CBR EXTENDED SHAREHOLDER PROTECTION INDEX

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by

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Table of Contents

Part 1: ... 3
Introduction (Priya Lele and Mathias Siems) ... 3
1. Guidelines ... 3
2. Core Variables ... 6
3. Template ... 9
Part 2: ... 10
Countries Coded ... 10
1. Argentina (Pablo Iglesias-Rodriguez, Aurelio Gurrea Martinez) ... 10
2. Belgium (Berk Demirkol, Mathias Siems) ... 14
3. Brazil (Viviana Mollica, Caroline Schmidt) ... 17
4. Canada (Priya Lele, Mathias Siems) ... 21
5. Chile (Pablo Iglesias-Rodriguez, Aurelio Gurrea Martinez) ... 25
6. China (Mathias Siems) ... 28
7. Cyprus (Berk Demirkol, Theodora Dimitrova) ... 31
8. Czech Republic (Stephan Heidenhain, Theodora Dimitrova) ... 33
9. Estonia (Theodora Dimitrova) ... 36
10. France (Mathias Siems) ... 39
11. Germany (Mathias Siems) ... 41
12. India (Priya Lele, Mathias Siems) ... 44
13. Italy (Viviana Mollica) ... 47
14. Japan (Mathias Siems, Ola Polanska) ... 51
15. Latvia (Theis Klauberg, Theodora Dimitrova) ... 54
16. Lithuania (Theodora Dimitrova) ... 58
17. Malaysia (Priya Lele, Akio Hoshi, Mathias Siems) ... 61
18. Mexico (Pablo Iglesias-Rodriguez, Aurelio Gurrea Martinez) ... 64
19. Netherlands (Gerhard Schnyder, Berk Demirkol, Mathias Siems) ... 68
20. Pakistan (Priya Lele, Mathias Siems) ... 72
21. Poland (Ola Polanska, Theodora Dimitrova) ... 74
22. Russia (John Hamilton, Berk Demirkol, Theodora Dimitrova) ... 78
23. Slovenia (Nina Cankar, Theodora Dimitrova) ... 83
24. South Africa (Priya Lele, Akio Hoshi, Mathias Siems) ... 87
25. Spain (Pablo Iglesias-Rodriguez, Aurelio Gurrea Martinez) ... 90
26. Sweden (Gerhard Schnyder, Tove Lundmark Söderberg) ... 94
27. Switzerland (Viviana Mollica, Mathias Siems) ... 97
28. Turkey (Pinar Akman, Melih Sonmez) ... 100
29. United Kingdom (Mathias Siems) ... 103
30. United States (Mathias Siems) ... 105

Part 1:
Introduction (Priya Lele and Mathias Siems)

This dataset has been developed as part of the 'Law, Finance and Development' project at the Centre for Business Research, University of Cambridge, UK.[1] A separate shareholder protection index comprising of 60 variables on a pilot basis for five countries coded the development of the law for a period of 35 years.[2] The present index consists of ten core variables which act as proxies for shareholder protection law in order to code the development of the law for a wider range of countries for a shorter period. The following guidelines were used in the process of coding. The choice of the ten variables is explained in more detail in the two papers accompanying this dataset.[3]

1. Guidelines

The dataset draws on provisions of laws, relevant regulations or codes, and relevant court decisions applicable to or answering the description of each of the core variables set out below. Values were assigned to each individual variable between '0' and '1' for each year and expressed in a tabular form.[4] The scores are expressed as a value between 0 and 1. Here, '0' would stand for no protection or worst protection offered and '1' would stand for the best or maximum protection offered with respect to the particular core variable.

a) Which areas of law to code

This exercise concerns shareholder protection in *listed companies* only. The starting point should therefore be the company law as applicable to listed companies. However, in some cases it may be necessary to take securities law into account, because certain aspects of the protection of shareholders from directors and majority shareholders may be addressed in securities law.[5]

b) Mandatory as well as default rules

Except while coding the variables 4 and 9 (see 2 below), we took into account not only the mandatory law but also the default rules. As far as default rules are concerned, we also considered *corporate governance codes* or takeover codes, if any, so long as, in the jurisdiction in

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[1] For further information on the project see http://www.cbr.cam.ac.uk/research/programme2/project2-20.htm. We gratefully acknowledge funding from the ESRC and the Newton Trust.

[2] See Priya Lele and Mathias Siems, 'Shareholder Protection: A Leximetric Approach' (2007) 7 *Journal of Corporate Law Studies* 17-50 (working paper version available at http://ssrn.com/abstract=897479).

[3] John Armour, Simon Deakin, Prabirjit Sarkar, Mathias Siems and Ajit Singh, 'Shareholder Protection and Stock Market Development: An Empirical Test of the Legal Origins Hypothesis', CBR Working Paper 358 and ECGI Law Working Paper 108/2008 available at http://ssrn.com/abstract=1094355; Mathias Siems, 'Shareholder Protection Around the World ("Leximetric II")' 33 *Delaware Journal of Corporate Law* 111-147 (2008) (working paper version available at http://ssrn.com/abstract=991092).

[4] See the template contained at 3 below.

[5] E.g., while coding for the US, we found that the regulation of proxy voting is to a large extent addressed in federal securities law.

question, these were considered to be at least as important as default rules set out in the legislation.[6]

c) Non-uniform law and listing rules

If the law on shareholder protection is not regulated in a uniform way in a given country because, for instance, it is a *federal state*, we took into account the law for the commercially dominant state, i.e. the state where most of the listed companies are registered and/or listed (and as such is the state whose law governs the majority of the listed companies).[7]

A related problem exists where there is more than one *stock exchange* in one country. Here we chose the dominant stock exchange.[8] The listing rules/requirements could be based on statutory law or on self-regulation of the stock exchange. If, in practice, listed companies cannot escape the relevant listing rules/requirements, we took those into account while coding any aspects of the shareholder protection law contained in the index below, which is to be found in such listing rules/requirements.

d) Statutory and case law

A particular legal rule can be based on statutory law or case law, therefore, for the purposes of this exercise both must be considered. Although in civil-law countries court decisions are not regarded as a *formal* source of law, we took them into account while coding because they can often bring about an effect that is as important as a statutory provision.

Statutory law was normally coded in the year in which it comes into force and case law was coded in the year in which the relevant judgment was delivered and reported. Statutes passed but not yet in force or decisions either secret or expected were not considered for coding.

e) Binary as well as non-binary coding

We used binary as well as non-binary numbers for coding where appropriate. The descriptions of most of the variables in the index (see 2 below) illustrate the use of non-binary coding, however, even where the description of the variable does not mention it specifically, we gave intermediate scores where absolutely necessary. For instance, the statutory law may be ambiguous, or judges may disagree. If no clearly predominant opinion exists, we considered that it was more appropriate to code a variable as '0.5 or some other intermediary score than to decide that either '1' or '0' score is more persuasive.

f) Explanations or references

In the 'Explanation/Reference' column provided in the template below, we have included short explanations or at least references to the provisions of the law or citations of the court

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[6] E.g., while coding for the UK, we took into account the City Code on Takeovers and Mergers and the Combined Code on Corporate Governance, 2003, as well as the Cadbury Committee, Code of Best Practice, 1992, the Greenbury Committee, Code of Best Practice, 1995, and the Hampel Committee, Combined Code of Best Practice, 1998.

[7] E.g. while coding for the US, we have chosen to code the law in the state of Delaware as more than half a million business entities have their legal home in Delaware and it is also home to a majority of US listed companies.

[8] E.g. we considered the NYSE and its rules for the US.

decisions on the basis of which we have assigned values to each of the core variables and for each of the changes in these values over the last eleven years.

g) Comments

In addition to coding the shareholder protection law as per the template, we have provided comments with respect to the following aspects of the coding process.

The core variables included in the index are proxies for shareholder protection law; therefore there may be different legal rules that achieve a similar function in a given country. Therefore, we sought to take into account any legal rules that might not be specifically covered by the core variables in the template, but which in fact achieve a similar function to any of the core variables and to that extent operate as its 'functional equivalent'.

Similarly, there may be other aspects of the shareholder protection law that may have changed significantly in a given country in the subject period which may not be captured by these core variables. In such cases, the coding process made provision for brief comments to be added about these other changes. However, our focus is on the legal rules which address the protection of 'shareholders as such' and not on investors in general. This means that many parts of the securities law were not taken into account in this index. For instance, the rules on insider trading, on public disclosure and transparency of financial information, as well as accounting requirements, are not considered in detail here.[9]

[9] But see variable 10, below.

2. Core Variables

Variables	Description
1. Powers of the general meeting for de facto changes[10]	If the sale of more than 50 % of the company's assets requires approval of the general meeting it equals 1; if the sale of more than 80 % of the assets requires approval it equals 0.5; otherwise 0.
2. Agenda setting power[11]	Equals 1 if shareholders who hold 1 % or less of the capital can put an item on the agenda; equals 0.75 if there is a hurdle of more than 1 % but not more than 3%; equals 0.5 if there is a hurdle of more than 3 % but not more than 5%; equals 0.25 if there is a hurdle of more than 5% but not more than 10 %; equals 0 otherwise. Please also indicate the exact percentage.
3. Anticipation of shareholder decision facilitated[12]	Equals 1 if (1) postal voting is possible or (2) proxy solicitation with two-way voting proxy form[13] has to be provided by the company (i.e. the directors or managers); equals 0.5 if (1) postal voting is possible if provided in the articles or allowed by the directors, or (2) the company has to provide a two-way proxy form but not proxy solicitation; equals 0 otherwise.
4. Prohibition of multiple voting rights (super voting rights)[14]	Equals 1 if there is a prohibition of multiple voting rights; equals 2/3 if only companies which already have multiple voting rights can keep them; equals 1/3 if state approval is necessary; equals 0 otherwise.
5. Independent board members[15]	Equals 1 if at least half of the board members[16] must be independent; equals 0.5 if 25 % of them must be independent;[17] equals 0 otherwise

[10] We have not included other powers of the general meeting (e.g. for amendments of the articles, mergers and division) because they usually do not differ between countries.

[11] If the law of a given country does not provide the right to put an item on the agenda of a general meeting (including annual general meeting), we coded the right to call an extraordinary general meeting provided the minority shareholders can utilise this right to discuss any agenda.

[12] It is not enough that proxy voting is possible (which is the case in most countries anyway).

[13] A two-way proxy form refers to a form which can be used in favour and against a proposed resolution.

[14] This may be regulated in securities law (incl. listing requirements).

[15] This may be regulated in a corporate governance code (see 1 b, above). If there is no 'comply or explain' requirement, this may, however, justify a lower score.

[16] It may be noted that (1) in a two-tier system this variable concerns only members of the supervisory board (not the management board); (2) if the law of a given country does not require that a certain percentage of the board must be 'independent', but if it provides that the members of some special committees of the board need to be independent (e.g. compensation and audit committee), so that it indirectly prescribes that some of the board members be 'independent', a lower score was assigned here.

[17] Other intermediate scores are also possible. They are calculated in the same way, i.e. *score = percentage of independent board members*/2; If the law requires a fixed number of independent directors (e.g., always 2 independent directors), please use the (estimated) average size of boards in order to calculate the score.

6. Feasibility of director's dismissal	Equals 0 if good reason is required for the dismissal of directors;[18] equals 0.25 if directors can always be dismissed but are always compensated for dismissal without good reason;[19] equals 0.5 if directors are not always compensated for dismissal without good reason but they could have concluded a non-fixed-term contract with the company;[20] equals 0.75 if in cases of dismissal without good reason directors are only compensated if compensation is specifically contractually agreed; equals 1 if there are no special requirements for dismissal and no compensation has to be paid. Note: If there is a statutory limit on the amount of compensation, this can lead to a higher score.
7. Private enforcement of directors duties (derivative suit)[21]	Equals 0 if this is typically excluded (e.g., because of strict subsidiarity requirement, hurdle which is at least 20 %); equals 0.5 if there are some restrictions (e.g., certain percentage of share capital;[22] demand requirement); equals 1 if private enforcement of directors duties is readily possible.
8. Shareholder action against resolutions of the general meeting[21]	Equals 1 if every shareholder can file a claim against a resolution by the general meeting;[23] equals 0.5 if there is a threshold of 10 % voting rights;[24] equals 0 if this kind of shareholder action does not exist.

[18] If the law of a given country follows a two-tier-system, this variable is addressed to both the management and the supervisory board.

[19] This variable can be based on a specific provision in statutory or case law. It can also be based on contract, for instance, if the company has to conclude an employment contract with the director and this contract cannot be terminated without a good reason.

[20] This restricts dismissal because either (1) an immediate unilateral termination of this contract may not be possible or (2) the directors have to be compensated in case of immediate unilateral termination of this contract.

[21] Variables 7 and 8 only concern the law. We did not consider here the efficiency of courts in general while coding these variables.

[22] We have also given intermediate scores, e.g., 0.75 for a 1% hurdle, 0.25 for a 10 or 15% hurdle. A 5% hurdle led to the score 0.5.

[23] Please note that the substantive requirements for a lawful decision of the general meeting are not coded.

[24] We have also given intermediate scores, e.g., 0.25 for a hurdles of 20% and 33% (considering further details).

9. Mandatory bid[25]	Equals 1 if there is a mandatory public bid for the entirety of shares in case of purchase of 30% or 1/3 of the shares; equals 0.5 if the mandatory bid is triggered at a higher percentage (such as 40 or 50 %); further, it equals 0.5 if there is a mandatory bid but the bidder is only required to buy part of the shares; equals 0 if there is no mandatory bid at all. Please also indicate the exact percentage.
10. Disclosure of major share ownership[26]	Equals 1 if shareholders who acquire at least 3 % of the companies capital have to disclose it; equals 0.75 if this concerns 5 % of the capital; equals 0.5 if this concerns 10 %; equals 0.25 if this concerns 25 %; equals 0 otherwise Please also indicate the exact percentage.

[25] This variable may be regulated in securities law or takeover code/law.

[26] This variable may be regulated in securities law.

3. Template

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2012	2013
1																							
2																							
3																							
4																							
5																							
6																							
7																							
8																							
9																							
10																							

Comments (see 1 g, above)

Part 2:
Countries Coded

1. Argentina (Pablo Iglesias-Rodriguez, Aurelio Gurrea Martinez)

Legal sources: Companies Act 1972 (*Ley 15.550/1972 de Sociedades Comerciales*); Stock Market Act 2012 (*Ley 26.831/2012 de Mercado de Capitales),* in force since January 2013; Decree 1023/2013 on Regulation of the Stock Market Act (*Decreto 1023/2013 que reglamenta la Ley de Mercado de Capitales 26.831/2012*)*;* Decree 677/2001 on Transparency of capital markets (*Decreto 677/2001 de Régimen de transparencia y oferta pública*), in force until January 2013; Public Bids Act 1968 (Ley 17.811 de 16 de julio de 1968), in force until January 2013; General Resolution 368/2001 issued by the Securities and Exchange Commmision (*Resolución General 368/2001 emitida por la Comisión Nacional de Valores*); General Resolution 400/2002 issued by the Securities and Exchange Commmision (*Resolución General 400/2002 emitida por la Comisión Nacional de Valores*); General Resolution 401/2002 issued by the Securities and Exchange Commmision (*Resolución General 401/2002 emitida por la Comisión Nacional de Valores*); General Resolucion 290/1997 issued by the Securities and Exchange Commission (*Resolución General 290/1997 emitida por la Comisión Nacional de Valores*); General Resolution 493/2006 (*Resolución General 493/2007 emitida por la Comisión Nacional de Valores*); General Resolution 516/2007(*Resolución General 516/2007 emitida por la Comisión Nacional de Valores*), in force until December 2011; General Resolution 606/2012 (*Resolución General 606/2012 emitida por la Comisión Nacional de Valores*), in force since January 2012.

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	*2013*[1]
1	0	0	0	0	0	0	0	0	0	0	0	0.5[2]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
2	0.5[3]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.75[4]	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75

[1] Coded in October 2013.

[2] **[variable 1]:** Until 2001, no legal provisions conerning these powers existed. However, from May 2001, article 72 of Decree 677/2001 established that, in listed companies, the ordinary meeting shall decide on the disposition or encumbrance of all or a substantial part (no specific percentage is given) of the company´s assets when it is not carried out in the ordinary course of the company´s business.

[3] **[variable 2]:** No dispositions concerning this right exist. Yet, according to article 236 of Companies Act 1972, shareholders with at least 5% of the share capital, or a lower percentage, if established by the articles of association, could call a general meeting, specifying the items to be discussed on it.

[4] Article 71 of Public Bids Act 1968, incorporated by article 42 of the annex of Decree 677/2001, established that up to five days before the general meeting shareholders with at least 2% of the share capital with voting rights in companies which make a public offering of their shares, can send commentaries or proposals to be introduced in the meeting. From January 2013 onwards this provision is contained in article 70 of the Stock Market Act 2012 (Spanish version available here).

3	0[5]	0	0	0	0	0	0	0	0	0	0	0	0	0	0.25[6]	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25
4	0.5[7]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
5	0	0	0	0	0	0	0	0	0	0	0	0	0.25[8]	0.25	0.5[9]	0.5	0.5	1	1	1	1	1	1	1
6	0.5[10]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5

[5] **[variable 3]:** According to article 239 of the Companies Act 1972, shareholders can be represented in general meetings. The representatives cannot be directors, members of the supervision committee, managers or any employees of the firm. The power of representation can have a form of a private document with a certified signature, unless the articles of association establish a different form. No mention of proxy solicitation or two way proxy form was made. However, article 65 of the Decree 677/2001 established that articles of association can provide for the possibility of general meetings at distance (since January 2013, Stock Market Act 2012); in these cases the National Securities Commission must regulate the means and conditions in order to guarantee the security and transparency of such meetings. It is understood that for these types of meetings, distance voting would be allowed, as the meeting itself would require it. However, neither General Resolution 400/2002 nor General Resolution 401/2002 (both regulating the Decree 677/2001) contain any mention of this kind of general meetings.

[6] Section 4.3.4 of the Corporate Governance Code 2004 established that companies should facilitate proxy mechanisms to shareholders (and according to section 4.3.6, companies should facilitate voting mechanisms to shareholders). However, they do not establish any specific provisions.

[7] **[variable 4]:** According to the article 216 of Companies Act 1972, the articles of association can create shares with up to 5 votes per ordinary share. This privilege is not compatible with other economic privileges. According to the second paragraph of this article, it is not possible to create shares with multiple voting rights after the company has been authorized to make a public offering of its shares. Therefore, listed companies may have shares with multiple voting rights provided that these privileged shares were issued before the IPO.

[8] **[variable 5]:** Until 2004, the only requirement concerning independence was related to the members of the audit committee. This type of committee must be adopted in any company which makes a public offer of its shares and must have at least three members, who must also be directors of the company. This committee should have at least 50% of independent directors (article 15 of Decree 677/2001; the definition of independence has been established by the Securities and Exchange Commission, provided in article 4 of General Resolution 400/2002). It should consist of at least 3 or more directors. Therefore, assuming that (i) at least 2 directors should be members of the audit commitee, (ii) these directors should also be 'independent' in order to fulfill their duties in accordance with the independence rule established for the audit committee, and (iii) the average number of directors in Argertine listed companies are 9, we will assume that listed companies may have at least 0.25 % of independent directors. Yet, since this is not a strictly binding requirement a lower score has been assigned.

[9] According to article 1.2. a) of the Corporate Governance Code 2004 (applicable since January 2004; available here in Spanish), the board of directors should consist of at least 50% of independent directors. Until 2012, this was pure soft law, i.e. there was no requirement by law to "comply or explain" with the code. However, according to General Resolution 606/2012, the Corporate Governces rules are mandatory for all listed companies since 2012. However, directors of listed companies already had to report about the degree of compliance with corporate governance rules since 2007 (see General Resolution 493/2006 and General Resolution 506/2007).

7	0.5[11]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5[12]	0.5	0.5	0.5	0.5
8	1[13]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
9	0	0	0	0	0	0	0	0	0	0	0	0	0.5[14]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5[15]
10	0	0	0	0	0	0	0	0.75[16]	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75

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[10] **[variable 6]:** According to Article 256 of the Companies Act 1972, the nomination of a director is revocable by the general meeting (namely, the general ordinary meeting, according to article 235 of the same Act). The articles of association cannot limit the revocability of the nomination of directors. Thus, it can be inferred that neither serious cause nor supermajority requirements are required for the dismissal of a director. In these cases the shareholders have to wait until the general meeting takes place (unless the general meeting is called by shareholders with at least 5% of the share capital [article 236 of Companies Act 1972], at which point they can proceed to the dismissal of the directors). However, the dismissal may imply high compensation.

[11] **[variable 7]:** Article 276 of Companies Act 1972 established that bringing of a claim against the directors of a company lies within the competences of that company, where this has been previously agreed by the general meeting. However, shareholders with at least 5% of the share capital can start a derivative suit against the directors for the breach of their duties.

[12] According to article 75 of the Decree 677/2001, a derivative claim may also be made by individual shareholders (under the provisions of article 216 of the Companies Act 1972 this means those owning at least 5% of the share capital) against the directors, on the company's behalf.

[13] **[variable 8]:** Article 251 of Companies Act 1972 states that any resolution of the general meeting which is contrary to law or regulations, or to the articles of association, can be the object of a judicial claim (calling for its nullity) by the shareholders who did not vote for it at the general meeting (except in the case of a resolution contrary to law, in which case the vote can be annulled) and by those shareholders who were not present at the general meeting.

[14] **[variable 9]:** The thresholds for a mandatory bid are set out in Regulation 401/2002 (following the general mandate established in article 23 of Decree 677/2001; effective from March 2002) and are as follows:

Target ownership %	Mandatory bid
≥35% of the shares with voting rights and/or the votes of the company (1)	≥50% of the share capital with voting rights
≥51 of the shares with voting rights and/or the votes of the company	100% of the share capital with voting rights

Note: (1) When the shareholder already has an ownership stake equal or higher than 35% of the share capital with voting rights and/or voting rights, but below 51%, and aims to increase the % by at least 6% during a period of 12 months, a bid must be made for at least the 10% of the share capital with voting rights.

[15] Since January 2013, this general mandate is contained in article 86 of Stock Market Act 2012 (in force since January 2013).

[16] **[variable 10]:** Article 12 of Book 6 of General Resolution 368/2001 (on the rules of the National Securities Commission) establishes a complex rule concerning the disclosure of information which can be summarised thus: acquiring (directly or indirectly) ownership of 5% or any of its multipliers must be communicated to the National Securities Commission. Aticle 10, book 7 of the former General Resolution 290/1997 (effective from August 1997) reflects the same percentage (without specifying the multipliers). No requirements on this matter were established before this date.

2. Belgium (Berk Demirkol, Mathias Siems)[1]

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	*2013*[2]
1	0	0	0	0	0	0	0	0	0	0	0	0[3]	0	0	0	0	0	0	0	0	0	0	0	0
2	0[4]	0	0	0	0	0	0	0	0	0	0	0	0	0	0.25[5]	0.25	0.25	0.25	0.25	0.25	0.5[6]	0.5	0.75[7]	0.75
3	0[8]	0	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5[9]	0.5

[1] Preliminary remarks: On 7 May 1999, the Belgian Parliament adopted a new Company Law. This Law came into force on the 6 February 2001 and is available in French here). The old provisions on the companies belong to the law enacted in 1935, which constituted Part IX of the Commercial Code. The Belgian Corporate Governance Code is "a formal expression by the representatives of the corporate leaders in Belgium of their commitment to create standards and benchmarks against which corporate behaviours and structures can be judged by insiders and outsiders. ... Transparency will stimulate compliance with the Code because it will be harder and harder to justify deviations from the Code if the Code is seen by corporate leaders and society as representing the best practice to organize good governance in listed companies." Still, the Code is based on voluntary compliance recommendations.

[2] Coded in October 2013.

[3] **[variable 1]:** Commercial Code Part IX Art. 103 / since 2001: Code des Sociétés (Company Law (CL) Art. 633 requires that the general meeting is called in case the active amount of the company reduces below half of the capital. Changing company objectives requires 4/5 of the votes in accordance with CL Art. 413. Neither of these two provisions address the topic of this variable.

[4] **[variable 2]:** Commercial Code Part IX Art. 73; CL Art. 532 states that shareholders representing 20% of the capital may call the general meeting.

[5] Corporate Governance Code (2009, available here) Art. 8.8 recommends that the level of shareholding for the submission of proposals by a shareholder to the general meeting should not exceed 5% of the share capital. Same provision exists in Art 8.9. of the 2004 Code.

[6] Since the 2010 Corporate Governance Law (Loi du 6 avril 2010 visant à renforcer le gouvernement d'entreprise dans les sociétés cotées et les entreprises publiques autonomes et visant à modifier le régime des interdictions professionnelles dans le secteur bancaire et financier), mandatory "comply or explain" requirement. See also the FSMA's communication here.

[7] Since 1.1.2012: CL Art. 533ter determines as shares representing 3% of the capital the threshold to request putting an item on the agenda in listed companies.

[8] **[variable 3]:** Until the amendment in 1991, which entered into force on 2.1.1992, there was no provision on postal voting, nor on proxy solicitation. With the 1991 amendment, the Old Commercial Code Part IX Art. 74(4) provided that the articles of incorporation might permit all shareholders to vote by letter. The amendment also envisaged that the request to grant a proxy and public solicitation to grant proxies might be done under some conditions. In the CL, this last provision is kept in Art. 549.

[9] CL Art. 550 provides that the articles of incorporation might permit all shareholders to vote by letter. This new provision entered into force in 1.1.2012, providing that articles might permit shareholders to vote electronically.

4	1[10]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
5	0	0	0	0	0	0	0[11]	0	0	0	0	0	0	0	0.33 [12]	0.33	0.33	0.33	0.33	0.44 [13]	0.66 [14]	0.66	0.66	0.66
6	0.75 [15]	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75

[10] **[variable 4]:** Before the amendment in 1991, the old Commercial Code Part IX Art. 74(3) provided that each share representing the same amount of capital confers the same amount of voting rights. Shares representing different amount of the capital confer proportional voting rights. This article moved to Art. 74bis(2) following the 1991 amendment. CL Art. 541 envisages the same provision.

[11] Old Commercial Code Part IX Art. 60bis, which entered into force on 1.7.1996, stated that: "for companies whose securities are included on the official list of a securities exchange established in a Member State of the EU, decisions within the authority of the board of directors which could give rise to a direct or indirect financial advantage to a shareholder with a decisive or significant influence on the appointment of the directors of such company shall be subject to the following procedure. The board of directors of the company concerned shall charge three board members who are chosen because of their independence with regard to the decision or the envisaged transaction and who will be assisted by an expert who is chosen for the same reason, with making a description of the financial consequences for the company concerned of the decisions or the considered transaction and a reasoned evaluation thereof..." Similarly, CL Art. 524 provides that some decisions of the board need to have the approval of a committee composed of three independent administrators, which is assisted by independent experts.

However, this provision did not envisage independent board members; it was merely requiring that a specific decision would be discussed by the board members who could stay independent to the decision, i.e. it is akin to provisions on approval by non-interested directors for certain transactions, not coded here.

[12] **[variable 5]:** In the Corporate Governance for Belgian Listed Companies (The Cardon Report 1998, available here), it has been recommended that a number of non-executive directors should be independent (Art. I.B.2.2). Specifically addressed to companies are the Corporate Governance Code (2004) Art. 2.2 and the Corporate Governance Code (2009) Art. 2.3, which recommend that at least three directors are independent. This conveys a recommendation that approximately one third of the board members should be independent, given that the average board size is approx. 9 (see Van Elst's comment here at page 7).

[13] CL Art. 526bis, which entered into force in January 2009, requires that listed companies have an audit committee in the board of directors. Para. 2 obliges that at least one member of the committee is an independent administrator. Thus, listed companies shall have at least 1 independent director.

[14] Art. 526quater, which entered into force in May 2010, requires the listed companies to have a remuneration committee in the board of directors. The majority of members of this committee shall be independent. Thus, boards shall have at least 1 independent director + half of another committee must be independent (which means that they shall have at least 2 independent directors). In addition, since 2010 (see supra note 5) there is a mandatory "comply and explain" in the corporate governance code: thus, the coding has considered three board members as independent (see note 11, above).

[15] **[variable 6]:** In accordance with the Old Commercial Code Part IX Art. 53 and 55, the directors may be dismissed at any time by the general meeting (by a simple majority vote). This rule has an imperative power; any provision of articles of incorporation violating this provision is void (Cassation, 13 April 1989, Tijdschrift voor Rechtpersoon en Vennootschap (1989), p. 321). The directors are not considered to be bound to the company with a labor contract.

Same provision in CL Art. 518(3). Yet there is nothing that prevents a separate contract providing for compensation in case of a dismissal.

7	0	0.75[16]	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.5[17]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
8	0	0	0	1[18]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
9	0.5[19]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	1[20]	1	1	1	1	1
10	0.75[21]	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75

[16] **[variable 7]:** The old Commercial Code Part IX Art. 62 provides that the directors are liable to the company and to third parties for any loss resulting from a breach of the provisions of Company Law or the articles of the association. Art. 66bis(2) allows that an action may be instituted for the account of the company by minority shareholders. The minority shall hold securities representing not less than 1% of the votes vested in the total number of securities outstanding on the date of the institution of the claim or who, on the same date, hold securities representing such part of the capital as has a value of not less than 50 million Belgian francs. Art. 66bis was inserted on 18.7.1991.

[17] CL Art. 416, which entered into force in January 2002, provides that the minority may initiate an action against the administrators for the account of the company. For that action, the minority shall hold at least 10% of the voting rights or shares with a nominal value of EUR 1.250.000 at the date of institution of the claim (thus, this justifies a higher score than if there had just been a 10% hurdle).

Another condition in the new and previous text other than the threshold-based on share holding is that those shareholders who institute an action should not have approved the discharge from liability of the administrators.

[18] **[variable 8]:** In accordance with the old Commercial Code Part IX Art. 190bis, which entered into force in October 1993, and CL Art. 178, any interested party may initiate an action against the resolutions of the general meeting.

[19] **[variable 9]:** Art. 41 of the Royal Decree of 8 November 1989 provides that when the control of a company is acquired at a price higher than the market price, the new controller must propose to the remaining shareholders to buy their securities at the same price as the securities previously acquired if only one transaction occurred.

[20] In accordance with Art. 5 of the Law of 1 April 2007 (Loi relative aux offres publiques d'acquisition, available in French here), as from 1 September 2007, a person or a company that, either alone or in conjunction with third parties, directly or indirectly, acquires more than 30% of the voting securities issued by an offeree company admitted to a regulated market must make a bid for all securities giving access to a right to vote.

[21] **[variable 10]:** The Law on the disclosure of major share ownership (Loi relative à la publicité des participations importantes dans des émetteurs dont les actions sont admises à la négociation sur un marché réglementé et portant des dispositions diverses) entered into force in January 2008. Art. 6 provides that shareholders who reach the 5% hurdle or a larger amount of the total voting rights of the company shall disclose such information. There is de novo an obligation of disclosure at each 5% split. The Law brings an obligation of disclosure in case of direct/indirect control and in case of unison with shareholders.

Same provision exists in the Law on the disclosure of major share ownership in listed companies, which entered into force in 1989.

3. Brazil (Viviana Mollica, Caroline Schmidt)

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	*2013*[1]
1	0[2]	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2	0.5[3]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75

[1] Coded in October 2013.

[2] **[variable 1]:** Concerning the selling of relevant assets of corporations, duties of loyalty and rules on the misuse of powers are set out in articles 153 to 159 of Law 6404/76 (Corporations Act, available here) and Instruction 31/84 of the Securities and Exchange Commission (CVM, in Brazilian Portuguese), later revoked by CVM's Instruction 358/2002 with new wording given by CVM's Instrution 369/02. As a general rule, managers must act with due diligence and in the interest of the company and relevant disclosure – brief description of the operation and its effects on the company – must be made. Relevant disclosure is regulated by article 157, § 1, e, of Law 6404/76 and article 2, of CVM Instruction 358/2002 and includes, among others, signing agreements for transfer of control of the company (article 2, sole §, I) and merger or spin-off involving the company or related companies (article 2, sole §, VII).

Abuse of power is regulated by Law 6404/76 and it includes operations where the controlling shareholder acts in disadvantage to the profits or assets of minority shareholders (Article 117, § 1, a). More recently, CVM's Instruction 323/2000 has futher regulated this matter and considered abuse of controlling power over the selling of assets, depositing them as guarantee and transferring corporate activities, if such operations result in advantages to the controlling shareholder (article 1, III). Article 11 of Law 6.385/76, which regulates the securities market, gives CVM the right to impose penalties on violators of the Corporation Law and CVM's resolutions.

The general meeting is empowered to decide all matters relating to corporate purposes and to pass such resolutions as it deems necessary for the protection and development of the corporation (article 121, Law 6404/76), esp. those concerning fundamental changes. Fundamental corporate changes may include: amendments to statutes or governing documents of the company; authorization of additional shares; and extraordinary transactions that result in the sale of the company (article 122, Law 6404/76).

[3] **[variable 2]:** Article 123 of the Corporation Law determines that it is up to the administrative council or to the directors to summon a general meeting and to propose issues for discussion. However, under special circumstances listed below, there are exceptions: following the law on by-law provisions, a general meeting may be called by any shareholder whenever the officers delay the call for more than sixty days (Id., sole paragraph, b);

Shareholders representing at least five per cent of the corporation's capital may request to the corporation officers that a general meeting, indicating the matters to be discussed, take place; should the officers not comply with the request within eight days, the above mentioned shareholders may call the general meeting (Id., article 123, sole paragraph, c, directly modified in 1997 by Law nº 9.457);

Shareholders representing at least five per cent of the voting capital, or five per cent of non-voting shareholders, may call a general meeting whenever the corporation officers do not, within eight days, comply with the request that a meeting be called in order to appoint a statutory audit committee. (Id., article 123, sole §, d, provision included by the 1997 law).

3	0[4]	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0.5[5]	0.5	0.5
4	1[6]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
5	0	0	0	0	0	0	0	0	0	0.5[7]	0.5	0.5[8]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
6	0.5[9]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5

CMV Recommendation on corporate governance 2002 at part I.1 states that: 'Regardless of the percentage required by law for calling shareholder meetings, the board should include in the agenda relevant and timely issues suggested by minority shareholders.' This is a 'moral suasion' type of code; in the recitals to the code there is a reference to an intention to make it a 'comply or explain' code, yet this has not yet happened (nor is this the case for the private Brazilian Institute of Corporate Governance (IBGC); for those see also note 6, below).

[4] **[variable 3]:** Personal attendance by the shareholder or a proxy is required by law (article 126, Law 6404/76). Shareholders must vote in person, duly producing proof of shareholder status, or be represented by a proxy, who may be a shareholder, a corporation officer, or a lawyer; in a publicly held corporation, the proxy may also be a financial institution. The power of attorney must date back no more than one year. The proxy application, by mail, or published notice, must follow specific requirements, such as contain all the information required for the voting application. Legal representatives of shareholders are also entitled to vote at general meetings, while there is no reference to telephone and electronic voting options.

[5] In June 2011, a single paragraph was included in the Corporations Act under article 127, by Law 12.431, establishing that shareholders who registered their presence as "away", as regulated by the CVM, are to be considered present at the general meeting. To this date, CVM has not formally regulated this article but has informed that companies can only exercise this voting option when making the option available to all shareholders, securing voting rights and by making possible later verification (Ofício Circular/CVM/SEP- n.002/12, 26/03/12).

[6] **[variable 4]:** Article 110 § 2 of the Corporations Act prohibits the attribution of plural voting right to any class shares.

[7] **[variable 5]:** The Code of Best Practice of Corporate Governance (Código de Melhores Práticas de Governança Corporativa) issued by IBGC (the Brazilian Institute of Corporate Governance) in May 1999 and revised in 2001, 2004, and 2009 states specifically that the majority of board members must be independent (item 2.12; in the 2009 version: item 2.16). IBGC's Code states that in listed companies the majority or all members should be independent; while in family companies it is acceptable that some members are not independent (item 2.12). CMV Recommendation on corporate governance 2002 in part II.1 states that as many board members as possible should be independent of the company management. Yet, as none of these codes falls under a "comply or explain" requirement (see note 2, above), a lower score was awareded.

[8] Article 147, § 1, of Law 6404/76 considers individuals convicted of bankruptcy crime, malfeasance, bribery, embezzlement against the economy, public faith or property as ineligible for the post of directors of the company. In 2001, paragraph 3 was added to article 147 stating that directors shall have unblemished reputations and are ineligible for election, unless an applicable waiver is granted by the general meeting in the following cases: item I – having a position in a competing company, especially on a management board or advisory or finance committees; and item II – conflicting interests with the company.

[Among the 30 companies that receive a Level 1 or Level 2 certification from BOVESPA, less than one third have an independent director on the board. Source: IBGC 2001].

7	0.5[10]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
8	0.5[11]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
9	1[12]	1	1	1	1	1	1	0	0	0.5	0.5	0.5	1[13]	1	1	1	1	1	1	1	1	1	1	1

[9] **[variable 6]:** Art. 122, II, of Law 6404/76, as modified by the 2001 law, confers on the general meeting the power to dismiss at any time the administrators and supervisors of the company. The Board of Directors have the competence to dismiss the directors of the company (article 142, II), but in these cases bylaw provisions should be observed (article 142, II). Claims for compensation are possible in case of fixed term contracts or explicit agreements.

[10] **[variable 7]:** According to Article 159 of Law 6404/76, by a resolution passed in a general meeting, the corporation may bring an action for civil liability against any officer for losses caused to the corporation's property. This resolution may be passed at an annual general meeting and, if included in the agenda or arising directly out of any matter included therein, at an extraordinary general meeting (Id., § 1). In this case, the officer or officers against whom the legal action is to be filed shall be disqualified and replaced at the same general meeting (Id., § 2). Should the general meeting decide not to institute proceedings, they may be instituted by shareholders representing at least five per cent of the capital (Id., § 4). Should such proceedings not be instituted within three months from the date of the resolution of the general meeting, any shareholder may bring the action (Id., § 3). In this case, any damages recovered by proceedings instituted by a shareholder shall be transferred to the corporation, but the corporation shall reimburse him for all expenses incurred, including monetary adjustment and interest on his expenditure, up to the limit of such damages (Id., §5).

The action described above shall not preclude any action available to any shareholder or third party directly harmed by the acts of the officer (Id., article 159, § 7). Should such action constitute a material event according to CVM's Instruction 358/2002, article 2, it must be disclosed to shareholders through the newspaper (Id., article 3).

[11] **[variable 8]:** The Corporations Act recognises that bylaws and general meetings cannot restrict the shareholder's rights to take legal action as provided by the law (Id., article 109, §2). Art. 117, caput, of Corporations Act states that the controlling shareholder is held responsible for damages caused through 'abuse of powers' behaviours (listed in § 1). According to Art. 115 of Law 6.404/76, the shareholder needs to exercise his voting right in the interest of the company. It will be considered an abusive exercise of a voting power for a vote to be cast with the intention to cause damage to the company or other shareholder, or to obtain, either for himself or others, some unjust advantages that may result in a damage caused to the company or another shareholder as amended by Law nº 10.303, de 31.10.2001. Article 115, paragraph § 4 stated that the resolution taken with the vote of a shareholder who exercises it as an abuse of power is voidable and the shareholder will be held responsible for it, and will have to transfer the advantages received to the company. Thus, overall, the position is a mixed one: some but not all violations of the general meeting can be challenged by shareholders.

[12] **[variable 9]:** Prior to the partial reform of the Corporation Law, introduced by Law 9457/97, the acquirer of a controlling stake in public companies was required by article 254 to make a tender offer for the purchasing of voting shares owned by minority shareholders, at the same price and on the same conditions as those offered to the selling controlling shareholder. The whole operation was subject to CVM approval (Id. § 3). Under the new system designed to facilitate the privatization process (in force since May 1997), tender offers were no longer necessary.

[13] Subsequently under CVM Instruction 299/1999, with amendments done by CVM IN 345/00, mandatory offer rules were reinstated: in particular, mandatory open market tenders were introduced for any increase of 10% or higher in the same class (article 12). New art. 254 A introduced by Law 10303/01 (in force since January 2002, available here) reestablished the mandatory bid rule in corporate law. It does not refer to any particular percentage, only to the 'acquisition of control' of the

10	0.75[14]	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75

Comments:

- Law 10.303, 2001 made a series of changes in the Corporations Act: Shareholders' representing 15% minimum of the voting shares are entitled to elect one Board member. Shareholders with non-voting shares, representing 10% minimum of the issued stock are also entitled to appoint one Board member. Regardless of the number of members on the Board, the controlling shareholder will be entitled to elect the majority of Board members.
- Mandatory disclosure is determined by: CVM Instruction 202/93, consolidated version with amendments done by various CVM instructions until CVM IN 373/2002, which covers initial registration requirements and periodic reporting; Instruction 358/2002, with amendments done by CVM IN 369/2002, which covers disclosure of material information; and Instructions 299/99, with amendments done by CVM IN 345/00, which cover disclosures regarding the acquisition of blocks of shares. The CVM regularly publishes a list of major violations of organizations' disclosure requirements.
- The new 2001 Law makes specific reference to the possibility of a solution of conflicts among shareholders or between the company and any shareholder by means of arbitration, by including § 3, in the article 109 of Law 6.404/76.
- Brazilian corporate law already provides a mechanism for cumulative voting (multiple voting) for minority voting shareholders who have 10% of the voting capital of the company. In fact, Art. 141, caput, states that whether or not provided for in the bylaws, when electing members of the board, shareholders representing at least one-tenth of the voting capital may request that a multiple voting procedure is adopted to entitle each share to as many votes as there are board members, and to give each shareholder the right to vote cumulatively for only one candidate or to distribute his votes among several candidates.

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company (New Article 4, § 6, provides that if the majority shareholder, or the controlling corporation, acquires shares of a publicly-held corporation under its control, and these shares directly or indirectly increase their interest in a certain class of shares in a way that hinders the market liquidity of the remaining shares, they shall be required to publicly offer to purchase all shares remaining in the market). The Tag Along right grants to minority shareholders of publicly-held companies the right to be bought out at 80% of the purchase price offered to the controlling shareholder.

[14] **[variable 10]:** CVM Instruction 202/93, consolidated version including amendments until later changes done by CVM IN 373/2002, rules that publicly held companies must provide and update the CVM with several data through different forms. The 'IAN' (annual information) form, which must be filed by all publicly held companies with the CVM annually, provides many types of information, including those on beneficial ownership of every shareholder holding exceeding 5% of the voting capital of a company. The changes introduced by CVM IN 245/96, in the IN 202/93, article 7, include item II, requiring general ownership disclosure, also requiring a nominal list of shareholders with their respective number of shares. CVM Instruction 299, first published and enacted on February 9, 1999 requires disclosure to sales of 5% (or higher) blocks of any class of shares (article 6).

4. Canada (Priya Lele, Mathias Siems)

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	*2013*[1]
1	0.75[2]	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75
2	1[3]	1	1	1	1	1	1	1	1	1	1	1[4]	1	1	1	1	1	1	1	1	1	1	1	1
3	0.5	0.5	0.5	0.5	0.5	0.5[5]	0.5	0.5	0.5	0.5	0.5	0.5[6]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
4	0[7]	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
5	0[8]	0	0	0	0	1[9]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1

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[1] Coded in May 2013.

[2] **[variable 1]:** Canada Business Corporations Act (CBCA, available here), s. 189(3): A sale, lease or exchange of all or substantially all the property of a corporation other than in the ordinary course of business of the corporation requires the approval of the shareholders in a general meeting by a special resolution. There is some jurisprudence on the issue of what constitutes 'all or substantially all' the property of the corporation. The issue does not appear susceptible to precise mathematical calculation: Wood v. MNR (1987) 87 D.T.C. 312 (T.C.C.). Both the quality as well as the quantity of a property in question must be examined: Warden Drilling Co. v. MNR (1974) 74 D.T.C. 6164 (F.C.T.D.): affd 78 D.T.C. 6202 (F.C.A.). It seems that a sale of as little as one third of the company's assets might trigger the operation of s.189(3): 85956 Holdings Ltd. v. Fayerman Brothers Ltd. (1985),46 Sask.R. 75 (C.A.). Such extreme cases occur when the assets are monetary, including cash, promissory notes or an investment portfolio. On the other hand, where a corporation carries on one or more businesses, the sale of such a business would not cause the provision to become operative, provided that the corporation retains its business assets: Olympia and York Enterprises Ltd. v. Hiram Walker Resources Ltd. (1986) 59 O.R. (2d) 254; Martin v. F.B. Bourgault Industries Air Seeder Division Ltd. (1987) 45 D.L.R. (4th) 296 (Sask.). [See Company Law of Canada, Fraser & Stewart, Sixth Edition, 1993: by – Harry Sutherland, Q.C. Carswell Thomson Professional Publishing – pg.574].

[3] **[variable 2]:** CBCA, s. 137: any shareholder entitled to vote at an annual meeting may submit a notice to the corporation of any matter he proposes to raise at the meeting.

[4] Provision amended in November 2001: adding CBCA, S. 137, subs. 1.1 with S. 46 of Canada Business Corporations Regulation (CBRC, available here), requiring one percent of the total number of a corporation's outstanding voting shares, or whose fair market value is at least $2 000.

[5] **[variable 3]:** CBCA, ss. 149-150: in case of corporations with 50 or more members (former rule: 15 or more), management is required to send a two-way proxy form that could be accompanied by a solicitation by or on behalf of the management (see CBRC, S 54 and corresponding circular for form). See also: Ontario Securities Act (OSA, available here), s.85; and Alberta Securities Act (ASA), s.127; British Columbia Securities Act (BCSA), s.117 (1) and Québec Securities Act (QSA), s.81.

[6] From November 2001: Amended ss.149-150 and s.141: in addition to two-way proxy form with or without solicitation by or on behalf of the management, the management may facilitate voting entirely by means of a telephonic, electronic or other communication facility if they make available such a communication facility (see s.141(3)).

[7] **[variable 4]:** CBCA, s. 24: it is possible to have multiple voting rights.

6	0.5[10]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
7	1[11]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1

[8] **[variable 5]:** CBCA, s.102 (2) – corporations that have distributed shares to the public must have a minimum of three directors, at least two of whom are 'outside' (i.e. not officers or employees) directors. Yet, this does not prescribe independence.

[9] As the largest Canadian public companies are listed on the Toronto Stock Exchange (TSX), we have taken into account corporate governance disclosure requirements of the TSE for this variable. In 1994 the Toronto Stock Exchange (TSE) published: 'Where Were The Directors? Guidelines for Improved Corporate Governance' [(Dec. 1994) the 'Dey Report', available at http://www.ecgi.org/codes/documents/dey.pdf]. The TSE introduced governance disclosure requirements to implement the Dey Report adopting the Committee's 14 recommendations as best practice guidelines for listed companies in February 1995 (see http://www.osc.gov.on.ca/en/SecuritiesLaw_pol_20040116_58-201_pro-pol-roc.jsp). One of these provides that the board of directors of every corporation should be constituted with a majority of individuals who qualify as unrelated directors. Since 2005, the 'comply or explain' obgligation is found in Sec. 474 (2) of the TSX Manual (see http://tmx.complinet.com/en/tsx_manual.html), together with Instrument 58-101 Disclosure of Corporate Governance Practices.

[10] **[variable 6]:** CBCA, s.109: Except in cases where cumulative voting is concerned, the shareholders of a corporation may, by ordinary resolution at a special meeting, remove any director/s from office unless that director is elected on behalf of any class or series of shares, in which case only the shareholders of that class of shares may so vote to remove that director. In a case of directors being appointed by cumulative voting: a director may be removed from office only if the number of votes cast in favour of the director's removal is greater than the product of the number of directors required by the articles and the number of votes cast against the motion [see s.107 (g)].

Whilst the CBCA does not specifically contain a provision which states that it does not deprive any director dismissed under the Act from claiming any compensation or damages payable to him in respect of the termination of his appointment as director or of any appointment terminating with that as director, dismissal as a director does not affect the rights of the same individual under a separate managerial services contract. The dismissed director will be also inevitably dismissed as an executive; when dismissed without cause, he/she can rely on this contract to claim compensation/damages. A requirement for shareholder votes on 'golden parachutes' etc. is currently discussed, but apparently without a result; see http://www.osc.gov.on.ca/en/NewsEvents_sp_20120320_mj-strategy-action.htm.

[11] **[variable 7]:** CBCA, ss. 239-242: derivative suits u/s.239 and 'oppression remedy' u/s. 241.

The CBCA s.239 facilitates to a certain extent the bringing of a derivative action and requires 'complainants' who wish to bring such action to apply to court for a leave to bring the action. The moving party must establish three elements, namely, notice, good faith and that it is acting in the interest of the corporation. Whilst s.239 does facilitate to a certain extent the bringing of a derivative action, the cost rules undermine its significance and use.

In addition to the derivative action u/s.239, the 'oppression remedy' available under s. 241 offers a further opportunity to enforce directors' duties – hence the score. Under s.241, the remedy is available where any act or omission of the corporation or the business or affairs of the corporation are or have been carried on or conducted in a manner, or the powers of the directors of the corporation are or have been exercised in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer.

8	1[12]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1

Directors and officers can be held personally liable for corporate oppression. Their liability in this regard does not depend on the breach of a specific statutory duty or on a common law tort but is substantially broader: Budd v. Gentra Inc. (1998), 43 B.L.R. (2d) 27 (Ont. C.A.) the Ontario Court of Appeal's review of the case law in this case reveals following situations in which directors may be held personally liable:

1. where directors obtain a personal financial benefit from their conduct: Budd v. Gentra Inc., Downdown Eatery (1993) Ltd. V. Ontario (2001) 54 O.R. (3d) 161, leave to appeal refused (2002), 289 N.R. 195 (note) (S.C.C.)
2. where directors have increased their control of the corporation by the oppressive conduct: e.g. Gottlieb v. Adam (1994), 21 O.R. (3d) 248 (Ont. Gen. Div.)
3. where directors have breached a personal duty they have as directors: e.g. Canada (Director appointed under s.253 of CBCA) v. Royal Trustco Ltd. (1984), 6 D.L.R. (4th) 682 (Ont. CA), affirmed [1986] 2 S.C.R. 537 (S.C.C.)
4. where directors have misused a corporate power: Gottlieb v. Adam (1994), 21 O.R. (3d) 248 (Ont. Gen. Div.)
5. where a remedy against the corporation would prejudice other security holders: Gottlieb v. Adam (1994), 21 O.R. (3d) 248 (Ont. Gen. Div.), Budd v. Gentra Inc.

[12] **[variable 8]:** CBCA, s. 241: for oppression remedy and s.190 for dissent and appraisal rights.

The oppression remedy available under s. 241 is broad and flexible and is available to 'a complainant' [238 (a) security holder] where any act or omission of the corporation or the business or affairs of the corporation are or have been carried on or conducted in a manner, or the powers of the directors of the corporation are or have been exercised in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer.

Scope of corporate conduct subject to review under the oppression remedy is wide and is not restricted to the wrongdoing of management. In Sparliong v. Javelin International Ltd. (No. 1), [1986] R.J.Q. 1073 (Que. S.C.) at p.1077, it has been held that the enumerated heads of corporate conduct "are to be regarded as mutually exclusive, each applying as well to isolated acts as to a continuing course of conduct". Miller v. F. Mendel Holdings Ltd. (1984), 26 B.L.R. 85 (Sask. Q.B.) at p.99; Wark v. Kozicki (1997), 153 Sask. R. 127 (Q.B.) at pp.132-133.

Sahota v. Basra (1991) 45 B.L.R. (2d) 143 (Ont. Gen. Div.) specified some of the leading propositions in relation to the 'oppression remedy' as follows:

1. One of the goals is to protect the reasonable expectation of shareholders;
2. When dealing with a closely held corporation, the court may consider the relationship between their shareholders and not simple their legal rights as such;
3. It is not necessary for the applicant to establish there is an element of bad faith present in the alleged misconduct in order to succeed;
4. It is sufficient to establish that the interests of the complainant have been unfairly disregarded or prejudiced;
5. The burden of proof concerning unfairly disregarded or prejudiced is less rigorous than the burden of proof where oppression is claimed.

[see Butterworths Shareholder Remedies in Canada, Dennis H. Peterson: §18.72, §18.73]

s.190 gives shareholders the right to dissent from certain transactions and to demand a fair value for their shares. Section 190(1) provides that the dissent and appraisal are subject to the right to bring an oppression application u/s. 241. Section 193 (1) provides that a dissenting shareholder has the right to be paid a fair value 'in addition to any other right the shareholder may have'.

9	0.5[13]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
10	0.5[14]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5

Comments:

Protection of minority shareholders: The provinces of Ontario and Québec have additional rules designed to ensure the fair treatment of minority shareholders in connection with certain types of transactions involving related parties. [see e.g. Ontario Securities Commission Policy No. 9.1 for Ontario].

[13] **[variable 9]:** Under the provincial securities legislation there is also no explicit mandatory bid, yet private purchases are only allowed in a restrictive way without triggering the requirement of a takeover bid (OSA, s. 93: eg, only from five persons). However, also note that the takeover rules are only triggered at 20% and they do not require acquisition of all securities, see e.g. OSA, ss. 89(1), 95 – or 97.2 (of the version from 2007).

Note: until 2001 (Bill S-11) the CBCA, ss. 194-196 also dealt with takeover, but not requiring a mandatory bid; still, in some cases it may have happened that someone acquiring more than 10% of shares ‘accidentally’ triggered threshold for a bid (see McIntosh, (1993) 31 Osgood Law Review 371 at 404-5).

[14] **[variable 10]:** 10%: ‘report of acquisitions’, early warning disclosure: any person acquiring control of over 10% of securities of a class of voting or equity securities must issue and file a press release identifying this person and the extent of their control over the voting securities, see OSA. s. 101 – since 2007: OSA, s. 102.1 [See also A.S.A. s.141; B.C.S.A. s.111; M.S.A. s. 93; Nfld.S.A. s. 102; N.S.S.A. s. 107; Q.S.A. s. 147.11; S.S.A. s.110]. A lowering to 5% is currently discussed; see http://www.securities-administrators.ca/aboutcsa.aspx?id=1126.

5. Chile (Pablo Iglesias-Rodriguez, Aurelio Gurrea Martinez)

Legal sources: Joint Stock Companies Act 1981 (*Ley 18.046/1981 de Sociedades Anónimas*); Stock Market Act 1981 (*Ley 18.045/1981 del Mercado de Valores*); Limited Liability Companies Act 1923 (*Ley 3918, de 7 de marzo de 1923*); Public Bids and Corporate Governance Act 2000 (*Ley 19705/2000 de ofertas públicas de adquisición y gobierno corporativo*); Corporate Governance Act 2009 (*Ley 20.382/2009 que introduce perfeccionamientos a la normativa que regula los gobiernos corporativos de las empresas*), in force since January 2010.

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	*2013*[1]
1	0	0	0	0	0	0	0	0	0	0	0	1[2]	1	1	1	1	1	1	1	1	1	1	1	1
2	0.25[3]	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25
3	0[4]	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0.5[5]	0.5	0.5	0.5

[1] Coded in October 2013.

[2] **[variable 1]:** According to article 57.4 of Joint Stock Companies Act 1981, inserted in November 2001 by article 5.2 of Act 19.769/2001 (Act on the Flexibilization of Mutual Funds and Insurance Firms, creation of the General Administration of Funds, facilitation of the bank internationalization and perfectioning of the Companies Act and Investment Funds, available here), with effect from November 2001, the extraordinary general meeting has the power to take decisions concerning the selling of the company's debts in the terms stated in article 67.9 of the same Act, or the selling of at least the 50% of its credits. Article 67.9 of Act 19.769/2001 requires a vote of 2/3 of all the issued shares with voting rights in the case of decisions of the extraordinary general meeting concerning the sale, or a business plan involving the sale, of 50% or more of the company assets, including or not sums owed to it. A single 'selling operation' involves one or more different acts relating to the company assets during a period of 12 months. Before the 2001 amendment, the law required this majority for the selling of all the assets of the company.

[3] **[variable 2]:** There is no explicit provision giving minority shareholders the right to set the agenda of the general meeting. However, Article 58.3 of Joint Stock Companies Act 1981 establishes that the board of directors must call a general meeting when it is required by shareholders with at least 10% of the shares with voting rights and they must also indicate the items to be discussed in the general meeting. This can be seen as functionally equivalent to setting the agenda, thus, it is here coded as 0.25.

[4] **[variable 3]:** Article 64 of Joint Stock Companies Act 1981 (amended in the same year by DO 31/10/1981) states that shareholders can be represented in a general meeting by another person, even if she is not a shareholder. This power of representation must be conferred by written means and for all the shares the represented shareholder owns. It was laid down that a regulation developing the content of Joint Stock Companies Act 1981 would specify the characteristics of the document conferring the representation. In effect, article 63 of Regulation 587/1982 (Regulation of the Joint Stock Companies Act 1981) establishes these characteristics, but no mention of a two-way voting form or of the fact that this must be provided by the company is made.

[5] Article 64 of Joint Stock Companies Act, introduced by the Corporate Governance Act 2009, establishes that the Securities and Exchange Commision (*Superintendencia*) may authorize companies to establish a distance-voting mechanism, provided that they properly respect shareholders' rights.

4	1[6]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
5	0[7]	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0.15[8]	0.15	0.15	0.15
6	0.5[9]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
7	0	0	0	0	0	0	0	0	0	0	0.5[10]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
8	0[11]	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

[6] **[variable 4]:** Article 21 of Joint Stock Companies Act 1981, by amendment, prohibits the creation of shares with multiple voting rights. According to article 1 of the Transitory dispositions of Joint Stock Companies Act 1981, companies in existence at the time of the publication of this Act must make their articles of association compliant with the new regulation in the first amendment they make concerning on them, or not later than within 180 days following the publication of the Act in the Official Bulletin. Hence, it may be understood that after those 180 days firms with multiple voting rights must have adapted their internal rules to the new regulation, and thus, no shares with multiple voting rights may exist from 1982 onwards.

[7] **[variable 5]:** The only reference in the Law concerning the independence of the directors is made in article 50.bis of Joint Stock Companies Act 1981 introduced by article 2.14 of 19.705/2000 Act (Act on Public Bids and corporate governance regimes) and refers not to the board but to the committee of directors, which must be established in each public limited company with a share capital above a given percentage. The majority of members of this committee (which is in charge of different tasks, such as providing advice on the retribution of the directors) must be independent of the controlling shareholder. At present, according to the same article, it is considered that a director is independent when, if not taking into consideration the votes of the major controlling shareholder or the persons related to her, the director would have equally well have been nominated. In case there are not enough independent directors to constitute this committee, the non-independent directors may be in the majority.

[8] Following the amendment of the Stock Market Act 1981, made in January 2010 by the Corporate Governance Act 2009, Chilean boards should include at least 1 independent member. Therefore, as most Chilean listed companies have at least 7 members on the board, we will assume that at least 1/7 of the directors are independent members.

[9] **[variable 6]:** Article 38 of the Joint Stock Companies Act 1981 establishes that all members of the board of directors can be dismissed by decision of the general ordinary or extraordinary meeting; it is not possible to dismiss only one or some of the directors. The nomination or dismissal of directors is a matter for the general meeting as stated in article 56.3 of Joint Stock Companies Act 1981; thus, agreements related to this issue must be adopted by absolute majority of the shareholders participating in the meeting or represented in it with voting rights, according to the majority requirements contained in article 61.1 of Joint Stock Companies Act 1981. Even if there are no special requirements for dismissal, the fact that this must affect all the directors explains the attributed value 0.5.

[10] **[variable 7]:** Article 133bis of the Joint Stock Companies Act 1981, introduced by article 2.21 of Act 19.705/2000 (in force since December 2000), established that any depletion of the company's assets as a consequence of the infringement of that Act, related regulations, the articles of association or the rules established by the Securities and Exchange Commission, confers upon any shareholder or group of shareholders, representing at least 5% of the issued shares, the right to start a derivative suit in the name and for the benefit of the company. Before 2000, article 133 of Joint Stock Companies Act 1981 merely referred to the liability of persons not fulfilling the requirements of Joint Stock Companies 1981, related regulations, the company's articles of association or the rules established by the Securities and Exchange Commission, without specifying how a claim could be brought in.

9	0	0	0	0	0	0	0	0	0	0	0.5[12]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
10	0.5[13]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5

[11] **[variable 8]:** No rules concerning this right exist. The law merely mentions certain rights of shareholders when, for example, they do not agree with resolutions of the general meeting (see article 69 of Joint Stock Companies Act 1981).

Apart from this, article 133 of the Joint Stock Companies Act 1981 only referred to the liabilitiy of persons who do not comply with this Act, its related regulations, the articles of association of the company, or the rules established by the Securities and Exchange Commission. This could also include the general meeting itself when it adopts a resolution against one of these rules. However, no particular causes of action for a shareholder aiming to file a claim against a resolution of the general meeting are set out.

[12] **[variable 9]:** If, as a consequence of an acquisition, any person reaches or exceeds 2/3 of the issued shares in terms of voting rights of a company which offers shares to the public, she has 30 days after the bid (taking this day into account) to make an offer for the rest of the shares. This precept (article 69 ter) has been inserted into Joint Stock Companies Act 1981 in 2000, by Act 19.705/2000 Act.

Since the amendment Ley 20.382/2007, mandatory bids are addressed in article 199 bis of Stock Market Act 1981; the threshold has not changed.

[13] **[variable 10]:** Article 12 of the Stock Market Act 1981 (Stock Markets Act) establishes that persons who directly, or indirectly, by means of other physical or legal person, own at least 10% of the share capital of a firm whose shares are registered on the Stock Register, or who as a result of an acquisition reach that percentage, along with the directors, liquidators, main managers and CEO of these companies, independently of the number of shares they own, must inform the National Securities Commission and the various Chilean Stock Exchanges in which the shares are traded, of any direct or indirect buying or selling they do in relation to the company's shares.

Additionally, the major shareholders must indicate if the purpose of these acquisitions is controlling of the firm or merely making a financial investment (this last paragraph was introduced by Act 19.705/2000 Act (in force since December 2000), article 1.4.c.).

Article 54 of Joint Stock Companies Act 1981, by an amendment introduced by article 7.a of Act 19.075/2000, adds that any person who directly or indirectly aims to obtain control of the company must publicly disclose it.

6. China (Mathias Siems)[1]

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	*2013*[2]
1	0[3]	0	0[4]	0	0.5[5]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	1[6]	1	1	1	1	1	1	1
2	0	0	0.5[7]	0.5	0.25[8]	0.25	0.25	0.5[9]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.75[10]	0.75	0.75	0.75	0.75	0.75	0.75	0.75
3	0	0	0[11]	0	0	0	0	0.5[12]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5

[1] Thanks to Rui Wang for helpful comments. Note: English translations of current laws are available at http://www.csrc.gov.cn/pub/csrc_en/laws/rfdm/statelaws/.

[2] Coded in May 2013.

[3] **[variable 1]:** Prior to the 1992 Opinion, the Law of the People's Republic of China on Industrial Enterprises Owned by the Whole People 1988 (English version available at http://www.by-cpa.com/html/news/20077/886.html) cannot be regarded as company law in the sense it is coded here: eg, it did not have shareholders as the owners of the company (and therefore the template used in this project cannot be applied). Neither did we consider the special laws that only allowed companies in some of the special administrative regions (SARs).

[4] Opinion for Joint-Stock Companies of the State Restructuring Commission from 15 May 1992, cf. http://www.lawinfochina.com/display.aspx?lib=law&id=6466, compared with the CA 1993 by Nicholas C. Howson, "China's Company Law: One Step Forward, Two Steps Back? A Modest Complaint", 11 *Columbia Journal of Asian Law* 127 (1997): no provisions on this topic exist.

[5] Company Law 1993 (in effect since July 1994, available here), art. 102(no.10): the power of the general meeting to decide on mergers, divisions, dissolution, liquidation, and "other matters". The latter may cover "de facto changes". It has, however, not been clarified what exactly is required. Since 2004 there are also the Minority Shareholder Protection rules, which require that "all relevant issues that have an important bearing on the interests of minority shareholders require tradable shareholder approval" (see Chao Xi, Institutional Shareholder Activism in China: Law and Practice, 17 I.C.C.L.R. 251 at 258 (2006)).

[6] Company Law 2005 (in effect since January 2006), art. 122: any purchase or sale of major assets within one year or provision of a security in an amount in excess of thirty percent (30%) of the total assets by a listed company shall be deliberated and determined at a general meeting of shareholders.

[7] **[variable 2]:** Opinion for Joint-Stock Companies 1992, s. 43 (n.9): 5% (Howson, supra, at 149 notes the change with the CA 1993).

[8] Company Law 1993, art. 104(no.3): 10 % right to call an extraordinary general meeting. Mandatory Provisions in the Articles of Associations for Companies Listed *Overseas* of 27 August 1994, art. 54 (not coded).

[9] Guidelines to Articles of Association for Companies Limited by Shares (Guidelines on Memoranda of Associations in Listed Corporations) of 06 December 1997, art. 57: 5 %.

[10] Company Law 2005, art. 103(2) introduced a general right to put an item on the agenda for 3% of shareholders.

[11] **[variable 3]:** Opinion for Joint-Stock Companies 1992, s. 43(3) proxy voting only possible.

4	0	0	1[13]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
5	0	0	0	0	0	0	0	0	0	0	0	0	0.4[14]	0.6	0.6	0.6	0.6	0.6	0.6	0.6	0.6	0.6	0.6	0.6
6	0	0	0.5[15]	0.5	0.25[16]	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
7	0	0	0[17]	0	0.25[18]	0.25	0.25	0.25	0.25	0.25	0.25	0.5[19]	0.5	0.5	0.5	0.5	0.75[20]	0.75	0.75	0.75	0.75	0.75	0.75	0.75

[12] Proxy voting but not postal voting is possible (Company Law 1993, art. 108; Mandatory Articles 1994, art.59; Mandatory Articles 1997, art. 48; Corporate Governance Code 2001, art. 9, 10 – now: Company Law 2005, art. 107). Companies do not have to provide proxy solicitation. If they do so, Mandatory Articles 1994, art. 62 and Mandatory Guidelines 1997, art. 51 require, however, two-way proxies.

[13] **[variable 4]:** Opinion for Joint-Stock Companies 1992, ss. 38(2), 49; Company Law 1993, art. 106; Company Law 2005, art. 104(s.1): strict one share one vote principle (note: the coding did ask to consider different types of shares that exist in China).

[14] **[variable 5]:** Until 2002 some independent directors were only required for companies listed abroad and in some local provisions. Furthermore, there was a 2000 recommendation by Shenzen Stock Exchange (see generally Donald C. Clarke, 'The Independent Director in Chinese Corporate Governance', 36 *Delaware Journal of Corporate Law* 125-228 (2006)).

In August 2001, the CSRC issued an opinion on independent directors, mandating that companies have 2 independent board members by June 2002 and 3 independent board members by June 2003 (see Clarke, ibid.). For calculation of percentages: see Clarke, ibid, at 200: average number of directors in Chinese companies: 10.

Also see: Company Law 2005, art. 123: A listed company shall have independent directors the specific method of which shall be determined by the State Council. Yet, this has not yet happened (see Hong, (2011) 12 E.B.O.R. 469-507, for discussion).

[15] **[variable 6]:** Opinion for Joint-Stock Companies 1992, s. 43(n.6), 64: members of the management board and the supervisory board. There is no provision stipulating further requirements. Yet, there is also no indication that the agreed compensation is not possible.

[16] The general meeting elects and replaces both members of the management board and the supervisory board (Company Law 1993, art. 103 (nos. 2 and 3); Company Law 2005, arts. 100, 38(2)). Under the CA 1993, directors of the management board shall not be removed without a reason (art. 115), yet, this seems not to be required under the CA 2005. If agreed, compensation appears to be possible.

[17] **[variable 7]:** Opinion for Joint-Stock Companies 1992, s. 110 only indicates that directors may be liable; shareholder enforcement is not mentioned (nor is it mentioned in s. 43, which talks about shareholder rights).

[18] Company Law 1993, art. 111 states, inter alia, that shareholders have the right to initiate proceedings if resolutions of the board of directors violate the law. The scope of this provisions was, however, not clear, and derivative suits did not take place only until recently.

[19] The January 2001 Corporate Governance Rules (available here), art. 4 only states that "shareholders shall have the right to request the company to sue for such compensation in accordance with law." In 2003 the High Courts of Shanghai and Jiangsu promulgated rules according to which derivative actions were possible.

8	0	0	0[21]	0	1[22]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
9	0	0	0	1[23]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
10	0	0	0	0.75[24]	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75

[20] Companies Act 2005, art 152; supplemented by Supreme People's Court, Provisions on Several Issues Concerning the Application of the Company Law, art. 4, introduced a general derivative action that can be raised by 1% of the shareholders.

[21] **[variable 8]:** Opinion for Joint-Stock Companies 1992, s. 43(2) only indicates that the general meeting must not infringe laws; no remedies are mentioned.

[22] Company Law 1993, art. 111; Company Law 2005, art. 22.

[23] **[variable 9]** Provisional Regulations on the Administration of Issuing and Trading of Shares, promulgated by the State Council on 22 April 1993, art. 48 and Securities Act 1998 (in force since 1999), art. 81: 30 %. Now also: Securities Act 2005 (in force since 2006), art. 88, 96.

[24] **[variable 10]:** Provisional Regulations on the Administration of Issuing and Trading of Shares, promulgated by the State Council on 22 April 1993, arts. 46, 47. Securities Act 1998 (in force since 1999), art. 79; Securities Act 2005 (in force since 2006), art. 86: 5 %.

7. Cyprus (Berk Demirkol, Theodora Dimitrova)

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	*2013*[1]
1	0[2]	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2	0.25[3]	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.375[4]	0.375	0.375	0.375	0.375	0.375	0.375	0.375	0.5[5]	0.5	0.5	0.5
3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0.5[6]	0.5	0.5	0.5
4	0[7]	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
5	0	0	0	0	0	0	0	0	0	0	0	0	0.16[8]	0.16	0.16	0.33[9]	0.33	0.33	0.33	0.33	1[10]	1	1	1

[1] Coded in November 2013.

[2] **[variable 1]:** Art. D.2.5 of the Corporate Governance Code (2002, available here), which applies the ‘comply or explain’ principle for listed companies, requires that the shareholders should be given precise information about unusual transactions of the company (Art. D.2.6 in the third edition). But there is no provision requiring the approval of the general meeting.

S 201C(5) of the Companies Act (Company Law Chapter 113, consolidated version available here) states the the general meeting of a company must approve the particulars of its merger with another company. The Act does not contain any particular thresholds.

[3] **[variable 2]:** Cyprus Company Law Chapter 113 Art. 128(1)(b) provides that two or more members holding not less than one-tenth of the issued share capital may call a meeting.

[4] Agenda setting power of the shareholders representing 5% of the voting rights has envisaged in the Art. D.2.1 of the Corporate Governance Code (applicable since September 2002); yet, without a legal requirement to ‘comply or explain’.

[5] Since July 2010 (through the implementation of the European Directive on Shareholders’ Rights, available here), it is accepted that shareholders holding 5% of the share capital or representing 5% of the voting rights are entitled to add an item onto the agenda of the meeting (see http://www.korelislaw.com/the-eu-shareholders-rights-directive) (Art 127B).

[6] **[variable 3]:** Since July 2010 (through the implementation of the European Directive on Shareholders’ Rights), it is required that the company provides copies of the documentation to appoint a proxy as well as copies of the documents which will be used for voting via mail, unless these have been sent to members directly. Also, it is accepted that these companies may provide electronic attendance and voting at their general meetings (see http://www.korelislaw.com/the-eu-shareholders-rights-directive). Art 128B of the Companies Act.

[7] **[variable 4]:** Art. 128(1)(e) states that every member shall have one vote in respect of each share. Still, it is possible to envisage the contrary by the articles of incorporation; a special class of shares may be created concerning a privileged right regarding voting (see Elias A Neocleous / Kyriacos Georgiades / Markus Zalewski, ‘Corporate Law’ in Andreas Neocleous & Co, Introduction to Cyprus Law, p. 325).

6	0.25[11]	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25
7	0[12]	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8	1[13]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
9	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1[14]	1	1	1	1	1	1
10	0	0	0	0.75[15]	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75

[8] **[variable 5]:** Art. A.2 of the Corporate Governance Code 2002, which applies the 'comply or explain' principle for listed companies, envisages that the companies shall have independent non-executive directors. Art. A.2.1 states that non-executive directors should comprise no less than a third of the Board and Art. A.2.2 provides that the majority of non-executive directors, or at least two, should be independent. Thus, at least 1/6 of the Board should be independent.

[9] Since the Regulation 596/2005, there is a requirement for listed firms to declare "comply or explain" with the corporate governance code in the annual reports; see http://ec.europa.eu/internal_market/company/docs/ecgforum/studies/comply-or-explain-090923-appendix1_en.pdf p. 43.

[10] In the third edition of the 2009 Corporate Governance Code (in force since Januay 2010, available here) Art. A.2.3 requires that at least 50% of the members of the Board of Directors, excluding the Chairman, should comprise independent Non-Executive Directors. The amended 2012 version of the Code contains the same requirement for the independent directors.

[11] **[variable 6]:** Art. 178(1) states that a company may remove a director by an ordinary resolution before the expiration of his period in office, notwithstanding its articles or any agreement between it and him. On the other hand, para. 6 envisages that Art. 178 does not deprive the director who is removed of compensation or damages payable to him in respect of the termination of his appointment.

[12] **[variable 7]:** The Foss rule of the common law and its exceptions are also applied in Cyprus (for an overview of derivative actions in Cyprus, see here). This right is only accepted in case law, as part of an exception to a rule (see also a paper on UK coding prior to 1980 here).

[13] **[variable 8]:** Shareholders may initiate an action against the resolutions of the general meeting under the case law, as in England.

[14] **[variable 9]:** Law 41[I]/2007 (in force since April 2007, available here) transposed the Takeover Directive of EU into the Cypriot legal order. In accordance with this new bid law (Art. 13), a shareholder, who as a result of his own acquisition or the acquisition by persons acting in concert with him, holds securities of a company which, added to his existing holdings and those of persons acting in concert with him, directly or indirectly owns 30% or more of voting rights in that company, shall make a bid for the outstanding securities.

[15] **[variable 10]:** The Cyprus Stock Exchange Law came into force in April 1993 (consolidated version available for download here). Art 171 sets out the disclosure requirements: during the takeover period any acquisition or disposal of 5% of shares carrying voting rights in the target company must be disclosed. Similarly, anyone who acquires or disposes of 10%, 15%, 20%, 25%, 30%, 50% or 75% must disclose this information to the target company and to the relevant authorities within one day. The Conditions for Transparency (Securities Admitted to Trading on a Regulated Market) Law of 2007 imposes a similar disclosure threshold (i.e. 5%) on anyone who acquires or disposes of shares of an issuer whose shares are traded on a regulated market.

8. Czech Republic (Stephan Heidenhain, Theodora Dimitrova)

	1990	**1991**	**1992**	**1993**	**1994**	**1995**	**1996**	**1997**	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**	**2004**	**2005**	**2006**	**2007**	**2008**	**2009**	**2010**	**2011**	**2012**	*2013*[1]
1	0[2]	0	0[3]	0	0	0	0.5[4]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
2	0.25[5]	0.25	0.25[6]	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.5[7]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
3	0[8]	0	0[9]	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
4	0[10]	0	0[11]	0	0	0	0	0	0	0	0	1[12]	1	1	1	1	1	1	1	1	1	1	1	1

[1] Coded in November 2013. A new Company Law will come into force in January 2014, see http://www.bnt.eu/index.php/en/?option=com_content&view=article&id=1607:neue-regeln-fuer-die-tschechische-gmbh-ab-dem-1-januar-2014.

[2] **[variable 1]:** The Law on Joint-Stock Companies came into force on 1 May 1990 (Act No 104 of 18 April 1990). Art 43 of the Act contains the powers of the general meeting, but it does not mention anything regarding the power of the members to control the sale of the company property.

[3] The Commercial Code came into effect in January 1992 (until 1993: Commercial Code of Czechoslovakia, available here). Section 187(1)(h) stipulated that the general meeting had the power to decide on transfers of company assets. The statute did not impose a particular percentage of company assets that required approval.

[4] Since 1.7.1996: Commercial Code, s. 187(1)(j): general meeting decides whether to conclude a contract if its object is the transfer of an enterprise or a part of such, or lease of an enterprise or a part of such, unless the statutes of the company transfer this right to the executive board.

Since 1.1.2001: Commercial Code, s. 187(1)(k): the general meeting decides whether to conclude a contract if its object is the transfer of an enterprise or a part of such, or lease of an enterprise or a part of such, or whether to conclude such contract with a controlled person→ changes in 2006: the general meeting still decides, however, the rules which apply to mergers do not apply any more to those contracts (Commercial Code, s. 187(1)(k) and s. 67a).

[5] **[variable 2]:** Art 39(1) of the 1990 Act imposes a threshold of 10%.

[6] Until 31.12.2000: Commercial Code, ss. 182(1)(a), 181(1): shareholders of a company who hold at least 10 % of the registered capital have the right to request the board to put items on the agenda.

[7] Since 1.1.2001: Commercial Code, ss. 182(1)(a), 181(1): shareholders of a company whose registered capital is higher than CZK 100 million: 3 %; otherwise 5% of the registered capital.

[8] **[variable 3]:** Art 36 of the 1990 Act envisages only the possibility of proxy voting for shareholders.

[9] Commercial Code, s. 184 (1) does only address proxy voting in general (and excludes directors).

[10] **[variable 4]:** Art 3(2) of the 1990 Act envisages that the articles of association can stipulate the number of votes attaching to a share.

[11] Commercial Code, s. 180(2): the articles of association could stipulate the number of voting rights pertaining to a share.

5	0[13]	0	0[14]	0	0	0	0	0	0	0	0	0	0	0.5[15]	0.5	0.5	0.5	0.5	1[16]	1	1	1	1	1
6	0.5[17]	0.5	0.5[18]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
7	0[19]	0	0.25[20]	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.5[21]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
8	1[22]	1	1[23]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1

[12] Since the 2001 reform: Commercial Code, s. 180(2): multiple voting rights are now prohibited in the Czech Republic.

[13] **[variable 5]:** The 1990 Act did not contain any provisions regarding independent directors.

[14] No; according to the Commercial Code, s. 200(1): 2/3 to be elected by the general meeting, 1/3 by the employees where the company has more than 50 employees; according to Commercial Code, s. 200(4), board members must not be proxies of the company.

[15] The first Czech Corporate Governance Code was published in 2001 (available here), became effective in January 2003 and was subsequently amended in 2004 (amended version here). Chapter IV recommends that the majority of members of the supervisory board or the board of directors should be independent: i.e. that they are not related to the executive management or majority shareholders or persons or entities closely connected to the company.

[16] Since 2008, there is a mandatory ‘comply-or-explain’ requirement in the corporate governance code, see ‘A Study on Monitoring and Enforcement Practices in Corporate Governance in the Member States’, http://ec.europa.eu/internal_market/company/docs/ecgforum/studies/comply-or-explain-090923_en.pdf. at p. 28 and http://www.kb.cz/file/en/about-bank/investor-relations/publications/annual-reports/kb-explanatory-report-on-information-required-based-on-theamendments-to-the-act-providing-for-business-undertaking-on-thecapital-market.pdf?3e51cfad6b72f4db07307376d34fe817.

[17] **[variable 6]:** Art 43(e) of the 1990 Act stipulates that the general meeting can recall members of the board of directors or the supervisory board. The Act does not mention anything regarding compensation in the event of dismissal without good reason. Alternatively, this may follow if an employment contract is agreed (see Houle et al, *Czechoslovakian Business Law*, 1992, p. 17: service contract, employment contract or other arrangement possible).

[18] Until 30.6.1996: Commercial Code, s. 187(1)(c),(d): S 187(1)(c) and (d) stipulated that the general meeting had the power to recall members of the board or the supervisory board without a cause. As of 1.7.2006: Commercial Code, s. 187(1)(d),(e) (amended in 2006) give shareholders the powers to remove members of the supervisory board. Shareholders may also remove members of the management board when the articles of association give them this power: alternatively management board members may only be removed by the supervisory board. Compensation may be paid only if special agreements or contracts between the director and the company provide for it (those stipulations in those contracts are normal).

[19] **[variable 7]:** Art 40 of the 1990 Act stipulates that only the supervisory board or the general meeting can enforce directors’ duties.

[20] Until 31.12.2000: Commercial Code, ss. 182(1)(a), 181(1): possible for shareholders of a company who hold at least 10 % of the registered capital.

[21] Since 1.1.2001: Commercial Code, ss. 182(2), 181(1): possible for shareholders of a company whose registered capital is higher than CZK 100 million: 3 %; otherwise 5% of the registered capital.

[22] **[variable 8]:** Art 41(1) of the 1990 Act allows any shareholder to initate action against a resolution of the general meeting irrespective of their share ownership.

9	0	0	0	0	0	0	0.5[24]	0.5	0.5	0.5	0.5	0.5[25]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
10	0	0	0	0	0	0	0.5[26]	0.5	0.5	0.5	0.5	0.75[27]	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75

[23] Commercial Code, ss. 131, 183: any shareholder may petition the court to nullify a resolution of the general meeting if it is contrary to the law or the articles of association.

[24] **[variable 9]:** As of 30.5.1996, up to 30.12.2001: Commercial Code, ss. 183b(1), 66a(1), (2): mandatory bid must be made where the shareholder has at least 50 % or 2/3 or ¾ of voting rights of freely negotiable shares.

[25] Since 1.1.2001: Commercial Code, ss. 183b(1), 66a(5): mandatory bid must be made where the shareholder has 40 % of voting rights.

[26] **[variable 10]:** As of 30.5.1996, up to 31.12.2000: Commercial Code, s. 183(d): 10 %.

[27] As of 1.1.2001, up to 30.4.2004: Commercial Code, s. 183(d) stipulates that a shareholder who attains or exceeds the threshold of 5%, 10%, 15%, 20%, 25%, 1/3, 40%, 45%, 50%, 55%, 60%, 2/3, 70%, 75%, 80%, 90% or 95% must notify the company, the Securities Commission and the Securities Centre. As of 1.5.2004 up to now: more or less identical stipulations in the law on the capital market (s. 122).

9. Estonia (Theodora Dimitrova)

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	*2013*[1]
1	0[2]	0	0	0	0	0[3]	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2	0.25[4]	0.25	0.25	0.25	0.25	0.25[5]	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.5	0.5[6]	0.5	0.5	0.5
3	0[7]	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0.5[8]	0.5	0.5	0.5	0.5
4	0[9]	0	0	0	0	1[10]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1

[1] Coded in November 2013.

[2] **[variable 1]:** Not in the list of powers of the general meeting in the Statute of the Shareholders' Company (Decree No 385 of 23 November 1989; in force since January 1990) s. 28 [note: the Statute of the Economic Associations of the Estonian Republic, Decree No 122 of 13 June 1990, deals with limited liability companies, as well as partnerships].

[3] The Estonian Commercial Code (English version available at http://www.fifoost.org/estland/recht/commercial_code/; further translations of Estonian law at https://www.riigiteataja.ee/en/) was adopted in February 1995 and entered into force in September 1995. Section 298 lists the exclusive competences of the general meeting. Shareholders are competent to decide on the dissolution, merger, division, or transformation of a public limited company. The law does not impose any special requirements regarding shareholders' approval of the sale of company assets.

[4] **[variable 2]:** The Statute of the Shareholders' Company (Decree No 385 of 23 November 1989) requires shareholders to own at least 10% of the share capital in order to have the right to request items to be put on the agenda (s 25(2)).

[5] S 293(2) of the Commercial Code stipulates that a shareholder must own at least 10% of the share capital in order to be able to demand the inclusion of certain items on the agenda.

[6] S 293(2) of the Commercial Code section was amended in Novemeber 2009 to allow the shareholders of listed public companies, whose shares represent at least 5% of the share capital, to demand the inclusion of certain items on the agenda of the general meeting.

[7] **[variable 3]:** No such provision prior to 2009.

[8] S 297(4) of the Commercial Code states that a representative of a shareholder who has been granted an authorisation document in writing may participate in a general meeting. The Code was amended in November 2009 to allow electronic voting (s 298^1) and voting by mail (s 298^2), if prescribed by the articles of association.

[9] **[variable 4]:** The Statute of the Shareholders' Company 1989 states that voting at the general meeting takes place according to the principle of 'one share, one vote' unless provided otherwise by the bylaws (s 29(4)); s. 8 also allows different kinds of shares.

[10] S 236(2) of the Commercial Code stipulates that shares with equal nominal values grant an equal number of votes. If shares with different nominal value are issued, the voting rights attached to them must be proportionate to their nominal value.

5	0[11]	0	0	0	0	0[12]	0	0	0	0	0	0	0	0	0	0	1[13]	1	1	1	1	1	1	1
6	0.5[14]	0.5	0.5	0.5	0.5	0.5	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75
7	0[15]	0	0	0	0	0[16]	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

[11] **[variable 5]:** Not in The Statute of the Shareholders' Company 1989.

[12] Estonia uses a two-tier system of management. The Commercial Code 1995 does not regulate the independence of board members or members of the supervisory board. The Code imposes restrictions on competition and distribution of business secrets.

[13] The Estonian Corporate Governance Recommendations came into effect in January 2006 (available here); there is also a mandatory comply-and-explain procedure, see http://www.tarkgruntesutkiene.com/news/publications-and-deals/adoption-of-stricter-corporate-governance-standards-for-estonian-companies.

S 3.3.2 recommends that at least half of the members of the supervisory board should be independent. An independent member is anyone who: (i) is not a member of the management board of the company or is not the company's controlling shareholder; (ii) is not an employee of the company; (iii) does not receive significant additional remuneration from the company; (iv) has not represented directly or indirectly the controlling shareholder; (v) does not have or has not had in the preceding year a significant business relationship with the company; (vi) will not or has not been an auditor of the company or an employee of the company's external auditor; (vii) has not been an independent member of the supervisory board for more than ten years; (viii) is not a person close to a member of the management board.

[14] **[variable 6]:** The Statute of the Shareholders' Company 1989, s 25(4) only mentions election of members of the boards, but also states in s 28 that the general meeting may pass resolutions with regard to other issues concerning the activities of the stock corporation.

Since 2005: (i) Members of the management board may be removed only by the supervisory board. S 309(3) of the Commercial Code states that this can be done regardless of the reasons. S 168 was amended in 2008 to allow shareholders to remove members of the board if the company does not have a supervisory board. (ii) Members of the supervisory board may be removed by a resolution of the general meeting. The resolution must be approved by two-thirds of the votes represented at the meeting (s 319(4)). Members of the supervisory board may be removed regardless of the reasons.

The legislation does not impose any obligation on companies to compensate directors in the event of their dismissal; yet, it also does not exclude the possibility of agreeing on a compensation in case of a dismissal.

Until 1996 there was also the possibility that directors were regarded as employees. However, now, the Employment Contracts Act 1992, as amended in June 1996, explicitly states in s 7(10) that directors are not employees (consolidated version of the Act available here).

[15] **[variable 7]:** Not in the Statute of the Shareholders' Company 1989.

[16] S 298 of the Commercial Code lists decisions on the conduct of legal disputes with members of the management or supervisory board as one of the competences of the general meeting. The law does not impose a certain percentage of share capital as a requirement for private enforcement of directors' duties. Therefore, such decisions must be approved by a simple majority of the votes present at the general meeting.

8	0[17]	0	0	0	0	1[18]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
9	0[19]	0	0	0	0	0	0	0	0	0	0	0	0.5[20]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
10	0	0	0	0	0	0	0.5[21]	0.5	0.5	0.5	0.5	0.5	0.5[22]	0.5	0.5	0.5	0.5	0.75	0.75	0.75	0.75	0.75	0.75	0.75

[17] **[variable 8]:** Not in the Statute of the Shareholders' Company 1989.

[18] S 302 of the Commercial Code states that any shareholder may file an action for the invalidation of a resolution of the general meeting of a public company where this resolution is in conflict with the law or the articles of association. The limitation period is three years from the date of passing the resolution.

[19] **[variable 9]:** No rules regarding mandatory bids until 2002 (eg, in the Securities Markets Act 1993); see 'Bringing Estonia's Securities Regulation up to European Standards', http://www.tarkgruntesutkiene.com/news/publications-and-deals/bringing-estonias-securities-regulation-up-to-european-standards.

[20] The Securities Market Act 1993 was replaced by the Securities Market Act 2002, in force since 1 January 2002 (available here). S 166 imposes an obligation on a person who has gained dominant influence over a company to make a takeover bid for the rest of the shares. Dominant influence under Estonian law is understood as a situation where a shareholder holds either directly or together with other persons acting in concert the majority of the votes or where such a shareholder has the right to appoint and remove the majority of members of the management and the supervisory board.

[21] **[variable 10]:** No such provisions in the Securities Market Act 1993; however, the listing rules of the Tallinn Stock Exchange, in operation since May 1996, see (cf http://www.ttu.ee/public/l/laivi_laidroo/Listings_Delistings_and_Cross-listings_on_Tallinn_Stock_Exchange_1996-2005.pdf), already provided a 10% disclosure requirement; see http://www.suomenpankki.fi/bofit/tutkimus/tutkimusjulkaisut/idantalouksien_katsauksia/Documents/0797OL.PDF at page 36.

[22] S 185 of the Estonian Securities Market Act 2002 imposed an obligation on shareholders who acquire 10% of all the votes represented by shares to inform the company issuing the shares. This section was amended in January 2007 and the threshold triggering the notification obligation was lowered to 5%.

10. France (Mathias Siems)

Main laws on shareholder protection: Loi no 66-537 du 24 juillet 1966 sur les sociétés commerciales (in 2000 repealed); since Ordonnance No. 2000-912 company law is (again) regulated in the Code de Commerce (subsequently amended, e.g., by Loi sur les nouvelles régulations économiques (NRE) no 2001-420 du 15 mai 2001 (consolidated version available for download here)); Décret no 67-236 sur les sociétés commerciales (as amended); Règlement général de l'Autorité des marchés financiers 2004; Code monétaire et financier 2000; Principes de gouvernement d'entreprise résultant de la consolidation des rapports conjoints de l'AFEP (Association Française des Entreprises Privées) et du MEDEF (Mouvement des Entreprises de France) 2003 (French Corporate Governance Principles).

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	*2013*[1]
1	0[2]	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2	1[3]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
3	1[4]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
4	0.5[5]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
5	0	0	0	0	0	0	0	0	0	0	0	0	0	0.35[6]	0.35	0.35	0.35	0.35	0.35	0.7[7]	0.7	0.7	0.7	0.7

[1] Coded in May 2013.

[2] **[variable 1]:** There is no explicit provision on the sale of major parts of company assets. First, it is debated whether the general meeting may be competent because a *de facto* measure may be regarded as a change of the purpose of the company (as it is specified in the articles of associations). Second, it is argued that the major assets can be equated with the whole assets (Loi 1966, art. 396 (no.4); Code de Commerce 2000, art. L. 237-8(no.4)) (see generally, Siems, Die Konvergenz der Rechtssysteme im Recht der Aktionäre, 2005, at 217). Since these cases are exceptions and no relevant case law exists, deviation from the "0" score would, however, not be justified.

[3] **[variable 2]:** The number of shareholders that can make a topic the object of decision by the general meeting is usually 5% of the registered capital (Loi 1966, art. 160; Code de Commerce 2000, art. L. 225-105). There is also a graduated threshold, which for big companies may be 1 or 0.5 % (Décret 1967, art. 128). These companies (portion of capital more than 7.5. million euro) are the main focus of this study. Since Loi no 94-679 du 8 août 1994, the proposal right is also extended to shareholder associations (Loi 1996, art. 172-1; Code de Commerce 2000, art. L. 225-120).

[4] **[variable 3]:** Décret no 86-584 du 14 mars 1986 (in force since January 1988) inserted Décret 1967, art. 131-1: shareholders have the right to request a remote ballot form. Then, postal voting is possible (Loi 1966, art. 161-1 inserted by Loi no 83-3 du 3 janvier 1983; today: Code de Commerce 2000, art. L. 225-107).

[5] **[variable 4]:** Loi 1966, art. 175; Code de Commerce 2000, art. L 225-123: holders of registered shares can be given a double voting right in the articles of association, providing the shares have been held by the same owner for two years.

[6] **[variable 5]:** October 2003: According to the French corporate governance principles (available here) a significant number of board members (no. 8.2) [now: 9.2], shall be independent. The principles also state that 'the independent directors should account for half the members of the Board in widely-held corporations and without controlling shareholders. In controlled companies, independent directors should account at least for a third'. Initially 'comply or explain' was not required

6	1[8]	1	1	1	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.85
7	1[9]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
8	1[10]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
9	0.5[11]	0.5	1[12]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
10	0.75[13]	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75

(the principles were generally applied by most companies, see note Monks & Minow, Corporate Governance, 2nd edn 2001, at p. 292, but they often opted out of the independence requirement (see Storck, (2004) 1 ECFR 36 at 47)).

[7] But since the implementation of Directive 2006/46/EC by Loi DDAC du 3 juillet 2008 introducing Code de Commerce, Art. L. 225- 37 et L. 225-68 (in force since 1 April 2009): the requirement of 'comply or explain' introduced.

[8] **[variable 6]:** Loi 1966, art. 160(3): dismissal was (and is) always possible (now: Code de Commerce 2002, art. L. 225-18(2); 225-105(3)). This effect was not reduced by the virtue of contracts supplementing the appointment, because separate employment contracts were inadmissible, unless this contract antedated the appointment by at least two years and related to actual employment. Loi no 94-126 du 11 février modified Loi 196, art. 160(3): an employment contract is also admissible if it relates to actual employment. It is therefore (only) necessary that this occupation is distinct from the occupation as a director. Code de Commerce 2000, art. L. 225-22(1), as amended by Loi no 2001-1168 du 11 décembre, affirms the change from 1994. The June 2013 revision of the Corporate Governance Principles has increased shareholders 'say on pay' (see s 23 of the French corporate governance principles).

[9] **[variable 7]:** Loi 1966, art. 245; today: Code de Commerce 2000, art. L. 225-252: Shareholder suit by single shareholder possible. There are also simplified representation provisions for an action by several shareholders (as a rule 5 %: Décret 1967, art. 200) and since 1994 (Loi no 94-679 du 8 août 1994) shareholder associations.

[10] **[variable 8]:** Loi 1966, art. 360 *et seq.*; Code de Commerce 2000, arts. L. 235-1 *et seq.* on nullity of a decision; This does not concern the case of abuse of majority power. However, here too a decision may be null, or damages can be awarded (see Cools, The Real Difference in Corporate Law between the United States and Continental Europe: Distribution of Powers, 2004, p. 30, available at http://ssrn.com/abstract=623286 and now published in 36 Del. J. Corp. L. 697 (2005)).

[11] **[variable 9]:** Loi 89-531 du 2 août 1989: mandatory bid in case of 1/3 of the target's shares since 1989; however, the bidder was only required to buy 2/3 of the shares (see Gardner (1992) ICCLR 93 at 96).

[12] Arrête du 15 mai 1992: Bidder is required to buy all shares; the mandatory bid was later regulated in Règlement Général des Conseils des Marchés Financiers (CMF), art. 5-5-2 and today in Règlement général de l'Autorité des marchés financiers 2004, art. 234-2.

[13] **[variable 10]:** Loi no 87-416 du 17 juin 1987 changed Loi 1966, arts. 356, 356-1 (amended by Loi no. 89-531 du 2 août, Loi no. 96-597 du 2 juilliet 1996, Loi no. 98-545 du 2 juilliet 1998); now Code de Commerce 2000, arts. L. 233-6, 233-7 (amended by Ordonnance no 2004-604 du 24 juin 2004).

11. Germany (Mathias Siems)

Main laws on shareholder protection: AktG (German Law on Joint-Stock Companies), HGB (German Commercial Code), UmwG (German Transformation Act); WpHG (German Securities Trading Act), WpÜG (German Takeover Act), GCGC (German Corporate Governance Code, latest edition available here).
Main reforms: Gesetz über die Mitbestimmung der Arbeitnehmer (MitBestG), 4. 5. 1976, BGBl. I 1153; Gesetz zur Durchführung der Dritten Richtlinie des Rates der Europäischen Gemeinschaften zur Koordinierung des Gesellschaftsrechts (Verschmelzungsrichtlinie-Gesetz), 25. 10. 1982, BGBl. I 1425; Gesetz zur Durchführung der Vierten, Siebenten und Achten Richtlinie des Rates der Europäischen Gemeinschaften zur Koordinierung des Gesellschaftsrechts (Bilanzrichtlinien-Gesetz - BiRiLiG), 19. 12. 1985, BGBl. I 2355; Gesetz über den Wertpapierhandel und zur Änderung börsenrechtlicher und wertpapierrechtlicher Vorschriften (Zweites Finanzmarktförderungsgesetz), 26. 7. 1994, BGBl. I 1749; Gesetz für kleine Aktiengesellschaften und zur Deregulierung des Aktienrechts, 2. 8. 1994, BGBl. I 1961 (Kleine-AG-Gesetz); Gesetz zur Bereinigung des Umwandlungsrechts (UmwBerG), 28. 10. 1994, BGBl. I 3210; Gesetz zur weiteren Fortentwicklung des Finanzplatzes Deutschland (Drittes Finanzmarktförderungsgesetz), 24. 3. 1998, BGBl. I 529; Gesetz zur Kontrolle und Transparenz im Unternehmensbereich (KonTraG), 27. 4. 1998, BGBl. I 786; Gesetz zur Namensaktie and zur Erleichterung der Stimmrechtsausübung (NaStraG), 18. 1. 2001, BGBl. I 123; Unternehmensübernahme-Regelungsgesetz, 20.12.2001, BGBl. I 3822; Viertes Finanzmarktförderungsgesetz, 21.6. 2002, BGBl. I 2010; Transparenz- und Publizitätsgesetz (TransPuG), 19. 7. 2002, BGBl. I 2681; Gesetz zur Unternehmensintegrität und Modernisierung des Anfechtungsrechts (UMAG), 22. 9. 2005, BGBl. I 2802; Gesetz über die Offenlegung der Vorstandsvergütungen (VorstOG), 3. 8. 2005, BGBl. I 2267; Gesetz zur Umsetzung der Richtlinie 2004/109/EG des Europäischen Parlaments und des Rates vom 15. Dezember 2004 zur Harmonisierung der Transparenzanforderungen in Bezug auf Informationen über Emittenten, deren Wertpapiere zum Handel auf einem geregelten Markt zugelassen sind, und zur Änderung der Richtlinie 2001/34/EG (Transparenzrichtlinie-Umsetzungsgesetz - TUG), BGBl. I, 2007, S. 10.

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	*2013*[1]
1	0.5[2]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
2	0.5[3]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
3	0[4]	0	0	0	0	0	0	0	0	0	0	0	0.25[5]	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25

[1] Coded in May 2013.

[2] **[variable 1]:** Case law of the German Supreme Court based on the referral possibility in § 119(2) AktG: The management board is obliged to refer questions of conduct of business to the general meeting if serious interference with shareholders' rights and interests is likely. This is presumed if a sale accounts for ca. 80% of company assets ((BGH, BGHZ 83, 122 (*Holzmüller*)); BGH, NJW 2004, 1860 (*Gelatine*)).

[3] **[variable 2]:** § 122(2) AktG: 5% of the registered capital is needed.

[4] **[variable 3]:** Usually, German shareholders appoint credit institutions as proxies. However, there was and is no general requirement for credit institutions to act as a proxy (cf. § 135(10) AktG).

4	0.33[6]	0.33	0.33	0.33	0.33	0.33	0.33	0.33	0.66[7]	0.66	0.66	0.66	0.66	1	1	1	1	1	1	1	1	1	1	1
5	0	0	0	0	0	0	0	0	0	0	0	0	0.25[8]	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25
6	0.25[9]	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25
7	0.25[10]	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.5[11]	0.5	0.5	0.5	0.5	0.5	0.5	0.75[12]	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75
8	1[13]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1

[5] According to no. 2.3.3 of the GCGC (2002) exercising shareholders' voting rights shall be "facilitated" and the company shall "assist the shareholder in the use of proxies". Details, however, are not specified.

[6] **[variable 4]:** § 12(2) AktG 1965: multiple voting rights that existed before 1965 remained valid; new multiple voting rights, established by a transitional provision in KonTrag (1998), required state approval.

[7] § 12(2) AktG, as amended by KonTraG (1998, available in German here): existing multiple voting rights remained valid until June 2003; new multiple voting rights cannot be granted.

[8] **[variable 5]:** No. 5.4.2 of the GCGC (2002) states that not more than two members of the supervisory board shall be former members of the management board.

Since 2005 the GCGC states that there shall be "an adequate number of independent members" (also similar proposition in the Commission Recommendation 2005/162/EC of 15 February 2005). Companies have to "comply or explain" with this code (§ 161 AktG).

[9] **[variable 6]:** The management board can be dismissed by the supervisory board only in the event of an important reason, which is presumed if the general meeting withdraws its confidence (§ 84(3) AktG). Dismissal of the supervisory board members is, unless otherwise provided in the articles of association, possible only by three quarters of the votes cast, unless an important reason is present (§ 103(1),(3) AktG).

[10] **[variable 7]:** According to § 147(1) AktG shareholders with 10% of the registered capital can enforce claims. Only a few special provisions in law on groups of companies have to date allowed a shareholder to sue directly (§§ 309(4), 310(4); 317(4), 318(4) AktG).

[11] KonTraG (1998) reduced the hurdle from 10 % to 5 % if facts suggest a suspicion of gross breach of duty (§ 147(3) AktG).

[12] The UMAG (November 2005) enables a shareholder minority with a 1% share of the registered capital or a stock-exchange value of €100,000 to bring action in its own name (§ 148 AktG).

[13] **[variable 8]:** §§ 241 *et seq.* AktG. It could be argued that since 2001 this score should be lowered because of the decisions of the German Supreme Court in BGHZ 146, 179 (*MEZ*); BGH, NJW 2001, 1428 (*Aqua-Butzke*) (in general, action can be brought against resolutions of the general meeting with which the wrongly refused information was connected. A problem with this is that these actions can block entry in the commercial register, bringing the danger of abusing the law. This has been restricted by the German Supreme Court; similar now UMAG (2005): § 243(4)(s.2) AktG).

9	0	0	0	0	0	0	0	0	0	0	0	0	1[14]	1	1	1	1	1	1	1	1	1	1	1
10	0.25[15]	0.25	0.25	0.25	0.75[16]	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	1[17]	1	1	1	1	1	1

[14] **[variable 9]:** Mandatory bid (§§ 35(1), 29(2) WpÜG) inserted by Unternehmensübernahme-Regelungsgesetz (2001).

[15] **[variable 10]:** Initially: §§ 20, 21 AktG (25 % threshold).

[16] § 21 WpHG (5 %) inserted by Zweites Finanzmarktförderungsgesetz (in force since August 1994).

[17] With Transparenzrichtlinie-Umsetzungsgesetz – TUG (2007) threshold lowered to 3% (in force since January 2007).

12. India (Priya Lele, Mathias Siems)

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	*2013*[1]
1	0.5[2]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
2	0.5[3]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
3	0.5[4]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.75[5]	0.875[6]	0.875	0.875	0.875	0.875	0.875	0.875	0.875	0.875	0.875	0.875	0.875	0.875

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[1] Coded in May 2013. A new Companies Act may be forthcoming in 2013 as the Companies Bill 2012 was approved by the lower house in December 2012.

[2] **[variable 1]:** CA 1956 (available here), S. 293 (1) (a). requires shareholders' approval in case of sale or disposal of "whole, or substantially the whole of the undertaking of the company, or where the company owns more than one undertaking, of the whole, or substantially the whole, of any such undertaking". Sale of a mere asset or property will not constitute a sale of an undertaking. For a theoretical discussion on the meaning of the expression 'undertaking' see, Re, Yellamma Cotton Woollen and Silk Mills Co. Ltd., (1970) 40 Com Cases 466. The expression 'undertaking' used in this section is liable to be interpreted to mean 'the unit', the business as a going concern, the activity of a company duly integrated with all its components in the form of assets and not merely some asset of the undertaking: Dhanuka J. in P.S. Offshore Inter Land Services Pvt Ltd v Bombay Offshore Suppliers and Services Ltd (1992) 75 Com Cases 583, (Bom). If the question arises as to whether the major capital assets of the company constitute the undertaking of the company, the courts do not specify a qualifying percentage, but emphasise that the test to be applied would be to see 'whether the business of the company would be carried on effectively even after the disposal of the assets in question or whether a mere husk of the undertaking would remain after the disposal of the asset?'.

[3] **[variable 3]:** CA 1956, S. 188 (2) [prescribes a hurdle of 5% or not less than 100 members contributing to paid-up capital of not less than Rs. 1 lakh].

[4] **[variable 4]:** From 1995-1999: CA 1956, s. 176 (Proxies) read with s.179 (Demand for poll) and Art 61 of Table A of Schedule I. Proxies have no right to speak at the general meeting and can participate in deciding only in the case of a written vote, unless the articles of association of the company provide otherwise [see CA 1956, s. 176(1) proviso (c)]. A poll can be demanded by members present in person or through proxy, holding 1/10th voting power or shares of Rs. 50,000/- [Amended S.179 (1) (a)].

Clause 34 (f) of the Listing Agreement as on 1985 (which is identical to the clause 34 (f) of the Listing Agreement of 2005) requires listed companies to send out proxy forms to shareholders and debenture holders in all cases, such proxy forms being so worded that a shareholder or debenture holder may vote either for or against each resolution.

[5] For 2000: Listing Agreement, Clause 49 Annexure 3 (d) as added by Circular No. SMDRP/Policy/Cir-10/2000 dated 21-2-2000: mentions certain non-mandatory requirements, which included postal ballot in case of certain resolutions (e.g. matters relating to alteration in the memorandum of association of the company, sale of whole or substantially the whole of the undertaking; sale of investments in the companies, where the shareholding or the voting rights of the company exceed 25%; corporate restructuring, matters relating to change in management etc.).

[6] From 2001: CA 1956, S.192 A, introduced by the Amendment Act of 2000 w.e.f. 15/6/01 to be read with Companies (Passing of the Resolution by Postal Ballot) Rules, 2001 (introduced w.e.f. 10-05-2001) as amended on 11th October, 2001 provide that certain important resolutions specified in Rule 4 'shall' be passed by

4	1[7]	1	1	1	1	1	1	1	1	1	0.75[8]	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75
5	0	0	0	0	0	0	0	0	0.25[9]	0.25	0.25	0.75[10]	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75
6	0.5[11]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
7	0.5[12]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5

postal ballot (these include most of the important resolutions e.g. alteration in the Object Clause of Memorandum, certain alteration in the Articles of Associations, buy-back of own shares, sale of whole or substantially the whole of undertaking of a company, giving loans or extending guarantee or providing security in excess of the limit prescribed under sub-section (1) of section 372A; election of a director under sub-section (1) of section 252 etc. An updated version of the Companies (Passing of the Resolution by Postal Ballot) Rules, 2011 has only modified these rules slightly.

[7] **[variable 4]:** CA 1956, S. 88, 89.

[8] The introduction of S.86 (a) by the Amendment Act of 2000 (w.e.f. 13-12-2000) and other incidental changes, including deletion of S.88 read with Companies (Issue of Shares with Differential Voting Rights) Rules, 2001 has led to a decrease in the score: in principle, disproportionate voting rights are possible, yet, according to the Rules the total number of shares with diverse voting rights cannot be more than 25 percent of the issued share capital.

[9] **[variable 5]:** From 1998: Voluntary Code: The Confederation of Indian Industries took an initiative in the area of corporate governance in the early 1990s and established a task force in 1995 to prepare a voluntary code of Corporate Governance in India. The draft of what is known as the 'Desirable Code of Corporate Governance' or 'Desirable Corporate Governance: A Code' was published in April 1997 and the final code was released in April 1998, available here (By 2000 over 25 leading and forward looking companies had already reviewed and/or complied with the voluntary Code).

According to this Code, the following was the recommendation with respect to independent board members: Recommendation 2: Any listed companies with a turnover of Rs.100 crores and above should have professionally competent, independent, non-executive directors, who should constitute at least 30 percent of the board if the Chairman of the company is a non-executive director, or at least 50 percent of the board if the Chairman and Managing Director is the same person.

[10] From January 2001: Clause 49.I (A) of the Equity Listing Agreement (introduced in 2000) prescribes that where the Chairman of the Board is a non-executive director, at least one-third of the Board should be composed of independent directors and in case he is an executive director, at least half of the Board should comprise of independent directors

[11] **[variable 6]:** See CA 1956 S.284 for dismissal of directors. S. 284 (7) provides that the section does not deprive any person removed thereunder of any compensation or damages payable to him in respect of the termination of his appointment as director or of any appointment terminating with that as director. Further see also S.318 for a possibility of claim by managing director or a director in the whole-time employment of the company for compensation in case of a dismissal.

[12] **[variable 7]:** Derivative suits: Ordinarily the directors of the company are the only persons who can conduct litigation in the name of the company (rule in Foss v. Harbottle) but there are certain well known exceptions to this rule, in which cases the shareholders may take action. For instance, matters which are ultra vires (e.g. see Jahangir Rustomki Modi v. Shamji Ladha, (1867) 4 Bom OC 185; Dr. Satya Charan Law v. Rameshshwar Prosad Bajoria (1950) 20 Com Cases 39, AIR 1950 FC 133), acts constituting fraud on the minority, where action of the majority is illegal or where articles require super majority. See also Shanti Prasad Jain v. Union of India, (1973) 75 Bom LR 778 for when the right to start an action on the company's behalf in exceptional cases reverts to the general meeting.

8	0.75 [13]	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75
9	0.5[14]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.4[15]	0.4	0.4
10	0.75 [16]	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75

Shareholders' actions under S.397/398: CA S.399: The threshold for bringing shareholders' action under Ss. 397/398 is the possession of 1/10th of voting rights or of the total number of its members or a minimum of 100 members whichever is less [S.399 (1) (a)]. However, the Central Government may, if in its opinion circumstances exist which make it just and equitable so to do, authorise any member or members of the company to apply to the Company Law Board under section 397 or 398, even if they don't constitute the requisite shareholding to take action under S.399 (1) (a) [See S.399 (4)]. Further, apart from an action u/Ss.397 or 398, in cases where the jurisdiction of civil courts over matters is not expressly or impliedly excluded by CA, 1956, shareholders may take action in ordinary civil courts which does not require the compliance with S.399 e.g. civil suit to challenge the validity of a notice calling a meeting: Niranjan Singh v. Edward Ganj Public Welfare Association Ltd., (1977) 47 Com Cases 285 (P&H); to save the company from two warring factions among the Board of directors: Jayanthi R. Padukone (Mrs.) v. I.C.D.S. Ltd. AIR 1994 Kant 354.

'Member not qualified may file a civil suit': The Delhi High Court in Spectrum Technologies USA Inc. v. Spectrum Power Generation Co. Ltd., 2002 CLC 539 (Delhi) held that: where the aggrieved member is not qualified for filing a petition because of his low shareholding and the Central Government's order for relaxing the requirement in this case is also not available to him, his remedy would be to file a civil suit.

[13] **[variable 8]:** The threshold for bringing shareholders' action under Ss. 397/398 is the possession of 1/10th of voting right or 100 members [S.399 (1) (a)]. However, the Central Government may, if in its opinion circumstances exist which make it just and equitable so to do, authorise any member or members of the company to apply to the Company Law Board under section 397 or 398, even if they don't constitute the requirement of minimum shareholding to sue under S.399 (1) (a) [Power of Central Government to relax requirements of 399: S.399 (4)]. Further, it is possible for shareholders to bring action against resolutions of the general meeting in the ordinary courts under certain circumstances.

'Member not qualified may file a civil suit': The Delhi High Court in Spectrum Technologies USA Inc. v. Spectrum Power Generation Co. Ltd., 2002 CLC 539 (Delhi) held that: where the aggrieved member is not qualified for filing a petition because of his low shareholding and the Central Government's order for relaxing the requirement in this case is also not available to him, his remedy would be to file a civil suit.

[14] **[variable 9]:** Clauses 40A and 40B (of the Listing Agreement) incorporated in May 1990 and from November 1994 as per Regulation 9 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1994. Then, Regulation 21 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997: trigger at 15% but no need to bid for the entirety of shares. All SEBI (Substantial Acquisition of Shares and Takeovers) Regulations may be found here.

[15] Regulation 3, 7 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011: mandatory offer with 25% but again not for the entirety of shares.

[16] **[variable 10]:** A new Clause 40A (of the Listing Agreement) was incorporated in the Listing Agreement Form in May 1990. According to this clause, any person acquiring 5% or more of the shares in a company was to notify the stock exchange of such holding. For position from 1994: see SEBI (Substantial Acquisition of Shares and Take-overs) Regulation, 1994 (Reg 6) and from 1997 see SEBI (Substantial Acquisition of Shares and Takeovers) Regulation, 1997 (Regulations 6 and 7); now: SEBI (Substantial Acquisition of Shares and Takeovers) Regulation, 2011, reg. 28 and 29.

13. Italy (Viviana Mollica)

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	*2013*[1]
1	0[2]	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2	0[3]	0	0	0	0	0	0	0	0.1[4]	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1
3	0[5]	0	0	0	0	0	0	0	0.5[6]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5

[1] Coded in October 2013.

[2] **[variable 1]:** Art. 2365 Codice Civile (available for download here, hereafter referred to as c.c.) deals with the power of the extraordinary shareholders' meeting. The new wording of the article provides for an eventual delegation of power to the board of directors (or the audit committee or the supervisory board), on mergers, transfer of the seat of the company, reduction of the capital, etc.

Since d. lgs. n. 58/1998 (Testo Unico della Finanza, TUF), Art. 2410 confers the power of issuing obligations to the board and no longer to the extraordinary shareholders' meeting. In general, the reform resolved the issue of the division of power between the shareholder meeting and the board in favour of the latter.

[3] **[variable 2]:** Art. 2367 c.c. only regulated the power of the minority to ask for a meeting to be held if they possessed 20% of the company capital.

[4] Art. 125 d. lgs. n. 58/1998 (TUF), in force since July 1998, modified old art. 2367 for listed companies, and provided for the power of the minority to ask for a shareholder meeting, when they possessed at least 10% of the shares. According to Art 125 the minority shareholders should also indicate the topics to be discussed in the meeting. The directors can nevertheless introduce other topics, even different from the minority formulation, with the only limit that the topics eventually chosen by the directors cover in substance what was asked by the minority that requested the meeting. The directors have to comply with the request in the time and modes established by law. Yet, the interpretation of art. 2367 c.c. is still very controversial, with two different views on it: on one hand, the doctrine recognises an obligation imposed on the directors to call for the meeting; on the other hand, some part of the doctrine thinks directors have only an obligation to consider the request, and would be free to reject it even for their own mere convenience. Recent case law recognises the right/obligation of the directors not to accept illegitimate, unjustified, repetitive, illicit requests, or requests that concern areas that are outside of the competence of the shareholders meeting. Trib. Milano, 7 maggio 1987, in Giur. Comm., 1987,II, p. 812; Trib. Milano, 22 marzo 1990, in Società, 1990,I, p. 775; Trib. Aosta, 12 aprile, 1994, in Società, 1995, I, p.70; Trib. Milano, 21 novembre 1994, in Giur. Comm., 1995, II, p.586; Trib. Napoli, 24 gennaio 1996, in Società, 1996, II, p.817.

New art. 2367, 2° co., c.c. also states that the Court President is not automatically authorised to call for the meeting, but shall do so only after having heard all the relevant parties in order to establish why the meeting was not called. Moreover, the new art. 2367 states that the meeting will not be called if the request concerns subjects that have to be prompt by the directors.

[5] **[variable 3]:** Art. 2372 Codice Civile: proxy voting is normally permitted, unless expressly prohibited by the Company Statute. The delegation of the voting power must be conferred in writing and is only valid for one shareholders meeting.

[6] The post-1998 wording of the article adds that the latter is the norm, unless the delegation of power is made through a general delegation clause or if the delegating person is a company and the delegate is one of its employees. The same person cannot represent more than 50 shareholders if the company capital amounts to less

4	1[7]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
5	0	0	0	0	0	0	0	0	0	0.1[8]	0.1	0.1	0.25[9]	0.25	0.4[10]	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.4	0.6[11]
6	0.25[12]	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25

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than Euro 5,000,000, or 100 if the company capital amounts to more than Euro 5,000,000 but less than 25,000,000 or 200 if the company capital is more than Euro 25,000,000.

In addition, since TUF (art. 127) transposed into the new Art. 2370 co. 4 Codice Civile: "The Company Statute can allow postal voting to be cast." The old legislation was silent on the matter.

[7] **[variable 4]:** Art. 2351, co. 4 Codice Civile.

[8] **[variable 5]:** The (self-disciplinary) Preda Code 1999 (available here, revised in 2002 and 2011) Art. 3 states that the board should comprise an 'adequate' number of independent non-executive directors, though these are soft law rules rather than a legal obligation (ie, freedom to choose coupled with accountability principle).

[9] Other (soft law) regulations that referred to the role of independent directors are *Le Linee Guida di Confindustria* and *Le Linee Guida dell'Associazione Bancaria Italiana*. Particularly relevant are *Le Linee Guida della Borsa Italiana* (stock exchange regulations), written on the basis of D.lgs. n. 231/2001 and concerning the annual report that listed companies have to compile. In paragraph 2.2., they make provisions about the roles that independent directors (again the reference is to an adequate number) should have in listed companies. The Regulation has a "comply or explain" requirement.

[10] There are different board models in the current Italian company law: (a) For the traditional model, the law reform introduced for the first time a formal mention of the independence requirement in the Civil Code (after 2004). New Art. 2387 c.c. states that the Company Statute may subordinate directors' appointment to some pre-requisites of independence (in the traditional model, the requirement of independency was traditionally attached to the auditors).

(b) As for the one-tier structure introduced by the company law reform, Art. 2409–septiesdecies, co. 2 introduces the compulsory figure of the independent director: at least one third of the board must be independent. Besides, art. 2409-octiesdecies, which recalls art. 2409-septiesdecies c.c. states that the audit committee, the eventual remuneration and nomination committees must be composed mainly of independent directors. But since it does not concern all companies, a lower score has been awarded.

(c) For the new two-tier system, Art. 2409 duodecies c.c states that the member of the monitoring board can be asked for the necessary requisites of independence. As for the managing board, Art. 2409-undecies recalls Art. 2387.

[11] Since the 2011 revision of the corporate governance code, applied since January 2013, section 3.C.3. states that issuers belonging to FTSE-Mib index (comprising of 40 companies), at least one third of the Board of Directors members shall be made up of independent directors. If such a number is not an integer, it shall be rounded down. Anyway, independent directors shall not be less than two. Again, since it does not concerns all companies, a lower score has been awarded.

[12] **[variable 6]:** Art. 2383 c.c. (new and old): Directors can be dismissed at any time by the board, but damage compensations for breach of contract must be paid in case the dismissal is without a just/fair cause (unjustified dismissal).

7	0.1[13]	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.5[14]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
8	1[15]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
9	0	0	0[16]	0	0	0	0	0	1[17]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1

[13] **[variable 7]:** Old text of art. 2393 cc gives the exclusive competence to the shareholders' meeting: the latter can act against the directors in case the fiduciary relation between the two is coming to an end; this power can be also eventually waived, but only if 20% of the capital doesn't veto the waiving.

In addition, acording to old Artt. 2409 with 2408 cc 10% of the capital can start an enforcement action in front of a court (in case of serious irregularities and a founded suspect of a serious breach). This requirement is more limited in substantive terms, thus we have only awarded a lower score (0.1, instead of 0.25).

[14] Since 1998: art. 129 TUF legitimates shareholders who possess at least 5% of the company shares (unless a lower percentage is provided by the articles) to take legal actions (arts. 2393 and arts. 2409 with 2408).

[15] **[variable 8]:** Artt. 2377 and 2379 cc (new and old version):

Resolutions of the shareholders' meeting can be the object of a claim for two categories of reasons:

- reasons concerning the substantial part (content) of the resolutions,

-reasons concerning procedural vices in their formation.

Besides, the vice can be classified in 'nulli' (void) that can be objected by whomever has an interest regulated by art. 2379 c.c. and 'annullabili' (voidable) that are regulated by art. 2377 c.c.

The new version of art. 2379 clarified the hypothesis in which a resolution can be defined as 'nulla', stating that it is so not only in case of illicit or impossible object (as the previous text), but also when the meeting has not been called, and when a written report of the meeting is missing.

New art. 2377 establishes that only shareholders who represent 1/1000 of the company capital can use this remedy: all the rest can ask for damage compensation. Art. 2377 has always been considered as the instrument granted to the minority against the excessive power of the majority, but it is ONLY actionable when there is a frauding intent aimed to produce a patrimonial advantage for the majority at the expense of other shareholders (cfr, Cass. 5 maggio 1995 n.4923 in Giust. Civ. Mass., 1995, 949; Cass.11 marzo 1993 n.2958 in Riv. Dir. comm., 1994, II, 311; Tribunale Milano, 18 maggio 1992, in Vita not., 1993, 876; Tribunale Milano, 15 aprile 1991, in Giur. It., 1991, I, 2, 649; Tribunale Trieste, 3 luglio 1987, in Giur. Comm., 1988, II, 124, (nota); Corte Appello Milano, 27 settembre 1983, in Rass. Dir. civ., 1985, 812 (nota); Cass. 7 febbraio 1979 n.818, in Giust. Civ. Mass., 1979, fasc.2), and never in the case of mere opportunity, since the court cannot interfere in the running of the company. See Tribunale Milano, 15 aprile 1991 in Giur. It., 19.

[16] **[variable 9]:** Legge n. 149 del 18-2-92, Art. 10 co. 1, 3, 7, 8, 9 transposed. The initial provisions introduced only the 'opa residuale' into the Italian landscape. The bid was mandatory if 90% (or a minor percentage if so indicated by CONSOB) of the shares were concentrated in the hand of a shareholder.

[17] Art. 106 TUF as well as Decreto legislativo 24 febbraio 1998 and Reg. CONSOB 11971/1998: A mandatory bid will take place in case of the purchase of 30% of the shares

10	1[18]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1

[18] **[variable 10]:** Legge n. 216 del 1974 (e suc. mod.), required the disclosure of more than 2% of shares.

Since 1998, in Art. 120 TUF and Art. 117 Reg. CONSOB 11971/ 1999: There is an obligation placed on every shareholder (companies, physical person) of disclosure (made to the Company and the Italian Stock Exchange) if it directly or indirectly owns more than 2% shares. Further disclosures are mandatory when one owns 5%, 7.5%, 10% and eventual 5-multiples. Reversely, there is a mandatory disclosure obligation when the shares possessed go below those percentages, or reach less than 2%. The shares that are the object of this norm are only those with voting rights.

14. Japan (Mathias Siems, Ola Polanska)[1]

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	*2013*[2]
1	1[3]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1[4]	1	1	1	1	1	1	1
2	1[5]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
3	0	0	0	1[6]	1	1	1	1	1	1	1	1	1	1	1	1	1[7]	1	1	1	1	1	1	1
4	1[8]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
5	0[9]	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0[10]	0	0	0.2[11]	0.2	0.2	0.2	0.2

[1] Thanks to Kenji Hirooka and Hiroyuki Watanabe for helpful comments.

[2] Coded in May 2013.

[3] **[variable 1]:** Commercial Code (available here), § 245(1)(no.1): transfer of a substantial part of the company's business is sufficient, which courts already assume as from 10% of the whole firm (see Kenichi Osugi, 'Americanization of Stock Corporation Laws Around the World and Shareholders' Derivative Suits as a Forgotton Element Therein', (2002) 13 ZJapanR 29 at 36).

[4] According to art. 467 of the new Companies Act enacted in May 2006 (available here), approval of the general meeting is required for the sale of the whole or a 'substantial part' of the company's assets, but the assets amounting to one fifth (20%) or less of the firm's entire assets are excluded. This threshold of 20% has been newly introduced by the Act, since the old Commercial Code did not provide any guidance as to how to interpret 'substantial part'.

[5] **[variable 2]:** Commercial Code, § 232-2: 1 % - new law: Art. 303 (2) of the Companies Act

[6] **[variable 3]:** Commercial Code, § 239: only basics, eg, proxy voting possible. But Law for special exceptions to the Commercial Code concerning audit, etc. of joint stock companies, § 24-3(1)-(4): postal voting required for big companies with the 1993 company law reform (in force since October 1993). Disclosure of proxy voting regulated in securities law (cf. Securities and Exchange Act, § 194).

[7] Companies Act: Either postal (art.311) or electronic (art.312) voting is possible with the decision of the board. Companies having 1000 or more of shareholders in total are obliged to stipulate the availability of postal voting in the articles (art. 298 (2)).

[8] **[variable 4]:** Commercial Code, § 241(1) - New law: art. 308 of the Companies Act.

[9] **[variable 5]:** Law for special exceptions to the Commercial Code concerning audit, etc. of joint stock companies, § 18(1) requires that half of the members of the "board of auditors" are independent (since 2001; from 1993-2000: at least one member). However, this board does not have comparable powers to, for instance, the German supervisory board. Thus, it is not taken into account in this coding.

With respect to directors, the general law mentions outside directors but does not require independence (cf. Commercial Code, § 188). The Tokyo Stock Exchange, Principles of Japanese Corporate Governance do not recommend independent directors.

6	0.25[12]	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25
7	0.5	0.5	0.5	0.75[13]	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
8	1[14]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
9	0.5[15]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.6[16]	0.6	0.6	0.6	0.6	0.6	0.6

[10] Under the new system, companies with committees (as opposed to companies with auditors) [The main difference in corporate governance by the board of auditors and by the committees is that in the latter, the powers of the board of management are confined to supervision/ audit exercised through the three committees established therein (nomination, audit and compensation committee), while the powers of execution of the company operations are delegated to executive officers] are required to appoint at least half of the committee members from outside (art.400 (3) of the Companies Act). This is the only instance where outside board members are mandated. The lack of reference in the law to the 'independence' requirement under the previous regime led to widespread criticism about the status of outside board members, and therefore the new Company Act addressed this issue by providing for a strengthened information disclosure to shareholders concerning outside board members in the two instances: at the time of initial appointment of them and at general meetings (in business reports).

[11] Amendment to Tokyo Stock Exchange Listing Regulations from 30 December 2009, requiring one independent director or corporate auditor (Rule 436-2), available at http://www.tse.or.jp/english/rules/regulations/.

[12] **[variable 6]:** Commercial Code, § 257(1): compensation possible (s.2). New law: Art. 339 of the Companies Act: directors can be dismissed with an ordinary resolution of the general meeting. If no good reason is provided regarding the dismissal, they must be compensated (para.2).

[13] **[variable 7]:** Since 1950, a derivative suit possible; but, e.g., demand requirement (Commercial Code, § 267). In 1993, the court fees were reduced and a regulation on reimbursement of lawyers' fees (Commercial Code, § 268-2) was introduced (law in into force in October 1993).

Amendment of 5 December 2001 (in force since 1 May 2002): extension of demand period from 30 to 60 days (Commercial Code, §§ 267-1- 267-3), amicable settlement with its defendant directors without consent from the entire shareholding possible (Commercial Code, §§ 268-5- 268-7) (before 2001 this was controversial).

The new Companies Act reorganized the provisions pertaining to a derivative suit by putting them all under one heading ('Action for Pursing the Liability, etc. of a Stock Company'). As a consequence, the scope of board members against which the suit can be filed has been extended (including accountant auditors) and the possibility of an amicable settlement with defendant directors has been explicitly provided for in a separate provision (art.849), in which case the consent of all auditors is required. The requirements applicable (shareholder status, demand period etc.) have not been changed; and it excludes a derivative action if it is unfair or to the damage of the company.

[14] **[variable 8]:** Japanese law differentiates between actions to quash a resolution (i.e., actions for avoidance) and actions for declaration of non-existence or nullity of resolution (Commercial Code, §§ 247, 252). The time limit for avoidance here is three months (Commercial Code, § 248(1)). Moreover, by contrast with the German model, the Court may require provision of security (Commercial Code, § 249(1)). No changes introduced by the Companies Act. The differentiation between actions for revocation (=avoidance) and actions for declaration of non-existence or nullity of a resolution is retained (art.831, 830 respectively).

10	0.75 [17]	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75

[15] **[variable 9]:** Since Law No. 43, 22 June 1990, effective as of 1 December 1990: Securities and Exchange Act, § 27-2(1) requires an off-exchange offer, the acceptance of which would result in the acquisition of more than 33.3% of the target's shares (ie ex ante vs. the ex post approach of most other legal systems), to be made through a tender offer open to all shareholders. The offer does not have to be for all outstanding shares.

[16] The Financial Instruments and Exchange Act (in force since September 2007), which amends the previous Securities Exchange Act, requires the following offers to be made through tender offers: (art.27-2(1)1) an off-exchange offer, which is made to *11 or more shareholders within a period of 60 days*, and which results in the acquisition of more than 5% of the target's shares; and (art.27-2(1)2) an off-exchange offer, which is made to *10 shareholders or less within a period of 60 days*, and which results in the acquisition of more than 33.3% of the target's shares. Note that the new Act mandates a tenderer to make offers for all outstanding shares in the case of acquisition of 66.6% or more of the target's shares (art.27-23 (4)). This was not regulated before. Moreover, the Act also introduced the regulation of 'combined on- and off-exchange offers', which would result in the acquisition of more than 33.3% of the target's shares. Under this system, the series of offers and purchases made within a certain period is considered as constituting a single transaction (art.27-2(1) 4). This was not regulated before and allowed for hostile takeovers to take place in avoidance of a mandatory bid. Because of all of this, the slightly higher score was awarded.

[17] **[variable 10]:** Securities and Exchange Act, § 27-23: 5 % as of Law No. 43, 22 June 1990, effective as of 1 December 1990; previously it was 10%.

15. Latvia (Theis Klauberg, Theodora Dimitrova)

	1990	**1991**	**1992**	**1993**	**1994**	**1995**	**1996**	**1997**	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**	**2004**	**2005**	**2006**	**2007**	**2008**	**2009**	**2010**	**2011**	**2012**	*2013*[1]
1	0[2]	0	0	0[3]	0	0	0	0	0	0	0	0	0[4]	0	0	0	0	0	0	0	0	0	0	0
2	0.25[5]	0.25	0.25	0.25[6]	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.5[7]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
3	0[8]	0	0	0[9]	0	0	0	0	0	0	0	0	0[10]	0	0	0	0	0	0	0	0	0	0	0
4	0[11]	0	0	1[12]	1	1	1	1	1	1	1	1	1[13]	1	1	1	1	1	1	1	1	1	1	1

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[1] Coded in November 2013.

[2] **[variable 1]:** Art 62(7) of the Law on Joint Stock Companies 1990 states that the general meeting has the exclusive competence to decide on the merging of the company with other companies. In addition, Art 70(4) lists the sale of company property as one of the issues of major importance, which would require the council to call a general meeting. The Law does not contain any provisions in relation to the sale of a part of the company.

[3] The Law on Joint Stock Companies 1993 had no provision on this topic either.

[4] Commercial Law (version as of the February 2002 amendment available here), s. 268 lists the competences of a meeting of stockholders. It does not, however, list any competences regarding approval of the sale of the company's assets.

[5] **[variable 2]:** Art 63 of the Law on Joint Stock Companies 1990 states that shareholders must own at least 10% of the company's share capital in order to have the right to request the board to include any issue on the agenda.

[6] Law on Joint Stock Companies 1993, s. 55 imposed a 10% hurdle.

[7] Commercial Law, s. 274: S 267 gives stakeholders the right to take part in the administration of the company through regular or extraordinary meetings. Regular meetings are normally convened by the board or alternatively, they may also be convened by the council, the Commercial Register Office, or the liquidators (s 269). Shareholders may request an extraordinary meeting if they jointly represent no less than 5% of the equity capital of the company (unless otherwise specified in the articles of association). S 274 stipulates that shareholders must represent at least 5% of the equity capital of the company in order to be able to include additional issues on the agenda.

[8] **[variable 3]:** Art 64 of the Law on Joint Stock Companies 1990 allows only proxy voting.

[9] Law on Joint Stock Companies 1993, s. 58: proxy voting only possible, requiring a written authorisation.

[10] Commercial Law, s. 212(3) stipulates that a shareholder may participate at a meeting in person or through a representative who has written authorisation. S 277 states that a proxy should be completed in writing and attached to the minutes of the meeting (this requirement does not apply where a person represents a stakeholder on the basis of law).

[11] **[variable 4]:** Art 64(9) of the Law on Joint Stock Companies 1990: the company's charter may stipulate different voting rights for different types of stock.

5	0[14]	0	0	0[15]	0	0	0	0	0	0	0	0	0	0	0	0	1[16]	1	1	1	1	1	1	1
6	0.25[17]	0.25	0.25	0.25[18]	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.75[19]	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75

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[12] Law on Joint Stock Companies 1993, s. 57: prohibited multiple voting rights.

[13] Commercial Law, s 279(1) stipulates that each minimum par value stock with voting rights gives the right to one vote at a meeting of stockholders. According to s 280(1), the articles of association may provide that only a certain amount of the par value of stock gives the right to one vote. Latvian law limits the number of voting rights which can be attributed to a class of shares to 5 votes per share (Litan, Pomerleano and Sundararajan, eds, *The Future of Domestic Capital Markets in Developing Countries*, p. 327).

[14] **[variable 5]:** Art 69(3) of the Law on Joint Stock Companies 1990 states that neither the board and audit commission members, nor the attorney of the company may be members of the council. The Law, however, does not specify how many council members must be independent.

[15] The Law on Joint Stock Companies 1993 did not contain any provisions regarding the independence of directors. It contained restrictions on board members' voting if there was a conflict of interests. Board members and their close relatives were under an obligation to disclose information regarding their employment, ownership or positions held in other companies, which could potentially give rise to a conflict of interests. Both executive and non-executive directors had to report their stakes in the company.

Likewise, Latvian Commercial Law does not provide any rules with respect to this variable. S 301 defines the board of directors as the executive body which manages and represents the company. S 309(3) states that in the event of a conflict of interests between the company and a member of the board of directors or a person related to a director, the issue should be resolved by the remaining directors. In addition, individual directors owe a duty to the company to declare his or her interest prior to a board meeting. This legislation, however, does not suggest that directors are completely forbidden from owing shares in the company.

[16] The first version of Latvia's Principles of Corporate Governance was published on 27 December 2005 (applied since January 2006, available here). It recommends that it shall be the obligation that half of the board members are independent (s. 8.6) – and this is restated in the 2010 revised version of the Principles (s. 7.6). Listed companies have to comply or explain, see the study on monitoring and enforcement of practices in corporate governance here, at pp. 201-2.

[17] **[variable 6]:** Art 76 of the Law on Joint Stock Companies 1990 allows the general meeting to remove a board member at any time. Board members have the right to compensation from the company if they are removed without good reason.

[18] Law on Joint Stock Companies 1993, no special requirements for the dismissal of board members or members of the supervisory board (s 66). Directors, however, had to be compensated for breach of contract if they were dismissed without an important reason (s 78).

[19] Commercial Law, s 224(4) states that a member of the board of directors may be recalled by a decision of the shareholders or the council if a general meeting cannot be immediately convened. S 306 specifies that the articles of association may provide that there must be an important reason for a directors' dismissal. It also lists the reasons which are important enough to lead to a director's dismissal: gross violations of authority, failure to perform or appropriately perform his or her duties, inability to manage the company, causing harm to the interests of the company, loss of confidence by stockholders.

7	0[20]	0	0	0.25[21]	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.5[22]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
8	1[23]	1	1	1[24]	1	1	1	1	1	1	1	1	1[25]	1	1	1	1	1	1	1	1	1	1	1
9	0	0	0	0	0	0[26]	0	0	0	0	0	0	0	0	0	0	0.5[27]	0.5	0.5	0.5	0.5	0.5	0.5	0.5

S 296(7) stipulates that supervisory board members may be recalled from their office at any time by the general meeting. This section does not specify whether there must be a good or important reason for the dismissal.

Note on Labour Law: The termination procedures applicable to members of management bodies are regulated by the Commercial Law which is regarded as a special law in relation to Latvian Labour Law. Several Latvian Supreme Court judgments refer to the need to apply Commercial Law to disputes related to directors' dismissal. A study on the termination of employment relations in Latvia suggests that Latvian courts have shaped the practices regarding the termination of employment of members of management bodies. The study examines several Supreme Court decisions and concludes that the existence of an employment contract with a member of the board or council does not preclude the application of Commercial Law. Therefore, board and council members can be dismissed by the shareholders (or the council as stipulated in the Commercial Law) without complying with the requirements for termination of employment listed in the Labour Law.

There is nothing in the law that would preclude a contractual provision providing directors with compensation in case of dismissal.

[20] **[variable 7]:** Art 70(1)(4) of the Law on Joint Stock Companies 1990 (in force since June 1990) states that one of the duties of the council is to represent the company against the board members at court. The Law does not allow shareholders to bring derivative suits.

[21] Law on Joint Stock Companies 1993, s. 100: a shareholder must own 10% of the share capital in order to bring derivative action.

[22] Commercial Law, s 172(2) states that a minority shareholder may request the company to bring an action against the founders, members of the board or council or the auditor providing that he or she represents at least 5% of the equity capital or his or her participation is no less than LVL 50,000. The company has to bring the requested claim within a month from the day when it was received. If it fails to do so, the shareholder(s) has the right to bring the claim directly. This, however, has to be done on behalf of the company and the claim must be submitted within 3 months from the date of the initial request (s 172(2)-(6)). The company bears the costs of litigation given that it is party to the lawsuit. It can recover the costs from shareholders who have brought an action in bad faith (s 172(7)).

[23] **[variable 8]:** Art 67(2)(2) of the law on Joint Stock Companies 1990 allows any shareholder to petition the court to repeal a decision of the general meeting provided that shareholder voted against the decision and requested this to be recorded in the minutes.

[24] Law on Joint Stock Companies 1993, s. 63: every shareholder could file a claim against a resolution by the general meeting.

[25] Commercial Law, s 287(1)(2)-(1)(7) in conjunction with s 286(1)(1)-(9) list the situations in which a stakeholder may be allowed to bring an action in court to declare a decision by the general meeting invalid. These include, inter alia, situations where the stakeholder voted against the decision, or he or she was unlawfully prevented from participating in the meeting, or the stakeholder was unjustifiably refused the provision of information. S 287(1)(2) specifically states that 'any' stakeholder may bring an action in respect of these scenarios, and therefore does not impose a certain threshold of voting rights.

[26] **[variable 9]:** No provision in the Securities Law 1995.

10	0	0	0	0	0	0	0	0	0	0	0.5[28]	0.5	0.5	0.5	0.5	0.5	0.75[29]	0.75	0.75	0.75	0.75	0.75	0.75	0.75

[27] Since the Law of the Financial Instrument Market 2004 (in effect since 13 July 2006, available here): article 66 lays down the rules on mandatory share buyout offers. When someone acquires directly or indirectly over 50% of the total amount of shares with voting rights, the acquirer(s) is obligated to issue a mandatory share buyout offer to the rest of the shareholders in the target company. According to a publication by Lejins, Torgans & Partners, this requirement applies irrespective of whether the shares acquired are fully or partially public emission shares or closed emission shares (http://rln.lv/lv/publications/M&A%202008-GZ%20MA.pdf). The price offered by the offeror is subject to regulation and cannot be lower than the price at which the offeror acquired the shares from the company. If the shares have been acquired as a result of a voluntary share buyout offer, the requirement no longer applies (Article 66(1)(2)(1)).

[28] **[variable 10]:** Not in the Law on Joint Stock Companies 1990 and 1993. Since April 2000: Group of Companies Law, s. 6: 10 %.

[29] Since July 2006: Law of the Financial Instrument Market, s. 61: 5 % (since 2006 – initially it was 5 %). Shareholders are under a duty to make a notification to the company and the Financial and Capital Market Commission. The acquirer should make a notification within 5 business days. According to a publication by Lejins, Torgans & Partners, this requirement applies irrespective of whether the shares acquired are fully or partially public emission shares or closed emission shares (http://rln.lv/lv/publications/M&A07_Chapter-20_Latvia.pdf, p. 4).

16. Lithuania (Theodora Dimitrova)[1]

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	*2013*[2]
1	0[3]	0	0	0	0.1[4]	0.1	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0[5]	0	0	0	0	0	0	0	0	0
2	0.5[6]	0.5	0.5	0.5	0.5[7]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.25[8]	0.25	0.5[9]	0.25	0.25	0.5	0.5	0.5	0.5	0.5
3	0[10]	0	0	0	0[11]	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

[1] Relevant laws: Law on Stock Corporations 1990 (English version at http://www.litlex.lt/litlex/Eng/Frames/Laws/Documents/121.HTM), Company Law 1994 (English version at http://www.litlex.lt/Litlex/eng/Frames/Laws/Documents/169.HTM), Law on Companies 2000 (English version at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=147516&p_tr2=2), amended in 2003 (in force since 2004) (English version available at http://www3.lrs.lt/pls/inter3/dokpaieska.showdoc_e?p_id=149256) and in subsequent years.

[2] Coded in November 2013.

[3] **[variable 1]:** The Law on Stock Corporations 1990 did not contain any rules which require shareholder approval in relation to the sale of company assets.

[4] Lithuania's Company Law came into force in July 1994. Article 27(7) stipulated that a resolution of the general meeting was required for decisions of the board concerning the sale of company assets amounting to 10% of the value of the company's authorised capital (note: irrespective of the actual assets of the company). This article was amended in 1996: the new text applied to sales of company assets amounting to more than 5% of the company's authorised capital and resolutions required a two-thirds majority of those present; the same provision was provided in art. 24(2)(n.17) of the Law on Companies 2000.

[5] Since the 2003 amendment (in force since January 2004), decisions concerning the transfer of a company's fixed assets which amount to more than 5% of the authorised capital should be taken by the board of directors (art. 34).

[6] **[variable 2]:** Art 21 of the Law on Stock Corporations 1990 stipulates that shareholders who own not less than 5% of the share capital have the right to demand the inclusion of additional items of business in the agenda.

[7] According to Article 22 of the Company Law 1994, shareholders had to own 5% of the share capital in order to have the right to request additional items to be put on the agenda. The same threshold was provided in the Company Law 2000, art. 27.

[8] The 2003 amendment of the Company Law (in force since January 2004) imposed a threshold of 10% (Article 25).

[9] The June 2006 version of the Law on Companies contained a threshold of 5% (Article 27). In a January 2007 amendment, the threshold was changed back to 10%. The threshold has been 5% since 2009.

[10] **[variable 3]:** Art 16 of the Law on Stock Corporations allows only proxy voting.

[11] Lithuanian Company Law envisages only proxy voting (art. 30 of current version).

4	1[12]	1	1	1	1[13]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
5	0[14]	0	0	0	0	0	0	0	0	0	0	0	0	0.1[15]	0.1	0.1	0.25[16]	0.25	0.25	0.25	0.25	0.25	0.25	0.25
6	0.75[17]	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75

[12] **[variable 4]:** Art 15(3) of the Law on Stock Corporations 1990 states that the articles of association may prescribe the maximum number of votes a shareholder may have. However, if all the voting stock of the company is of the same par value, each share carries one vote at the general meeting.

[13] According to Lithuanian Company Law, each share gives its holder one vote at the general meeting. This rule has not been changed since the adoption of the Company Law in 1994 (art. 17 in current version).

[14] **[variable 5]:** The Law on Stock Corporations 1990 did not contain any provisions regarding the number of independent board members.

[15] Lithuania's first Corporate Governance Code came into force in April 2003 (available here). Lithuania provides companies with a choice between having a one-tier or two-tier management. The Code lays down some rules regarding the composition of supervisory collegial bodies. Principle III in the Code states that the supervisory board should comprise of a sufficient number of members independent of the company and its controlling shareholders. A member should not be deemed 'independent' if he or she: (i) is the controlling shareholder of the company or somehow connected with the controlling shareholder; (ii) has been the chief executive or an empowered employee of the company; (iii) has been an employee of the entity which has been consulting the company in the last three years; (iv) is a major supplier or client of the company; (v) has material contract relations with the company; (vi) has been a member of a collegial body of the company for a sufficiently long term to be influenced regarding the best interests of the company; (vii) has business or other type of relations which may cause a conflict of interest. The Code does not specify an exact number of supervisory board members who should be independent: it provides companies with flexibility to decide.

The Corporate Governance Code was amended in 2010 but the requirement remains the same. The updated version is available here.

[16] Since June 2006 "comply or explain" is required; http://ec.europa.eu/internal_market/company/docs/ecgforum/studies/comply-or-explain-090923-appendix1_en.pdf at pp. 213-4.

[17] **[variable 6]:** According to the Law on Stock Corporations 1990, shareholders had the right to dismiss board members and members of the Council of Observers. The Law did not contain any provisions listing the grounds on which directors may be dismissed. The Company Law 1994 provided that the general meeting could remove members of the supervisory or management board. The law did not require a good reason for dismissal (Article 19). Similarly, the Law on Companies gives the general meeting the right to remove members of the supervisory or management board without providing a reason (Art 24 in 2000 version; Article 20 in 2004 version). None of these provisions preclude the possibility to have an agreement for compensation in case of dismissal.

7	0[18]	0	0	0	0[19]	0	0	0	0	0	0	0	0	0	1[20]	1	1	1	1	1	1	1	1	1
8	1[21]	1	1	1	1[22]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
9	0	0	0	0	0	0	0.5[23]	0.5	0.5	0.5	0.5	0.5	0.5[24]	0.5	0.5	0.5	0.5	1[25]	1	1	1	1	1	1
10	0	0	0	0	0	0	0.5[26]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.75[27]	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75

[18] **[variable 7]:** The Law on Stock Corporations 1990 did not allow shareholders to bring derivative law suits against directors. The Council of Observers represents the corporation in court proceedings against the board of directors (Art 24(1)(6)).

[19] The Company Law 1994 did not envisage the possibility for private enforcement of directors' duties. Art. 20(1)(n.4) of the Company Law 2000 only allowed for shareholders to sue for 'damage caused to the shareholders'.

[20] The Law on Companies 2004 introduced shareholders' derivative action through Article 16, which allows shareholders to file a claim with the court for reparation of damage resulting from malfeasance by the a member of the board of directors or the supervisory board. See also http://www.baltictimes.com/news/articles/17211/.

[21] **[variable 8]:** Art 22(1) of the Law on Stock Corporations 1990 states that a court may declare a resolution of the general meeting invalid in certain circumstances at the application of the shareholders, the members of the Board, the Council of Observers, and the head of the management of the Corporation. In addition, Art 22(3) states that a resolution may be appealed against within 30 days of the date when the person learned or should have learned about its adoption. Art 15(1)(3) also states that shareholders have the right to appeal in court against the resolutions of a general meeting. Therefore, the law makes it seem that every shareholder has the right to object to a resolution of the general meeting providing at least one of the conditions in Art 22(1) is met.

[22] Article 16 of the Company Law 1994 gave shareholders the right to appeal in court resolutions of the general meeting. Similarly, the 2004 Law also allows share-holders to appeal resolutions of the general meeting (Article 20).

[23] **[variable 9]:** The first comprehensive legislative act regulating the Lithuanian securities market came into force in January 1996. Article 10 of the Law on Public Trading in Securities stipulated that if a person acting independently or in concert with other persons acquires more than 50% of the votes at the general meeting, he or she must make a public bid for the remaining shares of the company.

[24] The Law on Securities Market, which was introduced in 2002 (consolidated version available here), reduced the required number of votes to 40% (Article 32). Article 32 also contains some exceptions to the mandatory offer rule.

[25] Lithuania amended this law in February 2007 and reduced the threshold to one-third (Article 31).

[26] **[variable 10]:** The Law on Public Trading in Securities imposed an obligation on shareholders to disclose their share ownership when they acquired more than 10% of the company's capital (Article 9(1)).

[27] The Law on Securities Market initially contained the same requirement. However, it was amended in 2004 and the threshold was reduced to 5% (Article 23).

17. Malaysia (Priya Lele, Akio Hoshi, Mathias Siems)

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	*2013*[1]
1	1[2]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
2	0.5[3]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
3	0.5[4]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
4	1[5]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
5	0[6]	0	0	0	0	0	0	0	0	0	0.25[7]	0.5[8]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5

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[1] Coded in May 2013.

[2] **[variable 1]:** Companies Act 1965 (consolidated version available here), s 132C (inserted in 1974): any proposal or transaction involving the disposal of a substantial portion of the company's undertaking or property which would adversely and materially affect the performace or financial position of the company requires the approval of the general meeting. 'Substantial value' is not defined under this section. However, a transaction is of substantial value if it relates to an acquisition or disposal of property which will materially and adversely affect the financial position of the company. In Chang Ching Chuan & Ors. V Aik Ming (M) Sdn Bhd & Ors. (Pekan Nenas Industries Sdn Bhd Intervenors) [1992] 2 MLJ 583, the land which was disposed of by the directors was the only asset of the company. The court held that its disposal would affect the financial situation of the company. Since the directors failed to obtain shareholders' approval at the general meeting, the disposal of the property was invalid. [Source: p.291: Commercial Applications of Company Law in Malaysia: Aiman Nariman Mohd Sulaiman and Aishah Bidin. 2002].

Since 1988: Section 116 of the Kuala Lumpur Stock Exchange Listing Requirements required the approval of the general meeting for the disposal of 25% of the company's assets. Since 1998: this rule can be found in the Bursa Malaysia listing requirements (Rule 10.07(1) Main Market Listing Requirements, http://www.bursamalaysia.com/market/regulation/rules/listing-requirements/main-market/listing-requirements). The "percentage ratio" includes several criteria, including (i) the value of assets of the transaction compared with the net assets of the issuer, (ii) the aggregate value of consideration given in relation to the transaction compared with the net assets of the issuer, (iii) the aggregate value of the consideration given in relation to the transaction compared with the market value of the issuer's ordinary shares and (iv) the total assets of the transaction compared with the total assets of the issuer.

[3] **[variable 2]:** Companies Act 1965, s 151: members holding at least 5% of the total voting rights of members having the right to vote on the matter to which the requisition relates or numbering at least 100 with an average of not less than RM500 having been paid by each member for the shares, may propose resolutions to be considered at a meeting of the company.

[4] **[variable 3]:** Companies Act 1965, s 149 read with Article 60 of Table A (providing two-way proxy form) [available at http://www.seraphim.my/A-1-2-5/act125/a0125sc004.htm].

[5] **[variable 4]:** Companies Act 1965, s.55: One-share one-vote is required for public companies. See also Sulaiman and Bidin, supra at 377.

[6] **[variable 5]:** Until 1999 there was no special requirement in relation to composition of the board and independent board members.

6	0.5[9]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
7	0.5[10]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.75	0.75	0.75	0.75	0.75	0.75	0.75
8	1[11]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1

[7] 2000: Because of the Malaysian Code on Corporate Governance (March 2000, available here) - a mechanism adopted by the government to encourage best practices and high standards for companies in Malaysia. Part II of the Corporate Governance Code, which set out the best practices, stated the recommended number of independent directors on a board to be at least two or one-third of the board of directors, whichever is the higher. A lower score has been assigned because it's a voluntary code.

[8] Since 2001: Because many of these recommendations have now been codified in the listing requirements (LRs) of the Kuala Lumpur Stock Exchange (KLSE) (now the Bursa Malaysia since 2004), which were launched on 22 January 2001. As per these LRs: Board of directors of a listed company to contain at least two independent directors or be one-third comprised of independent directors, whichever is higher. [LR 3.04].

[9] **[variable 6]:** Companies Act 1965, S. 128 read with S. 137.

Compensation for loss of office: S.137 attempts to limit the power of the board of directors to pay compensation to a director for loss of office. It is unlawful for a company to make payment or give any benefit to a director by way of compensation for loss of office unless particulars of the proposed payment have been disclosed to the members of the company and approved by the general meeting: S.137 (1).

But S.137 (5) provides that certain payments are 'exempt benefits', which are not subject to the prohibition of S.137 (1): these include: a payment made or given under an agreement entered into between the company and a director before he or she took up office, as a part of consideration for agreeing to hold office, and a bona fide payment by way of damages for breach of contract.

[10] **[variable 7]:** At common law: A member's entitlement to commence legal proceedings to remedy wrongs done to the company is circumscribed by the rule in Foss v. Harbottle. If a member is unable to bring his case within one of the established exceptions, he is precluded from proceeding with his complaint. Once it is established that the case comes under one of the exceptions to the rule in Foss v. Harbottle, the action to be commenced may take one of three forms, namely, personal action, a representative action or a derivative action.

Under the Rules of the High Court 1980 (RHC), there is no procedure prescribed for a derivative action and it takes the form of a representative action as in O.15 r.12 of the RHC. The company is added to the action as a mere nominal defendant so that it may be bound by any order that the court makes.

Companies Act 1965, s 181: s 181 (1) (a) allows the court to provide remedy to a member where the court finds that: affairs of the company are being conducted or the powers of the directors are being exercised either in an oppressive manner to one of the members including petitioner or in disregard of the member or other members' interests.

[p. 341: Commercial Applications of Company Law in Malaysia: Aiman Nariman Mohd Sulaiman and Aishah Bidin. 2002].

The July 2007 amendments added the provisions which expressly allow a complaint to bring an action on behalf of the company (ss.181A to 181E). A 30-day prior written notice to the director is required (s.181B(2)).

9	1[12]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
10	1[13]	1	1	1	1	1	1	1	1	1	1	0.75[14]	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75

[11] **[variable 8]:** Companies Act 1965, s181 (1) (b): under this section any member can apply for a remedy if the affairs of the company are being conducted in a manner which is oppressive, unfairly prejudicial or unfairly discriminatory. S 181 covers a wide range of conduct including fraud on minority: however, it appears that despite the wide terminology of section 181, courts are generally reluctant to intervene in the affairs of companies unless bad faith is established: see Zephyr Holdings Pty Ltd v Jack Chia (Aust) Ltd (1989) 7 ACLC 239: Re TriCircle Investment Pte Ltd [1993] 2 SLR 523; and Re Tong Eng Sdn Bhd [1994] 1MLJ 451.

p. 376: Company Law in Malaysia, Cases and Commentary: Krishnan Arjunan, Malay Law Journal, 1998.

[12] **[variable 9]:** Trigger: 33% or 50% for creeping takeover: Rule 34, Malaysian Code on Takeovers and Mergers 1987. Now: Rule 9 Malaysian Code on Takeovers and Mergers 2010 (available here). [And partial takeover is possible with the consent of the Securities Commission: Rule 27, Malaysian Code on Takeovers and Mergers 1987: 27.4 allows the offerror to bid for only a percentage of the target company's shares with the consent of the Securities Commission (established in March 1993 under the Securities Commission Act, 1993)].

Pg. 383.

[13] **[variable 10]:** Companies Act 1965 (as amended in 1985), s. 69D: 2% threshold.

[14] Companies (Amendment) Act 2001: substituting the word “five” for the word “two” in s. 69D (in force since August 2001).

18. Mexico (Pablo Iglesias-Rodriguez, Aurelio Gurrea Martinez)

Legal sources: Companies Act 1934 (*Ley General de Sociedades Mercantiles de 4 de agosto de 1934*); Stock Market Act 1975 (Ley del Mercado de Valores de 2 de enero de 1975), in force until June 2006; Stock Market Act 2005 (Ley del Mercado de Valores de 30 de diciembre de 2005, available in Spanish here), in forcé since June 2006; Code of Best Corporate Governance Practices 1999; Code of Best Corporate Governance Practices 2011.

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	*2013*[1]
1	0[2]	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2	0.25[3]	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25
3	0	0	0	0	0	0	0	0	0	0	0	0.5[4]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5

[1] Coded in October 2013.

[2] **[variable 1]:** The sale of an amount equal or higher than 5% of the assets of the company is within the competence of the board of directors according to article 28.3.c of the Stock Market Act 2005 (operating since June 2006). This article requires the authorization of the board of directors for operations that are executed simultaneously or successively, which by their characteristics can be considered like a single operation and which are sought to be carried out by the company or the people controlling it, done in the course of a social exercise, where they are unusual or nonrecurring, or, they consist of the buying or selling of company's assets with a value equal or higher to 5% of the consolidated assets of the company (based on the balance of the immediate last trimester before the operation takes place).

No other provisions make direct reference to this right. Only if this type of operations imply a change in the object of the company or a modification of the articles of association would they be an object of the general extraordinary meeting, as stated in article 182 of Companies Act 1934.

[3] **[variable 2]:** The commissaries (persons in charge of monitoring of companies, who can be both shareholders or persons with no relation to the society and who are nominated by the shareholders) can introduce items on to the agenda, according to article 166.5 of Companies Act 1934. Apart from this, article 167 of the Companies Act 1934 allows shareholders to inform the commissaries about any irregularity they consider to have arisen in the management of the company. In these cases, the commissaries must inform the general meeting about these complaints, as well as make any suggestions or proposals they consider to be sufficient. Apart from the powers of the commissaries (who can also be shareholders) in these circumstances, the minority shareholders are not able to introduce items onto the agenda of general meetings.

Article 184 of Companies Act 1934 establishes that shareholders with at least 33% of the share capital can ask a member of the board, the board of directors or any commissaries to call a general meeting, indicating items to be discussed.

As the commissaries are, in some sense, representatives of the interest of the shareholders, the value 0.25 has been attributed during the relevant period.

[4] **[variable 3]:** Article 192 of Companies Act 1934 offers the possibility of shareholder proxy solicitations. The representatives can be other shareholders, but not members of the board or commissaries. The power of representation will be conferred in the way established by the articles of association, or, in absence of such provision, by written means. Article 14.bis 3.VI.c.2 of Stock Market Act 1975, introduced in 2001, by Decree of 1 June, and article 49 of Stock Market Act 2005,

4	1[5]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
5	0	0	0	0	0	0	0	0	0	0.25[6]	0.25	0.5[7]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
6	0.5[8]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5

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develops this general principle and establishes the right to be represented in the general meetings by another person with a two-way voting proxy form provided by the company.

[5] **[variable 4]:** Article 113 of Companies Act 1934 clearly states that each share will have just one vote. Article 114 allows the company to issue special shares for people working for the company. These shares must indicate their particular conditions. Today it is understood that these particular conditions cannot go against the rule established the article 113 of Companies Act 1934. The transitory dispositions of the 1934 MCA establish that the dispositions of the Law will be applied to the effects of all the previous legal acts of the company unless this application is retroactive. It is thus considered that all the companies with the form of a PLC cannot have shares with double voting rights.

[6] **[variable 5]:** The former Code of Best Corporate Governance Practices, introduced in July 1999 (available here), page 7, recommends that at least 20% of the members of the board shall be independent; yet, this was pure soft law – which changed in 2001. The new Code of Best Corporate Governances establishes a recommendation of 25% of the members to be independent.

[7] Articles 14.bis.3.IV of Stock Market Act 1975, introduced in June 2001, as well as article 24 of Stock Market Act 2005, establish a requirement for at least 25% independent members on the board of directors (where the board is of a size between 5 and 20 members).

According to article 14.bis of Stock Market Act 1975, in no case may independent board members be: employees or officers of the company (including employees or officers who have worked as such during the previous year in the company); shareholders who may have authority over the company's managers; partners or employees of corporations or associations that provide advice or consulting services to the company or to other companies belonging to the same business group as the company and whose earnings represent 10 % or more of the company's total earnings; customers, suppliers, debtors, creditors, partners, directors or employees of a company that is a customer, supplier, debtor or significant creditor; employees or a foundation, association or civil company that receives significant donations from the company; general directors or high level officers of companies on whose board of directors the general director or top managers of the company have a seat; or spouses or those living together as well as relatives by blood or marriage.

Pursuant to article 24 of Stock Market Act 2005, stock exchange companies' boards of directors must have a maximum of 21 directors, of which at least 25 % must be independent directors. Each director may have an alternate director. Independent directors will be designated by virtue of their experience, capacity and professional training.

[8] **[variable 6]:** Article 50 of Stock Market Act 2005 allows shareholders owing 10 % (individually or in group) of the shares with voting rights, even those with limited or restricted voting rights, to nominate or revoke the designation of a member of the board of directors. Apart from this provision, article 162 of Companies Act 1934 only permits the dismissal of the directors in the cases in which the general meeting decides it as a result of their responsibility.

However, the articles of association may provide that such an appointment or removal of the sole director or board of directors must be made through an extraordinary shareholders' meeting (attending to the rule established in article 182.12 of Companies Act 1934). This is the reason why the value 0.25 has been attributed.

7	0[9]	0	0	0	0	0	0	0	0	0	0	0.25	0.25	0.25	0.25	0.25	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
8	0.25[10]	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.375	0.375	0.375	0.375	0.375	0.375	0.375	0.375	0.375	0.375	0.375	0.375	0.375
9	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1[11]	1	1	1	1	1	1	1
10	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0.66[12]	0.66	0.66	0.66	0.66	0.66	0.66	0.66

[9] **[variable 7]:** Article 163 of Companies Act 1934 allows shareholders owning at least 33% of the share capital of a firm to start a derivative suit against the breach of duties by the directors.

Today article 38 of Stock Market Act 2005 allows shareholders of listed firms with at least 5% of the share capital to start this kind of actions. Before 2005, the 1975 SMA art 14.bis.3.6.d, by amendment introduced in June 2001, allowed shareholders with at least 15% of the share capital to start the derivative suit.

[10] **[variable 8]:** Article 201 of Companies Act 1934 establishes that shareholders with at least 33% of the share capital can file a claim against a resolution of the general meeting unless they were not in the general meeting where the decision was adopted or they voted against the claimed resolution, in which case the claim is not possible. This claim cannot cover the resolutions concerning the responsibility of the directors or the commissaries. According to article 51 of the 2005 SMA, shareholders with voting rights, even if these are limited or subject to restrictions, owning individually or together at least 20% of the share capital, can file a judicial claim against a resolution of those general meetings in which they have voting rights. In these cases there is no application of the percentage (33%) established by the article 201 of the MCA. The former Stock Market Act 1975, in its article 14.bis.3VI.f (introduced in June 2001) reflects the same percentage.

[11] **[variable 9]:** As stated in article 98 of Stock Market Act 2005, a person or a group of persons aiming to acquire or reach by any mean directly or indirectly at least 30% of the share capital of a private limited company with registered shares, listed or not, by one or more different operations, at the same time or in different stages, must make an offer for the 100% of the share capital when they want to get the control of the company. There are also rules governing cases in which the purpose of the bidder is not to get control of the firm.

According to article 2.III of Stock Market Act 2005, one of the definitions of 'control' is the power of a person or a group of persons to keep the ownership of rights, which allow to directly or indirectly exercise more than the 50% of the voting rights of the firm. Thus, it can be assumed that for bids of more than 50% of the share capital with voting rights there is an obligation to bid for 100% of the share capital.

Neither the Companies Act 1934 nor the Stock Market Act 1975 contain rules regarding this type of bid.

[12] **[variable 10]:** Provisions regarding the disclosure of major share ownership are contained in the articles 109-111 of Stock Market Act 2005.

Article 109. - The person or group of persons who acquire, directly or indirectly, inside or outside of any stock market, by means of one or several operations of any nature, simultaneous or successive, ordinary shares of a private limited company registered in the Registry, leading to an ownership percentage equal or higher than 10% and less than 30% equal of these shares, are required to inform the public of this. At the same time, the aforementioned person or group of people must disclose whether they intend or not to acquire a significant influence in the company.

Article 110. - Persons related to a private limited company with registered shares, who directly or indirectly increase or decrease by 5% their participation in its share capital, by means of one or several operations, simultaneous or successive, must publicly dislose this. In addition, they must disclose whether they intend to acquire or increase a substantial influence in that company.

Article 111. - A person or group of persons who directly or indirectly own at least 10% of the share capital of a registered private limited company as well as the members of the board and the main managers must inform the Securities and Exchange Commission and, in cases involving dispositions of a general character, must make a public disclosure concerning the acquisition or sale of those shares, within the terms established by the Securities and Exchange Commission.

19. Netherlands (Gerhard Schnyder, Berk Demirkol, Mathias Siems)

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	*2013*[1]
1	0[2]	0	0	0	0	0	0	0	0	0	0	0	0	0	0.5[3]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
2	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1[4]	1	1	1	1	1	1	1	1	1
3	0[5]	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0.5	0.5	0.5	0.5	0.5	0.5	0.5

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[1] Coded in May 2013.

[2] **[variable 1]:** Before 2004 some approval for transfers of important parts of assets required (see Timmerman & Doorman 2002: 26) ["Dutch law recognises three different types of mergers. Apart from the legal merger mentioned above, there is also the asset acquisition and the share acquisition. A characteristic of the asset acquisition is that the acquiring company acquires all the assets from the acquired company. Such a transfer requires the approval of the general meeting of shareholders (section 2:217(107)), since it is not a power specifically conferred upon the board of directors or others. What is relevant for minority shareholders may be that the transfer of all assets could be seen as necessarily transgressing the object of the company (section 2:7). Under this view, an asset acquisition would require an amendment of the articles, for which those same articles usually require a qualified majority." (Timmerman&Doorman 2002: 26). => this suggests, however, that an AGM approval is necessary only for transfers of 100% of the assets → hence = 0.].

[3] In force since 1 October 2004: new art. 2:107a Civil Code (Burgerlijk Wetboek BW, available here) states that board decisions about the transfer of the "enterprise or nearly the whole enterprise to a third party" and that "acquiring of or divestment from" stakes in the capital of another company if it amounts to at least 1/3 of the company's assets requires the approval of the general meeting. This concerns only the shares of other companies but not other types of assets. [For criticism of this see the summary of the passages of the parliamentary debates in which the SER Advice 2001 was quoted (established by the Social and Economic Council (SER)) http://www.ser.nl/~/media/Files/Internet/PIPDF/3858-a3976/PI3926%20pdf.ashx. Some MPs in the 2nd Chamber (*Tweede Kamer*) asked to include other types of assets than stakes in other companies' capital. This provision was not, however, adopted. But see also Kleyn et al. (2007, ¶18) state that since October 1, 2004 "[…] a contemplated sale of a substantial asset or a contemplated change in the character or identity of a company […]" requires the approval of the AGM. Is there any case law on the definition of 'substantial'? Not that we know of (but ABNAMRO case may have such a point, but the point in this case is not really about this issue) / Kleyn et al. refer to subsection a of art. 2: 107a Civil Code: board decisions implying the transfer of the enterprise or nearly the whole enterprise to a third party. (while the ABNAMRO case involves a sale of a substantial part of the bank but not the whole of or nearly the whole thing).].

[4] **[variable 2]:** Reform of *structuurregieme* entered into force on October 1, 2004: Shareholders representing at least 1% of the issued capital or – in the case of listed companies – € 50m at the current share price, can ask that a certain item be put on the agenda for the AGM. (BW 2:114a, §2)(This provision corresponds literally with recommendation no. 30 of the Peters Code.) ["In their articles of association, some companies grant an explicit right to shareholders and to holders of certificates of shares to propose items for inclusion on the agenda. If the articles do not contain such a provision, this still does not mean that the Board of Directors can simply disregard a proposal to include a certain item." This suggests that there was no such right, but that some customary rule or 'moral obligation' exists. The passage continues "BoD should realize that mutual trust [...] implies" that requests for placing an item on the agenda should be carefully considered "[...] unless such inclusion on the agenda is – in the opinion of the Supervisory Board and the Board of Directors – opposed by substantive company interests" (Peters Code, 1997, English Version, p.25) The code also suggests that if the BoD refuse the follow a claim for inclusion, it should clearly explain why at the beginning of the AGM].

4	0[6]	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1[7]	1	1	1	1	1	1	1	1	1
6	0[8]	0	0	0	0	0	0	0	0	0	0	0	0	0	0.75[9]	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75
7	0[10]	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
8	1[11]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1

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[5] **[variable 3]:** Dutch law admits the existence of a right to delegate the voting of one's shares, without however specifying of any procedure (2:117 §1 BW). The company itself can solicit proxies and is not constrained to provide any particular form of ballot (Spamann 2006a). General proxies are prohibited, i.e. proxies count for one AGM only (Meinema 2002: 169).

Art. 117a introduced with law from 20 October 2006, in force since 1 January 2007, enabling online postal voting, if the articles provide it. Revised version of arts 117, 117a, b, implementing the Shareholder Rights Directive, in force since 1 July 2010.

[6] **[variable 4]:** The law stipulates that each shareholder has at least one vote (art. 2:118 BW for NVs and art. 2:228 BW for BVs). Deviations from the 'one share – one vote' principle include (see for a list Meinema 2002: 167): (a) Voting caps, which limit the number of votes per shareholder to six (if more than 100 shares are issued, otherwise to three) (2: 118 lid 5 BW [before 2004]); (b) Priority shares may give its holder certain special rights, e.g. the right to do a binding nomination for the appointment of managing directors (the general meeting may, at all times by a resolution passed with a two-third majority of the votes cast representing one-half of the issued capital, resolve that such a nomination shall not be binding). (c) Most importantly, indirect 'super-voting shares' can be created through not fully paid-up preference shares, which can be issued by excluding the pre-emptive right of existing shareholders (Carriere 1997, p. 377; Timmerman & Doorman 2002: 4).

[7] **[variable 5]:** Tabaksblat code (effective from December 2004, available here): all but one member of the supervisory board must be independent. (§ III.2.1). Listed companies are obliged to 'comply or explain' with the code, ie it is equivalent to default rules; cf also van Bekkum et al, http://www.ejcl.org/143/art143-17.pdf.

[8] **[variable 6]:** Carrière 1997, p. 380: no time limit for director appointment; Carrière 2000, p.81: directors' contracts have a special position in Dutch labour law, thus: contrary to other employees, no consent is needed from the Regional Employment Bureau for their dismissal and they cannot be reinstated by a court ruling!

Structure company before 2004 reform: only supervisory board can dismiss managing directors; supervisory board members are appointed for max. 4 years, but can be dismissed only by the *Ondernemingskamer* of the Amsterdam Court of Appeal (if requested by the supervisory board, AGM, or Works council). In companies with voluntary supervisory boards and with a 'mixed regime', the AGM appoints and dismisses supervisory directors (Carrière 1997, 383).

[9] Structure company after 2004: co-optation of the supervisory board abolished, AGM can dismiss the supervisory board *en bloc* by an absolute majority (and at least 1/3 of share capital). (Kleyn et al. 2007) - arts.2: 132, 134, 142, 144.

[10] **[variable 7]:** No derivative action (though, possible functional equivalents, not coded here; see Slides 17-8 at http://www.uni-hamburg.de/fachbereiche-einrichtungen/handelsrecht/ECFR_/Gerner-Beuerle%20Schuster.pdf).

9	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1[12]	1	1	1	1	1	1
10	0	0	0.75[13]	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75

Comments:

A structure company is defined as a company (either BV or NV) that satisfies during three consecutive years the following criteria: i) issued share capital of at least € 13m (€ 16m since October 2004); ii) has more than 100 employees, and iii) it – or one of its subsidiaries – falls under the obligation under the Works Council Act to

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[11] Besides an investigation procedure under art. 2:344-359 BW, other legal venues are open to shareholders based on art. 2:8 BW. Thus, each shareholder may apply for annulment of decisions by any organ of the company when it is contrary to: 1. law and statutes, 2. principle of reasonableness and fairness, 3. other company rules laid down in by-laws. Carrière 2000, p.83.

[Other legal venues include: Dispute settlement procedures (art. 2:335-343 BW) allow shareholders representing at least one third of the outstanding shares to ask a district court to order a compulsory selling of the shares of a shareholder who behaves in a prejudicial way to the company (Meinema 2002: 163). Conversely, a right to exit the company exists in the sense that dispute settlement procedures grant a shareholder whose interests are damaged by other shareholders (and not by the company's bodies) the right to ask that she be bought out at a fair price (art. 2.343) (see Timmerman & Doorman 2002: 86; Meinema 2002: 163)].

[12] **[variable 9]:** Such a rule was adopted by the lower house on October 24, 2006, following the adoption of the 13th EC CL Directive. The rule is a part of chapter 5 of the Financial Supervision Act (FSA), Section 5:70(1) of the FSA. It entered into force on October 28, 2007.

[details: "[...] Anybody who, individually or acting in concert with other parties, obtains dominant control in a Dutch public limited company (naamloze vennootschap, or NV), of which NV shares or certain depositary receipts issued for shares (certificaten van aandelen) have been admitted to trading at a regulated market within the European Union, will in the future be required to make a public offer to all holders of the relevant shaers for 100% of their holdings. The term 'dominant control' means the capacity to exercise at least 30% of the voting rights in the general shareholders' meeting of such an NV." (Buruma 2006, ¶3). NB: "The current bill does not include a prohibition on increasing pre-existing controlling interests (above 30%), without making an offer for 100% of the relevant company's issued capital (this is a notable difference from the takeover rules in, for instance, the United Kingdom)." (Buruma 2006, ¶13) Adopted by the lower house in October 2006, and by April 2007 was treated in the Senate but not adopted by October 2007 (Kleyn et al. 2007, ¶2)].

[13] **[variable 10]:** Disclosure of Major Holdings in Listed Companies Act of 1992 (February) implemented the EC directive of 12 December 1988, 88/627/EEC and introduced thresholds for the compulsory announcement of an acquisition or sale of significant share stakes. First threshold for disclosure = 5%.

[In 1996 the Disclosure of Major Holdings in Listed Companies Act (Wet melding zeggenschap in ter beurze genoteerde vennootschappen Wmz 1996, entry into force on June 1, 1997) has been adopted, which defines 'bands' (0-5%, 5-10% etc.) for disclosure. Disclosure rules exist at least since June 1995 (Haanappel et al. 1999). The thresholds were 5%, 10%, 25%, 50% and 66.66% (replaced in 2006 by *Wet melding zeggenschap en kapitaalbelang in effectenuitgevende instellingen*, entered into force October 1, 2006). Wet melding zeggenschap en kapitaalbelang in effectenuitgevende instellingen is replaced in 2007 by Wet op het financieel toezicht, entered into force January 1, 2007. The tresholds are 5%, 10%, 15%, 20%, 25%, 30%, 40%, 50%, 60%, 75% and 95% (art. 5:38 Financial Supervision Act)].

establish a works council (Meinema 2002: 158). Companies which fall under this ‘structure regime’ are obliged to establish, besides the management board (*raad van bestuur*), an independent supervisory board (*raad van commissarissen*) with at least three members. Until recently, most listed firms were *structuurvennootschap* (see e.g. SER 2001 (pp.8-9): out of 184 listed companies, 111 were structure companies and 30 applied the mixed regime voluntarily (January 1, 1999). The Dutch law provides for a less strict version of the structure regime for certain companies, the so called “mixed regime”. Companies which employ the majority of their workforce outside the Netherlands can apply this less strict regime in which case the AGM, not the supervisory board, adopts the annual accounts [Since October 2004, the AGM is always the authorized corporate body to adopt the annual accounts] and appoints and removes the members of the executive board (de Jong 2001). Interestingly, however, a considerable part of companies which could opt-out of the *structuurregeling* chose to apply the Dutch law system anyway: Poutsma and Braam (2005: 15) report 15% of the firms renounced from opting out; de Jong (2001: 159) reports even that 26% of all firms that applied the structure regime do so voluntarily (this may be explained by the fact that the structure regime constitutes an efficient anti-takeover device). Note that in the case of the voluntary structure regime, the power of the supervisory board is reduced and the AGM elects and dismisses the directors (Carrière 1997: 383).

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20. Pakistan (Priya Lele, Mathias Siems)

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	*2013*[1]
1	0.5[2]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
2	0.25[3]	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25
3	0[4]	0	0	0	0	0	0	0	0	0	0	0	0.5[5]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
4	1[6]	1	1	1	1	1	1	1	1	1[7]	0.33	0.33	0.33	0.33	0.33	0.33	0.33	0.33	0.33	0.33	0.33	0.33	0.33	0.33
5	0[8]	0	0	0	0	0	0	0	0	0	0	0	0.2[9]	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.2	0.4[10]	0.4
6	0.5[11]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
7	0[12]	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0

[1] Coded in May 2013.

[2] **[variable 1]:** Companies Ordinance 1984 (available here), S. 196 (3) : sale, lease or other disposal of the undertakings or a sizable part thereof requires the consent of a general meeting.

[3] **[variable 2]:** Companies Ordinance 1984, S.164 (2): 10% [in addition: Companies Ordinance 1984, 159 (2): Calling of extraordinary general meeting.-- members representing not less than one-tenth of the voting power can requisition or themselves call for an extraordinary general meeting].

[4] **[variable 3]:** Companies Ordinance 1984, S.161 read with Regulation 39 of Table A in the First Schedule: only allows proxy.

[5] Code of Corporate Governance 2002 (available here): mandates the provision of proxy solicitation but only in one case, i.e. to facilitate the minority shareholders as a class to contest the election of directors. This was left unchanged in the Code of Corporate Governance 2012 (available here).

[6] **[variable 4]:** Companies Ordinance 1984, S.90: strict one-share one-vote principle (only ordinary shares permitted).

[7] Companies Ordinance 1984, S.90 amended by Finance Act, 1999 dated 30th June 1999 (effective from 1st July 1999) read with the Companies, Share Capital (Variation in Rights and Privileges) Rules 2000 (in force since August 2000) – in particular rule 3, 4(a), 5 (ie approval by SEC necessary).

[8] **[variable 5]:** There is nothing in the Companies Ordinance 1984 on the composition of the board of directors and the requirement of independence of directors.

[9] Code of Corporate Governance 2002 (enacted by Pakstan SEC to be inserted in the Listing Rules of stock exchanges) recommends encouraging of effective representation of independent non-executive directors, with at least one independent director from amongst the institutional investors. This provision is dependent on voluntary compliance (see Appendix of the Code). Companies shall publish and circulate a statement to set out the status of their compliance with the code.

[10] Code of Corporate Governance 2012 (effective from April 2012): now one independent director is mandatory; encouragement to have 1/3 of independent directors.

[11] **[variable 6]:** Companies Ordinance 1984, S.181.

[12] **[variable 7]:** Companies Ordinance, 1984, S.290: 20%.

8	0.25 [13]	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.5[14]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
9	0	0	0	0	0	0	0	0	0	0	0	0	0.4[15]	0.4	0.4	0.4	0.4	0.4	0.9[16]	0.9	0.9	0.9	0.9	0.9
10	0	0	0	0	0	0	0	0	0	0	0	0	0.5[17]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5

[13] **[variable 8]:** Companies Ordinance, 1984, S.290: Action could be taken against the decision of the general meeting when it amounts to oppression and mismanagement within the meaning of that section: hurdle of 20%.

[14] Introduced since 2002: by Ordinance No. C 2002 dated 26 Oct. 2002 is S.160A, under which proceedings of a general meeting may be declared invalid by reason of any material defect or omission in the notice or irregularity in the proceedings of the meeting, which prevented members from using their rights effectively - hurdle of 10%.

[15] **[variable 9]:** Listed Companies (Substantial Acquisition of Shares and Takeovers) Ordinance 2002 (in force since October 2002, available here), ss. 5, 6, 12: mandatory offer with 25%, but not for the entirety of the shares (as in India; see coding explanation there).

[16] Listed Companies (Substantial Acquisition of Shares and Takeovers) Regulation 2008 (in force since August 2008, available here), s. 14 elaborates on Listed Companies (Substantial Acquisition of Shares and Takeovers) Ordinance 2002, s.12 that 'acquirer will oblige the acquirer to acquire at least ninety percent of the total voting shares of the target company'.

[17] **[variable 10]:** Listed Companies (Substantial Acquisition of Shares and Takeovers) Ordinance 2002: s. 4: 10%.

21. Poland (Ola Polanska, Theodora Dimitrova)[1]

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	*2013*[2]
1	0.5[3]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
2	0[4]	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0.5[5]	0.5	0.5	0.5	0.5
3	0[6]	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0.5[7]	0.5	0.5	0.5	0.5

[1] **Relevant legislation:** Commercial Code (enacted in 1934), succeeded by the Commercial Companies Code (hereafter referred to as "CCC", enacted on 15 Sep. 2000 and came into force on the 1st of Jan. 2001, available for download at https://roma.trade.gov.pl/it/download/file/f,6941); 1991 Act on Public Trading in Securities and Trust Funds (*Dz. U. 1991, Nr.35, poz. 155 from 21.03.1991*); succeeded by 1997 Act on Public Trading in Securities (*Dz. U. 1991, Nr.118, poz. 754 from 21.08.1997*); succeeded by the current Act on Public Offering, Conditions Governing the Introduction of Financial Instruments to Organised Trading, and Public Companies (hereafter referred to as the "Act on Public Offering and Public Companies"; *Dz. U. 2005, Nr. 184, poz. 1539 from 29.07.2005*, available here) [note: The Act on Public offering and Public Companies adopted in 2005 constitutes one of the three acts adopted as the "legislation package 2005", which implements the EU Directives harmonizing the regulations on investor protection, with a view to increasing the competitiveness of the Polish capital market through liberalization and simplification of the regulations concerned]. The Code of Best Practice of WSE (Warsaw Stock Exchange) Listed Companies 2007 (available here).

[2] Coded in November 2013.

[3] **[variable 1]:** Art. 393 para.3 states that the sale and lease of a company's business and/or its 'organized (structural)' part needs to be approved by the resolution of an ordinary general meeting. The Commercial Code contained similar provision only without the reference to an 'organized' part (art. 388) [The Commercial Code, however, contained a separate chapter entitled 'sale of business', which provided an extensive definition of that concept, i.e. the sale of any element of an organized entirety of an enterprise, such as a firm, patent rights, property etc. (art. 40)]. There is no indication of the actual value of business for the sale/ lease for which such an approval is needed.

Art. 4a, Pt. 4 of the Act on Corporate Income Tax provides a definition of what is considered an 'organized' part of the business: "A set of material and non-material elements separated both financially and organizationally from the existing enterprise structure, including services (undertakings) intended for the realization of particular economic objectives, which at the same time is capable of constituting a self-standing enterprise (establishment) realizing these objectives on its own accord."

[4] **[variable 2]:** According to Article 394 of the Commercial Code 1934, shareholders who owned at least 10% of the total shares could require additional items to be put on the agenda.

[5] The CCC initially contained the same requirement. However, it was amended and as of 3 August 2009, the threshold has been reduced to 5% (Article 400).

[6] **[variable 3]:** The Commercial Code 1934 allowed proxy voting only where the proxy was present during the general meeting. Until recently, participation in and voting at a shareholders' meeting through proxy was only possible with the physical presence of the proxy at the meeting and only where the proxy was appointed by a shareholder in writing (art. 405 of the Commercial Code; art. 412 of the CCC).

[7] The amendment of the CC introduced in 2008, in force from August 2009, has enabled postal-voting in public companies (art. 4111), which needs to be done using a form provided by the company (art. 402-3). According to art. 402-3, para. 3, this form shall specifically: (1) Provide for the means to identify a shareholder (or

4	0[8]	0	0	0	0	0	0	0	0	0	0	0.66[9]	0.66	0.66	0.66	0.66	0.66	0.66	0.66	0.66	0.66	0.66	0.66	0.66
5	0[10]	0	0	0	0	0	0	0	0	0	0	0[11]	0.5[12]	0.5	0.5	0.4[13]	0.4	0.4	0.5[14]	0.5	0.5	0.5	0.5	0.5
6	0.75[15]	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75

proxy), (2) Enable the shareholder to cast a vote ('for', 'against' or 'suspension', as defined in art. 4-1 pt. 9), (3) Ensure the possibility of objection if the shareholder votes against the resolution.

[8] **[variable 4]:** The Commercial Code 1934 allowed multiple voting rights (Articles 351 and 385). A maximum of five votes could be attached to one share.

[9] Companies can create preference shares which are assigned not more than two voting rights per one share (art. 351-1, 352 of the CCC). Such preference shares can only be issued as named shares and their details must be stipulated in the articles. Before the enactment of the CCC in 2001, a preference share could be assigned up to 5 voting rights (see previous note); this rule was retained as an exception for companies that had State Treasury as a shareholder (regardless of the percentage of shares owned thereby) for the provisional period of 2001-2004, until Poland's accession to the EU (art. 625 of the CCC).

Companies incorporated before the enactment of the CCC, which already had multiple voting rights, can retain them accordingly with the rule of obtained rights (art. 613 CCC).

[10] **[variable 5]:** The Commercial Code 1934 did not contain any requirements regarding independent directors.

[11] The basic rule on the supervisory board membership (art. 385) is that members are appointed by the general meeting and the minimum number of members required is 3 (5 in case of public companies). There is no reference to the board member's status against the company, shareholders etc. and consequently no requirement of independency.

[12] From 2002 onwards the Regulations of the Warsaw Stock Exchange incorporates the Code of Best Practices, drafted by the Polish Forum of Corporate Governance. *The Code of Best Practice for Public Companies 2002* (available here and revised in 2005, available here) stated at pt. 17 that at least half of the members of the Supervisory Board should be independent.

[13] The June 2005 amendment provided an exception to this rule, whereby the number is reduced to at least two in case where there is a dominant shareholder (holding >50% of votes).

[14] *The Code of Best Practice of WSE (Warsaw Stock Exchange) Listed Companies 2007*, effective from January 2008 and embodying the principles of the above Code, recommends that 'at least two members of the Supervisory Board should meet the criteria of being independent from the company and entities with significant connections with the company'(Section III, Point 6). But there is now also an explicit 'comply or explain' requirement: see http://ec.europa.eu/internal_market/company/docs/ecgforum/studies/comply-or-explain-090923-appendix1_en.pdf. at p. 282 – thus, justifying a higher score.

[15] **[variable 6]:** (1) Management board. The organizational relationship (i.e. membership within an organ of the company) and the contractual relationship (e.g. employment/ managerial contract) are considered independently.

7	0.5[16]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
8	0.75[17]	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	1[18]	1	1	1	1	1	1	1	1	1	1	1	1
9	0[19]	0.5[20]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5[21]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5

First, *organizational relationship*: According to art. 370, members of the management board may be dismissed at any time. This means that no good reason is required, although the company is not prevented from stipulating in the articles that the dismissal must be based on good reason (art. 370, para. 2). Art. 370 further states that a dismissed board member is not deprived of his rights (claims) under the contractual relationship entered into with the company (employment or managerial/civil contract). Art. 370 is applied by analogy to the dismissal of members of the supervisory board (art. 386, para. 2).

This issue was contested under the previous Commercial Code regime, since the provisions explicitly referring to the possibility of anytime dismissal were only found for the management board but not for the supervisory board. It was only shortly after the enactment of the new CCC that the Supreme Court clarified that the dismissal of auditors should be understood on the same footing as the dismissal of the members of any other organ, and that the lack of such a provision in the old Commercial Code did not justify a different interpretation.

Second, *contractual relationship*: According to the established case-law, the employment contract is not affected by the termination of an organizational relationship between (ex-) director and the company, and therefore if the employment contract was unlawfully revoked (e.g. the acting organ was not competent), the dismissed director can claim compensation based on the provisions of the Labour Code on unlawful revocation of an employment contract.

(2) Members of the supervisory board may be dismissed by the general meeting. Article 385 states that the articles of association may provide for a different manner of dismissal. The provisions of the labour law should apply in the same manner to the service contracts of supervisory board members.

[16] **[variable 7]:** Art. 294 of the Commercial Code and Art 486 of the CCC: demand requirement of 1 year applies. The demand period is calculated starting from the point when the shareholder came to know about the act causing the damages to the company. Any shareholder regardless of his status within the company (the number or kinds of shares owned) can file this claim on behalf of the company.

[17] **[variable 8]:** The Commercial Code 1934 contained a provision allowing shareholders to challenge a resolution of the general meeting, provided that they represented at least 1% of the share capital. This rule was not replicated in the CCC, which adopted the test of manifestly groundless action. (Frankowski and Lodnar, *Introduction to Polish Law*, p. 241).

[18] There is a differentiation between the action for the annulment of the resolution (art. 422 CCC) and for requesting the declaration of non-existence of the resolution (art. 425 CCC). Both provisions apply limitations as to the scope of competent persons/organs entitled to file such a claim (which are the same in both cases) and time limitation (significantly shorter for the former). The scope of the competent persons/organs is limited not in terms of the percentage of shares owned, but in terms of circumstantial facts on how the shareholder acted in relation to that particular meeting/ resolution: (a) Management board, supervisory board and their members, (b) Shareholders who voted against the resolution of the meeting (except for the holders of bearer shares), (c) Shareholders unreasonably (without legal/factual ground) excluded from the participation in the meeting. Shareholders who were not present at the meeting, only in the case of faulty calling of the meeting/ deliberation of the resolution.

[19] **[variable 9]:** Since the Warsaw stock exchange was only re-established in 1991, there were no provisions on public takeovers in 1990.

10	0	0.5[22]	0.5	0.5	0.5	0.5	0.5	0.5	0.75[23]	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75

[20] The Act on Public Trading in Securities and Trust Funds (effective as of April 1991) imposed an obligation on shareholders who acquired more than 50% of the shares in a joint-stock company to make a public offer for the rest of the stock (Article 87).

In detail, the initial legal framework for the protection of the minority shareholders was more concentrated on the information disclosure rather than on mandatory bids. The 1991 Act on Public Trading in Securities and Trust Funds only required a tender offer for the purchase of all outstanding shares to be made by a person who acquired the number of shares representing >50% of the total votes (art. 87). It also regulated creeping takeovers by requiring public bid in case a person intends to purchase shares representing 33% of the total number of votes within a period of 12 months (art. 73).

The 1997 Act on Public Trading in Securities had a similar provision triggering mandatory bid at 50% (art. 154) and also required mandatory bid for the acquisition of 10% of votes obtained within a period of less than 3 months (art. 151). In addition, the purchase of shares resulting in the acquisition of 25%, 33% and 50% of the total votes respectively required an authorisation from the Securities and Exchange Commission (but was not subject to a mandatory bid). Besides, a very detailed obligation on the disclosure of changes to the share ownership applied.

The Act on Public Offering and Public Companies, in force since 2005, provides for the two thresholds: (a) The acquisition of >33% votes requires public bid, but the tenderer is only obliged to purchase the number of shares, which would result in his obtaining 66% of the total number of votes (art. 73); (b) The acquisition of >66% votes requires a public bid and the tenderer is obliged to purchase all outstanding shares (art. 74). The institution of 'compulsory purchase (squeeze out)' has been newly introduced by this Act: shareholders who obtained or exceeded 90% of the total number of votes can request the purchase of the remaining shares.

[21] Article 73 of the Act on Public Offering and Public Companies (effective as of 2005) imposes a requirement on shareholders to make a mandatory offer when their shares exceed 33%. The Act, however, requires such shareholders to make a bid for 66% of the total shares in the company.

[22] **[variable 10]:** The 1991 Act on Public Trading in Securities and Trust Funds required the notification to the Securities Commission and the company if acquired/ exceeded 10%, 20%,33%, 50%, 66%, and 75% votes (art. 72).

[23] The 1997 Act on Public Trading in Securities (in force since January 1998) required the notification if reached/ exceeded 5% and 10% votes respectively (art. 147).

According to art. 69 of the Public Offering and Public Companies Act (as of 2009), the current thresholds are 5%, 10%, 15%, 20%, 25%, 33%, 331/3%, 50%, 75% and 90%. The applicable thresholds has been added in the amendments of the Act in 2008 ('90%' added; in force from January 2009) and 2009 ('333/1%' added; in force from August 2009) respectively. The obligation of notification also applies when there has been a change of a certain scale in the percentage of voting rights owned by major (i.e.10% and 33%) shareholders (art.69, para.2).

22. Russia (John Hamilton, Berk Demirkol, Theodora Dimitrova)[1]

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	*2013*[2]
1	0.5[3]	0.5	0.5	0.5	0.5	0.5	1[4]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
2	0.25[5]	0.25	0.25	0.25	0.25	0.25	0.75[6]	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75
3	0[7]	0	0	0	0	0	0.5[8]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5

[1] Note on relevant company laws: (a) Since June 1990: Regulations on Joint Stock Companies and Limited Liability Companies, adopted by the Council of Ministers of the USSR, 19 June 1990, Decree No. 590, available at http://heinonline.org/HOL/Page?handle=hein.journals/rsl16&id=405&collection=journals&index [login required]; (b) In 1995, the first part of the Russian Civil Code came into force. It set forth basic regulations with respect to the joint stock companies (definition, general rules on establishment, reorganization and liquidation, on charter capital and corporate governance); (c) These general rules are retained in the JSC Law [Federal Law No. 208-FZ of 26 December 1995 "On Joint Stock Companies", effective since 1 January 1996 (and replacing the 1990 regulations; available here).

[2] Coded in November 2013.

[3] **[variable 1]:** Regulation 1990, s. 49 lists the powers of the general meeting: according to lit. a this includes the "fundamental business activities of the company" – which may lead to a restriction of the sale of major assets.

[4] Article 79(1) of the Federal Law on Joint Stock Companies (JSC) provides that major deals require the approval of the board of directors (supervisory board) or the general meeting of shareholders. If the deal concerns assets worth between 25% and 50%, it requires unanimous approval by the board of directors (supervisory board). In case this is impossible, the decision must be referred to the general meeting which must approve it by a majority vote (Article 79(2)). Article 79(3) stipulates that when the deal concerns over 50% of the balance sheet value of the company's assets, it has to be approved by a 75% majority of shareholders voting at the general meeting.

[5] **[variable 2]:** Regulation 1990, s. 51(2) states that any stockholder shall have the right to include his proposals for the agenda for the general meeting no later than 40 days before the holding of the general meeting. Stockholders holding in the aggregate more than 10% of voring rights may put on the agenda.

[6] Article 53(1) of the JSC imposes a minimum of 2% of voting shares which a shareholder must own in order to be entitled to put issues on the agenda of the general meeting.

[7] **[variable 3]:** Regulation 1990, s. 51 only allows proxy voting.

[8] Upon decision of the board of directors, the general shareholders' meeting may be conducted without attendance of the shareholders. In such a case the decision of the general shareholders meeting shall be adopted by postal voting and a two-way proxy form must be provided to each shareholder of the company.

Article 50(1) of the JSC allows for decisions of the general meeting to be adopted through postal voting. Subsection (2) lists the decisions which require a general meeting and which cannot be adopted by postal voting: (i) election of the board of directors (supervisory board); (ii) election of the audit committee; (iii) election of auditor; (iv) approval of the annual reports (Article 48(1)(11)).

4	1[9]	1	1	1	1	1	1[10]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
5	0[11]	0	0	0	0	0	0	0	0	0	0	0	0.25[12]	0.6	0.6	0.6	0.6	0.6	0.6	0.6	0.6	0.6	0.6	0.6

In addition, s 1.7 of the Russian Corporate Governance Code (adopted in 2002, available here) recommends that each shareholder should be given the opportunity to exercise his or her voting rights in a simple and convenient manner.

[9] **[variable 4]:** Regulation 1990, s. 52: one share one vote.

[10] The general principle is one voting share grants one vote. (Article 59 and Article 66 of the JSC Law).

[[Exception from the above principle is “cumulative voting” in the course of election of the board of directors. At the cumulative voting the number of votes is multiplied by the number of candidates to the board of directors (Art. 59 and Art. 66 of the JCS Law. “Golden share” may be considered as an equivalent to super voting rights. The “Golden share” may belong only to the state and may be obtained in the course of privatisation or exclusion of the company from the list of strategic companies. The “Golden share” entitles the state, in particular, to participate in the general shareholders meeting and to exercise a veto right with respect to certain issues included in the meeting agenda. (Article 38 of the Law on Privatisation [Federal law No. 178-FZ of 21 December 2001 “On Privatisation of State and Municipal Property” (“Law on Privatisation”).]). These exceptions were not coded in this variable]].

[11] **[variable 5]:** The Regulation does not contain any provisions stipulating that any specific number of directors must be independent.

[12] The JSC Law does not include a requirement of independent directors: Article 66(2) of JSC stipulates that members of the board of directors (supervisory board) shall not be shareholders in that company. In addition, Article 83(3) defines ‘independent directors’ with regard to approving deals which involve interested parties or conflict of interests. These are individuals who have not been in any of the following positions at the time of the approval of the business deal or during the year preceding it: (i) general director, external manager, executive board member or member of the governing bodies of the external manager; (ii) a person whose spouse, parents, children, brothers, and sisters by one or both parents are the external manager or hold a position in the governing bodies of the external manager; (iii) a person whose adoptive parents or adopted children are the external manager or hold a position in the governing bodies of the external manager; (iv) an affiliated person other than a director of the company.

S 2.2 of Chapter 3 of the Russian Corporate Governance Code of 2002, effective since April 2002, recommends that the board of directors should include independent directors. The Code lays down several criteria which such directors should meet: (i) over the last three years this director has not been, and at the time of election to the board of directors is not, an officer (manager) or employee of the company, or an officer or employee of the managing organisation of the company; (ii) this director is not an officer of another company in which any of the officers of the company is a member of the appointments and remuneration committee of the board of directors; (iii) the director is not an affiliated person of an officer (manager) of the company; (iv) the director is not bound by contractual relations with the company, whereby the director may receive money from the company other than remuneration and this money exceeds 10% of the director’s annual income; (v) the director is not a major business partner of the company. S 2.2.3 recommends that independent directors should be at least one-fourth of the total number of board directors.

6	0.5[13]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
7	0[14]	0	0	0	0	0	0.75[15]	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75
8	0[16]	0	0	0	0	0	1[17]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1

In June 2003 it was recommended to the stock exchanges to include into quotation lists only the companies which had not less than 3 independent directors (Decree of the Federal Commission for Securities Market No. 03-1169/r of 18 June 2003). As far as the general number of members of the board of directors is concerned, a company is required to have a minimum of 5-9 members on the board of directors (the minimum is dependant on the quantity of shareholders).

[13] **[variable 6]:** Regulation 1990, s. 49 lit c and d: general meeting can dismiss members of both boards without any further requirements.

Since 1996: (Articles 66 and 69 of the JSC Law). JSC Art. 66(1) states that the general meeting may dismiss members of the board at any time before the expiration of their term. Similarly, JSC Art. 48(1)(4) provides that the general meeting is empowered to decide the early termination of the powers of directors.

Article 69, which deals with the executive body of the company (management board), provides that the termination of its members' power before due date shall be the responsibility of the general meeting of shareholders, unless this matter falls within the responsibility of the supervisory board. In addition, Art. 69(3) states that Russian Federal Labour legislation extends to the relations between the company and the members of its management board. Art. 69(4) allows the general meeting to terminate the powers of a one-person executive body and of members of the collective executive body of the company, unless the articles of association place the formation of the executive bodies within the authority of the board of directors. In that case the board of directors may at any time terminate the powers of the members of the executive body.

However, it is also necessary to consider the role of labour law, initially the Soviet Labour Code of 1972, replaced by the Labour Code of 2001 (available here). In the case of early dismissal of the sole executive body (general director) in the absence of misconduct on his part, he is entitled to compensation provided for by the employment contract (Article 279 of the Labour Code [Labour Code of the Russian Federation No. 197-FZ of 30 December 2001.]). In other situations a claim for compensation may also be possible. The general problem is that the relationship between labour law and the company is ambiguous with respect to the position of directors (for a brief summary see Black et al, 'Report to Russian Center for Capital Market Development: Comparative Analysis on Legal Regulation of the Liability of Members of the Board of Directors and Executive Organs of Companies', available at http://ssrn.com/abstract=1001990 at 121-124).

[14] **[variable 7]:** Regulation 1990 does not contain a provision on derivative actions (s. 49 lit g only mentions the right of the general meeting to make decisions regarding claims against the company's executives).

[15] Article 71(5) of the JSC law states that in the event of losses caused to the company, any shareholder with an aggregate of no less than 1% of the issued common stock of the company has the right to sue members of the board of directors, any general director or a member of the management board.

[16] **[variable 8]:** Regulation 1990 does not contain a provision on shareholder actions against resultions of the general meeting.

[17] According to Article 49(7) of the JSC law, shareholders are entitled to appeal in court decisions of the general meeting in the following cases: (i) the decision has been adopted in violation of the Federal Law or other laws of the country; (ii) the decision has been adopted in violation of the company's charter; (iii) the shareholder did not participate in the general meeting, or he or she voted against the resolution; (iv) the resolution violates the shareholder's rights and/or legal interests.

9	0[18]	0	0	0	0	0	1[19]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
10	0[20]	0	0.3[21]	0.3	0.3	1[22]	0.25[23]	0.25	0.75	0.75	0.75	0.75	0.75	0.25	0.25	0.25	0.75[24]	0.75	0.75	0.75	0.75	0.75	0.75	0.75

Providing one of these conditions is met, a shareholder may bring an action within three months of the date when he or she became aware or should have become aware of the decision (this article was amended in July 2009; the previous version of the law stipulated a six-month period for filing a claim). The law provides that in certain circumstances, the court may decide to enforce the decision irrespectively of the shareholder's complaint.

[18] **[variable 9]:** 1990-1991 – The Regulation Governing the Activity of Stock Companies (Decision of the Council of Ministers No 601, December 1990) did not contain any rules in relation to mandatory bids; 1992-1995: Decision No 78 on the Approval of the Regulations for the Issuing and Circulation of Securities and for Stock Exchanges in the RSFSR did not lay down any rules regarding mandatory bids.

[19] Acquisition of over 30% of placed ordinary shares in a company triggered mandatory bid to other shareholders. After 2001, this rule applied only to companies with more than 1000 shareholders. The charter of the company or the general shareholders meeting could release the acquirer of over 30% of shares of the said obligation (Article 80 of the JSC Law).

On 13 July 2006 the Russian state introduced amendments to the JSC with respect to mandatory offers. Article 84.2(1) states that when a party (or a party and its affiliates) acquires more than 30% of the shares of an open joint-stock company, he or she becomes obliged to make a public mandatory offer to the rest of the shareholders (the law allows for the shares of open joint-stock entities to be publicly traded without the permission of shareholders). The offer must be issued within 35 days from the moment the party became aware or should have become aware of its share ownership. Before this amendment, the rule applied only to companies with more than 1000 shareholders.

On 31 March 2013 several other amendments came into effect: these relate mostly to document submission and the procedure of state control over the acquisition of shares in open joint-stock companies, and therefore do not have a direct impact on the index for this variable.

[20] **[variable 10]:** The Regulation Governing the Activity of Stock Companies (Decision of the Council of Ministers No 601, December 1990) did not contain any rules in relation to disclosure of major share ownership.

[21] Decision No 78 on the Approval of the Regulations for the Issuing and Circulation of Securities for Stock Exchanges in the RSFSR provided that any individual or association who acquires 15% of any joint-stock company has to register this controlling block of shares with the Ministry of Economics and Finance.

[22] Decision No 3 of the Federal Commission on Securities and the Capital Market (1995) required registrars to provide all shareholders possessing 1% or more of the company's voting shares with details of the number, category and value of the stock they owned.

[23] The Securities Law (Federal law "On Securities Market" No. 39-FZ of 22 April 1996 ("Securities Law"), available here) introduced in 1996 an obligation of the company to disclose (in the form of notices on material facts) information on its shareholders holding over 25% of shares. The threshold for disclosure was set at 5% in 1998 and was changed to 25 % in 2003. In addition to the above disclosure requirement, a shareholder was obliged to notify the Federal Commission for Securities Market of its acquisition of 20% or more of the shares in a company and of any increase or decrease in its shareholding for each incremental 5% over 20% of the company's shares (Article 30 of the Securities Law).

[24] Federal Law No. 39-FZ on the Securities Market Art. 30, as of the January 2006 change, requires the disclosure of information on the acquisition of 5 and more per cent of the total number of shares, as well as on any change as a result of which the share of the stocks possessed by the stockholder became more or less than 5, 10, 15, 20, 25, 30, 50, 75 per cent.

23. Slovenia (Nina Cankar, Theodora Dimitrova)

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	*2013*[1]
1	0[2]	0	0	0[3]	0	0	0	0	0	0	0	0	0	0	0	0	1[4]	1	1	1	1	1	1	1
2	0[5]	0	0	0.25[6]	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.125[7]	0.25	0.25	0.25	0.25	0.25	0.25	0.25

[1] Coded in November 2013.

[2] **[variable 1]:** The Yugoslav Law on Enterprises came into force on 1 January 1989. The main idea behind this law was to provide a legal structure for socially-owned companies to operate as equity-based entities (see MS Ellis, "Yugoslavia's Move Towards a Market Economy: An Analysis of the New Law on Enterprises", (1989) 7 *Boston University International Law Journal* 301 at 309), including the joint-stock company as a form of a "mixed enterprise".

The Law on Enterprises did not contain any provisions requiring members' approval of the sale of company's assets.

[3] **[variable 2]:** No approval of the shareholder meeting is required. Powers of the shareholder meeting are defined in Article 282 of the Companies Act (ZGD) (in effect since 1993).

[4] The June 2006 amendments to the Companies Act (ZGD-1, available here, Article 330) require the adoption of the shareholder meeting resolution for the sale of more than 25 % of the company's assets. Article 329(2) states that the resolution requires a qualified majority of 75% of the capital represented at the general meeting.

[5] The Law on Enterprises did not contain any provisions regulating members' agenda-setting powers.

[6] Shareholders who hold 5% or more of the share capital can call a shareholder meeting and require the subject of the meeting to be published. However, the articles can regulate the right to call the shareholder meeting in a different way (Article 284 of ZGD; ZGD came into force in October 1993).

[7] Section 3 of the new Company Law (ZGD-1, entered into force in April 2006) focuses on corporate governance and Article 511(1) specifically sets out that minority shareholders whose shareholdings account for at least 10% of the share capital may require a general meeting to be convened. In addition, Article 511(2) states that members who meet this requirement may also require a vote on a particular matter to be included on the agenda. According to article 504(2), if the company's memorandum of association contains no provisions on corporate governance, ZGD-1 shall apply.

Moreover, the Corporate Governance Code 2005 (available here), s. 1.3.4., recommends that the management board shall convene a general meeting at the request of shareholders when they represent 5% of the company's share capital, or a smaller number if stipulated in the articles of association. The 2007 updated version of the code limits the maximum requirement, which may be introduced in the articles to no more than 10% (s 1.3.5). The most recent version of the code (December 2009) introduced changes mainly regarding the work of supervisory boards and transparency and it does not contain any further information on shareholders' agenda setting powers.

3	0[8]	0	0	0	0	0[9]	0	0	0	0	0	0	0	0	0	0.125[10]	0.125	0.25	0.25	0.25	0.25	0.25	0.25	0.25
4	0[11]	0	0	1[12]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
5	0[13]	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0.5[14]	0.5	1	1	1	1	1	1	1

According to article 1.3.12. of the Code, compliance with the code should be made public on the company's website ("comply-or-explain"). Since 2007 listed companies have to do so. The 2007 Code (effective from February 2007, available here) states that public companies, especially those listed on the official market, largely abide by this recommendation.

8 **[variable 3]:** The Law on Enterprises did not contain any rules in relation to proxy or postal voting.

9 Company law: no provisions under the ZGB. Article 308(9) of the Company Law (ZGD-1) provides that the articles of association may enable shareholders to vote by mail. The only restrictions on voting by mail may concern the requirements and limitations relating to the identification of shareholders.

10 Section 1.2.6 of the 2005 and 2007 Slovenian Corporate Governance Codes (see above for 'comply and explain') states that companies should actively encourage direct and indirect exercising of shareholders' rights: shareholders may vote either through financial organisations or through organised collection of proxies. Similarly, the 2009 Code states that each institution or individual who plans an organised collection of proxy notices must inform the board of the company (s 5.2).

11 **[variable 4]:** The Law on Enterprises states that the capital of mixed-ownership enterprises should be determined in stocks and each stock should have one vote, unless the statute of the company provides otherwise (art. 99 [old art. 122]).

12 It is prohibited to issue shares of a certain nominal value that give a different number of votes (Article 179 of ZGD). Today, article 178(3) of the Company Law (ZGD-1) forbids issuing of shares which would give a different number of votes with the same proportion of share capital.

13 **[variable 5]:** The Law on Enterprises did not contain any provisions according to which a certain number of members of the managing board should be independent. The law states that some directors may be experts on issues of interest for the operation of the mixed-ownership enterprise.

14 The corporate governance system in Slovenia provides for a two-tier board system. Therefore, most joint-stock companies have a management body (*uprava*) and a separate supervisory board (*nadzorni svet*). The Corporate Governance Codes from 2005 and 2007 state that the majority of supervisory board members should be independent in order to ensure the effective supervision of the management body (s 3.3.1 in both). The 2009 version of the Code (available here) proposes that at least half of the members of the supervisory board are independent. All three versions deem members of the supervisory board dependent if they have business ties with the company, its management or major shareholders. For 'comply and explain' see above (since 2007 version).

In addition, the Company Law (ZGD-1) states that the supervisory board may appoint committees (for instance, audit committees) to review the supervisory board's resolutions. In the case of audit committees, at least one of its members should be an independent expert in accounting or auditing (Articles 278-280).

6	0.5[15]	0.5	0.5	0.75[16]	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.875[17]	0.875	0.875	0.875	0.875	0.875[18]	0.875	0.875	0.875	0.875	0.875	0.875	0.875
7	0[19]	0	0	0	0	0	0	0.25[20]	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25[21]	0.25	0.25	0.25	0.25	0.25	0.25	0.25

[15] **[variable 6]:** According to Arts 102 and 105 [old Arts. 125 and 128] of the Law on Enterprises, the 'assembly' has the power to dismiss members of the management board. The assembly consists of both workers and investors (arts 98, 99 [old arts. 121, 122]). It is not excluded that board members have a contractual agreement for compensation.

[16] Article 250 of ZGD stipulated that members of the management board could be dismissed for the following (good) reasons: (i) - severe breach of directors duties; (ii) - incapability of running the business; or (iii) passing a vote of no confidence against a board member. If the board member was dismissed without a good reason, the law entitled him or her to a certain level of compensation.

No good reasons are required nor any financial burdens imposed for dismissal of a director from the supervisory board (Article 266 of ZGD).

[17] ZGD amendments of December 2001 introduced two major changes for dismissal of members of the management board (art. 250): (i) another good reason for dismissal is introduced – that is, other business and economic reasons (e.g. major changes in the ownership structure, reorganisation of the company, major changes in the business of the company, etc.); and (ii) compensation is not mandated by the law anymore. Coded as "0.75" since the criteria of "other business and economic reasons" are fairly lax and enable a great deal of manoeuvring space for dismissal.

[18] Article 268(1) of the Company Law (ZGD-1) stipulates that the supervisory board appoints members of the management body. Article 268(2) provides the conditions under which members of the management board may be dismissed: (1) if they have committed a serious breach of their obligations; (2) if they are incapable of conducting business; (3) in case of a no confidence vote by the general meeting; (4) for other economic and business reasons. The fourth condition seems to give the supervisory board wide powers to dismiss directors. ZGD-1 does not provide for compensation for directors' dismissal.

Shareholders appoint and dismiss members of the supervisory board. Article 275(1) stipulates a 75% majority at the general meeting. In addition, it also provides that the articles of association may lay down a higher threshold and other requirements. The law does not list any conditions which need to be met for dismissal. Similarly, there is no statutory compensation.

[19] **[variable 7]:** Derivative action was not available to shareholders under the Law on Enterprises.

[20] If the resolution to file a lawsuit is not adopted at the shareholder meeting (51% majority vote required), those shareholders who hold at least 10 % of the share capital or 400,000 EUR can file a suit (Article 73 of the Takeover Act of 1997, in force since August 1997).

[21] The Company Law (ZGD-1) allows for derivative action in cases where an action for damages cannot be brought because: (i) it was rejected by the general meeting; (ii) the general meeting has failed to appoint a special representative; (iii) the special representative or the management board has failed to act in accordance with the shareholders' resolution. In order to be able to bring a derivative suit, the shareholder(s) must hold at least 10% of the share capital or his/her share must have a nominal amount of at least EUR 400,000 (Article 328(1)).

8	0[22]	0	0	1[23]	1	1	1	1	1	1	1	1	1	1	1	1	1[24]	1	1	1	1	1	1	1
9	0	0	0	0	0	0	0	1[25]	1	1	1	1	1	1	1	1	1[26]	1	1	1	1	1	1	1
10	0	0	0	0	0.5[27]	0.5	0.5	0.75[28]	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75[29]	0.75	0.75	0.75	0.75	0.75	0.75	0.75

[22] **[variable 8]:** The Law on Enterprises did not give shareholders the right to dispute resolutions of the assembly.

[23] According to Articles 359 and 366 of the ZGD, every shareholder had the right to file a claim against a resolution by the general meeting.

[24] Article 395(7) of the Company Law (ZGD-1) stipulates that a resolution by the general meeting may be challenged by any shareholder if (i) the contents of the decision is contrary to the law or the articles of association; (ii) if the shareholder's right to be informed was violated; (iii) if in exercising his or her right to a vote, a shareholder attempted to secure for himself or a third party special benefits to the detriment of the company or the rest of the shareholders (unless appropriate compensation has been provided).

[25] **[variable 9]:** From 1997, the mandatory bid obligation is triggered at 25 % of the voting rights (Article 4 of the Takeovers Act of 1997 - ZPre). Until 2006, exceptions from this rule were three fold: (i) privatisation investment funds (PIFs) were not required to issue the mandatory bid for shares they had acquired in the privatisation process;(ii) so called "empowered companies", established by shareholders of those companies that have not chosen public sale of shares as a privatisation method, were excluded from the mandatory bid requirement when acquiring shares; and (iii) for the two para-state funds (KAD and SOD) and other shares acquired by PIFs the mandatory bid was triggered at 40 %.

[26] The current Slovenian legislation laying down the rules on mandatory bids is the Takeover Act 2006 (ZPre-1, available here). According to Article 12(1), a takeover bid shall be made by the offeror on achieving the takeover threshold of 25% stipulated in the same Act (Article 7(2)). The previous exceptions were eliminated.

In May 2012 the Slovenian Parliament amended the Takeover Act and increased the threshold triggering a mandatory bid to 1/3 of the voting capital in the target company. For a general overview of M&A in Slovenia, see here.

On 3 July 2013 the mandatory bid rule was amended and now it prescribes an exemption for people who acquired the takeover threshold in a company with a view to execute financial restructuring and to ensure that the company can meet its long-term obligations to pay its creditors. For a brief summary of the amendments introduced see http://gss.unicreditgroup.eu/markets/slovenia/newsflashes/amendments-takeover-act.

[27] The Securities Market Act 1994 stipulated that the shareholders who acquired 10%, 25%, 50% or 75% of shares with voting rights listed at the official market were subject to disclosure requirements (Article 146).

[28] **[variable 10]:** The Takeovers Act of 1997 mandated a shareholder who, directly or indirectly, acquired 5 % and each subsequent 5 % of shares with voting rights, to notify the issuer of securities and the Securities Market Agency thereof within three working days (Article 64 of ZPre).

[29] Article 10 of the new Takeover Act 2006 (ZPre-1, available here) states that if a person achieves a 5%, 10%, 15%, 20%, 1/3, 50% and 75% qualifying holding, he or she shall notify the company and the Securities Market Agency. A corresponding requirement can be found in Article 105(1) of the Financial Instruments Market Act 2010. For a general overview of M&A in Slovenia, see here.

24. South Africa (Priya Lele, Akio Hoshi, Mathias Siems)[1]

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	*2013*[2]
1	0.5[3]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.75	0.75[4]	0.75	0.75	0.75	0.75	0.75
2	0.5[5]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	1[6]	1	1
3	0.5[7]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
4	0.66[8]	0.66	0.66	0.66	0.66	0.66	0.66	0.66	0.66	0.66	0.66	0.66	0.66	0.66	0.66	0.66	0.66	0.66	0.66	0.66	0.66	0[9]	0	0

[1] We thank Irene-Marie Esser for helpful comments.

[2] Coded in May 2013.

[3] **[variable 1]:** Companies Act 1973 (available here), S. 228: the disposal of the 'whole or substantially the whole of the undertaking of the company or the whole or the greater part of its assets' requires the consent of the general meeting [Please note that s 228 has been amended in terms of the Corporate Laws Amendment Act 24 of 2006. A special resolution is now needed].

[4] Effective as of 14 December 2007, the words "substantially the whole" were replaced by the words "the greater part". As a result, the disposal of the whole or greater part of the undertaking or assets of the company requires the authorisation of members by a special resolution. This is potentially a lower threshold. Now, also in Companies Act 2008 (in force since 1 May 2011; together with the Companies Act Regulations 2011, both available here), s. 112.

In addition (not coded here): disposal of assets where the percentage ratio of the consideration to market capitalization is 25% or more requires the approval of the general meeting of shareholders (JSE Limited Listed Requirements (available here), Rule 9.20: Category 1 transaction).

[5] **[variable 2]:** Companies Act 1973, S. 185 (2): members representing 5% of voting rights or at least 100 members. Expenses are borne by the members (Companies Act 1973, S. 185 (1)). Companies Act 1973, S. 181: members representing 5% of voting rights or at least 100 members can requisition or themselves call for a general meeting other than the annual general meeting. Expenses are borne by the company.

[6] Companies Act 2008, s. 62(3): the notice must include any proposed resolution. Cf. also s. 65(3) that any two shareholders can propose a resolution at the general meeting.

[7] **[variable 3]:** Companies Act 1973, S.189 read with Articles 50-52 of Table A; now: Companies Act 2008, s. 58(8) (if company provides proxy solicitation, it has to provide two-way proxy form).

[8] **[variable 4]:** Companies Act 1973, S.193 (1) read with S.196 (1). Note: JSE permitted the listing of "N-Ordinary Shares" in 1995 and South Africa is well known among investors for its use of dual class capital structure. But these and similar shares do provide lower (not multiple) voting rights. See http://www.jse.co.za/Products/Equity-Market-Products.aspx.

[9] Companies Act 2008, s. 37(2) stipulates one share one vote principle but s. 37(5)(a) allows classes with mentions of special voting rights. Note: JSE Listing Requirements Rule 3.28 only provides that members of the same class have to be treated equally.

5	0[10]	0	0	0	0	0	0	0	0	0	0	0	0	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.35	0.35	0.35	0.35
6	0.5[11]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.25[12]	0.25	0.25
7	0.75[13]	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.875[14]	0.875	0.875
8	1[15]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1

[10] **[variable 5]:** The King reports (King I -1994, King II – 2001 and King III - 2009) are all voluntary codes of Corporate Practices and Conduct – result of self-regulatory initiatives. We understand that there was nothing substantial in the King Report I on the requirement of 'independent directors'.
The King II Report states that a company should have a balance of executive and non-executive directors, "preferably comprising a majority of non-executive directors of whom sufficient amount should be independent of the management for minority interests to be protected" (sec 2.2). King II does not provide specific numbers on the amount of independent directors.
Since September 2003 Rule 3.84 of the JSE Listing Requirements states that certain recommendations on corporate governance issues are now mandatory for listed companies, including this recommendation on the composition of the board.
The King III Report (effective from March 2010) states that the board should comprise a balance of executive and non-executive directors, with a majority of non-executive directors. The majority of non-executive directors should preferably be independent.
Effective from 1 April 2010, the JSE requires that the nomination committee comprises only non-executive directors, of whom majority must be independent (Rule 3.84(a)). Although the King III Report requires that the audit committee constitutes solely independent non-executive directors and the compensation committee constitutes only non-executive directors, of whom majority must be independent, the JSE requires only disclosure of the composition of such committees (Rule 3.84(d)).

[11] **[variable 6]:** Companies Act 1973, S. 220, in particular (7) for compensation for loss of office: Directors may be removed by resolution but they are not deprived of compensation or damages. Cf. also "The implications of [the proviso of s.220] are, *inter alia*, that a person holding his office purely in terms of the provisions of the articles of association, usually has no claim for damages against the company on removal from office, while a person who occupies the office in terms of a separate contract with the company does, by virtue of this removal, have a claim for damages against the company in terms of ordinary rules relating to breach of contract." (Cilliers, et.al., Corporate Law, 2nd ed., 1992, at 124.).

[12] Now: Companies Act 2008, s.71 is similar to the old law but see F Cassim et al., Contemporary Company Law, 2nd edn, 2012, p. 452: unlike the situation under CA 1973, now always contract between company and the director (ie no separate contract needed) that can lead to compensation.

[13] **[variable 7]:** Companies Act 1973, S. 266. There is a demand requirement of one month (S.266(2)), but no major further requirements. Apart from the statutory derivative suit, the common law derivative action is still available to shareholders (TWK Agriculture Ltd v NCT Forestry Co-operative Ltd & others 2006(6) SA 20 (N)).

[14] Companies Act 2008, s.165 on derivative actions (explicity replacing the previous case law). Similar requirements but the new law is potentially wider [Section 266 was limited to instances of delict, breach of trust or breach of faith by a director or officer of the company, whereas the provision in s. 165 is much wider; for details see L. Coetzee, 'A comparative analysis of the derivative litigation proceedings under the Companies Act 61 of 1973 and the Companies Act 71 of 2008', 2010 *Acta Juridica* 290].

9	0	1	1	0.8[16]	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8	0.8
10	0[17]	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0.7[18]5	0.75	0.75

[15] **[variable 8]:** Companies Act 1973, S. 252 (which covers cases where the majority is oppressive or unfairly prejudicial, unjust or inequitable). For technical issues the shareholders will have to rely on the Act and request that the specific decision be declared void based on the fact that it went against the Companies Act. S 65(2) also states that the articles and memorandum of association constitute a contract between the company and the shareholders, and between the shareholders themselves, normal contractual principles can therefore also be used.

[16] **[variable 9]:** Securities Regulation Code on Takeovers and Mergers, Regulation, GNR. 29 of 18 January 1991, F. Rule 8 with B 5: Mandatory bid is required for the holding of securities with 30% or more voting rights at general meeting of shareholders. GN R1522 in GG15050 of 13 August 1993; changed this threshold to 35%; a consolidated version of the document is available here. Since 2011 this is Companies Act 2008, s. 123(5) with Companies Regulations 2011, s. 86.

[17] **[variable 10]:** There used to be no early warning system – though Rule 8.63(e) (former Section 11.26) of the JSE Limited Listings Requirements required that issuers disclose major shareholders who hold 5% or more of any class of the issuers' shares in their annual financial statements.

[18] Companies Act 2008 (in force since 1 May 2011), s. 122: 5%.

In addition (not coded here): disposal of assets where the percentage ratio of the consideration to market capitalization is 25% or more requires the approval of the general meeting of shareholders (JSE Limited Listed Requirements, Rule 9.20: Category 1 transaction).

25. Spain (Pablo Iglesias-Rodriguez, Aurelio Gurrea Martinez)

Legal sources: Companies Act 2010 (*Real Decreto Legislativo 1/2010, de 2 de julio, por el que se aprueba el texto refundido de la Ley de Sociedades de Capital*), in force since September 2010; Joint Stock Companies Act 1989 (*Real Decreto Legislativo 1564/1989, de 22 de diciembre, por el que se aprueba el texto refundido de la Ley de Sociedades Anónimas*), repealed with the Companies Act 2010; Limited Liability Companies Act 1995 (*Ley 2/1995, de 23 de marzo, de sociedades de responsabilidad limitada*), repealed with the Companies Act 2010; Stock Market Act 1988 (*Ley 24/1988, de 28 de julio, del Mercado de Valores*); European Public-Limited Liability Companies Act 2005 (*Ley 19/2005, de 14 de noviembre, sobre la sociedad anónima europea domiciliada en España*); Transparency Act 2003 (*Ley 26/2003, de 17 de julio, por la que se modifican la Ley 24/1988, de 28 de julio, del Mercado de Valores, y el texto refundido de la Ley de Sociedades Anónimas, aprobado por el Real Decreto Legislativo 1564/1989, de 22 de diciembre, con el fin de reforzar la transparencia de las sociedades anónimas cotizadas*); Royal Decree 1197/1991 on Public Bids (*Real Decreto 1197/1991, de 26 de julio, sobre el régimen de las ofertas públicas de adquisición de valores*), in force until 2007; Royal Decree 1066/2007 on Public Bids (*Real Decreto 1066/2007, de 27 de julio, sobre el régimen de las ofertas públicas de adquisición de valores*); Note 6/1989 on communication of substantial ownership on listed firms issued by the Securities and Exchange Commission (*Circular 6/1989, de 15 de noviembre, de la Comisión Nacional del Mercado de Valores sobre comunicación de participaciones significativas en Sociedades cuyas acciones estén admitidas a negociación en Bolsa*), in force until 1991; Royal Decree 377/1991 on communication of substantial ownership on listed firms (*Real Decreto 377/1991, de 15 de marzo, sobre Comunicación de Participaciones significativas en Sociedades Cotizadas y de Adquisiciones por éstas de acciones propias*), in force until December 2007; Corporate Governance Code 1998 ("Olivencia Report"); Corporate Governance Code 2003 ("Aldama Report"); Unified Corporate Governance Code 2006 (currently under revision).

	1990	**1991**	**1992**	**1993**	**1994**	**1995**	**1996**	**1997**	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**	**2004**	**2005**	**2006**	**2007**	**2008**	**2009**	**2010**	**2011**	**2012**	*2013*[1]
1	0[2]	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2	0.5[3]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
3	0	0	0	0	0	0[4]	0	0	0	0	0	0	0	0.5[5]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5

[1] Coded in October 2013.

[2] **[variable 1]:** No legal provisions exist concerning these powers.

[3] **[variable 2]:** Article 97 of Joint Stock Companies Act 1989 (in force since January 1990), modified by the European Limited Liability Companies Act 2005, establishes that shareholders representing at least 5% of the share capital can introduce items on to the agenda. Before that year there were no provisions giving this right. Since 2010, this requirement is established in article 172.1 of Companies Act 2010 as well as article 519 of the same act for listed companies. It should be noted that the right to call extraordinary meeting requires 5% of share capital. A new proposal to reform Corporate Governance in Spain suggests that this threshold should be reduced from 5% to 3% for listed companies.

[4] **[variable 3]:** Article 106 of Joint Stock Companies 1989 establishes that all the shareholders with attendance rights can be represented in the meeting by another person. However, this right can be limited by the articles. Article 107 of the same Act establishes that the company (via directors or register and deposit firms) may provide proxy solicitation with a two way proxy form.

4	1[6]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
5	0	0	0	0	0	0[7]	0	0	0.25[8]	0.25	0.25	0.25	0.25	0.25	0.5[9]	0.5	0.66[10]	0.66	0.66	0.66	0.66	0.66	0.66	0.66

[5] Article 105.4 of the Joint Stock Companies Act 1989, introduced by article 2.1 of the Transparency Act 2003 (in force since July 2003), states that according to the articles of association, voting on any item of the general meeting can be delegated or exercised by postal or electronic means or any other commurnication means which properly guarantee the identity of the person exercising the voting right. The law does not impose this obligation, but merely creates the possibility and there is no explanation of what the 'secure means' are.

Similarly, article 184 of Companies Act 2010 establishes that all shareholders with attendance rights can be represented in the meeting by another person. However, this right can be limited by articles. Article 186 of the same Act establishes that the company (via directors or register and deposit firms) may provide proxy solicitation with a two way proxy form. Article 189 of Companies Act 2010 confirms the statement in article 105.4 of the Joint Stock Companies Act 1989, see supra note 5 above.

Specifically for listed companies, article 521 of the Companies Act 2010 also establishes that according to the articles of association, voting on any item of the general meeting can be delegated or exercised by postal or electronic means or any other communication, provided that it properly guarantees both the identity of the person exercising the voting right and the security of the communications.

[6] **[variable 4]:** Article 50 of Joint Stock Companies Act 1989 prohibits the creation of shares which directly or indirectly modify the proportion between the value of the share and the voting rights or the preemptive rights attached to it. According to the second transitory disposition of the same law, all provisions in the articles of association going against the Companies Act will have no effect from the coming into force of the Companies Act. Thus, it can be assumed that there are no shares with multiple voting rights after 1990. Now, article 188.2 of Companies Act 2010 also prohibits the creation of shares which directly or indirectly modify the proportion between the value of the share and the voting rights.

[7] No legal provisions concerning this requirement exist, just the governance codes. These codes are not compulsory for companies, which can freely decide whether to comply with them or not. However, once they affirm they follow any of these codes, they must comply with their respective requirements.

The Olivencia Report (February 1998) considers independent directors to be those who are appointed to the Board of Directors on the basis of their high professional qualifications, regardless of whether or not they are shareholders (point 2.2). These directors have the mission of representing the floating capital (ordinary shareholders). The report establishes that a wide majority of the directors should be non-executive and that among non-executive directors, the ratio between the independent and domanial directors (those who hold or represent the holders of blocks of shares which can control the company) should be based on the ratio existing in the company's shareholding, namely between the floating capital (in the hands of ordinary investors) and the stable capital (held by significant investors). This is a recommendation which tries to ensure that independent directors carry sufficient weight in the Board's decisions. As the code states: 'the reasonable and flexible nature of the rule allows it to be adapted to each company's individual circumstances'.

[8] **[variable 5]:** The Aldama Report (January 2003) reflects a similar definition of independent directors, although establishing more specific restrictions (2.1.c). When it comes to the balance between independent and non-independent directors, the code follows the criteria established in the Olivencia report.

6	0.5[11]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
7	0.5[12]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
8	1[13]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
9	0	0.5[14]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	1[15]	1	1	1	1	1	1

[9] Since January 2004 the law requires "comply or explain" (article 116 bis of Stock Market Act 1988), see http://ec.europa.eu/internal_market/company/docs/ecgforum/studies/comply-or-explain-090923-appendix1_en.pdf at pp. 382-3. Now such a requirement is also included in article 538 of Companies Act 2010, i.e. as a part of the management report (although in a separate section) listed companies must include a corporate governance report.

[10] After the Unified Code of Corporate Governance 2006 (published in May 2006), the recommendation is to increase it to one third of the board members.

[11] **[variable 6]:** Article 131 of Joint Stock Companies Act 1989 and now article 223 of Companies Act 2010, allow the general meeting to agree on the dismissal of the directors at any moment with no special requirements for proceeding in this way. However, compensation is possible if there is a fixed term contract or a special agreement.

[12] **[variable 7]:** Article 134.4 of Joint Stock Companies 1989 allows shareholders owing at least 5% of the share capital to call a general meeting to decide on the exercise of the derivative suit or to directly exercise it when the directors fail to call a meeting to discuss the exercise of the action, or when an agreement to exercise it is not carried out by the company. Similarly, article 239 of Companies Act 2010 allows shareholders owning at least 5% of the share capital to call a general meeting to decide on the exercise of the derivative suit or to directly exercise it when the directors fail to call a meeting to discuss the exercise of the action, or when an agreement to exercise it is not carried out by the company.

[13] **[variable 8]:** According to article 117 of Companies Act 1989, any shareholder can file a claim in respect of a resolution of the general meeting which is null and void. In the case of voidable resolutions, claims may be brought by those shareholders who attended the general meeting and indicated their opposition to that resolution in that meeting, those who were not in the meeting, and those who were illegally deprived of their voting rights. According to article 115 of Joint Stock Companies Act 1989, resolutions of the general meeting which can be subject to this action are resolutions which are against the law (void) or the articles of association, or those which damage, to the benefit of one or some shareholders, the interest of the company (voidable).

Similarly, articles 204 to 208 of the Companies Act 2010 regulate actions against resolutions of the general meeting. In particular, any shareholder can file a claim against a resolution of the general meeting with is null and voidable. However, in the case of voidable resolutions, claims may be brought by (i) those shareholders who attended the general meeting and indicated their opposition to that resolution in that meeting, ii) those who were not in the meeting, and (iii) those who were ilegally privied of their voting rights (art. 206). A null resolution is when it is against the law (art. 204.2). However, a voidable resolution is when it is agains the articles of association, or when it benefits a particular person at the expense of the company (arts. 203 and 204.2).

[14] **[variable 9]:** The Royal Decree 1197/1991 on Public Bids (in force since August 1991 until August 2007) establishes percentages concerning the mandatory bid in case of purchase of shares (article 1):

10	0.75 [16]	0.75 [17]	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	1[18]	1	1	1	1	1	1

PURCHASE	BID
≥25%	≥10% (1)
≥50%	100% (2)

Further notes: (1): A bid must also be for 10% in these cases: when the purchaser already had a percentage equal or higher than 25% but lower than 50% and aims to increase that percentage by at least 6% in a period of 12 months; when the offer refers to a percentage lower than 25% but the following circumstances pertain: firstly, the purchaser aims to achieve a percentage equal or higher than 5% or where the target is below 5%, is at a level which would allow him to nominate members of the board representing (along with those previously nominated) more than a third but less than 51% of the members of the board of the firm; secondly, where the intention of the purchaser is to nominate the said amount of the members of the board.

(2): A bid must also be for 100% of the share capital in a case in which the offer refers to a percentage below the 50% but the following circumstances pertain at the same time: firstly, the purchaser aims to achieve a percentage equal or higher than 5% or where the target is below 5%, is at a level which would allow him to nominate members of the board representing (along with those previously nominated) more than a third but less than 51% of the members of the board of the firm; secondly, where the intention of the purchaser is to nominate the said amount of members of the board.

[15] Takeover bids are now regulated in article 60 et seq. of Stock Market Act 1998, Royal Decree 1066/2007 (in force since August 2007) and Note 8/2008 issued by the National Securities and Exchanges Commission. All legal or natural persons who reach the control of a listed company are obligated to make a takeover bid. This control is presumed where a shareholder reaches at least 30% of the voting rights, or it has the power to appoint more than 50% of the board.

[16] **[variable 10]:** For 1990, there is a 5% disclosure requirement, established in Note 6/1989 on communication of substantial ownership on listed firms issued by the Securities and Exchange Commission (*Circular 6/1989, de 15 de noviembre, de la Comisión Nacional del Mercado de Valores sobre comunicación de participaciones significativas en Sociedades cuyas acciones estén admitidas a negociación en Bolsa*).

[17] Article 1 of Royal Decree 377/1991 on the communication of substantial stakes on listed companies (*Real Decreto 377/1991, de 15 de marzo, sobre comunicación de participaciones significativas en sociedades cotizadas y de adquisiciones por éstas de acciones propias*), following the requirement of the Stock Market Act 1988 (article 53), established, as a general rule, an obligation upon shareholders purchasing shares leading to an ownership percentage equal or higher than 5% of the share capital and their successive multipliers to communicate this to the listed company, the stock exchange where the firm is listed, and the National Securities Commission.

[18] Since 2007, this requirement applies (with some exception) to acquisitions equal or greater than 3%, according to the Royal Decree 1362/2007 (in force since December 2007).

26. Sweden (Gerhard Schnyder, Tove Lundmark Söderberg)[1]

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	*2013*[2]
1	0[3]	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2	1[4]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
3	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0.5[5]	0.5	0.5	0.5	0.5	0.5	0.5	0.5
4	0.25[6]	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25
5	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0.75[7]	0.75	0.75	1	1	1	1	1	1

[1] Thanks to Christopher von Koch and Ola Nilsson for helpful comments.

[2] Coded in October 2013.

[3] **[variable 1]:** There are no explicit provisions on the sale of major parts of the company assets in Sweden. Only rarely can a de facto measure be seen as changing in the object of business, for which only the general meeting is competent (Case law, NJA 1924 s. 186, NJA1967 s. 313, NJA 2000 s. 404).

[But see Leo Lagen (lag 1987:464 om vissa riktade emissioner i aktiemarknadsbolag): listed company cannot sell shares of subsidiary companies to related persons or parties (e.g. managers of the subsidiary) without the consent of 9/10th of AGM (represented votes & capital).(§6 lag 1987:464) (has been integrated in ABL 2005 (available here): chap. 16 4§). ABL 2005: 24 kap, 1-30§§ fission: AGM has to agree on the splitting of the company (without indicating a % of assets). 2/3rd majority of votes cast and of shares represented in order to approve the fission plan. NB: if the company which sells its assets is a public company and one (or several) of the overtaking companies are private, the decision has to be taken in the selling company's AGM unanimously and 9/10 of the shares have to be present!].

[4] **[variable 2]:** 'aktieägares initiativrätt' (ABL 2005 7:16; ABL 1975 9:7): even one single shareholder has the right to put a point on the agenda.

[5] **[variable 3]:** ABL 2005 (in force since January 2006): 7 kap 4§ *fullmaktsinamlingar*: articles of incorporation can provide that the board is allowed to collect proxies, which amounts in fact to a sort of postal voting system. [Svensson & Danelius 2005: p.62 "De är tillåtet att i bolagsordningen ta in föreskrifter om ett särskilt slags fullmaktsförfarande, *som i praktiken kan liknas vid en form av poströstning*"]. See also SFS 2010:1516.

[6] **[variable 4]:** ABL 1975 3:1; ABL 2005 4:5. But note that the difference in value of multiple voting rights can be no higher than 1 to 10.

[7] **[variable 5]:** Swedish Code of 2004 (3.2.4), applied since July 2005 (available here), "The majority of the directors elected by the shareholders' meeting are to be independent of the company and its management." According to the OMX listing rules, companies have to "comply or explain" whether they fulfil the requirements of the code. This provision initially only applied to the largest listed companies (>=SEK 3bn in market cap) and only from July 2008 onwards to all listed companies.

[PS: since the introduction of co-determination in 1977, there are also employee representitves who, by definition, won't be independent. The law gives the employees the right to choose 2 members to the board of companies with at least 25 members. In 1987 this right was extended to 3 members in companies consisting of at least 1000 employees. Employee representatives can never exceed the number of the other members on the board].

6	0.75[8]	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75
7	0.25[9]	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25
8	1[10]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
9	0	0	0	0	0	0	0	0	0	0.5[11]	0.5	0.5	0.5	1	1	1	1	1	1	1	1	1	1	1

[8] **[variable 6]:** Directors who are elected by the AGM can be dismissed without good reasons and without compensation (ABL 2005: 8:14; ABL 1975: 8:2). Yet, those who have been appointed in other ways (e.g. by political authority) can only be dismissed by those who have appointed them.

[9] **[variable 7]:** Damage suit (‘*minoritetstalan*’ 29:9 ABL 2005, ABL 1975 15:5): at least 10% of share capital.

[10] **[variable 8]:** Each shareholder can file a law suit against an AGM decision if it was not taken in due form or if it infringes the law or the articles [‘inte har kommit till i behörig ordning eller på annat sätt strider mot denna lag, tillämplig lag om årsredovisning eller bolagsordningen’ (7 kap, 50§ ABL 2005; ABL 1975 9 kap, 17§)].

[11] **[variable 9]:** NBK takeover rules since 1971; revision 1988 and 1999. Mandatory bid rule since July 1999. Obtained quasi-legal status through the inclusion in SSE listing requirements 1999 [[SOU 2005::58, p.10 “Sverige är ett av de länder i Europa i vilka takeover-regler tidigast växte fram. Redan år 1971 utfärdade Näringslivets börskommitté (NBK), med förebild i de brittiska reglerna, regler om offentliga erbjudanden om aktieförvärv. Reglerna har under årens lopp successivt utvecklats och anpassats till näringslivets behov och den internationella utvecklingen. Reglerna är intagna i Stockholmsbörsens, NGM:s och AktieTorgets noteringsavtal och därmed juridiskt bindande för de noterade bolagen.”]].

30% mandatory bid rule since 2003 [NBK PRESS RELEASES June 30, 2003: “Stricter Rules on Mandatory Offers and Strengthened Self-regulation on the Swedish Stock Market”: The Swedish Industry and Commerce Stock Exchange Committee (Näringslivets Börskommitté, NBK) is today presenting a revision of the takeover rules on mandatory offers, and also measures that will markedly reinforce compliance with self-regulation. Based on experience of attendance at general meetings of Swedish listed companies, and taking into account the rules in other countries, NBK is now lowering the mandatory offer threshold to 30% of the votes in a company. The rules will come into force on 1 September 2003.” See http://www.naringslivetsborskommitte.se/Templates/Undersida.aspx?pId=7.].

SOU 2005:58 proposes to introduce a mandatory bid rule at 30% into the law, make the NBK rule in this respect stricter and introduce stricter sanctions [SOU 2005:58 p.17 “3 kap. Budplikt Förutsättningar för att budplikt skall uppkomma i ett aktiemarknadsbolag 1 § Den som inte innehar några aktier eller innehar aktier representerande mindre än tre tiondelar av röstetalet för samtliga aktier ett aktiemarknadsbolag och genom förvärv av aktier i bolaget, ensam eller tillsammans med någon som är närstående enligt 2 § uppnår ett aktieinnehav som representerar minst tre tiondelar av röstetalet för samtliga aktier i bolaget (kontroll), skall lämna ett offentligt uppköpserbjudande avseende resterande aktier i bolaget (budplikt).”].

This leads to Law on public bids on the stock market (Lag (2006:451) om offentliga uppköpserbjudanden på aktiemarknaden) Ch. 3 Sec. 1 - Mandatory bid for the entirety of shares in purchase of 30% of the shares.

10	0.5[12]	0.5	0.5	0.5	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75

[12] **[variable 10]:** NBK "flaggningsreglerna" (*flagging rules*, available in Swedish here) of 1983, 1984, 1991 and 1994 are part of the SSE listing requirements and inspired by the UK rules. They apply to Swedish companies' listed shares (since 1991 also to convertibles). Between 1983 and 1994 the initial threshold for disclosure was 10%); since January 1994: 5% threshold and then 10%, 15%, 20%, 25% etc. (abolished on July 1, 2007 as legal rules takeover) [Between 1993 and 2007 the NBK rules applied in parallel to a set of legal rules (Lag 1991:980 om handel med finasiella instrument (chapter 4, 5§) entry into force on Jan 1, 1993) that were based on 88/627/EEC on the information to be published when a major holding in a listed company is acquired or disposed of (thresholds of 10 %, 20 %, 1 / 3, 50 % and 2 / 3). The NBK maintains its rules as their abolishing in favour of the EC-based legal rules would consititute a weakening of disclosure requirements (see NBK flagging rules of 1994, p.2). Following Bet. 2006/07:FiU17 2007 (2007:535) Lagen1991:980 om handel med finansiella instrument is amended. New thresholds: 5%, 10%, 15%, 20%, 25%, 305, 50%, 66 2/3 and 90%. NBK rules are abolished in 2007.].

27. Switzerland (Viviana Mollica, Mathias Siems)[1]

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	*2013*[2]
1	0[3]	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
2	0.25[4]	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25
3	0[5]	0	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
4	0[6]	0	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25
5	0	0	0	0	0	0	0	0	0	0	0	0	0.5[7]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
6	0.5[8]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5

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[1] Thanks to Gerhard Schnyder for helpful comments. All references are to the Swiss Code of Obligations (Obligationenrecht, OR, available in English here), unless indicated otherwise.

[2] Coded in May 2013.

[3] **[variable 1]:** No (though in some cases because of "Teillquidation", "faktische Liquidation").

[4] **[variable 2]:** Ex Art. 699 (3): to exercise a requisition right, the requesting shareholders who represent shares of an (aggregate) nominal value of 1 million Swiss Francs of the issued capital. Art. 700 (2) and market practice fix a time limit of 2 or 3 weeks before the notice, so approximately 45 days before the meeting (provision unchanged); 10 % can call extraordinary general meeting.

[5] **[variable 3]:** The general meeting exercises the rights of shareholders respecting the affairs of the company. Each shareholder is entitled to participation in the general meeting. The shareholder may be represented by proxy (Art. 689). In the case of registered shares, such proxy must be in writing. Since July 1992 (reform of October 4, 1991) proxy voting is facilitated. The management is not obliged to act as a proxy, however, it has to guarantee that in case of proxy voting shareholders have to have the chance to effectively voice their opinion (Arts. 689b, c).

[6] **[variable 4]:** Privileged voting rights are possible and they are akin to multiple voting rights elsewhere (http://www2.eycom.ch/newsletter/legal/2011/201111/en.aspx; see also Report by Deminor on One Share One Vote in Europe, 2005: multiple voting rights issued by two Swiss companies.

But since July 1992 Art. 693(2) limits the extend of multiple voting rights to a maximal distortion of 1:10, i.e. super-voting shares cannot carry more then 10 times as many votes as 'normal' shares.

[7] **[variable 5]:** There is no requirement for independence of the board (*Verwaltungsrat*; one-tier system) in the OR. A "Code of Best Practice" was recently issued by *Economie Suisse* (February 2002, available here), the leading Swiss business association containing non-binding recommendations for the corporate governance of listed and non-listed companies. The Code recommends at section IIb §12: "That the majority of the Board should, as a rule, be composed of […] non-executive members […]." However, the independence recommendation is not part of the 'comply or explain' requirement of the Swiss Stock exchange (see http://www.six-exchange-regulation.com/admission_manual/06_15-DCG_en.pdf).

7	1[9]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
8	1[10]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
9	0	0	0	0	0	0	0	0	0.5[11]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
10	0	0	0.75[12]	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	1	1	1	1	1	1	1

[8] **[variable 6]:** According to Art. 705(1), the general assembly can remove members of the board of directors. Art. 705(2) states that compensations can still be paid for the dismissal, whenever due. The condition in which the company may indemnify its D&Os is not addressed by statute. There is limited legal commentary and no leading case or other precedent on the subject. The commentators suggest that indemnification is impermissible in respect to claims brought by shareholders, although providing a defense may be allowed as long as the claim is unsuccessful. The scope of indemnification may also be affected by the terms of the articles of incorporation or by (e.g. employment) contract.

[9] **[variable 7]:** Art. 754 makes the directors liable to the company, shareholders and creditors, in case they caused damage to the company while violating their duty to act honestly, diligently and with due care.

Art. 756: any shareholders can apply for court proceeding against a director. Prior to 1992, this was provided in Art. 755 (though the wording was a bit different).

[10] **[variable 8]:** Art. 706 states that the board and any shareholder have the right to start an action in front of the Court to oppose a resolution of the general meeting if they are in breach of the law or the company statute.

[11] **[variable 9]:** If a shareholder exceeds 33% of the voting rights, then he has an obligation under the Federal Act on Stock Exchanges and Securities Trading (SESTA, *BEHG in German*, entered into force in February 1997, with art. 32(1)(s.1) coming into force in January 1998, available here) to submit a takeover offer to purchase all of the existing securities of the target company. Public takeover regulations are controlled by the Takeover Board, which is subordinate to the Federal Banking Commission.

In their articles of incorporation, companies may raise the threshold for a public takeover offer up to 49% (opting-up) (art. 32(1)(s.2)). Furthermore, companies might even exclude that obligation (opting-out) before they are listed (art. 22(2)). In practice, 22% of all companies listed at the SWX Swiss Exchange have opted out and 6% have opted up.

[12] **[variable 10]:** Since July 1992: Art. 663c requires listed companies to disclose, in their annual business report, the identity of shareholders or organized groups of shareholders with a title or beneficial interest of more than 5 per cent (subject to a lower percentage pursuant to the articles of incorporation) in the companies' shares to the extent such interest is known to the companies.

In addition, under Art. 20 SESTA, whoever directly, indirectly or acting in concert with third parties, acquires or sells, for his own account, securities in a Swiss company listed in Switzerland, and who thereby reaches, exceeds or falls below the thresholds of 5%, 10%, 20%, 33 1/3, 50% or 66 2/3 per cent of the voting rights must report these participations to the company and to the exchange on which the shares are listed. The disclosure obligations also include put and call options and conversion rights. With an amendment of the law from 22 June 2007, in force since 1 December 2007, this threshold was lowered to 3%.

Comments

- Before 2003, listed companies in Switzerland have not been required to publicly disclose information on aspects of corporate governance, apart from ownership stakes above five percent and the names of directors.
- Consultative voting is a procedure through which the shareholders may form and express their opinion on any issue concerning the affairs of a corporation. Although without foundation in the corporate law of Switzerland, consultative voting is today a well established even if under-utilised tool in Swiss corporate practice. They have no binding effect, but they are used by the board members to know what the shareholders expect from them and to express their dissatisfaction with the management's general performance.
- Art. 709 states that if there are several groups of shareholders with different legal statuses, the articles must guarantee that each group will have at least one elected representative on the board of directors.
- Ex Art. 699 (3): to exercise a requisition right, the requesting shareholders who represent shares of an (aggregate) nominal value of 1 million Swiss Francs of the issued capital.

28. Turkey (Pinar Akman, Melih Sonmez)

Main laws. The Turkish Commercial Code (TCC) was revised in 2011: thus we distinguish between the 1957 Code (available in Turkish here), Act No: 6762, and the 2011 Code, Act No: 6102, mainly in force since 1 July 2012. The Capital Market Laws was revised in 2012: thus, we distinguish between the 1981 Code, Act No. 2499, the 2002 Code, Act No. 6362. They are available in English at http://www.cmb.gov.tr/regulations/regulations_index.html. The Capital Market Law is *lex specialis* for public companies and has been complemented by the Communiqués of the Capital Market Board. English versions of the Communiqués (though not always the most recent versions) are available at http://www.cmb.gov.tr/apps/teblig/index.aspx?lang=E&submenuheader=-1.

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	*2013*[1]
1	0[2]	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0.5[3]	0.5
2	0.5[4]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
3	0	0	0	0	0.5[5]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	1[6]	1
4	0[7]	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	1[8]	1
5	0[9]	0	0	0	0	0	0	0	0	0	0	0	0	0.66[10]	0.66	0.66	0.66	0.66	0.66	0.66	0.66	0.66	0.66	0.66

[1] Coded in August 2013.

[2] **[variable 1]:** There were no regulations with regard to the powers of the general meeting for de facto changes. However, if the assets have been lost by as much as 50% of the grand capital, the management board has to inform the general meeting (TCC, Article 324).

[3] With the new Commercial Code, this requirement has been regulated in Article 408: the wholesale of the significant amount of the company assets requires approval of the general meeting. But it is not specified what does "significant" precisely mean.

[4] **[variable 2]:** Capital Market Law, No: 2499, Article 11(8) – 5%. Now this is part of the new TCC, art. 411, this rule was not changed and determined as 5% again.

[5] **[variable 3]:** Capital Markets Board Communiqué on Principles Regarding Proxy Voting at Shareholders' Meetings of Publicly Held Joint Stock Corporations, Proxy Solicitation and Tender Offer, published in the Official Gazette dated 9 March 1994 No: 21872 (in force since the same day) (Serial: IV, No: 8) Article 6 et seq (Proxy solicitation is also possible – but not mandatory - if there is no provision to the contrary in the articles).

[6] With the new Commercial Code, electronic technologies have been improved in the capital markets. According to Article 1527 (5) of the new TCC, it is possible to attend, make a suggestion, express an opinion or vote in the general meeting with the electronic media tools.

[7] **[variable 4]:** Turkish Commercial Code Article 373 – Each share gives at least one vote. The number of votes per share can be stipulated in the articles so long as this rule is complied with. Exception – when the matter is changing the articles, each share gives only one vote (Turkish Commercial Code Article 387). Exception to the first rule – there can be shares without any voting rights in public companies (Capital Market Law No 2499, Article 14/A).

[8] According to Article 226 of the new TCC, each share only gives one vote and the contracts that claim to the contrary of this rule are invalid.

6	1	1	1	1	1	1[11]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	0[12]	0
7	0.25	0.25	0.25	0.25	0.25	0.25[13]	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	1[14]	1
8	1	1	1	1	1	1[15]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
9	0	0	0	0	0.5[16]	0.5	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	0.5[17]	0.5

[9] **[variable 5]:** Two-tier system – supervisory board separate from the management board. Supervisory board members must not be employees of the company (Turkish Commercial Code Article 347). Similarly, they must not be members of the management board or close relatives of the management board members (Turkish Commercial Code Article 349). They can be shareholders or non-shareholders (Turkish Commercial Code Article 347). There is also a compulsory external "independent" supervision (Capital Market Law Article 16).

[10] The Corporate Governance Code of June 2003 (http://www.ecgi.org/codes/documents/cmb_principles_2004.pdf), which follows the "comply or explain" principle, states: "3.3. The board should be composed to comprise independent members who have the ability to execute their duties without being influenced under any circumstances" and in "3.3.1. Independent board members should comprise at least one third of the board and in any case two members of the board should be independent. While calculating the number of independent members, fractions should be considered as the next whole number". This provision was maintained with the Capital Markets Board Communiqué on Principles Regarding Determination and Implementation of Corporate Governance of 2011 (Serial IV No: 56, 3.3.1, http://www.spk.gov.tr/apps/teblig/displayteblig.aspx?id=435&ct=f&action=displayfile).

[11] **[variable 6]:** Turkish Commercial Code Article 316: directors could be dismissed with the decision of the board without any special requirements for dismissal and no compensation has to be paid either.

[12] With Article 630 (2) of the new TCC every shareholder may require the dismissal of directors but only on condition that a good reason exists.

[13] **[variable 7]:** Turkish Commercial Code, Article 341: "Claim/Suit on Behalf of the Company". This is about suing management "on behalf" of the company. The right for this belongs to the general meeting - if the general meeting does not accept the claim, then the shareholders holding 10% can request it from the general meeting and then the company has to sue the management. Normally, it is the supervisory board that sues the management. But if the 10% has used the abovementioned right, then they can have someone else represent them.

[14] With the new Commercial Code, this requirement is regulated under Article 630 (1-2). According to the new law, this right again belongs to the general meeting. However, in addition to this, every single shareholder has also a right to demand this requirement from the court in the event of a justified reason.

[15] **[variable 8]:** Turkish Commercial Code Article 381. However, there are limitations on the basis of whether or not the shareholder was present at the meeting. With the new TCC, this rule was regulated under Article 446 by removing this abovementioned limitation as well. According to the new TCC-Article 446 (1-b), whether or not the shareholders are present at the meeting, every shareholder can file a claim against a resolution by the general meeting.

[16] **[variable 9]:** Mandatory bid at 25% - Capital Markets Board Communiqué on Principles Regarding Proxy Voting at Shareholders' Meetings of Publicly Held Joint Stock Corporations, Proxy Solicitation and Tender Offer of March 1994 (Serial: IV, No: 8) Article 17. This article stipulated the mandatory bid at 35% until December 1996.

10	0	0	0	0	0	0	0	0	0	0	0	0	0	0.75[18]	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75

[17] With the new Capital Markets Law No: 6362-Article 26 (1-2), the mandatory bid was determined as a higher percentage (over 50% of the voting rights of the company).

[18] **[variable 10]:** Since July 2003: 5% - Capital Markets Board Communiqué on Principles Regarding Public Disclosure of Material Events 2003 (Serial: VIII, No: 39) Article 5. Since 2009 this is addressed in the Capital Markets Board Communiqué on Principles Regarding Public Disclosure of Material Events 2009 (Serial: VIII, No: 54), also available at http://www.cmb.gov.tr/regulations/files/SeriesVIII_No54.pdf - see also Article 15 of the Capital Markets Law 2012.

In addition, Article 198 of the new TCC regulates the initial thresholds for group of companies. According to this Article, if an entity directly or indirectly acquires or disposes of shares of a company where that proportion reaches, exceeds or falls below the thresholds of 5%, 10%, 15%, 20%, 30%, 50% and 75%, it should inform these situations to the equity corporation within ten days.

29. United Kingdom (Mathias Siems)

Main laws on shareholder protection: Companies Act 2006; previously Companies Act 1985 as amended by Companies Act 1989; Companies Table A Regulation 1985; Insolvency Act 1986; Company Directors Disqualification Act 1986; City Code on Takeovers and Mergers of the Panel on Takeovers and Mergers; Combined Code on Corporate Governance 2003; Financial Services and Markets Act 2000; UK Listing Rules (but the October 2005 version is not yet taken into account); Main previous laws: Companies Act 1948; Section 9 of the European Communities Act 1972; Companies Act 1980 implementing the Second EEC Directive; Companies Act 1981 implemented the Fourth EEC Directive; Cadbury Committee, Code of Best Practice 1992 (applied since June 1993); Greenbury Committee, Code of Best Practice 1995 (applied since 1996); Hampel Committee, Combined Code of Best Practice 1998 (applied since June 1998), 2003 amendments of the Combined Code (based on: Smith Report, Audit Committees Combined Code Guidance, 2003; Higgs Report, Review of the role and effectiveness of non-executive directors, 2003).

	1990	**1991**	**1992**	**1993**	**1994**	**1995**	**1996**	**1997**	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**	**2004**	**2005**	**2006**	**2007**	**2008**	**2009**	**2010**	**2011**	**2012**	*2013*[1]
1	1[2]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	0.75	0.75	0.75	0.75	0.75
2	0.5[3]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
3	0.5[4]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
4	0[5]	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
5	0	0	0	0.25[6]	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	1[7]	1	1	1	1	1	1	1	1	1

[1] Coded in May 2013.

[2] **[variable 1]:** As from 25 % of total assets involvement of the general meeting is required (Listing Rules 1984 (in force since 1985), s. 6.3.4; not yet in Listing Rules 1979-83, ch. 4.5): major class 1 transactions; Listing Rules, 1993 para. 10.37: super class 1 transactions); now LR 10.5.1 for company with premium listing. Note that prior to October 2009 when the FSA introduced new rules, only companies incorporated outside the UK were eligible for a Standard Listing. Now Standard listings are open to all companies regardless of domicile http://www.londonstockexchange.com/companies-and-advisors/main-market/companies/primary-and-secondary-listing/listing-categories.htm - ie now companies can decide not to comply by way of shifting to the standard listing.

[3] **[variable 2]:** CA 1948, s. 140; CA 1985, ss. 376, 377; CA 2006, ss. 314, 315: 5 % or support from holders of not less than 100 shares on which there has been paid up an average sum of not less than £100.

[4] **[variable 3]:** Listing Rules 1979, ch. 2.12; Listing Rules 1984, s. 5.36; Listing Rules, para 13.28(a),(b): two-way proxy forms required; now LR 9.3.6: three-way proxy form; but management does not have to provide solicitation, cf. also CA 2006, s. 326.

Postal voting is possible if provided in the articles: see *Re RE Jones Ltd* (1933) 50 TLR 31; and, following the implementing of the EU Shareholder Rights Directive, CA 2006, s. 322A.

[5] **[variable 4]:** Multiple voting rights are admissible *Cf.,* e.g., *Bushell v. Faith* [1970] A.C. 1099; Davies, Modern Company Law, 7th edn., 2003, at. 620-1.

[6] **[variable 5]:** Code of Best Practice 1992, s. 2.2 (majority of non-executive directors must be independent).

6	0.625[8]	0.625	0.625	0.75	0.75	0.75	0.875	0.875	0.875	0.875	0.875	0.875	0.875	0.875	0.875	0.875	0.875	0.9	0.9	0.9	0.9	0.9	0.9	0.9
7	0.5[9]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.75[10]	0.75	0.75	0.75	0.75	0.75	0.75
8	1[11]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
9	1[12]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
10	1[13]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1

[7] Combined Code 2003, A.3.2 (at least half of the board members must be independent).

[8] **[variable 6]:** Dismissal without particular thresholds is possible (CA 1948, s. 184; CA 1985, s. 303; CA 2006, s. 168). But there is often a financial burden on the firm where on appointment the member concluded a contract giving rise to a compensation claim upon dismissal. In particular, an agreement whereby the (ex-) director receives compensation is possible (CA 1948, s. 184(6); CA 1985, s. 303(5); CA 2006, s. 168(5); cf. also CA 2006, s. 220(1)(a),(2)). Moreover, members of the board may often agree on a separate service contract (Table A 1948, arts. 107, 108; Table A 1985, art. 84) with long notice periods, so that a compensation claim arises in the event of an early dismissal. But CA 1980, s. 47; CA 1985, s. 319: a contract with a period of more than five years can only be concluded with the assent of the general meeting – which CA 2006, s. 188 changed this to two years (in force since 1 October 2007).

Code of Best Practice 1992, s. 3.1: a contract with a period of more than three years can only be concluded with the assent of the general meeting.; Code of Best Practice 1995, s. D2 and Combined Code 1998, s. B.1.6: notice or contract periods should be one year or less; now Combined Code 2012, s. D.1.5.

[9] **[variable 7]:** *Foss v. Harbottle* (1943) 2 Hare 461: it is in principle not possible for a shareholder to bring an action on behalf of the company (although there are some exceptions; see Boyle, Minority Shareholders' Remedies, 2002).

According to CA 1980, s. 75 (now: CA 1985, ss. 459, 461) shareholders could, with court authorisation, sue on behalf of the company for compensation for damage. Yet, it could be said that this provision was only about discriminatory treatment so that an unfair conduct which affected all shareholders equally would not have been covered (Davies, t 513).

CA 1989, sch. 19 amended CA 1985, s. 459: now it is clarified that CA 1985, s. 459 is about both cases of unfair conduct; However, there are still limits (and therefore the coding 0.5) because the courts can relieve officers (*cf.* CA 1985, s. 744) from their liability if the breach of duty can in the circumstances be excused (CA 1985, s. 727; formerly CA 1948, s. 448).

[10] With the CA 2006: derivative claims (s. 260) in force since 1 October 2007; but various procedural restrictions (see ss 260-264 for details).

[11] **[variable 8]:** See, e.g., *Edwards v. Halliwell* [1950] 2 All E.R. 1064 at 1067.

[12] **[variable 9]:** City Code, rule 9.1.

[13] **[variable 10]:** CA 1967, s.33; CA 1976, s. 26(2); CA 1985, s. 199(2)(a) (usually 5 %); CA 1985, s. 199(2)(a) was changed by Companies Act 1989 (usually 3 %; in some special cases 10 %); now: Disclosure Rules and Transparency Rules sourcebook, s. 5.1.2, introduced by the Transparency Obligations Directive (Disclosure and Transparency Rules) Instrument 2006 (FSA, 2006).

30. United States (Mathias Siems)

Main laws on shareholder protection: Delaware General Corporation Law (DGCL, major revision in 1967; frequent changes thereafter; unless otherwise stated the notes refer to the 2005 version); Securities Act of 1933 (SA 1934), ch. 38, 48 Stat. 7, codified at 15 USC secs. 77a-77m; Securities Exchange Act of 1934 (SEA 1934), ch. 404, 48 Stat. 881, codified at 15 USC secs. 78a-78kk; Rules of the SEC based on Securities Exchange Act of 1934 (SEC Rule), 17 CFR Parts 200-30; Sarbanes-Oxley Act (Public Company Accounting Reform and Investor Protection Act) of 30.07.2002, Pub. L. No. 107-204, 116 Stat. 745; Listed Company Manual of the New York Stock Exchange (NYSE Manual); Model Business Corporations Act (MBCA, for information purposes only).

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	*2013*[1]
1	0.75[2]	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75
2	1[3]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
3	1[4]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1
4	1[5]	1	1	1	0.5[6]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5

[1] Coded in May 2013.

[2] **[variable 1]:** DGCL, § 271(a) approval in case of "substantially all of its property and assets". The courts do not specify a specific qualifying percentage, but emphasise the qualitative and quantitative characteristics of the transaction at issue (*Gimbal v. Signal Companies*, 316 A.2d 599 (Del. Ch.) affirmed in part, 316 A.2d 619 (Del. 1974). In *Katz v. Bregman*, 431 A.2d 1274 (Del. Ch. 1981) ca. 50 % was regarded as sufficient. For a recent case *Hollinger Inc. v. Hollinger Intern., Inc*. 858 A.2d 342 Del. Ch., 2004.

[3] **[variable 2]:** Two communication possibilities are to be distinguished: First, by the shareholder communication rule (SEC Rule 14a-7) any shareholder may collect proxies for matters relating to the general meeting and thus affect its course. To enable contact with fellow shareholders, management may at its discretion either send the shareholder the list of other shareholders or pass his communication on to them. The problem is, however, that in either case the shareholder must bear the costs (not coded in this variable). Secondly, shareholders who have held 1% of shares (or least $ 2,000 in market value) for at least one year may require proxy documents to be included at company expense with the general documents for voting proxies (SEC Rule 14a-8(b)(1)). Particular areas are, however, excluded. In these cases only the cumbersome path via SEC Rule 14a-7 is possible.

[4] **[variable 3]:** NYSE Manual, § 402.04 (proxy solicitation required in order to afford shareholders a convenient method of voting) (the NYSE first mandated proxy voting in 1959); SEC Rule, 14a-4(b)(1) (two way proxies).

[5] **[variable 4]:** DGCL, §§ 151(a), 212(a): multiple voting rights possible; But listing at the NYSE excluded (see Douglas C. Michael, Untenable Status of Corporate Governance Listing Standards Under the Securities Exchange Act, 47 Bus. Law. 1461, 1463 n.12, 1464 n.15 (1992)). When the NYSE first proposed to repeal its voting rights listing standards in 1985, the SEC issued a ban on multiple voting rights (Voting Rights Listing Standards; Disenfranchisement Rule, 53 Fed.Reg. 26,376, 26,394 (1988), codified at 17 CFR § 240.19c-4 (1990)), which was, however, invalidated by the DC Circuit Court (The Business Roundtable v. SEC, 905

5	0.25[7]	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	1[8]	1	1	1	1	1	1	1	1	1	1
6	0.5[9]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.75	0.75	0.75
7	0.5[10]	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.75[11]	0.75	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5
8	1[12]	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1	1

F.2d 406 (1990)). Yet, the verbatim counterpart adopted by the NYSE remained valid until 1994 (see Michael, ibid, at note 70) [note: the rules of NASDAQ are different].

[6] NYSE Manual, §§ 313.00, 308.00, as amended on 05.05.1994, prohibits multiple voting rights. Yet, the new policy is more flexible than the SEC-Rule and companies with existing dual class capital structures are generally permitted to issue additional shares of the existing super voting stock.

[7] **[variable 5]:** NYSE Manual B-23 (1966): at least two independent directors.

[8] Since November 2003: NYSE Manual, § 303A.01: half of the board members independent (approved by the SEC, Self-Regulatory Organizations; New York Stock Exchange, Inc. and National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Changes (SR-NYSE-2002-33 and SR-NASD-2002-141), 68 Fed. Reg. 64154 (Nov. 12, 2003)).

[9] **[variable 6]:** DGCL, 141(k); see also MBCA, § 8.08; (general) compensation agreements as well as "golden parachutes" in the event of a change in corporate control are possible (but see also on the argument that "golden parachutes" help to reduce the conflict of interest between shareholders and managers in case of takeovers; Bruce A. Wolk, 'The Golden Parachute Provisions: Time for repeal?', 21 Va. Tax Rev. 125 (2001)).

From April 2011, advisory vote on "golden parachutes" necessary following – Dodd Frank Wall Street Reform and Consumer Protection Act 2010; see http://www.sec.gov/news/press/2011/2011-25.htm.

[10] **[variable 7]:** Derivate suits are possible (Rule 23.1 of the Court of Chancery of the State of Delaware; see also Rule 23.1 Federal Rules of Civil Procedure). Their use is fostered because lawyers can agree on contingency fees and thus expect considerable gains if successful. This incentive is further enhanced by the possibility of a class action (cf. Rule 23 of the Court of Chancery of the State of Delaware). Yet, there are also various requirements which have to be fulfilled (e.g., demand; review of special litigation committees; contemporaneous ownership rule; see also DGCL, § 327).

[11] *In re Walt Disney Co.*, 825 A.2d 275 (Del. Ch. 2003) (Disney II) (regarding demand requirement); *In re Oracle Corp.*, 824 A.2d 917 (Del. Ch. 2003) (regarding independence of litigation committees); *In re Abbott Laboratories*, 325 F.3d 795 (7th Cir. 2003) (regarding demand requirement) "evidence a heightening of judicial scrutiny on directors in the wake of the corporate governance scandals" (Hern, 41 Willamette L. Rev. 207 (2005); for a different assessment see Reese & Herring, 7 Del. L. Rev. 177 2005)). But then, according to Armour et al, 87 Indiana L.J. 1345-1405 (2012), at least since mid 2000s scepticism towards activist plaintiff lawyers (eg, referring to *In re Cox Communications, Inc. Shareholders Litigation* 879 A.2d 604 (Del. Ch. 2005)).

[12] **[variable 8]:** See already *Goldman v. Postal Tel.*, Inc., 52 F. Supp. 763 (D. Del. 1943) (exercise of power to amend certificate of incorporation); *Barrett v. Denver Tramway Corp., 53 F. Supp*. 198 (D. Del. 1943), aff'd, 146 F.2d 701 (3d Cir. 1944) (exercise of power granted to majority).

9	0[13]	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0	0
10	0.75[14]	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75

[13] **[variable 9]:** There is no mandatory bid. Fiduciary duties in case of sale of corporate control are only recognised to a limited extent for smaller companies (see Cox & Hazen, Corporations, 2nd edn., 2003, at §§ 12.01, 12.02). In Delaware courts have repeatedly emphasised that controlling shareholders may obtain a premium for their shares, which they need not to share with other shareholders (see *In re Sea-Land Corp. S'holders Litig.*, No. 8453, 1987 WL 11283 (Del. Ch. 1987); *Harris v. Carter*, 582 A.2d 222, 234 (Del. Ch. 1990); *Thorpe v. CERBCO, Inc*., 676 A.2d 436, 442 (Del. 1996)).

[14] **[variable 10]:** SEA, § 13(d), Schedule 13D: 5 %.