

International Corporate Law and Financial Market Regulation

Independent Directors in Asia

A Historical, Contextual
and Comparative Approach

Edited by Dan W. Puchniak,
Harald Baum and Luke Nottage



CAMBRIDGE

International Corporate Law and Financial Market Regulation

This book provides the first in-depth analysis of independent directors in Asia, describing who they are, what they do and how they are regulated in seven of Asia's most important and dynamic economies, and in Australia. It will appeal to comparative corporate law and governance scholars, regulators, and lawyers interested in new developments in the field.

'Independent Directors in Asia combines a rigorous theoretical framework with the insights that only in-depth jurisdiction-specific analyses can give. In doing so, it provides the readers with a precise and thought-provoking sense of how the same governance mechanism can mean different things and perform different functions not only once transplanted from the US to Asia but also within the various Asian jurisdictions. In short, this is a fascinating book that has all the ingredients to become a classic in comparative corporate law.'

Luca Enriques, Allen & Overy Professor of Corporate Law, University of Oxford

'The independent director has been a focal point of corporate governance reform in the United States and the United Kingdom for decades, but its transplantation into Asian systems has been surprisingly complex and at times politically fraught. This enlightening volume exposes the institutional richness and functional diversity behind Asia's halting embrace of this corporate governance device. Independent Directors in Asia will have a long shelf life as an indispensable resource for scholars, policymakers and practitioners.'

Curtis J. Milhaupt, Parker Professor of Comparative Corporate Law
and Fuyo Professor of Japanese Law, Columbia Law School

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Puchniak, Baum
and Nottage

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INDEPENDENT DIRECTORS IN ASIA

The rise of the independent director in Asia is an issue of global consequence that has been largely overlooked until recently. Less than two decades ago, independent directors were oddities in Asia's boardrooms. Today, they are ubiquitous. *Independent Directors in Asia* undertakes the first detailed analysis of this phenomenon. It provides in-depth historical, contextual and comparative perspectives on the law and practice of independent directors in seven core Asian jurisdictions (China, Hong Kong, India, Japan, Singapore, South Korea, Taiwan) and Australia. These case studies reveal the varieties of independent directors in Asia, none of which conform to its original American concept. The authors develop a taxonomy of these varieties, which provides a powerful analytical tool for more accurately understanding and effectively researching independent directors in Asia. This new approach challenges foundational aspects of comparative corporate governance practice and suggests a new path for comparative corporate governance scholarship and reform.

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International Corporate Law and Financial Market Regulation

Corporate law and financial market regulation have major implications for how the modern economy is organized and regulated and for how risk is managed and distributed – domestically, regionally and internationally. This Series seeks to inform and lead the vibrant scholarly and policy debate in this highly dynamic area by publishing cutting-edge, timely and critical examinations of the most pressing and important questions in the field.

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A B B R E V I A T I O N S

2001 Code	2001 Code of Corporate Governance (Singapore)
2005 Code	2005 Code of Corporate Governance (Singapore)
2012 Code	2012 Code of Corporate Governance (Singapore)
2013 Act	Companies Act, 2013 (India)
ABIT	ABIT Computer Corporation
ACGA	Asian Corporate Governance Association
ACSI	Australian Council of Superannuation Investors
AEC	ASEAN Economic Community
AICD	Australian Institute of Company Directors
AIMA	Australian Investment Managers' Association
APRA	Australian Prudential Regulation Authority
ASX	Australia Stock Exchange
AUS	Australian Dollar
BBK Survey	survey conducted by Balasubramanian, Black and Khanna (India)
CAPCO	China Association for Public Companies
CAMAC	Corporations and Markets Advisory Committee (Australia)
CCGC	Collection of Corporate Governance Codes
C/E	'comply and explain' approach
CEO	chief executive officer
CFO	chief financial officer
CGC	Corporate Governance Committee (Singapore)
CII	Confederation of Indian Industry
CPA	Certified Public Accountant
CSMAR	China Stock Market and Accounting Research
CSR	corporate social responsibility
CSRC	China Securities Regulatory Commission
DIDD	Database of Independent Director Definitions
D&O insurance	Directors and Officers Liability Insurance
DPJ	Democratic Party of Japan
EMCA	European Model Company Act
EU	European Union
FSA	Financial Services Agency (Japan)

FSC	Financial Supervisory Commission (Taiwan)
GEM	Growth Enterprise Market (China)
HIH	HIH Insurance Ltd
HKEx	Hong Kong Exchanges and Clearing
HKD	Hong Kong Dollar
ID	independent director
IMF	International Monetary Fund
INED	independent non-executive director
IT	information technology
KCC	Korean Commercial Code
KFTC	Korea Fair Trade Commission
KONEX	Korea New Exchange
KOSDAQ	Korean Securities Dealers Automated Quotations
KOSPI	Korea Composite Stock Price Index
LDP	Liberal Democratic Party
MAS	Monetary Authority of Singapore
MBCA	Model Business Corporations Act (US)
METI	Ministry of Economy, Trade and Industry (Japan)
MOF	Minister for Finance (Singapore)
MOJ	Ministry of Justice (Japan)
MoM	majority of the minority vote
MOPS	Market Observation Post System (Taiwan)
MORC	Memorandum of Regulatory Cooperation
MSIL	Maruti Suzuki India Limited
NASDAQ	National Association of Securities Dealers Automated Quotations
NCLT	National Company Law Tribunal (India)
NED	non-executive director
NTD	New Taiwan Dollar
NTS	National Tax Service (Korea)
NTU	National Taiwan University
NYSE	New York Stock Exchange
OD	outside director
OECD	Organisation for Economic Co-operation and Development
OROA	adjusted operating return on assets
OTC	over-the-counter
PAP	People's Action Party (Singapore)
PRC	People's Republic of China
RMB	Renminbi (China)
S&P	Standard & Poors
SEA	Securities and Exchange Act (Taiwan)
SEC	Securities and Exchange Commission (US)
SEBI	Securities and Exchange Board of India

SFIPC	Securities and Futures Investors Protection Center
SFC	Hong Kong Securities and Futures Commission
SFO	Securities and Futures Ordinance (Hong Kong)
SGX	Singapore Exchange
SOE	state-owned enterprise
SME	Small and Medium-Sized Enterprise Board (China)
SMEs	small and medium enterprises
SZSE	Shenzhen Stock Exchange
TIDD	Temasek Independent Director Database (Singapore)
TSE	Tokyo Stock Exchange
TWSE	Taiwan Stock Exchange
UK	United Kingdom
UK Code	Combined Code of Corporate Governance (UK)
US	United States of America
USD	United States Dollar

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