

Part I Reports

General Introduction

Why and How to Discuss on Corporate Governance and Industrial Democracy?

Takeshi Inagami
University of Tokyo

To begin with, as 'General Introduction' to the Special Seminar, I would like to tell you very simply my own understanding of the current debates on the reform of corporate governance, in order to make clear the intention or purpose of this Seminar organized by JTUC-RIALS.

At the Turn of the Century Which Type of Capitalism?

At the turn of the Century, we are truly at the crossroads; Which path to take?' which type of capitalism to have?; the Anglo-Saxon, the Rhineland, or the 'Third Way'? Obviously, we are living in the era of capitalism against capitalism. Therefore, we can not be free from the question of 'A Capitalism or Capitalisms?'

Recent Debates on Corporate Governance

Our focus is definitely on the corporate governance especially in the industrialized societies. By doing so, it might be possible to touch on the spirit of contemporary capitalism in transition.

Actually, in the latter half of the 90s, in the recent couple of years in particular, everywhere in the world, Washington or New York, London, Paris, Amsterdam, Brussels, Berlin or Frankfurt, Tokyo, Seoul, Singapore, Hong Kong, Bangkok, Sidney, everywhere we have observed the move or boom to revise and reform the corporate governance principle or code.

In parallel with these revisions, just one year ago, May 1999, OECD decided OECD Principles of Corporate Governance. It has covered five areas; namely, [1] the rights of shareholders and their protection; [2] fair treatment of every shareholder including minority and foreign shareholder; [3] the role of employees and other stakeholders; [4] the disclosure and transparency of corporate structure and operation; and [5] the responsibilities of the board of directors to company and shareholders.

As for this Declaration, among many things, I would like to emphasize two things;

- [1] first, OECD Principles have stressed the significance to construct and maintain the co-operative relationship between shareholders and other stakeholders; directors and employees in particular;
- [2] second, OECD Principles are not intended to prescribe an "Anglo-Saxon Model" or any other single model for corporate governance, despite identifying the strong world-wide pressure or inclination towards 'Anglo-Saxon Model'. Anyway, definitely it has rejected the 'one-size-fits-all approach' or Single Global Standards of corporate governance.

Agenda

I think that OECD Principles have implied several agenda for us to explore.

First, what kind of reform has been made on the national model of corporate governance? Especially, when company law or relevant commercial law has been amended; the reform for what? by whose initiative? and what has been changed?

Overall, does it stand for the 'collapse' of prevailing national model in the Continental Europe or Japan?

Second, irrespective of the legal amendment, under the intensified international competition and the rapid growth of global financial market, to what extent the corporate governance practices have actually been reformed particularly in terms of the rank-order of priority among the stakeholders?

Third, what impact has been brought about on the employment practices and industrial relations?

Fourth, what kind of influence has been exercised by labour union or works council in the process to reform the corporate governance structure or operation?

These are several problems to be discussed in this Seminar.

Three Types of Corporate Governance Model

Meanwhile, reflecting on the Reports on the reform of corporate governance in Britain in the past decade, among them, Hampel Report in 1998 and the 1999 DTI's Paper prepared for the amendment of British company law are remarkable respectively;

I would like to point out two things ;

One is concerned with the purpose or context to reform the corporate governance structure.

Another is related to the revision of conventional "Anglo-Saxon Model" of corporate governance.

Because, when we talk about good corporate governance, Hampel Report has advocated

that it's necessary to distinguish two contexts; [1] one is the improvement of 'Accountability' for shareholders. [2] another is 'Business Prosperity' eventually to enhance or increase the shareholders value.

Moreover, Hampel Report has insisted that the latter context; namely the 'Business Prosperity' is much more important in the reform of corporate governance structure and operation..

In addition, for the business prosperity, Hampel Report has declared that it's indispensable for shareholders to make the long-term good relationships with other stakeholders, and also that there's no single model in terms of good corporate governance.

I think that these noteworthy claims of Hampel Committee does illustrate the 'Enlightened Shareholder-Value Model'.

And, interestingly enough, Hampel Report has had decisive influence on the idea of Japan Association of Corporate Executives in terms of their reconsideration of Japanese-style corporate governance.

Enlightened Shareholder-Value Model: New Anglo-Saxon Model?

Exactly, this 'Enlightened Shareholder Value Model' gives the first priority to the increase of shareholder value; nevertheless,

- first, the Model does emphasize the importance of 'business prosperity' rather than the accountability for shareholders, as the basic context or purpose to reform the corporate governance.
- second, it stresses the long-term perspective, and it's against the short-termism of 'Traditional Model'.
- third, it attaches special importance to making good relationship with other stakeholders.
- fourth, it says that there's no single model for good corporate governance;

In these senses, it should be sharply distinguished from the 'Classic Shareholder-Value Maximization Model' or 'Traditional Model' to abbreviate.

Therefore, when we talk about simply the Anglo-Saxon Model of corporate governance, it may be possible to differentiate these two Models at least; namely, one is the 'Classic' or 'Traditional' Model and another is the 'Enlightened Shareholder Value Model'.

Indeed, we can find out easily the relevant principles or codes to be classified into this 'Enlightened Shareholder Value Model' in America and in Britain as well.

For example, the Corporate Governance Principle or Code of [1] American Law

Institute - a leading professional association in this area, [2] the Business Roundtable - the powerful association of American CEO, and [3] TIAA-CREF - one of the biggest pension fund in the US, are to be classified into 'the Enlightened Shareholder Value Model' respectively.

In addition to these two models, there is the third model to be called 'the Pluralist Model'. And, the German, Dutch and Japanese model does illustrate the Pluralist Model in respective way.

Variety of Pluralist Model Legislation in Japan

As is the case of the so-called Anglo-Saxon model, it could be distinguished several sub-types of the 'Pluralist Model'.

As you know, if compared Germany with Japan, the legal or institutional framework of corporate governance is sharply different from each other. For example, in Japan there's no legal system of co-determination.

Moreover, their difference is also prominent in terms of restriction of dismissal.

In another word, in Japan, the employment security and union influence on management decision-making are based on the convention or practices rather than the statute or legislation.

Therefore,

[1] with the rapid increase of shareholders' influence, nevertheless,

[2] if we intend to maintain the basic structure of Japanese-style corporate governance in future, it's very natural to give serious consideration to the necessity of any new legislative framework.

On the other hand, as for the future of German-style or Dutch-style corporate governance, what kinds of additional devices are necessary to maintain and improve their institutionalized 'Industrial Democracy'?

This is one question to be asked.

Compatibility of Capital-efficient Management with Stable Employment and Co-operative Industrial Relations

Closely linked with this question, in the debate of corporate governance reform in Germany or the Netherlands, it has virtually been asked how to reconcile the enhancing capital efficiency with maintaining the stable employment and co-operative industrial relations.

Are these two things incompatible? Are they trade-off each other?

In this respect, as far as the basic idea of Japanese employers associations is concerned, they intend to compromise two things; on the one hand, they think it's inevitable or

important to enhance shareholders value, but on the other hand, in order to do so, it's necessary to secure the employment opportunity of regular employees and to keep good relationships with their enterprise union.

However, one may suspect that this scenario is too optimistic to be realized.

Shareholder Activism

Lastly, with the increase of the shareholders' voice, I think it's important to pay close attention to the rise of 'shareholder activism' of the last decade.

Certainly, shareholder activism is a double-edged sword. However, there's a positive aspect in it.

In order to control and regulate the so-called 'Wall-Street-Rule' of speculative short-termism, it's important that institutional shareholders, pension funds in particular have their own principles of investment or proxy voting.

In fact, we are partially shareholder, even if neither buying nor selling the share as an individual. Actually, whether actively working or not, we are member of corporate pension fund for example. Indeed, pension funds are often governed by management and employees. Nevertheless at the moment, in most cases as far as I know, we have no definite principles of investment to use our money in socially significant way.

From my point of view, it seems to be desirable for employees or unions to have much interest into this neglected but positive aspect of 'shareholder activism'.