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An Asian solution for the world's environment? Corporate governance in a Non-Anglo-American world

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

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

Historically, 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. This has resulted in ill-fitting Anglo-American corporate governance solutions being transplanted to Asia with unforeseen consequences.**[i]** Will Asia repeat this history by adopting Anglo-American corporate governance solutions to solve its environmental problems?

Eight major Asian economies (India, Hong Kong, Japan, Malaysia, Taiwan, Thailand, Singapore, and South Korea) have adopted **stewardship codes**. All of Asia's inaugural stewardship codes were modelled on the UK's 2010 stewardship code (UK Code 2010) – the first of its kind in the world. The original goal of the UK Code 2010 was to solve the UK's systemic corporate governance problems by incentivizing passive institutional investors to become actively engaged shareholder stewards. In 2020, the UK issued a new stewardship code (UK Code 2020), which expanded the role for actively engaged shareholder stewards from solving the UK's systemic corporate governance problems to addressing its **ESG problems**, particularly climate change. Given this context, if the past is any predictor of the future, it seems likely that the eight Asian jurisdictions that modelled their original stewardship codes on the UK will follow in the UK's footsteps by reorienting their stewardship codes to focus on ESG. The recently released updated version of institutional investor focused stewardship codes in **Malaysia**, **Singapore**, and Taiwan are evidence that this is already occurring.

In the UK, the focus on institutional investors as a solution for its systemic corporate governance and ESG problems makes sense. Institutional investors collectively own 68% of the shares of UK listed companies. Therefore, *if* a stewardship code can motivate institutional investors to be actively engaged promoters of ESG, it will result in significant changes in UK listed companies – as institutional investors collectively have the voting rights to legally control the companies. The rationale for viewing institutional investors as the key to getting companies to focus more on ESG is even stronger in the United States, where institutional investors collectively own 80% of the shares of listed companies.

However, in non-UK/US jurisdictions the situation is entirely different. Putting the UK/US aside, there is no other major economy in the world where institutional investors collectively own a majority of shares in listed companies. As I explain in detail **elsewhere**, the focus on institutional investors as a potential solution for environmental shortcomings (or any other corporate governance problem) is particularly misplaced in Asia, where on average institutional investors collectively own a paltry 11% of shares in listed companies. In some major Asian economies, their collective ownership stakes languish in the small single digits. To be clear, this does not mean that institutional investors cannot have some impact on ESG in Asia by acting collectively as *minority* shareholders – especially in Japan where, as an outlier in Asia, institutional investors collectively own 36% of shares in listed companies. However, in almost every listed company in Asia, institutional investors – even if they act collectively – lack the voting rights to control the company. Moreover, in Asian jurisdictions like Singapore, where institutional investors collectively own 6% of the shares in listed companies, a focus on them as either the problem or solution for ESG (or any other corporate governance malady) is misplaced. In its 2020 Investment Stewardship Annual Report, **BlackRock acknowledges** this Asian reality. However, some of the most prominent UK/US research on institutional investors and stewardship overlooks this point.**[ii]** This fact also seems to have escaped the attention of regulators in the eight Asian jurisdictions that adopted UK-style stewardship codes, which are designed on the assumption that institutional investors have the voting rights to collectively control most listed companies.

The question then becomes: How can corporate governance strengthen ESG performance in Asia? Again, the answer to this question is entirely different in Asia than in the UK/US. As I explain in detail **elsewhere**, only 12% of listed companies in the UK and a mere 4% in the US have a dominant controlling shareholder – compared with, on average, 66% of listed companies in Asia. Therefore, any chance of succeeding in changing the behavior of companies to benefit the environment will need to focus on changing the behavior of controlling shareholders in almost every Asian economy. One notable exception is Japan, which (again) is an extreme outlier in Asia (and the world) due to the low level of controlling shareholders in its listed companies.

It is possible that reorienting stewardship codes in Asia to focus on controlling shareholders (as **Singapore** has already done) may provide a nudge towards ESG. However, it appears that reforms to hard law will likely be necessary to effectively incentivize controlling shareholders to steward Asian companies towards ESG. The entrenched interests of controlling shareholders will have to be challenged – something that powerful corporations, families, and governments, who themselves are the dominant controlling shareholders in Asia, seem well placed to thwart. However, if Asia can create corporate governance solutions to solve this problem, it will likely benefit the world – which has much more in common with Asia than Anglo-America. Perhaps then Asia will provide corporate governance solutions needed for global environmental problems – and, hopefully, ill-fitting Anglo-American corporate governance transplants will be a relic of the past.

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[i] This blog post is an updated and revised version of, Dan W. Puchniak, *An Asian Solution for a Global Problem? Corporate Governance and the Environment in a Non-Anglo-American World*, 2 USALI East-West 8, Apr 13, 2022, **https://usali.org/asia-pacific-symposium-essays/an-asian-solution-for-a-global-problem**, which contains more detailed endnotes.
[ii] For example, Bebchuk, Cohen, and Hirst's insightful research identifies the importance of the agency problems of institutional investors in corporate governance. However, it fails to note that the UK/US are outliers globally with respect to the percentage of their stock markets owned by institutional investors and, in turn, that these agency problems are likely to be far less significant in non-UK/US jurisdictions. Lucian A. Bebchuk et al., *The Agency Problems of Institutional Investors*, 31 J. Econ. Persp. 89, 90, 108.

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.
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