECGI Blog and ECGI Research Member.
If you would like to read further articles on Corporate Governance in Asia, **click here**
The ECGI does not, consistent with its constitutional purpose, have a view or opinion. If you wish to respond to this article, you can submit a blog article or 'letter to the editor' by ***clicking here****.*