U.S.-Asia Law Institute
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The Social Role of Corporations in Asia-Pacific

Introduction

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The genesis of this symposium was a straightforward question from a colleague at the U.S.-Asia Law Institute: What is the hottest topic today in corporate governance throughout Asia? To find out, I queried a group of colleagues from six Asia-Pacific countries who previously collaborated with me on a book on corporate governance in the region. The essentially unanimous answer was the social role of corporations, as exemplified by ESG—the environmental, social and governance factors related to a company's business activities. As one of the symposium essays put it succinctly: good corporate governance appears to be a key to a sustainable green future (see Puchniak essay).

This response surprised me for two reasons. First, there has long been a debate over the social role of corporations, but it is a notable change for such an issue to assume center stage. Second, when we think of public policy issues such as climate change in Asia-Pacific countries, we generally focus on the role of governments rather than the responsibility of corporations.

At the same time, there is no doubt that over the past few years the demand for corporations everywhere to emphasize ESG has increased dramatically. In the US, the leading proponent of a narrow corporate focus on profits on behalf of shareholders (shareholder capitalism), CEOs of leading corporations announced in 2019 that they would pursue a broader agenda on behalf of diverse stakeholders (stakeholder capitalism).[1] Although there is a widespread view that Asia-Pacific lags behind the EU and US in terms of ESG and climate change, recent public opinion polls indicate that the public has a strong expectation that corporations will bear much of the cost of climate change—in Asia-Pacific, as well as in Europe and the Americas.[2]

Broadly speaking, in the EU there has been a centralized, regulatory approach towards demanding ESG-related disclosures that is strongly backed by the public. In the US (and the UK) the government has largely deferred to markets, as large institutional investors such as BlackRock have both stepped up pressure on corporations to increase ESG disclosure and have sold many ESG-focused investment funds. Both approaches have resulted in remarkable increases in concern for ESG-related corporate policies and in ESG assets. What might be the sources of effective pressure for change in Asia-Pacific countries—where businesses are generally less supportive of government regulation and where domestic institutional investors generally do not have the level of share ownership and influence they enjoy in the US and UK?

The essays in this symposium look at the specific situations in six countries: Australia, India, Singapore, China, Japan, and Taiwan. They describe a wide range of roles played by governments, investors, and other actors. They show similarities as well as significant differences—both among these Asia-Pacific jurisdictions and between them and the established EU and US/UK models. Taken as a whole, the essays suggest a range of intermediate approaches, including the possibility of a middle path between the EU and US models based on cooperation between government and industry.

Corporate Social Responsibility and the Rise of ESG

The nature and definition of the social role of corporations have changed over time. Beginning in the 1970s corporate social responsibility (CSR) became a popular term, spurring investment in companies that practiced social responsibility (socially responsible investing or SRI). In recent years ESG has become the most popular formulation for the social responsibility of corporations. While CSR tended to refer to philanthropic donations or other activities for the public good that were separate from a company's business activities, ESG generally means exercising social responsibility in conducting one's own business, such as reducing carbon emissions and the overall carbon footprint of business operations. One important goal (and tool) of advocates of a strong social role for corporations is to increase public disclosure of ESG risks and related corporate policies.

What are the main causes of this recent emphasis on ESG? First are the actions of international organizations, such as the formation in 2006 of an UN-supported network of international investors who subscribe to the Principles for

Responsible Investment and the enactment by the UN General Assembly in 2015 of the 2030 Agenda for Sustainable Development, which established 17 Sustainable Development Goals.

Second is government policy and regulation at the national level, and public pressure on corporations to assume a more active social role. This trend is illustrated by many recent announcements of government goals for promoting renewable energy and achieving carbon neutrality, and an overall movement towards increased public disclosure of ESG and climate risks.

Finally, in the West (particularly in the US and UK) institutional investors have put strong pressure on corporations to improve their ESG policies. There has been an explosion of ESG-based investments, which now account for over one-third of all global assets under management.[3] In addition to ESG-related equity investment, banks are being pressured to stop financing coal-fired power plants, and "green bonds" issued by corporations and municipal governments are on the rise.

Unresolved Questions

Despite the surging popularity of ESG, two basic issues remain unresolved. First, there is no universally accepted definition of ESG and no widely accepted criteria for ESG investing. Terms such as ESG, SRI, sustainable investing, and impact investing are often used interchangeably. ESG investment criteria are also inconsistent. They may rely on negative screening— that is, simply excluding "sin" stocks — or may try to positively measure relevant corporate policies. Investment criteria may also differ by industry and contain subjective elements. Asset managers often use off-the-shelf ESG data from third-party providers who are inconsistent in their attempt to reduce sustainability performance to a single ESG score.

Second, the relationship between ESG policies and investment performance remains unclear, much like the relationship between good corporate governance and economic performance. There does not seem to be any performance penalty due to emphasizing social responsibility, but it is also difficult to empirically demonstrate a clear and consistent economic benefit.

Despite the intuitive appeal of sustainable development, from the beginning there were criticisms that CSR policies and investments were more about public relations than substantive results. The current booming popularity of ESG funds has also led to new charges of "greenwashing." This includes, for example, asset managers exaggerating the ESG nature of investment funds to attract greater investment, even though the funds may be fundamentally similar to more general index funds and the overall market.

Climate Change: The Biggest ESG Issue

The most pressing ESG issue is corporate response to climate change, and this serves as a case study in a number of the essays in this symposium. Extreme weather events have become more common, often with devastating consequences for individual companies, such as the bankruptcy of the major utility PG&E following unprecedented forest fires in northern California. The United Nations has recently increased the

urgency of its warnings to combat climate change. Among the recent increase in ESG assets, "climate remains king," as 25% of new ESG funds launched in 2020 focused solely on climate concerns.

Climate change is an area with a clear international framework based on the Paris Treaty and long-term pledges by governments (affirmed last fall at COP26) to achieve carbon neutrality at a specified future date, typically 2050. However, the pledges remain insufficient, and virtually no country has in place a full set of domestic policies that will achieve its climate pledge. It is unsurprising that various countries may utilize differing approaches; one common element, as noted above, is the strong societal expectation that corporations will play a significant role in this process.

Companies now face many new pressures to improve their response on climate change, particularly with respect to information disclosure. The Task Force on Climate-Related Financial Disclosures (TCDF) has developed recommendations for more effective climate-related disclosures (2017).[4] These recommendations form the basis of new disclosure practices (and, increasingly, mandatory disclosure requirements) in many countries, including those in Asia-Pacific, as shown in the essays in this symposium.

The increasing importance of ESG scores published by private third-party providers creates additional pressure. Institutional investors have used these scores and other tools to step up their campaign for better corporate disclosure and policies on climate change, by means such as formulating and publicizing new expectations and proxy voting guidelines, direct engagement with corporations, and shareholder resolutions.

Corporate Governance in Asia-Pacific

When discussing the social role of corporations in Asia-Pacific, we should note a few basic features of the field of comparative corporate governance and Asia-Pacific corporate governance systems. Corporate governance is a multidisciplinary field in which the definitions of good corporate governance and analytical frameworks are contested. When comparative corporate governance first developed as a field of academic research in about 1990, corporate governance systems were broadly classified into two contrasting types: (1) shareholder-oriented systems in the US and the UK characterized by dispersed shareholders whose interests were protected by independent directors and market mechanisms, and (2) stakeholder-oriented systems in Germany and Japan characterized by block shareholders and a more insider-oriented system, with a greater public dimension of corporate governance and less reliance on markets.

Any such classification system is necessarily broad and oversimplified. For example, the UK pursues an "enlightened shareholder value approach" that generally favors stakeholders and society more than the US approach. Throughout Asia-Pacific a number of countries have English common law systems (Australia, India, Singapore), which generally reflect this approach. By contrast, a German-based civil law perspective (a stakeholder system with a broader public dimension) influenced corporate law and governance

throughout East Asia in Japan, Korea, Taiwan, and, indirectly, China.

It is also difficult to apply the traditional classification system to account for rising Asia.[5] One important reason is differences in shareholder structure. Many countries in Asia-Pacific (although not Australia or Japan) are characterized by controlling shareholders, either governments or families. This causes a more acute problem of protecting minority shareholders. "Western" solutions, such as independent directors elected by shareholders, are unlikely to be highly effective in addressing this problem. Efforts to develop corporate governance practices in Asia-Pacific to deal with this problem cannot be ignored. This is not simply because of the general economic importance of the region, but also because the rapid growth of stock markets in Asia-Pacific has created a new normal: from a global perspective, the "average" listed company is now arguably one with relatively concentrated ownership compared to the US model.

A further difficulty in dealing with Asia-Pacific is its diversity. Countries in the region have a number of commonalities in corporate governance—including relatively concentrated shareholding and stakeholder-oriented systems and boards that focus more on management than monitoring. However, Asia-Pacific is also a diverse region that could be divided according to a wide range of factors: geography, language, form of government, state of economic development, origin of legal system, etc. Accordingly, it is necessary to avoid overly broad generalizations and to provide local context and in-depth analysis of each country.

This symposium is intended to provide new perspective and spur debate on the social role of corporations in Asia-Pacific, and how they may contribute to the pressing problem of addressing climate change. It highlights promising areas for additional research and discussion on new, important issues facing Asia-Pacific and the world.

Notes

[1] In 2019, the Business Roundtable, an organization of 181 CEOs of the largest US corporations, issued a new statement on the purpose of corporations that included the interests of all stakeholders, meaning customers, employees, suppliers and local communities in addition to shareholders. This replaced a 22-year-old policy on the principles of corporate governance that had defined a corporation's main purpose as maximization of shareholder return. See Press Release, Business Roundtable, Business Roundtable Redefines the Purpose of a Corporation to Promote 'An Economy That Serves All Americans' (Aug. 19, 2019).

[2] See, e.g., Lorraine Woellert, *Climate Change will be expensive. Who Should Pay?*, POLITICO, Feb. 9, 2022.

[3] See GLOBAL SUSTAINABLE INVESTMENT ALLIANCE, GLOBAL SUSTAINABLE INVESTMENT REVIEW 2020 (2021) (Figure 4, at 10). The fifth edition of this biennial report found that

the total of ESG assets was US $35.3 trillion in 2020 (id., Figure 1, at 9), an increase of 15% since 2018, and that the global percentage of ESG assets was 35.9% of all assets under management in 2020 (id., Figure 2, at 9).

[4] The TCDF was established by the Financial Stability Board in late 2015 at the request of the G20 to "improve and increase reporting of climate-related financial information."

[5] See Bruce Aronson and Joongi Kim, *Introduction to Comparative Corporate Governance*, in CORPORATE GOVERNANCE IN ASIA: A COMPARATIVE APPROACH 3, 7 (Bruce Aronson and Joongi Kim eds., 2019) (modifying the traditional classification of corporate governance systems into shareholder system and stakeholder system by adding a third category of controlling shareholder system, in order to incorporate many Asian systems into the traditional model).

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