The London School of Economics and Political Science

The complex relationship of concentrated ownership structures and corporate governance

Vasiliki Stergiou

A thesis submitted to the Department of Law of the London School of Economics for the degree of Doctor of Philosophy, London, September 2011

Declaration

I certify that the thesis I have presented for examination for the MPhil/PhD degree of the London School of Economics and Political Science is solely my own work other than where I have clearly indicated that it is the work of others (in which case the extent of any work carried out jointly by me and any other person is clearly identified in it).

The copyright of this thesis rests with the author. Quotation from it is permitted, provided that full acknowledgement is made. This thesis may not be reproduced without the prior written consent of the author.

I warrant that this authorization does not, to the best of my belief, infringe the rights of any third party.

Abstract

Concentrated ownership is perceived as an inefficient form of ownership because it allegedly increases the risk of minority expropriation, which is further exacerbated by the disproportionality of control and cash-flow rights of the controller. This thesis challenges the perception of concentration as a *per se* inefficient ownership structure. It argues that the 'inefficiency bias' is based on the over-simplified, incorrect assumption that concentration is characterised by the presence of one controlling shareholder and therefore disregards the variety of the forms of concentration. To substantiate this argument, this thesis categorises the forms of concentration based on the identity and number of the controllers and examines their impact on corporate governance. It is shown, that the distinct characteristics of the varieties of shareholders' profiles have an ambivalent impact on corporate governance: Families are strongly committed investors but also prone to extract private benefits of control; the state is inefficient in monitoring but can also be a driver of good corporate governance practices; multiple large shareholders improve internal contestability of control but shareholders' agreements can also be used for minority expropriation.

In this context, the effectiveness of the legal framework to mitigate the arising corporate governance problems becomes the key factor which differentiates efficient from inefficient corporate ownership structures. The different corporate governance problems of concentration imply that adapted legal solutions and adequately flexible rules are the prerequisites of effective investor protection. Given the varieties of concentration, legal effectiveness and strong investor protection can therefore only be defined by reference to a given ownership structure. This thesis presents concrete examples of investor protection mechanisms which are adapted to the distinct characteristics of the varieties of concentration: In the case of family and state ownership, effective minority protection takes the form of special minority rights of board-representation; within multiple large blockholdings, shareholders' agreements limit the abuse of the governance rights of majority shareholders. Ultimately, the thesis deals with the implications of this complex interaction between ownership structures and corporate governance which compromise the reliability of indices as a metric of the quality of corporate governance, to the extent that the applied methodology fails to encompass the differences in shareholders' profiles and that a functional approach to the substantive legal analysis preceding the compilation of an index is not adopted.

Acknowledgements

As my PhD thesis is now completed, I would like to express my gratitude to all the people who have shared this journey with me.

First and foremost, I would like to thank my doctoral supervisor, Professor David Kershaw, for his continuous support and for constantly reminding me that in the end of the day I have to find my own voice and deliver my contribution to the corporate law and governance research. By challenging me through his feedback, he helped me create my own path.

I would also like to thank my doctoral co-supervisor, Professor Niamh Moloney, for her valuable help especially during the final period of my thesis. Through her feedback and comments, she taught me the importance of presenting clear and consistent arguments.

I would also like to thank my doctoral supervisor during the first years of my PhD, Professor Paul Davies. He provided me with the opportunity to conduct research in cutting-edge issues of corporate law and governance and has guided me through complex concepts and problems, while always being simple and reassuring.

Throughout my studies at the LSE, I have been fortunate enough to be part of the group of intelligent and warm-hearted people, who comprise the students of LSE in general and the Law Department in particular. I warmfully thank them all and look forward to the day that our paths cross again.

I would also like to express my warmest gratitude to the Greek State Scholarship Foundation for their financial assistance during the first three years of my thesis work. Their help has been absolutely instrumental.

Vasiliki, Michalis and Vasiliki, thank you for our discussions over Greek Company Law but most importantly, thank you for helping me out all the times that distance made things complicated for me.

Giannis, thank you for your advice and your valuable help during my first days in London.

Panayiotis, thank you for all your patience and support. With your optimism and confidence in me you have seen me through this journey.

It would have never been possible study for a PhD at the LSE if it weren't for my parents, Maria and Thanassis, and my brother, Andreas. They have always been my motivation, my driving force and my strength. I wholeheartedly dedicate this thesis to them.

To my parents and my brother,

Maria, Thanassis and Andreas

TABLE OF CONTENTS

INTRODUCTION TO THE RELATIONSHIP OF OWNERSHIP STRUCTURES AND CORPORATE GOVERNANCE 13

I. THE MAIN PROPOSITIONS AND METHODOLOGY OF THE THESIS 13

1. The main propositions of the thesis 13

2. The outline of the thesis 17

3. The methodology and jurisdictional focus of the thesis..21

II. THE GENERAL CONTEXT OF THE THESIS 23

1. Concentrated ownership structures and the agency problem 23

2. Concentrated ownership and the 'inefficiency bias' 29

2.1. Concentrated ownership structures and the ‘legal origin’ hypothesis..........................29

2.2. Measuring corporate governance: Ratings and indices..30

3. Concentrated ownership and disproportionate control..31

3.1. Control-enhancing mechanisms and the separation of cash-flow from control rights ..33

3.2. Control-enhancing mechanisms: Efficient response or market failure?........................36

III. THE RATIONALE FOR THIS THESIS: CONCENTRATED OWNERSHIP AND THE INTERCONNECTEDNESS OF CORPORATE GOVERNANCE SYSTEMS..39

CHAPTER I: THE ' INEFFICIENCY BIAS' OF CONCENTRATION AND THE 'LEGAL EFFECTIVENESS' ARGUMENT..43

I. INTRODUCTION 43

II. CRITICISMS AGAINST THE LLSV HYPOTHESIS AND THE ANTI-DIRECTOR RIGHTS INDEX 44

1. Important LLSV findings and relevant studies...44

2. Criticisms of LLSV and related studies 48

2.1. The accuracy of the LLSV Anti-Director Rights Index 51

2.2. The relevance and effectiveness of the rights comprising the LLSV Anti-Directors Rights Index 52

2.3. Institutional complementarities and functional equivalents 54

2.4. The suitability of indices as indicators of the quality of investor protection 57

III. CORPORATE GOVERNANCE INDICES IN LIGHT OF THE VARIETIES OF CONCENTRATION 59

1. Findings of alternative indices and implications 59

2. Corporate governance indices and the varieties of concentration 61

3. Corporate governance indices and the 'legal effectiveness' argument of this thesis 63

IV. CONCLUDING REMARKS 64

CHAPTER II: FAMILY AND STATE OWNERSHIP AS KEY FACTORS OF CORPORATE GOVERNANCE 66

A. FAMILY OWNERSHIP 66

I. INTRODUCTION 66

II. THE BENEFITS OF FAMILY OWNERSHIP 67

1. Quantitative Factors: Economic participation and increased monitoring 68

2. Qualitative Factors: 'Familiness' as a competitive advantage 69

III. THE CORPORATE GOVERNANCE PROBLEMS OF FAMILY OWNERSHIP...................................71

1. Extraction of private benefits of control...71

2. 'Familiness' as a source of competitive disadvantage...72

3. Families and control-enhancing mechanisms 74

IV. THE DETERMINANTS OF THE BENEFICIAL EFFECT OF FAMILY OWNERSHIP...........................75

1. Family ownership and firm performance: The inconclusiveness of empirical research........75

2. Explaining the inconclusiveness of empirical research on the efficiency of family ownership: Complementarity and the Law...78

V. CONCLUDING REMARKS 80

B. STATE OWNERSHIP 81

I. INTRODUCTION 81

II. THE CORPORATE GOVERNANCE PROBLEMS OF STATE OWNERSHIP......................................84

1. Empirical findings 84

2. The corporate governance problems of SOEs 85

III. BUILDING AN EFFICIENCY DEFENCE FOR STATE OWNERSHIP 87

1. Legal effectiveness as a determinant of the beneficial effect of state ownership 87

2. State ownership as a driver of good corporate governance 89

IV. CONCLUDING REMARKS 91

CHAPTER III: RESTATING THE 'LAW MATTERS' THESIS: MINORITY PROTECTION BEYOND THE COMPARATIVE LAW INDICES 92

A. MINORITY PROTECTION IN GREEK STATE-OWNED ENTERPRISES 93

I. INTRODUCTION 93

II. A CASE STUDY OF MINORITY PROTECTION IN GREEK STATE-OWNED ENTERPRISES 95

1. The methodology and sample of SOEs 96

2. The findings 98

2.1 Special rights of minority representation at the board level 98

2.2 Employee representation at the board level 101

2.3 Special corporate governance rights 102

III. CORPORATE GOVERNANCE IN GREEK SOEs: THE ENHANCED THE ROLE OF THE BOARD OF DIRECTORS 106

IV. CONCLUDING REMARKS 110

B. MINORITY PROTECTION IN GREEK FAMILY-OWNED COMPANIES 112

I. INTRODUCTION 112

II. THE GENERAL RULES AND PRINCIPLES OF THE GREEK CIVIL CODE AS FUNCTIONAL EQUIVALENTS OF COMPANY LAW 114

1. The approach and methodology of the analysis 114

2. Minority shareholders protection in Greece in light of Law 2190/1920 115

3. General principles of Civil Law and their impact on Company Law: The relationship between Article 281 of the Greek Civil Code and Law 2190/1920 117

3.1 The increase of capital as an abuse under Article 281 of the Greek Civil Code 120

3.2 The variation of special minority rights as an abuse under Article 281 of the Greek Civil Code 122

4. The function of Articles 914 and 919 of the Greek Civil Code in limiting private benefits of control: Direct personal claims in light of Case 1298/2006 124

III. CONCLUDING REMARKS 127

CHAPTER IV: THE IMPACT OF MULTIPLE LARGE SHAREHOLDERS ON CORPORATE LAW AND GOVERNANCE 129

I. INTRODUCTION 129

II. THE BENEFITS OF MULTIPLE LARGE SHAREHOLDERS IN THE CONTEXT OF CORPORATE GOVERNANCE 130

III. THE FACTORS OF CONTROL DILUTION AND THE VARIATIONS OF MULTIPLE LARGE SHAREHOLDERS INTERACTIONS AS DETERMINANTS OF CORPORATE GOVERNANCE 133

1. The factors of control dilution within concentrated ownership structures 133

1.1 The number and size of blocks 134

1.2 The distribution of ownership 135

1.3 The type of shareholders 136

2. Corporate governance and the varieties of structures of multiple large shareholders 137

2.1. Absolute concentrated ownership structures 137

2.2. Hybrid concentrated ownership structures 138

2.3. Hybrid multiple blockholders ownership structures 139

2.4. Genuine multiple block-holders ownership structures 140

3. Empirical findings regarding the impact of the varieties of blockholders ownership on corporate governance 142

IV. SHAREHOLDERS AGREEMENTS AS A CORPORATE GOVERNANCE MECHANISM: SHAREHOLDERS' CO-ORDINATION OR EXPROPRIATION? 143

1. Shareholders agreements: Their proliferation and content 143

2. The interaction of shareholders agreements and ownership structures: Theoretical predictions and empirical findings 147

V. CONCLUDING REMARKS 150

CHAPTER V: THE ROLE OF THE LAW IN FACILITATING THE INTERACTIONS OF MULTIPLE LARGE SHAREHOLDERS: A COMPARATIVE STUDY OF THE REGULATION OF SHAREHOLDERS AGREEMENTS IN THE UK AND GREECE....151

I. INTRODUCTION....151

II. THE LEGAL NATURE OF SHAREHOLDERS AGREEMENTS....153

1. The legal nature of shareholders agreements in the UK....153

2. The legal nature of shareholders agreements in Greece....155

III. THE INTERACTION OF SHAREHOLDERS AGREEMENTS WITH THE ARTICLES OF ASSOCIATION....157

1. The relationship of shareholders agreements and the articles of association in the UK....158

1.1 The prevalence of the articles of association....158

1.2. Exceptions to the prevalence of the articles of association....160

1.2.1 Shareholders agreements as corporate resolutions....160

1.2.2 Shareholders agreements as an amendment of the articles of association....160

2. The relationship of shareholders agreements and the articles of association in Greece....161

2.1. The prevalence of the articles of association....161

2.2 Exceptions to the prevalence of the articles of association....162

2.2.1 Shareholders agreements as corporate resolutions....162

2.2.2 Shareholders agreements as an amendment of the articles of association....163

IV. THE INTERACTION OF SHAREHOLDERS AGREEMENTS WITH MANDATORY COMPANY LAW RULES....164

1. Shareholders agreements in light of the mandatory provisions of UK company law....165

1.1 Restrictions imposed on the appointment of Directors in light of Section 168 of the Companies Act 2006....165

1.2 Shareholders agreements in light of Section 21 of the Companies Act 2006....166

2. Shareholders agreements in light of the mandatory provisions of Greek company law....167

2.1 Shareholders agreements in light of the mandatory provisions of Law 2190/1920....167

V. THE LIMITATIONS IMPOSED ON SHAREHOLDERS AGREEMENTS AS A DETERMINANT OF THEIR LEGAL EFFECTIVENESS ... 170

1. The balance between minority protection and minority expropriation in the context of shareholders agreements in the UK ... 170

1.1 The common law duty of shareholders to vote bona fide in the interests of the company as a whole ... 170

1.2 The limits on the exercise of the statutory rights of the company ... 172

2. The balance between minority protection and minority expropriation in the context of shareholders agreements in Greece ... 173

2.1 The general principles of the Greek Civil Code and the notion of 'corporate interest' . 173

2.2 The limits imposed on the exercise of shareholders' statutory rights ... 175

VI. THE INEFFICIENCIES OF THE LAW OF SHAREHOLDERS AGREEMENTS AND THEIR IMPLICATIONS FOR CORPORATE GOVERNANCE ... 179

1. The lack of specific performance remedies as a source of inefficiency of Greek company law ... 180

2. Legal uncertainty as a source of inefficiency in the UK and Greece ... 181

VII. CONCLUDING REMARKS ... 182

CHAPTER VI: THE IMPACT OF EU REGULATION ON MULTIPLE LARGE SHAREHOLDERS INTERACTIONS ... 185

I. INTRODUCTION ... 185

II. SHAREHOLDERS AGREEMENTS IN THE EU ... 187

A. EU TRANSPARENCY REQUIREMENTS ... 187

1. Disclosure requirements under the EU Transparency Directive ... 188

2. Disclosure requirements under the EU Takeover Bids Directive ... 189

3. Criticisms against the EU disclosure framework ... 191

3.1. The definition of 'acting in concert': Differences between the Transparency Directive and the Takeover Bids Directive ... 191

3.2 The high costs of compliance and the quality of company reporting ... 192

B. SHAREHOLDERS AGREEMENTS IN THE EU: THE MANDATORY BID RULE ... 194

1. The diverging definitions of ‘concerted action’ and the problem of legal uncertainty ... 196
2. Lessons from Sacyr/Eiffage and Beiersdorf/Tschibo case studies: EIFFAGE ... 199
2.1 Facts of the case ... 199
2.2 Legal framework at the time of the conflict ... 200
2.3 AMF decisions and judgments held by French Courts ... 202
3. Lessons from Sacyr/Eiffage and Beiersdorf/Tschibo case studies: BEIERSDORF ... 204
3.1 Facts of the case ... 204
3.2 Legal Framework at the time of the conflict ... 205
3.3 BaFin investigation and decision ... 205
4. The mandatory bid rule and its impact on shareholder activism ... 207
C. SHAREHOLDERS AGREEMENTS AND THE BREAK-THROUGH RULE ... 209
1. The function of the break-through rule in the context of shareholders agreements ... 209
2. Criticisms against the break-through rule ... 211
III. CONCLUDING REMARKS ... 214
SUMMARY AND IMPLICATIONS OF THE THESIS ... 216
I. CHALLENGING THE COMMON PERCEPTION ABOUT CONCENTRATED OWNERSHIP ... 216
II. THE VARIETIES OF CONCENTRATION AND THE 'LEGAL EFFECTIVENESS' ARGUMENT ... 218
III. THE IMPLICATIONS OF THE VARIETIES OF CONCENTRATION ... 222
TABLE OF CASES ... 224
BIBLIOGRAPHY ... 227

INTRODUCTION TO THE RELATIONSHIP OF OWNERSHIP STRUCTURES AND CORPORATE GOVERNANCE

I. THE MAIN PROPOSITIONS AND METHODOLOGY OF THE THESIS

1. The main propositions of the thesis

Controlling shareholders represent a challenge to the prevailing conception of corporate governance in the Anglo-American world. The main corporate governance problem within Anglo-Saxon corporations revolves around the agency issue, defined as the costs of the misalignment of shareholders and managers interests.[1] This conflict results from the prevailing dispersed ownership structures, which promote shareholder passivity due to low incentives to monitor and important collective action problems. By contrast, concentrated ownership gives rise to a different problem. In its more absolute form, when control is held by a single shareholder, important conflicts of interests arise between minority and majority shareholders.[2] Since concentrated ownership is prevalent around the world, the conflicts of interests of minority and majority shareholders constitute one of the typical corporate governance problems within public companies globally.[3] In this light, this thesis is focused on the merits of the 'controlling shareholder' systems, both on their

[1] Berle, A. A., and G. C. Means, (1932), The Modern Corporation and Private Property, New York, NY: MacMillan.

[2] Shleifer, A., and R. Vishny, (1997), A Survey of Corporate Governance, Journal of Finance, 52:737; Enriques L. & Volpin P., (2007), Corporate Governance Reforms in Continental Europe, Journal of Economic Perspectives, 21:117; R.J. Gilson and Gordon, J.N., Controlling Controlling Shareholders (June 2003). Columbia Law and Economics Working Paper No. 228; Stanford Law and Economics Olin Working Paper No. 262. Available at SSRN: http://ssrn.com/abstract=417181.

[3]The most important comparative corporate governance works showing that companies with a controlling shareholder are the dominant form among publicly traded firms in most countries include:
Becht M. and Röell A.A., (1999), Blockholdings in Europe: An International Comparison. European Economic Review, Vol. 43(4-6):1049. Available at SSRN: http://ssrn.com/abstract=167128; Franks J.R. and Mayer C., (2001), Ownership and Control of German Corporations. Review of Financial Studies, 14(4):943. Available at SSRN: http://ssrn.com/abstract=900656; Holderness C.G., (2009), The Myth of Diffuse Ownership in the United States, The Review of Financial Studies, 22(4):1377; La Porta R., Lopez de Silanes F., Shleifer, A. and Vishny R.W., (1999a), Investor Protection and Corporate Governance. Available at SSRN: http://ssrn.com/abstract=183908.

own terms and in comparison with the 'widely-held' systems of corporate ownership.[4] The ultimate aim is to contribute to the corporate governance debate by enhancing the understanding of the diversity of corporate governance systems around the world and their interaction with corporate ownership structures.

To this end, the thesis challenges the 'inefficiency bias' of concentrated ownership, according to which concentration is a corporate governance mechanism which enables controlling shareholders to extract private benefits of control to the detriment of minority shareholders. The 'inefficiency bias' has been established by the 'law and finance' literature[5] and in particular the 'legal origin' hypothesis of LaPorta et al. (hereafter LLSV)[6], according to which civil law jurisdictions and the prevalent concentrated ownership structures offer weaker legal protection to investors, therefore increasing the risk of their expropriation. The findings of corporate governance indices, namely the LLSV Anti-Director Index and the Self-Dealing Index compiled by Djankov et al. (hereafter DLLS)[7], reinforce the 'inefficiency bias' of concentration. This bias is particularly pervasive within the more complex forms of concentration emerging around the world, such as pyramids and companies with multiple classes of shares. This is due to the fact that the structures characterised by control-enhancing mechanisms facilitate the separation of cash-flow and control rights and, consequently, increase the incentives of the controllers to extract private benefits of control to the detriment of the remaining minority shareholders.

This thesis thoroughly assesses the validity of the 'inefficiency bias' of concentration and highlights a variety of misconceptions regarding concentrated ownership. In this respect, it is argued that the

---

[4] Gilson R.J., (2005), Controlling Shareholders and Corporate Governance: Complicating the Comparative Taxonomy; Stanford Law and Economics Olin Working Paper No. 309; Columbia Law and Economics Working Paper No. 281. Available at SSRN: http://ssrn.com/abstract=784744.

[5] The 'law and finance' scholarships includes the following papers: La Porta R., Lopez-de-Silanes F., and Shleifer A., (1999b), Corporate Ownership Around the World, Journal of Finance, 54:471; La Porta R., Lopez-de-Silanes F., and Shleifer A., (2006), What Works in Securities Law?, Journal of Finance, 61:1; La Porta R., Lopez-de-Silanes F., and Shleifer A., (2008), The Economic Consequences of Legal Origin, Journal of Economic Literature, 46:285; La Porta R., Lopez-de-Silanes F., Shleifer A., and Vishny R. W., (1997), Legal Determinants of External Finance, Journal of Finance, 52:1131; La Porta R., Lopez-de-Silanes F., Shleifer A., and Vishny R.W., (1998), Law and Finance, Journal of Political Economy 107:1113; La Porta R., F. Lopez-de-Silanes, Shleifer A. and Vishny R.W., (2000a), Agency Problems and Dividend Policies Around the World, Journal of Finance, 55:1; La Porta R., Lopez-de-Silanes F., Shleifer A. and Vishny R.W., (2000b), Investor Protection and Corporate Governance, Journal of Financial Economics, 58:3; La Porta R., Lopez-de-Silanes F., Shleifer A., and Vishny R.W., (2002), Investor Protection and Corporate Valuation, Journal of Finance, 57:1147.

[6] La Porta et al (1998, 2008) ibid.

[7] Djankov S., Lopez de Silanes F., La Porta R. and Shleifer A., (2008), The Law and Economics of Self-Dealing, Journal of Financial Economics, 88:430.

'inefficiency bias' results from the over-simplified assumption of the 'law and finance' literature that concentration is typically manifested in its absolute form which involves ownership by one controlling shareholder against small dispersed shareholders. This assumption is strongly contested in light of the variety in the forms of concentrated ownership. Furthermore, as concentration may take various forms according to the identity of the controller and the presence of multiple large shareholders, the corporate governance problem differs from one closely-held company to another. The complex interrelations among shareholders shape the type and the pervasiveness of the inherent conflicts of interests. For example, the type and identity of the controlling shareholder, such as families and the state, often mitigate the intensity of the risk of minority expropriation, due to their long-term investment horizon and their active engagement in the company. Similarly, the existence of multiple large shareholders often re-shuffles the balance of power among the shareholders and limits the entrenchment of minority-expropriating and value-destructing corporate owners in control.

The aforementioned analysis indicates that the varieties of concentration are closely associated with the effectiveness of the law to address the corporate governance issues arising within such structures. Given the important differences in the type of corporate governance problems of concentration which range from the extraction of private benefits of control in the case of family ownership to the inefficient monitoring of the state as a blockholder, there is no one-size-fits-all standard when determining the effectiveness of a legal system or framework to address such problems. Instead, the main proposition of this thesis is that what constitutes effective regulation is shaped by the type of concentrated ownership. This is reflected in the definition of legal effectiveness in this thesis, according to which legal effectiveness refers to the extent to which an issue can be dealt with by the law and if so, how well it is dealt with in terms of consistency and predictability, on the one side, and the delivery of efficient and just outcomes, on the other.

In the context of this thesis, legal effectiveness is also defined on the basis of the type of concentrated ownership involved. For example, in the case of family ownership legal effectiveness refers to the capacity of the rules to limit the extraction of private benefits of control by the controlling family. In the case of state ownership, legal effectiveness refers to the capacity of the rules and complementary institutions to enhance the incentives of the state to monitor effectively

the managers, while mitigating the risk of corruption and the risk that the interests of the state-owned enterprises are secondary and subservient to political considerations. Furthermore, in the case of multiple blockholders, legal effectiveness refers to the capacity of the rules to allow for beneficial shareholder collaboration and responsible, active ownership, while limiting the risk of shareholders agreements being employed as expropriating mechanisms. This thesis considers a number of factors when evaluating the effectiveness of the law in addressing the arising corporate governance issues. Such factors include the consistency and predictability in the application of the law, the enforceability of the legal rules and agreements, how the law facilitates the efficient use of resources and whether the law reflects the best practices and high standards of corporate governance.

Measuring the legal effectiveness of corporate governance systems has been the key objective of comparative corporate governance studies which build on the notion of indices. However, the complex relationship of ownership structures and corporate governance has been disregarded by the variety of commercial ratings[8] and academic indices[9] developed to measure the quality of corporate governance and investor protection. In the wider context of the criticisms[10] of the aforementioned indices as a reliable indicator of the quality of corporate governance, the thesis challenges the 'inefficiency bias' of concentrated ownership by comparing country- and firm-level investor protection mechanisms, while taking into account the complex forms in which concentration manifests. More specifically, as the effects of concentrated ownership structures vary substantially according to the forms that concentration might take, the analysis is structured around the profiles of the controlling shareholders of a company and the exercise of control by one sole or multiple large shareholders forming a coalition.[11]

[8] ISS (part of the MSCI Group), Governance Risk Indicators, http://www.issgovernance.com/grid-info (last accessed 09.11.2011).

[9] See Djankov et al. (2008) supra note7; La Porta et al. (1998) supra note5.

[10] For criticism see Bhagat S. et al., (2008), The Promise and Peril of Corporate Governance Indices, Columbia Law Review 108:1803, 1807; Daines R. et al.,(2008), Rating the Ratings: How Good Are Commercial Governance Ratings? 8-14 (John M. Olin Program in Law & Econ., Stanford Law School, Working Paper No. 360, 2008), available at http://ssrn.com/abstract=1152093.

[11] On the profiles of the controlling shareholders of a company see Chapter II. On the impact of multiple large shareholders forming a controlling coalition see Chapter IV.

In this light, the first proposition of this thesis suggests that the differences of the multiple types of shareholders' profiles are the determinants of the nature and the pervasiveness of the corporate governance problems of concentration. The second hypothesis highlights the importance of effective law and argues that the quality of the legal framework of investor protection rather than the origin determines the impact of concentrated ownership on corporate governance. This 'legal effectiveness' argument draws on the 'law matters' thesis originally presented by LLSV but constructively reconsiders their approach as it measures the quality of investor protection on the basis of a categorisation of shareholders profiles. The prevalence of 'legal effectiveness' over 'legal origin' as the determinant of the efficiency of a given ownership structure is substantiated through concrete examples of legal mechanisms and provisions. Emphasis is placed on the mechanisms that are adapted to protect minority shareholders in family or state-owned companies and where multiple blockholders are present. This assessment clearly illustrates how the law can effectively influence the character of the various forms of concentrated ownership as benign or malign.

2. The outline of the thesis

Chapter I sets the general context of this thesis by reviewing the law and finance literature and challenging the LLSV hypothesis that concentration is a *per se* inefficient ownership structure. In this respect, the reliability of the LLSV and DLLS indices is questioned on the grounds of methodology and substance. For instance, the assessment of the quality of investor protection through the two indices is contested because the variables used are not always relevant and because important rules and principles operating as functional equivalents to investor protection law are disregarded. In this regard, more recent versions of corporate governance indices fail to support the propositions of LLSV that civil law jurisdictions, bad law and concentrated ownership structures are inter-linked in the way the LLSV indices suggest. The changes in the methodology and the variables included in the index, as proposed by newest studies, better reflect the idiosyncracies of concentrated ownership structures and, thus, provide a more reliable assessment of the quality of investor protection across civil and common law systems around the world. Nevertheless, they still fail to distinguish among the various forms of concentration. In this context,

The complex relationship of concentrated ownership structures and corporate governance

An introduction

Chapter I of the thesis sets the basis for restating the LLSV 'law matters' hypothesis and shifts the focus on the 'legal effectiveness', rather than the 'legal origin' of a given regulatory framework.

Chapter II examines the implications of family ownership for corporate governance. Families display exceptional commitment to the success of the companies they invest in, as manifested by their participation in the governance of their investees and their long-term investment horizon. Their activism, however, may have a negative aspect as owners are entrenched in control and extract high levels of private benefits. Nevertheless, family ownership is generally found to have a beneficial impact on corporate performance, even when control-enhancing mechanisms are employed.[12] This suggests that the effectiveness of investor protection, rather than the form of ownership alone, determines the actual nature of concentration as a malign or benign form of ownership. Similarly, Chapter II examines the role of the state as a corporate owner and indicates that the transparency deficit, the monitoring deficiencies and the social objectives of the state often pose problems for minority shareholders of state-owned enterprises.

Given the ambivalent nature of controlling shareholders, the role of effective law is to facilitate the efficient use of the resources of family owners and the state by limiting the scope of abuse and minority expropriation. Chapter III assesses the determinants of legal effectiveness by examining company-specific investor protection mechanisms, which are adapted to the distinct characteristics of family and state ownership. More specifically, it presents the legal mechanisms developed by the Greek legal system as a response to concentration and in particular to the control of the state and families over corporations. The case study of the Greek legal framework reveals a series of distinctive minority protection mechanisms which aim to limit the extraction of private benefits in the case of family ownership or safeguard the interests of minority shareholders in the case of state ownership. These additional aspects of the minority protection framework in Greece constitute important findings of the case study. These provisions act as functional equivalents to company law and, therefore, confirm the necessity of a functional approach to comparative studies. When viewed from this perspective, the analysis highlights the deficiencies of the LLSV indexing methodology and the risks deriving from the over-reliance on indices to measure the quality of the law. The examination of the distinctive minority protection mechanisms shows

[12] For references see Chapter II.

that the law reflects the best practices and high standards of corporate governance as identified by the corporate governance studies of international institutions on state-owned enterprises such as the 2005 OECD Survey on the Governance of State-owned Enterprises. It, therefore, reinforces the 'legal effectiveness' argument as presented by the restated ‘law matters’ thesis.

The assessment of family and state ownership is complemented by the examination of complex structures involving multiple large shareholders. Chapter IV tackles the corporate governance implications triggered by the presence of multiple large shareholders within a company. It argues that multiple large shareholders are beneficial for corporate governance because they mitigate the intensity of the conflicts of interests among shareholders. For instance, as multiple large shareholders compete over the formation of controlling coalitions, their high incentives to monitor and challenge corporate decisions effectively limit private benefit extraction. Similarly, their activism as corporate owners is aligned with the notion of responsible ownership and increases competition for control internally. In this respect, the interaction of multiple large shareholders towards forming controlling coalitions has the potential to upgrade the role of minority shareholders, as the actors who determine control through their participation in coalitions. Their positive impact on corporate governance depends on a variety of factors such as the number of large shareholders in the company and the distribution of ownership among them.

In this light, legal effectiveness could be defined as the capacity of the law to facilitate the efficient use of the resources of active and responsible shareholders by allowing beneficial shareholders interactions. Chapter V, therefore, assesses the impact of the legal framework on large shareholders' interactions, as manifested through the formation of coalitions. The focus turns on the approach of the law to shareholders' agreements, viewed as the legal expression of shareholders coalitions. The overall approach of the legal system to shareholders' agreements is important because it determines their effectiveness and reliability as corporate governance mechanisms. The legal treatment of shareholders agreements is, therefore, earmarked as the area of corporate and contract law to be evaluated against factors such as the consistency and predictability of the law and the enforceability of legal agreements and rules. The analysis is structured around a comparison of the legal framework which applies to shareholders' agreements in the UK and in Greece, two jurisdictions representing two systems of different legal origin.

The comparative analysis of the treatment of shareholders agreements is structured around two prerequisites of effectiveness which promote beneficial shareholders interactions. More specifically, the first prerequisite for beneficial shareholders interaction is a facilitative regulatory regime regarding shareholders coalitions. The legal nature of shareholders' agreements, their interaction with the articles of association and their relationship with mandatory provisions of company law determine the character of the regulatory regime as permissive or restrictive of shareholders coalitions. The second prerequisite of beneficial shareholders coordination is the availability of effective rules and principles that are designed to strike down shareholders' agreements of an expropriating nature, while ensuring that shareholders agreements which protect minorities are not disregarded by the majority shareholders, which fact may sometimes even amount to an abuse of the corporate form.

The comparative analysis highlights a number of legal mechanisms which impose limits on shareholders agreements such as the articles of association and the mandatory provisions of the law in both jurisdictions. It is argued that such mechanisms set the line between beneficial and harmful shareholders' agreements. In Greece, for instance, the general rules of the Greek Civil Code which prohibit abusive contracts, act as a filter of shareholders' agreements which are used in order to expropriate minorities rather than facilitate shareholders' interaction and monitoring. Despite the generally permissive approach to shareholders' agreements adopted by both jurisdictions and the similar techniques employed to balance the potential negative effects of shareholders agreements, the analysis identifies several points of legal inefficiency which mainly derives from the legal uncertainty in the relationship of shareholders agreements with company law. This legal uncertainty impedes rather than promotes the beneficial coordination of shareholders and often distorts the economic reality that shareholders' agreements establish. Similarly, the comparative analysis indicates that the lack of effective specific performance remedies, which is particularly the case in Greece, discourages the coordination of shareholders, because shareholders are provided with a leeway to avoid their obligations under the shareholders agreement. This is evident especially in light of the fact that any damages awarded for the breach will not reflect the actual loss suffered by the other members of the shareholders agreement.

While the focus remains on the notion of 'legal effectiveness', Chapter VI assesses the EU regulatory framework, which primarily affects shareholders agreements through the requirements imposed on the disclosure of significant ownership stakes and takeovers. The analysis identifies a number of factors which determine the ineffectiveness of the EU legal framework, as it fails to facilitate beneficial shareholders interactions and to benefit from the limits imposed when shareholders cross-monitor the extraction of private benefits of control. More specifically, it is argued that the duplication of disclosure requirements and the resulting high compliance costs imposed on shareholders agreements by the European Takeover Bid Directive and the Transparency Directive negatively affect large shareholders interaction and amount to an inefficient use of resources. In addition to this, the EU rules on takeovers, most notably the mandatory bid rule and the break-through rule, have a distorting effect as they effectively deter shareholders coordination and limit the positive impact of shareholders agreements on corporate governance. These rules are, therefore, misplaced and ill-adapted to the concentrated ownership structures prevailing across Continental Europe, thereby constituting an example of legal inefficiency mainly because they disregard the wider context in which they are called to operate.

3. The methodology and jurisdictional focus of the thesis

The thesis examines the profiles of the most prevalent types of controlling shareholders. It shows that the governance problems of concentrated ownership are determined by two factors, namely the identity of the controlling shareholder, most notably a family or the state, and the number of large shareholders in the company. The aim of this analysis is to illustrate the different challenges that the identity and number of the controller pose for investor protection. To this end, the thesis reviews the variety of relevant theoretical research and empirical studies by different disciplines. The overall analysis builds on this literature and seeks to explain the ambivalent effect of concentrated ownership structures on corporate performance, as presented by the vast number of papers in the area of corporate governance. This thesis also assesses the effectiveness of different legal systems to address the conflicts of interests emerging as a result of concentration. To this end, the analysis covers Greece, the UK and the influential EU regulatory framework. The profiles of shareholders identified in the thesis, namely family ownership, state ownership and multiple

large shareholders, are also the main drivers for the effectiveness assessment of the investor protection mechanisms within concentrated ownership structures.

In this regard, Chapter III presents a country-specific case study of the Greek legal framework of investor protection mechanisms in state- and family-owned corporations. The case study reinforces the 'legal effectiveness' argument and also reveals the importance of functional equivalents to company law, mainly in the form of the general rules and principles of the Greek Civil Code. The Greek legal system is selected because of its civil law origin, which is viewed critically by LLSV and the related literature. Similarly, as the typology of ownership in Greece includes the state and families as the prevalent corporate owners, the mechanisms of investor protection, as adapted to address the special characteristics of different types of owners, provide a concrete example of effective regulation.

Similarly, the hypothesis that the 'legal effectiveness' rather than the 'legal origin' determines the quality of investor protection is further substantiated through a case study of the law which applies to shareholders coalitions. To this end, Chapter V outlines and describes the legal mechanisms which limit the effect of shareholders agreements as expropriation tools within blockholders ownership structures. The jurisdictions of the comparative study include the UK and Greece, which are intentionally selected because of their different legal origin, a common law and civil law system respectively, and the different prevalent ownership structures, namely dispersed ownership in the UK and concentrated ownership in Greece. Despite the differences in the legal treatment of shareholders' agreements by the two systems, both approaches provide for a legal framework which is equally permissive of beneficial shareholders coalitions. The elements of inefficiency in both systems, however, suggest that the legal treatment of shareholders agreements across both legal systems could be improved further.

Additionally, the EU regulation of shareholders agreements is presented as an example of 'legal ineffectiveness'. More specifically, Chapter VI analyses two case studies, one in Germany and the other in France, as part of the comparative assessment of the implementation of EU law across jurisdictions. Taking into account the EU aspect of regulation is imperative, given the considerable impact of legislation originating from the EU. This assessment reveals the differences in the implementation of EU law across jurisdictions and the inadequacy of the current legal framework

to promote beneficial shareholders' coalitions and to create a level playing field across the EU. The selection of the EU legal framework which is relevant across a substantial number of jurisdictions therefore introduces an important comparative perspective in the analysis of the legal treatment of shareholders agreements and the effectiveness of the law to address their problematic aspects.

II. THE GENERAL CONTEXT OF THE THESIS

1. Concentrated ownership structures and the agency problem

Corporate governance systems around the world are distinguished into two broad categories according to the prevailing ownership structures.[13] The first category involves the systems in which dispersed corporate ownership is widespread, while the second category comprises systems in which the ownership of corporations is concentrated in the hands of one or a group of shareholders who exert corporate control in proportion with or even disproportionately to their economic participation in the companies involved.[14] Ownership structures are crucial because they determine the nature of the governance problems to be addressed by corporate governance strategies.[15] In the context of dispersed ownership, for instance, the source of tensions among the various constituencies often lies with the consequences of incorporation as such, most notably the misalignment of interests of the shareholders and the managers.[16] Specialised managers develop into a powerful constituency, as shareholders inject their capital in companies incorporated into

[13] Berglof E., (1997), A note on the typology of financial systems, in Hopt K. et al, Comparative corporate governance: Essays and materials, p.151.

[14] Similarly, the UK corporate governance system is an 'outsider' one, because within the diffused share ownership the monitoring function is exercised by an institution outside the firm, such as the takeover market. By contrast, continental European systems are characterised as 'insider systems', because the concentration of ownership facilitates the exertion of corporate control by the shareholders-owners, in the hands of whom the task of monitoring the management rests. See Julian Franks and Colin Mayer, (1997), Corporate governance and control in the UK, Germany and France, Journal of Applied Corporate Finance, 9(4):30; Goergen M. and Renneboog L., (1999), Strong managers and passive investors in the UK, in Barca and Becht, Ownership and control: A European perspective, OUP.

[15] La Porta et al. (1999) supra note5; Bebchuk L.A. and Hamdani A., (2009), The Elusive Quest for Global Governance Standards (2009). University of Pennsylvania Law Review, 157:1263; Harvard Law and Economics Discussion Paper No. 633. Available at SSRN: http://ssrn.com/abstract=1374331.
The authors highlight the shortcomings of the metrics developed to assess the governance of public companies around the world. They underline that the impact of many key governance arrangements depends considerably on companies' ownership structure: measures that protect outside investors in a company without a controlling shareholder are often irrelevant or even harmful when it comes to investor protection in companies with a controlling shareholder, and vice versa. Consequently, governance metrics that purport to apply to companies regardless of ownership structure are bound to miss the mark with respect to one or both types of firms.

[16] Paul Davies, Introduction to Company Law, 2002, OUP.

separate legal entities and assign the management to skilful, knowledgeable individuals with the competence to discharge the managerial functions.[17] Theoretically, the role of managers is to promote the success of the company and maximise shareholders' value in exchange for their remuneration.[18] This division of powers is considered to be one of the beneficial consequences of incorporation.[19]

However, managers are not only a source of competitive advantage for the company but also a source of costs, deriving from the fact that their incentives and interests are not always aligned with the interests of shareholders. More specifically, they often come across a plethora of opportunities to divert the value created by the company's operations from its shareholders to themselves. The negative impact of managerial misconduct on the value of the company can be multiple, as managers may divert corporate opportunities[20], get excessive remuneration[21] or engage into self-dealing[22] transactions. Similarly, their shirking and incompetence may also deprive shareholders of the value yet to be realised[23], while an empire-building culture also implies that the company resources are allocated inefficiently by way of over-investing.[24] Finally, considerable costs are entailed in the consumption of perquisites, provided and paid for by the company, in order for managers to satisfy their desire to be distinguished by owning items or enjoying services

[17] In the UK, for example, the underlying assumption that directors are better positioned and equipped to manage the company than shareholders is illustrated in the Model Articles (Article 3) for both private and public companies of the CA 2006, providing that 'Subject to the articles, the directors are responsible for the management of the company's business, for which purpose they may exercise all the powers of the company.'

[18] In the UK, for example, Section 172, CA 2006 sets out the role and main duty of the directors to promote the success of the company for the benefit of its members as a whole.

[19] Davies (2002) supra note16.

[20] D. Kershaw, Company Law in Context, 2009, OUP, p.468.

[21] Bebchuk L.A. and Fried J.M., (2003), Executive Compensation as an Agency Problem. Journal of Economic Perspectives, 17:71; Harvard Law and Economics Discussion Paper No. 421. Available at SSRN: http://ssrn.com/abstract=364220; Bebchuk L.A. and Fried J.M., (2004), Pay Without Performance: The Unfulfilled Promise of Executive Compensation. Harvard University Press, 2004; UC Berkeley Public Law Research Paper No. 537783. Available at SSRN: http://ssrn.com/abstract=537783.

[22] Conac P.-H., Enriques L. and Gelter Martin, (2007), Constraining Dominant Shareholders' Self-Dealing: The Legal Framework in France, Germany, and Italy, (October 2007), European Company and Financial Law Review, 4(4); ECGI - Law Working Paper No. 88/2007; Harvard Olin Fellows' Discussion Paper No. 18/2008. Available at SSRN: http://ssrn.com/abstract=1532221; Enriques L., (2000), The Law on Company Directors' Self-Dealing: A Comparative Analysis (April 01, 2000). International and Comparative Corporate Law Journal, 2(3):297, 2000. Available at SSRN: http://ssrn.com/abstract=135674.

[23] Keshaw (2009) supra note20, p.170-171.

[24] Shleifer&Vishny (1997) supra note2.

to which the society attributes a particular importance.[25] All aforementioned tensions are the negative side of the same coin, namely of specialized management.

The problems arising in the relationship of shareholders and managers have been conceived and described by economists in terms borrowed from the principal and agent relationship.[26] As a relationship of dependency is developed among the two constituencies, important conflicts of interests arise. The agency problem is described as the misalignment of the interests of the shareholders, who are viewed as the principals, and the managers, who act as their agents. The agency costs are reflected in the discounted price potential investors are willing to pay for the shares of a company and, therefore, affect the cost of capital of a corporation. As the cost of capital is a decisive factor for investment and sustainable growth, the reduction of agency costs is also important for the financial system as a whole.[27] The separation of ownership from control[28] resulting from dispersed ownership accentuates agency costs due to the weakened incentives of shareholders to monitor their investment because of the high costs, the free rider problem and the inherent collective action limitations.[29]

The mechanisms for mitigating the agency problem are based on four main forces which can act as a deterrent to managerial misconduct. These include the market for corporate control, the external regulation of companies through company law and listing rules[30], the competition in the

[25] Yermack D., (2005), Flights of Fancy: Corporate Jets, CEO Perquisites, and Inferior Shareholder Returns (March 2005). AFA 2005 Philadelphia Meetings. Available at SSRN: http://ssrn.com/abstract=529822.

[26] Jensen M. and Meckling W., (1976), Theory of the firm: managerial behavior, agency costs, and ownership structure, Journal of Financial Economics, 3:305; Jensen M.C., (1976), A Theory of the Firm: Governance, Residual Claims and Organisational Forms, Harvard University Press, December 2000; Journal of Financial Economics (JFE), 3(4). Available at SSRN: http://ssrn.com/abstract=94043. The scholars described the problem in agency-principal terms, which are more general than what a lawyer would understand as agency.

[27] For an explanation of the cross-country differences in the cost of equity capital by reference to legal institutions and securities regulations see Hail L. and Leuz C., (2005), International Differences in the Cost of Equity Capital: Do Legal Institutions and Securities Regulation Matter?. ECGI - Law Working Paper No. 15/2003; Rodney L. White Center for Financial Research Working Paper No. 17-04; AFA 2005 Philadelphia Meetings. Available at SSRN: http://ssrn.com/abstract=641981.

[28] Berle&Means (1932) supra note1; Fama E.F. and Jensen M.C., (1983), Separation of Ownership and Control, in M.C. Jensen, Foundations of Organisational Strategy, Harvard University Press, 1998, and Journal of Law and Economics, 26, 1983. Available at SSRN: http://ssrn.com/abstract=94034.

[29] Kershaw (2009) supra note20, p.163-171; Grossman, S., and O. Hart, (1980), Takeover Bids, the Free-Rider Problem, and the Theory of the Corporation, The Bell Journal of Economics, 11:42.

[30] However, it must be noted that the move of stock trading from traditional stock exchanges to alternative trading platforms substantially mitigates the monitoring role of stock exchanges for the purposes of transparency and corporate governance. For the role of stock exchanges on corporate governance see Christiansen H. and Koldertsova A., (2009), The

product markets[31] and the internal governance arrangements. Such mechanisms comprise both legal and non-legal strategies.[32] Examples of legal strategies that can discipline managers include the regulation of executive compensation, the regulation of board composition and the adjustment of the internal governance structure so as to allocate the power between the board, the managers and the shareholders efficiently.[33] The functions of each strategy are often complementary to each other and it is their aggregate effect which often leads to the successful mitigation of the agency problem. However, in extreme cases, the failure of corporate governance mechanisms to align shareholders and managers interests can have negative implications. The recent banking crisis in the UK has indicated how important efficient corporate governance is. In the case of UK banks such as RBS and Lloyds, for example, the limited shareholders' understanding and monitoring of the risk embedded in the business model and the activities of banks, coupled with the passive role of non-executive board members, wiped out shareholders' equity and led to a wider crisis, only to be contained through unprecedented government intervention.[34]

Although the agency problem and the dispersed ownership structures are typical in countries such as the UK[35] and the US, they are not prevalent throughout the world. Instead, many countries are

---

Role of Stock Exchanges is Corporate Governance, OECD, Financial Market Trends, Vol.1, 2009, available at http://www.oecd.org/dataoecd/3/36/43169104.pdf (last accessed 27/09/2011).

[31] Schmidt, Klaus, (1997), Managerial incentives and product market competition, Review of Economic Studies, 64:191; Hermalin B., (1992), The effects of competition on executive behavior, Rand Journal of Economics 23:350; Guadalupe, M., Pérez-González, F., (2010), The impact of product market competition on private benefits of control. Working paper, available at http://www0.gsb.columbia.edu/faculty/mguadalupe/papers/Paper%20Mar2010%20v2.pdf (last accessed 27.09.2011); Hart O., (1983), The Market Mechanism as an Incentive Scheme, Bell Journal of Economics 14:366.

[32] For a seminal comparative company law study see Reinier Kraakman, John Armour, Paul Davies, Luca Enriques, Henry B. Hansmann, Gérard Hertig, Klaus J. Hopt, Hideki Kanda, and Edward B. Rock, 'The Anatomy of Corporate Law', (2009), OUP.

[33] ibid, Similarly, the imposition of behavioural standards and duties on the directors, the enforcement of such behavioural standards and the various market (takeover market, product market, market for managerial talent) disciplinary mechanisms are some of the main strategies against managerial misconduct.

[34] For an extensive review of corporate governance in UK financial institutions and the failures which partly led to the crisis see The Walker Review, Sir David Walker, A review of corporate governance in UK banks and other financial industry entities, Final Recommendations, 26 November 2009, available at http://www.hm-treasury.gov.uk/walker_review_information.htm; European Commission, Green Paper, Corporate governance in financial institutions and remuneration policies, Brussels, 2.6.2010 available athttp://ec.europa.eu/internal_market/company/modern/corporate_governance_in_financial_institutions_en.htm (last accessed 12.09.2011)

Mülbert, P.O., (2010), Corporate Governance of Banks after the Financial Crisis - Theory, Evidence, Reforms. ECGI - Law Working Paper No. 130/2009. Available at SSRN: http://ssrn.com/abstract=1448118.

[35] However, the UK is a distinct case in that institutional shareholders own a significant percentage of equity in the UK. See for example Stapledon G.P., (1996), Institutional shareholders and corporate governance, Clarendon Press; Kirchmaier T. and Grant J., (2004), Who Governs? Corporate Ownership and Control Structures in Europe. Available at SSRN: http://ssrn.com/abstract=555877.

characterized by concentrated ownership structures, where corporations have a controlling shareholder or multiple shareholders.[36] Concentrated ownership implies that shareholder activism and management monitoring are rational responses of owners in preservation of their interests, because the costs of monitoring and the free-rider problem are not inhibiting factors and the collective action problems of shareholders in dispersed structures are eliminated.[37] However, ownership concentration transforms the agency problem into a problem of conflicts in the interests of minority and majority shareholders. More specifically, as the scope for managerial misconduct diminishes, the conflicts of interests of the controlling and the minority shareholders are accentuated. In extreme cases, such as the Parmalat scandal[38], minorities are vulnerable to expropriation and fraud by the majority, which leads to important financial losses and often to the bankruptcy of the company.

Viewed from this perspective, concentration empowers controlling shareholders to extract private benefits of control to the detriment of non-controlling shareholders.[39] Such private benefits may take both a pecuniary and non-pecuniary form.[40] The typology of the private benefits of control is

[36] La Porta et al (1999) supra note5.

[37] The findings regarding the impact of concentrated ownership on the company's performance indicate that ownership concentration and the involvement of large shareholders improve performance. See, for example, Shleifer A., and Vishny R., (1986), Large Shareholders and Corporate Control, Journal of Political Economy, 94:461; Shleifer&Vishny (1997) supra note2.

For Asian economies see Claessens S., Djankov S. and Lang L. H. P., (2000), The Separation of Ownership and Control in East Asian Corporations, Journal of Financial Economics, 58:81.

[38] Parmalat, a closely-held company, was involved in a scandal of the misrepresentation of the financial statements of the company to investors, which fraud went undetected for the 13 years. Although the company was publicly traded on the Milan stock exchange from 1990 to 2003, minority investors had been presented with a fictitious profit and loss statement throughout that period and an understated debt in the balance sheet for 2003 by almost €12bn (amounting to almost £8bn at the time).

Parmalat case see Bruno Cova, The Parmalat case has generated too little reform, FT, 07.11.2007, available at http://www.ft.com/cms/s/0/333642e6-4f33-11da-9947-0000779e2340.html#axzz1WiZ1voKY (last accessed 27.09.2011)

[39] Nenova T., (2003), The Value of Corporate Votes and Control Benefits: A Cross–country Analysis, Journal of Financial Economics, 68:325.

[40] ibid Nenova; Dyck A. and Zingales L., (2004), Private Benefits of Control: An International Comparison, The Center for Research in Security Prices Working Paper №535; Atanasov V. et al.,(2008), Unbundling and Measuring Tunnelling (Univ. of Tex. Sch. of Law, Law & Econ. Working Paper No. 117, 2008), available at http://ssrn.com/abstract=1030529; Atanasov V.A., Black Bernard S. and Ciccotello C.S.,(2009), Law and Tunnelling. ECGI - Law Working Paper No. 178/2011; Northwestern Law & Econ Research Paper 09-35; University of Texas Law, Law and Economics Research Paper 158. Available at SSRN: http://ssrn.com/abstract=1444414.

For the differences in the private benefits of control and agency costs in firms dominated by a controlling shareholders as opposed to dispersly owned firms see Bebchuk&Hamdani (2009) supra note15 stating that the ownership of significant outside businesses provides controllers with additional ways to divert value. The scholars note at least three differences in the typology of expropriation by controlling shareholders and managerial opportunism. More specifically, they note that for controlling shareholders, large self-dealing transactions with other entities affiliated with them and freeze-out

similar to the agency costs incurred by shareholders in a widely-held company. For example, the controllers may divert business opportunities from the company to another wholly-owned company; they may engage into self-dealing transactions or get excessive remuneration as managers of the company. Similarly, they themselves or their family members may be managing the company despite their incompetence or shirking; they may be consuming perquisites the company provides for; they may also satisfy their desire to become powerful and respectful individuals in their society through the company.[41] Finally, as controlling shareholders pursue their own interests, the risk of suboptimal management by owners-managers and excessive risk concentration[42] may be detrimental for minority investors.[43]

The aforementioned examples indicate that the ownership structure determines the corporate governance problems to be addressed.[44] For instance, in countries in which a relatively small number of dominant families control many public companies through pyramids and other forms of control-enhancing mechanisms, important inefficiencies derive from the presence of the controlling shareholder and the related high risk of minority expropriation. In this context, one of the underlying propositions of this thesis is that the danger of expropriation is inherent in both ownership systems, concentrated and dispersed, with the difference lying in the identity of the expropriator: Dispersed ownership facilitates managerial misconduct to the detriment of the company and its shareholders, while concentrated ownership gives rise to conflicts of interests between minority and majority shareholders, therefore increasing the risk of private benefits extraction by the controllers. The use of control-enhancing mechanisms appears to exacerbate the conflicts of interests as disproportionate control reduces the disciplinary effect on the actions of the controlling shareholders. Therefore, despite the arguments that corporate governance systems

---

transactions often provide an important channel for extracting private benefits. Additionally, even when individuals affiliated with the controller serve in a managerial capacity, the controller may well elect not to maximize diversion through excessive compensation, given its ability to extract private benefits on a larger scale through other means, such as related-party transactions. Finally, they note that managerial shirking and empire building are more serious concerns in NCS companies than in CS companies.

[41] Morck R., Wolfenzon D., and Yeung B., (2005), Corporate Governance, Economic Entrenchment and Growth, Journal of Economic Literature, 43:657.

[42] Demsetz H., and Lehn K., (1985), The Structure of Corporate Ownership: Causes and Consequences, Journal of Political Economy, 93:1155.

[43] Stulz R., (1988), Managerial Control of Voting Rights: Financing Policies and the Market for Corporate Control, Journal of Financial Economics, 20:25; Morck R., Shleifer A., and Vishny R., (1988), Management Ownership and Market Valuation: An Empirical Analysis, Journal of Financial Economics, 20:293.

[44] See Chapters II and IV on the typology and profiles of shareholders and their impact on corporate governance.

around the world appear to converge[45], important differences remain with regard to the nature of the governance risks and the conflicts which affect investors.

2. Concentrated ownership and the 'inefficiency bias'

2.1. Concentrated ownership structures and the 'legal origin' hypothesis

In the late 1990s, the traditional distinction of financial systems into bank- and market-centred[46] on the basis of the prevalent institution available to market participants for raising capital, has been criticised as an unfruitful way of explaining the differences in corporate governance systems around the world. This criticism was manifested in a series of papers[47] by La Porta et al (LLSV) who sought to explain the large differences observed between countries in terms of ownership concentration in publicly traded firms, in the breadth and depth of financial markets and in the access of firms to external finance. They proposed a classification based on an 'investor protection matters' approach according to which *'…all outside investors, be they large or small, creditors or shareholders, need rights to get their money back.'* In this light, scholars argued, '*investor rights are a more primitive determinant of financial development than is the size of particular institutions'*, such as banks and capital markets.[48]

In their study, LLSV argue that the legal system and the minority protection mechanisms established within it explain the different patterns of corporate ownership and finance around the world. The LLSV hypothesis, therefore, establishes a correlation between the legal and the financial system. As investor protection rights are the prerequisites of developed capital markets, good investor protection determines the patterns of corporate ownership structures and the efficient

[45] Coffee J., (1999), The Future as History: The Prospects for Global Convergence in Corporate Governance and its implications, Northwestern Law Review, 93:641; Hopt K.J., (2011), Comparative Corporate Governance: The State of the Art and International Regulation, American Journal of Comparative Law, 59:1; ECGI - Law Working Paper No. 170/2011. Available at SSRN: http://ssrn.com/abstract=1713750; Siems M.M., (2010), Convergence in Corporate Governance: A Leximetric Approach. Available at SSRN: http://ssrn.com/abstract=1444860; Martynova M. and Renneboog L., (2010), A Corporate Governance Index: Convergence and Diversity of National Corporate Governance Regulations. Center Discussion Paper Series No. 2010-17; TILEC Discussion Paper No. 2010-012. Available at SSRN: http://ssrn.com/abstract=1557627.

[46] Allen F. and Gale D., (2000a), Comparing Financial Systems, Cambridge, MA: MIT Press; Allen F. and Gale D., (2000b), Corporate Governance and Competition in Vives (2000). The distinction is conducted on the basis of the size and development stage of sources of finance such as the capital markets or the banking institutions; Levine R., (2003), Bank-Based or Market-Based Financial Systems: Which is Better?, Journal of Financial Intermediation, 11:398.

[47] La Porta et al. (2000b) supra note5.

[48] La Porta et al. (1998) supra note5.

allocation of resources within a financial system. In this context, the LLSV hypothesis associates concentration of ownership with high costs of capital[49] and 'bad law'[50], by considering that concentration is the response of shareholders who are unwilling to part with control for fear of being expropriated due to deficient investor protection.

LLSV found that the average ownership concentration of the three largest shareholders around the world was 46% and the median 45% but they also managed to establish an important correlation between the legal origin and the level of concentration. When measured by legal origin, French-origin civil law countries, for example, were found to exhibit an average ownership by the three largest shareholders of 54%. In German-origin civil law countries concentration of ownership by the three largest shareholders is 34%, while concentration in Scandinavian civil law countries is 37%. Finally, common law countries were in the middle with 43% average ownership of the three largest shareholders. LLSV, therefore, supported that strong investor protection is positively correlated with dispersion of ownership, while, in contrast, weak investor protection is positively correlated with concentrated ownership. LLSV considered their results to be at least suggestive of the fact that concentration is an adaptation to poor legal protection, namely a response of investors to inefficient legal systems with weak investor protection.[51] It is this latter finding of the LLSV study which is strongly contested in this thesis.

2.2. Measuring corporate governance: Ratings and indices

In order to test their hypothesis, LLSV measured the levels of ownership concentration for 45 countries around the world by taking the median and the average ownership stake of the three largest shareholders among the ten largest publicly traded companies within each country. The Anti-Director Rights Index rates countries on the basis of six components, with the 'oppressed

[49]For LLSV, poor investor protection has an important cost on the financial system. More specifically, they explain that '…one of these costs of heavily concentrated ownership in large firms is that their core investors are not diversified. The other cost is that these firms probably face difficulty raising equity finance, since minority investors fear expropriation by managers and concentrated owners.' See La Porta et al. (1998) supra note5.

[50] ibid. They summarise their propositions pertaining to the relationship established between investor protection and ownership concentration when they say that '… poor quality of legal protection of shareholders helps determine the ownership concentration, accounting for the higher concentration of ownership in the French civil law countries. The results support the idea that heavily concentrated ownership results from, and perhaps substitutes for, weak protection of investors in a corporate governance system.'

[51] La Porta et al (1999) supra note5. Their explanation provided is that '... with poor investor protection, concentration becomes a substitute for legal protection, because only large shareholders can hope to get a return on their investment.'

minorities' variable being the most relevant in the context of concentrated ownership structures.[52] Subsequent attempts to measure investor protection through an improved index involve the Anti-Self-Dealing Index created by Djankov et al (DLLS).[53] The latter index focuses on private enforcement mechanisms, such as disclosure, approval, and litigation, governing a specific self-dealing transaction. Both academic indices produce results that illustrate concentration as a sub-optimal type of corporate ownership structure and the minority protection regimes within civil law systems as less effective[54], thus establishing an 'inefficiency bias' against concentration.

The misconception of concentrated ownership established by LLSV is premised upon an 'imperative causality' relationship between civil law legal systems, low investor protection and the concentration of ownership. This approach has shifted the focus of the corporate governance debate to the legal origin rather than the actual effectiveness of investor protection rules, as assessed through a substantive comparative analysis of the law. The 'legal origin' proposition also downplayed the importance of the factor of ownership structures as a determinant of legal effectiveness. As the LLSV study constructed stereotypes of corporate governance systems according to their legal origin, the role of the patterns of ownership in determining the corporate governance problems to be addressed by any given legal framework was perceived as secondary. Contrary to this approach, this thesis studies the interaction of the ownership structures and corporate governance on the basis that ownership structures dictate what rules will be effective in a given context.

3. Concentrated ownership and disproportionate control

The 'inefficiency bias' of concentrated ownership structures is more intense, when control is not proportionate to the cash-flow rights of the controller.[55] In order to achieve disproportionality, a

[52] La Porta et al. (1999) supra note5, Table 7.

[53] For the methodology and variables of the Anti-Self Dealing Index created by Djankov et al see Chapter I.

[54] For the 'inefficiency bias' of concentration see Chapter I.

[55] One important type of controlling shareholders are those labelled 'controlling minority shareholders' by Bebchuk, Kraakman&Triantis (2000). These are shareholders who own only a minority (and sometimes a small minority) of the company's cash flow rights but control a majority of the votes and thus have a lock on control. They show that such structures have the potential to create very large agency costs that are an order of magnitude larger than those associated with controlling shareholders who hold a majority of the cash flow rights in their companies. See Bebchuk L., Kraakman R. and Triantis G., (2000), Stock Pyramids, Cross-Ownership and Dual Class Equity: The Mechanisms and Agency Costs of Separating Control From Cash-Flow Rights, in R. Morck (ed.), Concentrated Corporate Ownership, Chicago, p.445.

wide variety of control-enhancing mechanisms (hereafter CEMs) is often used.[56] One type of such mechanisms are corporate voting devices such as non-voting shares, multiple voting shares, shares with preferential rights, golden shares or shares with special features whose beneficiaries can be the state, a regional government, or even a municipality.[57] Shareholder agreements, cross-shareholdings and pyramidal structures are also common CEMs.[58] Controlling shareholders, such as family owners and the state, resort to these mechanisms as a means of achieving the desired balance between liquidity and control.[59] For instance, a famous example of the function of CEMs is found in the shares held by the German state of Lower Saxony in Volkswagen AG. In this case, the shares held by the state carry special rights and enable the state to veto certain key decisions of Volkswagen AG, such as a merger or an acquisition.[60] Similarly, family owners such as the

For evidence about the significant amount of tunnelling that takes place in such firms see Johnson, S., La Porta R., Lopez-de-Silanes F., and Shleifer A., (2000), Tunnelling, American Economics Review Papers and Proceedings, 90:22; Bertrand M., Mehta P., and Mullainathan P., (2002), Ferreting Out Tunnelling: An Application to Indian Business Groups, Quarterly Journal of Economics, 117:121; Almeida H.V. and Wolfenzon D., (2006), A theory of pyramidal ownership and family business groups, Journal of Finance, 61:2637.
Such structures are quite common in many countries. See Claessens et al. (2000) supra note37; Faccio M. and Lang L.H.P., (2002), The ultimate ownership of Western European corporations, Journal of Financial Economics, 65:365.

[56] Rydqvist K., (1992), Dual-Class Shares: A Review, Oxford Review of Economic Policy, 8(3):45; Allaire Y., (2006), Dual-Class Share Structures in Canada: Review and Recommendations, The Institute for Governance of Public and Private Organisations Policy Paper No 1 ; Capaul M. and Fremond O., (2003), Capital Structures and Control Rights Patterns, Policy Issues, The World Bank, available at http://info.worldbank.org/etools/docs/library/154716/domestic2003/pdf/fremondcapaulberg_version1.doc (last accessed 29.09.2011); for Europe see Report on the Proportionality Principle in the EU, ISS, ECGI, Sherman & Sterling LLP, May 2007 available at http://www.ecgi.org/osov/documents/final_report_en.pdf (last accessed 27.09.2011); for Europe also see Deminor Rating, (2005), Application of the One-Share-One-Vote Principle in Europe, A Survey Commissioned by Association of British Insurers; Burkart M. and Lee S., (2008), One Share - One Vote: the Theory, Review of Finance, Oxford University Press for European Finance Association, 12(1):1.

[57] ibid. For more details on the characteristics of the mechanisms see EU 2007 Report.

[58] Faccio&Lang, supra note55, at 390, Table 8. They present evidence on the prevalence of pyramidal ownership structures in Western Europe.; Khanna T. and Yafeh Y., (2006), Business groups in Emerging Markets: Paragons or Parasites, Working Paper, HBS and Hebrew University.

[59] Becht M., (1999), European Corporate Governance: Trading off liquidity against control, European Economic Review, 43:1071. As the argument goes, when controlling shareholders exert proportionate control in a company, they have to sacrifice their liquidity because they have to hold shares representing the majority of the capital of the company. The implication of this is that they might face restrictions to finance any plans of the company in the future. Thus, they will need to sustain a good reputation in the market regarding the governance of the controlled company in order to be able to attract investors.

[60] On 23 October 2007, the European Court of Justice ruled in Case C-112/05 that by maintaining in force Paragraph 4(1), as well as Paragraph 2(1) in conjunction with Paragraph 4(3), of the Law of 21 July 1960 on the privatisation of equity in the Volkswagenwerk limited company Germany has failed to fulfil its obligations under the EC Treaty rules on the free movement of capital (Article 56). For more information see C-112/05, Commission v Germany, available in http://curia.europa.eu/jurisp/cgi-bin/gettext.pl?where=&lang=en&num=79928976C19050112&doc=T&ouvert=T&seance=ARRET (last accessed 02.06.2010).

Wallenberg[61] family in Sweden and the Agnelli family in Italy[62], make extensive use of corporate voting devices and shareholders' agreements in order to maintain their control over a group of companies.[63]

3.1. Control-enhancing mechanisms and the separation of cash-flow from control rights

The separation of cash-flow from control rights, resulting from the use of control-enhancing mechanisms, distorts the incentives of the controller and accentuates the conflicts of interests between minority and majority shareholders.[64] More specifically, controlling minorities, unlike

---

These three provisions of the VW law (which are also reflected in provisions of the Articles of Association of the company) grant the following special rights to German public authorities (the Land of Lower Saxony and potentially also the Federal Government):

-automatic representation of public authorities on the board stipulated in §4 (1) VW-law (Art. 12 Articles of Association in their version as of March 2006);

-a 20% voting cap stipulated in §2 (1) VW-law (Art. 24(1) 3rd sentence and Art. 25 Articles of Association) as well as

-a 20% blocking minority stipulated in §4 (3) VW-law (Art. 26(2) Articles of Association).

On the calls of the Commission to apply the ACJ judgment, 27.11.2008, see http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/1797&format=HTML&aged=0&language=EN&guiLanguage=en.

On the issue see Germany Faces Legal Action over VW Law, Deutsche Welle, 19.03.2003, available at http://www.dw-world.de/dw/article/0,,812366,00.html (last accessed June 02, 2010).

[61] For example, the Wallenberg family owns 22,3% of the capital and 48% of the votes of Investor, the SKr75bn (£6bn) Swedish industrial holding company founded in 1916 by the Wallenberg family. Investor AB is one of the most powerful investors in northern Europe. For the ownership structure of Investor see http://www.investorab.com/en/Investors_media/Share+Information/Ownership/default.htm For the investments and group structure of the Holding Company see http://www.investorab.com/en/OurInvestments/default.htm (last accessed on 11. 09.2011).

[62] Aganin A. and Volpin P.F., History of Corporate Ownership in Italy (March 2003). ECGI - Finance Working Paper No. 17/2003. Available at SSRN: http://ssrn.com/abstract=391180.

For the ownership structure and business group of FIAT SPA see http://www.fiatspa.com/en-US/investor_relations/financial_reports/FiatDocuments/Bilanci/2010/Relazione_Finanziaria_UK.pdf (last accessed 11.09.2011). For Exor SPA (owns 30% of FIAT SPA and is controlled by the Agnelli family), see http://www.exor.com/index.php?lang=en (last accessed 11.09.2011). Exor SPA is a subsidiary of Giovanni Agnelli e C. S.a.p.az., a private company. As of March 2011, Giovanni Agnelli e C. S.a.p.az. owns 52.66% of the capital of Exor, equal to 59.10% of ordinary capital stock. See Annual Report 2010, p.11 available at http://www.exor.com/uploads/922389-CG_Report_English.pdf (last accessed 11.09.2011).

[63] Adrian Michaels, Control shifts from Patriarchs to pacts, FT, 18.01.2006, available at http://www.ft.com/cms/s/0/662883c2-87c7-11da-8762-0000779e2340.html#axzz1WiZ1voKY (last accessed 11.09.2011) reporting the dominance of small, family-owned companies and the private origins of many of the 282 Italian firms listed on Milan Stock Exchange, which are still majority-owned. It is stated that '…Consob, the market regulator, says that companies representing 67 per cent of the market's capitalisation were controlled by majority shareholders in 1996. That fell to 33 per cent in 2004. But many important companies are instead controlled by a shareholder pact, under which a handful of investors own a controlling stake among them. Pacts controlled 15 per cent of the market's capitalisation in 2004, up from 5 per cent in 1996.'An example provided states that '...pacts are combined in pyramids of control through holding companies, as is the case with Telecom Italia, whose largest shareholder is Olimpia, the holding company. Olimpia's largest shareholder is Pirelli, the tyre maker. All three are chaired by Marco Tronchetti Provera, who is the biggest holder of Pirelli shares.'

[64] Report of the High Level Group of Company Law Experts on Issues Related to Takeover Bids, EC, Brussels, January 10, 2002, available at http://ec.europa.eu/internal_market/company/docs/takeoverbids/2002-01-hlg-report_en.pdf (last

controlling majorities, do not internalize most of the value effects of their decisions as their stake represents only a small fraction of the cash-flow rights in the firm under their control.[65] For example, the limited financial exposure of controlling minorities imposes fewer limitations on their incentives to take risks[66], although the consequences of risky decisions may have a significant impact on the non-controlling shareholders. In this regard, as the fraction of their cash-flow rights declines, controlling minorities can progressively externalize more costs of their misbehaviour, therefore causing a sharp increase in the rate of the agency costs involved.[67] The limited economic participation of controlling shareholders in the company also implies that they are more interested in extracting private benefits than maximising the value of the company's shares or the dividends awarded to shareholders.

Control-enhancing devices manage to restrict the disciplinary effect of the principal mechanisms which limit agency costs, such as the takeover market.[68] More specifically, controlling minorities are less exposed to hostile takeovers and proxy contests which discipline management and corporate insiders generally[69], because the deviations from the one-share-one-vote principle insulate the company from market powers with a disciplining effect, contrary to the situation in dispersed systems.[70] In the context of a takeover, for example, control-enhancing devices promote controlling shareholders who are most likely to extract the highest private benefits possible.[71] Assumming that the bidder is willing to pay a premium which is less than or equal to the private

---

accessed 29.09.2011). As a starting point, corporate governance and, consequently, corporate performance are considered to be optimal when control is exerted in proportion to shareholders' cash flow rights.

[65] The impact of such a misalignment is manifested on various occasions. An illustrative example is the choice among investment projects, in the context of which the controlling shareholder may choose the project with the lower value but the larger private benefits of control. As the cash-flow rights of the controller are less, the difference in the value of two projects becomes less important while the difference in private benefits of control will be determining. See Bebchuk et al (2000) supra note55.

[66] Gompers P., Ishii A.J. and Metrick A., (2006), Extreme Governance: An Analysis of Dual Class Firms in the United States, Working Paper, Harvard, Stanford and Wharton; Masulis R.W., Wang C. and Xie F., (2007), Agency Problems at Dual-Class Companies, Journal of Finance, 64:1697.

[67] Bebchuk et al (2000) supra note55.

[68] Bebchuk et al (2000) supra note55; Manne H.G., (1965), Merger and the Market for Corporate Control, Journal of Political Economy, 73:110; Easterbrook F. and Fischel D., (1983), Voting in Corporate Law, Journal of law and Economics, 26:395.

[69] Ferrarini G., (2006), One-share-one-vote: A European Rule, ECGI Law Working Paper No.58/2006. Available at SSRN: http://ssrn.com/abstract=875620.

[70] Claessens et al, (2002), supra note56; Gompers et al, (2006), supra note66, Masulis et al, (2007), supra note66.

[71] However, as the counterargument goes, the party who is able to extract the highest private benefits will also be the party who will run the company efficiently and increase firm value to the ultimate benefit of its shareholders. Khachaturyan A., (2006), The One-Share-One-Vote Controversy in the EU, ECMI Working Paper No.1, Centre for European Policy Studies (CEPS).

benefits to be extracted, the winning bidder is the one that is able to offer the highest control premium for the multiple-class shares.[72] The higher the magnitude of private benefits, the higher the voting premium paid for the shares as well.[73] As a result, the contest is ultimately most likely to be won by the party who is more able to extract private benefits of control to the detriment of the minority shareholders of the company, since this person is also more able to pay the highest control premium.[74]

The misalignment of shareholders interests also leads to the increase of the company's cost of capital, as the potential to extract private benefits is reflected in the price of the shares. For example, recent empirical studies suggest that almost 80% of investors consider control-enhancing mechanisms as a deterrent for investment and take the potential of extracting private benefits into account in their investment decisions.[75] Consequently, they expect a discount in the shares of the company anywhere from 10 to 30%.[76] Empirical studies also support the distortive effect of disproportionality of ownership and control rights on firm value.[77] For instance, research conducted on a sample of publicly traded corporations from East Asian economies, in which concentration of ownership is high and is coupled with sharp divergence between cash-flow rights and ownership, underlines the potential for significant control entrenchment due to

[72] Nenova (2003) supra note39. While the voting premium in companies with one-share-one-vote capital structures is negligible, in dual-class companies the voting premium increases substantially for the shares which confer control to the contestants.

[73] Zingales L., (1994), The Value of the Voting Right: A Study of the Milan Stock Exchange Experience, Review of Financial Studies, 7:125 supports that the price of voting rights is indicative of the magnitude of the private benefits.

[74] Grossman S.J. and Hart O., (1988), One-Share-One-Vote and the Market for Corporate Control, Journal of Financial Economics, 20:175.

[75] EU (2007) Report supra note56.

[76] Ibid, EU (2007) Report supra note56.

[77] The wedge between the prices of the different classes of stock reflects the private benefits of control enjoyed by the high-vote shareholders. There have been a number of papers documenting the patterns of ownership, the prices of dual class stocks, and the value of voting rights in such firms both in the U.S. and internationally. See Nenova (2003) supra note39,. Zingales (1994) supra note73; Zingales L., (1995), What Determines the Value of Corporate Votes?, Quarterly Journal of Economics, 110:1047.

Also see Gompers P.A., Ishii J.L. and Metrick A., (2008), Extreme Governance: An Analysis of Dual-Class Companies in the United States. AFA 2005 Philadelphia Meetings; Rodney L. White Center for Financial Research Working Paper No. 12-04; Rock Center for Corporate Governance Working Paper No. 39. Available at SSRN: http://ssrn.com/abstract=56251.

Gompers, Ishii, and Metrick (2008), assemble a comprehensive list of dual class firms in the U.S. and use this list to investigate the relationship between insider ownership and firm value. They find strong evidence that firm value is increasing in insiders' cash-flow rights and decreasing in insider voting rights. They, therefore, add to the empirical evidence that controlling minority shareholder structures are associated with increased agency costs and reduced firm value.

disproportionate large ownership.[78] The negative correlation between firm value and the wedge between the voting and the cash flow rights of the largest shareholder is also established in European companies[79], while similar studies on US dual-class companies confirm the efficiency distortions caused by control-enhancing devices and show that firm value is increasing in cash-flow ownership and decreasing in voting ownership.[80] Viewed from this perspective, CEMs appear to entrench the controller in power and promote the rigidities and volatility in the economy in the long run.[81] Moreover, private benefit extraction reduces the return on investments substantially and ultimately causes serious underinvestment problems and suboptimal allocation of capital.[82]

3.2. Control-enhancing mechanisms: Efficient response or market failure?

Despite the theoretical predictions that CEMs exacerbate the conflicts of interests, their proliferation and persistence suggest that important efficiency considerations render such mechanisms necessary for investors.[83] For example, corporate voting instruments determine control rights[84], increase the liquidity of the controller and provide investors with a form of leverage which enables them to maximize their financial returns.[85] Additionally, given that the wide managerial discretion inherent in dispersed shareholdings also has substantial agency costs[86],

[78] Claessens et al. (2000) supra note37. More specifically, the study shows that the difference between control rights and cash-flow rights of the largest shareholder is associated with a value discount and that this discount generally increases with the size of the wedge between cash flow and control rights.

[79] Barontini R. and Caprio L., (2005), The Effect of Family Control on Firm Value and Performance. Evidence from Continental Europe, ECGI Finance Working Paper No.88/2005.

[80] Gompers P., Ishii J. and Metrick A., (2004), Incentives vs. Control: An Analysis of U.S. Dual-Class Companies, NBER Working Paper No.10240. The explanation provided for this decrease in the value of firms with dual-class shares is a very interesting one. Firms adopt dual-class structures as a result of their original owners' persistence in exerting control, which fact implies that they may later hesitate to tap the capital markets, so that their corporate control is not diluted. As a result, such firms are short of finance, they invest less, grow slower, and are valued lower.

[81] Morck et al (2005), supra note41.

[82] Morck et al, (2005), supra note41.

[83] F. Barca and M. Becht, The Control of Corporate Europe, 2001, OUP.

[84] Davies (2002) supra note16, p.262. The shares of a company encompass two basic rights. Investors have control rights over the company and they also have a legally enforceable promise of a return on their investment. The votes attached to ones' shares constitute one of the basic means by which the control of the company is exerted. The voting rights and, therefore, the control rights are a matter of contract between the company and its shareholders, namely the articles of association. The allocation of control rights is closely linked to the capital structures of corporations. According to the EU (2007) Report (supra note56), legal systems seek to achieve a certain balance between the 'proportionality principle' and the 'inherent right to self-organisation principle', according to which companies can choose the allocation of control rights as they deem efficient or necessary, even if this means that the ownership of the majority stake in the company is not the determinant of control. The variety of voting mechanisms and structures which facilitate the separation of ownership from control rights is the result of such contractual freedom.

[85] Demsetz H., (1983), The Structure of Ownership and the Theory of the Firm, Journal of Law and Economics, 26:375.

[86] Jensen&Meckling (1976) supra note26.

concentrated ownership and the use of CEMs may constitute an efficient response to the characteristics of the financial system or the company rather than a market failure.

Factors such as the nature of the investment, the stage of the company's development and the surrounding institutions determine the optimality and the desirability of concentration and CEMs. For instance, for investments entailing high monitoring costs due to information asymmetries, it is vital that shareholders have the opportunity to use control-enhancing devices to ensure control over their investment. Moreover, in light of the heterogeneity of a company's shareholders[87], the existence of multiple voting and ownership structures actually promotes optimal arrangements between entrepreneurs and providers of risk capital.[88] For example, deviations from the one-share-one-vote rule form part of complex financing arrangements between venture capitalists and entrepreneurs.[89] From this perspective, the use of CEMs meets the demands of the corporate reality and promotes economic development, because it allows rational investors to use the ownership and voting structures corresponding to their needs.

Similarly, CEMs are often used in IPOs[90], as initial owners who do not want to leave control up in situations where the amount of private benefits could attract unfriendly takeover bids.[91] For example, in the countries in which the controllers can obtain higher benefits of control, initial owners of a company will normally choose to adopt a dual-class structure before offering the company’s securities to the public, as they wish to retain control. In this context, it has, thus, been argued that the CEMs constitute an optimal legal standard at least with respect to the IPO stage, as their use enables the initial owners’ choice to go public, thus generating lower social costs than those caused by the prohibition of dual-class structures.[92] In addition to this important trade-off,

[87] Khachaturyan (2006) supra note71.

[88] Burkart&Lee (2008) supra note56.

[89] Kaplan S. and Stromberg P., (2003), Financial Contracting Theory Meets the Real World: Evidence from Venture Capital Contracts, Review of Economic Studies, 70:281; Gompers, P.J.L., (1996), The Use of Covenants: An Empirical Analysis of Venture Partnership Agreements, Journal of Law and Economics, 39:463; Sahlman W., (1990), The Structure and Governance of Venture-Capital Organizations, Journal of Financial Economics, 27(2), p.473.

[90] On IPOs see Chemmanur T. and Jiao Y., (2005), Dual-Class IPOs, Share Recapitalisations and Unifications: A Theoretical Analysis, ECGI Finance Working Paper No.29/2006.

[91] Pagano M. and Roell A., (1998), The Choice of Ownership Structure: Agency Costs, Monitoring and the Decision to Go Public, Quarterly Journal of Economics, 113(1):187, Ferrarini (2006) supra note69.

[92] Boot A., Radhakrishnan G. and Thakor A.V., (2006), The Entrepreneur’s Choice between Private and Public Ownership, Journal of Finance, 71(2):803.

economic theory also suggests that the case of IPOs is non-problematic in terms of agency costs, as the initial shareholders bear the cost of limiting voting structures.[93]

Beyond the case of developed economies, the use of CEMs in emerging economies provides investors with the liquidity required to finance their activities in the absence of many of the institutional mechanisms such as deep and liquid capital markets, which facilitate market transactions.[94] As a response, investors resort to alternative internal financing mechanisms by vertical integration and diversification within a group, for example.[95] Similarly, oversight by controlling shareholders constitutes an efficient alternative to the missing disciplinary mechanisms such as the market for corporate control, and is often demanded by investors themselves, in order for the latter to invest in a country.[96] In this light, CEMs and the contractual freedom they represent limit the risk of adopting a one-size-fits-all approach, which disregards the divergence in the preferences of investors and distorts their incentives.

Viewed from another perspective, the disproportionate control facilitated by CEMs does not automatically imply a destruction of corporate value.[97] In this regard, private benefits extraction is viewed as compensation for the costs of holding a large block or engaging into monitoring[98] and have an important role as incentives. More specifically, empirical studies indicate a risk of underinvestment and obstacles to innovation, if entrepreneurs are given too little incentive in the form of private benefits.[99] This finding indicates that the extraction of private benefits is efficient to the extent that the agency costs of concentration are less than the agency costs created by

---

[93] Ferrarini (2006) supra note69; Also see R. Gilson, (1987), Evaluating Dual Class Stock: The Relevance of Substitutes, Virginia Law Review, 73(5), p.807, suggesting that, if a new class of non-voting shares is issued to allow new capital to be raised without diluting the dominant group, the transaction should not be interfered with.

[94] Khanna&Yafeh (2006) supra note58. They note at 332 that '[I]n virtually all emerging markets, group affiliated firms tend to be relatively large and economically important.'

[95] ibid Khanna&Yafeh 2006 supra note58.

[96] Berglof E. and Pajuste A., (2003), Emerging Owners, Eclipsing Markets?, Corporate Governance in Central and European Markets in P.K.Cornelious, P. Kogut eds., Corporate Governance and Capital Flows in a Global Economy, (2003), OUP.

[97] R. Adams, D. Ferreira, (2007), One Share, One Vote: The Empirical Evidence, ECGI Finance Working Paper No.177/2007 The authors argue that, expropriation and corporate value destruction are two distinct notions, not necessarily linked to one another. Expropriation rather has a distributional effect as it diverts wealth from minority to controlling shareholders. Therefore, a definition of firm value which encompasses the private benefits generated in the total value of the firm mitigates the negative perception of the effect of disproportionate control.

[98] Burkart&Lee (2008) supra note56.

[99] Allaire (2006) supra note56.

alternative ownership structures.[100] Similarly, disproportionate control is efficient if its costs are less than the transaction costs that shareholders would incur if power was exercised directly.[101] CEMs, therefore, appear to be more than a market failure or inefficiency. Building on this proposition, this thesis suggests that the impact of CEMs on corporate governance is determined by the legal protection of minority shareholders.[102] Aligned with the aforementioned proposition, empirical studies indicate that the agency costs of dual-class shares and similar structures tend to be comparatively larger in countries in which legal rules are lax and private benefits of control are consequently also large.[103]

III. THE RATIONALE FOR THIS THESIS: CONCENTRATED OWNERSHIP AND THE INTERCONNECTEDNESS OF CORPORATE GOVERNANCE SYSTEMS

As the interconnectedness of the financial and corporate governance systems increases, it is now more important than ever to understand the impact of different concentrated and dispersed ownership structures on corporate governance. Such interconnectedness is the result of a global economy, where investments flow throughout countries, as investors seek exposure to new markets and buy out stakes in companies with concentrated ownership. The Parmalat scandal clearly illustrates this point as it highlights the global dimension and impact of corporate governance failures.[104] More specifically, Parmalat raised money on international capital markets

[100] Shleifer&Vishny (1986) supra note37.
[101] Gilson (2005) supra note4.
[102] La Porta et al (2002) supra note5.
Reputational factors also limit the agency costs of controlling minority structures, as controllers who intend to return to the equity market must establish a reputation for sound management. See Becht (1999), supra note59. As the argument goes, when controlling shareholders exert proportionate control in a company, they have to sacrifice their liquidity because they have to hold shares representing the majority of the capital of the company. The implication of this is that they might face restrictions to finance any plans of the company in the future. Thus, they will need to sustain a good reputation in the market regarding the governance of the controlled company in order to be able to attract investors. However, the enhanced liquidity offered to controlling shareholders through the use of CEMs renders the role of reputational factors marginal. Investor protection, therefore, constitutes the determining factor in mitigating shareholders' conflicts of interests.
Also see Gilson R.J., (2007), Controlling Family Shareholders in Developing Countries: Anchoring Relational Exchange. Columbia Law and Economics Working Paper No. 311; Stanford Law and Economics Olin Working Paper No. 333; ECGI - Law Working Paper No. 79/2007; Rock Center for Corporate Governance at Stanford University Working Paper No. 10. Available at SSRN: http://ssrn.com/abstract=957895.
[103] Ibid. Also see Nenova (2003) supra note39, Dyck&Zingales supra note40.
[104] See Enriques L. and Gatti M., (2007), EC Reforms of Corporate Governance and Capital Markets Law: Do They Tackle Insiders' Opportunism?, Northwestern Journal of International Law & Business, 28(1):1.

from lenders based in some 100 countries.[105] However, in light of this interconnectedness, the oversight of global capital markets and corporate governance by fragmented supervisory regimes, usually organised on a national basis only, is inconsistent and problematic. For example, regulatory arbitrage is not rare, as companies seek out regulatory weak points all around the world, and exacerbates the risk of corporate governance frauds against investors in general and minority investors in particular.

The exposure of investors to the problems of concentrated ownership may also be the result of the listings of foreign companies in a jurisdiction with liquid capital markets, such as the UK. The UK capital market provides an illustrative example of the increasing interconnectedness of company law and corporate governance systems, as developed in the context of global financial markets. More specifically, as more companies of foreign origin are listed on the London Stock Exchange to access capital, investors are exposed to considerable conflicts of interests. For example, mining and resources companies, originating from emerging markets, currently make up one third of the FTSE 100, while IPO activity of mining and resources companies in the UK capital market accounted for 70% of the total activity for the first semester of 2011.[106] The data highlights that such

---

[105] Cova supra note38.

[106] See Alison Smith and Kate Burgess, Governance concerns rise after spate of London IPOs, FT, 17.06.2011, available at http://www.ft.com/cms/s/0/7411f846-9843-11e0-ae45-00144feab49a.html#axzz1Yo0KkPMk (last accessed 29.09.2011). The article refers to the trend that majority-owned companies, such as Glencore and Vallares, get listed on the London Stock Exchange and concerns are raised with regard to the suitability of the UK Combined Code to address this new problems and safeguard effective corporate governance in the context of concentrated ownership structures.

Employees and managers at Glencore have important stakes in the company as follows: Ivan Glasenberg 15,8%, Daniel Francisco Mate Badenes 6%, Aristotelis Mistakidis 6%, Tor Peterson 5,3%, Alex Beard 4,6%, Steven Kalmin 1%. The six significant shareholders own 48,7% of the company, while two of them (Ivan Glasenberg and Steven Kalmin) also sit on the board. The company is now also listed on the London Stock Exchange and Hong Kong Stock Exchange. See Glencore IPO Prospectus (2011), p.298-299.

Vallares is a listed company which plans to use the money provided by investors through its listing to buy into companies in need of capital. Instead of buying the company, Vallares will be offering shares in itself, thus providing the company with access to the global financial markets. The aforementioned business structure mostly involves closely-held companies with access to good resources but limited access to capital. A similar structure has already been in place as Vallar Plc used the capital raised in London capital markets in order to agree a deal with Indonesia's Bumi Resources, a company controlled by Indonesia's Bakri family. The new company, Bumi plc, is now on the threshold of FTSE 100. For more see William MacNamara, Vallares deal straight from Hannam's handbook, FT, 07.09.2011 available at http://www.ft.com/cms/s/0/def1b766-d92d-11e0-884e-00144feabdc0.html#axzz1Xdsfv72I (last accessed 27.09.2011)

This model gives rise to a complex business group overseen by Vallares, whose investors can hardly control the corporate governance and investor protection issues they will be exposed to. See Sylvia Pfeifer, Vallares sounds out FSA on $2.1BN Genel deal, FT, 07.09.2011, available at http://www.ft.com/cms/s/0/e022e024-d96e-11e0-b52f-00144feabdc0.html#axzz1Xdsfv72I (last accessed 27.09.2011); Richard Lambert, Lessons in capitalism for the FTSE 100, FT, 27.06.2011, available at http://www.ft.com/cms/s/0/fde2f874-a0f2-11e0-adae-00144feabdc0.html#axzz1Xdsfv72I (last accessed 27.09.2011).

companies are not only marginally important but rather represent an important part of new listings. In light of the concentrated ownership structures of such companies, minority shareholders face substantial corporate governance challenges and, as new entrants, they are often exposed to important corporate governance deficiencies. The case of ENRC, the London-listed Kazakh mining group, clearly shows the high risk often undertaken by minority investors.[107] More specifically, the independent directors of the ENRC board have been dismissed by the controlling shareholders of the company allegedly because the former repeatedly complained about corporate governance flaws, most notably the lack of board independence.[108] The tumult associated with corporate governance concerns has caused a substantial fall in the shares of the company to the detriment of minority shareholders. [109]

The presence of closely-held corporations in the UK capital markets highlights the mismatch between the prevalent corporate governance problems within such structures, namely the conflicts of interests between minority and majority shareholders, and the governance problems which the UK Corporate Governance Code is designed to address, namely managerial opportunism and shareholders' apathy.[110] For example, the Stewardship Code in the UK is designed to increase the engagement of institutional shareholders, who own almost 80% of the shares listed on the London Stock Exchange (LSE), in corporate governance.[111] As the 2010 reforms of the corporate

---

[107] William MacNamara, ENRC: lessons for London, FT, 13.06.2011 available at http://blogs.ft.com/beyond-brics/2011/06/13/enrc-what-lessons-for-london/#axzz1XqBXO0eI (last accessed 27.09.2011).

[108] William MacNamara and Patrick Jenkins, Third independent director to quit ENRC, FT, 09.06.2011, available at http://www.ft.com/cms/s/0/d25e6eec-92d1-11e0-bd88-00144feab49a.html#axzz1Xdsfv72I, (last accessed 27.09.2011); Alison Smith and William MacNamara, ENRC dismissals shake UK corporate world, FT, 09.06.2011, available at http://www.ft.com/cms/s/0/0f8499c2-924b-11e0-9e00-00144feab49a.html#axzz1OdbG0F3i (last accessed 27.09.2011).

[109] Isabel Gorst, ENRC and Kazakh corporate governance, FT, 10.06.2011, available at http://blogs.ft.com/beyond-brics/2011/06/10/enrc-and-kazakh-corporate-governance/#axzz1XqBXO0eI (last accessed 27.09.2011).

[110] According to the Financial Reporting Council, 'The UK Stewardship Code aims to enhance the quality of engagement between institutional investors and companies to help improve long-term returns to shareholders and the efficient exercise of governance responsibilities by setting out good practice on engagement with investee companies to which the FRC believes institutional investors should aspire.'

According to the Financial Reporting Council, 'The UK Corporate Governance Code (formerly the Combined Code) sets out standards of good practice in relation to board leadership and effectiveness, remuneration, accountability and relations with shareholders.'

[111] The UK Stewardship Code issued by the Financial Reporting Council, the UK's corporate governance regulator, contains seven principles that call on institutional investors to disclose how they will go about enacting corporate change, how they vote, and how they scrutinise company conduct.

The UK Stewardship Code, July 2010, Financial Reporting Council, available at http://www.frc.org.uk/images/uploaded/documents/UK%20Stewardship%20Code%20July%2020103.pdf (last accessed 22.09.2011); Also see Implementation of the UK Stewardship Code, July 2010, Financial Reporting Council, available at

governance rules for listed companies, brought about by the UK Corporate Governance Code[112] and the Stewardship Code, focus on dispersed ownership structures and the particular role of institutional shareholders in the UK, the issue of the conflicts of interests among minority and majority shareholders remains unaddressed. The increased emphasis placed on the role of the chairman, the annual re-election of the board and the calls for increased participation of women in the boardroom hardly have the potential to mitigate the conflicts of interests generated by the presence of a controlling shareholder in the company. Although potential entrants to the LSE need to comply with Listing Rules which require compliance with the UK Corporate Governance Code[113], the effectiveness and adequacy of current regulation to achieve good corporate governance within companies with concentrated ownership is under criticism.[114] In this wider context, understanding concentrated ownership and the different problems generated by this structure constitutes a prerequisite for designing effective investor protection mechanisms and for promoting market confidence.

---

http://www.frc.org.uk/images/uploaded/documents/Implementation%20of%20Stewardship%20Code%20July%2020103.pdf (last accessed 22.09.2011)
Miles Johnson, UK: Stewardship Code aims to encourage collaboration, FT, 6.10.2010, available at http://www.ft.com/cms/s/0/0b3bcdce-d016-11df-bb9e-00144feab49a,dwp_uuid=46d2c262-d015-11df-bb9e-00144feab49a.html#axzz1YR9twlDb, (last accessed 27.09.2011); John Plender, Investing: Rules of engagement, FT, 11.07.2010, available at http://www.ft.com/cms/s/0/9275b768-8d14-11df-bad7-00144feab49a.html#ixzz1WonAJrWO, (last accessed 27.09.2011).

[112] The UK Corporate Governance Code, June 2010, Financial Reporting Council, available at http://www.frc.org.uk/documents/pagemanager/Corporate_Governance/UK%20Corp%20Gov%20Code%20June%202010.pdf (last accessed 22.09.2011); May 2010 Report on Code Consultation, available at http://www.frc.org.uk/documents/pagemanager/Corporate_Governance/May%202010%20report%20on%20Code%20consultation.pdf (last accessed 22.09.2011).

[113] According to Listing Rule 4.2.3, if a company is not incorporated in the UK, the company must meet the following conditions in order to be considered eligible for assignment of UK nationality:
-The company must publicly acknowledge adherence to the principles of the UK Corporate Governance Code, pre-emption rights and the UK Takeover Code as far as practicable.
-The company must have a free float of not less than 50%. For the purposes of this clause, the calculation of the minimum free float may include shares that would otherwise be excluded solely because they are subject to a lock-in clause of twelve months or less from their first day of trading, but that would in all other respects be considered part of a company's free float.

[114] On the debate regarding the effectiveness of the UK Corporate Governance Code see Colin Melvin, Frank Curtiss and Dr Daniel Summerfield, Annual Re-election will not increase accountability, FT, 16.07.2010, available at http://www.ft.com/cms/s/0/93ccbd8e-906e-11df-ad26-00144feab49a.html#ixzz1WonfwZF4, (last accessed 27.09.2011); Alison Maitland, Chairmen slate parts of the Governance Code as 'crazy', FT, 27.06.2010, available at http://www.ft.com/cms/s/0/2cf56cdc-81eb-11df-938f-00144feabdc0.html#ixzz1WooGIsIZ, (last accessed 27.09.2011); Seamus Gillen, Boardroom culture holds secret to success, FT, 06.06.2010, available at http://www.ft.com/cms/s/0/ae899a02-7002-11df-8698-00144feabdc0.html#ixzz1WopOQihT, (last accessed 27.09.2011); Rachel Sanderson, Kate Burgess and Brooke Masters, Reaction to Governance Code divided, FT, 27.05.2010, http://www.ft.com/cms/s/0/11dbccd0-69c1-11df-8432-00144feab49a.html#axzz1WiZ1voKY (last accessed 27.09.2011).

CHAPTER I: THE ' INEFFICIENCY BIAS' OF CONCENTRATION AND THE 'LEGAL EFFECTIVENESS' ARGUMENT

I. INTRODUCTION

Corporate governance has received considerable attention in the past years, most notably due to its perceived correlation with firm performance, financial development and growth.[1] In particular, the compilation of indices measuring the quality of investor protection has been at the centre of comparative corporate governance research as indicated by the creation of the Anti-Director Rights Index by LaPorta et al.[2] (hereafter LLSV) and the Anti-Self-Dealing Index by Djankov et al.[3] (hereafter DLLS), which are two of the most important academic indices. The objective of corporate governance indices is to measure the quality of investor protection against expropriation by managers or controlling shareholders. The aforementioned investor protection indices document the low performance of civil law countries, characterised by concentrated ownership structures, and support the 'law matters' thesis established by LLSV, according to which controlling shareholders emerge as a response to low investor protection which also enables them to extract

[1] On the focus on corporate governance see: Claessens St., (2006), Corporate Governance and Development, World Bank Research Observer, 21:91, stating the *'(c)orporate governance...has now become a mainstream concern-a staple of discussion in corporate boardrooms, academic meetings, and policy circles around the globe.'*; Listokin Y., (2008), Interpreting Empirical Estimates of the Effect of Corporate Governance, American Law and Economics Review, 10:90, stating that *'(o)ver the last decade, a series of important empirical articles have evaluated the impact of many levers of corporate governance on firm value and performance.'*; Gillan S.L., (2006), Recent Developments in Corporate Governance: An Overview, Journal of Corporate Finance, 12:381, stating that *'(t)he amount of corporate governance research has increased dramatically during the last decade.'*

On corporate governance and firm performance/financial growth see: Bhagat S., and Bolton B., (2008) Corporate Governance and Firm Performance, Journal of Corporate Finance, 14:257; Black B.S. et al., (2006), Does Corporate Governance Predict Firms' Market Values? Evidence from Korea, Journal of Law, Economics and Organization, 22:366.

[2] La Porta R., Lopez-de-Silanes F., Shleifer A., and Vishny R.W., (1998), Law and Finance, Journal of Political Economy 107:1113.

[3] Djankov S., Lopez de Silanes F., La Porta R. and Shleifer A., (2008), The Law and Economics of Self-Dealing, Journal of Financial Economics, 88:430.

large private benefits of control.[4] This hypothesis has provided the basis for the 'inefficiency bias' of concentrated ownership structures by linking them to weak investor protection, which is allegedly the case predominantly within civil law jurisdictions.[5]

This Chapter challenges the common perception that concentrated ownership is inefficient and contests the foundations of the 'inefficiency bias'. More specifically, the analysis contests the reliability of the LLSV propositions by outlining the criticisms against the LLSV study and emphasises the inaccuracies and the methodological deficiencies which render the indices an unreliable measure of the quality of investor protection across the world. Building on the criticisms against LLSV and DLLS, this Chapter also argues that the methodology employed to produce reliable metrics for the quality of corporate governance must be adapted to the varieties of corporate ownership as they arise around the world. In this respect, this Chapter constitutes the cornerstone of this thesis, as it disproves the LLSV propositions which establish the 'inefficiency bias' of concentration, it highlights the importance of ownership structures as a factor of corporate governance, in general, and the varieties of concentration, in particular, and it sets the context in which the legal effectiveness argument is developed.

II. CRITICISMS AGAINST THE LLSV HYPOTHESIS AND THE ANTI-DIRECTOR RIGHTS INDEX

1. Important LLSV findings and relevant studies

The LLSV 'law matters' thesis postulates that 'investor protection' is instrumental in three broad areas, namely in determining the patterns of ownership structure, in the development of financial

---

[4] LaPorta et al (1998) supra note2.The explanation provided for this is a simple one: Because investor protection is low, investors aim at gaining control or are not willing to part with control for fear of subsequent exploitation by another controlling shareholder who could assemble control through the market and extract private benefits without significant restrictions by the legal system. Under this analysis, controlling shareholder systems will also most probably be characterized by weak equity markets, because too much liquidity is tied up in control blocks, and by large differences in the price of controlling and minority blocks as a result of private benefit extraction by the controlling shareholder. Their assertions, therefore, align with the typical characteristics of financial systems characterized by concentrated ownership structures but no causal link is established between concentrated ownership and low investor protection which results in the increase of the cost of capital.

[5] LaPorta et al (1998), supra note2.

In the process of establishing empirical links between the quality of legal regimes, capital markets and corporate governance systems, 'law and finance' scholars have associated controlling shareholder structures with 'bad law'.

markets and in the efficient allocation of resources, namely through capital allocation and the distribution of dividends.[6] In a series of papers[7], LLSV explained that weak investor protection provides strong incentives to shareholders to gain and retain control in order to be able to exercise their rights and avoid being expropriated.[8] LLSV also suggested that the legal origins of legal systems do not only determine the law, but through the law they play a key role in shaping the opportunities for external finance and, consequently, the characteristics of the financial markets as well.[9] In the context of the LLSV 'law matters' approach to corporate governance, rules and legal techniques are regarded as the key mechanism against expropriation. Therefore, the effectiveness of the legal system in mitigating the agency problem and conflicts of interest, which may arise at the level of the company, substantially enhances the confidence and willingness of investors to provide capital at a lower cost.

In order to establish a correlation between the legal and the financial system, the next step of LLSV was to assess the effectiveness of the different legal systems. The latter task would necessitate the comparability of the outcome of such an assessment exercise. What resulted from this process was the creation of one of the most influential works on corporate governance and comparative company law of the last fifteen years. More specifically, LLSV compared a set of key legal rules protecting shareholders and compiled an index by rating the relevant rights with either one or zero

[6] Wurgler J., (2000), Financial markets and the allocation of capital, Journal of Financial Economics, Elsevier, Vol. 58(1-2), p.187.

[7] LaPorta et al (1998), supra note2; La Porta R., Lopez-de-Silanes F., and Shleifer A., (1999b), Corporate Ownership Around the World, Journal of Finance, 54:471; La Porta R., Lopez-de-Silanes F., and Shleifer A., (2006), What Works in Securities Law?, Journal of Finance, 61:1; La Porta R., Lopez-de-Silanes F., and Shleifer A., (2008), The Economic Consequences of Legal Origin, Journal of Economic Literature, 46:285; La Porta R., Lopez-de-Silanes F., Shleifer A., and Vishny R. W., (1997), Legal Determinants of External Finance, Journal of Finance, 52:1131; La Porta R., F. Lopez-de-Silanes, Shleifer A. and Vishny R.W., (2000a), Agency Problems and Dividend Policies Around the World, Journal of Finance, 55:1; La Porta R., Lopez-de-Silanes F., Shleifer A. and Vishny R.W., (2000b), Investor Protection and Corporate Governance, Journal of Financial Economics, 58:3; La Porta R., Lopez-de-Silanes F., Shleifer A., and Vishny R.W., (2002), Investor Protection and Corporate Valuation, Journal of Finance, 57:1147

[8] For example, LaPorta et al (1998) supra note2 argued that poor investor protection renders the issuance of new shares to the public an unattractive option for raising finance, either because minority investors may only be willing to buy shares at low prices or unwilling to buy shares as an investment generally, thus affecting the demand for such investments. As a result, the loss in corporate value is not limited to cases of direct expropriation of minorities by the controllers but also extends to affecting the value of their investment because the expected loss in the form of extracted private benefits is projected on investors' assessments of firm value.

[9] Because of the correlation of legal origins with the law and because legal families originated before financial markets had developed, LaPorta et al (1998) supra note2 point out that it is unlikely that laws were written primarily in response to market pressures. Instead what seems more likely is that the legal families have shaped the legal rules, which in turn influenced the financial markets.

according to the perceived effectiveness of the rule.[10] According to the findings of their indexing methodology, countries with a common law tradition[11] have the strongest protection[12] of outside investors, namely shareholders and creditors, whereas French civil law countries have the weakest protection. German civil law and Scandinavian countries fall in between, although they have been found to have stronger protection of creditors, especially secured creditors.[13] The LLSV findings indicate that investor protection and, consequently, the development of the financial system are extensively affected by the legal tradition and the political history of a given country.[14]

---

[10] More specifically, in their research, LaPorta et al. (1998) supra note2 compared a set of key legal rules protecting shareholders and creditors in 49 countries around the world with the ultimate objective to examine the variation of legal rules and enforcement quality across countries and across legal families. In order to achieve this, they aggregated the documented rules into shareholder (anti-director) and creditor rights indices for each country. They also considered several measures of enforcement quality, such as the efficiency of the judicial system, as well as a measure of the quality of accounting standards.

The definitions and method of rating of the six components of the index designed by LLSV (1998, Table I) are the following:

1. Pre-emptive rights to new issues: 2. Cumulative voting or proportional representation: 3. Shares not blocked before meeting: 4. Proxy by mail allowed:.5. Percentage of share capital to call an extraordinary shareholders' meeting:. 6. Oppressed minorities mechanism.

[11] Also LaPorta et al (2000) supra note7, with further references to literature. The protective stance of common law is further explained by the tendency of the judges to use their discretion to prevent expropriation because of historical and political reasons. More specifically, LaPorta et al (1997) supra note7 argue that common law evolved to protect private property against the Crown, which protection was extended to investors. In civil law countries, the state has had a central role in economic activity and traditionally used codes and statutes in order to regulate economic activity, thus imposing severe limitations on the judges' discretion to shape the law. In this light, civil law is associated with greater government intervention in economic activity and weaker protection of private property than common law.

[12] With regard to causation, in order to identify why common law is more protective of shareholders' rights as opposed to civil law legal traditions, LaPorta et al (1997) supra note7 developed two explanations. According to the judicial explanation, common law protects investors better, because legal rules in the common law system are usually made by judges, who are based on precedents and are inspired by general principles such as fiduciary duty or fairness. For this reason judges have more discretion, which in the case of expropriation they exert by applying what has been called a 'smell test' and focus on whether the practise is unfair to outside investors. Such discretion results in the limitation of the expropriation by the insiders in common law countries. In contrast, laws in civil law systems are made by legislatures, and judges are not supposed to go beyond the statutes and apply 'smell tests' or fairness opinions. Thus, civil law systems entail significant restrictions and flexibility is compromised, since judges cannot rule against what is not explicitly prohibited by the statutes.

This justification is exposed to criticism on the basis that the functional equivalent of the smell tests performed by judges in common law systems is the use of general legal principles within civil law systems. Such general legal principles provide judges with the discretion to achieve fairness and constitute an additional mechanism against minority expropriation. Johnson, S., La Porta R., Lopez-de-Silanes F., and Shleifer A., (2000), Tunnelling, American Economics Review Papers and Proceedings, 90:22; Coffee J., (1999), The future as history: the prospects for global convergence in corporate governance and its implications, Northwestern Law Review, 93:631.

[13]ibid. In respect to the differences in creditor protection, the researchers commented that 'differences among legal origins are best described by the proposition that some countries protect all outside investors better than others, and not by the proposition that some countries protect shareholders while other countries protect creditors.'

[14] On the existence of important links between investor protection and the ownership structures see for example, for the case of Germany: Gorton G. and Schmid G., (2000), Class struggle inside the firm: A study of German codetermination,

Whilst the Anti-Director Rights Index rates countries on the basis of six components, of which the 'oppressed minorities' variable is the most relevant in the context of concentrated ownership structures[15], the Anti-Self-Dealing Index focuses on private enforcement mechanisms, such as disclosure, approval and litigation, governing a specific self-dealing transaction. The methodology involves the description of a particular self-dealing situation[16] and the use of a questionnaire in order to obtain lawyers' advice regarding the legal treatment of such a situation. The questions posed include, among others, the approvals required, the disclosure requirements, the duties of directors and controlling shareholders, how the validity of the transaction could be challenged and

---

NBER Working Paper No. 7945, October 2000; Edwards J.S.S. and Fischer K., (1994), Banks, Finance and Investment in Germany, Cambridge University Press: Cambridge.

For Italy see Barca F., On Corporate Governance in Italy: Issues, Facts and Agenda (September 1995), Bank of Italy, Research Department. Again, such data come from the research conducted by La Porta et al (1998) supra note2 which described ownership concentration in their sample of 49 countries. Also see La Porta et al (1999) supra note7 where the patterns of control in the largest firms from each of 27 wealthy economies are examined.

Claessens, S., Djankov S., and Lang L.H.P., (2000), The Separation of Ownership and Control in East Asian Corporations, Journal of Financial Economics, 58:81; Claessens S., Fan J.P.H., Djankov S. and Lang L.H.P., (1999) On Expropriation of Minority Shareholders: Evidence from East Asia. Available at SSRN: http://ssrn.com/abstract=202390. Their findings apply to all countries in their sample except for Japan, which is considered to have fairly good shareholder protection

See for example, Modigliani F., Perotti E.C. and van Oijen P., (1998), Security versus Bank Finance, Tinbergen Institute Discussion Papers 98-051/2, Tinbergen Institute; Modigliani F. and Perotti E., (2000), Security Markets versus Bank Finance: Legal Enforcement and Investors' Protection, International Review of Finance, International Review of Finance Ltd., 1(2):81.

[15] The definitions and method of rating of the six components of the index designed by LaPorta et al (1998) supra note2 LLSV (Table I) are the following:

1. Pre-emptive rights to new issues: 2. Cumulative voting or proportional representation: 3. Shares not blocked before meeting: 4. Proxy by mail allowed:.5. Percentage of share capital to call an extraordinary shareholders' meeting:. 6. Oppressed minorities mechanism

Definition of oppressed minority variable: Index of the difficulty faced by (minority) shareholders owning 10% or less of the capital stock in challenging (i.e. by either seeking damages or having the transaction rescinded) resolutions that benefit controlling shareholders and damage the company. Equals one if minority shareholders may challenge a resolution of both the shareholders and the board (of directors or, if available, of supervisors) if it is unfair, prejudicial, oppressive, or abusive; equals one half if shareholders are able to challenge either a resolution of the shareholders or of the board (of directors or, if available, of supervisors) if it is unfair, prejudicial, or oppressive; equals zero otherwise. Greece receives 0 on both the original and the revised Anti-Directors Rights Index.

[16] Djankov et al (2008) supra note3. Their methodology and case study are described as follows: As a first step, the stylized transaction between two companies ('Buyer' and 'Seller;) is described to the Lex Mundi law firms. It is assumed that Mr. James owns 90% of Seller and 60% of Buyer, and that the latter is a publicly-traded firm. Mr. James is a director of Buyer and his son is its CEO. Seller operates a chain of retail hardware stores and has recently shut down many stores. As a result, some trucks in Seller's fleet are not being used.

Mr. James proposes that Buyer purchases Seller's idle trucks for a cash payment equivalent to 10% of Buyer's assets (the transaction). He argues that Buyer could use additional trucks to expand its sales. Mr. James is on both sides of the transaction and could benefit if Buyer overpays for Seller's trucks. In fact, under the case facts, a $100 wealth transfer from Buyer to Seller would reduce the value of Mr. James' equity in Buyer by $60 but increase the value of his equity in Seller by $90. Although the proposed transaction has a possible business purpose, it involves an obvious conflict of interest.

the availability of direct and derivative suits.[17] The DLLS findings further support the 'legal origin' hypothesis, as the comparative assessment of shareholder protection against self-dealing indicates a *'pronounced difference between common and French civil law countries'*. [18] DLLS suggest that the differences among legal origins are explained on the basis that common law systems are more suspicious of conflicted transactions than civil law systems, thus subjecting such transactions to closer regulation and legal scrutiny.

2. Criticisms of LLSV and related studies

The array of criticisms of LLSV range from the assessment of the validity of their proposition that the law does matter[19] to the substantive objections raised with regard to the accurate description of the legal rights determining the variables of the LLSV index.[20] Although the LLSV study

[17] Djankov et al (2008) supra note3. *'The lawyers received the aforementioned case study and were asked to describe the minimum legal requirements in force in May 2003 regarding: (1) who approves the transactions; (2) what needs to be disclosed to the board of directors or supervisory board, the shareholders, the stock exchange, and the regulators; (3) what are the duties of officers, directors, and controlling shareholders; (4)how the transaction's validity could be challenged; (5) what causes of action are available if Buyer suffers damages; (6) what needs to be proved under each cause of action; (7) who has standing to sue under each available cause of action; (8) availability of direct and derivative suits; (9) access to information and discovery rights; and (10) fines and criminal sanctions.*
The lawyers based their answers on all binding (i.e., not voluntary guidelines) laws and regulations applicable under our case facts and substantiated their answers with references to all relevant legal provisions.'

[18] For the US see Gompers P.A., Ishii J.L. and Metrick A., (2003), Corporate Governance and Equity Prices. Quarterly Journal of Economics, 118(1):107. Available at SSRN: http://ssrn.com/abstract=278920 (last accessed on 19.09.2011). The authors constructed an index of the quality of corporate governance for a large number of publicly traded U.S. firms, and found that higher quality as defined by their index was associated with improved future stock performance.
For commercial corporate governance indices see the Governance Risk Indicators by Institutional Shareholder Services (ISS), available at http://www.issgovernance.com/grid-info (last accessed on 19.09.2011)
For a presentation and criticism of the market for corporate governance ratings being used in the formulation of voting recommendations by proxy advising firms, see Paul Rose, (2007), The Corporate Governance Industry, Journal of Corporate Law, 32(4):887; Sonnenfeld J., (2004), Good Governance and the Misleading Myths of Bad Metrics, Academy of Management Executive, 18:108.

[19] For example, Coffee (2000), suggests that legal reforms, while important, are likely to follow, rather than precede, market changes and presents the historical development of the markets in both the U.S. and the U.K as an illustrative example. His argument basically questions the extent to which the law shapes the financial system by determining its characteristics, such as the size and depth of the capital markets. See Coffee J., (2000) The Rise of Dispersed Ownership: The Role of Law in the Separation of Ownership and Control, Columbia Law and Economics Working Paper No. 182. Available at SSRN: http://ssrn.com/abstract=254097

[20] Spamann H., (2010), The Antidirector Rights Index Revisited, Review of Financial Studies, 23:467. Previous versions of this paper include Spamann H., (2006), On the Insignificance and/or Endogeneity of La Porta et al.'s 'Anti-Director Rights Index' under Consistent Coding (March 2006). Harvard Law School John M. Olin Center Discussion Paper No. 7; ECGI - Law Working Paper No. 67/2006. Available at SSRN: http://ssrn.com/abstract=894301; Spamann H., (2008), 'Law and Finance' Revisited (February 1, 2008), Harvard Law School John M. Olin Center Discussion Paper No. 12. Available at SSRN: http://ssrn.com/abstract=1095526 .

documents a correlation between concentration and low investor protection, this correlation does not equal causation. In this regard, the LLSV approach to concentration is overly simplistic, given the lack of conclusive evidence that concentrated forms of ownership emerge necessarily or exclusively as a response to weak investor protection.[21] The simplicity of the methodology and explanations which made the LLSV research so influential also becomes the source of criticism by scholars of comparative company law and corporate governance. The criticism of LLSV and their indexing methodology has an important impact on the validity, accuracy and credibility of the 'legal origin' hypothesis presented by the scholars. More specifically, the possible inaccuracy of their comparative analysis and findings would also compromise the reliability of the vast number of studies using the findings of the LLSV indices as reference. In this regard, it has been estimated that almost 100 empirical papers are based on the original index.[22]

Although the extensive consideration of the criticisms against LLSV certainly surpasses the scope of this study, nevertheless, it is a prerequisite for deconstructing the 'inefficiency bias' of concentration. With this consideration in mind, this Chapter questions the reliability of the LLSV assessment of the legal effectiveness of investor protection across jurisdictions and strikes down the related 'legal origin' hypothesis. A variety of weaknesses of the LLSV indexing methodology are considered as follows. Firstly, the accuracy of the influential LLSV anti-director index, taking the selection of rights as given, is examined. Secondly, this Chapter assesses the criticisms challenging the relevance of the selected rights in light of the differences of the legal and financial systems involved. Thirdly, the role of institutional complementarities and the LLSV approach towards functional equivalents of corporate law and governance are considered. Fourthly, the suitability of the at-the-time innovative LLSV index to measure the quality of investor protection and corporate governance is questioned.

[21] See for example Sofie Cools (2005) (p.755-762) arguing that ownership structures tilt towards dispersion or concentration according to the distribution of powers to the board or to the shareholders respectively. Cools S., (2005), The Real Difference in Corporate Law between the United States and Continental Europe: Distribution of Powers. Delaware Journal of Corporate Law, 30(3):697; Harvard Law and Economics Discussion Paper No. 490. Available at SSRN: http://ssrn.com/abstract=893941

[22] Dyck A. and Zingales L., (2004), Private Benefits of Control: An International Comparison, Journal of Finance, 59:537; Licht A.N. et al, (2005), Culture, Law, and Corporate Governance, International Review of Law and Economics, 25:229; Pagano M. and Volpin P., (2005), The Political Economy of Corporate Governance, American Economic Review 95:1005; further references in Spamann (2006) supra note20.

This discussion reinforces the caveats raised by comparative corporate governance scholars regarding the role of indices as indicators of the quality of corporate governance. In this respect, it is noted that *'governance indices are highly imperfect and unsatisfactory screens for determining how to vote corporate proxies, and that investors and policymakers should exercise utmost caution in attempting to draw inferences regarding a firm's quality or future stock market performance from its ranking on any particular corporate governance measure'.*[23] According to this line of argument, there is no 'one best' measure of corporate governance because the most effective governance institution depends on the context and on the firms' specific circumstances, which are difficult to be captured by an index or by any one variable. Although this criticism mostly involves the extensive use of commercial indices as proxies for corporate governance quality, it highlights the underlying problems and methodological limitations of academic indices as well.

In the wider discussion about the adequacy of indices as corporate governance indicators, the ownership structures of the company emerge as a key factor. The differences in corporate ownership imply that the mechanisms that protect investors in a company without a controlling shareholder are often irrelevant or even harmful when applied to companies with a controlling shareholder, and vice versa. [24] Consequently, the adaptation of governance metrics to corporate ownership structures constitutes a prerequisite for any reliable assessment of investor protection. Such an approach is perfectly aligned with the underlying aim of this thesis, namely to shift focus on country-level or firm-level comparisons of investor protection, while using a methodology which distinguishes between companies of dispersed and concentrated ownership.

[23] Bhagat S., Bolton B.J. and Romano R., (2007), The Promise and Peril of Corporate Governance Indices, ECGI - Law Working Paper No. 89/2007; Yale Law & Economics Research Paper No. 367. Available at SSRN: http://ssrn.com/abstract=1019921.

[24] Bebchuk L.A. and Hamdani A., (2009), The Elusive Quest for Global Governance Standards, University of Pennsylvania Law Review, 157:1263; Harvard Law and Economics Discussion Paper No. 633. Available at SSRN: http://ssrn.com/abstract=1374331 In particular, the authors show that the influential metrics used extensively by scholars and shareholder advisers to assess governance arrangements around the world, namely the Corporate Governance Quotient (CGQ), the Anti-Director Rights Index, and the Anti-Self-Dealing Index, are inadequate for this purpose.

2.1. The accuracy of the LLSV Anti-Director Rights Index

Without questioning the relevance of the originally selected rights, Spamann re-compiled the indices originally designed by LLSV using a more refined methodology.[25] The aim was to provide a more clearly defined and more reliably coded index. The importance of this specific study lies in its focus on the accuracy of the LLSV index while taking for granted its composition. Spamann criticises LLSV on the basis of their un-refined method of collecting their data and points out the difficulty in assessing the accuracy of the value of the law, as attributed to the countries of the original LSSV study, given the ambiguity of the definitions involved. This latter problem was further accentuated by the fact that LLSV did not specifically refer to the statutes and precedents underlying their index. In order to highlight the deficits in the accuracy and consistency of the LLSV index, Spamann presents many examples in which the rating awarded to countries by the index was different although the countries compared had the same laws in place.[26]

The re-examination of the legal data used by LLSV led to surprising findings. More specifically, the thorough re-examination of the indices led to corrections of the original LLSV index for thirty three out of the forty six countries. The most important implication of this re-indexing is that the corrected index, despite being based on the same rights which comprised the LLSV anti-director index, fails to support the most influential claims presented by LLSV and originally supported by their findings. The empirical findings of Spamann do not confirm the claim that civil law countries have lower investor protection than common law countries. Furthermore, as a result of the examination of the empirical data provided by Spamann, the quality of investor protection is disassociated from the size of capital markets and the patterns of ownership dispersion. The implications of this research for the comparative corporate governance scholarship are crucial as it disproves LLSV directly and also indirectly the hypotheses of scholars relying on the LLSV study. In the context of this thesis, the findings support the proposition that the association of concentrated

[25] For example, instead of resorting to secondary sources as LLSV did, in his collection of the legal data he included the advice of local lawyers. This methodology is considered to be providing the most accurate description of the law to be used as a basis of the index. The latter approach was considered necessary in light of the high importance of local lawyers in providing an accurate description of the applicable law in the jurisdictions involved. Moreover, he considered various interpretations of the ambiguous definitions of the LLSV study and used the most sensible one as the basis for creating his new index. Spamann (2010, 2006) supra note20 focused on the transparency of his methodology by creating an appendix which documents the raw legal data of the new and old index. Finally, he used a coding protocol in order to convert the collected legal data into numerical index values consistently.

[26] Spamann (2010) supra note20, Section 2.1, p.472-473.

ownership with low investor protection constitutes an oversimplification which misleads rather than enhances the understanding of different ownership structures in the context of corporate governance.

2.2. The relevance and effectiveness of the rights comprising the LLSV Anti-Directors Rights Index

A great part of the literature criticises LLSV on the basis of the rights used by the scholars to create the indices, namely by questioning how relevant[27] the variables used by LLSV are for investor protection and whether the index weights these rights appropriately.[28] For example, the existence of the right to vote by mail may be adding nothing to the effectiveness of the legal system in general, if this right is rarely used. As the selected rights are not equally relevant in all 49 jurisdictions, it is problematic that they weight equally on the index.[29] In this context, Braendle[30], for example, reconsiders the LLSV Anti-Director Rights Index for Germany and the United States, two typical representatives of the civil and common law family. The thorough analysis of German law leads to a higher score for Germany. In this light, the difference between Common and Civil Law in terms of shareholder protection is far less significant than LLSV suggest.[31]

Another ground for criticism against the LLSV study is the proposition that the LLSV index, reflects the allocation of powers in the corporation rather than measuring the quality of the corporate

---

[27] Graff M., (2006), Myths and Truths: The 'Law and Finance Theory' Revisited (January 2006). Swiss Institute for Business Cycle Research (KOF) Working Paper No. 122. Available at SSRN: http://ssrn.com/abstract=881546. Graff demonstrates that a few minor, but sensible modifications in aggregating the original indicator set produce results that are different from those reported so far and contradictory to the theory's ranking of the four major legal families in terms of investor protection. Accordingly, the validity of the theory's investor protection measures for international comparisons, the supremacy of the common law legacy in protecting investors and, consequently, the validity of legal origin variables to instrument for financial development, have to be regarded as myths rather than truths. For further criticism of LLSV see Graff M., (2008), Legal Origin and Financial Development: New Evidence for Old Claims? The Creditor Rights Index Revisited. Available at SSRN: http://ssrn.com/abstract=1135595; Vagts D.F., (2002) Comparative Company Law - The New Wave in Festschrift fur Jean Nicolas Druey zum 65. Geburtstag 595 (R. Schweizer et al. eds., 2002).

[28] Coffee (2000), supra note19.

[29] For example, the provisions about pre-emption rights may be more important within systems in which concentrated ownership is prevalent, because it makes more sense to safeguard a 10% stake from dilution than a 1% stake. A 10% stake for example, has the right to call a meeting in most jurisdictions while the 1% stake does not give rise to any such special rights. Emphasising on the importance of pre-emption rights within jurisdictions in which dispersed ownership is prevalent, is hardly justifiable in this case.

[30] Braendle U.C., (2005), Shareholder Protection in the USA and Germany - On the Fallacy of LLSV (May 2005). Available at SSRN: http://ssrn.com/abstract=728403.

[31] Similar studies exist for additional countries with similar outcomes. For Austria and the UK see Schmidbauer R., (2006), On the Fallacy of LLSV Revisited - Further Evidence About Shareholder Protection in Austria and the United Kingdom. Available at SSRN: http://ssrn.com/abstract=913968.
For Germany, France and Belgium see further references provided by Sofie Cools footnotes 20,21,22. See Cools (2005) supra note21.

governance system.[32] According to this argument, the fundamental choices of a legal system affect the respective roles of the various constituencies within U.S. and Continental European corporations.[33] For example, in the US the centre of power lies with the board, while in Europe shareholders appear to have more rights and the power to act. This difference fundamentally shapes how the mechanisms of shareholder protection operate and how effective they are. Contrary to the LLSV approach, this line of criticism suggests that the same rights will not be as relevant and effective for the shareholders of a European and a US corporation alike. Similarly, the prevalence of different constituencies, the shareholders or the managers for example, leads to the genesis and use of different rights.

LLSV are, therefore, criticised for selecting the sets of rights they considered as indicative of strong investor protection based on their perception on what constitutes effective investor protection, without providing any justification for their selection or an assessment of the importance of the selected rights in practice. In this light, the Anti-Director Rights Index only identifies certain investor protection rights rather than reflects the actual effectiveness of investor protection frameworks. Provided that investor protection mechanisms are not equally effective in all contexts, verifying whether certain rights of investors are present within a system only marginally contributes to a reliable comparative analysis. Ownership structures, in particular, determine the distinct type of corporate governance problems to arise and, therefore, set the context in which the investor protection rights operate.[34] By disregarding this factor, the LLSV Index has therefore produced an unreliable, distorted perception of the quality of investor protection around the world.

When viewed from this perspective, the methodology of LLSV is the projection of the checks and balances of their systems of reference, namely the dispersed ownership, market-based systems, on

---

[32] ibid Cools(2005), supra note21.

[33] ibid As Cools states, in a U.S. corporation, the management can act autonomously in matters where a Continental European board or management would depend on its shareholders. It is also easier for shareholders to set the agenda of the shareholders' meeting in Continental Europe than it is in the United States. The board is also allowed to assume several powers of the shareholders' meeting. In contrast, in Continental Europe, the statutory allocation of powers is mandatory, and even with the permission of the shareholders, the board cannot appropriate most of their powers. In the United States, the board can act relatively independently from the shareholders. Conversely, in Continental Europe, the board needs the permission of the shareholders for a range of decisions, and it can be replaced at any moment if a simple majority of shareholders wishes to do so.

[34] Bebchuk&Hamdani 2009 supra note24.

systems which are importantly different, such as the concentrated ownership, bank-based systems. Their study is, therefore, susceptible to the criticism that it is characterised by a US bias and perpetuates rather that bridges the lack of understanding between common and civil law scholars.[35] As scholars argue, the *'…proponents of the legal origin claim present a picture of a 'decentralised', market-friendly common law, and a 'centralised', government-friendly civil law, which relies excessively upon a few stylized facts, and which modern comparative legal analysis has (rightly) rejected*.'[36]

2.3. Institutional complementarities and functional equivalents

An important point against the LLSV methodology emerges from the theory of institutional complementarities. The theory of institutional complementarities states that '*the understanding of the formal institutions, including the legal framework, must be complemented by the appreciation of how they interact with informal norms, social conventions and tacit understandings in shaping behaviour*'.[37] In this respect, institutions are defined as '*the rules of the game whose purpose or function is to minimise transaction costs associated with market activity*.'[38] The starting point of the theory of institutional complementarities is the observation that financial and legal systems share many of the same legal institutions, ranging from the basic forms of protection of individual and collective property rights and recognition of the capacity to contract, to more specific types of support for the business enterprise (limited liability and corporate personality), regulation of the employment relationship (labour law) and the provision of a welfare state (taxation and social security law).

The aforementioned concept of institutional complementarities is fundamental for the theory of comparative legal development. The diversity in the forms of the prevalent institutions across national systems only reflects the variations in the evolutionary path, as determined by factors

---

[35] Spamann (2010, 2006) supra note20.
[36] Deakin S.F. and Ahlering B.A., (2005), Labour Regulation, Corporate Governance and Legal Origin: A Case of Institutional Complementarity?. University of Cambridge Centre for Business Research Working Paper No. 312; ECGI - Law Working Paper No. 72/2006. Available at SSRN: http://ssrn.com/abstract=898184.
[37] ibid
[38] North D., (1990), Institutions, Institutional Change, and Economic Performance (Cambridge: CUP).
The generation of such rules has also been a crucial issue and several hypotheses have been developed. For example see Aoki M., (2001), Towards a Comparative Institutional Analysis. Stanford University Press: Stanford; Streeck W., (2005), Requirements for a useful concept of complementarity, Socio-Economic Review, 3: 363.

such as the timing of industrialization, the structure of firms and of labour unions, the degree of liquidity of capital markets, and more generally the role of the state in regulating economic life.[39] In light of these considerations, a certain degree of diversity is inherent in the financial systems around the world and should be expected.[40] Therefore, the concept of institutional complementarities is an important mechanism which explains the persistence of the diversity of the corporate governance systems around the world.[41] More specifically, as scholars note *'…such complementarities arise from the 'coevolution' of institutional forms*'.[42] Thus, '*the way in which they (ie the institutions) relate to one another at a systemic level is the result of an evolutionary process whose outcome, to a significant degree, cannot be planned or predicted*'.[43]

While seeking to explain the differences in financial systems, the LLSV 'legal origin' hypothesis does not encompass the possibility that multiple pathways may lead to economic development, as theories of comparative legal development suggest. The path dependence theory, for example, explains the tendency of systems to become locked into specific historical trajectories despite the existence of inefficiency or the lack of optimality so long as a degree of functionality exists.[44] Cross-national diversity could then only be the rational result of the process of evolution. Notwithstanding the aforementioned proposition, the 'legal origin' theory does not encompass the 'alternative paths of development' notion. Therefore, although the LLSV literature spells out the precise mechanisms through which diversity could have occurred, methodologically it is not as sound as it has been assumed to be. As the critics have noted, '*this is in part because the legal origin literature relies upon an overly reductive understanding of the common law/civil law divide.'*[45]

[39] Such factors which might be expected to influence the evolution of distinctive legal 'varieties of capitalism' Deakin&Ahlering (2005) supra note37 where further references.
[40] Hall&Soskice (2001) also support that the diversity of legal form is to be expected just as it is for the institutions of governance more generally. See Hall P. and Soskice D., (2001), Varieties of Capitalism: The Institutional Foundations of Comparative Advantage, Oxford, Oxford University Press, 2001.
[41] Aoki (2001) supra note38.
[42] Coevolution is the process by which adaptations in one institutional context or domain become adjusted or fitted, over time, to those in another. Deakin&Ahlering (2005), supra note37.
[43] Deakin&Ahlering (2005), supra note37.
[44]Bebchuk L.A. and Roe M.J.A, (1999), Theory of Path Dependence in Corporate Ownership and Governance (October 1, 1999). Stanford Law Review, 52:127; Columbia Law School, Center for Studies in Law & Economics Paper No. 131, November 1999. Available at SSRN: http://ssrn.com/abstract=202748; Rajan R.G. and Zingales L., (2006), The Persistence of Underdevelopment: Institutions, Human Capital, or Constituencies? NBER Working Paper 12093.
[45] Deakin&Ahlering (2005) supra note37.

This 'reductive understanding of the common law/civil law divide' is manifested in the omission of LLSV to take into account the functional equivalents to a given legal mechanism, which may be found in completely different areas of law, or outside the legal system altogether, at the level of social norms or commercial practices. In this respect, the theories of comparative law assert that it is a '*basic rule of comparative law*' that '*different legal systems give the same or very similar solutions, even as to detail, to the same problems of life, despite the great differences in their historical development, conceptual structure, and style of operation*'.[46] In general, they find that as a general rule developed nations answer the needs of legal business in the same or in a very similar way[47], while there is a '*common core of efficient principles hidden in the different technicalities of the legal systems*'.[48] When seen from this perspective, the assessment of ownership structures is a multifaceted task, which entails the comparison and consideration of a variety of institutions across the areas of the law.

It is exactly on these grounds that the reliability and credibility of indices is problematic. LLSV have shaped the debate without taking into account the comparative law methodology, as they *'… measure only the formal law; they take no account of functional equivalents to legal regulation beyond the law; and they are not weighted so as to take into account variations in the importance of particular legal measures in given jurisdictions, as comparative law theory suggests that they should be*'.[49] For example, although company law in many civil law jurisdictions does not provide remedies for the oppression of minorities such as the one provided under Article 994 of the 2006 Companies Act in the UK, it is often the case that general legal principles exist in other bodies of legislation, such as the Civil Code, which prohibit the abusive exercise of one's rights and offer protection against minority oppression.[50]

The failure of the LLSV index to take into account the functional equivalents of company law compromises the credibility of their indexing methodology. Due to the lack of a pervasive comparative analysis of the alternatives and functional equivalents of the selected variables, the scholars fail to consider the overall context in which such factors operate. Their grasp of the very

[46] Zweigert K. and Kotz H., (1998), An Introduction to Comparative Law, Oxford University Press.
[47] ibid.
[48] Mattei U., (1997), Comparative Law and Economics, University of Michigan.
[49] Deakin&Ahlering (2005) supra note37.
[50] See Chapter III.

systems they are trying to explain is, therefore, fragmented and deficient. When the broad array of mechanisms that interfere with, or substitute for, the mechanisms of shareholder protection used to construct the LLSV index are also considered, the recoding of the index to include these sources yields no significant differences between common law and civil law jurisdictions.[51] This finding casts further doubt on the proposition that common law jurisdictions offer better shareholder protection than civil law jurisdictions. It also disassociates civil law jurisdictions and concentrated ownership structures from bad law and low levels of investor protection.

2.4. The suitability of indices as indicators of the quality of investor protection

Criticism against LLSV is also targeted at the suitability of the index-based approach to assess the quality of the various systems of law and corporate governance. Doubts have been expressed regarding the extent to which indices guarantee the comparability of corporate governance mechanisms and systems. Siems[52], for example, presents the various complexities which render indices a tool of questionable value in the context of comparative law and points out the problems of the methodology used. Regarding the future of comparative law, he specifically questions whether comparative law and numerical methods are compatible at all. The first argument against the numerical approach to comparative law refers to the reductionism of the methodology employed and the superficial analysis that is produced as a result.[53] As the argument goes, '(*c)omplicated systems cannot be understood by breaking them into simpler parts*.'[54] Moreover, the chaotic and dynamic nature of legal systems can hardly be taken into account by the numerical approach to comparative law.

The second argument presented against the numerical approach to comparative law stresses that *'(t)he law is special, complex and it cannot be reduced to numbers*.'[55] It is therefore pointed out

[51] Armour J., Deakin S.F., Sarkar P., Siems M.M. and Singh A., (2008), Shareholder Protection and Stock Market Development: An Empirical Test of the Legal Origins Hypothesia, University of Cambridge, CBR Working Paper; ECGI - Law Working Paper No. 108/2008. Available at SSRN: http://ssrn.com/abstract=1094355

[52] Siems M., (2005), Numerical Comparative Law - Do We Need Statistical Evidence in Law in Order to Reduce Complexity?. Cardozo Journal of International and Comparative Law, 13:521. Available at SSRN: http://ssrn.com/abstract=514142M; Siems, Mathias M., (2008a), What Does Not Work in Comparing Securities Laws: A Critique on La Porta et al.'s Methodology. International Company and Commercial Law Review, 2005, 300; CPC-RPS No. 0009. Available at SSRN: http://ssrn.com/abstract=608644.

[53] ibid.

[54] ibid.

[55] ibid.

that an attempt to reduce law to numbers by using statistical methods could produce inconsistent findings and amounts to the questionable practice of replicating the analysis of another discipline into legal scholarship. In this light, the quantification of the differences identified among legal systems is rendered almost impossible, especially given the fact that systems are incommensurable.[56] An additional argument against the numerical approach points out that a methodology which relies on listing the legal similarities and differences is neither sufficient nor adequate.[57] Instead, a test of functionality must also be applied to identify the mechanisms which have a similar function despite their different form. In the absence of an analysis of the functionally equivalent mechanisms, determining whether a rule exists or not and strictly applying the statistical methods is more likely than not to be inadequate for measuring the quality of the law.

Although attributing and comparing legal differences by numbers is contrary to the traditional approach of comparative law, with a cautious approach, this method of comparing corporate governance and law has a high potential '*to open new vistas of research in the area and as such should not be shunned*'. [58] The arguments in favour of the numerical approach are its simplicity and its potential to produce easily comparable results. The wide enthusiasm with which LLSV has been accepted by legal scholars highlights the attractiveness of the underlying idea. Provided that the quantification of legal rules remains be a popular tool for comparing legal systems, it is vital that functional equivalents are incorporated into the methodology of the indices. In this context,

[56] ibid. Siems (2005) stresses that any comparative law analysis, must instead be carried out on more functional terms.

[57] Siems (2005) supra note56 stresses, that comparative law cannot operate independently of the legal history and the social, cultural and economical circumstances which are, therefore, of vital importance. Similarly the evolutionary stage of the country involved and the legal culture underpinning the institutions within a system are additional determining factors to be taken into consideration throughout the comparative analysis.

[58] See Lele P.P. and Siems M.M., (2006), Shareholder Protection: A Leximetric Approach, University of Cambridge, CBR Working Paper No 324. Available at SSRN: http://ssrn.com/abstract=897479 for a study presenting a new shareholder protection index which traces how shareholder protection in five countries, namely UK, the US, Germany, France and India, has developed over a period exceeding three decades.

See Siems M.M., (2000b), Shareholder Protection Around the World ('Leximetric II'), University of Cambridge, CBR Working Paper No. 359. Available at SSRN: http://ssrn.com/abstract=991092 for a study presenting the importance of legal transplants through the analysis of the development of shareholder protection in 20 countries from 1995 to 2005.

See Armour et al (2008) supra note51, for a study questioning the impact of the legal origin on the effectiveness of investor protection rules.

See Armour J., Deakin S.F., Lele P.P. and Siems M.M., (2009), How Do Legal Rules Evolve? Evidence from a Cross-Country Comparison of Shareholder, Creditor and Worker Protection, European Corporate Governance Institute - Law Working Paper No. 129/2009. Available at SSRN: http://ssrn.com/abstract=1431008 for a study casting doubt on the legal origin hypothesis in so far as it is shown that civil law systems have seen substantial increases in shareholder protection over the period of 1970-2005.

ownership structures constitute an additional factor which determines the selection of relevant rights of investor protection and the adaptation of new indexing methodologies to the varieties of ownership structures accordingly is a prerequisite for the reliability of an index.

III. CORPORATE GOVERNANCE INDICES IN LIGHT OF THE VARIETIES OF CONCENTRATION

1. Findings of alternative indices and implications

The new studies of comparative corporate governance indices extensively discuss their choice of variables so as to best reflect the shareholder protection framework in the countries under comparison.[59] Similarly, in order to address the different governance problems posed by different ownership structures, the variables of the index used as proxies for shareholder protection are divided into those which protect shareholders against directors and managers and those which protect minority shareholders against majorities. Having taken this into account, the empirical findings of the Lele and Siems re-codification of the law on shareholder protection disprove LLSV as they indicate that investor protection in the US is weaker than the law of the other four countries

[59] For an example of the evolution in the methodology of comparative analysis through indices see Lele&Siems supra note58. Their index has 60 (sub-)variables whose development has been coded for the five countries, therefore rendering their sample considerably representative. The scholars are aware of the limitations of their study as they state that '… we do not attempt here to include everything that matters for shareholder protection in the index, nor do we believe that everything should be considered. The effective protection of shareholders is linked with contract law, civil procedure and questions of legal effectiveness, as well as social, economic and cultural differences.'
With respect to the 'oppressed minority' variable, the scholars distinguish between substantive law for protection against mismanagement of the directors and managers and fraud on minority shareholders by majority (or controlling) shareholders for their own benefit. The scholars take account of the fact that different legal instruments can be used to achieve a similar function, namely the principle of 'functionality'. In their study, they provide the example of the general meeting, in which a decision may be prevented from harming minority shareholders in various ways, namely by having in place mandatory rules of company law so that the majority shareholders cannot abuse their power in the general meeting in this respect; company law may require approval of a public authority so that the powers of the majority shareholders are restricted; quorum and supermajority requirements may ensure that a significant majority has approved the decision in question; fiduciary principles may control the voting of the majority shareholder; or appraisal rights may provide the minority shareholder with a way to exit the company for full compensation.
In order to compile their indices, their points of reference are the shareholder rights provided within the frames of company law and securities law. The study also takes into account legal rules based on statutory law and/or case law. It, thus, looks beyond a doctrinal approach and recognises that in both common-law and in civil-law countries court decisions can bring about an effect which is as important as a statutory provision. Finally, Lele&Siems (supra note58) are aware of the 'home bias' problem and highlight the danger that comparative lawyers may impose their own conceptions on a foreign legal system. They address this 'home bias' by building their variables so as to take into account the OECD Principles on Corporate Governance and the comparative literature on company law, as well as the laws of the countries themselves.

selected, most of which are of civil law origin. As the authors claim, the *'... results therefore suggest that, on diligent coding of shareholder protection law based on a meaningful shareholder protection index, in particular taking into account functional equivalents of legal instruments for protection, the claims that there are deep differences between shareholder protection in the civil-law and common-law countries seem to wither away.'* One of the reasons for the low ranking of the US in the aforementioned study is that the protection of minority against majority shareholders is considerably stronger in the 'blockholder countries', because of the high risk that major shareholders exploit the minority shareholders. Similarly, given the fact that blockholders often dominate public companies in India, France and Germany, it comes as no surprise that these countries perform better in the Lele and Siems comparative study than the UK and the US, where dispersed shareholder ownership is more common.

The abovementioned 'leximetric' study also shows that in all of the countries studied, namely the UK, the US, Germany, France and India, shareholder protection has been improving in the last 35 years. In all the countries of reference the protection of shareholders against directors and managers has increased considerably, whereas the protection against other shareholders has not changed much. One possible explanation provided by the scholars is that the growing importance of capital markets leads to more dispersed shareholder ownership and this increased shareholder base may exert pressure to improve primarily the protection of shareholders against directors and managers.[60] This tendency is also indicative of the important competitive forces in attracting investment which act among jurisdictions and the convergence that such competition gives rise to.[61] However, the inverse tendency, namely enhancing the protection of minority shareholders, is not confirmed in the case of the UK, where the protection of minority shareholders has not been the subject of the new reforms introduced by the UK Corporate Governance Code and the Stewardship Code in 2010. The wider implications of this is that the low levels of protection from

[60] This tendency towards dispersed ownership may also be explained on the basis of the perceived prevalence of the Anglo-Saxon model over the Continental-European one. Policy makers around the world used the market-based model to lead the restructuring of their financial systems in order to boost their competitiveness. The findings, therefore, indicate the increased importance attributed to corporate governance and regulation within the frames of an increasingly globalised economy. This finding constitutes a first-class example of the role of the law in shaping the characteristics of the financial system.

[61] According to the scholars, the latter observation may also serve as an explanation of the findings of the study according to which convergence in shareholder protection has been taking place since 1993 and has increased considerably since 2001. See Armour et al (2008) supra note58.

controlling shareholders offered to minority investors in common law jurisdictions fail to address the risks resulting from the listing of companies with concentrated ownership structures on the London Stock Exchange, most notably big natural resources companies such as Vallares and Glencore.[62]

2. Corporate governance indices and the varieties of concentration

Although the most recent attempts to assess the quality of investor protection law seek to address the methodological problems of LLSV by taking into account the differences in the ownership structures, important deficiencies still undermine the reliability of indices. For example, in the Siems and Lele study, the varieties of ownership are reflected in the division of the variables of the index into those which protect shareholders against directors and managers and those which protect minority shareholders against majorities. However, all variables have equal weightings, despite the fact that minority protection rights in the US are less relevant than in the case of other countries of their study. Although the authors genuinely seek to enhance the reliability of their study, the 'home bias' persists and probably partly explains the low score of the US.

The failure of corporate governance indices so far to encompass the differences of ownership structures has been increasingly gaining attention in the past years. In this regard, scholars have highlighted that *'the quest for global governance standards should be replaced by an effort to develop and implement separate methodologies for assessing governance in companies with and without a controlling shareholder*.'[63] The development of separate methodologies is, therefore, necessary in order to facilitate reliable country- or firm-level comparisons.[64] Building on the inherent limitations of the indices compiled so far to reflect the variety of ownership structures observed in the corporate reality, this thesis engages into a substantive analysis of investor protection mechanisms and demonstrates how profoundly the ownership structures affect corporate law and governance in practice. Therefore, it seeks to contribute to the comparative

[62] See Introduction, where further references support the interconnectedness argument.
[63] Bebchuk&Hamdani (2009) supra note24.
[64] Bebchuk&Hamdani (2009) supra note24.

corporate governance debate by highlighting important aspects of investor protection developed in the context of concentrated ownership structures, which indices do not cover.

This thesis also extends the criticism of corporate governance indices further by highlighting their failure to differentiate among the various forms of concentrated ownership structures and the various shareholders' profiles and provide a credible assessment of investor protection in more specific contexts. It is argued that the indices developed so far do not take into account the different types of controlling shareholders and their implications on corporate law and governance. The variety in the forms of concentrated ownership suggests that the actual impact of concentration on corporate governance can vary substantially depending on the profile of the controlling shareholder, which sets out the determining parameters such as the controller’s incentives to actively monitor the management and the level of their engagement in corporate governance and their long-term perspective. Such characteristics ultimately determine the approach of the controlling shareholder to the company, its minority shareholders and the way they exercise control, therefore affecting the risk of expropriation and the overall impact of the ownership structure on minority shareholders.

It is, therefore, argued that the various types of controlling shareholders also raise similar, yet distinct corporate governance inefficiencies and concerns. For example, family ownership gives rise to minority expropriation, while state ownership causes broader concerns associated with the efficiency of the state as a corporate actor within the financial system. The type of the private benefits to be extracted also varies substantially according to the type of the controller involved. Non-pecuniary private benefits, may, for instance, constitute an acute problem when a family is the controlling shareholder. In the case of state ownership, it is the prioritisation of public policy objectives over shareholder value maximisation which may be detrimental to the interests of minority shareholders in the company. Despite the importance of the aforementioned distinct characteristics of concentrated ownership which determine which investor protection mechanisms will actually be effective, such characteristics are not taken into account by indices.

3. Corporate governance indices and the 'legal effectiveness' argument of this thesis

The 'legal effectiveness' thesis challenges the ‘imperative causality’ relationship between civil law systems, low investor protection and the concentration of ownership, as developed by LLSV. As legal effectiveness is closely linked to ownership structures, identifying the relationship of the varieties of concentrated corporate ownership with corporate governance is a prerequisite for assessing the quality of investor protection mechanisms employed by any given legal system. In this regard, the LLSV classification of the different types of controlling shareholders is used as the basis of the analysis.[65] More specifically, in order to illustrate how the identity of the controller determines the type and the nature of the conflicts of interests to arise, this thesis is focused on family and state ownership. The selection of family and state ownership is not random but reflects the fact that families and the state are probably the most prevalent and representative types of controlling shareholders around the world.[66] Additionally, the different characteristics of families and the state as corporate owners provide for a fruitful example of the distinct corporate governance issues arising within each structure. Furthermore, this thesis expands the LLSV categories of controlling owners so as to include ownership structures which involve multiple large shareholders. The analysis of the interactions among multiple large shareholders complements that of the more absolute forms of ownership by one controlling shareholder. The focus placed on multiple large shareholders enhances the understanding of concentrated ownership, which is often examined only on the basis of the model that there is one controller against a number of small, minority shareholders facing collective action problems and high risk of expropriation.

The comparative presentation of the risks and benefits of two different types of owners also sets the context for the assessment of the legal effectiveness of corporate governance mechanisms employed by the Greek legal system to address the corporate governance issues that the prevalent structures of state and family ownership give rise to.[67] The analysis reveals the existence of important minority protection mechanisms within the narrow perimeter of family and state-owned

[65] LaPorta et al (1999) supra note7. The scholars allowed for five types of ultimate controlling owners: (1) a family or an individual, (2) the state, (3) a widely held financial institution such as a bank or an insurance company, (4) a widely held corporation, and (5) miscellaneous, an entity such as a cooperative, a voting trust, or a group with no single controlling investor.

[66] See Chapter II.

[67] See Chapter III.

companies that indices fail to capture due to the ill-adapted methodology and sets the basis for the assessment of their effectiveness to mitigate the risk of private benefits extraction. Further to the analysis of state and family ownership, the benefits and problems associated with multiple large shareholders and their interactions are examined, especially if shareholders interaction is facilitated by shareholders agreements. This thesis also assesses the effectiveness of the legal framework which is designed to regulate shareholders interactions and agreements, as developed by two different legal systems, namely the UK and Greece. This assessment reveals a variety of effective legal mechanisms which filter beneficial shareholders agreements from expropriating coalitions and fall outside the DLLS and LLSV categories of investor protection rules. These concrete examples of minority protection mechanisms and techniques substantially reinforce the 'legal effectiveness' argument of this thesis.

IV. CONCLUDING REMARKS

The findings of the LLSV indices measuring the quality of investor protection have been overturned by subsequent criticisms and alternative indices. This chapter has challenged the 'inefficiency bias' of concentration on the grounds that the corporate governance indices have failed to reflect the varieties of concentrated ownership structures when assessing the quality of investor protection. This failure to take into account the different types of controlling shareholders and their implications on corporate law and governance undermines the reliability of such indices as indicators of the quality of corporate governance. The thesis contributes to the comparative corporate governance debate by highlighting the importance of ownership structures as a factor of corporate governance and by identifying important, previously unexplored aspects of investor protection in the context of concentrated ownership. In doing so, this thesis restates the LLSV ‘law matters’ thesis by focusing on the legal effectiveness rather than the legal origin of a corporate governance mechanism or system. More specifically, the analysis revolves around family ownership, state ownership and multiple large shareholders and assesses the effectiveness of a variety of distinct legal mechanisms to protect investors in companies owned by families, by the state or by multiple large shareholders against expropriation.

Identifying the close relationship between the varieties of concentrated corporate ownership and corporate governance is a prerequisite of the reliable assessment of the quality of investor protection mechanisms employed by any given legal system. This relationship also dictates the methodology and structure of this thesis. More specifically, the different impact of the varieties of concentration is examined in Chapters II and IV, where it is shown how the identity and type of the controlling shareholder affect the corporate governance problems which arise. This analysis highlights the role of ownership structures as a factor of corporate governance, most notably by indicating the type of and the risk level of minority expropriation to be addressed. The type of corporate governance problems identified as prevalent within each of the various forms of concentration shape the overall context in which the assessment of the legal effectiveness of corporate governance mechanisms takes place. Chapters III, V and VI reinforce the 'legal effectiveness' argument by referring to a variety of legal mechanisms against minority expropriation and by assessing their impact.

The analysis documents the existence of important investor protection provisions which are not included as variables in any of the indices compiled so far. More specifically, the assessment of the legal effectiveness of the regulation of shareholders agreements involves the examination of minority protection mechanisms and techniques which comparative studies such as the DLLS and the LLSV hardly consider. The role of the law as a mechanism which filters shareholders coalitions of an expropriating nature from the beneficial shareholders interactions, reinforces the 'legal effectiveness' proposition of this thesis. Legal effectiveness is defined as the extent to which an issue can be dealt with by the law and if so, how well it is dealt with in terms of consistency and predictability, on the one side, and the delivery of efficient and just outcomes, on the other. The concrete examples to be presented in this thesis illustrate that in the context of concentrated ownership, the variables measuring legal effectiveness differ according to the profile of the controlling shareholder involved. This argument, therefore, advocates for the development of a methodology of indices which will encompass the varieties of concentrated ownership structures in order to reliably reflect the effectiveness of the available investor protection mechanisms.

CHAPTER II: FAMILY AND STATE OWNERSHIP AS KEY FACTORS OF CORPORATE GOVERNANCE

A. FAMILY OWNERSHIP

I. INTRODUCTION

Within concentrated ownership structures, families often exercise control over the corporation[1] or compose the bulk of large, non-controlling shareholders present in companies.[2] The high importance of family ownership around the world is confirmed by a variety of studies.[3] Nevertheless, while concentrated family ownership makes economic sense in the case of small firms[4], its use within large companies has often been perceived as negative. In this respect, it is suggested[5] that as firms grow larger concentrated family ownership will inevitably be replaced by

---

[1]It is indicative that, using a 20% control threshold, 30% of large firms are family-controlled in the average country. This figure is higher when a sample of smaller firms is used, or when the threshold of control is 10%. See La Porta R., López De Silanes F., and Shleifer A., (1999), Corporate Ownership Around the World, Journal of Finance 54:471; Claessens S., Djankov S., and L. Lang, (2000), Separation of Ownership from Control of East Asian Firms, Journal of Financial Economics 58:81; Faccio M. and Lang L., (2002), The Ultimate Ownership of Western European Corporations, Journal of Financial Economics 65:365.

[2] For example, a family is found to be the largest shareholder in 405 out of a sample of 553 firms with ownership structures involving two or more large shareholders with none holding a majority of the voting rights. Similarly, a family appears to be the second largest shareholder in 70 of these firms. This means that as a percentage, in 86% of the firms with complex ownership structures, a family is either the largest or second largest shareholder. See Laeven L. and Levine R., (2007), Complex Ownership Structures and Corporate Valuations; IMF Working Paper 07/140, available at http://www.imf.org/external/pubs/ft/wp/2007/wp07140.pdf.

[3] In fact, entire industries are dominated by family firms. The global beer industry is one example of this phenomenon. InBev, Anheuser-Busch, SABMiller, Heineken, FEMSA, Carlsberg, and many smaller companies are still controlled by their founding families or related foundations. In the U.S., six of the seven largest cable system operators, including Comcast, Cox, Cablevision, and Charter Communications, are controlled and actively managed by their founders or the founder's heirs. See Gilson S. and Villalonga B., (2007), Adelphia Communications Corp.'s Bankruptcy, Harvard Business School Case 208-071, Boston, MA, Harvard Business School Publishing. Eleven of the 12 largest publicly traded newspaper companies are also family controlled. See Villalonga B. and Hartman C., (2007), The New York Times Co., Harvard Business School Case 207-113, Boston, MA, Harvard Business School Publishing.

[4] This is mainly so due to the resulting reduction of principal-agent conflicts and the more hands-on, less bureaucratic management , See Fama E.F. and Jensen M.C., (1983), Separation of Ownership and Control. M.C. Jensen, Foundations of Organisational Strategy, Harvard University Press, 1998, and Journal of Law and Economics, Vol. 26, June 1983. Available at SSRN: http://ssrn.com/abstract=94034.

[5] Berle A. A. and Means G. C., (1932), The Modern Corporation and Private Property. New York, NY: MacMillan.

more dispersed forms of ownership, separating ownership and control. The failure to separate ownership and control *'tend(s) to penalize the organization in the competition for survival'*[6] *due* to the financial constraints of the owners and their lack of diversification resulting from tying up an important part of their capital in one single company. These propositions create a bias against family ownership by assuming that concentrated ownership is incompatible or even problematic within large and developed corporations.

However, the persistence of family ownership structures within some of the most prosperous, developed economies, such as in Continental European countries, indicates that family ownership has a positive effect on economic growth.[7] This shakes the foundations of the theories supporting the inevitability of the separation of ownership and control within large corporations and advocates for family ownership as an efficient ownership structure. In this context, the analysis to follow outlines the beneficial and problematic characteristics of family ownership for corporate governance. The review of empirical studies reveals an important inconclusiveness of the evidence regarding the actual effect of family ownership. The ambiguous impact of family ownership implied by the inconclusiveness of the empirical findings is, according to this thesis, explained by external factors such as the effectiveness of the legal system. Legal effectiveness, therefore, constitutes the determinant of the nature of family ownership as a benign or malign form of ownership. Specific examples of the legal mechanisms which improve the effectiveness of the overall system are presented and assessed in Chapter III to follow.

II. THE BENEFITS OF FAMILY OWNERSHIP

The positive impact of family ownership on firm performance and corporate governance is attributable to a variety of quantitative and qualitative elements which affect the incentives of families as owners. The quantitative elements, such as the increased economic participation of families in the companies owned, minimise agency costs and enhance firm performance. Similarly,

[6] Fama&Jensen (1983) supra note4.
[7] LaPorta et al, (1999) supra note1; Shleifer A., and Vishny R, (1997), A Survey of Corporate Governance. Journal of Finance 52:737.

the qualitative elements, such as the long-term investment strategy and the commitment of family owners to the success of the company, further explain their beneficial effect.

1. Quantitative Factors: Economic participation and increased monitoring

The increased participation of family owners in their investment companies implies that the high costs of monitoring are reduced. This suggests that families have an important monitoring role. Instead of constituting just another category of passive shareholders, families in many cases determine the identity, the culture and the profitability of the company through their involvement in the management and promote the alignment of shareholders and managers interests. Empirical evidence supports this effect, as family firms are found to outperform their competitors when they are run by their original founders.[8] Through their important monitoring role, families as block-holders substantially mitigate the owner-manager agency problem.[9] The intense involvement of family owners in the management of their companies, therefore, constitutes one of the differentiating attributes of family ownership in the context of corporate governance.[10]

When compared to other forms of concentrated ownership, the advantageous monitoring and disciplining effect on the family CEO derives from the close relationship of managers and owners.[11] The alignment of interests facilitated through the close family ties between principals (family owners) and agents (family CEOs) reduces conflicts of interests[12] and improves firm performance,

---

[8]See Anderson R.C., Mansi S.A. and Reeb D.M., (2002), Founding Family Ownership and the Agency Cost of Debt. Available at SSRN: http://ssrn.com/abstract=303864. However, empirical research assessing the impact of family ownership on firm performance provides a useful distinction between firms in which the founder is actively present and firms in which descendants have taken over or the founder is not actively involved in its management. For example, family-owned firms are broken down into three sub-categories: 'founder-controlled' if the founder still acts as the company's CEO, 'descendant-controlled' if the founder is no longer active in the executive board or has passed away and one of his/her descendants is in the position of CEO, and last, a firm is 'professionally managed' if it is categorized as a family firm, but has hired a professional management team and the family is no longer present in the executive board[8]. Very importantly, it is suggested that such a distinction reflects the various levels of risk with regard to the expropriation of minority shareholders in the context of family ownership.

[9] Jensen M. and Meckling W., (1976), Theory of the firm: managerial behavior, agency costs, and ownership structure. Journal of Financial Economics 3:305.

[10] More specifically, one of the main ways through which family ownership and control is expressed is the participation of the family members in the management of the company through their representation at the board level, namely either by appointing a professional CEO, who they control, or through the direct appointment of family members as CEOs. Since the appointment of family members as CEOs is one of the most ordinary manifestations of family control, empirical research has sought to measure its impact on firm performance.

[11] Fama&Jensen, (1983) supra note4.

[12] Westphal J. D., (1999), Collaboration in the boardroom: Behavioral and value consequences of CEO-board social ties.

especially when compared to firms with non-family, professional CEOs.[13] Evidently, families add value to a company in a way that differentiates them from all other types of block-holders. For example, a recent study comparing the impact of the various forms of concentrated ownership on firm performance[14], has confirmed the positive impact of family ownership[15], while privatized companies, in which the government is still a controlling shareholder, are documented to be less efficient or at least less profitable than widely-held firms.[16] The findings suggest that the added value is mainly related to the way families use their control rights. For example, it has been found that it makes a difference whether families are represented in the firm, probably in at least one of the boards, and whether they use their control rights actively or not. By contrast, family firms without board representation of the founding-family do not exhibit a significantly better performance compared to firms without block-holders.[17]

2. Qualitative Factors: 'Familiness' as a competitive advantage

The long-term investment horizon of families constitutes an additional characteristic which affects their impact on corporate governance.[18] More specifically, their long-term investment horizon increases their willingness to invest in long-term projects[19] and has positive reputational effects

Academy of Management Journal, 42:7.

[13] Durand R. and Vargas V. (2003). Ownership, organization, and private firms' efficient use of resources. Strategic Management Journal, 24:667; Lee, K. S., Lim, G. H. and Lim, W. S. (2003), Family business succession: Appropriation risk and choice of succession, Academy of Management Review, 28:657.

[14] Andres C., (2007), Family Ownership as the Optimal Organizational Structure?. EFA 2006 Zurich Meetings, Forthcoming. Available at SSRN: http://ssrn.com/abstract=903710.
In this study, for the purposes of identifying the impact of the type of the controller on firm performance, controlling shareholders have been subdivided into the following categories: government including all public authorities, financials such as banks and insurances, strategic investors including other companies, individuals, which include wealthy investors who invested part of their private wealth without being linked to the company, families involved in the management of their investees and others such as management teams and foundations.

[15] ibid Andres (2007). The results show positive and significant coefficients for families who are present in the company. Such presence can also be expressed when families with large shareholdings have other means than a seat in the supervisory board to effectively control management.

[16] ibid.

[17] ibid.

[18] Villalonga B. and Amit R.H., (2009b), Family Control of Firms and Industries, Financial Management, Forthcoming. Available at SSRN: http://ssrn.com/abstract=1107466.

[19] Stein J., (1989), Efficient Capital Markets, Inefficient Firms: A Model of Myopic Corporate Behavior, Quarterly Journal of Economics 103:655.

when dealing with external stakeholders.[20] They also often have a long business background and high management skills. Their expertise makes them more effective when implementing their strategies. Compared with professional managers, family CEOs may also gain a competitive advantage if they have access to unique resources, especially in emerging economies with weak market-supporting institutional frameworks, where access to resources is often not through formal channels such as banks but often through informal, private networks such as business groups.[21] In addition to this, resource-based theories[22] highlight the importance of 'familiness' as a valuable source of competitive advantage due to the existence of common interest and identity, goal congruence, trust, and reciprocity within the corporation.[23] As a result, their focused investment strategies, their long-established supporting networks and the common interests underpinning their active monitoring efforts constitute a source of competitive advantage[24], which explains the success of family-owned corporations around the world.

[20] Anderson R. C. and Reeb D.M., (2003a), Founding-Family Ownership and Firm Performance: Evidence from the S&P 500. Journal of Finance 58(3):1301; Anderson R.C. and Reeb D.M., (2003b), Founding-Family Ownership, Corporate Diversification, and Firm Leverage, Journal of Law and Economics, 46(2):653.

[21] Peng, M. W., (2003), Institutional transitions and strategic choices. Academy of Management Review, 28:275.

[22] Barney, J. B., (2001), Resource-based theories of competitive advantage: A ten-year retrospective on the resource-based view, Journal of Management, 27:643.

[23] Sirmon D. G. and Hitt M. A., (2003), Managing resources: Linking unique resources, management, and wealth creation in family firms, Entrepreneurship: Theory & Practice, 27:339; Habbershon T. and Williams M., (1999), A resource-based framework for assessing the strategic advantage of family firms. Family Business Review, 12:1; Durand&Vargas (2003) supra note13.

[24] The positive effect of family ownership on firm value is also documented by Anderson&Reeb (2003a) supra note20; Villalonga B. and Amit R., (2006), How Do Family Ownership, Control, and Management Affect Firm Value?, Journal of Financial Economics, 80:385. For an earlier version of this paper see Villalonga B. and Amit R.H., (2004), How Do Family Ownership, Control, and Management Affect Firm Value?. AFA 2005 Philadelphia Meetings; EFA 2004 Maastricht Meetings Paper No. 3620; Fifteenth Annual Utah Winter Finance Conference. Available at SSRN: http://ssrn.com/abstract=556032; Fahlenbrach R., (2009), Founder-CEOs, Investment Decisions, and Stock Market Performance, Journal of Financial and Quantitative Analysis, 44:439; Sraer D. and Thesmar D., (2007), Performance and Behavior of Family Firms: Evidence from the French Stock Market, Journal of the European Economic Association 5:709.

III. THE CORPORATE GOVERNANCE PROBLEMS OF FAMILY OWNERSHIP

1. Extraction of private benefits of control

Although family ownership has important beneficial elements, its overall efficiency as an ownership structure is contested on several grounds.[25] For example, despite the reduction of managerial agency costs, family CEOs as inside shareholders have higher incentives to adopt investment policies that benefit themselves and their families, while reducing the payout to outside shareholders.[26] Moreover, even qualified and competent family CEOs may take excessive risk and deviate from the objective of shareholder wealth maximization.[27] In this light, an important caveat regarding family ownership is the potential costs of family ownership mainly due to the extraction of private benefits in various forms.[28] The private benefits to be extracted are not only of a pecuniary nature, in the form of excessive dividends or self-dealing transactions. Non-pecuniary benefits may involve the reputational advantage of having a family member leading the company[29] or using the firm to create jobs for their descendants through their appointment as

[25] La Porta R., Lopez-de-Silanes F., Shleifer A., and Vishny R. W., (1998), Law and Finance, Journal of Political Economy 107:1113.

[26] Fama&Jensen (1983) supra note4; McConnell J. J. and Servaes H., (1990), Additional evidence on equity ownership and corporate value, Journal of Financial Economics, 27:595.

[27] Carpenter M. A., Pollock T. G. and Leary M. M., (2003), Testing a model of reasoned risk-taking: Governance, the experience of principals and agents, and global strategy in high-technology IPO firms, Strategic Management Journal, 24:802; Gomez-Mejia L., Larraza-Kintana M. and Makri, M., (2003), The determinants of executive compensation in family-controlled public corporations, Academy of Management Journal, 46:226.

[28] Burkart M., Pannunzi F. and Shleifer A., (2003), Family firms, Journal of Finance, 58:2167; Nenova T., (2003), The Value of Corporate Votes and Control Benefits: A Cross–country Analysis, Journal of Financial Economics 68:325; Zingales L., (1995), What Determines the Value of Corporate Votes?, Quarterly Journal of Economics 110:1047;

For tunnelling practices of family business groups in emerging markets see Mehta P., and Mullainathan S., (2002), Ferreting Out Tunnelling: An Application to Indian Business Groups, Quarterly Journal of Economics 117:121.

For the premium of super voting shares in firms with dual-class stock, which are largely family-controlled see Lease R., McConnell J., and Mikkelson W., (1983). The market value of control in publicly traded corporations, Journal of Financial Economics, 11:439.

For the negative effects on firm value of families' excess control over ownership see Claessens S., Fan J. P. H., Djankov S. and Lang L.H.P., (1999), On Expropriation of Minority Shareholders: Evidence from East Asia (December 9, 1999). Available at SSRN: http://ssrn.com/abstract=202390; Villalonga&Amit (2004, 2006) supra note24,

For more on the negative effects of the descendant CEOs see. Pérez-González F., (2006), Inherited Control and Firm Performance, American Economic Review, 96(1):559.

[29] Demsetz H. and Kenneth L., (1985), The Structure of Corporate Ownership: Causes and Consequences, Journal of Political Economy, 93(6):1155; Demsetz&Lehn (1985) propose the term 'amenity potential;, standing for non-pecuniary income that does not (directly) come at the expense of profits. They name sports and media as two examples for industries with a particularly high amenity potential.

members of the management. Similarly, a founder who has rendered outstanding services to the company in the past might not be called on to retire by his family or other minority shareholders, even though he may no longer be competent.[30]

2. 'Familiness' as a source of competitive disadvantage

Additional costs for the company derive from sibling rivalry, generational envy, non-merit-based compensation, and irrational strategic decisions.[31] For example, family CEOs may enter into power competition with other family members, using the company in order to enhance their own power and prestige as CEOs rather than to create profits.[32] At this stage, the benefits deriving from strong family ties begin to decline as outside CEOs may be more focused on the company and less likely to get into family rivalries.[33] In this regard, resource-based theories point out that appropriate resources, such as family ties, are necessary but insufficient to achieve a competitive advantage, and that 'familiness' must be managed effectively.[34] Furthermore, the very concept of altruism, defined as the selfless regard for the well-being of other family members, threatens to negatively affect firm performance[35] by leading to ineffective monitoring of the family CEO, rather than constituting the source of a competitive advantage for the family-run corporation.[36]

A very important aspect of the problem is that altruism may also induce family CEOs to fail to adopt and enforce formal rules and procedures, thus rendering corporate governance for outside shareholders problematic. The potential for considerable conflicts of interest between the family and outside investors is evident. This problem is accentuated, as families are clearly oriented to

---

[30] According to Shleifer&Vishny (1997) supra note7 this is one of the greatest costs that large shareholders can impose.

[31] Gomez-Mejia, L., Nunez-Nickel, M. and Gutierrez, I. (2001). 'The role of family ties in agency contracts'. Academy of Management Journal, 44:81.

[32] For a case of rivalry among family members, see the story of Hermès emerging in the context of the acquisition of the 20% stake of the company by LVMH, below Part III.2. This is, particularly, the case when the founding generation passes away and the firm becomes a sibling partnership, in which case each sibling partner is likely to be more concerned about his/her own welfare and that of his/her immediate family rather than other siblings' welfare. See Stark O. and Falk I., (1998), Transfers, empathy formation, and reverse transfers, American Economic Review 88(2):271.

[33] ibid (Hermès)

[34] Sirmon&Hitt (2003) supra note23.

[35] Schulze W. S., Lubatkin M. H. and Dino R., (2003), Toward a theory of agency and altruism in family firms, Journal of Business Venturing, 18:473.

[36] Schulze W. S., Lubatkin M. H., Dino R. and Buchholtz A. K., (2001), Agency relationships in family firms: Theory and evidence, Organization Science, 12:99.

maintaining control of the companies they found or acquire, and often resort to control-enhancing devices, such as dual-class shares and pyramids, which are linked to lower value creation.[37] In this light, agency problems within family-owned corporations are harder to resolve as relations between principals (family owners) and agents (family CEOs) are likely to be based on emotions, sentiments, and informal linkages rather than a formalised set of rules and principles. Moreover, as family CEOs are less exposed to the pressures exerted by the managerial labour market, there is a higher potential for the entrenchment of incompetent family members in managerial positions.[38]

The lack of competent successors or family disagreements with a negative impact on corporate governance and firm performance are hardly rare.[39] More specifically, the example of Ford[40] illustrates how family control negatively affects the competitiveness and performance of the corporation, especially if control is in the hands of the generations succeeding the founders. In the case of Ford, family involvement in the management of the company has led to bad decisions, reflected in the value of the shares, which in 2007 has plummeted to $584 million from $2.3 billion since 1999, when Bill Ford, great-grandson of the founder, became chairman of the company. On the contrary, the French company Hermès[41] provides an example of positive impact of family commitment. During the LVMH acquisition of an important 17% stake in Hermès, family owners appeared united when they sought to eliminate the potential of the company becoming a target, most notably through setting up a complex ownership structure involving a family-owned private

[37] Claessens et al. (2002) supra note28; Lins K.V., (2003), Equity ownership and firm value in emerging markets, Journal of Financial and Quantitative Analysis 38:159; Gompers P. A., Ishii J. L. and Metrick A., (2008), Extreme Governance: An Analysis of Dual-Class Companies in the United States, AFA 2005 Philadelphia Meetings; Rodney L. White Center for Financial Research Working Paper No. 12-04; Rock Center for Corporate Governance Working Paper No. 39. Available at SSRN: http://ssrn.com/abstract=562511.

[38] Morck R., Wolfenzon D., and Yeung B., (2005), Corporate Governance, Economic Entrenchment and Growth, Journal of Economic Literature 43:657.

[39] Francesco Guerrera, Out of the picture, FT, 23.07.2007 available at http://www.ft.com/cms/s/0/6f1c011c-38b4-11dc-bca9-0000779fd2ac.html#axzz1Q6apFVW8 (last accessed 29.09.2011).
Famous families, Charles Batchelor, FT, 08.07.2007, available at http://www.ft.com/cms/s/2/ad831aba-2d49-11dc-939b-0000779fd2ac.html#axzz1Q6apFVW8 (last accessed 29.09.2011).

[40] John Lippert and Bill Koenig, 'Ford family members weigh sale of shares, people say', Bloomberg, May 14, 2007, available at http://www.bloomberg.com/apps/news?pid=newsarchive&sid=a5CO3otNRW0Y&refer=home (last accessed 29.09.2011).

[41] Paul Betts, Family members in tune for some harmony, FT, 9.12.2010, available at http://www.ft.com/cms/s/0/47f7147a-03bb-11e0-8c3f-00144feabdc0.html#axzz1Q6apFVW8 (last accessed 29.09.2011).

holding company.[42] The strong financial performance of the company and the competent leadership by family owners justify this reaction. However, even in the example of Hermès the willingness of some family members to cash out on their positions indicates the lack of commitment of subsequent generations to the company, which has an impact of the company's performance and increases its vulnerability to takeovers. [43]

3. Families and control-enhancing mechanisms

Probably one of the most problematic aspects of family ownership is their unwillingness to part with control often expressed through the use of control-enhancing devices. Results of empirical research verify that families are the type of owners who mostly use control-enhancing devices associated with lower firm performance.[44] The use of such mechanisms is predicted to increase the scope and incentive for the extraction of private benefits at the expense of minority shareholders. Indeed, the use of control mechanisms like multiple share classes, pyramids, cross-holdings or voting agreements has been found to have a negative effect on firm value, particularly in founder-led companies.[45]

However, in Continental Europe in particular, there is no evidence that disproportionate family control is negative for firm value and operating performance.[46] Families are actually found to outperform other types of controlling shareholders[47], even if the control and ownership structures chosen by the family distort the principle of proportionality. Therefore, as the scholars point out

[42] Lex Column, Hermès, FT, 6.12.2010, available at http://www.ft.com/cms/s/3/0d94e256-011f-11e0-8894-00144feab49a.html#axzz1Q6apFVW8 (last accessed 29.09.2011).
Scheherazade Daneshkhu, Hermès clan fights for control, FT, 10.12.2010, available at http://www.ft.com/cms/s/0/6319a918-048b-11e0-a99c-00144feabdc0.html#axzz1Q6apFVW8 (last accessed 29.09.2011).

[43] Scheherazade Daneshkhu, Hermès to create holding company, FT, December 5, 2010, available at http://www.ft.com/cms/s/0/f3306ec2-00b9-11e0-aa29-00144feab49a,s01=1.html#axzz1Q6apFVW8 (last accessed 29.09.2011).

[44] Andres (2007) supra note14.

[45] Villalonga&Amit (2004, 2006) supra note24.

[46] Barontini R. and Lorenzo C., (2006), The Effect of Family Control on Firm Value and Performance: Evidence from Continental Europe, European Financial Management, 12(5):689.

[47] Ibid *'… we consider both family affiliation and the percentage of cash-flow and voting rights held by the largest shareholder as explanatory variables of market valuation and operating performance, the effect of family control is neatly positive, meaning that for any given cash-flow/voting rights combination, families tend to be better than other types of controlling shareholders.'*

'…although a part of the positive effect is wasted by the high use of wealth-reducing control-enhancing devices by families, a residual positive effect is clearly still there.' The evidence on family ownership in Continental Europe indicates that the general effect of family control may still be positive, notwithstanding the frequent preference of family corporations for apparently inefficient ownership structures. The findings also suggest that families make optimal use of control-enhancing devices in order to maintain control, while the liquidity generated enables them to invest further.[48]

IV. THE DETERMINANTS OF THE BENEFICIAL EFFECT OF FAMILY OWNERSHIP

1. Family ownership and firm performance: The inconclusiveness of empirical research

Despite the attempts of researchers to solve the family ownership conundrum, empirical evidence remains inconclusive. In the US, for example, family ownership appears to be an effective organizational structure. Studies on majority-owned firms show that, although most of them are characterized by family involvement, they do not exhibit specific inefficiency features.[49] Recent empirical evidence also demonstrates that founding-family ownership is associated with superior firm performance when compared to widely-held companies, both in terms of accounting performance and market valuation.[50] For instance, in a panel study on S&P 500 firms it is found that family firms perform better than non-family firms, both in terms of market and accounting measures.[51] The closer observation of family firm performance reveals a so-called 'founder effect'. The presence of founders, either as CEOs or as non-executive directors, is associated with

[48] Barontini&Caprio (2006) supra note46.

[49] Holderness C. G., (2003), A survey of blockholders and corporate control, Economic Policy Review, 9:51; Shleifer A. and Vishny R., (1986), Large Shareholders and Corporate Control, Journal of Political Economy, 94:461; Denis D.J. and Denis D.K., (1994), Majority owner-managers and organizational efficiency, Journal of Corporate Finance 1:91.

[50] Anderson&Reeb (2003a) supra note20; Barontini&Caprio (2006) supra note46; Villalonga&Amit (2004, 2006) supra note24.

[51] Anderson&Reeb (2003a) supra note20 in line with older research conducted by McConnaughy D., Walker M., Henderson G. and Chandra M., (1998), Founding family controlled firms: Efficiency and value, Review of Financial Economics 7:1.

outstandingly high market valuation and operating performance, explained by close monitoring and the unique value-adding skills that improve performance.[52]

Recent research on the impact of family ownership on corporate value creation in Europe[53] also finds that market valuation and operating performance are higher in founder-controlled corporations and at least not worse in descendant-controlled firms.[54] In terms of single-country European evidence, French stock-market listed companies owned by families are found to outperform widely-held corporations.[55] These results hold for founder-CEO firms as well as for heir-managed firms. Turning the focus to Germany, family businesses are also found to outperform non-family firms in terms of operating performance.[56] Again, the positive effect of family

---

[52] Other studies that highlight that founder-CEOs have a positive effect on corporate performance include Fahlenbrach R., (2003), Founder-CEOs and stock market performance, Journal of Financial and Quantitative Analysis, 44:439; Adams R., Almeida H. and Ferreira R., (2003), Understanding the relationship between founder-CEOs and firm performance, Journal of Empirical Finance, January 2009, 16(1):136; Palia D. and Ravid A., (2002), The Role of Founders in Large Companies: Entrenchment or Valuable Human Capital, Working Paper, Rutgers University.

[53] Barontini&Caprio (2006) supra note46.

[54] For a cross-country study of Continental European firms see Barontini&Caprio (2006) supra note46.

Based on accounting performance measures, results also indicate that family firms only perform better when a family member is CEO (Anderson&Reeb (2003a) supra note20). With regard to the impact of founder descendants as CEOs, one strand of research indicates that they do not affect market performance (Anderson&Reeb (2003a) supra note20). However, based on the distinction between founder-led and non-founder-led firms other studies support that family ownership creates value only when the founder serves as CEO or as chairman of the supervisory board with a professional CEO (Research based on a sample of Fortune 500 firms, Villalonga&Amit (2004, 2006) supra note24)). In addition, many researchers find that the retirement of the founder often leads to a decline in the performance of the firm (McConnaughy et al. (1998) supra note51; Pérez-González (2006) supra note28). Finally, Villalonga&Amit (2004, 2006) supra note24 also remark that family control exhibits specific weaknesses when descendants are involved in top management.

The presence of founders, either as CEO or as non-executive director, is thus associated with outstandingly high market valuation and operating performance. Moreover, there is no evidence at all that descendants-controlled corporations under-perform non-family firms. On the contrary, family firms remain better than non-family ones, when descendants limit themselves to the role of non-executive directors, and are not worse than non-family ones, when a descendant takes the helm of CEO. The findings could be interpreted as providing for an efficiency defence for family ownership by revealing a positive association of family control with market valuation and operating performance throughout Continental Europe.

[55] Sraer&Thesmar (2007) supra note24.

[56] Nowak E., Ehrhardt O. and Weber F. M., (2006), 'Running in the Family': The Evolution of Ownership, Control, and Performance in German Family-Owned Firms, 1903-2003. Swiss Finance Institute Research Paper No. 06-13. Available at SSRN: http://ssrn.com/abstract=891255. The authors investigate a sample of 62 family and 62 non-family firms.

Also see Andres C., (2008), Large shareholders and firm performance-An empirical examination of founding-family ownership. Journal of Corporate Finance, 14(4):431, finding that in a single-country research using panel data on 275 German exchange-listed companies, family firms are not only more profitable than widely-held firms but also outperform companies with other types of block-holders.

Finally, in an analysis of German and UK initial public offerings (IPOs) in the period from 1981 to 1988, Goergen (1997) compares the performance of 62 German firms that were floated by families to a sample of UK IPOs. For 36 German companies, the founding family remains the largest shareholder over the entire sample period. The results show no

involvement is stronger when the founder serves as CEO.[57] Several other single-country studies[58] complete the picture about the effect of family control in European corporations and provide similar results.

Outside the U.S. and Europe, recent theoretical analysis highlights the role families can be expected to play, especially when the financial markets are underdeveloped and the legal protection of investors is poor.[59] The empirical evidence about the effect of family control introduces a new perspective into the debate. Contrary to the positive findings mentioned so far, family ownership is found to have negative implications on the efficiency of Canadian firms.[60] Family ownership in East Asia is also found to lead to severe conflicts and hamper firm performance.[61] However, it is very difficult to identify the extent to which the negative correlation

---

statistically significant difference of past-IPO performance between firms under family control and widely-held corporations. See Goergen M., (1997), Does Ownership Matter? A Study Of German And UK IPOS. Available at SSRN: http://ssrn.com/abstract=42860; Goergen M. and Renneboog L., (2003), Why are the Levels of Control (so) Different in German and UK Companies? Evidence from Initial Public Offerings. ECGI - Finance Working Paper No. 07/2003. Available at SSRN: http://ssrn.com/abstract=372420.

[57] Similarly, the performance of family businesses is only better in firms where the founding-family is still active either in the executive or the supervisory board. If the family is just a large shareholder without board representation, the performance of their firms is not statistically distinguishable from non-family firms.

Andres (2008) supra note56 points out that, founder-CEOs do better than descendants or professionals in all regressions. In terms of accounting performance, the coefficients of Descendant CEO and Professional CEO are about equal (and significant), suggesting that founder descendants and professional managers are equally successful and still perform better than CEOs in non-family firms. When using Tobin's q as the dependent variable, the coefficients of Descendant CEO and Hired CEO are not significant, indicating that market participants assess heir CEOs and professional CEOs in family-firms similar to CEOs in non-family firms.

These results are more or less consistent with evidence on the U.S. by Anderson and Reeb (2003a) supra note20 but stand (partially) in contrast with Sraer&Thesmar (2007) supra note24. They find descendant CEOs to be as successful as founders (based on ROA). Cross-European results by Barontini&Caprio (2006) supra note46 exhibit that the performance of family firms with descendant CEOs is not statistically distinguishable from non-family firms, while Villalonga&Amit (2004, 2006) supra note24 even provide evidence of significantly worse performance (in terms of Tobin's q) of descendant-CEO firms.'

[58] Volpin P., (2002), Governance with poor investor protection: Evidence from top executive turnover in Italy, Journal of Financial Economics, 64:61; Cronqvist H. and Nilsson M., (2003), Agency Cost of Minority Shareholders, Journal of Financial and Quantitative Analysis, Vol. 38(4); Gorton G. and Schmid F., (2000), Universal Banking and the Performance of German Firms, Journal of Financial Economics, 58:29; Tiscini R. and Di Donato F., (2008), The Impact of Family Control and Corporate Governance Practices on Earnings Quality of Listed Companies: A Study of the Italian Case. Available at SSRN: http://ssrn.com/abstract=1346457.

[59] Bhattacharya U. and Ravikumar B., (2001), Capital markets and the evolution of family business, Journal of Business, 74:187; Burkart et al (2003), supra note28; Almeida H. and Wolfenzon D., A theory of pyramidal ownership and family business groups, Journal of Finance, 61(6):2637.

[60] Morck R., Strangeland D., and Yeung B., (1998), Inherited Wealth, Corporate Control and Economic Growth: a Canadian Disease?, NBER Working paper, no. 6814.

[61] Faccio M., Lang L. and Young L., (2001), Dividends and expropriation, American Economic Review, 91:54.

of family ownership and firm performance can be attributed to the presence of the family as a controlling shareholder or to the possible deficiencies of the institutional framework developed in the countries involved.

2. Explaining the inconclusiveness of empirical research on the efficiency of family ownership: Complementarity and the Law

An extreme example of the lack of alignment of empirical research and the ambivalent nature of family ownership is offered by a recent empirical research covering eight Asian countries.[62] According to the findings, within Asia, family ownership and control in large firms are good in some countries, where the benefits outweigh the costs. They are bad in some other countries and irrelevant in the remaining countries. The findings could, therefore, provide support for both the 'good' and 'bad' hypotheses across different countries. The aforementioned inconclusiveness of the evidence demonstrates that the effect of family ownership is not determined by the form of the ownership structure as such. Family ownership is not *per se* inefficient. Instead, the explanation for its ambivalence can be found if the focus is shifted from the type of ownership as such to other external factors, such as the financial and legal system of the countries in which family companies operate. [63]

For example, the theories of institutional complementarity provide an explanation of the difference in the levels of efficiency of family ownership around the world. More specifically,

---

Their results are supported by Claessens et al. (2002), supra note28 who find that the negative effect of separation between ownership and control is largely driven by family control.

[62] Peng M. W. and Jiang, Yi, (2006), Family Ownership and Control in Large Firms: The Good, the Bad, the Irrelevant - and Why (October 2006). William Davidson Institute Working Paper No. 840. Available at SSRN: http://ssrn.com/abstract=938173; Peng M. W. and Jiang Yi, (2010), Institutions behind family ownership and control in large firms, Journal of Management Studies, 47:2.

[63] Galve Górriz C. and Salas Fumás V., (2005), Family Ownership and Performance: The Net Effect of Productive Efficiency and Growth Constraints. ECGI - Finance Working Paper No. 66/2005. Available at SSRN: http://ssrn.com/abstract=664538 More accurately, it indicates that the impact of the ownership structure on corporate performance is also influenced by other determinants. In support of this latter theory, recent research investigating the behaviour and performance of listed Spanish family and non-family firms finds that family firms, despite being more efficient in production, have the same economic profits, financial structure and cost of capital as non-family firms.

This evidence sharply contrasts with the findings deriving from samples of listed U.S. firms where family firms outperform in profits when compared to non-family ones. The explanation for this, provided by the scholars, is focused on the institutional differences between the two countries, in particular higher technological capital and better protection of minority shareholders in U.S. than in Spain.

family ownership is the market's response to the underdevelopment of essential institutions and compensates for the lack of resources for corporations. [64] Family ownership and control, often facilitated through the use of CEMs, are therefore considered to be the functional equivalent or substitute for the lacking or underdeveloped institutions, such as the financial markets, which are necessary to support investment and growth. However, the weak investor protection framework also implies that families may expropriate their control. This hypothesis explains why the empirical evidence about the effect of family control tends to be less benign outside the U.K. and the U.S., given that corporate activity in the latter countries benefits from the existence of deep and liquid capital markets. It also aligns with recent theoretical analysis outside the U.S. regarding the role families are expected to play within systems of underdeveloped financial markets and weak legal protection of investors.[65]

The complex interrelation between family ownership, the legal environment and corporate performance is further affected by the dynamic nature of the firm throughout its development. More specifically, at certain points within the firm's life circle the founder will have to decide on the ownership structure and the governance of the firm.[66] The characteristics of the surrounding legal environment then become the main factor determining the outcome of this choice. In a firm originally owned and managed by its founder, the age of the founder or the growth and success of the company require that a choice be made between hiring a professional manager or leaving management to his heir. Similarly, the founder needs to decide how much, if any, of the shares to float on the stock exchange. The protection offered to the founder within the given legal environment shapes the founder's decisions. For example, weak investor protection will lead the founder to choose a manager they can control, probably a member of the family, rather than a professional manager.

[64] Peng (2003) supra note21. The author argues that the weak institutional framework of emerging economies implies that access to resources is often not through formal channels such as banks but through informal, private networks such as business groups.
[65] Almeida&Wolfenzon (2004) supra note59; Bhattacharya&Ravikumar (2001), supra note59; Burkart et al (2003) supra note28.
[66] Burkart et al (2003) supra note28.

Indeed, in confirmation of the aforementioned hypothesis, it has been shown that the widely-held, professionally-managed corporation emerges as the equilibrium outcome in legal regimes which successfully limit the expropriation of minority shareholders.[67] In legal regimes with intermediate protection, management is delegated to a professional, but the family stays on as a large shareholder to monitor the manager. In legal regimes with the weakest protection, the founder designates his heir to manage and ownership remains inside the family. When viewed from this perspective, the inconclusiveness of the evidence is not a problematic contradiction between different empirical studies but actually confirms the important role of legal and regulatory institutions in determining the efficiency of ownership structures.

V. CONCLUDING REMARKS

The foregoing analysis indicates the ambiguous potential of family ownership as a corporate governance factor. It is demonstrated that the impact of family ownership as a corporate structure is clearly determined by parameters such as the firm's size and stage of development, the surrounding economic environment, the existence and development of institutions supporting economic activity and the quality of the legal framework. As the 'inefficiency bias' against family ownership is not supported by conclusive empirical data, it is subject to the criticism that it derives from the over-simplification of the complex interrelations of the ownership structures and the overall financial and legal system surrounding corporations. This supports the proposition that the effectiveness of the corporate law and governance mechanisms embedded within each system determines the impact of family ownership by mitigating its risks or promoting its benefits. The legal effectiveness of such mechanisms is extensively assessed in Chapter III of this thesis through a case study of the Greek framework for the protection of investors in family-owned companies.

[67] ibid

B. STATE OWNERSHIP

I. INTRODUCTION

State ownership experienced a period of popularity among developed nations in the 1930's, 1940's and 1950's, and in developing nations throughout the post-war period.[68] The rationale for state ownership in industrialized nations is that it remedies market failures such as externalities and monopoly, which at that time were considered widespread. In developing nations, state-owned enterprises (hereafter SOEs) were also considered to facilitate 'economic independence' and planned development.[69] Despite the extensive privatisations, the state remains a key player in the economy of many countries[70] around the world, with the examples of China[71] and Russia[72] being the most obvious ones. Contrary to what might be expected, the important role of the state as a corporate owner is not limited to emerging economies only. Throughout the developed world and

[68] Netter J.M. and Megginson W.L., (2001), From State to Market: A Survey of Empirical Studies on Privatization, Journal of Economic Literature, 39(2), June 2001. Available at SSRN: http://ssrn.com/abstract=262311; Estrin S., Hanousek J., Kocenda E. and Svejnar J., (2009), Effects of Privatization and Ownership in Transition Economies, World Bank Policy Research Working Paper 4811, 2009. Available at http://www-wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2009/01/07/000158349_20090107093820/Rendered/PDF/WPS4811.pdf (last accessed 29.09.2011).

[69] Shirley M. M. and Walsh P. M., (2001), Public vs. Private Ownership: The Current State of the Debate. World Bank Policy Research Working Paper No. 2420. Available at SSRN: http://ssrn.com/abstract=261854.

[70] Kikeri S. and Kolo A.F., (2005), Privatization: Trends and Recent Developments, World Bank Policy Research Working Paper No. 3765. Available at SSRN: http://ssrn.com/abstract=849344; Havrylyshyn O. and McGettigan D., (1999), Privatization in Transition Countries: A Sampling of the Literature. IMF Working Paper, 1999, 1. Available at SSRN: http://ssrn.com/abstract=880533.

[71] The Chinese State still maintains ownership of key enterprises, and government agencies carry out shareholder functions typically performed by private owners in a market economy. Privatization and restructuring of SOEs mostly pertains to small and medium sized firms. For the larger, more important companies, the large state enterprise groups and holding companies and other forms of 'state asset management' are prevalent. It is reported that, today, China's SOEs still account for more than one-quarter of national production, two-thirds of total assets, more than half of urban employment and almost three-quarters of investment. See Broadman H.G., (2001b), The Business(es) of the Chinese State, World Economy, Forthcoming. Available at SSRN: http://ssrn.com/abstract=283959

Also see Clarke D.C., (2003), Corporate Governance in China: An Overview. Available at SSRN: http://ssrn.com/abstract=424885; Xu X. and Wang Y., (1997), Ownership Structure, Corporate Governance, and Corporate Performance: The Case of Chinese Stock Companies. World Bank Policy Research Working Paper No. 1794. Available at SSRN: http://ssrn.com/abstract=45303; Hovey M.T., (2006), Corporate Governance in China: Ownership Structures and the Performance of Listed Firms. Available at SSRN: http://ssrn.com/abstract=904261; Berkman H., Cole R.A. and Fu J.L., (2011), Improving Corporate Governance Where the State is the Controlling Block Holder: Evidence from China. Second Singapore International Conference on Finance 2008. Available at SSRN: http://ssrn.com/abstract=1020170.

[72] Sprenger C., (2001), Ownership and Corporate Governance in Russian Industry: A Survey. EBRD Working Paper #70. Available at SSRN: http://ssrn.com/abstract=333705; Broadman H.G., (2001a), Lessons from Corporatization and Corporate Governance Reform in Russia and China. Available at SSRN: http://ssrn.com/abstract=292599.

despite the extensive privatisations of the 1980's and the 1990's, the state preserves its important role in the economy by retaining a controlling or substantial stake in major companies.[73] Even in cases where the level of direct ownership of corporations has dropped as a result of extensive privatisations, the state has managed to retain the ultimate control by employing control-enhancing mechanisms (CEMs) such as pyramidal ownership, dual-class shares and golden shares.[74] The case of Italy constitutes the most cited example in this regard.[75]

State ownership in developed economies has also increased as a result of the 2007-2008 financial crisis. During the crisis, even countries such as the UK, with a long history in the privatisation of corporations and reliance on private ownership, have acquired substantial stakes in corporations, notably banks, in order to safeguard the stability of the financial system. The most important examples are the nationalisation of Northern Rock and the case of the Royal Bank of Scotland which received considerable attention in the U.K recently.[76] In addition to this, the bail out of General Motors through the acquisition of a majority stake of the company by the US Government indicates that the potential role of the state is not limited to the corporate governance of financial

[73] In the UK Rolls Royce, Northern Rock, RBS, Lloyds. In France, the state has important stakes in EDF, GDF Suez, France Telecom, Renault, EADS.

[74] In a study of privatised companies in OECD countries at the end of 2000, after the largest privatization wave in history, governments were found to retain control of 62.4% of privatized firms. In civil law countries, governments tend to retain large ownership positions, whereas in common law countries they typically use golden shares. See Bortolotti B. and Faccio M., (2007), Government Control of Privatized Firms. ECGI - Working Paper No. 40/2004; FEEM Working Paper No. 130.04; EFA 2005 Moscow Meetings Paper; AFA 2006 Boston Meetings Paper. Available at SSRN: http://ssrn.com/abstract=536683; Grundmann S. and Möslein F., (2003), Golden Shares - State Control in Privatised Companies: Comparative Law, European Law and Policy Aspects. Available at SSRN: http://ssrn.com/abstract=410580.

[75] Barca F. and Trento S., (1997), State Ownership and the Evolution of Italian Corporate Governance, Industrial and Corporate Change, 6:533.

[76] 2008: Northern Rock - announced by Alistair Darling, Chancellor of the Exchequer on 17 February 2008 as 'a temporary measure'. The bank will be run at 'arms length' as a commercial business and sold to a private buyer in the future. See for example, http://online.wsj.com/article/SB120326502915274181.html

2008: Bradford & Bingley (mortgage book only) - announced by Alistair Darling, Chancellor of the Exchequer on 29 September 2008. The loans part of the company was nationalised, while the commercial bank was sold off.

2008: In October, the Royal Bank of Scotland, and the newly merged HBOS-Lloyds TSB was partly nationalised. The Government took over approximately 60% of RBS (later increased to 70%, then 80%) and 40% of HBOS-Lloyds TSB. This is part of the £500bn bank rescue package.

2009: On 13 November, Directly Operated Railways, a government company, took over the East Coast Main Line railway franchise that National Express had bought in 2007 for £1.4 billion, a sum originally to be paid over 7 years. The nationalised service operates as East Coast and includes services from London to York and Edinburgh. It has been stated by the government that their control is a temporary measure, initially to last 2 years.

institutions only.[77] Even if state ownership as a result of the crisis constitutes an exceptional case with limited impact, still the participation of the state in business activity through ownership of enterprises indicates the inevitability of state intervention in the economy either in economic sectors of strategic importance or as a corrective and stabilizing factor in times of crises. The re-emergence of state ownership in many developed countries as a result of the 2008 economic crisis has even given rise to several analyses predicting a much less damaging impact of state ownership on the corporations and the wider economy this time.[78] In light of the increasing prevalence of the state in economic activity, its role as a controlling shareholder gives rise to important challenges for corporate governance.

[77] GM collapses into government's arms, The Wall Street Journal, 02.06.2009, available at http://online.wsj.com/article/SB124385428627671889.html (last accessed 16.09.2011)
As a result of the restructuring process, GM has been turned into a private company and the US Government owned more that 60% of the GM Company. In December 2010, GM consummated a public offering and listed securities on the NYSE and on the Toronto Stock Exchange. See Bernard Simon and Telis Demos, GM listing marks successful turnround, FT, 18.11. 2010 available at http://www.ft.com/cms/s/0/0efddc18-f325-11df-9514-00144feab49a,dwp_uuid=0e73f8e0-a2b8-11de-ae7e-00144feabdc0.html#axzz1Xdsfv72I (last accessed 16.09.2011)
Following the listing, the US Government owns 33% of the company. For further information see the 2010 Annual Report which provides a comprehensive view of the company in the past years, available at https://materials.proxyvote.com/Approved/37045V/20110408/AR_87685/images/General_Motors-AR2010.pdf (last accessed 16.09.2011); Megginson W.L., (2011), Privatization Trends and Major Deals in 2010. Available at SSRN: http://ssrn.com/abstract=1886009.

[78] Wong S. C. Y., (2009), Government Ownership: Why This Time It should Work, The McKinsey Quarterly, June 2009.
The paper suggests that five structural characteristics should reassure the public that government intervention today will be far less damaging than past experience would indicate. These include: 1) Western governments have been forced into equity ownership and are 'reluctant' shareholders, 2) governments insist that they will seek to sell their holdings as soon as possible, 3) the limited number of capital injections has made it is easier for the public to measure the value created or lost, 4) looming budget deficits should constrain governments from engaging in wasteful spending at bailed-out firms, and 5) governments have kept a portion of companies' ownership in private hands, thus preserving a high level of transparency and compelling governments to consider the impact of their actions on other shareholders.
Furthermore, government can put in place certain safeguards to instill the public with greater confidence that they are acting not only to insulate government-held firms from inappropriate political influence but also with the companies' best commercial interests in mind. These include: 1) clearly stating the objectives for their holdings, 2) defining and announcing their 'rules of engagement,' 3) establishing an intermediary body to hold the government's stakes in private companies, 4) ensuring that public policy objectives pursued are separately funded or underpinned by commercial principles, and 5) maintaining a high level of transparency, including by announcing a preliminary timetable for exit.

II. THE CORPORATE GOVERNANCE PROBLEMS OF STATE OWNERSHIP

1. Empirical findings

Empirical findings widely support that state ownership has a negative impact on firm performance, when compared with private ownership.[79] When seeking to balance the benefits and the costs of state ownership, an important part of empirical literature documents the superiority of private ownership in terms of efficiency.[80] Private ownership has an advantage in both industrialized and developing nations, the lead being more pronounced in the latter.[81] This result contradicts the argument that market failures and under-developed supporting institutions in developing nations make SOEs more viable in relation to private firms.

In one of the most comprehensive reviews of the impact of state ownership, scholars compared 52 empirical studies on the issue.[82] Of the 52 studies of their sample, 32 conclude that the performance of private and privatized firms is significantly superior to that of public firms. 15 studies find either that there is no significant relationship between ownership and performance, or that the relationship is ambiguous (different evidence supports both public and private superiority). Five studies conclude that publicly-owned firms perform better than private firms. The dominance of studies finding superior private performance is robust across all sub-categories. Of the 31 studies that compare private and public firms operating in the same industry, 18 conclude that private firms have higher performance, while 8 report mixed results and five find superior public performance. Among the 21 studies that examine the performance of a firm before and after privatization, 14 find that performance improves, while seven find no significant change. The overwhelming conclusions that can be drawn from the empirical evidence in favour of private

[79]Megginson W.L., Nash R.C. and van Randenborgh M., (1994), Financial and Operating Performance of Newly Privatized Firms: An International Emprirical Analysis, Journal of Finance, 49(2); Ros A. J., (1999), Does Ownership or Competition Matter?, Journal of Regulatory Economics,105(1); Li W., (1997), The Impact of Economic Reform on the Performance of Chinese State Enterprises, 1980-1989, Journal of Political Economy, 1997, 105(5).

[80] Shleifer A., (1998), State versus Private Ownership, Journal of Economic Perspectives, 12:4; Nellis J., (2006), Privatization: A Summary Assessment. Center for Global Development Working Paper No. 87. Available at SSRN: http://ssrn.com/abstract=983188.

[81] Netter et al (2001) supra note68. In their study, the scholars document that, in most setting privatization 'works' in that the firms become more efficient, more profitable, financially healthier, and reward investors. While this holds in both transition and non-transition economies, there is more variation in transition economies. Especially in transition economies, the identity of the new owners and managers is important in determining post-privatization performance.

[82] For a comprehensive review of the role of the state as corporate owners see Shirley et al (2001) supra note69.

ownership are illustrated in the comments of scholars that *'the ambiguity about the merits of private ownership and privatization is greater in theory than in the empirical literature'*.[83]

2. The corporate governance problems of SOEs

The poor performance of SOEs is generally attributed to unclear objectives, political interference, lack of discipline, and poor transparency.[84] The main corporate governance problem arising within SOEs are the conflicts of interests between minority shareholders and the state. The conflicts derive from the divergent objectives, given that social welfare maximisation is often the underlying objective of SOEs, contrary to the objectives of other types of owners to maximise shareholder value.[85] In this respect, even in fully competitive environments, SOEs will be inefficient because politicians use them to pursue political goals such as over-employment.[86] These arguments are backed up by research documenting political use and abuse of SOEs.[87] This aspect of state-owned enterprises remains a source of conflicts of interest, even under the assumption that the state complies with the highest standards of corporate governance.

Whatever the government's goals and political objectives, the internal corporate governance of SOEs is less efficient than private companies, due to a variety of factors.[88] More specifically, the average private sector monitoring is superior due to the presence of owner-operated private firms and the disciplining role of takeovers.[89] The advantages of private monitoring also include a more healthy market for managers and profit-oriented monitors.[90] In the context of state ownership, the

[83] ibid.
[84] ibid.
[85] Vagliasindi M., (2008), Governance Arrangements for State Owned Enterprises, World Bank Policy Research Working Paper Series. Available at SSRN: http://ssrn.com/abstract=1102837.
[86]For criticism of SOEs on the basis of the motivation of politicians who exert influence on them, see Shleifer A. and Vishny R., (1994), Politicians and Firms, Quarterly Journal of Economics, 109:4; Boycko M.; Shleifer A. and Vishny R., (1996), A Theory of Privatization, Economic Journal, 106:435.
[87] Shirley et al (2001) supra note69.
[88] Boardman A.E. and Vining A.R., (1989), Ownership and Performance in Competitive Environments: A Comparison of the Performance of Private, Mixed, and State-Owned Enterprises, Journal of Law and Economics, 32(1); D'Souza J., Nash R.C. and Megginson W.L., (2000), Determinants of Performance Improvements in Privatized Firms: The Role of Restructuring and Corporate Governance. AFA 2001 New Orleans. Available at SSRN: http://ssrn.com/abstract=243186.
[89] Shirley et al (2001) supra note69.
[90] Kikeri S. and Nellis J., (2002), Privatization in Competitive Sectors: The Record to Date, World Bank Policy Research Working Paper No. 2860. Available at SSRN: http://ssrn.com/abstract=636224.

failures in the political market, the presence of government officials or appointees with self-serving interests and a highly distorted market for public managers negatively affect the quality of monitoring by the state.[91] Similarly, the accountability and transparency issues of SOEs increase the risk of exploitation by self-interested politicians, who either seek to fulfil their political aims or to extract direct pecuniary benefits while running or monitoring SOEs. The aforementioned problem appears even more pervasive in light of the high levels of corruption across several states, the SOEs often being the field where such corruption is manifested. In this light, the state appears to be ill-equipped to monitor managers and to tackle managerial opportunism. Provided that state monitoring is deficient, the main source of the comparative advantage of concentrated structures becomes irrelevant. Additionally, the limited market for the shares in SOEs implies that minority shareholders are more exposed to loss as a result of their participation in the SOE.

The sub-optimal levels of monitoring in the public sector are exacerbated due to a wide variety of characteristics of state ownership. For example, as there is a limited market for the shares of SOEs, information on firm performance is scarce and non-comparable.[92] While both public and private systems of ownership suffer from collective-action problems in monitoring, the ability of markets to generate information gives private ownership a crucial advantage in the monitoring process.[93] This combination of information and monitoring failures in the public sector results in higher management discretion and worse public performance. Moreover, state ownership is associated with important accountability issues. More specifically, if all voters are considered to be the owner of public firms, the ownership of SOE's is more widely distributed than a private firm's ever could be.[94] Monitoring is particularly weak when ownership is diffuse and information is poor. Both situations arise in public ownership.[95]

Furthermore, state-owned corporations are also not subject to the disciplining effect of product markets, because their presence in the markets often has a negative effect on competition, as

[91] Shirley et al (2001) supra note69.
[92] Alchian A., (1965), Some Economics of Property Rights, Politico, 30(4).
[93] Vickers J. and Yarrow G., (1991), Economic Perspectives on Privatization, Journal of Economic Perspectives, 5:2; Lin, Cai and Li Lin, Justin Yifu, Fang Cai, Zhou Li. (1998), Competition, policy burdens, and state-owned enterprise reform, American Economic Review, Papers and Proceedings, 88:2.
[94] Alchian (1965) supra note91.
[95] Shirley et al (2001) supra note69.

empirical evidence suggests.[96] More specifically, because SOEs rarely seek to maximize profits, they actually have greater incentives and the ability to engage in anti-competitive behaviour.[97] In particular, SOEs are more likely than private firms to set prices below marginal cost, therefore raising their competitors' costs through market or political methods.[98] In addition to this, the state, who is also the controlling shareholder of SOEs, may affect competition through the regulation of the market of reference or by raising high barriers of entry for competitors.[99] The disciplining impact of product market competition on SOEs is also less pervasive because many SOEs operate in market monopolies.

III. BUILDING AN EFFICIENCY DEFENCE FOR STATE OWNERSHIP

1. Legal effectiveness as a determinant of the beneficial effect of state ownership

Although the majority of empirical evidence and theoretical studies highlights the problematic aspects of corporate governance within SOEs, a more positive dimension of state ownership is provided by OECD in its Survey on the Governance of State-owned Enterprises.[100] In the context of investor protection, the Survey highlights a variety of legal mechanisms employed by the state to improve corporate governance within SOEs. As a starting point, it is found that in most OECD countries, minority shareholders in SOEs enjoy at least the same level of protection as the shareholders of private companies.[101] However, some OECD countries establish strengthened decision-making powers for minority shareholders within general shareholders meetings or

[96] Shirley M. M., Kikeri S. and Nellis J., (1992), Privatization: the Lessons from Experience. World Bank Publication # 11104, 1992.
[97] Sappington D.E.M. and Sidak J.G., (2003a), Competition Law for State-Owned Enterprises. Antitrust Law Journal, 71(2):479. Available at SSRN: http://ssrn.com/abstract=357720.
[98] Sappington D.E.M. and Sidak J. G., (2003b), Incentives for Anticompetitive Behavior by Public Enterprises (2003). Review of Industrial Organization, 22:183. Available at SSRN: http://ssrn.com/abstract=269489.
[99] ibid Sappington&Sidak (2003b)
[100] Corporate Governance of State-Owned Enterprises: A Survey of OECD Countries, OECD, 2005; State-Owned Enterprise Governance Reform: An Inventory of Recent Change, OECD, 2010, available at http://www.oecd.org/dataoecd/43/4/48455108.pdf (last accessed 27.09.2011) (pages 69-77).
[101] ibid, OECD Survey (2005), p.71-72. "Almost all countries assert that SOEs follow the regulatory provisions fixed in their commercial company code, Company Law, listing requirements or in the corporate governance principles/codes. Most countries do refer to the general legal framework as, for example, among others Finland, Germany, Sweden, the UK and Switzerland."

boards.[102] Italy, for example has established a cumulative voting-type system applying to the election of the board which protects minority shareholders in SOEs. The Italian cumulative voting-type system ('voto di lista') assigns disproportional voting rights to the minority shareholders, which fact may help to rebalance the dominant position of the state and allow for the private minority shareholders to exercise more influence over the company. Similarly, minority shareholders are granted stronger board representation rights.[103]

By identifying the variety of mechanisms[104] employed by SOEs in order to enhance minority shareholders protection, the OECD Survey on SOEs sheds light on the role of the state in corporate governance in multiple ways. Firstly, it documents the importance of SOEs around the world, both in developed and in developing economies. The recent example of UK state ownership of financial institutions adds to the list of important SOEs around the world. Secondly, it presents the minority (shareholders)-friendly approach adopted by many states aiming to attract investors. Such minority (shareholders)-friendly approach is manifested in the various mechanisms established by many OECD states for the protection of minorities, ranging from consultation processes ahead of

[102] ibid OECD Survey (2005), p.74. "Italy, for example has established a cumulative voting-type system applying to the election of the board which protects SOE's minority shareholders who, apart from this, do not enjoy any specific rights beyond what is mandated in Company Law."

[103] ibid OECD Survey (2005), p.72-73. "In Denmark and Spain, for example, SOEs' minority shareholders are granted board representation."

[104] ibid OECD Survey (2005), p.69-77.

"Additional minority rights and mechanisms for minority protection include the adoption of specific mechanisms at the company level, including facilitating voting in absentia or developing the use of electronic means as a way to reduce participation costs, in order to actively encourage minority shareholders to participate in general shareholder meetings.

The Survey also documents the effectiveness of granting minority shareholders specific ex ante rights. Such rights are usually granted by the general legal framework and are not specific to minority shareholders in SOEs. For example, in a number of OECD countries, pre-emptive rights are established under the general company law framework, serving the purpose of protecting minority shareholders from the dilution of their stakes.

Equally important are the general company law provisions setting out qualified majorities for certain shareholder decisions. Such qualified majorities requirements may also be granted by specific SOE bylaws.(pages 73-74) In Austria, for example, minority shareholders enjoy significant rights at GSMs via threshold arrangements. In the Slovak Republic and for votes on fundamental matters, the approval of two third of shareholders is required, and it is possible to extend further this requirement to more than two third of present shareholders.

Finally, qualified majorities for some board decisions might also be made mandatory in the case of some SOEs. This is the case in Belgium, where special majorities have been stipulated in shareholders' agreements in the decision making powers of the boards of the telecommunications and airport companies, where a significant part of the shares is held by private investors."

important corporate decisions to the cumulative voting processes for the election of the board and even provisions regarding minority representation at the board level.

Thirdly, the abovementioned mechanisms indicate that state ownership does not inevitably give rise to minority expropriation and corporate underperformance. Contrary to common perceptions, the set of corporate governance provisions described in the OECD Survey facilitate the cooperation between the state and private investors based on equality and suggest that state participation in the economy does not necessarily destroy the value of the SOEs as previously assumed. Fourthly, the Survey confirms the crucial role of the law and the various governance mechanisms in mitigating the minority-majority conflicts within the frames of state ownership through an array of minority protection mechanisms particularly adapted to this type of ownership, thus improving the effectiveness of the overall legal framework. These special minority protection mechanisms support the proposition that legal effectiveness is the determinant of the nature of state ownership as a harmful or beneficial ownership structure for minority shareholders.

2. State ownership as a driver of good corporate governance

The underlying proposition of the OECD Guidelines of best practices in the corporate governance of SOEs,[105] is that it is in the state's own interest that other shareholders do not perceive it as an opaque and unpredictable owner and that they do not feel that they are treated unfairly. In this respect, the state's track record in terms of respecting minority rights is found to have a significant impact on the shares' value and the future capacity of the company to raise further funds on the market.'[106] Furthermore, the participation of other blockholders in SOEs introduces market pressures which have a disciplining effect on the management of SOEs.[107] In this respect, the OECD Survey finds that around 40 percent of SOEs involve other shareholders, while the state is a majority shareholder in half of them. In this light, the proposition underlying the OECD Survey and

[105] OECD Principles of Corporate Governance, 2004. OECD (2005); OECD Guidelines on Corporate Governance of State-Owned Enterprises, available at http://www.oecd.org/dataoecd/46/51/34803211.pdf (last accessed 27.09.2011).
[106] Privatising State-Owned Enterprise, An Overview of Policies and Practices in OECD Countries, OECD, 2003.
[107] Cole R.A., Berkman H. and Fu, J.L., (2002), From State to State: Improving Corporate Governance Where the Government is the Controlling Block Holder. Available at SSRN: http://ssrn.com/abstract=370140

the OECD General Principles and Recommendations of Good Corporate Governance of SOEs suggests that the state has the potential to become a pioneer in promoting good corporate governance practices by applying them to the companies it owns first.

The list of SOE-specific minority protection arrangements confirms the theoretical predictions regarding the role of the state as a driver of progress in international corporate governance. This beneficial aspect of state ownership is particularly important in the case of emerging economies, where improving investor confidence in the marketplace and attracting capital are the prerequisites of development and growth. Provided that the surrounding environment and supporting institutions are often insufficient to hinder the expropriation of minority shareholders, it is often the role of the state to bring in change and apply a model of good corporate governance. The findings of the OECD Survey demonstrate the key role of the state as a driver of good corporate governance while the concrete examples of corporate governance reforms in emerging economies illustrate that this is a possible development.[108] In this context, the general principles provided by the OECD and the special provisions for minority protection which already apply in many developed countries provide an indicative list of practices and legal mechanisms that emerging economies can employ to this effect.

---

[108] Geoff Dyer and Richard McGregor, China's champions: Why state ownership is no longer proving a dead head, FT, 16.03.2008, available at http://www.ft.com/cms/s/0/979f69c8-f35b-11dc-b6bc-0000779fd2ac.html#axzz1ZbCWGn84 (last accessed 27.09.2011). *'A decade ago, China's state-owned sector looked like an economic disaster waiting to happen.... Fast-forward 10 years and the situation is almost unrecognisable. In 2007, the combined profit of the 150 or so companies controlled by the central government is expected to have reached Rmb1,000bn (£70bn, $140bn, €90bn). In the five years to 2008, this figure rose by 223 per cent. At the end of last year, the list of the world's 10 most valuable companies contained four groups controlled by the Chinese state….What we are witnessing, in other words, is an experiment in capitalism that could challenge much of the conventional wisdom about state ownership. Plenty of countries have strong state-owned companies in semi-monopolies such as telecommunications or heavily regulated sectors such as energy and mining. Yet China is trying to create a series of leading public companies in industries exposed to cut-throat competition, where technology, design and marketing are crucial features – just the sort in which state-owned companies have typically suffered at the hands of private rivals…. Some of the sector's improvements reflect reforms the government has pushed on the state sector. Many SOEs have listed at least part of their shares, exposing them to at least some shareholder influence. Executives' compensation is linked ever more to performance rather than bureaucratic formulas….SOEs are increasingly competitive in attracting top executive talent.'*

IV. CONCLUDING REMARKS

Empirical evidence suggests that state ownership is a problematic ownership structure due to a variety of factors ranging from sub-optimal monitoring to corruption. In this respect, when compared to family ownership, state ownership provides a useful example of the distinct corporate governance issues arising within the varieties of concentrated ownership structures. The findings of the OECD Survey on the Governance of SOEs also demonstrate how the law can mitigate the governance problems associated with state ownership. This thesis extensively draws on the aforementioned OECD Survey, as it explores the minority protection mechanisms and governance arrangements emerging within Greek SOEs and assesses their effectiveness in the Chapter to follow. Having identified the distinct corporate governance problems that family and state ownership give rise to, Chapter III contributes to the understanding of the complex relationship of ownership structures and corporate governance through a case study indicating the profound links between the forms of ownership, particularly state ownership, and the distinct legal mechanisms for the protection of minority shareholders emerging within SOEs as a response.

CHAPTER III: RESTATING THE 'LAW MATTERS' THESIS: MINORITY PROTECTION BEYOND THE COMPARATIVE LAW INDICES

Having established the distinct characteristics of state and family ownership and the different corporate governance problems they give rise to, this Chapter assesses the effectiveness of the Greek legal system to protect minority shareholders in state and family-owned corporations. This assessment outlines and considers the impact of rules and principles that have not been taken into account by LLSV as variables for the compilation of their indices, although they substantially improve the quality of investor protection. The substantive analysis of minority protection provisions in Greece further supports the 'legal effectiveness' argument presented in this thesis. The Greek legal system has been chosen as a case study because of its civil law origin. Greece is also a jurisdiction characterised by concentrated ownership structures and the presence of families and the state as the main corporate owners. It, therefore, fits well into the category of the jurisdictions of civil law and concentrated ownership, to which the 'inefficiency bias' would apply.

This Chapter reveals a variety of alternative legal techniques which have so far received limited credit for their role in protecting minority shareholders. Such mechanisms derive from two sources: Firstly, within Greek SOEs the articles of association provide for a variety of distinctive rights conferred to minority shareholders, such as their representation at the board level or employee codetermination arrangements. Although such rights are not mandatory or even default provisions of the law on the *Societes Anonymes*[1], they are widely used by state-owned enterprises (hereafter SOEs) and can only be identified through a review of the articles of association and founding laws of Greek SOEs. Effectively, such provisions act as minority protection mechanisms. Secondly, the Greek Civil Code also provides for a set of general rules and principles which have the effect to protect minority shareholders within corporations of concentrated ownership. In this

[1] See Law 2190/1920, which establishes the form of *Societe Anonyme*, which is the prevalent form under which all listed SOEs are incorporated.

regard, limits to minority expropriation are, for example, set by the general rule established in Article 281 of the Greek Civil Law, which prohibits the abusive exercise of one's rights.

In particular, the example of Greek minority protection mechanisms reinforces the criticisms against the LLSV study in a particularly revealing manner, as LLSV awarded Greece with a score of 0 in the category of minority oppression remedies, which is the category of reference in this Chapter. The low score of Greece in this category is awarded only on the basis of the oppression remedies made available to minority shareholders by the main body of company law, Law 2190/1920 which applies to companies incorporated under the form of a *Societe Anonyme*. This is the prevalent form under which most medium- or big-sized Greek companies are incorporated. This score is inaccurate, because it fails to consider the impact of provisions included in the Greek Civil Code, such as Articles 281, 914 and 919, which provide minority shareholders with an alternative legal basis against the abusive exercise of the rights of the majority shareholders.[2] The low score of Greece in the category of minority oppression is not aligned with the wide use of the aforementioned legal mechanisms and, therefore, reflects a distorted assessment of the quality of corporate governance in Greece.

A. MINORITY PROTECTION IN GREEK STATE-OWNED ENTERPRISES

I. INTRODUCTION

The case study of corporate governance of Greek SOEs is in alignment with the defence of corporate governance practices in SOEs as presented in a recent Survey conducted by OECD.[3] Despite the traditionally controversial role of the state as a corporate governance actor, state ownership does not always imply a high risk of minority expropriation. Firstly, in almost all countries '*SOEs follow the regulatory provisions fixed in their commercial company code, Company*

[2] See below part B of this Chapter.

[3] Corporate Governance of State-Owned Enterprises: A Survey of OECD Countries, OECD, 2005

Law, listing requirements or in the corporate governance principles and codes'.[4] Some OECD countries, however, have established strengthened decision-making powers for minority shareholders within General Shareholders Meetings or the Board of Directors in order to mitigate the shareholders conflicts of interests and promote minority protection. In this regard, the study by the OECD on the corporate governance of SOEs reveals a variety of SOE-specific mechanisms providing for minority protection.[5] These declared rights may involve representation of minority shareholders on the board of directors, enhanced decision making power of minorities at the level of shareholders meetings and minority shareholders rights to receive information about the company's situation.[6]

In this context, the presentation of the special minority protection mechanisms within SOEs improves the understanding of the relationship of concentrated ownership, more specifically, state ownership, and corporate governance. The minority protection provisions within SOEs are often not found in the general legal framework concerning companies, such as the company law legislation, the commercial company code or even corporate governance codes. Instead they are rather established by the articles of association or in specific founding laws of an SOE. This means that the general minority protection mechanisms within a legal system do not always reflect the quality of investor protection. This latter example shows that the fragmentation of the legal framework of investor protection and company regulation exacerbates the inherent difficulty of producing accurate and all-inclusive investor protection indices comparing the various corporate governance systems around the world.

This omission substantially distorts the score of countries where the state constitutes a key player of the economy, such as within emerging economies or within developed economies in which the privatisations of SOEs have not been extensive. Greece constitutes such a case where SOEs constitute an important part of the economy. As of the 27th September 2011, for example, SOEs

[4] OECD Principles of Corporate Governance, (2004); Privatising State-Owned Enterprise, An Overview of Policies and Practices in OECD Countries, OECD, 2003.
[5] OECD Survey 2005, supra note3, "In most OECD countries, minority shareholders in SOEs have no more rights than they usually have in privately owned companies. Most countries do refer to the general legal framework as, for example, among others Finland, Germany, Sweden, the UK and Switzerland."
[6] OECD Survey 2005, supra note3; For Greece, also see Law 2190/1920, providing for these rights.

represented 28,3% of the total capitalisation of the companies listed on the Athens Stock Exchange.[7] Therefore, the omission to include variables for assessing the corporate governance of SOEs in Greece highlights the lack of representativeness of the LLSV methodology and overall index-based assessment of investor protection. The distorted assessment of investor protection downplays the potential of several SOEs as investments. For example, neither state ownership nor the civil law system has hindered Greek state-owned companies from competing at a European level or becoming a success story. OPAP SA, the Greek Organisation of Football Prognostics, for example, is one of the leading gambling companies in Europe.[8] Similarly, OTE SA, the Hellenic Telecommunications Organisation, has been a successful state-owned company with activities spreading across Greece and several countries of Eastern Europe.[9] Finally, OLP SA, the Piraeus Port Authority has been one of the most profitable Greek SOEs, competing at a global level. [10]

II. A CASE STUDY OF MINORITY PROTECTION IN GREEK STATE-OWNED ENTERPRISES

Building on the OECD Survey, the assessment of the minority protection tools to be found within SOEs takes the form of a case study of Greek SOEs. In addition to the mechanisms generally explored by the OECD study, the focus is shifted to alternative forms of minority protection, often offered through mechanisms such as employee representation, which have the potential to complement the imperfect state monitoring within SOEs. Since the aforementioned minority

[7] The participation of SOEs at the Athens Stock exchange is 21,4% if the Hellenic Telecom Organisation is excluded from the group of SOEs. See Athens Stock Exchange, Shares Market Data fro 27.09.2011, available at http://www.ase.gr/content/en/MarketData/Stocks/Prices/ (last accessed 27.09.2011).

[8] See Paul Betts, Greece must sell family silver to bolster asset ragbag, Financial Times, June 16,2010, available at http://www.ft.com/cms/s/0/96e5d846-78dd-11df-a312-00144feabdc0.html#axzz1NqD7nnnM
'OPAP is Europe's biggest betting company and a cash cow that earned €594m last year on sales of €5.4bn. It is poised to expand in online betting and the government would have no problem in finding enthusiastic takers for its stake.'

[9] See http://www.ote.gr/portal/page/portal/InvestorRelation/BusinessOverview/WhatWeDo/Mobile_Telephony (last accessed 16.09.2011).

[10] For example, under a 35-year concession agreement with COSCO, China's state-controlled shipping and ports group, its strategic importance as a container terminal will be enhanced as the port of Piraeus is planned to develop into a hub for container trade between Asia, the Mediterranean and the Black Sea. See Kerin Hope, China in deal to build Piraeus terminal, Financial Times, 26.11.2008, available at http://www.ft.com/cms/s/0/66d4b7fc-bb5c-11dd-bc6c-0000779fd18c.html#ixzz1NqN38nn9 (last accessed 16.09.2011)
Also see Annual Report 2010 available at http://www.olp.gr/el/investor-information/annual-reports/view.download/13/433 (last accessed 16.09.2011).

protection mechanisms have not been part of the indices designed to measure the quality of the legal framework, their importance and role in the systems where they are present has not been assessed so far.

1. The methodology and sample of SOEs

In Greece, state-owned corporations operate in many sectors of the economy of strategic importance, such as power and energy, transport, telecommunications and infrastructures. Their central role in the financial system is illustrated in the Athens Capital Market Index where the eleven state-owned listed companies represent 28,3% of the Index in terms of market capitalisation.[11] In several industries such as energy (PPC SA, ELPE SA) and infrastructures (OLP SA, OLTH SA), SOEs represent the largest listed companies in the category. In the late 1990s, within the frames of the part privatisation and modernisation process[12], Greek SOEs took the form of the *Societe Anonyme* and in 2001 a number[13] of them were also listed on the Athens Stock Exchange or other stock exchanges around the world.[14] Law 3429/2005 distinguishes SOEs into two broad categories. One category comprises companies of strategic importance or of national interest, which are controlled by an Inter-ministerial Committee of Public Corporations and Organisations.[15] The other category involves SOEs with a limited impact on national interest. The legal framework of minority protection in Greek SOEs is similar to the general provisions applicable to companies

---

[11] Supra note3.

[12] State-owned private legal entities, under the article 2 par. 1 of L. 2414/1996 'Modernization of Public Companies and Organizations and other provisions' in addition to the C.L. 2190/1920 'about *Societe Anonyme*', have been converted into *Societe Anonyme* companies and their Articles of Association are published in the Official Legal Notice.

[13] Public Power Corporation SA, Hellenic Petroleum SA, Hellenic Postbank SA, OPAP SA, Agricultural Bank of Greece ATE SA, Hellenic Telecommunications Organisation SA, EYPAD SA, Piraeus Port Authority SA, Thessaloniki Port Authority SA

[14] The Hellenic Telecommunications Organisation, for example, is also listed on the London Stock Exchange and the New York Stock Exchange. Similarly PPC SA is listed both on the Athens Stock Exchange and the London Stock Exchange since 2001.

[15] See Article 15 of Law 3429/2005, stating that the *Societes Anonymes* of Article 1, par.5, which include PPC SA, are outside the narrow public sector. More specifically, PPC SA is not under the responsibility of the Inter-ministerial Committee of State-owned Companies and Organisations (Διυπουργική Επιτροπή Δημοσίων Επιχειρήσεων και Οργανισμών, Δ.Ε.Δ.Ε.Κ.Ο.), which oversees the public companies. Moreover, according to Article 16 of Law 3429/2005, the provisions of company law, namely Law 2190/1920, as updated by Law 3016/2002, Law 3604/2007 and Law 3884/2010, apply to PPC SA. The company is also subject to the Athens Stock Exchanges Listing Rules which apply to all listed companies. Finally, the oversight of the state is restricted to the oversight exercised on the activity and operations of all *Societes Anonymes* incorporated in Greece.

incorporated as *Societes Anonymes* and is set out in Law 2190/1920 as amended by Law 3604/2007.[16] Additional, company-specific minority protection rights are included in the articles of association and the founding laws of several Greek state-owned companies. The sources of corporate governance best practices and principles for Greek SOEs are provided by relevant laws, namely by Law 2190/1920, 3016/2002, 3693/2008, 3873/2010 and 3884/2010 and the Corporate Governance Code of the Hellenic Federation of Enterprises – SEV. [17]

The methodology of this analysis involves the study of the annual reports, the articles of association and the founding laws of nine out of the eleven listed SOEs in Greece. The companies to be examined are the nine listed companies, in which the Greek state is a majority or a large shareholder[18], as follows: Public Power Corporation SA (ΔΗΜΟΣΙΑ ΕΠΙΧΕΙΡΗΣΗ ΗΛΕΚΤΡΙΣΜΟΥ ΑΕ-ΔΕΗ ΑΕ), Hellenic Petroleum SA (ΕΛΛΗΝΙΚΑ ΠΕΤΡΕΛΑΙΑ ΑΕ-ΕΛΠΕ ΑΕ), TT Hellenic Postbank SA (ΕΛΛΗΝΙΚΟ ΤΑΧΥΔΡΟΜΙΚΟ ΤΑΜΙΕΥΤΗΡΙΟ ΑΕ), Greek Organisation of Football Prognostics SA-OPAP SA (ΟΡΓΑΝΙΣΜΟΣ ΠΡΟΓΝΩΣΤΙΚΩΝ ΑΓΩΝΩΝ ΠΟΔΟΣΦΑΙΡΟΥ ΑΕ-ΟΠΑΠ ΑΕ), Agricultural Bank of Greece SA (ΑΓΡΟΤΙΚΗ ΤΡΑΠΕΖΑ ΤΗΣ ΕΛΛΑΔΟΣ ΑΕ-ΑΤΕ ΑΕ), Athens Water Supply and Sewage SA-EYDAP SA (ΕΤΑΙΡΕΙΑ ΥΔΡΕΥΣΗΣ ΚΑΙ ΑΠΟΧΕΤΕΥΣΗΣ ΠΡΩΤΕΥΟΥΣΗΣ), Thessaloniki Water Supply and Sewage SA-EYATH SA (ΕΤΑΙΡΕΙΑ ΥΔΡΕΥΣΗΣ και ΑΠΟΧΕΤΕΥΣΗΣ ΘΕΣΣΑΛΟΝΙΚΗΣ ΑΕ-ΕΥΑΘ ΑΕ), Piraeus Port Authority SA (ΟΡΓΑΝΙΣΜΟΣ ΛΙΜΕΝΟΣ ΠΕΙΡΑΙΑ ΑΕ-ΟΛΠ ΑΕ) and Thessaloniki Port Authority SA (ΟΡΓΑΝΙΣΜΟΣ ΛΙΜΕΝΟΣ ΘΕΣΣΑΛΟΝΙΚΗΣ ΑΕ-ΟΛΘ ΑΕ). Hellenic Telecommunications Organisation SA (ΟΡΓΑΝΙΣΜΟΣ ΤΗΛΕΠΙΚΟΙΝΩΝΙΩΝ ΕΛΛΑΔΟΣ ΑΕ-ΟΤΕ ΑΕ) is not part of the analysis because the stake of the Greek state is 20% and the controlling shareholder is Deutsche Telecom.[19] Similarly,

[16] Minority shareholders rights provisions and the main control, pre-emption and information rights of the shareholders of the company are set out in Articles 13, 27A, 31, 35A, 35B, 39, 40, 49A and 49B of Law 2190/1920, as amended by Law 3604/2007and Law 3884/2010.

[17] Corporate Governance Code of the Hellenic Federation of Enterprises – SEV, available at www.sev.org.gr/Uploads/pdf/KED_TELIKO_JAN2011.pdf (last accessed 01.05.2011).

[18] For a report on the ownership structures and the largest shareholders of Greek listed companies as of 03/01/2011 jsee Archive/History of changes of ownership stakes for the year 2010 (Ιστορικό Αρχείων Μεταβολών Ποσοστών Έτους 2010) available at http://www.ase.gr/content/gr/ann.asp?annId=111058 (last accessed 01.05.2011).

[19] Shareholder structure as of 06.05.2011: Hellenic Republic 20%, Deutsche Telecom 30%, International Institutional Shareholders 30,3%, Greek Institutional Shareholders 10,1%, Other shareholders 9,6%. Information on the shareholder structure is available at http://www.ote.gr/portal/page/portal/InvestorRelation/TheShare/ShareholderStructureThe shareholders' agreement between the Greek state and Deutsche Telecom is available at http://www.ote.gr/portal/page/portal/InvestorRelation/IRKit/IR_Files_basket/sharehldrsagrmnt.pdf (last accessed 17.09.2011).

Hellenic Sugar Industry (ΕΛΛΗΝΙΚΗ ΒΙΟΜΗΧΑΝΙΑ ΖΑΧΑΡΗΣ ΑΕ) is excluded from the analysis as it is 82,33% owned by Agricultural Bank of Greece and effectively forms part of the same group of companies. [20]

In the context of this case study, the various minority protection rights and mechanisms have been identified and classified into categories. All companies comply with the general minority protection rights as set out by Law 2190/1920. The first category, therefore, includes the special rights awarded to minority shareholders such as the right to be represented at the board level by appointing directors on the board. The second category involves the mechanisms of employee representation at the board level, which constitutes a complementary institution with the potential to effectively limit private benefit extraction, especially when used in conjunction with the right of minority shareholders to appoint members on the board. The third category includes special rights deriving from the company's different classes of shares, the existence of shareholders agreements and the limitations or special arrangements which have an impact on the voting and control rights of shareholders in SOEs.

2. The findings

2.1 Special rights of minority representation at the board level

Of the nine companies examined, five have been found to be subject to provisions regarding the representation of minority shareholders at the board level as a means of enhancing minority protection. More specifically, in the case of Hellenic Petroleum S.A.[21], in addition to the general minority protection rights[22], minority shareholders appoint 2[23] out of the 13 members of the board

[20] See Annual Report 2010 of Hellenic Sugar Industry, available at http://ebz.smartin.gr/272864399/2009%2010.pdf (last accessed 17.09.2011).

[21] Ownership Structure as of 31.12.2010: Greek State: 35,48%, Paneuropean Oil and Industrial Holdings S.A: 41,25%, Free Float: 23,27% available at http://www.hellenic-petroleum.gr/online/generic.aspx?mid=210 (last accessed 17.09.2011).

[22] Article 18 of the Articles of Association provides for minority rights which coincide with the rights provided by Law 2190/1920. See more information regarding the corporate governance of ELPE SA available at http://www.hellenic-petroleum.gr/online/generic.aspx?mid=153 (last accessed 17.09.2011) and regarding the board of directors of the company available at http://www.hellenic-petroleum.gr/online/generic.aspx?mid=162. (last accessed 17.09.2011).

of directors (hereafter BoD), elected by the Special Minority Shareholders' Meeting according to Article 22 of the articles of association (hereafter AoA), comprising all the shareholders, except for the state and Paneuropean Oil and Industrial Holdings S.A..[24] Similarly, according to Article 21 of the AoA, Paneuropean Oil and Industrial Holdings S.A., a large minority shareholder of the company, has the right to directly appoint two representatives at the board level. Moreover, within the Public Power Corporation S.A. [25], 2 out of the 11 members of the BoD are elected by the Special Minority Shareholders' Meeting, which comprises all the shareholders, excluding the state as a majority shareholder.[26] According to Article 20 of the Company's AoA currently in force, whenever an election of a minority representative to the BoD is required, a Special Assembly is convened, which only the minority shareholders are entitled to attend, excluding the Greek state as a majority shareholder. Shareholders of EYDAP SA[27] also enjoy distinct rights, according to which

---

[23] According to Article 21c of the AoA, one member is elected if the minority shareholders represent less than 15% of the paid-up share capital of the company and two members are elected if the minority shareholders represent more than 15% of the paid-up share capital of the company.

[24] Article 21c of the AoA.

[25] Ownership Structure as of 31.12.2010: Greek State: 51.12%, General investing public & institutional investors: 40.08%, of whom Blackrock Inc holds 4,99%, Silchester International Investors Limited holds 6.37% of PPC's voting rights, PPC Personnel Insurance Organization (PIO): 3,81%. Information available at http://www.dei.gr/Documents2/ENG%20REPORT%202010%20FINAL.pdf (last accessed 27.09.2011).

[26] Article 10 of the AoA.

[27] Ownership Structure as of 31.12.2010: Greek State: 61,033%, Agricultural Bank of Greece: 9.999 %, Other Shareholders: 28.968% See 2010 Annual Report available at http://www.eydap.gr/media/FinancialData/isologismoi_en/ANNUAL_ECONOMIC_REPORT_2010.pdf (last accessed 17.09.2011)

The provisions concerning the appointment and replacement of the Members of the Board of Directors are set forth in Article 11 of the Company's Articles of Incorporation, which state the following:

'Article 11: Composition and Term of the Board of Directors

1. The Company is managed by the Board of Directors; the number of members (Directors) is an odd number which may not exceed thirteen (13) or be less than seven (7). The General Meeting of shareholders has the authority to specify the number of Directors, as well as to increase or reduce such number, always in accordance with the provisions set forth in this paragraph.

2. The Board of Directors consists of: (a) Two (2) representatives of the Company's employees, elected (along with their alternate members) by direct universal suffrage, in accordance with article 17, par.1, of Law 2469/1997 (Government Gazette A' 38), as in force from time to time. (b) Two (2) members representing minority shareholders, in accordance with the provisions of article 18, paragraphs 3 and 5 of Codified Law 2190/1920, elected as per the provisions of article 36 hereof. (c) Representatives of the shareholders, elected by the General Meeting; shareholders who participated in the Special Meeting provided for in article 36 hereof (concerning the election of the remaining members of the Board) may not participate in the said General Meeting. 3. The Board of Directors consists of executive, non-executive and independent non-executive members, in accordance with the provisions of articles 3 and 4 of Law 3016/2002, as in force from time to time. 4. The two (2) members elected by the Company's employees are appointed within two months of their election. Until their appointment, the Board of Directors convenes and resolves validly without these members. As of their

2 out of the 13[28] members of the BoD are elected by the Special Minority Shareholders' Meeting, which again comprises all the shareholders, excluding the state.[29] Minority shareholders in EYATH SA[30] have no special representation rights. For all other companies, namely OPAP SA[31], Hellenic Postbank S.A. [32] and Agricultural Bank of Greece-ATE SA[33] no special minority protection rights apply as well.[34]

---

appointment, the said members are included ipso jure in the Board of Directors. If the Board of Directors has already held its inaugural meeting, it convenes again to include the said members.
4. (a) Non-election, non-appointment or neglect on behalf of minority shareholders, for any reason whatsoever, to nominate their representatives may not prevent the Board of Directors from holding its inaugural meeting, nor from validly convening and resolving; the number of the said representatives is not taken into account in the calculation of majority and quorum.
5. In any event, the Board of Directors may convene and resolve validly without the representatives of employees, if the deadline specified in article 11, par. 4 hereof expires. In such case, their number is not taken into account in the calculation of majority and quorum.
6. Members of the Board of Directors are elected to a five-year term; this term is extended ipso jure until the nomination or election of new members (Directors), in accordance with the provisions of paragraph 2 of this article. Such extension may not exceed one (1) year.
7. Members of the Board of Directors may be freely recalled. Recall and replacement procedures are carried out by those who had the right to elect or nominate the members, in accordance with the provisions of paragraph 2 of this article. The General Meeting may replace any of the members (Directors) it had elected, as per paragraph 2, sub-paragraph (c) of this article, before their term expires.
8. The Directors may be re-appointed, re-elected or recalled for an unlimited amount of times.
9. The members of the Board of Directors may not be related with each other, by blood or marriage, up to the third degree, and may not be contractors or suppliers of the Company under any form, nor members of other Boards of Directors or employees of other companies that do business with the Company. Nevertheless, members of the Board of Directors or employees of an affiliate to the Company, as defined in article 42e of Codified Law 2190/1920, may be members of the Board of Directors of the Company.'

[28] This is the maximum number of members. According to the 2010 Annual Report, the BoD comprises of 10 members.

[29] Article 11 of the AoA. Moreover, according to article 36 of the Company's Articles of Association in force, whenever an election of a minority representative to the Board of Directors is required a Special Assembly is convened, which only the minority shareholders and not the Greek State-majority shareholder- are entitled to attend.

[30] Ownership Structure as of 31.03.2011: Greek State: 74,02%, Legal Entities: 15,40%, Natural Persons: 9,34%, Other Shareholders: 0,94%. Among the Legal Entities «SUEZ ENVIROMENT COMPANY» holds voting rights corresponding to 5,19393664% through its wholly-owned subsidiaries as follows: a) SUEZ ENVIROMENT which holds 1.348.753 votes, namely voting rights corresponding to 3,715573% and b) CALIGE which holds 536.646 votes, namely voting rights corresponding to 1,4784%. See shareholders ownership structure available at http://www.eyath.gr/misc/METOXIKI_SINTHESI_31-03-2011.pdf. Also see Annual Report 2010 available at http://www.eyath.gr/misc/ETISIA_EKTHESI_2010.pdf (last accessed 01.05.2011).

[31] There is no provision of the representation of minority shareholders at the board level. Minority shareholders participate in the General Shareholders Meeting to elect the members of the BoD. According to Article 35 of the Articles of Association, Minority Shareholders of the Company have the rights provided by the Codified Law 2190/1920 as in force. There is no employee representation.

[32] The breakdown of the Hellenic Post Bank SA shareholder structure, as of March 3rd, 2011, was as follows: Greek State: 34.043%, Hellenic Post: 10.0%, Own Shares: 1.207%, Free Float: 54.750% available at http://www.irwebpage.com/ttbank/english/shareholder_structure.php (last accessed May 1st, 2011).

2.2 Employee representation at the board level

Another important disciplining corporate governance mechanism included in the AoA of several SOEs is employee representation. Five out of the nine companies examined include such a mechanism. More specifically, Article 21 of the AoA of Hellenic Petroleum S.A. gives the right to employees to appoint two members of the thirteen-member board.[35] Similarly, the AoA of EYDAP SA[36] provide that the BoD consists of two representatives of the company's employees, as elected directly by the employees of the company. The maximum number of Board Members is nine. In the case of Public Power Corporation SA, two board members, representing the Company's employees, are elected by the members of the most representative trade union of the company.[37] In the case of Piraeus Port Authority S.A. [38], in accordance with Article 7 of the AoA, two out of the

---

[33] Ownership Structure as of 30.04.2010: Greek State: Government holds: 77.3120%, Other Shareholders: 22,6880% available at http://www.ase.gr/content/gr/ann.asp?annId=111058. (last accessed May 1st, 2011).

[34] There are no special provisions for the representation of minority shareholders at the board level. Minority Shareholders of the Company have the rights provided by the Codified Law 2190/1920 as in force. The rules provided for in both Bank's Articles of Incorporation on the appointment and replacement of BoD members and the amendment to the Articles of Incorporation are not different from those provided for in Codified Law 2190/1920, as in effect.

[35] According to Article 21 of the Articles of Association, the Board of Directors consists of:
- Six or seven members are appointed by the Greek State.
- Two members are appointed by shareholder Paneuropean Oil and Industrial Holdings S.A.
- Two or one members are elected by the Special Minority Shareholders' Meeting.
- Two members are elected by the Company's employees, as their representatives

Its term of office is five years. (Art.21).

[36] Article 11 of the AoA.

[37] According to article 10 of the Company's Articles of Association in force, the Company's Board of Directors is composed of eleven (11) members, among which :

-Six (6) members, including the Managing Director, are elected by the General Assembly of the majority shareholder (the Greek State) in which the minority shareholders are not entitled to participate. Thus, the procedure of election of the members of the Board of Directors takes is conducted through two General Shareholders' Assemblies. Only the majority shareholder – the Greek State – participates in one, while the minority shareholders participate in the other.

-Two (2) members representing the Company's employees, are elected by the members of the Most Representative Trade Union of the Company.

-Two (2) members are elected by a Special Assembly of the minority shareholders, in which the Greek State is not entitled to participate.

-One (1) member is designated by the Economic and Social Committee and comes from agencies performing activities similar to those of the Company.

[38] Ownership Structure as of 31.12.2010: Greek State: 74.14%, Other Shareholders: 25,86%, of whom Company Lansdowne Partners Limited Partnership, is entitled to exercise on a discretionary basis the voting rights attached to the 1,289,796 shares in Piraeus Port Authority S.A (percentage of indirect voting rights: 5.159 %), held by the following funds: Lansdowne European Equity Fund Limited, Lansdowne European Long Only Fund Limited, Lansdowne European Long Only Fund LP, Lansdowne European Strategic Equity Fund LP. None of these funds holds more than 5% of the voting rights in Piraeus Port Authority S.A.

See 2010 Annual Report, available at http://www.olp.gr/en/investor-information/annual-reports/viewdownload/71-annual-reports/508-annual-report-2010 (last accessed 27.09.2011).

thirteen members of the board are appointed to represent the company's employees[39] and one member represents the Municipality of the company's headquarters and is elected by the company's General Assembly after being nominated by the Piraeus City Council. [40] Similarly, in the case of Thessaloniki Port Authority S.A.[41], according to Article 9 of the AoA, two out of eleven members of the BoD are appointed by the employees and one member represents the Municipality of Thessaloniki, where the company is established. [42]

2.3 Special corporate governance rights

The third category of special governance rights involves rights deriving from multiple classes of shares, the existence of shareholders agreements and other rights or arrangements affecting the exercise of control. The findings document that the state, rather than minority shareholders, carries a variety of such special rights. For example, in the case of Hellenic Postbank S.A. and Agricultural Bank of Greece-ATE SA[43], the Greek state holds preference shares[44] to which a variety of control and information rights[45] are attached. The aforementioned rights are only attached to

[39] These representatives are drawn from the two most representative trade unions, one being an administrative employee and the other a port worker. They must be company employees. (Article 7 of the AoA).

[40] In accordance with article 7, par 1 of the company's articles of association, the Board of Directors consists of thirteen members whose term in office is 5 years. Of the thirteen members, ten are elected by the General Shareholders Meeting, two members are appointed to represent Company employees and one member represents the Municipality of the Company's headquarters and is elected by the Company's General Assembly as nominated by the City Council. (Article 7 of the AoA).

[41] Ownership Structure as of 29.03.2010: Greek State: 74,27%. Other Investors: 25,73%. See 2009 Annual Report, available at http://www.thpa.gr/files/financial/aok31122009gr.pdf (last accessed 27.09.2011)

On 31.3.2008 the Company had 2,384 shareholders of which Natural persons: 2.290 representing 13,34% of paid-up share capital, Jointly held stock: 18 representing 0,11% of paid-up share capital, Legal persons: 74 representing 86,55% of paid-up share capital, Joint owners: 2 representing 0,01% of paid-up share capital. (More information is available at the company's website, www.thpa.gr).

[42] The role of the Board of Directors is set out in Article 12 of the company's Articles of Association. It consists of eleven members whose term in office is 5 years. Of the eleven members, five are appointed by the Greek State, two are elected by the General Meeting of Shareholders, two members may be appointed to represent Company employees one member is nominated by the Economic & Social Committee (ESC) and is drawn from bodies related to company operations, and one member represents the Municipality of Thessaloniki. (Article 9 of the Articles of Association) The employee representatives are drawn from the two most representative trade unions, one being an administrative employee and the other a port worker. They must be company employees. (Article 7 of the AoA).

[43] For Hellenic Postbank S.A. see Annual Report 2010, pages 18-19, available at http://www.irwebpage.com/ttbank/english/pdf/12M2010EN.pdf (last accessed 01.05.2011), For Agricultural Bank of Greece S.A. see http://www.atebank.gr/NR/rdonlyres/46BB070D-19CD-4D9A-813B-F8B1742D01D1/0/ETISIAEKTHESI31122010.pdf (last accessed 01.05.2011).

[44] Preference Shares have been issued according to Law 3723/2008 'For the enhancement of liquidity of the economy in response to the impact of the international financial crisis'.

[45] Such rights include:

the shares held by the Greek state as a result of the injection of liquidity into Greek banks following the financial crisis of 2008. Such practice applies to all banks receiving liquidity assistance by the Greek state, not only state-owned financial institutions. Similarly, the aforementioned liquidity injection forms part of the measures adopted at the EU level and apply to all Member States. The aforementioned rights of the Greek state, therefore, need to be considered in the context of the 2008 financial crisis. Although they are problematic because they grant additional control and governance rights to the state, they are only temporary in duration and their nature is that of emergency financial assistance in order to safeguard the survival of banks following the crisis. Consequently, the aforementioned special governance rights of the state are not an indicative example of the mechanisms used by the state to expropriate minority shareholders.

Another important point emerging from the examination of the special corporate governance arrangements within Greek SOEs relates to the minimum levels of the participation of the state in the SOEs. This category of restrictions affects the transferability of shares, the issuance of new shares and other related issues with an impact on control. More specifically, in Public Power Corporation (PPC SA), the state's share capital cannot be less than 51%, according to the provisions in Article 43 paragraph 3 of Law 2773/1999. Moreover, under Presidential Decree 333/2000, the voting rights of non-state shareholders in PPC are capped to 5%. This voting cap applies to all corporate resolutions. The decree also confirms that 51% of the company is to remain in the hands of the state. Similarly, in the case of EYDAP SA, Article 1 paragraph 10 of Law 2744/1999 provides that the Greek state may only offer to investors and the public up to 49% of the company's share capital, as at the time of the offer. Moreover, the purchase of shares providing voting rights equal

-the right to vote at the General Privileged Shareholders Meeting in the specific occasions defined in Law 2190/1920;
-the right to participate in the BoD meetings of the Bank via a representative, appointed as an extra member of the BoD;
-the right of the Greek State's representative, appointed as an extra member of the BoD, to veto any decision related to dividend distribution and any payment policies to the Chairman, the Chief Executive, the remaining members of the BoD and the General Directors and their deputies, under the decision of the Greek Minister of Economics and Finance or if the Greek State's representative judges that the BoD decision could set in danger the depositors interests or substantially affect the credibility and the smooth functioning of the Bank;
-the right of appearance of the appointed by the Greek State, extra member of the BoD, in the General Meeting of the Ordinary Shareholders and the right to veto on the issues stated above;
-the right of the representative of the Greek State of free access to the account books and data of the Bank for the purposes of Law 3723/2008.

to 20% or more of the total share capital of the company shall require prior approval from an Inter-ministerial Privatisation Committee.[46]

The provisions which apply to PPC SA are problematic from a corporate governance perspective because they promote the disproportionality between ownership and control by preventing large shareholders with a participation of over 5% to exercise the voting rights proportionate to their stake in the company. The structural implication of this provision is the prevention of opposing blocks to emerge, therefore resulting in the entrenchment of the Greek state as a controlling shareholder. In this respect, according to the EU Commission, the 5% voting cap constitutes a special right which acts as a barrier to investors from other Member States, as direct investors are hindered from effectively participating in the management and control of the PPC SA. Additionally, portfolio investors, who invest for the purpose of gaining financial returns, are also deprived of the full minority protection rights provided by general company law.

Despite Greek contentions that the cap is justified on the grounds of public interest and security, on May 8, 2010, the EU Commission acted to ensure compliance with the EU Treaty rules on free movement of capital, more specifically Article 56 of the EU Treaty, by referring Greece to the European Court of Justice over the 5% voting cap in PPC SA, according to Article 258 of the Treaty on the Functioning of the European Union (TFEU).[47] In response to the referral, Law 3851/2010 abolished the 5% voting cap, making a valuable step towards enhancing corporate governance to the benefit of minority shareholders.[48] The abolishment of voting restrictions is aimed to attract

[46] Article 11 of Law 3631/2008 states that:
'1. The purchase of shares providing voting rights in private limited companies of national strategic importance that hold or held a monopoly in their field, and particularly companies that own, operate or manage national infrastructure networks, by a party other than the Greek State, or by companies linked to that party within the meaning of Article 42(e) of Law 2190/1920, or by parties acting in a coordinated manner, equal to 20% or more of the total share capital of the companies concerned shall require prior approval from the Inter-ministerial Committee on Privatisation established by Law 3049/2002 and in accordance with the procedure laid down therein.'

[47] Also see Press Release by the Commission 05.05.2010, available at http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/503&format=HTML&aged=0&language=EN&guiLanguage=en. (last accessed 27.09.2011).

[48] Article 8 par.2 and par.3 of the Presidential Decree 333/2000 providing for the 5% voting cap was abolished by Article 12 par 18 of Law 3851/2010. Law 3851/2010 was published on 4.6.2010 at the Greek National Gazette, Paper No 85 available at http://www.cres.gr/kape/neos%20nomos%20RES_N3851_2010.pdf (last accessed 01.05.2011).

new investment and facilitate the creation of large blocks, which are likely to contest and challenge the role of the state as a controlling shareholder.

Additionally, an important limitation is found in the case of Piraeus Port Authority SA, where Article 4 paragraph 2 of the company's AoA provide that the minimum participation of the Greek state to the equity capital cannot be less than 51%, while any purchase of shares providing voting rights equal to 20% or more of the total share capital of the company is subject to the prior approval from an Inter-ministerial Committee.[49] OPAP SA constitutes another example where the transfer of shares of the Company is subject to the condition that the minimum ownership stake held by the Greek public sector cannot fall below the 34% of the company's share capital. [50] The same rules apply to Thessaloniki Port Authority SA, in which the Greek state has been the sole initial shareholder and has the right to retain a majority holding in the company statutorily enshrined in Articles 6(2) and 7 of the company's AoA.[51] In addition to the limits imposed on the transfer of ThPA SA shares beyond the 51% level,[52] any purchase of shares providing voting rights equal to 20% or more of the total share capital of the company is subject to the prior approval from an Inter-ministerial Committee.[53] Therefore, five out of the nine companies examined contain provisions requiring a minimum stake of state ownership. Similarly, in three out of the nine companies, a special approval by the Inter-ministerial Committee is required, before voting rights above 20% are transferred to an investor. The restrictive impact of these arrangements on the free transferability of shares is justified by the strategic importance of the enterprises concerned. From a corporate governance perspective, this type of restrictions is less problematic than voting caps, because no disproportionality between voting and cash flow rights emerges.

---

[49] *Ibid.* Article 11 of Law 3631/2008 The purchase of shares providing voting rights in equal to 20% or more of the total share capital of the company, shall also require prior approval from an Inter-ministerial Privatisation Committee.

[50] Article 5 par 3 of the Articles of Association and par.1 of article 14 of Law 3336/2005.

[51] Article 6(2) and Article 7 of the Company's Articles of Association provide that the minimum holding of the Greek State in the Company's share capital may not drop below 51% even after listing of the company of the Athens Exchange.

[52] Law 2688/1999, which specifically governs the organisation and operation of ThPA S.A., includes Article 11(3) which states that the Ministers of Economy, Competitiveness and Marine may issue a joint decision setting limits on the transfer of ThPA shares for each investor for any percentage of the capital other than the 51% which belongs to the Greek State.

[53] *Ibid*. Article 11 of Law 3631/2008.

III. CORPORATE GOVERNANCE IN GREEK SOEs: THE ENHANCED THE ROLE OF THE BOARD OF DIRECTORS

The protection of the controlling stake of the Greek state within SOEs through the variety of the aforementioned special rights reflects the nature of most SOEs as enterprises of public interest or a state monopoly. In this context, effective minority protection mechanisms are vital in order to counterbalance the dominant role of the state and attract investment. [54] The study of the minority protection mechanisms in Greek SOEs reveals important rights of minority and employee representation on the BoD. Both categories of rights, therefore, shift focus on the board of directors as a vital corporate governance mechanism within concentrated ownership structures. For instance, the provision of board representation rights to minorities empowers minority shareholders and enables them to monitor the acts, decisions or omissions of the members of an otherwise state-controlled board. This practice strengthens the independence of the board, which is developed into the most important corporate governance mechanism for balancing the interests of minority and majority shareholders.

Moreover, in five out of the nine companies examined, there is representation of employees in the BoD. The role of employee representation in corporate governance has been a controversial one. According to one line of argument, employee representation has a negative impact on firm performance because employee representatives on the board can alter a firm's objective function away from maximizing shareholder value and towards maximizing payroll. [55] Codetermination is also considered to limit the managerial power of control over the assets of the company, which constitutes an intervention in the management of the company and may risk causing adverse

[54] It is reminded that an important finding deriving from the Greek case study is that, in addition to the generally applicable rights, minority shareholders within SOEs (3 out of 10 of the cases) have the right to directly elect their representatives on the BoD through a separate minority shareholders meeting, to which the majority shareholder, namely the state, cannot be present.

[55] Gorton G. and Schmid F., (2004), Capital, Labor, and the Firm: A Study of German Codetermination. Journal of the European Economic Association, 2:863. Gorton and Schmid (2004) analyze the effects of codetermination on the 250 largest German stock corporations. That research compares firms with one-third employee representation to firms with one-half representation and shows that the equity of firms with equal representation trades at a substantial relative discount on average.

efficiency effects.[56] Viewed from this perspective, employee representation constitutes another source of agency costs.

However, according to the proponents of employee representation, its benefits exceed its costs for a variety of reasons. For example, '*the representatives of employees facilitate the flow of important production-specific information to the superior levels of the management, therefore contributing to the efficiency of their decisions*'.[57] Similarly, employee representatives at the board level have the potential to protect the company from the short-termism of shareholders and managers.[58] Moreover, because of their knowledge of the business they are better positioned to monitor management efficiently[59], thus, limiting managerial misbehaviour and, in overall, minimising the

---

[56] Jensen M.C. and Meckling W.H., (1979), Rights and productions functions: an application to labor-managed firms and codetermination. *Journal of Business* 52(10):469. In this regard, Jensen and Meckling (1979) point out that *'If co-determination is beneficial to both stockholders and labor, why do we need laws which force firms to engage in it? Surely, they would do so voluntarily. The fact that stockholders must be forced by laws to accept co-determination is the best evidence we have that they are adversely affected by it.'*

[57] Fauver L. and Fuerst M.E., (2004), Does Good Corporate Governance Include Employee Representation? Evidence from German Corporate Boards. EFA 2004 Maastricht Meetings Paper No. 1171. Available at SSRN: http://ssrn.com/abstract=534422. They show that employee representatives on a firm's board, through their knowledge of operational detail, provide a channel for the flow of valuable information. This is particularly relevant for firms in industries that demand intense coordination or involve specially skilled and knowledgeable workers should benefit most from employee representation. For these industries the higher degree of information flow that board representation provides should be more valuable.

Freeman R.B. and Lazear E., (1995), An Economic Analysis of Works Councils in Joel Rogers and Wolfgang Streeck, eds., *Works Councils: Consultation, Representation, and Cooperation in Industrial Relations.* Chicago: University of Chicago Press, p.27–52. Freeman and Lazear (1995) also argue that codetermination provides a mechanism for the credible exchange of information between the board and the workers. The flow of credible information to the board enhances the efficiency of their decisions.

[58] This effect is particularly important in countries with deep and liquid capital markets, where corporations are more vulnerable to pressures exerted by short-term shareholders, who have the power to influence the stock price of the company. Recent reports document the negative effects of shareholders' short-termism on corporate valuations. See Andrew Haldane and Richard Davies, The short long, May 2011, Bank of England, available at http://www.bankofengland.co.uk/publications/news/2011/043.htm (last accessed 27.09.2011); Speech by Andrew Haldane, 11,05.2011 available at http://www.bankofengland.co.uk/publications/speeches/2011/speech495.pdf (last accessed 27.09.2011)

Commentators have suggested that capital markets are increasingly focused on the short-term and that this may be having a detrimental effect on their efficiency, and therefore on the return on investment. On the issue see also Consultation Paper Department for Business Innovation and Skills, October 2010, available at http://www.bis.gov.uk/assets/biscore/business-law/docs/l/10-1225-long-term-focus-corporate-britain (last accessed 27.09.2011); BIS, Summary of Responses, A long-term focus for corporate Britain, March 2011 available at http://www.bis.gov.uk/assets/biscore/business-law/docs/s/11-797-summary-responses-long-term-focus-corporate-britain.pdf (last accessed 27.09.2011).

[59] Fauver&Fuerst, (2004), supra note57, for example, argue that labour representation introduces a highly informed monitor to the board. They claim that the flow of information from the board to the employees also contributes to the better monitoring of the management, while the incentives of the large shareholders to choose one investment over the

agency costs to the benefit of minority shareholders and the various stakeholder constituencies of the company. Although employee representation appears to have the potential to be both a beneficial and a detrimental element of corporate governance, scholars argue that the prudent use of this mechanism is bound to increase value and efficiency.[60] In light of the important benefits involved, a string of recent studies advocates for the application of the model of codetermination as a means of limiting agency costs and conflicts of interests in the corporation. [61]

In the context of this study, employee representation is a functional equivalent to company law mechanisms of minority protection, which has the potential to mitigate the conflicts of interests between majority and minority shareholders. Under the assumption that employee representatives indirectly protect the interests of minority shareholders, while seeking to govern the firm in a manner that protects their own interests, the presence of employee representation arrangements in five out of nine Greek SOEs suggests that such arrangements act as an additional mechanism of minority protection. In this light, the independence of the BoD as an organ of the company enhanced through employee representation constitutes a manifestation of the

---

other is subject to the control by employees who are better positioned to assess the long-term impact of the investment on the company. Viewed from this perspective employee representation also mitigates the conflicts of interests arising at the level of the relationship of minority and majority shareholders.

[60] Fauver&Fuerst (2004) supra note57 claim that, if excessively used, employee representation may become a new source of agency costs as employees seek their own perks, exert their influence to maximize payroll rather than increase value. They show that prudent levels of employee representation on corporate boards can increase firm efficiency and market value. At first sight, their results appear to contrast with those of Gorton&Schmid (2004) supra note55 who show increasing labour representation (from one-third to one-half of total board seats) decreases firm value. However, Fauver&Fuerst (2004) supra note57 interpret their results to imply that there is an inverted U-shaped relationship between firm value and employee representation on corporate boards: for low levels of employee representation, firm value rises as representation increases. For sufficiently high levels of employee representation, firm value falls as representation increases. In this light, the negative impact of employee representation documented by the study of Gorton&Schmid (2004) supra note52 can be explained on the basis that 50% employee representation is excessive and suboptimal when compared to 1/3 employee representation.

[61] Muthusamy S.K., Bobinski P.A. and Jawahar D., (2009), Toward a Strategic Role for Employees in Corporate Governance. Available at SSRN: http://ssrn.com/abstract=1330140; Windbichler C., (2005), Cheers and Boos for Employee Involvement: Co-Determination as Corporate Governance Conundrum, European Business Organization Law Review (EBOR), Vol.6, 2005. Available at SSRN: http://ssrn.com/abstract=963287; Megginson W.L., Ginglinger E. and Waxin T., (2009), Employee Ownership, Board Representation, and Corporate Financial Policies, 21st Australasian Finance and Banking Conference 2008 Paper. Available at SSRN: http://ssrn.com/abstract=1259609; Jackson G., (2005), Employee Representation in the Board Compared: A Fuzzy Sets Analysis of Corporate Governance, Unionism, and Political Institutions. Industrielle Beziehungen, 12(3):1. Available at SSRN: http://ssrn.com/abstract=800525.

importance of complementarities in comparative corporate law.[62] In this respect, it is argued that *'(c)orporate law and employment law may therefore sometimes be substitutes; employees may benefit from better corporate law intended to protect minority shareholder, and vice versa.'* Aligning the interests of minority shareholders and employees, therefore, facilitates the cooperation of the two different constituencies in order to monitor the controller and limit the scope for the extraction of private benefits or the inefficiencies of state ownership.

The aforementioned propositions also explain the higher efficiency levels of German and Scandinavian legal systems in limiting private benefit extraction among civil law systems characterised by concentrated ownership models.[63] Provided that employee representation is particularly common in German and Scandinavian legal systems, it could be interpreted as one of the factors contributing to their effectiveness to tackle with private benefit extraction. Consequently, employee representation at the level of the board constitutes a complementary institution, which enhances corporate governance and could potentially form part of the institutions promoting economic growth within a concentrated ownership model. As scholars argue, *'laws aiming at the protection of stakeholders (such as codetermination or restrictive employment law) are therefore normatively more desirable in the presence of stronger shareholder influence, particularly under concentrated ownership'*.[64] In this context, the laws providing for employee representation further support the ‘legal effectiveness’ argument as they illustrate how legal rules and arrangements shape the impact of concentrated ownership structures on corporate governance.

[62] See Ecchia G., Gelter M. and Pasotti P., (2009), Corporate Governance, Corporate and Employment Law, and the Costs of Expropriation. Harvard Olin Fellows' Discussion Paper No. 29, 5/2009; ECGI - Law Working Paper No. 128/2009; Fordham Law Legal Studies Research Paper No. 1430623. Available at SSRN: http://ssrn.com/abstract=1430623.

[63] La Porta R., Lopez-de-Silanes F., Shleifer A., and Vishny R.W., (1998), Law and Finance. *Journal of Political Economy* 107:1113; La Porta R., Lopez-de-Silanes F., Shleifer A., and Vishny R.W., (2000b), Investor Protection and Corporate Governance, *Journal of Financial Economics* 58:3; La Porta R., Lopez-de-Silanes F., Shleifer A., and Vishny R.W., (2002), Investor Protection and Corporate Valuation, *Journal of Finance* 57:1147.

[64] Gelter M., (2008), The Dark Side of Shareholder Influence: Toward a Hold-up Theory of Stakeholders in Comparative Corporate Governance. ECGI - Law Working Paper No. 096/2008; CLEA 2008 Meetings Paper; Harvard Olin Fellows' Discussion Paper No. 17/2008. Available at SSRN: http://ssrn.com/abstract=1106008, arguing that employment protection in Continental Europe counterbalances the increased influence of shareholders, therefore creating a local optimum in terms of the efficiency of concentrated ownership systems.

IV. CONCLUDING REMARKS

The foregoing analysis highlights the important mechanisms for the protection of minority shareholders in Greek SOEs, which have not been incorporated in the corporate governance indices developed so far. Although the extensive review of minority and employee representation as a corporate governance mechanism is beyond the scope of this thesis, the foregoing analysis illustrates its potential to act as a factor regulating private benefits extraction in closely-held companies due to the enhanced role of the board. Board independence from the controlling shareholder enables minority and employee representatives to exercise an important role monitoring the actions of the board. The better information of employee representatives also implies that they are better positioned to challenge management decisions and they have the potential to add value to the corporate decision-making process. Although the collusion of employee representatives with the controlling shareholder remains probable, minority and employee representation at the board level at least increases the probability that they will collaborate to contest the decisions made by the controlling shareholders.

When viewed from this perspective, strengthening the board through codetermination and minority representation clearly complements the existing techniques for minority protection and constitutes a well-adapted response to the special characteristics of state ownership. In this respect, the findings of the Greek case study manifest and reinforce the argument that legal effectiveness rather than legal origin is the determinant of good corporate governance. Employee representation, in particular, also illustrates the importance of functional equivalents to company law in the context of the comparative corporate governance analysis. Although the extensive use and effectiveness of the aforementioned legal mechanisms could substantially improve the quality of investor protection within SOEs, the combined effect of minority and employee board representation has only limitedly been considered by LLSV[65] and the subsequent studies which measure the quality of investor protection in countries of concentrated ownership.

[65] LaPorta et al. (1998,2000b) supra note63

When assessing the effectiveness of the aforementioned corporate governance mechanisms, the analysis takes into account the definition of legal effectiveness used in this thesis, according to which legal effectiveness refers to the extent to which an issue can be dealt with by the law and if so, how well it is dealt with in terms of consistency and predictability, on the one side, and the delivery of efficient and just outcomes, on the other. In this Chapter, legal effectiveness is assessed according to the type of concentrated ownership involved. In the case of state ownership, for example, legal effectiveness refers to the capacity of the rules and complementary institutions to enhance the incentives of the state to monitor effectively the managers, while mitigating the risk of corruption and the risk that the interests of the SOEs are secondary and subservient to political considerations. This part, in fact, demonstrates that the legal framework which applies to Greek SOEs reflects the best practices and high standards of corporate governance and employs a variety of effective legal mechanisms to limit minority expropriation. The analysis corroborates the main proposition of this thesis that effective regulation is determined by and must be adapted to the type of concentrated ownership.

B. MINORITY PROTECTION IN GREEK FAMILY-OWNED COMPANIES

I. INTRODUCTION

This part adds to the discussion on minority protection within concentrated ownership systems by as it is focused on the minority protection mechanisms which apply in the context of family-owned corporations in Greece. The analysis is built around specific situations of minority expropriation and shows how the rules and principles available within the Greek legal framework, which comprises both Law 2190/1920 and the Civil Code, protect minority shareholders in the selected contexts. The list of the situations[66] presented is certainly not exhaustive. However, they constitute a representative sample of the most typical cases of expropriation arising within closely-held companies and outline how a variety of available mechanisms within the Greek legal system protect investors in the context of family-owned corporations.

The substantive analysis of Greek company law points out that a variety of rules and principles of the Greek Civil Code provide minority shareholders with alternative legal bases against minority oppression beyond Law 2190/1920, which is the most obvious source. To this effect, Articles 281, 914 and 919 of the Greek Civil Code, which prohibit the abusive exercise of one's rights and establish the right to sue for damages in tort respectively, are the most important. More specifically, minority shareholders can resort to the principle set out in Article 281 GCC as the legal basis in order to invalidate or repeal the actions and decisions of the board of directors or the resolutions passed at a shareholders meeting by the majority to the extent that such resolutions are abusive. Article 281 GCC even applies to resolutions passed in compliance with the provisions of the articles of association in terms of the process and the formalities involved, but which are detrimental to the minority shareholders and cannot be justified by the 'company's interest'.

[66] Such cases include the variation of special rights of minority shareholders by the general meeting, the increase in the capital of the company in order to dilute the stakes of minority shareholders, the excessive remuneration of majority shareholders sitting on the board and the extraction of direct private benefits such as the expropriation of an important corporate asset.

Although the provisions fall within the scope of the LLSV[67] variables, most notably the minority oppression variable, their important role is disregarded. As a result, in their famous anti-director rights index, LLSV mistakenly rate Greece with 0 in the category of minority oppression remedies. This finding reinforces the criticisms of the reliability of the LLSV anti-director index.

The analysis also supports the criticisms of the LLSV study regarding the relevance of the rights forming their variables. Provided that the concentrated ownership structures which are prevalent within civil law systems necessitate enhanced investor protection to apply to the interactions between minority and majority shareholders, the most important variable included in the LLSV index is the one referring to minority oppression remedies. With the exception of the oppression remedies variable, the rights which compile the anti-director index of LLSV are of little relevance in the context of a situation where members of the board are controlled by or in fact are themselves also the controlling shareholder. For instance, the rights used by LLSV do not address some of the most common issues regarding minority expropriation, such as a) the role of the law where there is an abusive increase of capital which dilutes the stake of minorities in the company, b) the role of company law in the case of the variation of special minority rights through an amendment of the articles of association by the majority, and c) the availability of a personal claim for minority shareholders to be compensated for the loss they suffered as a result of minority expropriation.

In this respect, the analysis of the Greek law illustrates that Civil Code rules and principles have the effect of protecting minority shareholders, thus acting as functional equivalents to company law. In terms of the legal effectiveness of the mechanisms concerned, it is shown that the principle-based approach embedded in civil law systems such as the Greek one is particularly well-suited to address the conflicts of interest inherent within concentrated ownership structures because it allows for several, probably atypical manifestations of minority expropriation to be captured by the case law provided that the rules and principles of the law are interpreted accordingly. Aligned with the 'legal effectiveness' argument, this is a concrete example of the effective responses to the corporate governance problems of concentrated ownership to be found within a civil law system.

[67] On the main hypotheses of LaPorta et al (LLSV) and criticisms of LLSV see Chapter I.

II. THE GENERAL RULES AND PRINCIPLES OF THE GREEK CIVIL CODE AS FUNCTIONAL EQUIVALENTS OF COMPANY LAW

1. The approach and methodology of the analysis

The restated 'law matters' hypothesis is premised on the actual effectiveness rather that the 'legal origin' of the legal system under assessment. Of course, measuring such effectiveness is not a straightforward exercise. In light of the scepticism expressed with regard to the suitability of the index-based approach to comparative corporate law and governance, this thesis employs a different methodology of assessment.[68] More specifically, the analysis involves the identification, interpretation and application of traditional black letter rules and principles which form part of the minority protection framework. It is based on two pillars. Firstly, it identifies the relevant rules and seeks to highlight important aspects of the legal framework that the LLSV indexing methodology misses. Secondly, instead of only outlining the rules, the analysis is structured around certain typical situations of minority expropriation and assesses how effectively the rules and principles available within the Greek law both, Law 2190/1920 and the Civil Code, protect minority shareholders in the selected contexts.

Examining how the Greek legal system deals with a set of situations is the preferred approach because it clearly illustrates how minority protection mechanisms operate and establishes a reliable basis for their true comparability. Additionally, it has the important benefit of allowing for functional equivalents to be identified. As a result, the focus is placed on whether expropriation is effectively limited, rather than the means through which such limitations take effect. The types of expropriation were selected on the basis of their probability to actually occur. Given that family ownership is prevalent in Greece, there is higher probability that a situation or problem involving family owners might occur. Furthermore, within a jurisdiction characterised by concentrated ownership structures such as Greece, the main corporate governance problems will involve the

[68] For criticisms against the reliability of indices see Chapter I.

conflicts of interests between minority and majority shareholders. The emphasis is, therefore, placed on the identification of the rules, principles and institutions that have been developed by the legal system as a response to the conflicts between minority and majority shareholder and the effectiveness of the legal framework in meeting its objective. Taking into account the correlation between ownership structures and the corporate governance problems likely to arise, leads to a more robust analysis.

2. Minority shareholders protection in Greece in light of Law 2190/1920

Within Greek Company Law and in particular Law 2190/1920 which applies to companies incorporated under the *Societe Anonyme* form, there are no general, overarching legal principles which address cases of minority expropriation. This fact is viewed by scholars as being a substantial omission of Law 2190/1920 because it provides minority shareholders with limited means of protection against the majority besides the minority rights specifically provided by the provisions of the Law.[69] This omission becomes particularly important in light of the narrow interpretation of minority rights due to their special nature. This special nature derives from the fact that they are the exception to the majority principle[70] underlying Law 2190/1920, according to which corporate actions and decisions taken by the majority must be respected and any rights of minority shareholders are strictly provided by the Law only.[71] The lack of a general principle providing for the protection of minorities has even been interpreted as amounting to a breach of the Greek

[69] For an extensive criticism on the absence of a general principle of investor protection in Law 2190/1920 see Spyridonos A., (2001), The rights of minority shareholders in Societes Anonymes (Τα δικαιώματα της μειοψηφίας στο δικαιο της ΑΕ), (2001), Nomiki Vivliothiki Publishers, p.563

[70] The majority principle is not absolute and there are several exceptions to it. For example, for certain resolutions and corporate decisions, the Law imposes supermajority requirements (See Law 2190/1920 Articles 3 par.5, 22α par.4, 23α par.2, 24 par.226.) Alternatively, the element of corporate interest is taken into account and informs the application of Article 281 of the Greek Civil Code. The effect of the latter alternative is that majority shareholders cannot pass resolutions which harm the interests of the company and its minority shareholders.

[71] On the rights of minority shareholders see for example Sinanioti-Mauroudi Ar., (2010), Emporikes Etairies (Εμπορικές Εταιρείες), Athens, Antonis Sakkoulas Publishers, p.407-420; The majority principle in the Societe Anonyme, Myth and Reality (Η αρχή της πλειοψηφίας στην ανώνυμη εταιρία, Μύθος και πραγματικότητα). 4th Panhellenic Conference on Commercial Law, Nayplion, November 1994, Vol.1, Publications of the Macedonian Society of Commercial Law, Antonis Sakkoulas Publishers; Perakis E., (2002), The Law of the Societe Anonyme-Auditors and Minority Rights (Το δίκαιο της Ανώνυμης Εταιρίας – Ελεγκτές και δικαιώματα μειοψηφίας), 2nd Edition, Nomiki Vivliothiki.

Constitution, because it effectively deprives minority shareholders of access to the judicial system when seeking to protect their legal rights. This constitutes an important deficiency in the protection offered by the judiciary and legal system and is therefore considered to be unconstitutional.[72]

As an example to illustrate the latter point, scholars refer to the lack of an available remedy for the minority shareholders who suffer loss as a result of the resolutions, actions or omissions of the Board of Directors (hereafter BoD), the acts of which are often determined by the controlling shareholder.[73] In this case, only the company could potentially suffer a direct loss, in which case the general meeting of the shareholders has the right to initiate a claim against the BoD on behalf of the company by a simple majority vote according to Article 22b of Law 2190/1920.[74] Given the presence of a controlling shareholder, the effectiveness of this provision as a minority protection mechanism is evidently very limited. Alternatively, the shareholders representing 1/3 of the capital of the company may request from the BoD to bring the claim against its members.[75] Upon such a request, the BoD is under the obligation to bring the claim within six months.[76] The shareholders representing 1/3 of the capital also have the right to request the court to appoint representatives who will bring the claim against the members of the BoD who have caused damage to the company.[77] If none of the aforementioned rights is exercised within the period of six months provided, then any shareholder, regardless of their stake in the company, has the right to request the court to appoint representatives who will then bring the claim against the members of the BoD who have caused damage to the company.[78]

The aforementioned description indicates the procedural complexities attached to the exercise of the right of the minority shareholders to bring a claim against the BoD for mismanagement. The

[72] Spyridonos (2001) supra note69, p.565
[73] Spyridonos (2001) supra note69, p.563
[74] Rokas N., (1996), Commercial Companies (Εμπορικές Εταιρίες), Athens, Antonis Sakkoulas Publishers, p.224; Papadimitriou G., (1980), The liability of the members of the Board of the Societe Anonyme to the company and third parties (Η ευθύνη των μελών του διοικητικού συμβουλίου ΑΕ έναντι αυτής και τρίτων), Nomiko Vima, 1980, 962.
[75] See Article 22b of Law 2190/1920 and Rokas (1996) supra note74, p.225-226
[76] See par.2 of Article 22b of Law 2190/1920.
[77] See par.3 of Article 22b of Law 2190/1920.
[78] See Rokas (1996) supra note74, page 226. This interpretation of the applicable provisions is the equivalent to the derivative claim established under Section 260 of CA2006 in the UK.

position of Law 2190/1920, therefore, is that the minority shareholders have no direct personal claim against either the company or the BoD, despite the fact that they may have suffered a substantial loss. This loss may be caused by the reduction in the price of the shares in the company, the reduction in the amount of dividend to be distributed or simply because the minority shareholder was forced to exit the company by selling their shares to the majority at a low price. Although such situations constitute the typical manifestation of minority oppression within closely-held companies, most of which in practice are incorporated under the form of the *Societe Anonyme*, Law 2190/1920 fails to provide minority shareholders with effective protective mechanisms.

Despite the deficiencies of Law 2190/1920, minority shareholders in Greece are protected by an elaborate system of provisions, setting out general legal principles and rules, to be found not only within Law 2190/1920 but also within the Greek Civil Code. These provisions establish the overarching legal principles which prohibit the abusive exercise of one's rights.[79] With regard to minority protection, the provisions of the Greek Civil Code are often used to resolve the conflicts between minority and majority shareholders at the level of the corporation. By filling in the gap deriving from the lack of an overarching principle for the protection of minority shareholders within Law 2190/1920, the rules and principles of the Greek Civil Code play an important role as they are an integral part of the minority protection framework in Greece.

3. General principles of Civil Law and their impact on Company Law: The relationship between Article 281 of the Greek Civil Code and Law 2190/1920

Article 281 of the Greek Civil Code sets out one of the main general principles of the Greek Civil Code, which provides for the general prohibition of the abusive exercise of one's rights and also covers cases of minority expropriation by the majority. The role of Article 281 in company law is

[79] Article 281 of the Greek Civil Code prohibits the abusive exercise of one's rights. Articles 914 and 919 of the Greek Civil Code provide for the right to compensation for damages in tort.

set out in Article 35a' of Law 2190/1920 as replaced by article 42 of Law 3604/2007.[80] According to this provision, a resolution of the general meeting of the shareholders is void under article 281 of the Greek Civil Code, if adopted in abuse of the rights of the majority. Any shareholder representing the 2/100 of the capital of the company can bring a claim to court requesting the recognition that such resolution is void, provided that they did not participate in the meeting or that they objected to the resolution. The claim can be made against the company within three months after the resolution was adopted. Greek case law provides ample examples where the breach of Article 281 is set out as a special reason for the invalidation of a corporate resolution. [81] Resolutions are subject to the control of Article 281 GCC even when the procedure for adopting the resolutions of the general meeting of the SA complies with the majority principle and the procedure set out by the provisions of the articles of association of the company.

With regard to what constitutes a breach of Article 281, Greek case law provides useful insights. The starting point is the general statement that a resolution will be void as abusive when its adoption is 'beyond the limits set by good faith, good morals and the social and economic aim for

---

[80] According to the provisions of Article 35a' par. 1-2 of Law 2190/ 1920 on the *Societe Anonyme* the resolutions of the general meeting of the SA are void not only under the conditions of Article 35a and b but also in any other case which involves that a resolution is contrary to the Articles of Association, to the mandatory provisions of Law 2190/1920 or to Articles of the Civil Code such as Articles 174 and 180 of the Greek Civil Code.
See *Case 94/99* Supreme Court of Greece (Άρειος Πάγος), published in Commercial Law Review, 1999, 324; *Case 459/1989* Supreme Court of Greece (Άρειος Πάγος), published in Commercial Law Review, 1990, 428; *Case 546/85* Supreme Court of Greece (Άρειος Πάγος), published in Commercial Law Review, 1987, 66; *Case 155/1985* Supreme Court of Greece (Άρειος Πάγος), published in Elliniki Dikaiosini, 26:458; *Case 2401/1998* Thessaloniki Court of Appeal (Εφετείο Θεσσαλονίκης), published in Elliniki Dikaiosini, 40:420; *Case 3566/97* Thessaloniki Court of Appeal (Εφετείο Θεσσαλονίκης), published in Law of Enterprises and Companies, 1998, 471; *Case 130/1997* Patra Court of Appeal (Εφετείο Πατρών), published in Law of Enterprises and Companies, 1997, 712; *Case 14292/1988* Athens Court of Appeal (Εφετείο Αθηνών), published in Commercial Law Review, 1989, 238; Case *1136/1985* Athens Court of Appeal (Εφετείο Αθηνών), published in Elliniki Dikaiosini 26:271.
A claim against the aforementioned resolutions must be brought within 2 years from the filing of the official copy of the resolution to the Ministry of Commerce. After the two years period, the invalidity of the void resolution is remedied. (See Article 35a' par. 2 of Law 2190/1920 and *Case 94/99* Supreme Court of Greece (Άρειος Πάγος), published in Commercial Law Review, 1999, 324; *Case 2401/1998* Thessaloniki Court of Appeal (Εφετείο Θεσσαλονίκης), published in Elliniki Dikaiosini, 40:420.
Levantis E., Societes Anonymes, 7th Ed., p.287; Kintis S. in The Law of the Societe Anonyme, Collection of law commentary overseen by E. Perakis, (2000), Vol.4, Article 35 a', p.257-261; Rokas (1996) supra note74, p.193-195.
[81] Supreme Court of Greece (Άρειος Πάγος), *Case 982/80*, published in Nomiko Vima 29:321; Thessaloniki Court of Appeal (Εφετείο Θεσσαλονίκης) *Case 249/1991*, published in Incorporate and Limited Liability Company Bulletin, 1992, p.446.
Georgiadis A. and Stathopoulos M., Commentary on Civil Code, Article 281, No.12; V. Kotsovilis in The Law of the Societe Anonyme, Collection of law commentary overseen by E. Perakis, (1992), Article 35 a', No33-35, p.856-858; Kotsiris L., Legal opinion, published in Commercial Law Review, 1997, 849.

which the rights have been conferred' in the first place.[82] Resolutions are found to be abusive, if, for example, they do not align with the interests of the company and/or are prejudicial against the minority shareholders or disproportionately harm the interests of minority shareholders compared to the alleged benefit accruing to the company. On the contrary, there is no abuse if the resolution benefits the company, even if this also implies a benefit for the majority shareholders, and provided that the detriment for the minorities is not disproportionate. The objective and intention of the majority shareholders and the benefit for the company are, therefore, the determining factors and the legally important elements to be considered.[83]

The standard applied in the context of Article 281 amounts to more than a rationality review. More specifically, the content of the actual decision or resolution is reviewed for the purposes of identifying its implications for minority shareholders as determined by the factual background of the particular case. The court will, therefore, examine the totality of circumstances and facts associated with the resolution, the majority's objective and intention and the means used in relation to the interests of the company and the personal interests of individual shareholders.[84] Viewed from this perspective, Greek courts have applied Article 281 GCC to review not only the rationality of the resolution but also its intrinsic value and impact on minority shareholders and the company. This fact justifies the claim that Article 281 GCC provides for a substantive and effective tool against minority oppression. For the purposes of illustrating the function of Article 281 GCC in practice, two cases which fall into the broader category of minority oppression have been included in the analysis to follow. One involves the increase of capital which results in diluting the stake of minority shareholders and the other involves an amendment of the articles of association so as to remove distinctive rights held by minority shareholders.

[82] Leading cases which support this interpretation include *Case 11/1972* Multi-member First Instance Court of Corinth, *Case 139/78* Crete Court of Appeal, *Case 6299/79* Multi-member First Instance Court of Athens.
Also see Rokas N., (1971), The limits of the powers of the majority shareholders in the Law of *Societes Anonymes* (Τα όρια της εξουσίας της πλειοψηφίας εις το δίκαιον των Α.Ε.), Nomiko Vima, 1971.

[83] *Case 155/1985* Supreme Court of Greece (Άρειος Πάγος), published in Elliniki Dikaiosini, 1985, p.458; *Case 832/1976* Supreme Court of Greece (Άρειος Πάγος) published in Nomiko Vima 1977, 190; *Case 14292/1988* Athens Court of Appeal (Εφετείο Αθηνών), published in Commercial Law Review, 1989, 238.

[84] I.Passias, The Law of the *Societe Anonyme*, 1969, Vol II, p.355-360; Rokas, 1971, supra note82, p.59, p.72; L.Georgakopoulos, The Law of *Societes Anonymes*, Vol.II, par.43, p.341; Deloukas N. , Legal opinion published in Nomiko Vima, 29:468-472.

3.1 The increase of capital as an abuse under Article 281 of the Greek Civil Code

Greek case law provides that the resolution of the general meeting providing for a capital increase is abusive, if it ultimately aims to reinforce the position of the majority in the company through the dilution of the minority stake.[85] Article 281 of GCC requires an analysis of the objective underlying the resolution and of the actual motives of the majority shareholders. This indicates that the analysis of the resolution is not limited to a rationality review. More specifically, it is not sufficient for the controlling shareholders to provide some plausible justification that the resolution brings some benefit for the company. The justification to be provided by the majority is commensurate with the principle of proportionality which is also applicable. Therefore, the detriment inflicted upon the minority shareholders must be proportionate to the alleged benefit for the company and the loss inflicted upon minority shareholders deriving from the resolution must only be a measure of last resort.

In this regard, in *Case 521/2001* (Single-member First Instance Court of Karditsa) it was held that a resolution which involved the increase in the capital voted by the general meeting of the shareholders, while the transfer of shares to a new shareholder was pending, was abusive. This practice resulted in the dilution of the stake of the new shareholder who could not have participated in the general meeting because the formalities associated with the sale of the shares had not been completed. According to the judgment, the decision of the general meeting was abusive because it was contradicting the content and aim of the voting rights held by the shareholders and because it was beyond the limits set by good faith, given that it aimed exclusively at the dilution of the stake of the new shareholder in the company.[86] Similarly, it was held to be

[85] See, for example, *Case 6907/2009* First Instance Multi-Member Court of Athens (Πολυμελές Πρωτοδικείο Αθηνών) stating that the resolution providing for the increase of capital can be abusive if it has been adopted with the exclusive objective of diluting the stake of minority shareholders in the company and cannot be justified as being in the interests of the company.
The fundamental approach of case law to this issue is also expressed in *Case 7120/2004* Athens Court of Appeal (Εφετείο Αθηνών), published in Law of Enterprises and Companies, 2005, 300; Multi-member First Instance Court of Athens (Πολυμελές Πρωτοδικείο Αθηνών) *Case 5182/2007* published in Law of Enterprises and Companies, 2008, 323.
Also see Rokas, (1996) supra note74, p.295 where further references are provided. Also, further support is provided that the resolution which unjustifiably varies the special rights of shareholders will also be void as abusive according to Article 281 GCC.

[86] See *Case 521/2001* Single-Member First Instance Court of Karditsa (Μονομελές Πρωτοδικείο Καρδίτσας). The following extract has been translated from the original in Greek for the purpose of this thesis.

lawful the decision of the general shareholders meeting which resulted in the benefit of the company deriving from an effected merger, although the claimant argued that the motives for the merger have been of a personal nature, namely the revenge against her. More specifically, in *Case 6907/2009* (Multi-member First Instance Court of Athens), the court rejected the claim that the decision approving the merger was unlawful on the grounds that Article 281 has been breached, because the claimant showed no damage caused or loss suffered by her in her capacity as a shareholder of the company.[87] The aforementioned reasoning, therefore, indicates that the

---

The facts of the case involved the injunction brought by one of the shareholders of the company against the resolution of the shareholders meeting for an increase of capital. The content of the injunction was to hinder the exercise of the voting rights attached to the shares which have been issued as a result of the resolution. In the context of the injunction, the claimant argued that the resolution is void because it was passed in breach of Article 281GCC with the exclusive aim to dilute the stake of the claimant in the company.

In 22.12.1999 the defendants sold to the claimant 150.000 shares of the company. The transaction was concluded and the legal ownership was transferred to the claimant on 16.11.2000. Shortly before the transfer of the shares to the claimant, on 10.11.2000, the defendants called a shareholders meeting, in the context of which an increase in the capital of the company has been decided.

In light of the aforementioned factual background, the Court held that ' *...the aforementioned resolution of the general meeting providing for the increase in the capital of the company was not passed in order to cover the losses incurred by the company during its activities, as stated in the minutes of the general meeting. Instead the resolution was passed with a view to dilute the stake of the claimant in the company shortly before the transfer of shares was completed and, consequently, it is held by reasonable probability that it infringed Article 281GCC. The Court is led to this judgment 1) because it was not found that the company was unprofitable at the time and 2) the board of directors hurriedly called the shareholders meeting, although they were aware of the judicial conflict among the shareholders regarding the completion of the transfer of the shares to the claimant, which (transfer) was scheduled be completed in the following days...*'

[87] For an interpretation of Article 281GCC, see *Case 6907/2009* Multi-member First Instance Court of Athens (Πολυμελές Πρωτοδικείο Αθήνας). The following extracts have been translated from the original in Greek for the purpose of this thesis.

The pre-requisites for a resolution to be void in breach of Article 281GCC are that '*...the resolution must not be dictated by the interests of the company but it must be passed with the exclusive aim to serve the personal interests of the majority shareholders or to the detriment of the minority shareholders.*

...

In order for the resolution of the shareholders meeting regarding the increase of the capital of the Societe Anonyme to infringe the general prohibition to abuse one's rights according to Article 281 GCC, it is, therefore, required to serve the exclusive aim of the majority shareholders to reinforce their position in the company and to dilute the position of minority shareholders respectively.'

The facts of the case involved a claim brought by a minority shareholder holding 3,33% of company A (the majority shareholder was the ex-husband of the claimant and held 96,67% of the company) to invalidate the resolution of the shareholders meeting approving the merger of company A with company B, which was owned by the majority shareholder and ex-husband of the claimant. Company A did not carry out any commercial activity in the years before the merger and the asset of the company involved the house were the couple lived. After the divorce the claimant continued to live in the house owned by the company A. The claimant argued that the merger was decided by the majority shareholder in abuse of his rights, with the exclusive aim to evict the claimant from the house and for revenge against her. The claimant also argued that there was no commercial motive for the merger, provided that company A was inactive for many years while company B was financially sound and profitable.

In light of the aforementioned factual background, it was held that the resolution approving the merger was not abusive because '*...according to the facts of the case, company A, which is financially weak, benefits from the merger in light of*

claimant will need to prove the actual loss or the diminution in the value to accrue to them as shareholders caused by the abusive resolution. Such loss may be in the form of the reduction of the value of his shares or the interference with his rights as a shareholder. The failure to refer to and substantiate such a loss as part of the claim negates the finding of abuse according to Article 281 GCC.

3.2 The variation of special minority rights as an abuse under Article 281 of the Greek Civil Code

Law 2190/1920 allows for the provision of special rights to shareholders. For example, the articles of association of the company may provide for the special right of a shareholder to appoint a certain number of members on the Board of Directors[88] or for special pre-emption rights. Such special rights can be repealed by a resolution of the general meeting but this is subject to strict conditions.[89] More specifically, the resolution of the general meeting of the company which repeals the special right conferred to a minority shareholder constitutes a breach of article 281, if it is not dictated by the interests of the company and if it is not the least detrimental option for the

---

the financial strength of the merging company (B), because of the consolidation of their assets into the pool of assets of the new legal entity. Furthermore, it must be noted that the claimant is not threatened to incur any loss in her capacity as a shareholder of the company concerned, namely in the sense that the value of her shares in the company is reduced or her rights as a shareholder are negatively affected, provided that in her capacity as shareholder of the company the claimant derives actual benefit from the merger for the aforementioned reasons. Instead, the claimant seeks to establish the abusiveness of the resolution on her personal relationship with the majority shareholder, which does not constitute an important element for determining her benefit or loss as a shareholder. '

[88] This right is subject to the limitations set out by Article 18 par. 3 of Law 2190/1920 which provides that the articles of association may provide that a shareholder may appoint members of the Board of Directors but this may not amount to them being able to appoint more than 1/3 of the total number. This right may be referring to a specific shareholder or a specific holder of a type of shares specified by the Articles of Association. Unless otherwise stated in the articles of association, the special right cannot be varied without the consent of the shareholder to be affected. Thus, the variation or limitation of the right cannot be valid without the consent of the shareholder to the benefit of whom the right is conferred.

See *Case 459/89* Supreme Court of Greece (Άρειος Πάγος), published in Commercial Law Review 1990, 428; *Case 14292/1988* Athens Court of Appeal (Εφετείο Αθηνών), published in Commercial Law Review, 1989, 238; Passias I., The law of the Societe Anonyme II, p.515; Rokas (1996) supra note74, p.13; Rokas (1971) supra note82, p.58-59; Mouzoulas S. in Company law commentary collection overseen by E. Perakis , (1992), Vol.A, p.694-696.

[89] *Case 9181/2002* First Instance, Multi-Member Court of Thessaloniki (Πολυμελές Πρωτοδικείο Θεσσαλονίκης) and *Case 7119/2004* Athens Court of Appeal (Εφετείο Αθηνών), in their interpretation of Article 281 of the Greek Civil Code, held that the resolution of the general meeting of the company which varies the special right conferred to a minority shareholder constitutes a breach of Article 281 GCC if it is not dictated by the interests of the company and if it is not the least detrimental option for the shareholders, if it is beyond the extent necessitated by the facts and if it is in breach of the principle of proportionality.

The particular element of *Case 7119/2004* Athens Court of Appeal (Εφετείο Αθηνών) is that it establishes as abusive the variation of Special Minority Rights conferred to the shareholder through the shareholders' agreement.

shareholders, if it is beyond the extent necessitated by the facts and if it is not aligned with the principle of proportionality.[90] The detriment to the shareholder must, therefore, be such that when balanced with the benefit to the company, it is proportionate.

In order for the resolution to be invalidated it is important for the minority shareholder to prove that the repeal of the special right is not only detrimental to their interests but to the interests of the company as well. In this regard, the claim must contain and prove all the material facts, which enable the court to balance the interests of the parties involved. It is therefore a legally important element of the claim to refer to the way in which the variation of the special right constitutes a detriment to the interests of the company, what specific interests are harmed and what the objective aimed at by the majority shareholders is. All these elements are necessary in order to facilitate the judgment of whether this objective is irrelevant to the interests of the company, and whether the resolution constitutes an unjustified harm to the personal interests of the minority shareholder.[91] The absence of specific reference to the factual background and the specific context indicating the abusive nature of the resolution will cause the claim to fail.

In addition to the variation of special rights of shareholders, it has been held to be abusive and void, the resolution with which the general meeting appointed a new BoD without any particular reason but only in order to remove or limit the authority of a shareholder who was also a member of the BoD and whose right to be a member of the BoD derived from a shareholders agreement.[92] In this case, the two resolutions of the majority shareholders, one involving the election of the new members of the BoD and the other involving the limitation of the authority of the shareholder-member of the BoD, have been held to be closely interrelated. The objective of the first resolution was held to be the facilitation of the second. This mechanism effectively resulted in a breach of the

[90] An example of special right is the pre-emption rights of Article 13 of Law 2190/1920 and the right to appoint the members of the Board of Directors within the frames of Article 18 of Law 2190/1920. (No more than a third of the members can be appointed through the exercise of such a right).
Regarding the validity of the resolution providing for the variation of these rights see Nisiraios E. in The Law of the Societe Anonyme, in Collection of law commentary overseen by E. Perakis, (1992), Articles 13-13a', No. 251-252, p.603-604; Telli N., (1991), Pre-requisites for the variation of old shareholders' pre-emption rights (Προϋποθέσεις για τη κατάργηση του δικαιώματος προτίμησης των παλαιών μετόχων), Commercial Law Review, 1991, 209.

[91] The absence of specific reference to the facts which indicate the abusive nature of the resolution will lead to the rejection of the claim. See *Case 1298/2006* Supreme Court of Greece (Άρειος Πάγος).

[92] *Case 7119/2004* Athens Court of Appeal (Εφετείο Αθηνών).

shareholders agreement, which provided for the distribution of management powers among the shareholders, and both resolutions were, therefore, found to be abusive.

4. The function of Articles 914 and 919 of the Greek Civil Code in limiting private benefits of control: Direct personal claims in light of Case 1298/2006

In *Case 1298/2006 (*Supreme Court of Greece*)*[93], the minority shareholder was able to bring a direct claim against members of the BoD because of the loss suffered. The facts of the case involved a significant loss caused to one of the minority shareholders of company X, when the majority shareholders, who were also the members of the BoD of company X (the claimant owned almost 16%, while the majority shareholders jointly held almost 43% of company X), transferred an important asset of the company, namely its 40% stake in company Y, to company Z which was established only for this purpose and which the controlling shareholders of company X owned 100%. The transfer took place before the listing of the company Y, so that the minority shareholder would not benefit from the increase in the value of the company, deriving from its listing and accruing to him due to his participation in the holding company. The sale of the 40% stake in company Y, which was about to be listed, was at a significant discount compared to the market value of the company.

Before looking into the specific legal issue in the aforementioned case, some elements of Greek Company Law need to be presented as the legal framework required to understand the judgment.[94] More specifically, under Greek Law, an important characteristic of incorporation is the

[93] Judgment by ' Άρειος Πάγος ', the Supreme Court of Greece, whish is the highest appeal court in almost all cases and is the equivalent to the Supreme Court in England and Wales, which replaced the House of Lords following the Constitutional Reform Act 2005.

[94] Under Greek Law 2190/1920 the company has a separate legal personality which is distinct from that of its shareholders. The company has rights and obligations in its capacity as a separate legal person. The assets of the company are ring-fenced against the rights of its shareholders, therefore providing to the shareholders and their creditors no ownership rights on the assets of the company. Instead, shareholders only have a specified set of rights provided to them by the law as a manifestation of their legal relationship with the company. Among these rights is their right to theoretically 'co-own the assets of the company', which is floating over all the assets of the company as a whole. See *Case 1298/2006* Supreme Court of Greece (Άρειος Πάγος).

Their shares in the company, as securities, also constitute an asset. Of course, the actual value of their shares does not correspond to the nominal value of the shares, which only reflects the registered capital of the company. The true,

separation of ownership from the management of the company through the use of specialized management in a board structure. Law 2190/1920 includes several provisions aiming to protect the company against the risks and conflicts of interests between the company and its directors. For example, in the case of managerial misconduct, the members of the BoD of a *Societe Anonyme* are liable towards the company for the loss caused to the company by their gross negligence.[95] The absence of a legal basis enabling the minority shareholders to personally claim compensation for the loss suffered has been criticized even as amounting to lack of judicial protection.[96] Given the narrow scope of the applicable provisions of Law 2190/1920, this lack could be interpreted as constituting a breach of Article 20 par. 1 of the Greek Constitution.[97]

However, an alternative legal basis for the liability of the members of the BoD for mismanagement could be established upon Articles 914 and 919 of the Greek Civil Code. More specifically, an action which results in a loss for the company may also give rise to the liability of the members of the BoD in tort. This second legal basis is of general scope and only applies when the special provisions included in Law 2190/1920 are inapplicable, in line with the general principle that the specific rule precedes the general rule. A precondition for the application of the general provisions of Article 914 and 919 GCC is that the loss suffered by the claimant must not be too remote.[98] Therefore, it is only the company that can bring a claim against the members of the BoD. The shareholders of the

commercial value of their shares is determined by the evaluation of the company as a going concern, after taking into account its assets and liabilities. As a result, the value which the share incorporates constitutes the reflection of the value of the corporation and the shares in a company only establish a form of indirect ownership over the assets of the company. See *Case 14/1999* Supreme Court of Greece (Άρειος Πάγος) in Plenary Session (Απόφαση Ολομέλειας)

[95] See Articles 18, 22, 22b of Law 2190/1920, Articles 31 and 32 of the Greek Commercial Law and 68, 714, 297, 298 of the Greek Civil Code.

[96] See Spyridonos, (2001), supra note68.

[97] This situation necessitates that the gap in the provision of judicial protection is filled through the general principles applying to companies and are to be found within the Greek Civil Code. In terms of proof, to the extent that the loss suffered can be proven through an independent, subjective assessment minority shareholders should be protected. The criticism that the abovementioned limitations imposed on the ability of minority shareholders to bring a personal claim and be compensated for the loss suffered as a result of the actions and behaviours of the BoD amount to a breach of the Greek Constitution is made redundant in light of the interpretation provided by courts within *Case 1298/2006* Supreme Court of Greece (Άρειος Πάγος) regarding the ability of minority shareholders to resort to the general principles in law of tort as their legal basis. Also see below page 113, Section 2.

[98] Through the cumulative and combined application of Articles 914, 928 b, 929 b, 297 και 298 of the Greek Civil CodeAK, the right to compensation is only established in favour of the person who has suffered a direct loss because of the tortuous action involved and not the person who suffered indirect loss. See *Case 18/2004* Supreme Court of Greece (Άρειος Πάγος) in Plenary Session (Απόφαση Ολομέλειας)

company do not have the personal right to bring such a claim against the BoD because they are considered to be third parties, their loss therefore being indirect. [99] Examples of such indirect or reflective loss include the loss suffered by the shareholders in the value of the shares of the company traded on the stock exchange or the loss due to the distribution of reduced dividends.[100]

However, a closer look into *Case 1298/2006* indicates the existence of an important exception to the ‘direct loss’ rule, which applies in order to fill the gap and allow the personal claims of shareholders against the members of the BoD, even if the loss is indirect or reflective in nature, such as in the case of reduced dividends or reduced value of shares. This exception is facilitated through the combined application of Articles 914, 919 of the Greek Civil Code in light of Law 2190/1920.[101] In this case, the aforementioned articles have been interpreted broadly so as to allow minority shareholders to bring a personal claim against the members of the BoD, if their action, omission or behaviour could be interpreted as giving rise to liability in tort or as constituting a self-standing breach of any rule which gives rise to a claim for compensation.

In Case 1298/2006 of the Greek Supreme Court, the rule to have been breached was 919 GCC, which is a self-standing legal rule of general application. Article 919 GCC applies to situations in which a person intentionally and contrary to good morals[102] defies the expectation of another person to gain a good or a right. The intentional transfer of the asset of the company by the majority shareholders who were also the members of the BoD reduced the value of the shares of the minority shareholder, bringing about a loss. In order to assess whether an action is unlawful as contrary to good morals, the motives, the aim and the means employed by the person in order to achieve this goal and the general circumstances of the surrounding environment in which the

[99] The notion of 'indirect loss' is the equivalent to the term 'reflective of the company's loss' developed under the UK company law.

[100] *Case 1285/1980* Supreme Court of Greece (Άρειος Πάγος).

[101] For example, according to Article 919 of the Greek Civil Code, the person who caused a loss intentionally in a way contrary to 'good morals' (χρηστά ήθη) is under the obligation to compensate them. Article 919 complements and is interpreted in combination with Article 914 which establishes liability in tort. Good morals (χρηστά ήθη) constitutes a legal concept the breach of which is judged on a subjective standard, namely according to the prudent average person (See Case 10/1991 Supreme Court of Greece (Άρειος Πάγος) in Plenary Session (Απόφαση Ολομέλειας))

In the context of business and commercial transactions, the practices and principles applicable in this category of transactions may be taken into account, to the extent that they are not incompatible with social ethics according to the standards of the average prudent person.

[102] *Case 398/75* Supreme Court of Greece (Άρειος Πάγος) in Plenary Session (Απόφαση Ολομέλειας).

action took place are taken into account. [103] With regard to intention, wilful misconduct is required but it is sufficient for the person to have foreseen the possibility of loss but to have chosen to act nevertheless. In the specific case examined, the factual background provided conclusive evidence of the intention of the controlling shareholder to cause damage to the minority shareholder.

In the context of Greek company law, the aforementioned case and its interpretation of the law have been groundbreaking. Firstly, this interpretation fills the gap of minority protection emerging when abusive acts, which give rise to liability in tort, are facilitated by the use of the majority principle applying to companies incorporated under the *Societe Anonyme* form. In the case examined, for example, minority shareholder protection is provided despite the fact that the resolution of the BoD to transfer the asset to the new company, created for this purpose only, complied with the procedural requirements of Law 2190/1920 and the articles of association. Secondly, the right to be compensated is awarded to the person, against which the tort took place.[104] As a result, the shareholders of the *Societe Anonyme* can bring a personal rather than a derivative claim against the members of the BoD, when the acts of the latter are contrary to good morals and give rise to their liability in tort. [105]

III. CONCLUDING REMARKS

The assessment of Greek company law, as interpreted and applied by the courts, reveals a variety of provisions which have not been included as variables in the initial LLSV index, although they play an important role in protecting minority shareholders. Provided that a variety of legal provisions for minority protection in concentrated ownership structures within civil law systems have not been considered, the ratings of the indices cannot reflect their effectiveness. In this light, the findings of both case studies included in this Chapter support the main proposition of this thesis that the ‘inefficiency bias’ against concentrated ownership structures is partly the result of the deficient analysis and the overgeneralization manifested in the LLSV index and the associated

[103] *Case 398/75* Supreme Court of Greece (Άρειος Πάγος) in Plenary Session (Απόφαση Ολομέλειας).
[104] *Case 1298/2006* Supreme Court of Greece (Άρειος Πάγος) in Plenary Session (Απόφαση Ολομέλειας).
[105] *Case 1298/2006* Supreme Court of Greece (Άρειος Πάγος) in Plenary Session (Απόφαση Ολομέλειας).

studies and literature. The Greek example also highlights the availability of mechanisms for minority protection outside the strict boundaries of company law and shows that taking into account the complementary institutions or the functionally equivalent rules constitutes a precondition for a methodologically sound assessment. It has, therefore, been shown that the index-based approach to comparative corporate law is unlikely to accurately reflect the quality of the law, unless underpinned by extensive substantive analysis of legal provisions within a perimeter which is wider than that set by company law only.

The various concrete examples presented in this Chapter also confirm the ‘legal effectiveness' argument of this thesis. Legal effectiveness refers to the extent to which an issue can be dealt with by the law and if so, how well it is dealt with in terms of consistency and predictability, on the one side, and the delivery of efficient and just outcomes, on the other. More specifically, for example, in the case of family ownership legal effectiveness refers to the capacity of the rules to limit the extraction of private benefits of control by the controlling family. The Greek case study indicates that legal effectiveness, defined as the delivery of consistent, just and fair outcomes by the law, is achieved through the use of general principles and standards. This demonstrates that effective legal rules may be part of any legal system, independently of its legal origin. Legal effectiveness is assessed on the basis of the type of concentrated ownership involved. In this Chapter, the examination of the special rules and responses of Greek law to the problem of minority expropriation has been driven by the presence of SOEs and family-owned companies, which are the prevalent forms of ownership in Greece. In this regard, the Greek minority protection mechanisms presented are indicative of a legal framework which is well-adapted to the identity of the controlling shareholders and the distinct corporate governance problems each type gives rise to. The adaptation of the legal framework to the ownership structures clearly manifests the strong interactions between ownership structures and corporate governance.

CHAPTER IV: THE IMPACT OF MULTIPLE LARGE SHAREHOLDERS ON CORPORATE LAW AND GOVERNANCE

I. INTRODUCTION

This Chapter extends the assessment of the categories of controlling owners to multiple large shareholders. Contrary to the absolute forms of concentrated ownership, the presence of multiple large shareholders significantly alters the context and governance problems arising within the company. For example, the model of one controller against a number of small minority shareholders implies that the latter face collective action problems, increased monitoring costs and free-rider concerns, all of which reduce their monitoring incentives and increase the risk of expropriation. Instead, the presence of multiple large shareholders (hereafter MLS) mitigates collective action problems and reduces monitoring costs, thus rendering control internally contestable and mitigating the risk of minority expropriation.

In addition to the analysis of state and family ownership presented in the previous part of the thesis, this Chapter examines the benefits and problems of MLS and evaluates the main possible outcomes of their interactions. Shareholders interactions are legally expressed in the form of shareholders agreements. An effective regulatory framework should, therefore, promote beneficial shareholders agreements and limit the ones in which the enhanced control achieved by the shareholders coalition is used for minority expropriation. Aligned with the 'legal effectiveness' argument of the thesis, this Chapter, therefore, sets the general context for the subsequent assessment of how the regulation of shareholders agreements affects their nature as benign or malign corporate governance mechanisms.

II. THE BENEFITS OF MULTIPLE LARGE SHAREHOLDERS IN THE CONTEXT OF CORPORATE GOVERNANCE

One of the main grounds for the criticism against concentration revolves around the argument that it increases the cost of capital. The cost of external finance is driven by the extent of firm's agency[1] and information problems[2], which in the case of concentrated control are aggravated and render corporate financing more expensive.[3] Concentration can be interpreted by investors as indicative of the high risk of expropriation, while dispersion is usually associated with managerial opportunism and high agency costs. In both cases, outside investors will adjust the price they are willing to pay for the shares and the cost of capital is determined accordingly. Nevertheless, most studies on the impact of concentration incorrectly assume that ownership structures involve the presence of a controlling shareholder and a group of dispersed minority shareholders who are reluctant and powerless to react. This assumption disregards the existence of MLS in the company and understates their impact on corporate governance.[4] In this respect, for example, it is

[1] See Dyck A. and Zingales L., (2004), Private Benefits of Control: An International Comparison, The Center for Research in Security Prices Working Paper №535; Journal of Finance 59:537. They note that the potential extraction of private benefits by controlling shareholders '*reduces what minority shareholders are willing to pay for shares, lowering the value of all companies where such behavior represents a real possibility. And by raising the cost of finance, it limits the ability of such firms to fund attractive investment projects*.'

[2] There is an important correlation of information quality and the cost of capital. For example, the firm's information quality (e.g., asymmetric information) leads to high cost of capital. For the relationship between the cost of equity capital and information quality see O'Hara M. and Easley D., (2001), Information and the Cost of Capital. EFA 2002 Berlin Meetings Presented Paper; Cornell University Johnson Graduate School of Management Working Paper. Available at SSRN: http://ssrn.com/abstract=300715; Hughes J. S., Liu, Jing and Liu, Jun, (2004), Information, Diversification, and Cost of Capital. AFA 2006 Boston Meetings Paper. Available at SSRN: http://ssrn.com/abstract=651944. Moreover, greater disclosure is associated with a lower cost of equity capital for firms. See Botosan C. A., (1997), Disclosure Level and the Cost of Capital. The Accounting Review, 72(3). Available at SSRN: http://ssrn.com/abstract=292. Similarly, enhanced financial information quality (e.g., more transparent earnings, more independent audit committees, and lower abnormal accruals) is associated with lower cost of equity capital. See Francis J.R., Khurana I. K. and Pereira R., (2005), Disclosure Incentives and Effects on Cost of Capitol Around the World. Accounting Review, 80(4):1125. Finally, information risk affects firm's agency costs which, in turn, influences cost of equity capital. See Lambert R.A., Leuz C. and Verrecchia R.E., (2006), Accounting Information, Disclosure, and the Cost of Capital (March 2006). Available at SSRN: http://ssrn.com/abstract=823504.

[3] La Porta R., F. Lopez-de-Silanes, and A. Shleifer, (1999b), Corporate Ownership Around the World, Journal of Finance, 54:471.

[4] Becht M. and Mayer C., (2002), Corporate control in Europe. Revue d' Economie Politique 112(4), p.471; Faccio M. and Lang L. H. P., (2002), The ultimate ownership of western European corporations, Journal of Financial Economics, 65: 365-395 where the ownership of 5,232 publicly-traded corporations in 13 Western European countries is examined ; Also see La Porta et al. (1999) supra note 3. They examine 600 of the largest publicly-traded firms across 27 countries, and they

documented that more than 25% of listed European companies have more than one large shareholder.[5]

The structures including MLS have a positive impact on firm performance and valuation[6] because controlling shareholders are incentivised to commit not to behave opportunistically.[7] More specifically, as control is diluted, no single owner has enough shares to control the corporation unilaterally. Such control dilution arises in firms with two owners if ownership is shared equally and neither of the two owners is able to implement their preferred decision without the acceptance of the other owner.[8] This restrictive effect on the opportunistic behaviour of large shareholders results from the need of each others' support in the process of forming a controlling

---

find that one-quarter have more than one large owner; Bianchi M., and M. Bianco, (2006), Italian Corporate Governance in the Last 15 years: From Pyramids to Coalitions?, *ECGI - Finance Working Paper*; Kirchmaier T. and Grant J., (2004), Who Governs? Corporate Ownership and Control Structures in Europe. Available at SSRN: http://ssrn.com/abstract=555877.

[5] Ibid Becht and Mayer (2002) supra note4.

Similarly, while ownership is concentrated in 50,11%[5] of a sample of Western European companies, the presence of a second large shareholder is documented in 46.01% of the corporations with at least one controlling shareholder. See Faccio and Lang (2002), supra note4.

[6] Empirical research provides support to the positive impact of multiple shareholders on corporate valuation. For example, it has been shown that the existence of a second large owner is positively associated with the profitability of German firms. See Lehmann E. E. and Weigand J., (2001), Does the Governed Corporation Perform Better? Governance Structures and Corporate Performance in Germany. European Finance Review, 4(2):2001. Available at SSRN: http://ssrn.com/abstract=268734.

Similarly, it has been found that the existence of multiple large shareholders increases dividend payouts in Europe, although it lowers them in Asia, probably due to the ineffectiveness of investor protection law. See Faccio M., Lang, L.H.P. and Young L. S.F., (2000), Dividends and Expropriation. AFA 2001 New Orleans; EFMA Athens 2000. Available at SSRN: http://ssrn.com/abstract=222428.

[7] Bennedsen M. and Wolfenzon D., (2000), The Balance of Power in Closely Held Corporations. Journal of Financial Economics, 58(1-2). Available at SSRN: http://ssrn.com/abstract=251877.

Although, the aforementioned study refers to closely-held companies, it can also provide an initial indication of what can be expected to apply in the case of public corporations. The research by Bennedsen et al (2000) is of particular interest even in the context of public companies because it reveals the interrelations that emerge at the company level. A similar analysis for public companies is very complex and difficult, as the ownership structure of which continuously changes. In this light, examining the closely-held companies is the closest alternative to studying public corporations. Provided that corporate governance problems arising within concentrated ownership structures are identical in both private and public corporations, an analogy can be drawn, therefore allowing for this study to be used in the case of public corporations.

[8]Bennedsen, Morten, Fosgerau, Mogens and Nielsen, Kasper Meisner, (2003), 'The strategic choice of control allocation and ownership distribution in closely held firms', (June 2003), available at http://kelley.iu.edu/Finance/Symposium/files/bennedsen_03.pdf In a sample of 17,000 small, closely held corporations, Bennedsen et al have explored the strategic choice of ownership distribution and the implied allocation of control and found that the existence of multiple owners brings about significant dilution of control which has a positive effect on performance.

coalition.[9] In this light, the presence of MLS alters the determinants of control by increasing internal competition for the control of the company.

The internal contestability of control upgrades the overall role of minority shareholders because of the increased scope for their participation in the formation of coalitions. More specifically, the role of minority shareholders is less marginal as they have more power to determine where control will lie by supporting the coalitions which compete for the control of the company or for passing a given corporate resolution. Furthermore, in order for the controlling alliance to be sustainable, its members are indirectly forced to take into account the interests of other shareholders while running the company. It is exactly their need for compromise that reduces opportunistic behaviour and excessive risk taking, thus adding value to the corporations they are involved in. The internal competition for control emerging in the context of MLS structures limits the scope of expropriation by forcing shareholders to co-operate. The impact of MLS on firm performance is, therefore, positive because the cost of capital will be lower as investors will apply a lower discount to the price they are willing to pay compared to more absolute forms of concentrated ownership.

The findings of empirical research[10] support the aforementioned hypotheses by showing that '*the implied cost of equity decreases in the presence of large shareholders beyond the controlling owner*'. This finding suggests that the market acknowledges the monitoring and disciplinary role of large shareholders within corporations characterised by concentrated ownership structures and reacts positively to them. The additional analysis of firms from East Asia and Western Europe also shows that the governance role of MLS is more valuable in East Asia, where agency problems embedded in corporate ownership structures are more severe and the legal environment is weak.[11] These findings suggest that MLS are instrumental in reducing the firm's equity financing costs, as they mitigate information asymmetry and the conflicts between the controlling owner and minority investors.

---

[9] *ibid*. Bennedsen et al (2003) verify that the ownership structure is generally chosen to avoid control dilution, since two thirds of the firms in their sample have a single owner.

[10] Attig N., Guedhami O. and Mishra D.R., (2008), Multiple Large Shareholders, Control Contests, and Implied Cost of Equity, AFFI/EUROFIDAI, Paris December 2008 Finance International Meeting AFFI - EUROFIDAI. Available at SSRN: http://ssrn.com/abstract=1282129.

[11] *ibid.*

However, despite the desirability of internal control contestability, multiple blockholders are unlikely to emerge. It has been documented, for example, that investors are organised in such a way that only one of them holds a block in any given firm, precisely because they want to eschew the internal contests which limit their private benefits.[12] Furthermore, the sustainability of the formed coalition is often threatened, as the composition of the controlling group over time substantially changes.[13] The free-rider problem also applies to the monitoring efforts among MLS.[14] Shareholders coalitions within listed companies are therefore less sustainable, due to the transfers of shareholdings and the changes in the ownership composition occurring through the capital market.[15] Notwithstanding the aforementioned limitations, the dynamics of MLS and shareholders coalitions challenge the underlying assumptions of the traditional hypotheses about the impact of concentration on corporate governance which only take into account more absolute forms of concentrated ownership.

III. THE FACTORS OF CONTROL DILUTION AND THE VARIATIONS OF MULTIPLE LARGE SHAREHOLDERS INTERACTIONS AS DETERMINANTS OF CORPORATE GOVERNANCE

1. The factors of control dilution within concentrated ownership structures

In the presence of MLS, the relationship between control allocation and ownership concentration is a further complicated. In terms of the factors which affect the allocation of control, the size and number of shareholders are probably the most obvious determinants of internal contestability levels.[16] A less obvious factor is also the type of the shareholder involved.[17] The size of the block-

[12] Zwiebel J., (1995), Block Investment and Partial Benefits of Corporate Control. Review of Economic Studies, 62:161.
[13] Gutiérrez Urtiaga M. and Tribo J.A., (2004), Ownership Structure and Minority Expropriation in Non-Listed Firms: The Case for Multiple Large Shareholders. ECGI - Finance Working Paper No. 053/2004. Available at SSRN: http://ssrn.com/abstract=1106979.
[14] Winton A., (1993), Limitation of Liability and the Ownership Structure of the Firm, Journal of Finance 48(2):487.
[15] See Gutiérrez&Tribo (2004) supra note13. The importance of the absence of a market is also manifest in the scholars' documentation of a tendency for the controlling coalition to boost its stake, since reducing their stake constitutes a costly option in the absence of a market. This finding suggests that shareholders in listed companies will have more alternative choices that the shareholders of non-listed companies, thus rendering shareholders coalitions within listed companies less sustainable.
[16] See below 1.1.

holders is a relevant factor and its practical importance for control emerges only when compared to the size of the other large shareholders in the company. Therefore, the overall level of the control that a shareholder achieves with a particular stake is determined by how ownership is distributed among multiple block-holders.[18] In this context, the level of control dilution is a function of the number of large shareholders, the type of the owners and the distribution of ownership and control rights of the shareholders. These factors of ownership structure interact to produce various combinations of controlling coalitions. This means that the ownership structure determines whether the large shareholders are more likely to collude or compete with the controller to take on an essential monitoring role.

1.1 The number and size of blocks

The emergence of multiple block-holders in the company implies higher incentives to monitor the largest shareholder or challenge the controlling coalition, thus mitigating the risk of expropriation.[19] As the costs of monitoring are shared and the collective action problems are manageable, MLS are more likely to form coalitions with a view to change the control in the company. To this effect, the size of the blockholdings is instrumental.[20] More specifically, the remaining large shareholders need to have significant cash-flow rights for their benefits to exceed their monitoring costs.[21] Thus, the smaller the size of the large shareholders, the more rationally apathetic they will be and the higher their incentive to collude with the controller will be.

---

[17] See below 1.3.

[18] See below 1.2.

[19] Laeven L. and Levine R., (2007), Complex Ownership Structures and Corporate Valuations; IMF Working Paper 07/140, June 1, 2007, available at http://www.imf.org/external/pubs/ft/wp/2007/wp07140.pdf; Claessens S., Djankov S., Fan J., and Lang L., (2002), Disentangling the Incentive and Entrenchment Effects of Large Shareholdings, Journal of Finance 57:2741.

For an alternative view that blockholders discipline managers through trading see Edmans A. and Manso G., (2011), Governance Through Trading and Intervention: A Theory of Multiple Blockholders (June 29, 2011). Review of Financial Studies, 24(7):2395; ECGI - Finance Working Paper No. 225/2008. Available at SSRN: http://ssrn.com/abstract=1102730 The authors conceptualise multiple blockholders as informed traders, competing for trading profits like informed traders and improve the availability of information about the firm.

[20] ibid Laeven&Levine (2007).

[21] Burkart M., Gromb D. and Panunzi F., (1997), Large shareholders, monitoring and the value of the firm, Quarterly Journal of Economics 112.

1.2 The distribution of ownership

Factors such as the relative voting size of the multiple block-holders *vis-à-vis* the first largest shareholder also affect their potential to coordinate or contest control in the company.[22] For example, the existence of a second shareholder with a block large enough to enable him to control the company upon the support of other large shareholders makes the outcome of an internal competitive process for control far less predictable. The likelihood to form a coalition is also determined by the uneven distribution of the cash-flow rights of its members. More specifically, the uneven distribution of ownership shapes the incentives of blockholders to monitor, because the different stakes of each blockholder imply that monitoring does not make equal economic sense for all of them.[23] In this context, the distribution of ownership is relevant only on the assumption that the cash-flow rights and the control rights of the shareholders are proportionate. In the case that the use of control-enhancing devices distorts how control rights are distributed across the company, the ownership stakes of shareholders become less relevant and it is now the distribution of control rights that will determine the potential for the formation of a coalition.

The proportionality between the ownership and the control rights of the coalition also affects the impact of the coalition on corporate governance. More specifically, proportionate control is found to limit the scope for private benefit extraction to the detriment of minorities. This is indicated in the increased firm performance documented when the joint stakes of the shareholders participating in the coalition are high.[24] The evidence for a positive correlation between corporate valuations and the high cash-flow rights of the biggest owner also suggests that highly

[22]It is found, for example, that the relative voting size of block-holders affects the market valuation of companies owned by multiple large shareholders. See Attig (2008) supra note10; Also see Maury, Benjamin and Pajuste A., (2005), Multiple Large Shareholders and Firm Value, Journal of Banking and Finance, 29:1813. Available at SSRN: http://ssrn.com/abstract=617844. In an examination of Finnish firms, Maury&Pajuste (2005) argue that equal distribution of the votes among large blockholders has a positive effect on firm value and document that the positive result is particularly strong in family-controlled firms suggesting that families (which typically have managerial or board representation) are more prone to private benefit extraction if they are not monitored by another strong blockholder. They also show that the relation between multiple blockholders and firm value significantly depends on the identity of these blockholders. Finally, they also show that the relationship between corporate valuations and the presence of multiple large shareholders depends on the comparative sizes of the large shareholders.

[23] Bloch F. and Hege U., (2003), Multiple Shareholders and Control Contests, available at https://studies2.hec.fr/jahia/webdav/site/hec/shared/sites/hege/acces_anonyme/papers/BlochHege_Control.(last accessed 02.05.2011)

[24] Gutierrez&Tribo, (2004) Hypothesis 4 supra note13.

concentrated cash-flow rights discourage the expropriation of corporate assets.[25] Contrastingly, controlling coalitions with low cash-flow rights have both the incentives (low cash-flow rights) and the ability (sufficient voting rights, thus control) to divert corporate resources for private gain.[26] In this respect, because uneven distribution facilitates the formation of coalitions with the least possible cash-flow rights[27], minority shareholders run a higher risk of expropriation.[28]

1.3 The type of shareholders

Apart from the number and relative size of the large shareholders, the formation of a coalition and, thus, the internal contestability of control, are also affected by the type of the blockholders present in the company. More specifically, the identity of the shareholders affects their potential to collude with the controller or to form a shareholders coalition.[29] If, for example, the larger shareholder and other blockholders are all families, there is more scope for their collusion than in the case where the largest shareholder is the state. In this respect, empirical evidence supports

---

[25] Lins K.V., (2003), Equity ownership and firm value in emerging markets, Journal of Financial and Quantitative Analysis, 38:159. The author finds firm values to be lower when control and cash flow rights of a firm's management group are separated, which indicates that the private benefits of control are reflected in the price paid by non-controlling shareholders. The results also suggest that large non-management blockholders can reduce these private benefits. The separation of management group ownership and control has a significantly more negative relation to value in countries with low shareholder protection, whereas large non-management blockholders have a significantly more positive relation. These results imply that private control benefits are discounted even more by minority shareholders where external shareholder protections are weak and that large non-management blockholders can act as a partial substitute for these missing institutional governance mechanisms.

[26]Bloch&Hege (2003) supra note23. Their research problem and model is constructed around the perception that multiple large owners compete in forming controlling coalitions which will enable them to extract private benefits of control. In this light, the winning coalition will most probably be a combination of block-holders with more than 50% of the votes and the minimum cash-flow rights. According to their view, the low cash-flow rights of the winning coalition accentuate the problem of the expropriation of corporate resources. As a result, an initial owner choosing an ownership structure with multiple block-holders to maximize firm value subject to a wealth constraint, should bear in mind that the greater the dispersion of cash-flow rights, the easier it gets to form ruling coalitions with low cash-flow rights, which ultimately reduces the value of the firm.

[27]ibid Bloch&Hege (2003) supra note23 further show that enhanced monitoring is less likely when ownership is unevenly distributed, which again implies a negative relationship between cash-flow rights dispersion and valuations.

[28] Considerable theoretical research further predicts a negative relationship between the cash-flow rights of a large, controlling owner and his/her incentives to expropriate corporate resources. See Jensen M., and Meckling W., (1976), Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure, *Journal of Financial Economics* 3, 305-360; Shleifer A. and Wolfenzon D., (2000), Investor Protection and Equity Markets, Harvard Institute of Economic Research Paper No. 1906. Available at SSRN: http://ssrn.com/abstract=245448.

Empirical research also confirms this prediction in the context of multiple shareholders ownership by finding a positive relationship between the cash-flow rights of the largest owners and firm value. See Lins, Karl V. and Lemmon, Michael L., Ownership Structure, Corporate Governance, and Firm Value: Evidence from the East Asian Financial Crisis (April 2001). William Davidson Institute Working Paper No. 393; 3rd Annual Fin. Mkt. Dev. Conference, Hong Kong 2001; U of Utah Working Paper. Available at SSRN: http://ssrn.com/abstract=265108.

[29]Laeven&Levine (2007) supra note19.

that large shareholders are less likely to cooperate and form ruling coalitions when they are of different types.[30]

2. Corporate governance and the varieties of structures of multiple large shareholders

The variations in the number of blockholders, the levels of dispersion and the patterns of distribution produce infinite combinations of multiple shareholders seeking to form a controlling coalition. In this light, the interdependencies developed among blockholders do not only determine the outcome of the internal competition for control but also affect the nature of the resulting corporate governance problems, most notably the risk of private benefits extraction. The following examples illustrate what the impact of a variety of different types of controlling coalitions on corporate governance might be.[31] When viewed from a wider perspective, the analysis outlines the complex interrelationship of the varieties of concentrated ownership structures and corporate governance.

2.1. Absolute concentrated ownership structures

Absolute concentrated ownership structures involve the presence of one controlling shareholder and many or a few minority shareholders who hold no significant stake in the company. In this case, the typical problem of conflicts of minority and majority shareholders interests is encountered. Minority investors run the risk of being expropriated by the controller,[32] due to collective action problems and the high monitoring costs that they incur. These conflicts of

[30] For example, empirical evidence documents that the negative association between valuations and the dispersion of cash-flow rights becomes more pronounced when the holders of the largest cash-flow rights are of different types. This indicates that shareholders agreements and the positive effect they are bringing in are less likely to be formed among shareholders of different types. See Maury&Pajuste (2004), supra not22; Laeven&Levine (2007) supra note 19

Also Attig (2008) supra note10 shows that within family-controlled firms the identity of the second largest shareholder determines the agency costs and thus the cost of equity. If the two largest shareholders are families, the information risk is high and so too is the cost of equity capital. In contrast, the presence of the state as the second largest shareholder in family-controlled firms seems to moderate firm's agency costs and lowers its cost of equity.

[31] The list to follow is only indicative and by no means restrictive.

[32] Such expropriation may include the extraction of private benefits in a direct way, as for example by diverting corporate opportunities or even indirectly. An example of this latter category, is the one presented by Rubin&Barnea (2006). The scholars show that large block-holders are likely to over-invest in projects that improve the public perception of the firm as being socially responsible. They suggest that this is an expropriating strategy because these large block-holders take all the credit for the socially responsible behaviour but bear only a proportion of the cost of implementing such a strategy. See Rubin A. and Barnea A., (2006), Corporate Social Responsibility as a Conflict Between Shareholders, EFA 2006 Zurich Meetings. Available at SSRN: http://ssrn.com/abstract=686606.

interests are the manifestation of the agency problem within concentrated structures. Effectively, the role of the controlling shareholder is equivalent to the role of the managers in companies with dispersed ownership.[33]

2.2. Hybrid concentrated ownership structures

Hybrid concentrated ownership structures involve the presence of a controlling shareholder and MLS. In this scenario, the presence of MLS increases the competition for control within the company. The reaction of the large shareholders to the controller depends on their characteristics such as their voting power, their cash-flow rights and their identity.[34] If their aggregate control rights enable them to influence the outcome of corporate resolutions and processes, then a coalition among large shareholders against the controller is likely. This likelihood is even higher, if the collective action problems are mitigated by a low dispersion of the blockholders' cash-flow rights. Should the large shareholders identify deficiencies in the governance and management of the firm, it would make economic sense for them to intervene to limit the potential of private benefit extraction by the controller.

Similarly, the identity and general investment approach of the controller and the large shareholders are also important in determining the interdependencies and coalitions to be created. For example, shareholders of the same identity are more likely to form a coalition, while shareholders with a long-term investment horizon are expected to co-operate with other long-term investors and short-term ones with each other. When viewed from this perspective, the existence of other large owners alters the dynamics of control allocation among shareholders, although it does not guarantee that the large shareholders will play an active role in monitoring

[33] Burkart et al (1997) supra note21; Also see Burkart M.C., Gromb D. and Panunzi F., (2005), Minority Blocks and Takeover Premia, ECGI - Finance Working Paper No. 96/2005. Available at SSRN: http://ssrn.com/abstract=796765. According to their predictions, the takeover premium paid for a firm with a single block-holder accompanied by other minority shareholders is larger than that for a firm with a diluted ownership structure, which finding indicates the correlation of absolute concentration with the risk of private benefits extraction.
Also see Pagano M. and Roell A., (1998), The Choice of Stock Ownership Structure: Agency Costs, Monitoring, and the Decision to Go Public, Quarterly Journal of Economics, 113:187. According to their predictions, in firms with a single controlling shareholder, the ownership stake of the non-controlling shareholders should also be more concentrated when expropriation is likely to be severe, so as to provide incentives for monitoring.

[34] For an analysis of the impact of large shareholders on the financial policy decision making process within a company see Paligorova T. and Zhaoxia Xu, Complex Ownership and Capital Structure (2009), Bank of Canada Working Paper 2009/12.

the controller. On this point, it has been found that there is an optimal level of monitoring to be achieved for a given second-largest shareholder's stake size.[35] Internal control contests, therefore, imply a model of governance which is less prone to expropriation. However, the outcome of the competitive process cannot be easily predicted and is determined by the characteristics of the ownership structure of each specific company. Similarly, the sustainability of the formed coalition is questionable.

2.3. Hybrid multiple blockholders ownership structures

Hybrid multiple blockholders ownership structures involve the presence of a shareholder large enough to be the controller if unchallenged, a second large shareholder and many minority shareholders with no substantial stakes. In this case, the alternatives of the second large shareholder will be to either enhance their monitoring or to collude with the first large shareholder. They will then be left unchallenged to exercise control over the company. The risk that the two principal shareholders will collude rather than compete is determined by the comparative size of the two blockholders and the significance of the sizes of the remaining minority shareholders. The potential for collusion between the largest shareholders also increases in the event that these are of the same type, such as families. For example, in the absence of a comparable size, it makes more economic sense for the controller to form an alliance and share a part of the extracted private benefits with the largest shareholder rather than engage into a contest which could trigger high levels of monitoring and minimise the extraction of private benefits. For the largest shareholder, sharing a part of the extracted private benefits is also preferable to incurring the costs to defend against minority shareholders and their monitoring.

By contrast, the incentives of the second largest shareholder to form a coalition with minority shareholders are low, given that due to the small stakes of the remaining minority shareholders the costs for such monitoring would mainly be incurred by the large shareholder, while the cash-flow rights of the coalition would be low overall. All this materially changes if the stake of the second largest shareholder is very similar to the stake of the first. In this latter case, the second larger shareholder has more incentives to closely monitor the leading blockholder and eventually

[35] Pagano&Roell (1998) supra note33.

compete for the control of the company through the formation of a coalition with the remaining minority shareholders. In this respect, the lower the dispersion of the ownership stakes of the remaining minority shareholders, the higher the likelihood that control will be contested internally by one of the two largest shareholders.

2.4. Genuine multiple block-holders ownership structures

Genuine multiple blockholders ownership structures involve the presence of MLS, none of which holds a controlling block of shares. There are several views about the role that the large shareholders in this scenario may play. The largest shareholders may, for instance, collude with each other and expropriate minority shareholders.[36] Alternatively, they may compete with each other to form smaller, yet controlling coalitions with smaller shareholders.[37] Provided that the controlling group is not formed among all large shareholders only, the dynamic interactions of large shareholders increases the possibility that they cross-monitor each other.[38] Out of the various coalitions that have the power to control the company, the optimal coalition in terms of mitigating conflicts of shareholders interests is *ex ante* the one with the largest ownership stake because of its 'alignment effect'.[39]

The greater the ownership stake of the controlling coalition the more the internalization of its costs. However, from the perspective of the large shareholders, the preferred coalition will actually be the one with the smallest ownership stake necessary to win control. This is described as the 'coalition formation effect'.[40] Given that private benefits accrue at the expense of all the non-controlling shareholders, the coalition with the lowest possible ownership stake will have the largest minority group to expropriate. To put this simply, the larger the winning coalition is, the

[36] Zwiebel (1995) supra note12. He also points out that the control benefits are divided among large shareholders on the basis of their relative size of their blocks. He, thus, suggests that the holder of a small block does not necessarily share the private benefits of control proportionately.
[37] Bennedsen&Wolfenzon (2000) supra note7.
[38] Pagano&Roell (1998) supra note33; Winton (1993) supra note14; Bolton P. and Von Thaden E., (1998), Blocks, liquidity and corporate control, Journal of Finance, 53:1.
[39] Bennedsen&Wolfenzon (2000) supra note7.
[40] *ibid.*

less private benefits it will extract at the expense of minority shareholders.[41] It is evident that, from a corporate governance perspective, the most desirable outcome is to have a coalition among large and smaller shareholders, with the largest ownership stake in the company, in order for the large shareholders to cross-monitor each other.

The impact of MLS, none of which holds a controlling block of shares, and a continuum of small shareholders, has also been examined in the context of a voting contest.[42] In this example, two blockholders compete for effective control in a company by determining the composition of the board of directors in a shareholders meeting. The two large shareholders submit competing proposals, and small shareholders will only vote if the proposals are relevant and sufficiently beneficial for them when compared to the cost of participation. In order to lure small shareholders, the two large shareholders rely on two elements: they pledge to limit the private benefits of control they will extract and they seek to improve their proposals, which are indicative of the competence of the specific shareholders to develop the company's strategy.

The aforementioned theoretical approach suggests that the internal contests for the allocation of control limit the shareholders' capacity to extract benefits, thus shifting the focus from ownership concentration to the internal control contests among MLS. In fact, the outcome of the internal contests is determined by two factors, namely the shareholders' ability to create value when in control and the relative size of their blocks. Both factors work as substitutes, in the sense that control becomes more contestable as the controlling shareholder loses appeal as a wealth creator or as their block decreases in size relative to their competitor's. The aforementioned examples illustrate that MLS structures significantly re-shape the traditional corporate governance problems arising within more absolute forms of concentration.

[41] However, caution is required with the idea of multiple shareholders acting as substitutes for poor legal protection of dispersed shareholders, as there may be important flaws involved. Bloch&Hege (2003) supra note23 point out that the weaker the legal protection, the less important is usually the gain that arises from shareholder competition.

[42] Bloch&Hege (2003) supra note23 analyze the strategic interplay between the various block-holders on the one hand, and between any of the block-holders and small shareholders on the other hand. In doing so, they focus on the consequences for corporate performance and shareholder value.

3. Empirical findings regarding the impact of the varieties of blockholders ownership on corporate governance

The common element in the theoretical models regarding the impact of multiple blockholders ownership is the underlying assumption that the presence of MLS limits the extraction of private benefits.[43] As a result, firms with multiple block-holders and small dispersion of cash-flow rights have significantly higher valuations than firms with a single (non-majority) large shareholder.[44] This finding also suggests that the extent to which the various multiple blockholders structures limit the extraction of private benefits depends on the dispersion of the blockholders' cash-flow rights. The higher dispersion of the cash-flow rights of blockholders is associated with the lower valuation of such companies.[45] This negative correlation is explained by the collective action problems and high monitoring costs, which provide a disincentive for monitoring.

In this respect, for a given controlling blockholder's combined stake, increasing the number of controlling block-holders is found to have a positive effect on performance.[46] Similarly, a structure of two block-holders sharing control gives rise to less tunnelling.[47] In this light, for a given ownership stake held by the controlling group, increasing the number of shareholders generates a 'bargaining effect', therefore implying that private benefit and rent extraction will be less likely, since the controlling group formed by all the large shareholders will only approve a project if all the members of the group benefit from it.[48] Although the bargaining problems among MLS are found to prevent decisions that may harm small shareholders, the company also risks missing out on valuable projects due to the shareholders' internal disagreement.[49]

---

[43] Pagano&Roell (1998) supra note33.

[44] Laeven&Levine (2007) supra note19 examine a sample of 1,657 publicly traded firms in Europe seeking to substantiate whether investors value firms with multiple block-holders differently from widely-held firms or those with a single large owner.

[45] Bennedsen&Wolfenzon (2000) supra note7. However, the abovementioned line of argumentation has certain limitations given that greater dispersion also brings about interest misalignment and coordination problems among the multiple large shareholders.

[46] Gutiérrez&Tribo (2004) supra note13.

[47] Gomes A.R. and Novaes W., (2005), Sharing of Control as a Corporate Governance Mechanism. PIER Working Paper No. 01-029; U. of Penn., Inst. for Law & Econ. Research Paper 01-12. Available at SSRN: http://ssrn.com/abstract=277111.

[48] *ibid*. The presence of more than one controlling shareholders substantially decreases private benefit extraction when the controlling group's stake is in the range between 50-60%.

[49] See Gutiérrez&Tribo (2004) supra note13, stating that *'Remarkably, this effect becomes less positive when the number of block-holders is large (more than three). In that case, the difficulties to reach an agreement among controlling block-*

IV. SHAREHOLDERS AGREEMENTS AS A CORPORATE GOVERNANCE MECHANISM: SHAREHOLDERS' CO-ORDINATION OR EXPROPRIATION?

1. Shareholders agreements: Their proliferation and content

The existence of MLS within the corporation creates an environment in which shareholders coalitions are likely to thrive. Such coalitions may be expressed in the form of agreements entered into by the shareholders, aiming to regulate a variety of corporate governance issues. A recent study commissioned by the European Commission shows that shareholder agreements are not at all rare, as they are encountered in 12% of European listed companies.[50] The extent of their proliferation varies.[51] Shareholders agreements have received relatively limited attention in the literature, except in the context of venture capital investments where they are extensively used by venture capitalists to regulate their relations with owner-managers of growing firms.[52] A shareholders agreement is chosen for its benefits. Such benefits include the secrecy[53], the lack of formalities and the flexibility of shareholders agreements as to their form, their amendment, their length, their duration and the amount of detail required in the description of the rights and the relationship formed.

---

holders on the decision to take, not only protect the minority shareholders but also hinder the adoption of value-creation initiatives.'

[50] ISS, Shearman and Sterling, and ECGI, 2007, "Report on the Proportionality Principle in the European Union", External Study Commissioned by the European Commission, available at http://ec.europa.eu/internal_market/company/docs/shareholders/study/final_report_en.pdf (last accessed 26.09.2011).

[51] Roosenboom P. and Schramade W., (2006), The price of power: Valuing the controlling position of owner-managers in French IPO firms, *Journal of Corporate Finance* 12:270. For example, over the period from 1993 to 1999 26.4% of French IPOs featured a shareholder agreement. Later on in the life of the company, shareholders are also found to be kept together by an explicit agreement in 170 of 510 French listed firms (i.e. one third). For France also see Boubaker S., (2007), Ownership-Control Discrepancy and Firm Value: Evidence from France, *Multinational Finance Journal* 11:211.

In Italy, an agreement is in force in 15% of his sample of Italian listed companies. See Volpin, P., (2002), Governance with poor investor protection: evidence from top executive turnover in Italy, *Journal of Financial Economics* 64:61.

[52] Kaplan S.N. and Strömberg P., (2002), Characteristics, Contracts and Actions: Evidence from Venture Capitalist Analyses. CRSP Working Paper No. 536. Available at SSRN: http://ssrn.com/abstract=296956.

[53] See *Case 3265/1991* Multi-member First Instance Court of Athens (Πολυμελές Πρωτοδικείο Αθηνών). This case establishes that the secrecy of a shareholders agreement cannot be a reason for its unenforceability.

The following extract has been translated from the original in Greek for the purpose of this thesis. *'Furthermore, the secrecy of shareholders agreements does not constitute a reason for infringing the law or the good morals, provided that the specific group of shareholders who are parties in the agreement does not take the form of any company that is subject to disclosure requirements, but constitutes a case of contractual agreement which is valid in the absence of disclosure.* '

These pacts are extra-statutory and may concern all or a part of the shareholders, including the company as a party to the agreement or not. They are facilitated by contracts which may contain a large number of clauses, regulating a vast variety of issues such as the exercise of the shareholders' voting rights or the transferability of their shares.[54] Effectively, such agreements may also specify the rights and duties of shareholders when the default provisions of company law do not reflect the desired governance arrangements. In this regard, shareholders agreements often contain terms which complement or even alter the distribution of powers manifested in the articles of association of a given company.[55]

Regarding the terms of shareholders agreements, it is possible to distinguish three main categories.[56] The management provisions of shareholders agreements determine the distribution of powers and the control over the company's decisions. Shareholders may, therefore, regulate issues of internal corporate governance according to their interests, which are not necessarily aligned with the provisions set out in the articles of association of the company. The most common clauses are the ones prescribing the board composition[57] between large shareholders or containing

[54] For a variety of clauses of a shareholders agreement see the Shareholders agreement between the Greek State and Deutsche Telecom regarding the Hellenic Telecommunications Organisation available at http://www.minfin.gr/content-api/f/binaryChannel/minfin/datastore/b2/53/f8/b253f838f3ad28d122ef06faeccca9687439593b/application/pdf/3676_139-A-08_11_07_2008.pdf (last accessed 26.09.2011). This agreement has been approved by the Greek Parliament (Law 3676/2008) and has been published in the Official Government Gazette (139/11.07.2008).

[55] For the relationship of shareholders agreements with the articles of association see Chapter V.

[56] Daigre J.-J., Bompoint D. and F. Basdevant, 2002, Les pactes d'actionnaires dans les sociétés cotées, Actes Pratiques et Ingénierie Sociétaire 64, 05-33. available at http://www.affi.asso.fr/uploads/Externe/48/CTR_FICHIER_343_1226349180.pdf (last accessed 26.09.20011).

[57] Single-member First Instance Court of Athens (Μονομελές Πρωτοδικείο Αθηνών) *Case 5570/2010*. The following extract has been translated from the original in Greek for the purpose of this thesis.

'...in the shareholders agreement of 4.7.2006 of a 7-year duration, the shareholders agree that the first board of directors of the company will comprise the shareholders or their spouses and that each shareholder will have the right to appoint a members of her choice at the board...' However, in the context of this case, the judgment rejects the claim that the shareholders can only revoke the members of the board that they have elected. Instead, it establishes that the shareholders' meeting has the power to decide whether new members of the board will be elected and who these members will be. In this light, the arrangements set out in the shareholders agreement cannot restrict the statutory power of the shareholders meeting to elect new members at the board of directors.

Multi-member First Instance Court of Athens (Πολυμελές Πρωτοδικείο Αθηνών) *Case 3265/1991* In this case, the voting agreement involved 35 shareholders, who held more than 50% of the shares of the company and determined a detailed process of a) selecting their 10 representatives to be candidates as members of the board of directors, b) electing 7 of the aforementioned candidates as members of the BoD during the general meeting and c) distributing the powers among the elected members of the BoD according to the number of votes they obtained at the general meeting. For a detailed description of the terms of the agreement see *Case 3265/1991*.

restrictions or guidelines regarding the exercise of the shareholders' voting rights.[58] In Greece, this practice is particularly common within *Societes Anonymes*, because shareholders agreements regulate issues that could not have formed part of the content of the articles of association due to the strictness of the legal framework for *Societes Anonymes*.[59] For example, issues such as the restriction of the transferability of shares cannot be part of the articles of association of a *Societe Anonyme*, while this may be set out in a shareholders agreement.

Through an agreement shareholders may also be bound to exercise their voting rights in a certain way or seek to gain and maintain stable control over the company. Moreover, the financial provisions of a shareholders agreement are related to the purchase, the sale and the transfer of the shares in the company. The most widespread financial clause is the pre-emptive buying right.[60] Shareholders agreements may also provide, among others, for drag-along rights[61] or tag-along rights.[62] Finally, miscellaneous provisions within the shareholders agreements may concern the

[58] Multi-member First Instance Court of Athens (Πολυμελές Πρωτοδικείο Αθηνών) *Case 3265/1991*, for example held that a shareholders agreement determining the way they will exercise their voting rights during the general meeting regarding the election of the members of the board is valid. The validity of this agreement is only subject to 3 exceptions, namely a) when the voting agreement covers up a hidden buy-out of the shares according to Article 59 of Law 2190.1920, b) when the voting agreement is contrary to the interests of the company and c) when the voting agreement excessively restricts the rights of the parties to the agreement.

[59] Multi-member First Instance Court of Athens (Πολυμελές Πρωτοδικείο Αθηνών) *Case 569/2007*. The following extract has been translated from the original in Greek for the purpose of this thesis.

'The shareholders agreements entered into by the shareholders of a Societe Anonyme or among the shareholders and third parties with a view to cover the practical needs of the contracting parties are legally established by the general principle of the freedom of contracts.(Georgakopoulos L., Company Law, Vol III, 1974, 328-329; Nisiraios E., The Law of the Societe Anonyme, Vol 1, 2nd Edition, 366), and are always of a contractual nature, namely they are binding for the contracting parties only (Perakis E., Contractual Restrictions of the shareholder's voting rights, 1976, 10.). '

[60] Under such a clause, a contracting shareholder wishing to sell her stake is required to offer it to the other contracting shareholders with the method of calculating the price to be paid for this transfer, often a premium to the market price of the shares, often set out in the agreement as well. For a variety of clauses of a shareholders agreement see the Shareholders agreement between the Greek State and Deutsche Telecom regarding the Hellenic Telecommunications Organisation supra note54.

[61] Chemla G., Ljungqvist A. and Habib M.A., (2004), An Analysis of Shareholder Agreements, NYU, Ctr for Law and Business Research Paper No. 02-01; RICAFE Working Paper No. 006. Available at SSRN: http://ssrn.com/abstract=299420. See Appendix 1 in particular.

In case a shareholder sells his stake to an outside investor, drag-along rights grant the investor the right to buy out the other shareholders' stakes at the same price and on the same terms as the first shareholder's stake. Drag-along rights can be viewed as conditional call options granted to the outside investor.

[62] *ibid.* Appendix 1.

In case a shareholder sells his stake to an outside investor, tag-along rights grant the other shareholders the right to require the outside investor to buy these shareholders' stakes at the same price and on the same terms as the first shareholder's stake. Tag-along rights can be viewed as conditional put options granted to all shareholders. Interestingly, tag-along rights replicate the mandatory bid rule and drag-along rights recall squeeze-out rights, both mandatory rules of minority protection implemented in the context of the EU Takeover Bids Directive.

'smooth functioning' of the agreement. For instance, a referee can be *ex ante* designated to resolve potential problems arising *ex post* . Termination clauses are often also included, precisely defining *ex ante* the situations that will lead *ex post* to the cancellation of the agreement.

In the context of concentrated ownership, an important function of shareholders agreements is the provision of distinct minority protection rights.[63] In this regard, shareholders agreements can be used by minority shareholders to enhance their protection before they invest in the company. Similarly, they can be employed by former controlling shareholders or the founders of the company after shedding their controlling stake in order to attract outside investment. Such agreements often restrict the ability of majority shareholders to exercise their controlling power. For example, voting pacts can bind majority shareholders to a certain act or behaviour. Similarly, minority shareholders may be awarded special appointment or veto rights as part of the agreement to invest in the company.[64] The function of shareholders agreements as mechanisms for the protection of minority shareholders is particularly important in the context of coalitions formed among large and small shareholders, where the reliability and enforceability of shareholders agreements are instrumental in safeguarding minority protection. When viewed from

[63] See Multi-member First Instance Court of Athens (Πολυμελές Πρωτοδικείο Αθηνών) *Case 569/2007*. The following extract has been translated from the original in Greek for the purpose of this thesis.
'It is inherent in shareholders agreements that they aim to achieve, in addition to and independently of the corporate interest, the personal interests of the shareholders who are parties in the agreement. Minority shareholders may enter into a shareholders agreement in order to bind the remaining shareholders, and the majority shareholders in particular, to a specified behaviour or action (Perakis E., Contractual restrictions of the shareholder's voting rights, 1976, 224) More importantly, the minority shareholders may have imposed as a condition upon the majority shareholders, before they invested in the company, that a shareholders agreement be concluded containing specific terms which safeguard the investment of the minority shareholders.'

[64] See Multi-member First Instance Court of Athens (Πολυμελές Πρωτοδικείο Αθηνών) *Case 3265/1991* which accepts that a voting agreement does not limit the minority protection rights or cancel out the provisions of the articles of association, because the board of directors and the general meeting still have the exclusive authority, as organs of the company, to determine corporate decisions and actions. Similarly, in principle, the voting agreement does not excessively bind the right of the shareholders who are parties to the agreement. In this regard, see the following *extract*, as translated from the original in Greek for the purpose of this thesis. *'...Finally, according to the factual background of the case, the Court cannot be led to find that the minority rights set out in Law 2190/1920 are infringed. The fact that the shareholders, who are also parties to the shareholders agreement, have decided in advance or have committed to vote in a specific way, does not necessarily result in the provisions of the law or the articles of association, which set out the exclusive and prevailing powers of the general meeting and the board of directors, have been cancelled out, because, independently of the contractual arrangements and restrictions that emerge among the contracting parties of the shareholders agreement (see Athens Court of Appeal (Εφετείο Αθηνών) Case 8129/1977), the general meeting and the board of directors are not bound to vote in the same way. Besides, the contractual obligation of the shareholder to vote towards a specific direction in the context of the shareholders agreement. does not, in principle, constitute an excessive restriction of her will, sufficient to bring about the unlawfulness of her vote as a unilateral legal action.'*

this perspective, shareholders agreements constitute a central factor in the relationship of MLS ownership structures and corporate governance.

2. The interaction of shareholders agreements and ownership structures: Theoretical predictions and empirical findings

The effect of shareholders agreements on corporate governance is assessed by a variety of theoretical predictions which produce a conflicting picture. According to one view, for example, shareholders agreements contribute to the alignment of the shareholders' interests within a company in which MLS exist, therefore minimizing conflicts between minorities and majorities.[65] Viewed from another perspective, shareholders agreements are often classified under the category of control-enhancing mechanisms, which increase the risk of minority expropriation and render concentrated ownership structures less attractive to investors.[66] Their nature as an expropriation tool derives from the distortion of the proportionality between control and cash-flow rights due to the increased control power of the formed winning coalition.

In light of the ambiguous nature of shareholders agreements, it is important to identify the factors which determine their actual effect on corporate governance. One such factor is the distribution of ownership of the shareholders who are also parties to the agreement. More specifically, if a shareholders agreement is in force between two shareholders whose stakes are very disparate in size, the expropriation effect of the coalition is considered to be maximal.[67] In the context of shareholders agreements among shareholders owning disparate stakes, the limited scope for

---

[65] Gomes&Novaes (2005) supra note47.

[66] For example, the EU Report, (2007), supra note50, considers shareholders agreements to be among the control enhancing mechanisms who accentuate the wedge between cash-flow and voting rights, therefore being likely to give rise to inefficiencies.

[67] Bloch&Hege (2003) supra note23. The scholars have presented a model according to which in situations of low control contestability, such as in cases where the first shareholder holds cash flow rights that significantly excess those of the second shareholder, minority shareholders should anticipate expropriation. On the contrary, in a situation in which ownership distribution is even and, thus, control contestability is higher, the scope for expropriation is limited. Hence, following this model, it may be assumed that firm value should decrease as the size difference between major shareholders increases. The combination of a large shareholder and a small one signals that the aim of this agreement is securing effective control over the firm with the smallest possible cash flow stake. The uneven bargaining power among the parties to the agreement implies that the agreement does not serve the purpose of facilitating coordination among shareholders but is more likely to be used as an expropriation tool instead.

minority shareholders to challenge larger shareholders reduces internal control contests. Contrastingly, in the case of even distribution among large, non-controlling shareholders, control is more contestable internally and shareholders agreements are more likely to be used to facilitate the efficient coordination among shareholders.[68] In the latter case, the correlation between shareholders agreements and firm value is a positive one.

Empirical findings from a variety of countries only partly confirm the theoretical predictions for a negative impact of shareholders agreements. For example, the performance of Spanish firms is found to be better when the stakes of the members participating in the coalition are of similar size[69] and a negative and significant abnormal return has been noticed when an agreement is signed and disclosed to the market, while the announcement of an agreement termination is associated with positive and significant abnormal returns.[70] In the context of privately-held firms, such as joint ventures, shareholders agreements are generally viewed as positive[71] and are extensively used by venture capitalists in order to alter the distribution of powers within the corporation and enhance or safeguard the value of their investment.[72] Shareholders agreements

---

[68] For a confirmation of these predictions see the model created by Bennedsen&Wolfenzon (2000) supra note7; Belot F., (2010), Shareholder Agreements and Firm Value: Evidence from French Listed Firms. Available at SSRN: http://ssrn.com/abstract=1282144. The author explains, that when cash-flow and voting rights are unevenly distributed among shareholders of a closely held firm, shareholders will form coalitions in order to seize control over the firm. In doing so, they will seek to have the minimal financial participation. In this latter case, the shareholders of the coalition are less prone to internalize the costs of their actions and more attracted by the consumption of private benefits. At this point, the analysis would benefit from an example to illustrate this point. According to Belot, 'suppose there are only three shareholders and compare two possible ownership structures. The first structure is {1/3, 1/3, 1/3} and the second {45%, 35%, 20%}. In both situations, two shareholders can share control (because they own more than 50% of voting rights). In the first case this “winning coalition” pools 2/3 of the voting rights while in the second case a winning coalition could emerge with only 55%.' Such an outcome would potentially be more detrimental to minority shareholders, because the willingness of the coalition to maximise firm values is proportionate to the number of shares it owns (‘alignment effect’). Therefore, the potential for conflicts of interests among controlling and non-controlling shareholders is increased and the risk of expropriation is accentuated.

[69] Gutiérrez&Tribo (2004) supra note13.

[70] Gianfrate G., (2007), What Do Shareholders Coalitions Really Want? Evidence from Italian Voting Trusts. Corporate Governance: An International Review, 15:(2):122. Available at SSRN: http://ssrn.com/abstract=972511 The author observes that in Italy, voting trust agreements are mainly aimed at both protecting controlling shareholders from hostile takeovers and entrenching incumbent management.

[71] Chemla, Gilles, Ljungqvist, Alexander and Habib, Michel A., (2004), An Analysis of Shareholder Agreements, NYU, Ctr for Law and Business Research Paper No. 02-01; RICAFE Working Paper No. 006. Available at SSRN: http://ssrn.com/abstract=299420.

[72] Steven N. K. and Stromberg P., (2003), Financial Contracting Theory Meets the Real World: An Empirical Analysis of Venture Capital Contracts, Review of Economic Studies, Blackwell Publishing, 70(2):281.

Although the specific research deals with the rights which form part of a shareholders agreement in the context of joint ventures and venture capital contracts, it is indicative of the role of shareholders agreements in complementing the law

are also found to mitigate the bargaining problems among MLS with respect to taking up investment projects that are beneficial for the company.[73] The terms contained in such agreements can induce the parties to make *ex ante* investments and prevent *ex post* transfers, defined as the so-called 'hold up problem', therefore achieving the efficient *ex post* allocation of stakes within the firm.[74]

The positive impact of shareholders agreements is also indicated by the higher sensitivity of CEO turnover to poor performance when the shareholders of the firm are kept together by an explicit agreement.[75] Similarly, in the context of an analysis of the dividend payout policy of Italian firms, it has been observed that the payout in firms whose shareholders have signed an agreement is higher.[76] Again, this finding can be interpreted as evidence of a less severe agency conflict between large and minority shareholders. In the US, the indications that voting agreements are a means of extracting private benefits are limited, even if the effect of the agreement is the creation of a wedge in cash-flow and control rights.[77] In this respect, evidence suggests that firm value is enhanced even when voting agreements are used by family owners. France, a jurisdiction in which shareholders agreements are often encountered, constitutes another illustrative example of the positive effect of shareholders agreements. Despite the negative relationship observed between firm value and the dispersion of voting rights across major shareholders[78], the existence of a shareholder agreement tends to offset this negative effect. This countervailing effect is more pronounced when a 'concerted action' provision[79] is in force and/or the contracting shareholders

---

or in accommodating the needs and aims of corporate actors. It is also indicative of the potential beneficial impact of shareholders agreements on the efficient allocation of resources and the promotion of investment through the inclusion of special terms which will govern tender offers and the sale of control blocks. In this context, private benefits extraction is regarded as a pre-requisite of ex-ante investments.

[73] Gomes&Novaes (2005) supra note47.

[74] Kaplan&Stromberg (2003) supra note72.

[75] Volpin (2002) supra note51.

Although the turnover is significantly lower and unaffected by performance when the controlling shareholder of the firm is also a top executive in the firm, it is more sensitive to performance when control is contestable and when the controlling shareholder owns a larger fraction of the firm's cash-flow rights.

[76]Mancinelli L. and Ozkan A., (2006). Ownership structure and dividend policy: Evidence from Italian firms. *European Journal of Finance, 12*(3):265.

[77] Villalonga B. and R. Amit, (2009a), How are U.S. Family Firms Controlled?, Review of Financial Studies 2009 22(8):3047-3091.

[78] Belot (2010) supra note68.

[79] For the definition of concerted action see Chapter VI.

are of the same type. In alignment with the aforementioned findings, higher valuations are also documented for French firms which have in place a shareholders agreement in which the pre- and post-IPO controlling shareholders agree to share control.[80]

V. CONCLUDING REMARKS

Multiple large shareholders are often encountered within companies of concentrated ownership. The distinct characteristics of multiple blockholders structures determine the impact of this form of concentrated ownership on corporate governance. The most important elements of multiple blockholders ownership include the number and the size of the blockholdings, the distribution of shareholders cash-flow and control rights and the identity of the large shareholders. These factors interact to produce a wide variety of combinations of controlling coalitions. They also shape the characteristics of the resulting coalitions and their impact on corporate governance, most notably the scope for private benefit extraction. The concrete examples of this Chapter clearly illustrate how each factor contributes to internal control contestability, which is one of the main drivers of low private benefit extraction.

Internal control contestability is closely linked to the formation of shareholders agreements. Such agreements are the legal expression of the interactions and arrangements among the shareholders participating in a coalition. Shareholders agreements have been cited for their dynamic potential and ambiguous impact as corporate governance mechanisms. The legal effectiveness of the regulation of shareholders agreements is the main determinant of their benign or malign character as a corporate governance mechanism. In this respect, by presenting the interrelation of shareholders coalitions and corporate governance, this Chapter sets the general background, against which the legal effectiveness of investor protection provisions within multiple blockholders ownership structures is assessed in Chapters V and VI of this thesis.

The study, therefore, indicates that the positive effect of the shareholders agreements is greater when the contracting shareholders confirm through the agreement their common view on the strategy of the company.

[80] Schramade W. and Roosenboom P., (2006), The Price of Power: Valuing the Controlling Position of Owner-Managers in French IPO Firms. Journal of Corporate Finance, 12(2):270. Available at SSRN: http://ssrn.com/abstract=708985. Their findings derive from the analysis of a sample of 299 French companies conducting an IPO over the period from 1993 to 1999.

CHAPTER V: THE ROLE OF THE LAW IN FACILITATING THE INTERACTIONS OF MULTIPLE LARGE SHAREHOLDERS: A COMPARATIVE STUDY OF THE REGULATION OF SHAREHOLDERS AGREEMENTS IN THE UK AND GREECE

I. INTRODUCTION

Theoretically, shareholders agreements have the potential to be a beneficial mechanism which facilitates the coordination of shareholders but their role in practice depends on the context and the overall regulatory framework in which they operate. More specifically, as shareholders agreements often include minority protection provisions, their enforceability determines their impact on investor protection. The role of the law is, therefore, vital because it affects the reliability of shareholders agreements as a governance tool. If the legal uncertainty and risk[1] are excessive, shareholders agreements turn into unreliable and ineffective governance mechanisms which shareholders are unwilling to use for their coordination. In this regard, a facilitative regulatory regime constitutes the first prerequisite for the development of shareholders agreements into a reliable and effective corporate governance mechanism. However, the dynamics of shareholders agreements, most notably the ambiguity regarding their impact as minority expropriating tools or efficient coordination mechanisms, necessitate that limits be imposed on their enforceability. In this respect, legal rules and principles act as a filter which allows beneficial shareholders coalitions to be formed while restricting the risk of minority expropriation resulting from the control-enhancing effect of the shareholders agreements. In this context, legal effectiveness is defined as the effectiveness of the law to strike down shareholders agreements of an expropriating nature.

[1]Legal risk derives from the terms that affect the rights and duties of the shareholders with regard to the voting process and power, and the composition, election and powers of the board of directors.

Chapter V: The role of the law in facilitating the interactions of multiple large shareholders – A comparative study of the regulation of shareholders agreements in the UK and Greece

In this Chapter, the identification of the mechanisms employed by the selected jurisdictions to strike the right balance between the efficient coordination of shareholders and minority expropriation involves the comparative analysis between two different jurisdictions. More specifically, the comparative assessment of the law of shareholders agreements, viewed as the legal expression of shareholders interactions, involves two jurisdictions of different legal origin, namely the UK and Greece. This comparison highlights the differences and similarities of the regulation of the same legal relationship, namely shareholders agreements, by two legal systems of different origin. In both jurisdictions shareholders agreements have a central role for different reasons: In the UK, shareholders agreements facilitate the coordination of dispersed institutional shareholders, who collectively own the vast majority of listed companies. In Greece, shareholders agreements facilitate the interaction of multiple large shareholders and often constitute a minority protection mechanism. Structuring the comparative analysis around two countries with different legal systems is perfectly aligned with the argument underlying this thesis, that the effectiveness of the legal framework rather than the legal origin determines the quality of investor protection.

The substantive analysis of black-letter rules and case law guarantees the reliable evaluation of the quality of the legal framework of investor protection. The comparison is structured around three determinants of legal effectiveness, the first being the legal nature of shareholders agreements. This analysis indicates how shareholders agreements are perceived by the law and sets the basis for understanding the more complex issues regarding their regulation. The second factor involves the complex relationship of shareholders agreements and the articles of association of the company. This point is particularly important in light of the distinct legal nature of shareholders agreements, as they lie at the intersection of company and contract law. The third factor refers to the limitations imposed on shareholders agreements by the law. This aspect is vital because it determines the extent to which shareholders agreements can be used as expropriation mechanisms.

II. THE LEGAL NATURE OF SHAREHOLDERS AGREEMENTS

1. The legal nature of shareholders agreements in the UK

In the UK, shareholders agreements are viewed as an expression of the parties' freedom of contract.[2] This implies an inherent flexibility associated with shareholders agreements, as the parties have a wide discretion when determining their content. However, the lack of disclosure[3] of the terms of the agreement is in contrast with the transparency imposed at the level of the articles of association. Moreover, the interference of the terms of shareholders agreements with the articles of association creates a tension between the two sets of regulation, thus giving rise to legal risk born by the parties to the agreement. Legal risk emerges because the limits of the enforceability of shareholders agreements and the limits of the contractual freedom of the shareholders are often blurred.

In this respect, different views have been expressed. According to the restrictive view[4], there is a limited scope for legally enforceable shareholders agreements because they facilitate the evasion of company law rules. Contrastingly, the liberal view[5] not only accepts an unfettered contractual freedom between shareholders, but extends this freedom to the agreements between shareholders and the company as a party. In the latter case, shareholders agreements importantly become part of the arrangements of the corporation and in effect complement the regulation of the governance of the company illustrated in the company's articles of association. An example in support of this view is Section 40(3)(b) of the Companies Act 2006 which acknowledges that shareholders agreements complement the articles of association. By covering both the restrictions deriving from the articles and the ones deriving from shareholders agreements, it, therefore,

[2] For the treatment of shareholders agreements in the context of UK law see for example E. Ferran, (1994), The Decision of the House of Lords in *Russell v Northern Bank Development Corporation Limited,* Cambridge Law Journal, 53:343. According to the most liberal view expressed in this paper, shareholders agreements constitute an expression of the contractual freedom of the shareholders and the company, should the latter choose to enter into such an agreement.

[3] To the extent that there is no requirement for such agreements to be disclosed, they distort the transparency imposed on the internal governance of companies for the protection of shareholders and third parties alike.

[4] Schmitthoff k., (1970), House of Lords Sanctions Evasion of Companies Act, Journal of Business Law, 1970, 1.

[5] Ferran (1994) supra note2.

provides an expanded definition of the company's constitution compared to the definition in S17 and S29.[6]

A key element of the law of shareholders agreements, whether agreed by all or some of the shareholders only, is that they create personal obligations between the parties only and, in principle, the agreement does not become a regulation of the company. Additionally, as the principle of privity of contract applies, the agreement does not become binding on the transferees of the parties to it or upon new or non-assenting shareholders.[7] The flexibility underpinning the shareholders agreements allows the parties to agree on the matters they choose. Similarly, the parties can alter their agreement as long as they all agree or follow the procedures that the shareholders agreement prescribes.[8]

An additional important aspect of the law of shareholders agreements in the UK involves the remedies available for the parties to the agreement. Should a breach occur, the parties have the option to either bring a claim for damages or request injunctive relief. In *Puddephatt v Leith*[9]*, for example,* the court compelled a shareholder to vote as agreed in a shareholders agreement. In *Russell v Northern Bank*[10], such an order would also possibly have been granted by the court, had it been sought by the claimant, which would prevent the shareholders-parties from voting in favour of the resolution in question.[11] The availability of specific performance remedies under UK law is a determining factor when it comes to the assessment of the effectiveness of the legal framework to protect minority shareholders who are parties to the agreement. As the courts will grant orders to enforce shareholders agreements, they send out an important signal to market participants that the contractual obligations undertaken in the context of shareholders agreements must be respected. To the extent that shareholders agreements contain provisions which protect minority

[6] Gower&Davies, (2008), Principles of Modern Company Law, 8th Edition, Sweet & Maxwell page76 footnote 124.
[7] Lord Davey *in Welton v Saffery*, [1897] A.C.299.
[8] *In Euro Brokers Holdings Ltd v Monecor (London) Ltd [2003] EWCA Civ 105 [2003] BCC 573,[2003] 1 BCLC 506*, the Court of Appeal found that a unanimous informal agreement could alter procedures agreed in a shareholders' agreement.
[9] *Puddephatt v Leith [1916] 1 Ch 200.*
[10] *Russell v Northern Bank* Development Corp Ltd [1992] BCC 578; [1992] 1 WLR 588.
[11] Kershaw D., (2009), Company Law in Context: Text and Materials, OUP, p.95.

shareholders, this approach limits the risk of minority expropriation and reinforces the perception of shareholders agreements as a reliable mechanism of corporate governance.

2. The legal nature of shareholders agreements in Greece

Under Greek law, shareholders agreements are also premised on the freedom of contract as expressed in Article 361 of the Greek Civil Code and as such are presumed to be lawful.[12] Such agreements are contractual in nature and, as the principle of the privity of contracts applies, they are only binding among the parties to the agreement. As a result, they do not bind the company or the shareholders who became members of the company following a subsequent transfer of shares.[13] The shareholders agreements are not subject to any form or disclosure requirements and may be express or implied.[14] The stake or the economic participation of the shareholders in the company does not affect the rights and processes established under the shareholders agreement, unless specifically stated. For example, their amendment requires the agreement of all parties, unless otherwise prescribed within the agreement.

Their function and operation is subject to the rules and general principles of contract law as stated in the Greek Civil Code. A voting agreement, for example, may be valid, although it restricts the exercise of the shareholders' statutory voting right, the obligation undertaken by the shareholders

[12] *Case 304/1998* Multi-member First Instance Court of Verroia (Πολυμελές Πρωτοδικείο Βέρροιας). The following extract has been translated from the original in Greek for the purpose of this thesis.
'The legal foundation of the relevant agreements is the principle of freedom of contract, (Article 361 GCC), coupled with the provisions of Law 2190/1920.'

[13] Marinos M., (2004), Shareholders agreements as a means of coordination and planning,(Οι συμφωνίες μεταξύ μετόχων ως μέσο οργάνωσης και προγραμματισμού), Chronicles of Private Law, 2004, 97; Marinos M., (2008), Contractual shareholders agreements and the articles of association-Some normative observations on the distinction between the statutory and the contractual agreement following *Case 1121/2006* of the Supreme Court of Greece (Άρειος Πάγος),(Ενοχική συμφωνία μετόχων και καταστατικό-Μερικές δογματικές παρατηρήσεις στη διάκριση μεταξύ καταστατικής και ενοχικής σύμβασης με αφορμή την απόφαση *ΑΠ 1121/2006*), Elliniki Dikaiosini, 2008, 677.

[14] *Case 304/1998* Multi-member First Instance Court of Verroia (Πολυμελές Πρωτοδικείο Βέρροιας). The following extract has been translated from the original in Greek for the purpose of this thesis.
'Commercial practices, particularly in the field of Societes Anonymes, involve that the shareholders of the company complement or to some extent substitute the organisation of the company with contractual agreements among themselves or even with persons who are not shareholders of the company. These shareholders agreements are not subject to any form and are not disclosed, they are being entered into explicitly or tacitly and regulate issues regarding the operation of the company.'

being only contractual in nature.[15] It is also possible that a separate legal relationship between the parties to the agreement is established as a result of the agreement. For example, if a shareholder takes up the obligation to vote in a certain way against a third party, who is not a shareholder, the voting agreement may also give rise to a relationship of agency among the parties according to Article 713 of the Greek Civil Code.[16] Similarly, if all the shareholders are parties to a voting agreement, a distinct legal relationship of 'civil company' may be formed among them, according to Article 741 of the Greek Civil Code.[17]

In terms of enforcement, the failure of the shareholder to comply with the terms of the agreement constitutes a breach and the shareholder will be liable to compensate the parties to the agreement for the breach.[18] The distinct legal relationships which arise in the context of the specific factual background may often provide an alternative legal basis for the compensation of the contracting

---

[15] *Case 304/1998* Multi-member First Instance Court of Verroia (Πολυμελές Πρωτοδικείο Βέρροιας). The following extract has been translated from the original in Greek for the purpose of this thesis.

' Under the category of shareholders agreements also fall the voting agreements, according to which the shareholder undertakes the obligation to vote at the shareholders meeting in a specified way, in order to bring about a specified outcome and shape the will of the company as a legal person accordingly. The restrictions of the shareholders' voting powers fall under contract, rather than company law, because the undertaking of the shareholder does not alter the nature of her voting right; the shareholder is simply restricting her power to exercise her voting rights freely at the shareholders meeting.'

Also see relevant case law: Case 3265/91Multi-member First Instance Court of Athens, published in Commercial Law Review 1991, 444; Case 5001/71 Multi-member First Instance Court of Athens, published in Commercial Law Review 1971, 545; Perakis E., (1976), Contractual restrictions of shareholders' voting rights (Ενοχικαί δεσμεύσεις του δικαιώματος ψήφου του μετόχου), 1976, 3.

[16] *Case 304/1998* Multi-member First Instance Court of Verroia (Πολυμελές Πρωτοδικείο Βέρροιας). The following extract has been translated from the original in Greek for the purpose of this thesis.

'..., if the shareholder unilaterally undertakes to vote in a specified way without any consideration/remuneration and without a similar undertaking by her counterparty, such as in the case that the counterparty is not a shareholder of the company, an agency relationship is concluded, according to article 713 of the Civil Code, the agency involving the exercise of the voting rights in a specified way. Consequently, if the shareholder fails to comply with the undertaking, she is contractually liable to compensate her counterparty, as provided by Article 714, according to which the agent is liable to compensate her principle even when negligence is involved.'

[17] The civil company created among the parties of the agreement has no separate legal personality. See further Marinos (2004, 2008) supra note13; Rokas N., (1996), Commercial Companies,4th Edition, Ant.Sakkoulas Publications, page3. An important element of this type of legal relationship is that the members of the civil company owe a duty of loyalty to each other, the breach of which gives rise to an additional legal basis of contractual liability. The duty of loyalty will, for instance, be infringed should the majority shareholders fail to comply with the shareholders agreement, thus expropriating the minority shareholders, who are also parties to the agreement.

[18] *Case 304/1998* Multi-member First Instance Court of Verroia (Πολυμελές Πρωτοδικείο Βέρροιας). The following extract has been translated from the original in Greek for the purpose of this thesis.

'…..Furthermore, if the shareholder is unable to comply with her undertaking, either because she never had the voting rights to do so or lost her voting rights subsequently or she undertook to vote contrary to the law, the provisions of Articles 362 and 335 of the Civil Code apply.'

parties due to the breach. However, an important deficiency of the Greek legal framework derives from the fact that the breach of the shareholders agreement only gives the contracting counterparties the right to seek compensation for damages rather than specific performance.[19] The lack of availability of specific performance remedies implies that the parties to an agreement which protects minority shareholders can potentially choose between the compliance with the agreement and the exercise of their voting power, for example, to approve transactions or strategies which enable them to extract private benefits of control, so long as the benefits from the breach outweigh the costs of compensation owed to the minority shareholders harmed by the breach. As the parties to the agreement are provided with a leeway from their contractual obligations, the reliability of shareholders agreements as a corporate governance mechanism is substantially compromised.

III. THE INTERACTION OF SHAREHOLDERS AGREEMENTS WITH THE ARTICLES OF ASSOCIATION

An important source of complexity in the relationship of shareholders agreements and the articles of association derives from the fact that a common set of issues regarding the organisation of the company is regulated by two different legal sources. In the context of this thesis, this relationship is important because it affects the enforceability of shareholders agreements and, consequently, the reliance of market participants on them as an effective governance mechanism. More specifically, the distinct legal nature of the articles of association limits the contractual freedom of the parties to an agreement. Effectively, this relationship gives rise to a paradox, as the articles of association often neutralise the shareholders agreements, which aim to alter the company's internal organisation or the allocation of control rights as manifested in the company's articles of association. A vicious circle is initiated, because the objective of the shareholders agreement is often the change in the company's organisation and operation, as prescribed in the articles of association.

[19] *ibid. Case 304/1998*Multi-member First Instance Court of Verroia (Πολυμελές Πρωτοδικείο Βέρροιας).

Although shareholders agreements are only contractual in nature across both jurisdictions, under certain conditions, their impact on corporate actions and decisions is determining. For example, although in both jurisdictions the resolutions passed at the general meeting are subject to corporate formalities and disclosure requirements, the participation of all the shareholders of the company to an agreement could have the equivalent effect of a resolution passed by the general meeting even without the observation of the required procedural formalities and disclosure. The issue has arisen both in the UK and Greece and the approach adopted is found in the case of *Re Duomatic* in the UK and in Case 26/1998 of the Supreme Court of Greece (Άρειος Πάγος) in Greece. The factual background in both cases involved the participation of all shareholders as parties to the agreement. The permissive approach to shareholders agreements reflected in the acceptance by both legal systems of the effect of a corporate action, even without the observation of corporate formalities, constitutes an illustrative example of the similarities of both jurisdictions.

1. The relationship of shareholders agreements and the articles of association in the UK

1.1 The prevalence of the articles of association

In the UK, the articles of association are a so called 'statutory contract', created by the Companies Act 2006 (CA2006, Section 33).[20] They constitute the manifestation of the freedom of the members to organise the company through governance rules that meet their preferences and correspond to the activity undertaken by the company. As default rules, the Model Articles[21] issued pursuant to the CA2006 apply to a company unless the members of the company have put alternative rules in place through the articles of association. The Model Articles, although optional, set out the practices which become a benchmark governance standard.[22] According to Section 33, the articles have the effect of a contract between both the members *inter se* and between the members and

[20] Reece Thomas K. and Ryan C.L., (1999) The Law and Practice of Shareholders Agreements, Butterworths, LexisNexis, 1999, 4; Kershaw (2009) supra note11, p.85; *Rayfield v Hands* [1958] 2WLR 851; *Wood v Odessa Waterworks Co* [1889] 42 Ch D 636. On the enforceability of the corporate contract and the limitations imposed see Kershaw (2009) supra note11, p.87-93; Gower&Davies (2008) supra note6 p.68-74.

[21] See the Companies Model Articles Regulations 2008 No 3229, issued pursuant to S19 CA 2006, by the Secretary of State.

[22] Kershaw (2009) supra note11, p.82 The Articles of Association may deviate from the Model Articles to the extent that no mandatory rules of company law are affected.

the company.[23] Contrary to regular contracts, however, the company's articles of association and any amendments must be filed with the Companies House and are made publicly available.[24]

Despite the similarities to contracts, the articles of association which provide the internal governance rules of the company as a separate legal entity differ from an ordinary contract in several ways.[25] For example, their binding character extends to the new shareholders acquiring the company's shares after the adoption of the articles, notwithstanding the lack of their specific consent to the terms set out in the articles of association.[26] Such consent is implied and the new shareholders are deemed by statute to be bound by virtue of their shareholding. Viewed from this perspective, the articles of association establish an exception to the principle of privity of contract. In addition to this, the articles of association, despite their contractual elements, are not enforceable by the shareholders against one another or the company and vice versa, with the exception of special rights held by shareholders in their capacity as shareholders.[27]

The differences in the nature of the shareholders agreements and the articles of association are legally important. More specifically, the UK case law confirms the prevalent legal nature of the

[23] *Hickman v Kent Romney Marsh Sheep-Breeders' Association* [1915] 1 Ch 881.

[24] S18(2) CA2006 and S26 CA2006 requiring for any amendments to the Articles to be filed within 15 days of the amendment.

[25] Reece&Ryan (1999) supra note20, p.6 For example, the AOA can be amended without the unanimous consent of the parties by virtue of the right of the company to change its articles by special resolution. (Section 21 of CA 2006) For the purposes of amending the Articles of Association the company is represented by its members and a special resolution is required. This means that the resolution must attract 75% of the votes cast in a shareholders meeting. The 75% threshold is a mandatory minimum threshold. When exercising their voting rights, shareholders are also subject to a duty to vote bona fide to the benefit of the company as developed in common law. See *Allen v Gold Reefs of Africa* LTD[1900-03] All ER REP 746; *Brown v British Abrasive Wheel Co Ltd* [1918-19] All ER Rep 308; *Sidebottom v Kershaw, Leese and Company Ltd* [1920] 1 Ch 154 (CA); *Dafen Tinplate Company Limited v Llanelly Steel Company* [1920] 2 Ch124; *Shuttleworth v Cox Bros Ltd* [1927] 2KB 9 (CA), *Greenhalgh v Anderne Cinemas* [1951] Ch 286, *Citco Banking Corporation NV v Pusser's Ltd* [2007] UKPC 13.

[26] Section 33 (1) CA2006 states that the articles bind the company and its members, referring those that at any time are members to the company.

[27] Kershaw (2009) supra note11, p.89. The articles do not create individual rights but their primary function is to provide for collective decision-making procedures and to distribute collective members rights. Thus, a breach of the collective rights of the shareholders created by the articles can only be enforced by the shareholders as a body. In this latter case, such a breach of the corporate contract amounts to an internal irregularity. By contrast a shareholder will be able to enforce the corporate contract, only if this gives rise to personal rights in his/her capacity as a shareholder. On this distinction and the important of the factor of discrimination against a shareholder with regard to his rights granted by the articles see *Macdoougall v Gardiner*[1875] 1 Ch D 13 and *Pender v Lushington* [1877] 6 CH D 70.

articles of association[28] by establishing that a shareholders agreement will be unenforceable against the company, if the agreement contains provisions which are in breach of statutory or common law. The participation of the company to the agreement will not be a material factor and any restriction of the company's statutory rights through a shareholders agreement cannot be justified on the basis of the freedom of contract of the company. The comparison between shareholders agreements and the articles of association in the UK, therefore, indicates the prevalence of the latter due to their distinct legal nature. However, this general proposition is subject to important exceptions, which blur the limits of their relationship.

1.2. Exceptions to the prevalence of the articles of association

1.2.1 Shareholders agreements as corporate resolutions

In the UK, the legal basis of the flexible, permissive approach to shareholders agreements is set out in *Re Duomatic*[29], which establishes the principle that *'where it can be shown that all shareholders who have the right to attend and vote at a general meeting of the company assent to some matter which a general meeting of the company could carry into effect, that assent is as binding as a resolution in general meeting would be.'*[30] The wording of the judgment indicates that there is no limitation with regard to the actual '*matters*' to which shareholders assent. This suggests that this principle does not only apply to approvals required by the company's constitution or to ratifications of breach of duty.[31]

1.2.2 Shareholders agreements as an amendment of the articles of association

The principle established in *Re Duomatic,* can also be extended to apply to the resolutions which approve an amendment of the articles of association. The prerequisite for the application of the principle is that all shareholders provide their approval, even if their consent is informal or is granted outside the context of the shareholders meeting, for example.[32] In this light, few

---

[28] *Russell v Northern Bank supra note10.*
[29] *Re Duomatic* [1969] 1 All ER 161.
[30] As per Buckley J in *Re Duomatic.*
[31] See Kershaw (2009) supra note11, p.103 footnote 93, *Bankgesellschaft Berlin AG (formerly Berliner Bank AG) v Makris* [1999] All ER (D) 56.
[32] See Kershaw (2009) supra note11, p.103 with further references in footnote 92 to *Cane v Jones* (1981) 1 All ER 533, per Michael Wheeler QC: *'it is a basic principle of company law that all the corporators, acting together, can do anything*

objections remain to the application of the *Re Duomatic* principle in the context of a shareholders agreement, provided that all the shareholders are parties. The consent of the shareholders expressed within the agreement could, therefore, have the effect of an amendment of the articles of association despite the fact that the requirements set out in Section 21 of the CA2006 are not complied with. This could be particularly relevant in the context of small companies which habitually exhibit a lack of adherence to corporate formalities when conducting their affairs.

2. The relationship of shareholders agreements and the articles of association in Greece

2.1. The prevalence of the articles of association

The tension between the articles of association and shareholders agreements is also the case in Greek law.[33] The most widely-accepted view considers the relationship between shareholders agreements and the articles of association to be a hierarchical one.[34] According to the principle of separation of the two contracts and the principle of the prevalence of the provisions of the articles of association, shareholders agreements will only be enforceable to the extent that they are not contrary to the provisions set out in the articles of association. As shareholders agreements are only contractual in nature, they do not strictly complement or amend the articles of association, in light of the statutory legal nature of the latter.

Therefore, the articles of association and shareholders agreements only work in parallel, subject to the prevalence of the former. This view is manifested in the general rule that a decision or action

which is intra vires the company'; to *Re Bailey, Hay&Co Ltd* (1971) 3 All ER 693, per Brightman J: *'it is established law that a company is bound, in a matter intra vires the company, by the unanimous agreement of all its corporators'.*

[33] Vervesos N., (2007), Shareholders agreement among all the shareholders of the company (Omnilaterale Gesellshaftervereinbarung) and invalidity of the resolution of the general meeting of the shareholders, Simultaneously, observations on Case 1121/2006 of the Supreme Court of Greece (Άρειος Πάγος), (Εξωεταιρική συμφωνία ανάμεσα σε όλους τους μετόχους της εταιρίας (Omnilaterale Gesellshaftervereinbarung) και ακυρότητα της απόφασης της γενικής συνέλευσης των μετόχων. Συγχρόνως παρατηρήσεις στην απόφαση 1121/2006 ΑΠ), Commercial Law Review, 2007, 932.

[34] Marinos M., (2006), Comments on Multi-member First Instance Court of Athens *Case 5723/2006*, published in Law of Enterprises and Companies, 2006, 1151.

More specifically, shareholders agreements are constrained by the articles of association and, should a conflict arise, the provisions of the articles of association prevail. See above Part III.2.(2.1).

of the organs of the company in breach of the articles of association will be void.[35] However, such a strict approach aligned with the principle of separation is under criticism mainly for being formalistic and for distorting the corporate reality shaped by the shareholders agreement. Instead, the articles of association and the shareholders agreement should be applied as a unity, in order for the law to capture and effectively regulate the complex arrangements developed at the level of the corporation.[36] To this effect, a variety of exceptions mitigates the formalistic affect of the principle of separation and blurs the limits of the relationship of shareholders agreements and the articles of association.

2.2 Exceptions to the prevalence of the articles of association

2.2.1 Shareholders agreements as corporate resolutions

An important exception to the prevalence of the articles of association is established under Greek company law by considering that a shareholders agreement which is entered into by all the shareholders has the effect of a resolution of the shareholders meeting.[37] The favourable approach of the Greek law is manifested in *Case 26/1998* of the Supreme Court of Greece, which has accepted that '*it is possible for the will of the legal person to be expressed, at least in special circumstances, without the involvement of the organs of the company, through all of its shareholders, who are effectively identified with it.'*[38] Such 'special circumstances' may involve closely-held corporations, where the participation of all the shareholders to the agreement can be equal to their participation in a duly convened general meeting where a resolution would normally

[35] See Article 35a par2b of Law 2190/1920, as amended by Law 3604/2007, which applies to Societes Anonymes. The decisions of the general shareholders meeting will be void if they are in breach of the articles of association or if they are taken in breach of general principles of good faith, good moral etc as such principles apply in the context of company law. See *Case* 832/1976 *Supreme Court of Greece (Άρειος Πάγος)*, published in Nomiko Vima, 25:190.
Similarly, the actions/resolutions of the board of directors can be void for similar breaches. See for example *Case 1339/1995* Piraeus Court of Appeal, published in Elliniki Dikaiosini 1996, 201; *Case 433/1995* Multi-member First Instance Court of Piraeus, published in Law of Enterprises and Companies 1995, 405; *Case 48/1991* Multi-member First Instance Court of Rodopi (Μονομελές Πρωτοδικείο Ροδόπης), published in Elliniki Dikaiosini 1992, 1626.

[36] Marinos (2006) supra note34.

[37] Also see Vervesos (2007) supra note33.

[38] On the issue also see Case 26/1998, Supreme Court of Greece ('Αρειος Πάγος), published in Commercial Law Review 1998, p.669, and Pampoukis K., Comments on Case 26/1998 Supreme Court of Greece ('Αρειος Πάγος), published in Commercial Law Review, 1998, p.553.

be passed at. In the context of such an approach, a statutory effect is attributed to the contractual nature of the shareholders agreement.

2.2.2 Shareholders agreements as an amendment of the articles of association

Under Greek law, in principle, a shareholders agreement cannot alter the articles of association, which constitute a contract between the company and its members in respect of the rights and liabilities they have in their capacity as members. However, courts have developed a more permissive approach to shareholders agreements by accepting that a shareholders agreement to which all shareholders are a party is more than contractual in nature.[39] In this respect, a recent Greek judgment[40] held that the legal nature of shareholders agreements is altered if all the shareholders are parties to the agreement, as it may often be the case in the context of a small company incorporated under the form of a *Societe Anonyme*. The terms of such an agreement acquire the nature of *de facto* provisions of the articles of association and become *quasi* statutory in nature. In order for this effect to be created, it is immaterial whether there is a specific reference by the articles of association to the shareholders agreement or not.[41]

This approach substantially favours shareholders agreements and protects the parties to the agreement by extending its binding effect and by rendering it a part of the constitutional documents of the company. As a result, the role and impact of shareholders agreements as a governance mechanism is substantially upgraded, because the legal consequences of a breach of the terms of the agreement will, in effect, threaten the validity of the company's actions. In the case that the shareholders agreement contains provisions for the protection of minorities, this approach limits the ability of majority shareholders to pass resolutions contrary to the terms of the agreement to the detriment of minority shareholders. However, this change in the legal nature of the shareholders agreements and the attribution of a statutory effect to the terms of the shareholders agreement have been criticised heavily as being contrary to basic formalities and

[39] Also see Vervesos (2007) supra note33.

[40] *Case* 5079/2002 Single-member Court of First Instance of Athens, published in Commercial Law Review 2002, 572, Also see Opinion of Rokas N. in the context of *Case 5565/2003* Single-member Court of First Instance of Athens, published in Commercial Law Review 2003, 831.

[41] *Case 26/1998* of the Supreme Court of Greece (Άρειος Πάγος). The extract has been translated from the original in Greek for the purpose of this thesis.

general principles of company and contract law, such as important disclosure requirements and the principle of privity of contracts.[42]

IV. THE INTERACTION OF SHAREHOLDERS AGREEMENTS WITH MANDATORY COMPANY LAW RULES

In addition to the articles of association, the mandatory provisions of company law impose important restrictions on shareholders agreements. In both jurisdictions examined, shareholders agreements are, in principle, unenforceable to the extent that they facilitate the avoidance of mandatory provisions of company law. The fact that both jurisdictions impose limits on the enforceability of shareholders agreements through mandatory rules, does not necessarily imply that the actual effect of the limitations is identical, because the number of mandatory rules in each of the selected jurisdictions is different. Similarly, the approach of the case law to the interaction of shareholders agreements and mandatory law also differs in terms of flexibility and strictness.

In effect, the increased number of mandatory provisions in Law 2190/1920 in Greece is counterbalanced by a permissive approach of the case law, therefore allowing the shareholders agreements to determine the organisation of the company more freely. Therefore, in both jurisdictions, the interpretation of the legal relationship between shareholders agreements and mandatory legal provisions mitigates the impact of mandatory rules in practice. This is particularly important in the case of Greece, because the favourable approach of the case law counteracts the restrictive effect of the multiple mandatory rules, therefore promoting shareholders coordination and the use of shareholders agreements as a tool of minority protection.

[42] At this point, it must be noted that the aforementioned approach has received extensive criticism on several grounds. The attribution by the case law of such a de facto, quasi-statutory effect to shareholders agreements, to which all shareholders are parties, effectively disapplies the general principle of privity of contracts as its binding effect is extended to the company. Furthermore, such an effect may as well be problematic for third parties, in light of the lack of any requirement that the shareholders agreement be disclosed to them. This approach is incoherent with the particular emphasis laid by Greek company law on the disclosure of the company's articles association and corporate decisions for the purpose of protecting third parties. More specifically, the company's articles of association, all amendments and corporate decisions must be made widely available to third parties by being submitted to the specified divisions of the Greek Courts, which serve the same purpose and are equivalent to the Company's House in the UK, and by being published on the Public Gazette. Also see Vervesos (2007) supra note33; Marinos (2004) supra note13 p.102.

1. Shareholders agreements in light of the mandatory provisions of UK company law

1.1 Restrictions imposed on the appointment of Directors in light of Section 168 of the Companies Act 2006

In the UK, shareholders agreements are unenforceable if they are contrary to mandatory provisions of company law. One example of a mandatory provision is S168 of CA2006, which establishes the shareholders' right to remove a director at any time and without cause.[43] The rationale for this rule is the protection of shareholders from managerial misconduct and its aim is to act as a disciplining mechanism for the management. In this respect, *Russell v Northern Bank* held that a shareholders agreement cannot be enforced against the company, if the latter is a party to the agreement and the agreement contains provisions which, had they been included in the articles of association, they would be invalid as contrary to mandatory company law principles and rules established by statute such as, for example, S168 of the CA2006.

However, in *Bushell v Faith*[44] the absolute, prohibitive effect of S168 was mitigated. In that case, a provision of the articles of association, which made the removal of a director practically impossible, was not found to have breached S303 of CA1985 (the predecessor of S168 of CA2006). More specifically, the mandatory nature of S303 was found to be compatible with the provision of the articles of association, that in the event of a resolution being proposed for the removal of any director, any shares held by that director shall, on a poll in respect of such resolution, carry the right to three votes per share.[45] In light of the decision in *Bushell v Faith*, UK company law seems to allow for weighted voting rights to be used to protect a director from being removed, despite the fact that such an approach could be interpreted as effectively distorting the mandatory nature of

[43] The mandatory nature of the rule has also been contested. Section 168 provides that 'A company may by ordinary resolution remove a director before the expiration of his term, notwithstanding anything in any agreement between it and him'. The omission of the reference to 'anything in the articles of association or in any agreement ', as it was the wording of section 303 of the 1985 CA, at first sight creates interpretative difficulties as to the mandatory nature of the rule. However, it is clear that 'the articles may not override any requirements set out in the Act' and to the extent that S168 does not explicitly give the company the opportunity to opt out, it remains mandatory in nature. See Kershaw (2009) supra note11, p.212 supports the mandatory nature of the rule, citing Lord Sainsbury of Turville, Hansard 9 May 2006.

[44] *Bushell v Faith* [1970] AC1099 (House of Lords).

[45] *ibid* The legality of such a provision was based on the analogy drawn by the Law Lords between the special voting rights on a poll, attached to the shares of the director in the context of passing a resolution, and the use of different classes of shares. Lord Morris was the dissenting judge and held that the unconcealed effect of the provision was to make a director irremovable and in this light, the provision was illegal as it was used to circumvent S303.

the rule. In this light, this judgment could also be used to support the argument that a shareholders agreement with a restraining effect on the shareholders' right to remove directors as set out in S168 is enforceable. To the extent that the provision of weighted voting rights included in the articles of association is lawful, it can, by analogy, be assumed that such a provision, if included in a shareholders agreement, will also be lawful.

Similarly, the enforceability of the shareholders agreement could also be argued on the legal grounds of *Russell v Northern Bank*.[46] Drawing on the judgment of Lord Jauncey[47], it could be argued that, while a provision in a company's articles restricting its statutory power to remove a director is invalid, an agreement with the similar content among the shareholders is not necessarily so. Such an agreement would establish a personal obligation and as such it would be enforceable, therefore enabling the claimant to obtain an injunction to prevent the shareholders who are also parties to the agreement from exercising their votes in order to remove the director. In light of the aggregate effect of the decisions of the House of Lords in *Bushell v Faith* and *Russell v Northern Bank*, the legality of such a term included in the shareholders agreement could hardly be contested.

1.2 Shareholders agreements in light of Section 21 of the Companies Act 2006

Shareholders agreements may also interfere with important common law and statutory rules on companies, such as the one set out in Section 21 of the CA2006. Although an undertaking by the company to restrict its right to amend its articles of association according to Section 21 of the CA2006 would be unenforceable against the company[48], an agreement of an identical content among the shareholders is not necessarily invalid, as the House of Lords judgment in *Russell v Northern Bank* points out. This would particularly be the case, if the parties state that the shareholders agreement will take precedence over the articles of association. Similarly, the parties could also undertake the obligation to amend the articles of association accordingly, should a conflict with the articles of association occur or if an amendment is required to give effect to one

[46] as per Lord Jauncey of Tullichettle, *Russell v Northern Bank Development Corporation Limited supra note10.*
[47] *ibid.*
[48] *Punt v Symons & Co Ltd* [1903] 2 Ch 506.

of the terms of the shareholders agreement. Although all such obligations will only be contractual in nature, their effect will nevertheless have wider implications.

2. Shareholders agreements in light of the mandatory provisions of Greek company law

2.1 Shareholders agreements in light of the mandatory provisions of Law 2190/1920

In Greek law, shareholders agreements are unlawful to the extent that they are contrary to the general principles applicable to *Societes Anonymes* and the mandatory rules set out in Law 2190/1920.[49] The list of mandatory company law rules applicable to a *Societe Anonyme* includes the right of the shareholders to remove the directors of the board without good reason by simple majority[50], the right of the minority shareholders to request the replacement of the board of directors in case of conflicts in the interests of the directors and the company[51], the provisions of Law 2190/1920 which establish majority or supermajority requirements.[52] In addition to the applicable mandatory rules, the content of shareholders agreements is also limited by the general principles of the law on *Societes Anonymes*. The principle of the equal treatment of all shareholders[53] and the general majority principle[54], which apply to the decision-making processes of the organs of the *Societe Anonyme*, constitute such an example.[55]

Although the aforementioned summary outlines the prevalent view in the literature and the case law, a minority of scholars advocate for additional limitations on shareholders agreements, which include the compliance of the agreement with the 'company's interest'[56] or the requirement that the agreement must be within the limits imposed by the nature and the form of the company as a

[49] Rokas (1996) supra note17, p.226.
[50] Article 31 of the Commercial Code. See Rokas (1996) supra note17, p.206 with further references.
[51] Article 69 of the Greek Civil Code. See Rokas (1996) supra note17, p.202.
[52] Article 29 of Law 2190/1920. See Rokas (1996) supra note17, p.188.
[53] See Rokas (1996) supra note17, p.233-234.
[54] According to the majority principle, within the decision-making processes of the organs of the *Societe Anonyme* resolutions require majority approval to be passed. For example, shareholders in general meeting constitute one of the main organs of the company. See Rokas (1996) supra note17, p.184-189, 193.
[55] See Marinos (2004) supra note13.
[56] On the notion of the company's interest see Triantafyllakis G., (1998), The interest of the company as a behavioural standard of the organs of the Societe Anonyme, 1998. Sakkoulas Publications.

Societe Anonyme, in line with the distinctive characteristics of this corporate form.[57] However, both such limitations are too abstract and have the potential to lead to an arbitrary, non-systematic interpretation of the law.[58] For instance, the notion of 'corporate interest' is particularly vague. Similarly, it is always arguable which core characteristics are distinctive of the corporate form of a *Societe Anonyme*. In this light, the dominant view adopted by the Greek scholars and the Greek case law has rightly limited the impact of such theories.

The limitations imposed by the Greek law on shareholder agreements resemble the UK approach where shareholders agreements will similarly not be enforceable to the extent that they facilitate the avoidance of a mandatory rule. At first sight, however, the approach of UK company law to shareholders agreements appears to be more accommodating and permissive. The differentiating factor is not to be found in the legal nature and binding effect attributed to shareholders agreements or mandatory rules in general, but to the high number of mandatory provisions of the Greek law for *Societes Anonymes*.[59] In the UK, the limited number of rules and provisions of a mandatory nature implies that the shareholders enjoy wide discretion when they shape the internal governance of the company through the articles of association and shareholders agreements. Such flexibility is less available in Greece, especially in the context of a *Societe Anonyme*, which is a form of company with predetermined characteristics and objectives.[60] Market participants have various corporate forms to choose from when incorporating, but, if they choose the *Societe Anonyme* form, the list of mandatory rules and principles that the shareholders cannot contract out of is a long one. The limitations imposed by mandatory company law rules on the content and enforceability of shareholders agreements is, therefore, reflected on their role as effective corporate governance mechanisms.

[57] Perakis (1976) supra note15, p.136.
[58]Marinos (2004) supra note13, p.101.
[59] *ibid.*
[60] It is important to note that Greek company law provides market participants with several choices when it comes to the corporate form to be used: The Limited Liability Company to which Law 3190/1955 applies and the *Societe Anonyme* which is regulated by the provisions of Law 2190/1920. The SA form is quite common and, although designed for large companies, it is often used by small, family-owned companies as well. Contrary to the Companies Act 2006 in the UK, which mainly consists of default provisions and allows for the wide discretion of the parties to regulate the company through the articles of association as they see fit, company law in Greece and Law 2190/1920, which is applicable to SA, consist of an important number of mandatory provisions. The mandatory nature of the provisions is justified on grounds of public order and of the distinctive character of the SA as a corporate form.

However, Greek case law substantially mitigates the strict effect of the mandatory rules or principles on shareholders agreements by accepting that the shareholders agreements which are contrary to mandatory rules of the law for *Societes Anonymes* are not necessarily void (invalid *ab initio*). Instead, the validity of the shareholders agreement will need to be assessed by the Greek courts *ad hoc*, namely in light of the special circumstances of each individual case. In the context of the assessment process, the courts have the discretion to interpret the scope of the applicable mandatory rule or principle of the *Societe Anonyme* more strictly so as to favour the enforceability of the shareholders agreement. The determining factors which trigger such a flexible interpretative approach are the purpose of the rule or principle and the extent to which there is a negative effect on the interests of the constituencies the rule is designed to protect. In this respect, it has been found, for example, that a shareholders agreement according to which minority shareholders are provided with the right to appoint the directors of the company is valid, although effectively it is contrary to the mandatory majority principle of Greek company law which applies to *Societes Anonymes*.[61] As the right of shareholders to remove directors is of a similar mandatory nature[62], an agreement imposing a restriction on the right of shareholders to remove directors would most likely be void, unless the factual background of the case justifies an alternative interpretation.

More specifically, when assessing the enforceability of shareholders agreements in light of Law 2190/1920, Greek courts will attribute a special weighting to the factor of the size and the ownership structure of the company. The strict mandatory rules and principles that derive from Law 2190/1920 will be interpreted in light of the character of the company as a small, family-owned entity, even though the company has been incorporated under Law 2190/1920, which was mainly designed for larger corporations. Therefore, the validity of the agreement will not be affected if the latter is not in breach of the protective aim and spirit of the mandatory rule given the factual background determined by the size and ownership structure of the company. By accepting that shareholders agreements may exceptionally be valid even if they include deviations from the mandatory provisions of Law 2190/1920, Greek courts have adopted a more flexible

[61] See supra note52.

[62] More specifically, the shareholders' right to remove the Directors without cause constitutes a mandatory general rule applicable to companies which operate under the form of the *Societe Anonyme*. See supra note50.

interpretational approach, manifested in the interpretation of the rule on the basis of its purpose and protective aim. The net effect of such an approach is to reduce the restrictions imposed on the content of shareholders agreements by the extensive mandatory provisions of Greek company law which applies to *Societes Anonymes*.

V. THE LIMITATIONS IMPOSED ON SHAREHOLDERS AGREEMENTS AS A DETERMINANT OF THEIR LEGAL EFFECTIVENESS

The ambiguous nature of shareholders agreements as α tool of minority protection and as a control-enhancing mechanism implies that the effectiveness of a legal system is determined by its capacity to mitigate the risk that shareholders agreements result in the expropriation of minority shareholders. In the UK, limits on shareholders agreements are imposed by the duties of the shareholders owed to the company in the circumstances specified by the law.[63] For example, shareholders are subject to a duty to vote *bona fide* to the benefit of the company during the amendment of the articles of association. In Greece, shareholders agreements are subject to the control of Article 281 of the Greek Civil Code, which strikes down agreements of an abusive nature. This set of provisions complements the permissive approach to shareholders agreements adopted by the Greek legal system and maintains the right balance between the facilitation of beneficial shareholders coalitions and the limitation of minority expropriation.

1. The balance between minority protection and minority expropriation in the context of shareholders agreements in the UK

1.1 The common law duty of shareholders to vote *bona fide* in the interests of the company as a whole

Shareholders agreements often dictate how shareholders must exercise their statutory rights, most notably their voting rights or their right to amend the articles of association. An amendment of the articles of association often takes place after the shareholders agreement and according to

[63] On the duties of shareholders see Kershaw (2009) supra note11, p.590-602.

its terms as a means of safeguarding its enforceability. In the context of an amendment of the articles of association, however, the strict adherence to the freedom of contract and the enforceability of the agreement could sometimes result in the agreement possibly being used as a tool to facilitate minority expropriation through the amendment. In such a scenario, the shareholders' voting right is subject to the common law duty to act *bona fide* in the interests of the company as a whole.[64] This duty complements the statutory requirement of Section 21 CA2006 that the articles can be amended by special resolution only, and has been established and developed in common law.[65] To the extent that a shareholders agreement imposes an obligation on shareholders to amend the articles of association in a certain way which may conflict with their common law duty to act *bona fide* in the interests of the company, such an agreement would be void as contrary to common law.

The restrictive effect of the duty to act *bona fide* in the interests of the company holds, even if the requirement is only imposed on the general meeting as the body exercising the corporate power rather than on each shareholder individually.[66] This principle restricts the ability of individual shareholders to use the power of the general meeting to expropriate minority shareholders. Viewed from this perspective, the common law duty to act in the interests of the company during an amendment of the articles of association could prevent compliance with shareholders agreements designed to facilitate the expropriation of minority shareholders, when implemented through an amendment of the articles of association. By contrast, the amendments of shareholders agreements providing for enhanced minority protection provisions is more likely to be consistent with the duty to act bona fide in the best interests of the company. Although the

[64] On the meaning of 'acting bona fide in the interests of the company as a whole' see *Allen v Gold Reefs of Africa* LTD; *Brown v British Abrasive Wheel Co Ltd* [; *Sidebottom v Kershaw, Leese and Company Ltd*; *Dafen Tinplate Company Limited v Llanelly Steel Company*; *Shuttleworth v Cox Bros Ltd; Greenhalgh v Anderne Cinemas*; *Citco Banking Corporation NV v Pusser's Ltd*. For all cases see supra note25. Also see Kershaw (2009) supra note11, p.590-602.

[65] More specifically, in *Allen v Gold Reefs*, Sir Nathaniel Lindley MR states that *'The power conferred on companies to alter the regulations contained in their articles is limited only by the provisions contained in the statute and the conditions contained in the company's memorandum of association. Wide, however, as the language of S50 is the power conferred by it, it must, like other powers, be exercised subject to those general principles of law and equity which are applicable to all powers conferred on majorities and enabling them to bind minorities. It must be exercised, not only in the manner required by law but also bona fide for the benefit of the company as a whole, and it must not be exceeded. These conditions are always implied, and are seldom, if ever, expressed*.'

[66] *Allen v Gold Reefs, Greenhalgh v Anderne Cinemas*, *Shuttleworth v Cox*. For all cases see supra note25. Also see Kershaw (2009) supra note11, p.601.

interests of the company are not identical to the interests of its minority or majority shareholders or any member whatsoever, the protection of minorities through a binding shareholders agreement could more easily than not be interpreted as being beneficial for the company as a whole. Consequently, the aforementioned duty constitutes an effective mechanism which achieves the right balance between minority protective and minority expropriating amendments when implementing a shareholders agreement.

1.2 The limits on the exercise of the statutory rights of the company

In the UK, the shareholders can use their statutory rights to neutralise the effect of shareholders agreements, because shareholders agreements cannot restrict statutory rights such as the company's right to alter its articles of association.[67] The case law imposes limitations on when the exercise of the company's statutory rights can be used as a defence against the enforceability of a shareholders agreement. More specifically, in *Southern Foundries (1926) Ltd v Shirlaw Ac,* it has been held that the subsequent alteration of the articles of association to empower the company to act contrary to the terms of the shareholders agreement constitutes a breach of the agreement and gives rise to contractual liability.[68] According to the facts of the case, the company exercised its statutory right to alter the articles of association and acted upon the subsequently changed articles, such action amounting to a breach of a prior contract. As the judgment by Lord Porter held,[69] *'(a) company cannot be precluded from altering its articles thereby giving itself power to act upon the provisions of the altered articles – but so to act may nevertheless be a breach of contract if it is contrary to a stipulation in a contract validly made before the alteration*'.

Although this case involved the service agreement between the company and one of its managers, the exception it establishes could also be extended to apply to a contract between the company and its shareholders, such as an agreement aiming to protect a shareholder.[70] Therefore, the approach adopted in *Southern Foundries (1926) Ltd v Shirlaw* suggests that any subsequent alteration of the articles of association will have no impact on the validity of the shareholders

[67] See above Part IV.1(1.1).
[68] *Southern Foundries (1926) Ltd v Shirlaw* (1940) AC 701, HL.
[69] Art 740-741 *per Lord Porter, Southern Foundries (1926) Ltd v Shirlaw Ac.*
[70] Gower&Davies (2008) supra note6, par.19-25, p.677-678.

agreement. Instead, it is the relationship of the shareholders agreement with the articles of association in force at the time that the company entered into the agreement that will determine the binding effect of the latter.[71] In this light, shareholders will be unable to escape liability under the shareholders agreement by changing the articles of association. In particular, these limits are relevant in the context of shareholders agreements which entail minority protection provisions.

2. The balance between minority protection and minority expropriation in the context of shareholders agreements in Greece

In Greece, the ability of contracting parties to evade their contractual obligations through company law is limited through the narrow interpretation of the principle of separation of shareholders agreements and the articles of association so as to facilitate the enforceability of shareholders agreements (*in dubio pro libertate*).[72] Indeed, Greek case law suggests that existing shareholders agreements constitute a determining factor to be taken into consideration when assessing the lawfulness of the actions of the company through its organs. In this respect, shareholders agreements may have important implications for the organisation of the company, despite the rule of separation and the hierarchical relationship of shareholders agreements and the articles of association.

2.1 The general principles of the Greek Civil Code and the notion of 'corporate interest'

Greek law provides that the shareholders' freedom to enter into shareholders agreements is limited by the general restrictions imposed on contracts by Article 174, Article 178[73], Article 179[74],

[71] The only problematic issue of such an approach is the type of remedy to be available to the shareholder-party under protection. In addition to a claim for damages for breach of contract, it has been argued that the shareholder could also seek injunctive relief. In the latter case, an injunction could be granted to prevent the adoption of the new articles, for example. See Gower&Davies (2008) supra note6, p.677-678.

[72] Marinos (2004) supra note13, p.102.

[73] The Article constitutes the foundation of the general principle of good morals as follows: Article 178 - Transaction contrary to morality *'A transaction which is contrary to good morals is null and void'.*

[74] Article 179: *'A transaction is considered to be null and void as contrary to good morals wherever the freedom of a person is hampered excessively or wherever the need, the levity of character or the lack of experience of the other party are exploited for the other's benefit or for the benefit of a third party or where the consideration of a thing furnished or pecuniary advantages awarded under the circumstances are in obvious disproportion to the consideration furnished.'*

Article 288[75] and Article 281[76] of the Greek Civil Code, which are jointly interpreted and implemented as necessary.[77] As these fundamental limitations apply to all types of obligations undertaken, shareholders agreements can lawfully dictate how the shareholders can exercise their voting rights only to the extent that this restriction does not infringe the aforementioned provisions. In the context of company law, the effect of Articles 174 and 281 of the Greek Civil Code is similar to the effect of the shareholders' duty to vote *bona fide* in the benefit of the company when amending the articles of association. For example, an agreement to vote in a way which is contrary to the interests of the company or discriminates against its minority shareholders will practically be ineffective because voting to this effect amounts to an abusive exercise of rights and the relevant resolution will, therefore, be void.[78] The abuse of the shareholders' voting rights renders the resolution regarding the amendment of the articles of association void.

However, under Greek law the limits imposed by Article 178 and Article 174[79] apply beyond the case of amending the articles of association to all corporate actions or decisions of the organs of the company. Articles 178, 174 and 281 of the Greek Civil Code, therefore, establish a mechanism to strike the right balance between allowing efficient shareholders agreements and striking down the ones of an expropriating nature. The joint application of the aforementioned provisions of the Greek Civil Code allows for the decisions of the shareholders meeting to be impeached to the extent that they are manifestly detrimental for minority shareholders or disproportionately limit their contractual freedom or constitute an abusive exercise of the majority shareholders' rights.[80] Such an abuse may involve the infringement of the interests of minority shareholders, unless

[75] Establishes the general principle of good faith in civil law. According to Article 288, *'the obligor is under the obligation to perform an undertaking according to good faith, after taking into account business practices.'*

[76] According to this provision, 'the abusive exercise of one's rights invalidates the act/omission etc. More specifically, Article 281 provides that the exercise of one's right is prohibited if it evidently exceeds the limits imposed by good faith, good morals or the economic or social objective of the right.' For further references and applications of this provision see Chapter III.

[77] Rokas (1996) supra note17, p.226.

[78] Marinos (2004) supra note13 p. 108.

[79] Article 174*: 'A transaction that is contrary to a prohibitive provision of the Law...is null and void'.*

[80] See relevant case law: *Case 11/72* Multi-member First Instance Court of Corinth; *Case 832/76* Supreme Court of Greece (Άρειος Πάγος*)*; *Case 139/78* Crete Court of Appeal (Εφετείο Κρήτης); *Case 6299/1979* Multi-member First Instance Court of Athens (Πολυμελές Πρωτοδικείο Αθηνών).
Also see Rokas N., The limits of the powers of the majority shareholders in the Law of Societes Anonymes (Τα όρια της εξουσίας της πλειοψηφίας εις το δίκαιον των Α.Ε.), Nomiko Vima, 1971; Rokas (1996) supra note17 p.193-194.

justified by a good cause, and the breach of the principle of equal treatment of the shareholders.[81] It also involves cases of conflict of the shareholders agreement with the interests of the company. In this respect, the notion of 'corporate interest' constitutes a concept which may impose limits on all corporate actions which are deemed to be harmful for the company.[82] However, the general definition and the wide scope of the notion of 'corporate interest' negatively affects its applicability and use in company law, while case law which interprets or applies the notion is scarce.[83]

2.2 The limits imposed on the exercise of shareholders' statutory rights

In the context of Greek law, an additional mechanism for filtering the beneficial shareholders agreements is provided by Law 2190/1920 and the general principles of the Greek Civil Code. More specifically, according to Article 281 of the Greek Civil Code, a decision or action of the organs of the company is void, if it is contrary to good faith, good morals or constitutes an abusive exercise of the shareholders' rights.[84] In this light, to the extent that the shareholders use their rights in the

[81] Rokas (1996) supra note17 p.233-234.
[82] See Triantafyllakis (1998) supra note56.
[83] For a critique on the notion of corporate interest see Marinos (2004) supra note13 p.101-102 noting that the use of such an abstract notion gives rise to arbitrary, non-systematic legal outcomes.
[84] *Case 569/2007* Multi-member First Instance Court of Athens (Πολυμελές Πρωτοδικείο Αθηνών). The following extract has been translated from the original in Greek for the purpose of this thesis.
According to Article 35a par.1-2 of Law 2190, the resolutions of the general meeting of the shareholders of the company are void...in all cases that they conflict with the prohibitive provisions of the aforementioned Law or the Civil Law (Articles 174 and 180 GCC). The resolutions, although they are outright void, shall be declared void subject to a claim brought by anyone with a legal interest to that effect by a decision of the Court which can be enforced against everyone.'
Relevant case law: Case 5565/2003 Multi-member First Instance Court of Athens, published on www.dsanet.com; *Case 94/1999 Supreme Court of Greece, published in Commercial Law Review, 1999, 324; Supreme Court of Greece, Case 459/1989, Elliniki Dikaiosini, 31:356; 4505/2004 Thessaloniki Court of Appeal Case, Law of Enterprises and Companies, 2004, 1010; Case 2401/1998 Thessaloniki Court of Appeal, Elliniki Dikaiosini, 40:420*
Also see Kintis S., Void and voidable resolutions of the shareholders meeting in the Societe Anonyme (Ακυρώτης και ακυρωσία των αποφάσεων γενικής συνέλευσης της ανώνυμης εταιρείας), 1981, p.20; Rokas (1996) supra note17, p.179, 193; *Passias I., The Law of the Societe Anonyme, 1969, Vol B', p.382.*
Case 7119/2004 Athens Court of Appeal (Εφετείο Αθηνών). The following extract has been translated from the original in Greek for the purpose of this thesis.
'A special form of invalidity arises when the resolutions of the shareholders meeting of the Societe Anonyme, are passed by the majority shareholders in abuse of their rights, namely in breach of the limits set out by good faith, good morals and the social and economic objective, and are not dictated by the interests of the company, but are, instead, adopted for the exclusive benefit of the interests of the majority shareholders or to the detriment of the minority shareholders'
Also see relevant case law: Case 155/198 Supreme Court of Greece, published in Elliniki Dikaiosini, 1985, 458; Case 832/1976 Supreme Court of Greece, published in Nomiko Vima, 1977, 190; Case 14292/1988 Athens Court of Appeal, published in Commercial Law Review, 1989, 238; Case 765/1974 Thessaloniki Court of Appeal, published in Nomiko Vima 1975, 678.

shareholders meeting to pass a resolution which is contrary to a shareholders agreement to which they are parties, such an action could constitute an abusive exercise of their rights. As a result, the associated resolutions or actions will be void. The aforementioned interpretation has been considered in a recent case which gained a lot of attention, namely *Case 7119/2004* of the Athens Court of Appeal.

According to the facts of the case, the two shareholders of company X disputed the validity of a series of resolutions of the general meeting and the board of directors, which resulted in the limitation of the right of one of the shareholders to manage the company, although this was set out in a shareholders agreement. More specifically, the two shareholders of the company, which was active in the food industry, had entered into a shareholders agreement according to which Shareholder A, who held a 40% stake in the company, would have the right to appoint three out of the seven members of the board. Moreover, Shareholder B was contractually bound to agree with the appointment of Shareholder A as the CEO of the company who could remain in this position for as long as she wished and could not be revoked, unless her sanity and capacity to run the company was compromised or she intentionally caused harm on the business and commercial strategy of the company.[85] The shareholders agreement was part of the sale of a block of shares in the company, as a result of which Shareholder B became the majority shareholder, holding 60% of the shares in the company. It also aimed to protect the rights of the minority shareholder to participate in the management of the company.

Following certain losses incurred by the company while managed by Shareholder A, Shareholder B called an extraordinary general meeting in order to elect a new board of directors, despite the fact that only a few months earlier a new board had been elected. The new board, which involved all the members of the previous board except for one new member appointed by the majority shareholder, passed a resolution which limited the authority of the chief executive officer, namely Shareholder A. This resolution was held to be void because it was passed in breach of the

[85] On special appointment rights of shareholders see Mastrokostas Hr., (2003), The distinct personal right of the shareholder to appoint the members of the board of directors (Article 18 par.3 of Law 2190/1920), (Το ατομικό ιδιαίτερο δικαίωμα του μετόχου να διορίζει μέλη του διοικητικού συμβουλίου (Άρθρο 18 παρ.3 Ν.2190/1920)) Chronicles of Private Law, 2003, 487.

procedural requirements set out in the articles of association (namely passing the resolution with 4/7 votes instead of 6/7 and the appointment of three managing directors, contrary to the provisions of the articles of association that the company will be represented by only one managing director).[86] The court also held that the resolution of the general meeting for the election of a new board was void as abusive, because its aim had been to restrict the powers of Shareholder A, as the only managing director of the company.[87]

The factual background in this case, namely the election of a new board just a few months after a board had been elected and the resolutions passed by the new board immediately after its election effecting the limitation of the powers of Shareholder A, was considered by the Court as an indication of the abusive character of the resolution of the shareholders meeting effectively passed by the majority shareholder. This judgment of the Athens Court of Appeal was partly overturned by the Supreme Court of Greece, Case 1121/2006 (A' Civil Division).[88] The legal issue under dispute at the High Court was again whether the resolution is void according to article 35 of Law 2190/1920 by reason of having been passed in breach of the shareholders agreement. The majority of the judges (3 members of the Court) found that the second-instance judgment[89]

[86] Case *7119/2004* Athens Court of Appeal (Εφετείο Αθηνών). Also see Comments on *Case 7119/2004* by Rokas N. and Legal Opinion by Kotsiris L., published in Commercial Law Review, 2005, 166; Varela M., Comments on *Case 7119/2004*, published in Law of Companies and Enterprises, 2007, 583.

[87] Case *7119/2004* Athens Court of Appeal. The following extract has been translated from the original in Greek for the purpose of this thesis.

'All this leads to the safe conclusion that the convention of the shareholders meeting of 15-4-2002 regarding the election of the new board of directors, despite the election seven months ago of a fully operational board of directors for a five-year term, the majority shareholder, who took the initiative, aimed at weakening the powers of the claimant and to remove her from chief executive officer. This conclusion is reinforced by the fact that the majority shareholder was unable to repeal the claimant from being a member of the board of directors or from chief executive officer, because she had the right to be appointed at the board, while her removal could not be achieved through a resolution of the board, because the supermajority of 6/7 of the members of the board was required. Therefore, the election of a new board of directors was promoted through the convention of a extraordinary shareholders meeting, without an important or good cause to this effect, so that the powers of the claimant as mentioned above could be reduced, immediately after the election of the new board and the appointment of the new chief executive officer. The resolution of the shareholders meeting of the 15-4-2002 regarding the election of the new board of directors is rationally linked to the resolution of the new board of directors and proves the objective of the majority shareholder to weaken the minority shareholder and remove her from the board, in breach of the shareholders agreement dated 31-10-1995. In the context of this factual background, the resolution of the general meeting of 15-4-2002 regarding the election of the new board of directors exceeds the limits set out by Article 281 of the Civil Code, as prescribed by the good faith, the good morals and the social and economic objective of the majority shareholders' rights and is, therefore, void.'

[88] 'Άρειος Πάγος' in Greek.

[89] *Case 7119/2004* Athens Court of Appeal.

misinterpreted Article 281 GCC and the resolution of the general meeting providing for the election of the new board of directors was not abusive.[90]

However, according to the dissenting judges (2 members of the Court), the resolution was passed in abuse of the majority shareholders' rights and as such is void.[91] Their judgment was premised on the general principle of the Greek Civil Code set out in Article 281. More specifically, the dissenting judges argued that the resolution of the general meeting was abusive because it effectively neutralised the provisions of the agreement aiming to protect the minority shareholders and the majority shareholder was controlling the corporate organ, the shareholders meeting, which passed the resolution which amounted to a breach of the agreement.[92] Moreover, according to the

[90] *Case 1121/2006* Supreme Court of Greece A' Civil Division ('Αρειος Πάγος, Α' Πολιτικό Τμήμα). The following extract has been translated from the original in Greek for the purpose of this thesis.
'According to the prevailing opinion of the members of this Court, the Court of Appeal wrongfully applied article 281 of the Civil Code, because, according to the facts accepted as proven by the judgment to be contested, the resolution of the shareholders meeting of 15-4-2002, which was lawfully convened according to Article 39 of Law 2190/1920, ...does not exceed the limits of Article 281 of the Civil Law and is not abusive, because, although the resolution of the board of directors dated 17-4-2002 is void because it infringes article 15par3 of the articles of association and, under the conditions of the law, gives rise to the right of the minority shareholder to claim damages due to the breach of the shareholders agreement and the reduction of the powers of the minority shareholder, it cannot substantiate the abusive character of the preceding resolution of the shareholders meeting of 15-4-2002 regarding the election of the board of directors, despite the fact that the shareholders meeting was convened to elect a new board of directors in order to reduce the powers of the minority shareholder.' According to the High Court, the resolution of the board of directors of 17-4-2002 is therefore void as abusive and gives rise to claims in damages because it infringes the shareholders agreement but it does not support the abusive character of the preceding resolution of the extraordinary shareholders meeting regarding the election of the board of directors.'

[91] *Case 1121/2006* Supreme Court of Greece A' Civil Division ('Αρειος Πάγος, Α' Πολιτικό Τμήμα). The following extract has been translated from the original in Greek for the purpose of this thesis.
'According to two members of the Court,..., the 15-4-2002 resolution of the extraordinary shareholders meeting regarding the election of the new board in order to reduce the powers of the minority shareholder is abusive, because it falls beyond the limits set by good faith and good morals, which fact constitutes an abusive exercise of ones rights according to article 281 of the Civil Code, given that a) the resolution was passed by the shareholders meeting, which expressed the will of the majority shareholder under the veil of the organ of the company, so that the shareholders meeting is identified with the majority shareholder and b) the majority shareholder, acting under the veil of an organ of the company, achieved the repeal of the right of the minority shareholder, as established by the agreement between them in their capacity as the only shareholders of the company, and achieved the outcome of restricting the powers of the minority shareholder regarding the management and the representation of the company.
Moreover, the causal link between the resolution of the shareholders meeting and the restrictive effect is not interrupted by the resolution of the board of directors on the 17-4-2002, which restricts the powers of the minority shareholders, because according to the second-instance judgment, the shareholders meeting of 15-4-2002 elected the new board of directors in order to achieve the goal of disempowering the minority shareholder, as provided by Article 926a.1 regarding joint causality, according to which if the damage results from the action of two or more, in collaboration or not, so that, in the absence of one action, the effect would not occur, everybody is jointly liable.'

[92] *Case 1121/2006* Supreme Court of Greece A' Civil Division ('Αρειος Πάγος, Α' Πολιτικό Τμήμα). The following extract has been translated from the original in Greek for the purpose of this thesis.

dissenting judges, the organs of the company cannot disregard the agreements among the shareholders of the company, especially if the organs are controlled by the majority shareholder who passes a resolution to the effect of cancelling out the shareholders agreement.[93] The approach adopted by the dissenting judges substantially promotes shareholders agreements by extending the protection offered to the parties in the case of a breach, without changing their legal nature as contracts. In this light, the breach of the agreement does not only give rise to claims for compensation but, most importantly, also provides shareholders with the right to contest the validity of the corporate resolution adopted in breach of the agreement. The effectiveness of the shareholders agreement is, therefore, enhanced. In light of the importance of the issue and the marginal majority of judges obtained in the A' (Civil) Division[94], the final judgment is to be held by the Court in Plenary Session.[95]

VI. THE INEFFICIENCIES OF THE LAW OF SHAREHOLDERS AGREEMENTS AND THEIR IMPLICATIONS FOR CORPORATE GOVERNANCE

The foregoing comparative study documents a similar, flexible and permissive approach adopted in both jurisdictions of reference, despite their different legal origins. More specifically, both jurisdictions recognise the contractual legal nature of shareholders agreements and allow for corporate governance arrangements, such as the restrictions of voting rights, to take effect. In both jurisdictions the limit on the enforceability of shareholders agreements is set by the company's articles of association. The interpretation of this complex interaction between the

'Finally, in the context of the reviewed case, for the application of the general legal concept of the rule regarding the prohibition of the abusive exercise of one's rights, the dissenting opinion took into account (among other elements)... the following: a) the protection of minority shareholders is established by legal provisions, allowing for the power of a shareholder to appoint the members of the board of directors, according to the provisions of the articles of association to this effect (article 18 par 3 of Law 2190/1920), b) the piercing of the corporate veil, when this is justified by good faith, needs to apply in the context of the majority shareholder's actions, when she/he acts under the veil of an organ of the company contrary to her/his agreement with the only additional shareholder of the company and c) the agreement of all the shareholders of the company regarding its organisation must not be disregarded by the organs of the company, when they are comprised by the shareholders, who are also parties to the agreement.'

[93] ibid *Case 1121/2006* Supreme Court of Greece A' Civil Division ('Αρειος Πάγος, Α' Πολιτικό Τμήμα).

[94] Άρειος Πάγος, Α' Πολιτικό Τμήμα.

[95] Ολομέλεια Αρείου Πάγου.

articles of association and shareholders agreements by the case law has on many occasions been favourable towards the latter. This flexible interpretation is in line with economic reality and the necessity to promote shareholders coordination, especially within financial systems of concentrated ownership.

In Greece, a country where concentrated ownership is prevalent, this comparative study reveals certain inefficiencies of the Greek legal system, which hinder shareholders' reliance on shareholders agreements as efficient coordination mechanisms. Such inefficiencies are partly attributed to the widely-accepted principle of separation of the articles of association and shareholders agreements, which affects the enforceability of the latter. However, this problem is mitigated by the approach of the case law to see beyond the strict principle of separation in order to prevent shareholders who are also parties to the agreement from evading their contractual obligations through company law. The lack of specific performance remedies adds a further obstacle to the use of shareholders agreements as minority protection tools, because shareholders effectively have limited means to enforce them.

1. The lack of specific performance remedies as a source of inefficiency of Greek company law

One of the most important sources of the inefficiency of the regulatory framework regarding shareholders agreements in Greece is the lack of the remedy of injunctive relief as a result of the contractual nature of the agreement. In this respect, *Case 569/2007*[96] presents the prevalent approach of Greek law. This judgment outlines the position of Greek law that a breach of the agreement only provides minority shareholders with a claim for damages against the majority but the minority shareholders will not be able to enforce the agreement by requesting that the majority complies with its terms. The lack of specific performance remedies substantially limits the effectiveness of the shareholders agreement as a minority protection mechanism because it signals that the compliance with the terms of the agreement cannot be enforced so as to achieve

[96] *Case 569/2007* Multi-Member First Instance Court of Athens (Πολυμελές Πρωτοδικείο Αθηνών).

the results at stake, had the breach not occurred. By contrast, the shareholders agreement can only be enforced indirectly, through the threat of damages. This approach provides an important leeway to majority shareholders to disregard their contractual obligations at their discretion to the detriment of minority shareholders. The judgment in *Case 569/2007* acknowledges this risk by noting that *'(t)he risk incurred by minority shareholders is the intentional breach of the shareholders agreement by the majority and the adoption of resolutions to this effect by the organs of the corporation facilitated by the controlling power of their majority stake. The investment of minority shareholders will, therefore, be reduced without the ability of minority shareholders to seek relief otherwise than to seek compensation in the form of damages for their losses on the basis of the contractual liability of the majority.'* [97]

2. Legal uncertainty as a source of inefficiency in the UK and Greece

The legal uncertainty deriving from the complex relationship between the articles of association and shareholders agreements jeopardises the reliability of the shareholders agreements as an effective corporate governance mechanism. For example, the reliability of shareholders agreements can be compromised to the extent that a term of the agreement might be interpreted as being contrary to the articles of association, in which case enforceability is not guaranteed. In order to avoid the conflict of the provisions of the shareholders agreement with the articles of association, the parties will usually include a term in the shareholders agreement binding them to amend the articles to be aligned with the content of the agreement. The technique of incorporating the terms of the agreement into the articles of association enhances the protection of the parties to the agreement, by extending the binding effect of such term to the company and all its shareholders. Although the amendment of the articles of association pursuant to the shareholders agreement minimises the risk that such agreements will be unenforceable, the original obligation undertaken to amend the articles remains only contractual in nature.

[97] See *Case 569/2007* Multi-Member First Instance Court of Athens (Πολυμελές Πρωτοδικείο Αθηνών). The extract cited has been *translated from the original in Greek.*
Also see Mihalopoulos G., (1992), Issues on shareholders agreements, (Ζητήματα εξωεταιρικών συμφωνιών), Commercial Law Review, 1992, 348.

The source of the problem regarding the enforceability of shareholders agreements is the principle of separation of shareholders agreements and the articles of association, as adopted by UK and Greek company law. Although shareholders agreements and the articles of association regulate similar or identical issues of internal corporate governance, the law only conditionally acknowledges the interaction between the two sources of governance arrangements, treating them as parallel, instead. The strict application of the principle of separation disregards the corporate reality and gives rise to a fragmented system of governance arrangements, which is partly prescribed in the articles of association and partly shaped by the shareholders agreement.

In the context of investor protection, the principle of separation allows the parties to the agreement to avoid compliance with their contractual obligations under the agreement. This effect has a negative impact on the incentives of large shareholders to coordinate, because it signals that the shareholders agreement which reflects their coordination arrangements can be breached, in which case the breaching counterparty is only contractually liable. When viewed from this perspective, the strictly defined interrelationship of shareholders agreements and the articles of association by the UK and Greek company law not only allows shareholders to avoid their existing obligations imposed by the agreement, but effectively also facilitates the abuse of the corporate form. This approach compromises the protection of the market participants and substantive fairness.[98] The criticism that the aforementioned legal approach to shareholders agreements leads to the prevalence of form over substance, is mitigated by the response of courts and legal scholars to interpret and apply shareholders agreements and the articles of association as a unity, on a consolidated basis.

VII. CONCLUDING REMARKS

In the context of this thesis, legal effectiveness refers to the extent to which an issue can be dealt with by the law and if so, how well it is dealt with in terms of consistency and predictability, on the one side, and the delivery of efficient and just outcomes, on the other. Legal effectiveness is

[98] Marinos (2004) supra note13, p.99.

assessed on the basis of the type of concentrated ownership involved. For example, in the case of multiple blockholders, legal effectiveness refers to the capacity of the rules to allow for beneficial shareholder collaboration and responsible, active ownership, while limiting the risk of shareholders agreements being employed as expropriating mechanisms. This thesis considers a number of factors when evaluating the effectiveness of the law to address the corporate governance issues involved. Such factors include the consistency and predictability in the application of the law, the enforceability of the legal rules and agreements, how the law facilitates and promotes the efficient use of resources and whether the law reflects the best practices and high standards of corporate governance.

The foregoing analysis highlights the important similarities in the treatment of shareholders agreements across the selected jurisdictions. The legal mechanisms facilitating the permissive approach of both systems to shareholders agreements are different, their permissive character, however, is a common outcome. For example, in both jurisdictions the contractual nature of the shareholders agreements is the rule. However, according to Greek case law the nature of the shareholders agreement changes if all shareholders of a small company are parties to the agreement, notwithstanding the form under which the company is incorporated. By accepting that shareholders agreements complement or amend the articles of association, the shareholders agreements effectively become part of the company's statutory documents. Under these circumstances the legal nature of shareholders agreements becomes quasi-statutory and its binding effect exceptionally extends to the company and its organs.

Despite all criticisms, the aforementioned approach adopted by the Greek courts has been pragmatic, flexible and permissive of shareholders agreements.[99] Similarly, in the UK, *Russell v Northern Bank* is also indicative of a very flexible and liberal approach to shareholders agreements

[99] The aforementioned approach is substantially less formalistic than the UK one, although it may be seen as having a negative impact on legal certainty. More specifically, to the extent that such a shareholders agreement is found to be binding against the company and its organs, there is a clear breach of the general principle of the privity of contract. Very importantly, from a company law perspective such an approach could be interpreted as disregarding the separate legal personality of the company, thus amounting to a lifting of the corporate veil.

based on the freedom of contract and the unwillingness of judges to allow parties to avoid their contractual obligations.[100] Across both jurisdictions, for example, under a flexible interpretation of the law, the risk that the controlling shareholders may rely on the generally applicable majority principle in order to pass resolutions contrary to what has been agreed within the frames of the shareholders agreement is minimised.[101] Viewed from this perspective, this approach benefits minority shareholders, who use shareholders agreements as a tool to enhance their protection against the majority.

However, the grey areas in the legal treatment of shareholders agreements, the complex, obscure relationship of such agreements with company law across both jurisdictions and the lack of sufficient enforcement mechanisms, particularly in the case of Greece, limit the reliability of shareholders agreements as a corporate governance mechanism. As a result, internal control contestability and shareholders interactions are discouraged. In this light, rather than reflecting the superiority of one legal system over the other, the differences documented among the two selected jurisdictions demonstrate that the same outcome can be achieved through different legal rules and mechanisms. The identification of different, yet functionally equivalent legal mechanisms with a similar effect on the legal relationship of shareholders agreements clearly substantiates the 'legal effectiveness' argument.

[100] Despite the wide, flexible approach of shareholders agreements and their enforceability in UK company law, there have been criticisms against the legal reasoning supporting such an outcome. More specifically, Ferran (1994) has criticised the reliance on formalistic distinctions which formed the basis of the decision and argues that it should instead be accepted that the company can bind itself in its future exercise of statutory powers through such shareholders' agreements. See Ferran (1994) supra note2.

[101] In such a scenario, minority shareholders have the option to bring a claim for damages for breach of contract. Alternatively, to the extent that the resolution is in breach of the agreement, it will be void and will thus be deemed to have had no effect *ab initio*.

CHAPTER VI: THE IMPACT OF EU REGULATION ON MULTIPLE LARGE SHAREHOLDERS INTERACTIONS

I. INTRODUCTION

The EU perspective is particularly relevant in the context of this thesis because the EU rules shape the regulatory framework which affects investor protection in general and shareholders agreements in particular across Member States. The company law framework formed at the level of the European Union includes a number of Directives, most notably the Takeover Bids Directive[1] and the Transparency Directive.[2] However, the current regulatory regime appears to be insufficiently adapted to the concentrated ownership forms which are prevalent in most EU countries. Despite the prevalence of concentrated ownership across the EU, there is an important deficit of EU regulation tackling shareholders conflicts of interests.[3] In particular, EU Company Law ignores the dynamic relationship between ownership structures involving multiple large shareholders (MLS) and the conflicts of interests of minority and majority shareholders. Aligned

[1] Directive 2004/25/EC of the European Parliament and of the Council of 21 April 2004 on takeover bids (OJ L 142, 30.4.2004).

[2] Directive 2004/109/EC of the European Parliament and of the Council of 15 December2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31.12.2004).

[3] The issue has remained unaddressed by the latter Directives on EU corporate governance such as Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies (OJ L 184, 14.7.2007). Commission Recommendation 2005/162/EC of 15 February 2005 on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board (OJ L 52, 25.2.2005). Commission Recommendation 2009/385/EC of 30 April 2009 complementing Recommendations 2004/913/EC and 2005/162/EC as regards the regime for the remuneration of directors of listed companies (OJ L 120, 15.5.2009).
Also see Report of the Reflection group on the future of EU Company Law, Brussels, 05.04.2011, available at http://ec.europa.eu/internal_market/company/docs/modern/reflectiongroup_report_en.pdf (last accessed 18.09.2011)

with this critique, the recent Green Paper[4] on EU Corporate Governance issued by the European Commission identifies the issue of minority protection in companies with dominant or controlling shareholders in particular.

The negative impact of EU regulation on MLS structures and interactions spreads across two axes. Firstly, the provisions of two different EU Directives imposing disclosure requirements regarding shareholders agreements lead to the duplication of efforts and, therefore, unnecessarily raise the compliance costs for shareholders wishing to coordinate through a shareholders agreement. In this light, it is questionable whether the benefits of the disclosure regime, as currently designed and used by investors in the EU, counteract the loss from the lack of shareholders coordination. Secondly, the EU regulation on takeovers, most notably the break-through rule and the mandatory bid rule, appear to be misplaced because they result, more often than not, in hindering rather than promoting the emergence and interactions of MLS within EU corporations. The problematic effect of the EU rules on 'concerted action' has recently been acknowledged by the Commission's Green Paper on the EU corporate governance framework.[5]

The rules constitute a manifestation of the failure of EU law to take into account the important role of MLS as a structure of corporate ownership. In this context, the example of MLS highlights a problematic aspect of the EU Company Law, namely its negative impact on shareholders interactions and agreements, therefore highlighting how ineffective law distorts the incentives of market participants. Similarly, it demonstrates that the legal effectiveness of investor protection mechanisms is strongly interrelated with the ownership structures of their investee companies. In particular, in the case of the EU, the variety in the forms of ownership across jurisdictions implies that imposing a one-size-fits-all approach, based on the rationale of harmonization and the need to level the playing field across Member States, is likely to create more problems than it solves.

---

[4] European Commission, Green Paper on the EU corporate governance framework, Brussels, 05.04.2011 available at http://ec.europa.eu/internal_market/company/docs/modern/com2011-164_en.pdf (last accessed 18.09.2011).

[5] *ibid*.

II. SHAREHOLDERS AGREEMENTS IN THE EU

A. EU TRANSPARENCY REQUIREMENTS

The requirement that shareholders agreement be disclosed is justified by the role of shareholders agreements as the tools which facilitate the acquisition, retention and/or organisation of effective control over the firm.[6] In particular, the potential of shareholders agreements to promote disproportionality between ownership and control further provides a clear rationale for requiring that listed companies report such agreements.[7] At the EU level, particular emphasis is placed on transparency through disclosure, in order to facilitate the pricing of such agreements by market participants.[8] This is one of the main rationales of the proposal for the full disclosure of shareholders agreements which have an impact on a company's or group's governance structure, set out in the High Level Group of Company Law Experts Final Report.[9] Therefore, in the context of

[6] See Chapter IV for further references on the role and functions of shareholders agreements.

[7] Shareholders agreements also have the potential to be used as control-enhancing mechanisms. This latter observation introduces an aspect of shareholders agreements as control-enhancing mechanisms, which disproportionately enhance control and exacerbate the problems of minority expropriation, economic entrenchment and ultimately the misallocation of resources. In this regard, also see the EU Report on the proportionality principle (2007), which classifies shareholders agreements as control-enhancing mechanisms because they bind shareholders on how they will exercise their voting rights. See ISS, Shearman and Sterling, and ECGI, 2007, 'Report on the Proportionality Principle in the European Union', External Study Commissioned by the European Commission available at http://www.ecgi.org/osov/documents/final_report_en.pdf (last accessed 29.09.2011).

The main rationale for European intervention was, of course, the promotion of the freedom of movement of capital as established in Article 56 of the EC Treaty, through the minimum harmonisation of the legal frameworks, as most member states had in place different rules on disclosure of material shareholders' agreements, which fact is regarded to distort the function and promotion of the internal market.

[8] See Annex 1 of Commission's Working Document on the Revision of the Transparency Directive available at http://ec.europa.eu/internal_market/securities/docs/transparency/directive/sec-2010_611_en.pdf (last accessed 29.09.2011), stating the following:

'1.20. Transparency of information about securities issuers enhances both investor protection and market efficiency and thus contributes to growth and job creation by better allocation of capital and by reducing costs. On the other hand, lack of transparency with regard to such information could hinder investor confidence and affect market resilience, reducing investment and slowing economic growth.'

....

1.33. *Transparency is key for robust, well functioning markets providing reliable price discovery mechanisms. The recent period of market turmoil and illiquidity has highlighted the importance to market confidence of reliable and useful financial disclosures. Financial reporting permits the measurement of the financial condition and performance of companies and is the cornerstone of a well-functioning financial system. Sound disclosure, accounting and valuation practices are essential to achieve transparency, to maintain market confidence and to promote effective market discipline.'*

[9] High Level Group of Company Law Experts Final Report on a Modern Regulatory Framework for Company Law in Europe, (2002), available at http://www.ecgi.org/publications/documents/report_en.pdf (last accessed 29.09.2011).

shareholders agreements, disclosure requirements apply when the terms of the agreement have an impact on core issues of corporate governance. For instance, this includes the provisions which bind shareholders to exercise their voting rights in a certain way or to establish a special regime for the appointment of the members of the board or dictate how shareholders will react in a takeover situation. The fragmented system resulting from the disclosure requirements imposed by two separate EU Directives, the Transparency Directive and the Takeover Bids Directive, significantly impedes the legal effectiveness of the regulatory framework through duplication and increases compliance costs disproportionately to the benefits of disclosure.

1. Disclosure requirements under the EU Transparency Directive

Shareholders agreements are regulated in the context of the Transparency Directive[10], which requires issuers of securities in regulated markets[11] within the European Union to ensure appropriate transparency for investors through a regular flow of information by disclosing periodic and on-going regulated information and by disseminating such information to the public. Apart from financial reports, regulated information consists of information on major holdings of voting rights. Information on shareholders agreements fall under Article 10[12], which modernizes the rules

[10] Directive 2004/109/EC. The Transparency Directive was to be transposed in national law by 20 January 2007 and the Commission is to review its operation by 30 June 2009.
The EU Commission has launched a public consultation on the Modernisation of the Directive 2004/109/EC. (27.05.2010), available at http://ec.europa.eu/internal_market/securities/docs/transparency/transparency-info_en.pdf
See EU Commission report on the operation of the Transparency Directive, 27.05.2010, available at http://ec.europa.eu/internal_market/securities/docs/transparency/directive/com-2010-243_en.pdf (last accessed 29.09.2011).
EU Commission staff working document - The Review of the operation of Directive 2004/109/EC: emerging issues, 27.05.2010, available at http://ec.europa.eu/internal_market/securities/docs/transparency/directive/sec-2010_611_en.pdf (last accessed 29.09.2011).
External Study on the Application of the Transparency Directive (December 2009): executive summary, final report and annexes http://ec.europa.eu/internal_market/securities/docs/transparency/report-application_en.pdf and http://ec.europa.eu/internal_market/securities/docs/transparency/report-application-annexes_en.pdf (all accessed last on 29.09.2010).

[11] In the context of the Transparency Directive, a ‘regulated market’ means a market as defined in Article 4(1), point 14, of Directive 2004/39/EC. More specifically, '*‘(r)egulated market’ means a multilateral system operated and/or managed by a market operator, which brings together or facilitates the bringing together of multiple third party buying and selling interests in financial instruments – in the system and in accordance with its nondiscretionary rules – in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with the provisions of Title III;*'

[12] '*Article 10 - Acquisition or disposal of major proportions of voting rights*

regarding the disclosure of holdings of voting rights. The Transparency Directive imposes on holders of voting rights the obligation to notify the issuer, whenever their voting rights reach, exceed or fall under certain thresholds.[13] This obligation also applies on shareholders who control voting rights as a result of a shareholders agreement, while issuers are to publish all such notifications within three days of receipt.

2. Disclosure requirements under the EU Takeover Bids Directive

Article 10 of the Takeover Bids Directive also requires companies admitted to trading on a regulated market to provide detailed information on the structure of the share capital, the restrictions on the transfer of securities, the significant shareholdings, the shareholders with special controlling rights and a description of those rights, the system of control of any employee share schemes and any restrictions on voting rights, in their annual report[14], which is also accompanied by the presentation of an explanatory report of the board to the annual general meeting of shareholders.[15] Article 10 provides an extensive list of the types of agreements and information to be disclosed by listed companies.[16] Special reference is made to the agreements

---

The notification requirements defined in paragraphs 1 and 2 of Article 9 shall also apply to a natural person or legal entity to the extent it is entitled to acquire, to dispose of, or to exercise voting rights in any of the following cases or a combination of them:

(a) voting rights held by a third party with whom that person or entity has concluded an agreement, which obliges them to adopt, by concerted exercise of the voting rights they hold, a lasting common policy towards the management of the issuer in question;…'

[13] By virtue of Article 3 of the Directive, Member States may impose on their issuers lower disclosure thresholds than that of 5% provided for in the directive. However, this flexibility challenges the harmonisation of the legal systems as it allows for different thresholds to be set.

[14] Article 5.2 of the Takeover Bids Directive and Article 46 of Directive 78/660/EEC(13) and Article 36 of Directive 83/349/EEC(14).

[15] Article 5.3 of the Takeover Bids Directive.

[16] Article 10 of the Takeover Bids Directive

'Article 10

Information on companies as referred to in Article 1(1)

1. Member States shall ensure that companies as referred to in Article 1(1) publish detailed information on the following:

(a) the structure of their capital, including securities which are not admitted to trading on a regulated market in a Member State, where appropriate with an indication of the different classes of shares and, for each class of shares, the rights and obligations attaching to it and the percentage of total share capital that it represents;

(b) any restrictions on the transfer of securities, such as limitations on the holding of securities or the need to obtain the approval of the company or other holders of securities, without prejudice to Article 46 of Directive 2001/34/EC;

(c) significant direct and indirect shareholdings (including indirect shareholdings through pyramid structures and cross-shareholdings) within the meaning of Article 85 of Directive 2001/34/EC;

between shareholders which may restrict transfers of securities or voting rights, as well as the rules governing the appointment and replacement of board members and the changes to the articles of association. Reference is also made to significant agreements of the company, which take effect, alter or terminate upon a change of the control of the company. Such disclosure is part of the EU regulation on takeovers and is designed to facilitate the application and promote the effectiveness of the core provisions of the Directive, such as the mandatory bid rule which is triggered upon the acquisition of a specified stake by a shareholder. The disclosure requirements under Article 10 form part of the set of wider reporting requirements imposed on companies admitted to be trading on a regulated market.[17]

(d) the holders of any securities with special control rights and a description of those rights;
(e) the system of control of any employee share scheme where the control rights are not exercised directly by the employees;
(f) any restrictions on voting rights, such as limitations of the voting rights of holders of a given percentage or number of votes, deadlines for exercising voting rights, or systems whereby, with the company's cooperation, the financial rights attaching to securities are separated from the holding of securities;
(g) any agreements between shareholders which are known to the company and may result in restrictions on the transfer of securities and/or voting rights within the meaning of Directive 2001/34/EC;
(h) the rules governing the appointment and replacement of board members and the amendment of the articles of association;
(i) the powers of board members, and in particular the power to issue or buy back shares;
(j) any significant agreements to which the company is a party and which take effect, alter or terminate upon a change of control of the company following a takeover bid, and the effects thereof, except where their nature is such that their disclosure would be seriously prejudicial to the company; this exception shall not apply where the company is specifically obliged to disclose such information on the basis of other legal requirements;
(k) any agreements between the company and its board members or employees providing for compensation if they resign or are made redundant without valid reason or if their employment ceases because of a takeover bid.'

[17] There have been substantial recent initiatives in this field, both at the UK level (in the form of the Operating and Financial Review and subsequently of the Business Review) and within the EU context in the form of a Directive amending the 4th and 7th Directives on accounting. More specifically, in the UK, the new disclosure requirements were implemented by SI 2006/1183 'The Takeover Directive (Interim Implementation) Regulations 2006 and were transferred into Schedule 7 Part VII of the Companies Act 1985 by section 992 of the Companies Act 2006. This includes a requirement for an annual corporate governance statement which includes elements of the disclosures required under Article 10 of the Takeovers Directive. Listed companies are now subject to an obligation to disclose annually in the business report certain information that is likely to affect the outcome of a public offer. This information includes material contracts with change of control provisions.

3. Criticisms against the EU disclosure framework

3.1. The definition of 'acting in concert': Differences between the Transparency Directive and the Takeover Bids Directive

Although the implementation of the Takeover Bids Directive and the Transparency Directive has substantially enhanced transparency in listed companies, it has also given rise to important inconsistencies which generate legal risk and increase the compliance costs incurred by market participants. An important source of legal risk is the divergence in the definitions of 'acting in concert' set out in Article 10(a) of the Transparency Directive and in Articles 2.1(d) and 5 of the Takeover Bids Directive. According to the Transparency Directive, the notification requirements prescribed apply to cases of an '*agreement*' which '*obliges' parties* to adopt, '*by concerted exercise*' of the voting rights, a '*lasting common policy towards the management*'. Therefore the necessary conditions for the obligation to arise, as imposed by the EU legislation, involve an agreement between the parties, the aim of adopting a common policy towards the issuer, the duration of the common policy ('lasting'), the object of the policy (not the issuer *per se* but the management of the issuer), and, finally, the rise above the relevant threshold (5% or less). In the context of the Takeover Bids Directive, persons acting in concert, thus triggering the launch of a mandatory bid, shall mean natural or legal person who '*cooperate'* with the offeror or the offeree company '*on the basis of an agreement'*, either express or tacit, either oral or written, '*aimed*' either at acquiring control of the offeree company or at frustrating the successful outcome of a bid. The conditions giving rise to the obligation involve the cooperation of the parties involved, an underlying agreement and the potential aim of the agreement to be used in order to facilitate the acquisition of the company or to frustrate a bid.

With regard to the application of the aforementioned rules, the European Securities Markets Experts (ESME) Group states, that the definition of 'acting in concert' should be interpreted in light of the goals to be pursued by the two Directives.[18] Article 10 of the Transparency Directive aims,

[18] European Securities Markets Expert Group (ESME) states that these goals although complementary, are different. See Preliminary views on the definition of 'acting in concert' between the Transparency Directive and the Takeover Bids Directive, 17.11.2008, available at http://ec.europa.eu/internal_market/securities/docs/esme/acting_in_concert_20081117_en.pdf (last accessed 18.09.2011).

inter alia, to ensure transparency as to who has the power to exercise voting rights when voting-rights holders agree on pooling their votes. Articles 2.1 (d) and 5 of the Takeover Bids Directive aim to protect minority shareholders by requesting the launch of mandatory bids at equitable prices, when shareholders act in concert to acquire control. However, the different wording and definitions of the two Directives may lead to further uncertainties in practice, as diverging interpretations are adopted by Member States on key concepts such as '*lasting common policy*' (in the Transparency Directive), or '*acquiring control*' (in the Takeover Bids Directive) or '*agreement*' (in both Directives).[19] These differences in the implementation and interpretation of the legal provisions imply that identical behaviours are treated differently across Member States. Such uncertainties constitute an important source of legal risk for market participants and add to the complexity of the notification requirements. This aspect of the problem especially affects cross-border institutional and private shareholders, therefore imposing an additional obstacle on cross-border activity. In this regard, ESME proposes the possible compulsory adoption by all competent authorities of a common standard at least for the transparency obligation.

3.2 The high costs of compliance and the quality of company reporting

The disclosure requirements imposed by EU Directives illustrate the importance of and the emphasis laid on disclosure as a regulatory tool in the hands of corporate law makers. This approach suggests that the promotion of transparency is a preferable option to any structural intervention in the form of a prohibition imposed on the shareholders agreements and control-enhancing mechanisms used by listed firms. Moreover, extensive transparency through disclosure constitutes a necessary prerequisite for responsible ownership and facilitates shareholder activism in corporate law and governance. However, the different content of the notifications required by each Directive implies that the divergence between the definitions and their purpose has considerable implications. More specifically, in the event that an agreement falls under the protective scope of both Directives, there is an overlap, whenever the notification requirements of the Transparency Directive are triggered by agreements which also fall within the scope of the Takeover Bids Directive and *vice versa*. In this case, the compliance with both Directives requires notifications of different contents, which fact gives rise to a duplication of efforts and increases the

[19] ESME i*bid*.

compliance costs in the form of legal fees, auditors' fees, costs of publication, costs of preparing the accounts etc. [20]

Additionally, the effectiveness of such disclosure substantially depends on the use to be made of the information by potential investors.[21] In this respect, the imposition of high compliance costs, which are not proportional to the benefit that such disclosure brings to shareholders, raises important concerns regarding the efficiency of regulation. In the context of large shareholders interaction, for example, the high costs of compliance render the formation of coalitions an unattractive option for shareholders groups. Viewed from a corporate governance perspective, the limitation of the beneficial effects of shareholders coalitions due to the patchy, incoherent disclosure regime constitutes an important source of compliance opportunity costs.[22] Similar considerations apply to the avoidance of unnecessary duplication due to the different corporate reporting requirements of the Transparency Directive and the Takeover Bids Directive. The consolidation of the requirements imposed would lead to the simplification of the presentation of information to shareholders and would better facilitate their informed decisions and responsible ownership.[23] This approach would increase the legal effectiveness of the rules on disclosure and

[20]For an overview of the provisions of the Transparency Directive under review see EU Commission Consultation document on the modernisation of the Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, Brussels, 27.05.2011, available at http://ec.europa.eu/internal_market/securities/docs/transparency/directive/consultation_questions_en.pdf (last accessed 19.09.2011).

On compliance costs in particular, see EU Commission Feedback Statement: Summary of responses to the consultation by DG Internal Markets and Services on the modernisation of the Transparency Directive (2004/109/EC), Brussels, 17.12.2010, available at http://ec.europa.eu/internal_market/securities/docs/transparency/transparency-consultation-summary_en.pdf (last accessed 19.09.2011); EU Commission Consultation Document on the Transparency Directive, Response of the Law Society of England and Wales and the City of London Law Society, 25.08.2010 available at http://international.lawsociety.org.uk/files/LSEW&CLLSResponse-TransparencyDirective-August2010.pdf (last accessed 18.09.2011) noting that *'the corporate governance requirements in general generate significant costs, which may be proportionally greater for smaller listed companies*.'

[21] ibid See particularly the EU Consultation on the modernisation of the Transparency Directive and related documents.

[22] See Holger F. and Schmolke K.U., (2011), The reform of the Transparency Directive: Minimum or full harmonisation of ownership disclosure?', European Business Organization Law Review, 12:121, where the debate on full or minimum harmonisation of disclosure requirements is presented. In the context of this debate and in light of the high compliance costs imposed by the current disclosure framework, it is stated that the EU Transparency Directive has failed to simplify reporting requirements across the EU. The fragmented framework applying to the disclosure of shareholders agreements constitutes a manifestation of the complexity created by the two Directives.

[23] ibid See the debate on full or minimum harmonisation of disclosure requirements.

would provide an example of targeted regulatory intervention in the context of concentrated ownership structures.

B. SHAREHOLDERS AGREEMENTS IN THE EU: THE MANDATORY BID RULE

In addition to the disclosure requirements, shareholders agreements are also subject to the provisions of the EU law which applies to takeovers. For instance, the Mandatory Bid Rule (hereafter MBR) shapes the legal treatment of shareholders agreements at the European level. More specifically, the MBR states that upon the acquisition of securities which results in the natural or legal person holding the securities in the company gaining control over the company, such person is required to make a bid to obtain the shares of minority shareholders in that company. This rule aims to safeguard the interests of minority shareholders by distributing to all shareholders the takeover premium, which in the absence of the rule would only accrue to the controlling shareholder.[24] This rule is particularly important as it applies whenever voting rights are exercised and control is exerted in concert with another party.

[24] The rationale of MBR's lays at the fact that they reallocate takeover gains between controlling and minority shareholders. Important criticisms have been raised on the basis that minority protection comes at the expense of promoting the restructuring of firms. Bebchuk (1994), for example, argues that the MBR may discourage efficient bidders by raising the cost of acquiring companies. See Bebchuk L. A., (1994), Efficient and Inefficient Sales of Corporate Control. The Quarterly Journal of Economics 109(4):957; Enriques L., (2003), The Mandatory Bid Rule in the Proposed EC Takeover Directive: Harmonization As Rent-Seeking? Reforming Company and Takeover Law in Europe. G. Ferrarini, K. Hopt, J. Winter and E.Wymeersch, 2004, OUP.

The definitions provided in articles 2.1(d) of the Directive[25] determine when the rule in Article 5[26] of the Directive will be triggered. More specifically, for the launch of a mandatory bid, persons acting in concert shall mean natural or legal person who '*cooperate*' with the offeror or the offeree company '*on the basis of an agreement*', either express or tacit, either oral or written, '*aimed*' either at acquiring control of the offeree company or at frustrating the successful outcome of a bid. The conditions required in this case involve the cooperation of the parties involved, an underlying agreement, the aim to acquire a company or frustrate a bid, the crossing of the threshold of voting rights that confers control. This threshold is determined by Member States and is currently set around 30%-33,33% of the voting capital.[27] In this light, agreements between shareholders, which regulate the exercise of their voting rights, may trigger the application of the mandatory bid rule, if they contain terms aiming to facilitate or frustrate a takeover. The link which needs to be established between a term and its impact on a takeover is a weak one.

The MBR has been extensively criticised for increasing the cost of control changes, therefore effectively discouraging takeovers.[28] Similarly, the role of the MBR to facilitate the efficient

---

[25] See Article 2 of the Takeover Bids Directive

'Article 2 - Definitions

1.For the purposes of this Directive:

(d) «persons acting in concert» shall mean natural or legal persons who cooperate with the offeror or the offeree company on the basis of an agreement, either express or tacit, either oral or written, aimed either at acquiring control of the offeree company or at frustrating the successful outcome of a bid;...'

[26] Article 5 of the Takeover Bids Directive

'Article 5 - Protection of minority shareholders, the mandatory bid and the equitable price

1.Where a natural or legal person, as a result of his/her own acquisition or the acquisition by persons acting in concert with him/her, holds securities of a company as referred to in Article 1(1) which, added to any existing holdings of those securities of his/hers and the holdings of those securities of persons acting in concert with him/her, directly or indirectly give him/her a specified percentage of voting rights in that company, giving him/her control of that company, Member States shall ensure that such a person is required to make a bid as a means of protecting the minority shareholders of that company. Such a bid shall be addressed at the earliest opportunity to all the holders of those securities for all their holdings at the equitable price as defined in paragraph 4.

....

3.The percentage of voting rights which confers control for the purposes of paragraph 1 and the method of its calculation shall be determined by the rules of the Member State in which the company has its registered office...'

[27] Criticisms have been raised as a result of Pirelli being able to circumvent the mandatory bid rule by acquiring control of Olivetti just below the threshold of 30% set by Italian legislation. It has been argued that the threshold may prove to be too low especially in the case of concentrated ownership structures with multiple large shareholders/pyramidal structures. See Kirchmaier T., Grant J. and Kirschner J., (2009), Financial Tunnelling and the Mandatory Bid Rule, FMG Discussion Paper No. 536. Available at SSRN: http://ssrn.com/abstract=613945.

[28] See Burkart M. and Panunzi F., (2004), Mandatory Bids, Squeeze-out, Sell-out and the Dynamics of the Tender Offer Process, in G. Ferrarini, K. Hopt, J. Winter, and E. Wymeersch (eds.), Modern Company Law and Takeover Law in Europe, 2004, OUP; See McCahery J.A. and Renneboog L., (2003), The Economics of the Proposed Takeover Directive, Brussels:

allocation of capital has been under scrutiny, especially in the context of concentrated ownership structures.[29] In particular, scholars have questioned whether the rationale for a MBR is applicable and relevant within systems characterised by concentrated ownership.[30] For example, it has been argued that the MBR induces majority shareholders to increase the size of their block in order to prevent having their control rents expropriated by hostile bidders. Under such an assumption, the effect of the MBR benefits incumbent shareholders and serves as a mechanism which limits contestability of control instead of improving the ownership structures and promoting efficient changes of control.[31] Given the extensive criticism against the MBR, *'the key issue is whether the aggregate value of the non-value maximizing transactions that it deters is greater than the aggregate value of the efficient takeovers that would have occurred in its absence'.*[32]

1. The diverging definitions of 'concerted action' and the problem of legal uncertainty

The MBR provides an illustrative example of the restrictive effect of the Takeover Bids Directive on shareholders coordination. Entering into shareholders agreements substantially increases the risk of being found to be 'acting in concert', therefore triggering the application of the MBR. In addition to this, the legal uncertainty arising due to the diverging interpretations adopted by Member States on key concepts of the Takeover Bids Directive such as 'acting in concert' or '*acquiring control*'[33] substantially shapes the incentives of shareholders to interact and coordinate.[34] More

CEPS (2003); See Bergstrom C., Hogfeldt P. and Molin J., (1997), The Optimality of the Mandatory Bid, Journal of Law, Economics and Organization, 13:433.

[29] Sepe S.M., (2008), Private Sales of Corporate Control: Why the European Mandatory Bid is Inefficient, Yale Law School Working Paper.

[30] Goergen M., Martynova M. and Renneboog L., (2005), Corporate Governance Convergence: Evidence From Takeovers: Evidence from Takeover Regulation Reforms in Europe, 21 Oxford Review of Economic Policy, 2005, 243; Ventoruzzo M., (2008), Takeover Regulation as a Wolf in Sheep's Clothing: Taking Armour & Skeel's Thesis to Continental Europe, Bocconi University Working Paper (2008).

[31] *ibid.*

[32] McCahery J. A. and Vermeulen E. P. M., (2010), Does the Takeover Bids Directive Need Revision?, TILEC Discussion Paper No. 2010-006; Tilburg Law School Research Paper No. 005/2010. Available at SSRN: http://ssrn.com/abstract=1547861.

[33] On related issues as to the thresholds and as to whether obtaining de facto control could trigger the protection of the MBR, see for example 'Transparency and corporate finance: monitoring control of listed companies', AMF Annual Conference 2008 Panel Discussion III available at http://www.amf-france.org/documents/general/8561_1.pdf (accessed June 22, 2010) stating that '*In France, the dispersion of share ownership in listed companies means that it is more and more common for a shareholder with less than a third of the voting rights to be able to determine the outcome of votes in general meetings. In such cases, especially as the abstention rate at general meetings remains high, a stake of 25% in a*

specifically, provided that the Takeover Bids Directive only sets out the minimum harmonisation requirements, the necessarily generic definition of the Directive allows for a wide interpretation of the 'acting in concert' provision.[35] However, it is unlikely that all Member States will adopt a common definition, either wide or narrow. This would suggest that, for example, certain behaviours of participants which could be presumed to fall under the 'acting in concert' definition in one Member State, will not necessarily require to be disclosed or trigger the MBR in others.

Therefore, the restrictive effect of the MBR and the legal uncertainty deriving from its inconsistent application across EU jurisdictions limit the reliability and, consequently, the use of shareholders agreements as a coordination mechanism, since shareholders may be found to be liable to bid for the shares of the company at a specific price as a result of their coordination. The lack of a harmonised interpretation across the various EU jurisdictions particularly exacerbates its restrictive impact on shareholders agreements. The different treatment of identical behaviours and the resulting uncertainties for market participants, especially where cross-border shareholdings are concerned, constitute an important source of legal risk and discourage shareholders agreements and interactions.

---

company may be enough to control the general meeting, without being required to make a mandatory bid. This state of affairs means that the effectiveness of the threshold that triggers a mandatory bid for all of the shares in a company must be questioned. Using de facto control as a triggering factor for mandatory bids would be a delicate matter however, since a shareholder's control of the general meeting has to be assessed in retrospect. It also seems to be contrary to the provisions of Article 5 of the Takeover Directive, which refers to a percentage of shares or voting rights. Using a quantitative and objective notion as the triggering factor for mandatory bids also makes it possible to avoid debates about whether control exists since shareholding percentages can be verified in material terms.'

[34] The City Takeover Code requires buyers that attain more than 30% of a company's outstanding shares to bid for the remaining shares at the highest price paid for the same shares in the preceding year. In particular, Rule 9 defines parties 'acting in concert' as those who, pursuant to an agreement or understanding, formal or informal, cooperate to obtain or consolidate control of a company or to frustrate the successful outcome of an offer for a company. The Code establishes a presumption that a 'concert action' exists in the absence of contrary evidence. See City Takeover Code available at http://www.thetakeoverpanel.org.uk/wp-content/uploads/2008/11/code.pdf (last accessed 29.09.2011).

[35] See for example Kirchmaier et al (2009) supra note27. The authors juxtapose the French approach to the German one. As a result of the narrow definition of German courts, a consortium of buyers including Tchibo, HGV Hamburger Gesellschaft für Vermögens- und Beiteiligungsverwaltung mbH, a holding company for the assets of the City of Hamburg, and Beiersdorf's own pension fund TROMA, managed to acquire a 33.6% stake in Beiersdorf, without triggering the German MBR currently set at a 30% threshold. In Germany, the definition of acting in concert has been so narrow by the courts so as to trigger the intervention through the reform of the law imposing a broader definition of the actions and types of co-ordination that constitute 'acting in concert' for the purpose of applying the MBR. On the Eiffage case see below Part II.B.2.

The negative effect of the MBR on shareholders agreements is clearly illustrated by two specific case studies, namely the Eiffage takeover bid by Sacyr in France and the Beiersdorf and Tschibo case in Germany. More specifically, the two case studies revolve around the uncertain definition of 'acting in concert' and show how this uncertainty can ultimately disincentivise market participants to interact or challenge the corporate governance arrangements within a corporation. The comparative analysis of how the Directive has been applied by two different Member indicates that the different interpretation of the same notion across the various jurisdictions substantially defies the objective of harmonising the legal framework and creating a level playing field for corporations across the EU. In particular, the broad interpretation of 'acting in concert' and the flexible approach to proving the 'concerted action' in the Eiffage case reveal the potential of the MBR to effectively become a defence mechanism against undesirable hostile takeovers. By contrast, the narrow definition of BaFin in the Beiersdorf case mitigates the effects of the MBR on minority protection, as it allows the parties to avoid the application of the MBR.

The problem of the legal uncertainty deriving from the divergent interpretation of the definitions of the Directive among Member States is exacerbated due to the inherently broad definition of 'concerted action'. More specifically, in order for the MBR to be triggered, the existence of a legally binding shareholders agreement aiming to either acquire control of a company or to frustrate the successful outcome of a bid is a sufficient condition across Member States. Such an agreement may be either express or tacit, either oral or written. However, it must be noted that for the purpose of applying the MBR, the shareholders agreement does not need to be legally binding in nature within the strict terms of contract law. Thus, the principles of contract law which determine whether a shareholders agreement is legally binding or not, are not at all decisive in the context of a takeover. Instead, the broad definition of 'concerted action' implies that shareholders agreements and similar, even legally non-binding forms of coordination may trigger the rule.

The blurred limits of the notion of 'legitimate communication' and 'concerted action', therefore, create a tension which is inherent in generic definitions such as the definitions mentioned in this Chapter. Nevertheless, it is crucial to distinguish among shareholders actions which constitute 'concerted action' and shareholders behaviours which amount to legitimate communication

among shareholders and should normally fall under the category of behaviours which would not trigger the MBR. In general, they are to be promoted as the precondition of responsible ownership and a manifestation of shareholder activism. The importance of a clear demarcation between the actions which are legally important and the behaviours which do not trigger the application of the MBR, is self-evident.

2. Lessons from Sacyr/Eiffage and Beiersdorf/Tschibo case studies: EIFFAGE

2.1 Facts of the case[36]

At Eiffage's 2006 Annual General Meeting, Sacyr Vallehermoso SA (hereafter Sacyr), a Spanish construction group, tried but failed to appoint four of its executives to the board of Eiffage. In its attempt to block Sacyr from winning seats on his board, the Eiffage board barred former employees from selling their investments held in a company trust. Since early 2006, Sacyr, has been the largest shareholder of Eiffage, a French construction company, owning 32.1% of the company's shares, an amount just under France's MBR threshold of 33.33% at the time.[37] Following the response of Eiffage, Sacyr began preparing a hostile tender offer for the 2007 Annual General Meeting. In the 2007 Annual Meeting, the board of Eiffage attracted further criticism by revoking voting rights of 89 new Spanish shareholders that control 17,5% of the company amid allegations that they were acting in concert with Sacyr, which owned 33.32%. Eiffage claimed that

[36] See Peggy Hollinger Eiffage strips Spanish of voting rights, FT, 18.04.2007 available at http://www.ft.com/cms/s/0/c086486c-ed9d-11db-8584-000b5df10621.html#axzz1Yo0KkPMk; Peggy Hollinger and Mark Mulligan, Eiffage opts to take the fight to predator Sacyr, FT, 23.04.2007 available at http://www.ft.com/cms/s/0/b2c6e634-f200-11db-b5b6-000b5df10621.html#axzz1Yo0KkPMk; Mark Mulligan, Peggy Hollinger, Sacyr drops interest in Eiffage, FT, 09.04.2008, available at http://www.ft.com/cms/s/0/7e179a12-0606-11dd-802c-0000779fd2ac.html#axzz1Yo0KkPMk; Neil Dennis, Eiffage stands out in Europe on Sacyr ruling, FT, 26.06.2007 available at http://www.ft.com/cms/s/0/2829a6ce-23ce-11dc-8ee2-000b5df10621.html#axzz1Yo0KkPMk; Financial Times, Alarm after watchdog bares teeth over Eiffage, FT, 27.06.2007 available at http://www.ft.com/cms/s/0/581323a6-24d7-11dc-bf47-000b5df10621.html#axzz1Yo0KkPMk (all accessed last on 29.09.2011).

[37] The 2010 Reform Act (Law No 2010-1249 of October 22, 2010 on banking and financial regulations, JORF No 0247 of October 23, 2010) amends shareholder disclosure and mandatory tender offer rules by harmonizing aggregation requirements, expanding the definition of concerted action and lowering the mandatory tender offer threshold to 30%. These new rules became effective October 23, 2010, except for those relating to mandatory tender offers and the new 30% Statutory Disclosure Threshold, which came into effect on February 1, 2011. On December 3, 2010, the French securities regulator (the *Autorité des Marchés Financiers* or 'AMF') released a new set of proposed amendments (the '2010 Proposed Rules') to its regulations (the 'AMF General Regulations') in view of implementing the 2010 Reform Act.

the coordination of Sacyr with 89 other Spanish investors aimed to gain control over the company. The board's tactics handed victory to the French management team, which narrowly defeated Sacyr's attempt to win five board seats and won support to issue poison pill warrants to be used as a defence in the event of an unwanted bid.

2.2 Legal framework at the time of the conflict

France is a jurisdiction which regulates shareholders agreements by requiring that the terms and conditions of shareholders agreements be disclosed. In France shareholders agreements need to be disclosed to the AMF in the five days following their signature if they concern at least 0,5% of the shares or voting rights.[38] This provision promotes the transparency of the use of shareholders agreements in companies and renders France an ideal case study of a jurisdiction which regulates shareholders agreements through disclosure. More specifically, on March 30, 2008, the French market regulator (the 'Autorité des Marchés Financiers' or 'AMF') amended the mandatory disclosure rules applicable to purchases or sales of equity securities in publicly-traded French companies.[39] The revised AMF regulations specifically implement EU Commission Directive 2007/14/EC[40] of March 8, 2007 laying down detailed rules for the implementation of certain provisions of the Transparency Directive. The stated aim of this revision has been to enable investors to acquire or dispose of shares in full knowledge of changes in the voting structure, as

[38] Below are listed some of the basic elements of the Statutory Disclosure Thresholds regime in France at the time of the Sacyr/Eiffage conflict:

1. An investor, acting alone or through concerted action, whose percentage ownership of outstanding shares or voting rights in a publicly traded French company rises above or falls below thresholds of 5%, 10%, 15%, 20%, 25%, 33%1/3, 50%, 66%2/3, 90% or 95% ('Statutory Disclosure Thresholds') must notify the issuer and the AMF, within 5 trading days, specifying the number of shares it holds and corresponding number of voting rights. It must be noted that the 33%1/3 is the threshold which also constitutes the mandatory bid threshold under French regulations. Article 222-12-3 of the AMF General Regulations; Article R 233-1 of the French Commercial Code.
2. Statutory Disclosure Thresholds may be crossed whether an investor's ownership interest in an issuer rises above or is reduced below the relevant thresholds. Article L.233-7, I, second paragraph of the Commercial Code
3. The information disclosed must include, among others: (1) the identity of the reporting person; (2) where applicable, the identity of the individual or legal entity entitled to exercise voting rights on behalf of the reporting person; (3) the date on which the threshold was crossed; (4) the reason why the threshold was crossed; (5) the resulting situation in terms of shares and voting rights; (6) where applicable, any potential aggregation of the shares or voting rights held by the reporting person; and (7) where applicable, the chain of control (as defined below) through which the shares and voting rights are held. Article 223-14 of the AMF General Regulations.

[39] See Ministerial Order (Arrêté) of March 18, 2008, concerning the adaptation of the General Regulations of the 'Autorité des Marchés Financiers' (AMF).

[40] See Commission Directive 2007/14/EC of 8 March 2007, laying down detailed rules for the implementation of certain provisions of Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market.

well as to enhance effective control by issuers and the overall market transparency of important capital movements.[41]

Apart from these general elements of the regime, of particular interest for the purposes of this part of this study are the principles applying to the aggregation of controlling interests.[42] In the context of the Eiffage case, the important provision is Article L. 233-9, I, 3 of the French Commercial Code which provide that the investor must also aggregate the shares and voting rights it holds with shares or voting rights held by other investors with whom it 'acts in concert'. Investors are considered to be 'acting in concert' if they have entered into an agreement to jointly acquire or sell securities of the company or to exercise their voting rights in common, in implementation of a common policy regarding the company.[43] Executive officers of an investor, or investors controlled by or under common control with an investor, are presumed to be 'acting in concert'.[44] The concerted action aggregation rule and the control aggregation rule are linked, as two or more investors acting in concert are deemed to jointly control a company where they exercise *de facto* control over the outcome of shareholder meetings.[45]

In addition to the abovementioned disclosure requirements, the French law implemented the EU Takeover Bids Directive and set 33.33% as the threshold for triggering the MBR, while a new provision for defensive ‘acting in concert’, Article L233-10-1, has been introduced into the French Commercial Code. According to the provision: *'I. - Persons who have entered into an agreement with a view to buying or selling voting rights or with a view to exercising voting rights to implement*

[41] See Recital 18 of the Transparency Directive.

[42] More specifically, Article L.233-9, I, 2 of the French Commercial Code provides that in order to determine whether statutory thresholds have been crossed, the investor must aggregate the shares and voting rights held by other entities it 'controls' as such term is defined by Article L.233-3 of the French Commercial Code. For these purposes, in implementation of Article 2(f) of the Transparency Directive, Article L.233-3 of the French Commercial Code (the 'Code') defines 'control' broadly as:
(i) the direct or indirect ownership of a majority of voting rights at shareholders meetings (*de jure* control test);
(ii) a contractual right to direct by itself a majority of voting rights pursuant to an agreement entered into with other shareholders or members of the company in question (contractual control test);
(iii) ownership of sufficient voting rights to exercise de facto control over the outcome of shareholder meetings (de facto control test); or
(iv) the right to appoint or remove a majority of the members of the administrative, management or supervisory board (e.g., the board of directors) (board control test).

[43] Article L.233-10, I of the French Commercial Code.

[44] Article L.233-10, II of the French Commercial Code.

[45] Article L.233-3, III of the French Commercial Code.

a policy in relation to a company shall be deemed to be acting in concert.' This definition is supplemented by the Act of 31 March 2006, which applies during the bid period: *'In the event of a takeover bid, persons who have concluded an agreement with the instigator of a takeover bid aimed at acquiring control of the target company shall be deemed to be acting in concert*.' Similarly, Article L.233-10-1 also notes that *'Persons who have concluded an agreement with the target company to frustrate a takeover bid shall also be deemed to be acting in concert.'*

2.3 AMF decisions and judgments held by French Courts

The legal issues raised by the Spanish group's acquisition of a stake in Eiffage have been addressed in two rulings by the AMF[46] and four court decisions.[47] Initially, AMF decided that a number of Spanish investors, including Sacyr, had acted in concert to seek changes to Eiffage's board without abiding by the laws on shareholder disclosure and mandatory bids and confirmed the suspension of their voting rights on such grounds. The AMF ruling in favour of Eiffage was grounded on the fact that the successive acquisitions of shares in Eiffage by Sacyr and the six Spanish shareholders did not arise from individual and autonomous transactions but rather through a collective undertaking in pursuit of a common objective, namely to obtain enough seats on the board of directors of Eiffage to be able to implement a friendly takeover. Therefore, the AMF ruling required Sacyr to make an offer for the French group in compliance with the applicable regulations. As Eiffage claimed that prior to Sacyr's offer, a stake was purchased by one of the shareholders it believed to be part of the bidding group for €129.30, this latter claim contributed to making the bid a higher one, which Sacyr was less able to bear.[48]

Both Sacyr and the Spanish investor Grupo Rayet lost the cases brought against Eiffage over the withdrawal of their voting rights but immediately appealed. The Nanterre Commercial Tribunal confirmed the AMF ruling and ordered Sacyr to bid for Eiffage's outstanding shares. Eventually, Sacyr escaped having to launch a €8bn ($12.5bn) cash bid for Eiffage after the Paris Court of Appeal overturned the ruling of AMF on procedural grounds, because the parties have not been

[46] AMF Decision No 207C1202 of June 26, 2007; AMF, 208C0741, 21 April 2008.

[47] Eiffage-Sacyr: Nanterre Commercial Tribunal, 1 June 2007; Versailles Court of Appeal 27 June 2007; Paris Court of Appeal, 2 April 2008; Nanterre Commercial Tribunal, 6 May 2008.

[48] This compared with Sacyr's bid of €104.70. Under French law, shareholders working together cannot make a bid below the price of the last stock purchase made by any of them.

given access to files related to their case. The Court ruled that the AMF had failed to follow proper procedure by not allowing Sacyr the right to defend itself against the concert party allegations. However, the Court did not go as far as to neither reject nor uphold the AMF's finding of concerted action directly. Although it found that the six shareholders had acted 'in an organized, collective approach' aiming to acquire control over Eiffage, it did not actually confirm the finding that they all acted as a group.[49]

The AMF ruling, in particular, surprised lawyers with regard to the evidence on which concerted action was found, especially in light of the inherent difficulty to prove that parties actually acted in concert.[50] Regarding the clues which proved concerted action, the AMF found no direct proof such as an email or a letter to support the claim that Sacyr acted in concert with the rest of the Spanish shareholders. However, provided that the written form is not a requirement in order for an agreement to be binding, the AMF decision took into account other important elements such as the business and personal ties between Sacyr and the shareholders who have been suspected to be acting in concert with it, coupled with other unusual facts which have been interpreted as evidence of long-term planning among them to take over the control of Eiffage.[51] For example, the AMF argued that the six had enough assets to acquire large amounts of Eiffage stock, since they were part of family groups that could have done so. Finally, failures to declare their holdings properly were also held to be relevant.

---

[49] Paris Court of Appeal, 1st Chamber, Section H, April 2, 2008, RG No 2007/11675, p. 13. This decision was based on the grounds that Article L.233-10 of the Commercial Code does not require the agreement to jointly acquire or sell securities of a company or to exercise voting rights in common 'to be in writing, nor does it need to be legally binding'.

[50] In recent years the only significant European example was in Italy, where the regulator Consob found in 2005 that stock market raiders had acted in concert to help a bid by Banca Popolare Italiana for rival Antonveneta, which was the subject of an approach by Dutch bank ABN Amro.
But in the same year in Germany, BaFin, the German regulator, found no evidence of an alleged concert party among activist investors in Deutsche Börse after they overturned its strategy and ousted the directors.
The most famous UK example was the Guinness scandal in 1986, when several parties colluded to manipulate the drinks maker's shares, a debacle that led to an overhaul of the UK's Takeover Code. Guiness was found to have breached the Code in relation to its takeover of Distillers. For the history of the case and the decisions of the Takeover Panel see http://www.thetakeoverpanel.org.uk/wp-content/uploads/2008/12/1989-13.pdf (last accessed 29.09.2010).

[51] For example, the fact that some of the 89 had changed their bylaws in the same way and during the same time period so as to allow them to buy shares in foreign companies. Similarly, five of the shareholders were allegedly close to two Sacyr directors, and all had invested in a company called Opera Bona.

In this light, the board of Eiffage has been criticised for using the provision as a defence to frustrate a hostile bid by Sacyr.[52] Similarly, the AMF's ruling, that a 'concert party' existed between Spanish investors in Eiffage has been characterised as aggressive and was attributed to the political dimension of the case, as it involved a French company being taken over by a Spanish one.[53] When viewed from a legal perspective, this case clearly illustrates how arbitrary the definition of 'concerted action' can be. The AMF decision provided a wide interpretation of 'concerted action'[54], which implies that shareholders agreements will trigger the MBR, may they be formal or informal. It also suggests that the link to be established between the terms of the agreement and their impact on the takeover is a weak one. Any term affecting the governance of the company, such as one's ability to appoint directors at the board, could be interpreted as having the potential to facilitate or frustrate a takeover bid. Additionally, the lax approach of the AMF regarding the evidence which was held to be conclusive of a concerted action further increases the restrictive effect of the MBR on shareholders interaction, as it is presumed that the legitimate communication between shareholders constitutes 'concerted action' in the absence of striking evidence to the contrary.

3. Lessons from Sacyr/Eiffage and Beiersdorf/Tschibo case studies: BEIERSDORF

3.1 Facts of the case[55]

Beiersdorf , a skincare and adhesives manufacturer based in Hamburg, had an ownership structure comprising multiple large shareholders. Allianz, the German insurer, was the controlling shareholder of the company holding a 43,6% stake, while Tchibo, the coffee retailer controlled by the Herz family, held a 25% stake. In 2002, Tchibo increased its stake in Beiersdorf to 30,3%. In 2002, Allianz initiated negotiations with Procter & Gamble, seeking to sell its 43.6% stake in Beiersdorf. There has been strong opposition to the sale by Beierdorf's deputy chairman, its

[52] The Deal Magazine. 'The conspiracy defence', 03.07.2008, available at http://www.thedeal.com/magazine/ID/017541/features/the-conspiracy-defense.php (last accessed 29.09.2011).
[53] *ibid.*
[54] Mark Solomons, Shock after watchdog sounds alarm over Eiffage, FT, 28.06.2007, available at http://www.ft.com/cms/s/0/7a46b776-2513-11dc-bf47-000b5df10621.html.
[55] Kirchmaier et al (2009) supra note27.

employees and the city of Hamburg. Under an agreement, a consortium of buyers including Tchibo, a holding company for the assets of the City of Hamburg[56] and Beiersdorf's own pension fund, TROMA,[57] purchased most of Allianz's 43.6% stake in Beiersdorf. More specifically, Tchibo acquired a 19.6% stake, Hamburg a 10% stake, and the pension fund a 4% stake. After the acquisition, the consortium of buyers had obtained a stake of 33,6% without triggering the mandatory bid rule.

3.2 Legal Framework at the time of the conflict

Article 35 Sections 1 and 2 of WpÜG, the German Takeover Act[58] provides for a mandatory bid rule. The mandatory bid obligation is triggered when the control rights over the target company obtained by an investor exceed the level of 30%[59]. Article 30 Section 2 of WpÜG specifically provides that the voting rights attached to shares held by a party that coordinates its conduct in relation to the target company with a third party, either on the basis of an agreement or in any other manner, shall be attributed to such party. In other words, the 'acting in concert' rule is triggered if there is a coordination of conduct with regard to the target company, which is exercised by virtue of an agreement or in any other manner, such as a tacit agreement or a gentlemen's agreement. In addition to administrative fines, Article 59 of WpÜG provides that the respective shareholder and the persons acting in concert with such shareholder are not entitled to exercise their rights under the shares for the period of non-compliance. In this light, the definition of 'acting in concert' is determining.

3.3 BaFin investigation and decision[60]

BaFin, the German regulator, launched an investigation after complaints by minority shareholders in Beiersdorf against the actions of the consortium.[61] The members of the consortium argued that

[56] Hamburger Gesellschaft für Vermögens und Beteiligungsverwaltung mbH.
[57] TROMA Alters- und Hinterbliebenenstiftung.
[58] § 30 Abs. 2 WpÜG Wertpapiererwerbs- und Übernahmegesetz.
[59] § 29 Abs. 2 WpÜG.
[60] BaFin 23 January 2004, See Press Release available at http://www.bafin.de/cln_152/nn_721290/SharedDocs/Mitteilungen/DE/Service/PM__2004/pm__040123__acting.html?__nnn=true (last accessed 29.09.2011).

the increase of Tschibo's stake from 30.3% to 49,6% did not trigger the application of the mandatory bid rule because there has been no change in control. In this respect, BaFin made clear that any shareholder who held 30% or more of the voting rights of a target company prior to the entry into force of the Takeover Act on January 1, 2002 is exempt from the obligation to launch a mandatory bid if such shareholder subsequently acquires additional shares in the target company. With regard to the joint acquisition of the shares by the consortium, BaFin stated that it found no conclusive evidence that the members of the investor group had acted in concert with respect to Beiersdorf. BaFin found no evidence of the existence of an agreement restricting or tying their voting rights or the intention to act jointly to exercise their influence over the target company. BaFin also found no conclusive evidence that the three entities of the consortium had reached an agreement to pursue, through the purchase of the shares, the protection of the company's seat in Hamburg.

In its decision BaFin also provides valuable information as to how the term 'acting in concert' is to be interpreted. According to BaFin, the joint acquisition of shares can only be described as 'acting in concert', if the acquirers pursue a joint objective beyond the acquisition itself. More specifically, the acquirers must have the intention to jointly exercise their influence over the target company, for instance, in order to divest the company or change the company's seat or coordinate the composition of the supervisory and management boards. However, several points of criticism of the BaFin decision have been raised.[62] For example, before the acquisition of the shares by the consortium, Allianz was the largest shareholder in the company but its stake was diluted after the sale. Moreover, there were indications that the parties in the consortium did not make independent investment decisions as it had been claimed. Instead, Beiersdorf’s Buyback Prospectus detailed: 1) a contractual agreement among the parties to transfer their rights in the share buyback to Allianz; 2) shared interests in blocking a takeover bid from Procter & Gamble; and 3) the joint goal of retaining production in Hamburg. Additionally, the City of Hamburg declined representation on the Supervisory Board, stating that it '*fe[lt] well represented by the Tchibo*

---

[61] Entscheidung bei Beiersdorf bis Jahresende, Bafin macht Tempo - Streit um Übernahmeangebot an freie Aktionäre - US-Investor droht mit Klage, Birger Nicolai, WeltOnline, 09.12.03, available at http://www.welt.de/print-welt/article278740/Entscheidung_bei_Beiersdorf_bis_Jahresende.html (last accessed 29.09.2011).

[62] Kirchmaier et al (2009) supra note27.

representatives.' The consortium together acquired a stake of 33.6%, well above Germany's mandatory bid threshold of 30%. Under a broader construction of 'acting in concert', it would have been required to bid for the outstanding shares.

4. The mandatory bid rule and its impact on shareholder activism

The negative impact of the MBR on shareholders agreements coupled with the legal uncertainty deriving from the interpretation of the rule by national courts acts as a disincentive for the participation of minority shareholders in the governance of their investments and promotes shareholder apathy. The aim of the rule, namely to protect minority shareholders by distributing to them the takeover premium otherwise accruing to the controlling shareholder, illustrates the inherent presumption embedded in the MBR, that minority shareholders are passive and have limited means to react. However, such a presumption is not aligned with the dynamic interactions taking place within a corporation owned by several large minority shareholders. Under these conditions, the shareholders have the incentives and the economic interest to react by forming coalitions. Consequently, the presumption upon which the MBR relies is not valid for a considerable number of EU corporations owned by multiple large shareholders. As multiple large shareholdings substantially differ from small, dispersed minority shareholdings, the MBR distorts rather than promotes the emergence of beneficial shareholders coalitions.

To illustrate this argument, it would be useful to imagine the following scenario. A controller owns 35% of a company, which stake makes him a controlling shareholder under most definitions of control provide by scholars and regulators. The ownership of the company is also shared by three additional shareholders each of whom owns around 15% of the shares of the company and a few smaller shareholders holding various stakes. The three large shareholders have the incentives to monitor the controlling shareholder and to challenge the decisions the latter wishes to pass. The three large shareholders have an interest to coordinate by entering into a shareholders agreement in order to facilitate monitoring and avoid both the collective action and the free rider problem. Assuming that the three large shareholders seek to effect a change of control, the existence of a shareholders agreement would trigger the MBR. Even in the absence of a shareholders agreement,

their behaviour could fall under the concerted action notion. Under the abovementioned conditions, the paradox effect of the MBR would be that the coalition of the three large shareholders would have to make a mandatory bid to acquire the shares of the existing controller, who for the purpose of the MBR, would count as a minority shareholder.

The aforementioned example clearly shows the problematic impact of the MBR on three grounds. The first problem derives from the impact of the MBR on the ownership structure of the corporation. More specifically, the requirement that a shareholder who contests the control must offer to buy the shares of the minority shareholders eventually makes control harder to contest. It also only facilitates control changes between controlling shareholders which means that the new corporate structure to emerge following the takeover gives rise to the same risk of minority expropriation. The second problem involves the effect of the rule as a disincentive of large minority shareholders to challenge control internally. Either because of their wealth constraints or due to their investment strategy to hold a diversified portfolio, they may choose not to bear the risk of triggering the MBR. As a result, the challenge of the control of existing inefficient controlling coalitions or shareholders becomes less likely, while the inefficient controllers become entrenched. The third problem is associated with the impact of the MBR on maintaining the *status quo* of passive minority shareholders. More specifically, the risk of triggering the MBR effectively impedes any change or improvement of the marginal role of minority shareholders in corporate governance.

The European Securities Markets Expert Group (ESME) has already identified the problem deriving from the different definitions of 'acting in concert' in Article 10 (a) of the Transparency Directive and in Articles 2.1(d) and 5 of the Takeover Bids Directive.[63] The difference in the definitions is caused by the different aims of the Directives[64] and the different elements required for the

[63] ESME 17.11.2008 supra note18.

[64] Article 10 of the Transparency Directive aims, inter alia, to provide transparency as to who has the power to exercise voting rights when voting-rights holders agree on pooling their votes.
Articles 2.1. (d) and 5 of the Takeover Bids Directive aims at protecting minority shareholders by requesting the launch of mandatory bids at equitable prices when shareholders act in concert to acquire control. See ESME 17.11.2008 supra note18.

application of the rules.[65] The general and abstract proposals set forward in the ESME Recommendations indicate the difficulty in addressing the problem. More specifically, the Group proposes that, with respect to the acting in concert notion, the Takeover Bids Directive should be *de facto* considered by Member States and competent authorities as a maximum harmonization one.[66] In acknowledgment of the arising problem, the review of the Transparency Directive by the Commission also states that some technical adjustments to the text of the Directive would possibly be beneficial with a view to clarifying its obligations. Among the issues identified is the notion of 'acting in concert' in Article 10(a). More specifically, the Commission acknowledges the fact that clarifications of some elements of the definition in Article 10 (a), namely, what does 'lasting common policy towards the management of the issuer' or 'agreement' mean are necessary in order to limit the exposure of market participants to legal risk.[67] Similarly, such a clarification should also be provided as the Takeover Bids Directive is revised.

C. SHAREHOLDERS AGREEMENTS AND THE BREAK-THROUGH RULE

1. The function of the break-through rule in the context of shareholders agreements

In addition to the MBR, the Break-through Rule (hereafter BTR) set out in Article 11 of the EU Takeover Bids Directive constitutes another example of the EU takeover regulation which affects shareholders agreements. The BTR is designed to render the takeover defences contained in a target company's articles of association or in shareholders agreements ineffective against a bidder

[65] According to the Transparency Directive, the notification requirements prescribed by the Directive apply also to cases of an 'agreements' which 'obliges' to adopt, 'by concerted exercise' of the voting rights, a 'lasting common policy towards the management'. Therefore the necessary conditions for the EU legislation for the obligation to arise, are: an agreement between the parties, the aim of adopting a common policy towards the issuer, the duration of the common policy ('lasting'), the object of the policy (not the issuer per se but the management of the issuer), and, finally, the rising above the relevant threshold (5% or less).
According to the Takeover Bids Directive, persons acting in concert – for the launch of a mandatory bid - shall mean natural or legal person who 'cooperate' with the offeror or the offeree company 'on the basis of an agreement', either express or tacit, either oral or written, 'aimed' either at acquiring control of the offeree company or at frustrating the successful outcome of a bid. The conditions required in this case are the cooperation, an underlying agreement, the aim acquiring a company or frustrating a bid; the relevance is given only to the crossing of the threshold for the mandatory bid. See ESME 17.11.2008 supra note18.
[66] ESME 17.11.2008 supra note18, p.3.
[67] EU Commission Staff Working Document on the review of the Transparency Directive (27.05.2010) supra note10.

during the offer. The aim of the BTR is to facilitate takeovers by lifting the disproportionate control rights of incumbent shareholders. The rationale for the rule is the well-functioning of the market for corporate control and the wider objective of the integration of the EU market. The BTR is particularly relevant in the context of shareholders agreements because it strikes down any restrictions on the transfer of securities or voting rights provided for in the articles of association of the offeree company, or in contractual agreements between the offeree company and the holders of its securities, or in contractual agreements between holders of the offeree company's securities. According to par. 2 and 3 of Article 11 of the Takeover Bids Directive, such restrictions on the transfer of securities or on voting rights shall not apply vis-à-vis the offeror during the time allowed for acceptance of the bid. Similarly, par. 4 provides that the restrictions on the transfer of securities or on voting rights and any extraordinary rights of shareholders concerning the appointment or removal of board members are prohibited, if the bidder obtains 75% or more of the voting capital of the target company.

To the extent that such provisions are included in shareholders agreements, the latter are ineffective. The purpose of the rule is to neutralise shareholders agreements by intervening in the contractual freedom of shareholders. The rule addresses shareholders agreements which limit the free transferability of shares or restrict voting rights to the extent they constitute typical pre-bid defences and applies to all shareholders agreements without taking into account the factual background and the ownership structure of the company involved. As the rule provides no means for differentiating between beneficial and harmful shareholders agreements, it effectively deters most types of shareholders interactions. Although the BTR clearly poses important obstacles to the effectiveness and the reliability of shareholders agreements as a governance mechanism, its impact is substantially mitigated because few Member States have chosen to apply it.[68]

[68] For an extensive analysis of how this rule has been implemented across member states see Davies P.L., Schuster E.-P. and Van de Walle de Ghelcke E.,(2010), The Takeover Directive as a Protectionist Tool?, ECGI - Law Working Paper No. 141/2010. Available at SSRN: http://ssrn.com/abstract=1554616. Their analysis indicates that the actual impact of the breakthrough rule is limited because of the low rate of countries which adopted the rule.

2. Criticisms against the break-through rule

In the context of the vast criticism against the Takeover Bids Directive, the BTR has held a central role.[69] The criticism against the BTR ranges from the optional application of the rule to the limited impact of the rule on many problematic ownership structures, such as pyramids and cross-shareholdings. Similarly, the interpretation of certain facets of Article 11, such as the concept of 'equal treatment', could lead to inconsistencies and finally, defy the harmonisation objective.[70] The extensive reference to the arguments against the BTR falls beyond the scope and limits of this thesis. However, in the context of shareholders agreements the BTR is found to be problematic in two important respects: Firstly, as regards the substance of the rule, and, secondly, as regards its impact on levelling the playing field.[71]

More specifically, the BTR constitutes an example of the limitations imposed on the contractual freedom of shareholders and, thus their freedom to enter into shareholders agreements. In the context of the concentrated ownership prevalent in most EU countries, the most important argument against the BTR involves its limited effect to actually promote ownership structures which will reduce the risk of minority expropriation. On the assumption that the existence of multiple large shareholders should be promoted, the BTR appears to be bringing about the contrary, restrictive effect as it substantially undermines the reliability of shareholders agreements as effective corporate governance and coordination mechanisms. By negatively affecting the formation of coalitions among large shareholders, the BTR ultimately also limits the positive effect of multiple large shareholders within public corporations and discourages shareholders from playing an active role in the governance of their investments. Viewed from this perspective, the rule does not only hinder the emergence of shareholders agreements and coalitions but is also

---

[69] For criticism on the breakthrough rule see Mülbert P.O., (2003), Make It or Break It: The Break-Through Rule as a Break-Through for the European Takeover Directive?, ECGI - Law Working Paper No. 13/2003. Available at SSRN: http://ssrn.com/abstract=441120.
For criticisms on the Takeover Bids Directive see further Wymeersch E. O, (2008), The Takeover Bid Directive, Light and Darkness, Financial Law Institute Working Paper No. 2008-01. Available at SSRN: http://ssrn.com/abstract=1086987; Berglöf E. and Burkart M. C., European Takeover Regulation. Available at SSRN: http://ssrn.com/abstract=405660; For a recent review Burkart M.C. and Panunzi F., (2006), Takeovers, ECGI Finance Working Paper N°. 118/2006.

[70] Papadopoulos T., (2008), Legal Aspects of the Breakthrough Rule of the European Takeover Bid Directive. Takeover regulation: A legal approach, Icfai Books, Icfai University Press (IUP), Icfai University, 2008. Available at SSRN: http://ssrn.com/abstract=1114671.

[71] Rickford J., (2004), The Emerging European Takeover Law From A British Perspective, European Business Law Review, 2004, p.1379.

inconsistent with the calls of the European Commission for greater shareholder participation as part of the wider debate on shareholders activism and responsible ownership.[72]

Moreover, the arguments in favour of the rule are misplaced to the extent that the BTR facilitates the transfer of control from one controller to the next. Provided that the law should be allowing for more competitive ownership structures, most notably through the emergence of multiple blockholdings, it is inconsistent to provide a potential acquirer with the ability to strike down existing shareholders agreements. Similarly, there are also limited indications that a takeover is the optimal corporate governance disciplining mechanism when compared to multiple blockholdings. According to this line of argument, the rationale for promoting takeovers as a whole is challenged, at least in the context of concentrated ownership structures.[73] This argument is further corroborated by the fact that the disciplining effect of the market for corporate control in Continental Europe is not found to be as pervasive as in the UK and the US.[74] Furthermore, provided that shareholders agreements promote internal control contestability, it appears that the BTR is ill-adapted to the distinct characteristics of concentrated ownership structures,

[72] See EU Commission Green Paper on Corporate Governance (05.04.2011) supra note4.

[73] The rationale for takeovers in the context of dispersed ownership structures appears to be better founded that the case for takeovers in systems of concentrated ownership. See for example Ruback R. S. and Jensen M. C., (1983), The Market for Corporate Control: The Scientific Evidence, Journal of Financial Economics, 11:5. Available at SSRN: http://ssrn.com/abstract=244158; Jensen M.C., (1986), The Takeover Controversy: Analysis and Evidence, Midland Corporate Finance Journal, 4(2). Available at SSRN: http://ssrn.com/abstract=173452; Martynova M. and Renneboog L., (2008), A Century of Corporate Takeovers: What Have We Learned and Where Do We Stand? (previous title: The History of M&A Activity Around the World: A Survey of Literature), Journal of Banking and Finance, 2008; ECGI - Finance Working Paper No. 97/2005. Available at SSRN: http://ssrn.com/abstract=820984; Bebchuk L.A. and Hart O.D., (2001), Takeover Bids Vs. Proxy Fights in Contests for Corporate Control. ECGI - Finance Working Paper No. 04/2002; Harvard Law and Economics Discussion Paper No. 336. Available at SSRN: http://ssrn.com/abstract=290584; Jensen M.C., (1988), Takeovers: Their Causes and Consequences, Journal of Economic Perspectives, 2(1):21. Available at SSRN: http://ssrn.com/abstract=173455.

For criticisms in the case of the EU see Hertig G. and McCahery J. A., (2003), Company and Takeover Law Reforms in Europe: Misguided Harmonization Efforts or Regulatory Competition?. ECGI - Law Working Paper No. 12/2003. Available at SSRN: http://ssrn.com/abstract=438421.

For criticisms of takeovers as a corporate governance mechanism in the context of concentrated ownership structures see Burkart&Panunzi (2000) supra note69; Berglöf E. and Burkart M. supra note69; Martynova M. and Renneboog L., (2008), The Performance of the European Market for Corporate Control: Evidence from the 5th Takeover Wave, European Financial Management Journal, Forthcoming; ECGI - Finance Working Paper No. 135/2006. Available at SSRN: http://ssrn.com/abstract=941731. The scholars find that the presence of a large shareholder in the bidding firm has a significantly positive effect on the takeover returns in the UK and a negative one in Continental Europe.

[74] For evidence that the disciplinary effect of takeovers is also weak in the UK see Franks J.R. and Mayer C., (1995), Hostile Takeovers In the UK and the Correction of Managerial Failure. London Business School Institute of Finance and Accounting Working Paper 156-1995. Available at SSRN: http://ssrn.com/abstract=6487.

characterised by multiple large shareholders.[75] In effect, the MBR only serves the interests of controlling block-holders and facilitates the transfers of control from one controlling block-holder to the other. Consequently, the problem of private benefits extraction persists, while the benefits of internal competition for control are minimised.

The arguments against the BTR are reinforced by the lack of conclusive evidence that its actual benefits countervail its overall costs.[76] Furthermore, the existence of the BTR could also not be justified on the basis that it promotes harmonisation and levels the playing field across the EU. More specifically, because of its optional application[77], the BTR has failed to meet its harmonisation objective by establishing a level playing field for takeover bids at the EU level and has barely promoted the contestability of control, as originally envisaged.[78] This failure partly derives from the fact that no jurisdiction has made the BTR mandatory. Instead, they all allow corporations to opt in. In this latter case, however, reciprocity is usually required.[79] This renders the rule inapplicable, even if a company opts in, in the case that the tender offer is launched by a

[75] This proposition aligns with findings that legal transplants are often problematic. See Martynova&Renneboog (2008) supra note73.; Goergen et al (2005) supra note73. The authors point out that '*similar regulatory changes may have very different effects within different corporate governance systems. For example, while in some countries the adoption of a specific takeover rule may lead toward more dispersed ownership, in others it may further reinforce the blockholder-based system.*'
Also arguing in favour of a neutral regulatory approach towards takeovers see Enriques L., (2009), European Takeover Law: The Case for a Neutral Approach, UCD Working Papers in Law, Criminology & Socio-Legal Studies Research Paper No. 24/2010. Available at SSRN: http://ssrn.com/abstract=1523307.

[76] Coates IV J.C., (2003), Ownership, Takeovers and EU Law: How Contestable Should EU Corporations Be?, ECGI - Law Working Paper No. 11/2003; Harvard Law and Economics Discussion Paper No. 450 . Available at SSRN: http://ssrn.com/abstract=424720; Bennedsen M. and Nielsen K. M., (2002), The Impact of a Break-Through Rule on European Firms, Center for Economic and Business Discussion Paper. Available at SSRN: http://ssrn.com/abstract=328020.

[77] Gatti M., (2005), Optionality Arrangements and Reciprocity in the European Takeover Directive, European Business Organization Law Review (EBOR), 6:553; Tamburrini G., (2009), Harmonization of Takeover Discipline: A Comparative Law and Economic Overview. Available at SSRN: http://ssrn.com/abstract=1423762
For a defence of the optionality of the rule see McCahery J.A. and Vermeulen E.P.M., (2010), Does the Takeover Bids Directive Need Revision?, TILEC Discussion Paper No. 2010-006; Tilburg Law School Research Paper No. 005/2010. Available at SSRN: http://ssrn.com/abstract=1547861.

[78] The UK, for example, has opted not to apply the break-through rule. However, in implementing the Directive, the CA 2006 includes a right for any company to opt into the breakthrough provision of Article 11 pursuant to Article 12 of the Directive. Thus, in keeping with Article 12 of the Directive, sections 966 to 972 of the CA 2006 provide an option for listed companies to opt in to Article 11 should they wish to. These sections provide for conditions that have to be met if listed companies wish to opt in to Article 11. Therefore, a special resolution is required for both initial opting in and subsequent opting out.

[79] Article 12 of the Takeover Bids Directive also provides that Member States can subject the application of the breakthrough rule to reciprocity.

'company which does not apply the same rules' or 'by a company controlled, directly or indirectly, by the latter'. [80]

III. CONCLUDING REMARKS

In the context of this thesis, legal effectiveness refers to the extent to which an issue can be dealt with by the law and if so, how well it is dealt with in terms of consistency and predictability, on the one side, and the delivery of efficient and just outcomes, on the other. Legal effectiveness is assessed on the basis of the type of concentrated ownership involved. For example, in the case of multiple blockholders, legal effectiveness refers to the capacity of the rules to allow for beneficial shareholder collaboration and responsible, active ownership, while it limits the risk that shareholders agreements are used as expropriating mechanisms. This thesis considers a number of factors when evaluating the effectiveness of the law in addressing the corporate governance issues involved. Such factors include the consistency and predictability in the application of the law, the enforceability of the legal rules and agreements, how the law facilitates the efficient use of resources and whether the law reflects the best practices and high standards of corporate governance. Against the abovementioned definition and the criteria of legal effectiveness this Chapter has assessed the effectiveness of the EU framework to address the corporate governance issues that arise in the context of ownership structures characterised by multiple large shareholders.

The foregoing analysis highlights the deficiencies of the EU legal framework which is presented as an example of legal inefficiency due to a number of ill-adapted rules. For example, the complexity of the corporate disclosure regime and the resulting high compliance costs inhibit shareholders agreements and interactions, therefore imposing limitations on the activism and beneficial interactions of shareholders. Similarly, the promotion of takeovers as a corporate governance mechanism appears to be an ill-adapted response to the prevalent concentrated ownership

[80] In this respect, the only exception is the British rules, which provide that if a corporation decides to adopt the BTR, the absence of reciprocity does not make the rule inapplicable.

structures across the EU. Moreover, the underlying assumptions of rules such as the mandatory bid rule and the break-through rule are aligned with the absolute forms of concentrated ownership, according to which there is one controlling shareholder against many small, dispersed minority shareholders. As this view of concentration is overly simplistic and disregards the presence of multiple large shareholders in corporations across the EU, the rules are misplaced and ill-adapted. As a result, both the mandatory bid rule and the break-through rule in effect discourage shareholders activism and facilitate the transfer of control from one large blockholder to another rather than promoting internal control contestability. In this light, the failure of EU company law to adapt to the distinct characteristics of concentrated ownership structures characterised by the presence of multiple large shareholders substantially reduces the legal effectiveness of the EU regulatory framework of investor protection. Furthermore, the differences in the application of the rules across the EU add to the complexity of the legal framework and give rise to important inconsistencies of the law across Member States, which undermine the effectiveness of the applicable legal framework.

SUMMARY AND IMPLICATIONS OF THE THESIS

I. CHALLENGING THE COMMON PERCEPTION ABOUT CONCENTRATED OWNERSHIP

The positive impact of corporate governance on firm performance and on the cost of capital has sparked a vast discussion on the determinants of good corporate governance. In the past years, this discussion has been driven by the creation of a variety of indices intended to measure the quality of investor protection, as a proxy for good corporate governance. Concentrated ownership has been associated with an important 'inefficiency bias' deriving from the proposition that concentration facilitates the expropriation of minority shareholders by the majority. In its absolute form, concentration is considered to give rise to important conflicts of interests among shareholders and provides a favourable environment for the extraction of private benefits of control. The problem is exacerbated by the use of control-enhancing mechanisms such as pyramids and dual-class shares. In this respect, this thesis highlights a variety of biases and misconceptions in relation to concentrated ownership structures. In particular, considering concentrated ownership as a *per se* inefficient form of ownership is an over-simplified view of a far more complex corporate reality. The important differences within the varieties of concentration render such an over-generalisation inaccurate. This thesis argues that the underlying assumption of the 'inefficiency bias' of concentration, according to which concentration only involves the presence of a controlling shareholder against many dispersed small shareholders, is wrong.

Provided that the varieties of concentration are taken into account, strong investor protection is defined by reference to the ownership structure concerned. It is the case, that the different forms of ownership and shareholders' profiles pose different problems for investors and, therefore, require adapted legal solutions for their protection. As the corporate governance problems differ, the various minority protection mechanisms are not equally effective for all forms of concentrated ownership. Understanding this complex relationship of ownership structures and corporate governance is, therefore, a prerequisite of effective legal protection. Furthermore, in light of the interconnectedness of the systems

of corporate governance in the context of a global economy, understanding the complex relationship of ownership structures and corporate governance in now more imperative than ever.

In this context, the role of the law is central. Concrete examples of investor protection mechanisms demonstrate how the law adapts to the distinct characteristics of the ownership structures concerned. For instance, the case study of Greece, a jurisdiction of concentrated ownership structures and civil law background, highlights a variety of minority protection mechanisms which are specific to the ownership structure of companies. Such mechanisms can be found in company law and civil law provisions, as well as within the articles of association and the founding laws of specific categories of companies, such as state-owned enterprises. Similarly, the comparative assessment of the effectiveness of the regulatory framework applying to shareholders agreements in the UK, Greece and the EU reveals certain grey areas and regulatory uncertainties which negatively affect the reliability of shareholders agreements as an effective corporate governance mechanism. While UK and Greek company law only exhibit some elements of ineffectiveness as part of a generally effective, well-adapted legal framework for multiple blockholdings, EU company law, as shaped by the Transparency Directive and the Takeover Bids Directive, is ill-adapted to the distinct ownership structures of corporations in most EU countries, which are often characterised by the existence of multiple large shareholders.

The 'inefficiency bias' of concentration has been particularly reinforced by the LLSV Anti-Directors Rights Index and the related studies, such as the DLLS Self-Dealing Index, according to which investor protection is weaker within jurisdictions of concentrated ownership. In particular, the 'legal origin' hypothesis, as established by LLSV, justified the low investor protection levels of the systems of concentrated ownership by reference to their legal origin. According to this hypothesis, low investor protection is the effect of the legal origin of the system, while concentration of ownership is the investors' response to the low investor protection offered by the legal system. Due to its simplicity and attractiveness, the LLSV hypothesis has been extremely influential. However, there is a strong case for re-stating the LLSV 'law matters' thesis due to the methodological deficiencies and the inaccuracies which substantially affect the reliability of their index.

Contrary to the LLSV propositions, it is the case that the 'legal effectiveness' rather than the 'legal origin' of a legal system is the determinant of good corporate governance. In this context, the factor of ownership structures is central because corporate governance mechanisms are not equally effective across all contexts, jurisdictions and companies. In the case of concentration, in particular, effective investor protection is determined by a variety of characteristics which affect the corporate governance problems to be addressed. These important characteristics, as dictated by the ownership structure of the company, are the identity of the controller and the presence of multiple large shareholders. As indices fail to distinguish between dispersed and concentrated ownership structures and also among the different profiles and characteristics of the various forms of concentrated ownership, they are not a reliable metric of the quality of corporate governance. In this light, future comparative corporate governance studies aiming to measure the quality of minority protection across jurisdictions need to reflect the differences in the ownership structure and the particular characteristics of the companies concerned. To this effect, it is proposed that new comparative research methodologies should promote the substantive analysis of the law and employ a functional approach when assessing the effectiveness of a given legal system.

II. THE VARIETIES OF CONCENTRATION AND THE 'LEGAL EFFECTIVENESS' ARGUMENT

When viewed from this perspective, the relationship of concentrated ownership structures and corporate governance is better understood by complicating rather than simplifying the discussion. The closer observation of concentrated ownership structures reveals that the pervasiveness of the problem of private benefits extraction is determined by a variety of factors such as the identity of the controller. For example, conflicts of interests in the context of family ownership involve the entrenchment of the founder in the management and the extraction of pecuniary and non pecuniary benefits from being in control. These conflicts are often more intense due to the wide use by the family of control-enhancing mechanisms. Similarly, state ownership is also associated with low performance and high risk of expropriation because the state has a poor monitoring capacity and state-owned

enterprises often pursue other social goals, rather than the maximisation of shareholders' value.

Furthermore, the absolute form of concentration, which is often the underlying assumption of many comparative corporate governance studies, is not as prevalent as suggested, due to the presence of multiple large shareholders. The presence of multiple large shareholders alters the nature of the conflicts of interests because the increased monitoring limits the risk of expropriation, while the internal control contestability upgrades the role of minority shareholders, as they participate in coalitions and may even be in the position to determine which of the competing coalitions will gain control. In this light, the different forms of ownership require different corporate governance mechanisms in order to mitigate the various manifestations of the problem of conflicts of interests. Consequently, the ownership structures become important determinants of the legal effectiveness of corporate law and governance.

The aforementioned analysis indicates that the varieties of concentration and the effectiveness of the law in addressing the corporate governance issues arising within such structures are interrelated. Given the important differences in the type of corporate governance problems of concentration, which range from the extraction of private benefits of control in the case of family ownership to the inefficient monitoring of the state as a blockholder, there is no one-size-fits-all standard when determining the effectiveness of a legal system or framework to address such problems. Instead, what constitutes effective regulation is shaped according to the type of concentrated ownership. This is reflected in the definition of legal effectiveness as set out in this thesis, according to which legal effectiveness refers to the extent to which an issue can be dealt with by the law and if so, how well it is dealt with in terms of consistency and predictability, on the one side, and the delivery of efficient and just outcomes, on the other.

Legal effectiveness is also defined on the basis of the type of concentrated ownership involved. For example, in the case of family ownership legal effectiveness refers to the capacity of the rules to limit the extraction of private benefits of control by the controlling family. In the case of state ownership, legal effectiveness refers to the capacity of the rules and complementary institutions to enhance the incentives of the state to monitor effectively

the managers, while mitigating the risk of corruption and the risk that the interests of the state-owned enterprises are secondary and subservient to political considerations. Furthermore, in the case of multiple blockholders, legal effectiveness refers to the capacity of the rules to allow for beneficial shareholder collaboration and responsible, active ownership, while limiting the risk of shareholders agreements being used as expropriating mechanisms. A number of factors are considered when assessing the effectiveness of the law in addressing the corporate governance issues involved. Such factors include the consistency and predictability in the application of the law, the enforceability of the legal rules and agreements, how the law promotes and facilitates the efficient use of resources and whether the law reflects the best practices and high standards of corporate governance.

In this regard, the 'legal effectiveness' argument underpins the assessment of the distinct investor protection mechanisms which particularly apply to family-owned or state-owned enterprises. In the case of the Greek legal framework, a variety of special provisions of investor protection are included in the articles of association or the founding laws of state-owned enterprises. For instance, these provisions confer to minority shareholders of state-owned enterprises the right to directly elect their representatives on the board of directors through a separate minority shareholders meeting. Furthermore, an important corporate governance mechanism derives from the general principles established by the Greek Civil Code. The provisions of the Greek Civil Code prohibit the abuse of majority rights and are particularly relevant in the context of closely-held corporations, as they act as functional equivalents to mandatory rules of corporate law and effectively enhance investor protection in the particular context of concentrated ownership structures. The responsiveness of the distinct legal mechanisms of Greek law to the various forms of corporate ownership is an important factor of their effectiveness as minority protection devices. This example clearly illustrates the complex interactions of ownership structures and the law.

Although both categories of aforementioned provisions promote the effectiveness of the minority protection framework, the numerical approach and indexing methodologies of comparative law scholarship have failed to capture their importance. In this respect, the analysis of the selected aspects of the minority protection framework in Greece serves as a case study which indicates the deficiencies of the LLSV indexing methodology and the problems associated with the index-based approach to comparative corporate law. The

variety of the sources of minority protection provisions within the Greek legal framework also demonstrates the importance of functional equivalents and the risks deriving from the over-reliance on indices, rather than the substantive analysis to measure the quality of the law. In the case of minority protection in Greece, the findings of the traditional substantive analysis of the law show that the LLSV indices are inaccurate, since the two least obvious legal responses against expropriation and inefficiency presented in this thesis have not been considered by LLSV. This important finding confirms the necessity of substantive legal analysis as part of any reliable assessment of the quality of corporate governance across the world.

The 'legal effectiveness' argument is further corroborated by the comparative analysis of the legal treatment of multiple blockholders coordination through shareholders agreements in the UK, Greece and at the EU level. The legal treatment of shareholders agreements determines their enforceability and also affects the choices of market participants. The grey areas and legal uncertainty in the regulation of shareholders agreements by the law limit the effectiveness of shareholders agreements as a reliable corporate governance mechanism and discourage market participants from entering into such agreements in the first place. As a result, internal control contestability and shareholders interactions are negatively affected, while the economic reality established by shareholders agreements is distorted. In particular, EU company law provides an additional example of legal ineffectiveness, as the regulation imposed on blockholders interactions is ill-adapted to the ownership structures across EU countries, which are often characterised by multiple large shareholders.

Furthermore, the comparison of the treatment of shareholders agreements in Greece and the UK reveals the similarities and differences which determine the impact of the law on shareholders interactions. The differences documented are not as important as to justify the characterisation that one system is substantially less effective than the other. Particularly, in the case of Greece, the legal system achieves a balance between promoting shareholders agreements and striking them down when they can be used as mechanisms of expropriation. For example, shareholders agreements are subject to limitations imposed by the articles of association and the mandatory company law provisions, which are interpreted in light of the purpose of the rule, the factual background and the general principles of the Greek Civil Code. The application of general rules of the Greek Civil Code, which prohibit abusive

agreements, is an additional determining factor because it filters the agreements which are used to expropriate minorities from the agreements that facilitate beneficial shareholders interactions and monitoring. This example clearly illustrates that legal effectiveness may take different forms and can be achieved by different investor protection mechanisms depending on the context involved.

III. THE IMPLICATIONS OF THE VARIETIES OF CONCENTRATION

The thesis is not only a description of the varieties of concentration or the complex law of shareholders agreements or the law of investor protection within concentrated ownership structures but shows how the aforementioned issues are interlinked and highlight the important implications involved. Although the substantive analysis of the law highlights the inherent complexity of comparative company law as one of the main difficulties, it also indicates how important it is to assess the legal effectiveness of different systems not in a particular rather than a general context. In this respect, the similarities in the legal treatment of shareholders agreements show that the same outcome can be achieved through different paths, notwithstanding the differences in the legal reasoning and the path through which the outcome is achieved. This finding confirms the proposition that measuring the effectiveness and responsiveness of the law is a delicate and complex task, which requires much more than the identification of the applicable rules: It necessitates their substantive analysis in a particular context.

In this light, the methodology and findings of this thesis are aligned with the increased caution with which comparative corporate law scholars view the numerical approach to comparative corporate governance, most notably through the use of indices. More specifically, the indices and ratings compiled by financial economists and commercial providers of governance services to measure the quality of a company's governance arrangements fail to capture the multiple dimensions of a company's governance and the implications of the inherent differences across corporate governance systems. The underlying idea of an index or rating, namely to identify the best corporate governance system or the more effective corporate governance mechanism, contradicts the reality that there is no one, most effective system or arrangement of all. Instead, the most effective

governance system or mechanism appears to depend on the context and on a company's specific circumstances, which are shaped by the factor of the ownership structure.

In the absence of accurate substantive analysis of the corporate governance arrangements at the company or country level, it would be difficult for an index or a rating to accurately reflect the quality of the corporate governance framework in order to enable investors' informed decisions. When viewed from this perspective, unless the methodology and variables of corporate governance indices and ratings evolve to take into account the characteristics of the companies and the financial systems in the context of which corporate governance arrangements operate, they will remain imperfect instruments, inadequate for investors or policy makers to rely on. The case of concentrated ownership and the important varieties arising within it clearly supports this point. In this light, future corporate governance research should reflect on a famous quote of Albert Einstein: *'Make everything as simple as possible, but not simpler.'*

TABLE OF CASES

UK

Allen v Gold Reefs of Africa LTD[1900-03] All ER REP 746.
Re Bailey, Hay&Co Ltd (1971) 3 All ER 693.
Bankgesellschaft Berlin AG (formerly Berliner Bank AG) v Makris [1999] All ER (D) 56.
Brown v British Abrasive Wheel Co Ltd [1918-19] All ER Rep 308.
Bushell v Faith [1970] AC1099 (House of Lords).
Cane v Jones (1981) 1 All ER 533.
Citco Banking Corporation NV v Pusser's Ltd [2007] UKPC 13.
Dafen Tinplate Company Limited v Llanelly Steel Company [1920] 2 Ch124.
Re Duomatic [1969] 1 All ER 161.
In Euro Brokers Holdings Ltd v Monecor (London) Ltd [2003] EWCA Civ 105 [2003] BCC 573,[2003] 1 BCLC 506.
Greenhalgh v Anderne Cinemas [1951] Ch 286.
Hickman v Kent Romney Marsh Sheep-Breeders' Association [1915] 1 Ch 881.
Puddephatt v Leith [1916] 1 Ch 200.
Punt v Symons & Co Ltd [1903] 2 Ch 506.
Macdoougall v Gardiner[1875] 1 Ch D 13 and *Pender v Lushington* [1877] 6 CH D 70.
Rayfield v Hands [1958] 2WLR 851.
Russell v Northern Bank Development Corp Ltd [1992] BCC 578; [1992] 1 WLR 588.
Sidebottom v Kershaw, Leese and Company Ltd [1920] 1 Ch 154 (CA).
Southern Foundries (1926) Ltd v Shirlaw (1940) AC 701, HL.
Shuttleworth v Cox Bros Ltd [1927] 2KB 9 (CA).
Welton v Saffery, [1897] A.C.299.
Wood v Odessa Waterworks Co [1889] 42 Ch D 636.

GREECE

SUPREME COURT OF GREECE (ΑΡΕΙΟΣ ΠΑΓΟΣ)

Case 1298/2006 Supreme Court of Greece (Άρειος Πάγος).
Case 1121/2006 Supreme Court of Greece A' Civil Division ('Αρειος Πάγος, Α' Πολιτικό Τμήμα), published on www.dsanet.com.
Case 18/2004 Supreme Court of Greece (Άρειος Πάγος) in Plenary Session (Απόφαση Ολομέλειας).
Case 14/1999 Supreme Court of Greece (Άρειος Πάγος) in Plenary Session (Απόφαση Ολομέλειας).
Case 94/1999 Supreme Court of Greece (Άρειος Πάγος), published in Commercial Law Review, 1999, 324.
Case 26/1998 Supreme Court of Greece ('Αρειος Πάγος), published in Commercial Law Review 1998, 669.
Case 10/1991 Supreme Court of Greece (Άρειος Πάγος) in Plenary Session (Απόφαση Ολομέλειας).
Case 459/1989 Supreme Court of Greece (Άρειος Πάγος), published in Commercial Law Review, 1990, 428; *Elliniki Dikaiosini, 31:356*
Case 546/1985 Supreme Court of Greece (Άρειος Πάγος), published in Commercial Law Review, 1987, 66.
Case 155/1985 Supreme Court of Greece (Άρειος Πάγος), published in Elliniki Dikaiosini, 26:458.
Case 982/1980 Supreme Court of Greece (Άρειος Πάγος), published in Nomiko Vima 29:321.

Case 1285/1980 Supreme Court of Greece (Άρειος Πάγος).
Case 832/1976 Supreme Court of Greece (Άρειος Πάγος), published in Nomiko Vima 1977, 190.
Case 398/1975 Supreme Court of Greece (Άρειος Πάγος) in Plenary Session (Απόφαση Ολομέλειας).

COURT OF APPEAL (ΕΦΕΤΕΙΟ)

Case 7120/2004 Athens Court of Appeal (Εφετείο Αθηνών), published in Law of Enterprises and Companies, 2005, 300.
Case 7119/2004 Athens Court of Appeal (Εφετείο Αθηνών), *,* published on www.dsanet.com
Case 14292/1988 Athens Court of Appeal (Εφετείο Αθηνών), published in Commercial Law Review, 1989, 238.
Case *1136/1985* Athens Court of Appeal (Εφετείο Αθηνών), published in Elliniki Dikaiosini 26:271.
Case 8129/1977 Athens Court of Appeal (Εφετείο Αθηνών).
Case 139/1978 Crete Court of Appeal (Εφετείο Κρήτης).
Case 130/1997 Patra Court of Appeal (Εφετείο Πατρών), published in Law of Enterprises and Companies, 1997, 712.
Case 1339/1995 Piraeus Court of Appeal (Εφετείο Πειραιά), published in Elliniki Dikaiosini 1996, 201.
Case 4505/2004 Thessaloniki Court of Appeal (Εφετείο Θεσσαλονίκης)*, Law of Enterprises and Companies, 2004, 1010.*
Case 2401/1998 Thessaloniki Court of Appeal (Εφετείο Θεσσαλονίκης), published in Elliniki Dikaiosini, 40:420.
Case 3566/1997 Thessaloniki Court of Appeal (Εφετείο Θεσσαλονίκης), published in Law of Enterprises and Companies, 1998, 471.
Case 249/1991 Thessaloniki Court of Appeal (Εφετείο Θεσσαλονίκης), published in Incorporated and Limited Liability Company Bulletin, 1992, 446.
Case 765/1974 Thessaloniki Court of Appeal (Εφετείο Θεσσαλονίκης)*, published in Nomiko Vima 1975, 678.*

MULTI-MEMBER, FIRST INSTANCE COURTS (ΠΟΛΥΜΕΛΕΣ ΠΡΩΤΟΔΙΚΕΙΟ)

Case 6907/2009 Multi-member First Instance Court of Athens (Πολυμελές Πρωτοδικείο Αθήνας).
Case 5182/2007 Multi-member First Instance Court of Athens (Πολυμελές Πρωτοδικείο Αθηνών) published in Law of Enterprises and Companies, 2008, 323.
Case 569/2007 Multi-member First Instance Court of Athens (Πολυμελές Πρωτοδικείο Αθηνών).
Case 5565/2003 Multi-member First Instance Court of Athens (Πολυμελές Πρωτοδικείο Αθηνών), published on www.dsanet.com.
Case 3265/1991 Multi-member First Instance Court of Athens (Πολυμελές Πρωτοδικείο Αθηνών)*, published in Commercial Law Review 1991, 444.*
Case 6299/1979 Multi-member First Instance Court of Athens (Πολυμελές Πρωτοδικείο Αθηνών).
Case 5001/1971 Multi-member First Instance Court of Athens (Πολυμελές Πρωτοδικείο Αθηνών)*, published in Commercial Law Review, 1971, 545.*
Case 11/1972 Multi-member First Instance Court of Corinth (Πολυμελές Πρωτοδικείο Κορίνθου).
Case 48/1991 Multi-member First Instance Court of Rodopi (Πολυμελές Πρωτοδικείο Ροδόπης), published in Elliniki Dikaiosini 1992, 1626.

Case 433/1995 Multi-member First Instance Court of Piraeus (Πολυμελές Πρωτοδικείο Πειραιά), published in Law of Enterprises and Companies 1995, 405.
Case 9181/2002 Multi-Member First Instance Court of Thessaloniki (Πολυμελές Πρωτοδικείο Θεσσαλονίκης).
Case 304/1998 Multi-member First Instance Court of Verroia (Πολυμελές Πρωτοδικείο Βέρροιας).

SINGLE-MEMBER, FIRST INSTANCE COURTS (ΜΟΝΟΜΕΛΕΣ ΠΡΩΤΟΔΙΚΕΙΟ)

Case 5570/2010 Single-member First Instance Court of Athens (Μονομελές Πρωτοδικείο Αθηνών).
Case 5079/2002 Single-member First Instance Court of Athens (Μονομελές Πρωτοδικείο Αθηνών), published in Commercial Law Review 2002, 572.
Case 521/2001 Single-Member First Instance Court of Karditsa (Μονομελές Πρωτοδικείο Καρδίτσας).

EU

European Court of Justice, Case C-112/05, Commission v Germany, available in http://curia.europa.eu/jurisp/cgi-bin/gettext.pl?where=&lang=en&num=79928976C19050112&doc=T&ouvert=T&seance=ARRET (last accessed 02.06.2010).

FRANCE

Eiffage-Sacyr: Paris Court of Appeal, 1st Chamber, Section H, April 2, 2008, RG No 2007/11675.
Eiffage-Sacyr: Nanterre Commercial Tribunal, 1 June 2007.
Eiffage-Sacyr: Versailles Court of Appeal 27 June 2007.
Eiffage-Sacyr: Paris Court of Appeal, 2 April 2008.
Eiffage-Sacyr: Nanterre Commercial Tribunal, 6 May 2008.
AMF Decision No 207C1202 of June 26, 2007; AMF, 208C0741, 21 April 2008

BIBLIOGRAPHY

Adams R. and Ferreira D., (2007), One Share, One Vote: The Empirical Evidence, ECGI Finance Working Paper No.177/2007.

Adams R., Almeida H. and Ferreira R., (2003), Understanding the relationship between founder-CEOs and firm performance, Journal of Empirical Finance, January 2009, 16(1):136.

Aganin A. and Volpin, P.F., History of Corporate Ownership in Italy (March 2003). ECGI - Finance Working Paper No. 17/2003. Available at SSRN: http://ssrn.com/abstract=391180.

Alchian A., Some Economics of Property Rights, Politico, 1965, 30(4).

Allaire Y., (2006), Dual-Class Share Structures in Canada: Review and Recommendations, The Institute for Governance of Public and Private Organisations Policy Paper No 1.

Allen F. and Gale D., (2000a), Comparing Financial Systems, Cambridge, MA: MIT Press.

Allen F. and Gale D., (2000b), Corporate Governance and Competition in Vives (2000).

Almeida, H.V. and Wolfenzon, D., (2006), A theory of pyramidal ownership and family business groups, Journal of Finance, 61:2637.

AMF Annual Conference 2008 Panel Discussion III available at http://www.amf-france.org/documents/general/8561_1.pdf (accessed June 22, 2010).

Anderson R. C. and Reeb D. M., (2003a) Founding-Family Ownership and Firm Performance: Evidence from the S&P 500. Journal of Finance 58(3):1301.

Anderson R. C. and Reeb D. M., (2003b) Founding-Family Ownership, Corporate Diversification, and Firm Leverage. Journal of Law and Economics 46(2):653.

Anderson R. C., Mansi S. A. and Reeb D. M., (2002) Founding Family Ownership and the Agency Cost of Debt. Available at SSRN: http://ssrn.com/abstract=303864.

Andres C., (2008), Large shareholders and firm performance-An empirical examination of founding-family ownership. Journal of Corporate Finance, 14(4):431.

Andres C., Family Ownership as the Optimal Organizational Structure? (March 8, 2007). EFA 2006 Zurich Meetings, Forthcoming. Available at SSRN: http://ssrn.com/abstract=903710.

Aoki M., (2001), Towards a Comparative Institutional Analysis. Stanford University Press: Stanford.

Armour J., Deakin S. F., Lele P.P. and Siems M.M., (2009), How Do Legal Rules Evolve? Evidence from a Cross-Country Comparison of Shareholder, Creditor and Worker Protection (July 7, 2009). European Corporate Governance Institute - Law Working Paper No. 129/2009. Available at SSRN: http://ssrn.com/abstract=1431008.

Armour J., Deakin, S.F., Sarkar Pr., Siems M. M. and Singh A., (2008), Shareholder Protection and Stock Market Development: An Empirical Test of the Legal Origins Hypothesis (May 2008). University of Cambridge, CBR Working Paper; ECGI - Law Working Paper No. 108/2008. Available at SSRN: http://ssrn.com/abstract=1094355.

Atanasov V. et al., Unbundling and Measuring Tunnelling (Univ. of Tex. Sch. of Law, Law & Econ. Working Paper No. 117, 2008), available at http://ssrn.com/abstract=1030529;

Atanasov V.A., Black, B.S. and Ciccotello, C.S., Law and Tunnelling (August 1, 2009). ECGI - Law Working Paper No. 178/2011; Northwestern Law & Econ Research Paper 09-35; University of Texas Law, Law and Economics Research Paper 158. Available at SSRN: http://ssrn.com/abstract=1444414.

Attig N., Guedhami O. and Mishra D. R., (2008), Multiple Large Shareholders, Control Contests, and Implied Cost of Equity (October 10, 2008). AFFI/EUROFIDAI, Paris December 2008 Finance International Meeting AFFI - EUROFIDAI. Available at SSRN: http://ssrn.com/abstract=1282129.

BaFin 23 January 2004, See Press Release available at http://www.bafin.de/cln_152/nn_721290/SharedDocs/Mitteilungen/DE/Service/PM__2004/pm__040123__acting.html?__nnn=true (last accessed 29.09.2011).

Barca F. and Becht M., The Control of Corporate Europe, 2001, OUP.

Barca F. and Trento S., (1997), State Ownership and the Evolution of Italian Corporate Governance, Industrial and Corporate Change, 6:533.

Barca F., (1995), On Corporate Governance in Italy: Issues, Facts and Agenda (September 1995), Bank of Italy, Research Department.

Barney, J. B., (2001), Resource-based theories of competitive advantage: A ten-year retrospective on the resource-based view, Journal of Management, 27:643.

Barontini R. and Caprio L., (2006), The Effect of Family Control on Firm Value and Performance: Evidence from Continental Europe, European Financial Management, 12(5):689.

Barontini R. and Caprio L., (2005), The Effect of Family Control on Firm Value and Performance. Evidence from Continental Europe, ECGI Finance Working Paper No.88/2005.

Bebchuk L. A. and Hamdani A., (2009), The Elusive Quest for Global Governance Standards (2009). University of Pennsylvania Law Review, Vol.157, p.1263; Harvard Law and Economics Discussion Paper No. 633. Available at SSRN: http://ssrn.com/abstract=1374331.

Bebchuk L. A. and Fried J. M., (2004), Pay Without Performance: The Unfulfilled Promise of Executive Compensation. Harvard University Press, 2004; UC Berkeley Public Law Research Paper No. 537783. Available at SSRN: http://ssrn.com/abstract=537783.

Bebchuk L. A. and Fried J. M., (2003), Executive Compensation as an Agency Problem. Journal of Economic Perspectives, Vol.17, p.71; Harvard Law and Economics Discussion Paper No. 421. Available at SSRN: http://ssrn.com/abstract=364220.

Bebchuk L. A. and Hart O. D., Takeover Bids Vs. Proxy Fights in Contests for Corporate Control (2001). ECGI - Finance Working Paper No. 04/2002; Harvard Law and Economics Discussion Paper No. 336. Available at SSRN: http://ssrn.com/abstract=290584.

Bebchuk L., Kraakman R. and Triantis G., (2000), Stock Pyramids, Cross-Ownership and Dual Class Equity: The Mechanisms and Agency Costs of Separating Control From Cash-Flow Rights, in R. Morck (ed.), Concentrated Corporate Ownership, Chicago, p.445.

Bebchuk L. A. and Roe M. J. A, (1999), Theory of Path Dependence in Corporate Ownership and Governance (October 1, 1999). Stanford Law Review, Vol. 52, p.127; Columbia Law School, Center for Studies in Law & Economics Paper No. 131, November 1999. Available at SSRN: http://ssrn.com/abstract=202748.

Bebchuk L. A. (1994). Efficient and Inefficient Sales of Corporate Control. The Quarterly Journal of Economics 109(4): 957.

Becht M. and Mayer, C., (2002), Corporate control in Europe. Revue d' Economie Politique 112(4), 471.

Becht M., (1999), European Corporate Governance: Trading off liquidity against control, European Economic Review, 43:1071.

Becht M. and Röell A. A., (1999) Blockholdings in Europe: An International Comparison. European Economic Review, Vol. 43, No. 4-6, Pp. 1049-1056. Available at SSRN: http://ssrn.com/abstract=167128.

Belot F., Shareholder Agreements and Firm Value: Evidence from French Listed Firms (September 1, 2010). Available at SSRN: http://ssrn.com/abstract=1282144.

Bennedsen M., Fosgerau M. and Nielsen K. M, (2003), 'The strategic choice of control allocation and ownership distribution in closely held firms', (June 2003), available at http://kelley.iu.edu/Finance/Symposium/files/bennedsen_03.pdf (last accessed 27.09.2011).

Bennedsen M. and Nielsen K. M., The Impact of a Break-Through Rule on European Firms (September 4, 2002). Center for Economic and Business Discussion Paper. Available at SSRN: http://ssrn.com/abstract=328020.

Bennedsen M. and Wolfenzon D., (2000) The Balance of Power in Closely Held Corporations. Journal of Financial Economics, Vol. 58, No. 1-2, January 1, 2000. Available at SSRN: http://ssrn.com/abstract=251877.

Berglöf E. and Burkart M.C., European Takeover Regulation. Available at SSRN: http://ssrn.com/abstract=405660.

Berglöf E. and Pajuste A., (2003), Emerging Owners, Eclipsing Markets?, Corporate Governance in Central and European Markets in P.K.Cornelious, P.Kogut eds., Corporate Governance and Capital Flows in a Global Economy, (2003), OUP.

Berglöf E., (1997), A note on the typology of financial systems, in K.Hopt et al, Comparative corporate governance: Essays and materials, 151.

Bergstrom C., Hogfeldt P. and Molin, J., (1997), The Optimality of the Mandatory Bid, 13 Journal of Law, Economics and Organization, 1997, 433.

Berkman H., Cole, Rebel A. and Fu, Jiang Lawrence, Improving Corporate Governance Where the State is the Controlling Block Holder: Evidence from China (May 4, 2011). Second Singapore International Conference on Finance 2008. Available at SSRN: http://ssrn.com/abstract=1020170.

Berle A. A. and G. C. Means, (1932), The Modern Corporation and Private Property, New York, NY: MacMillan.

Bertrand M., Mehta P., and Mullainathan S., (2002), Ferreting Out Tunnelling: An Application to Indian Business Groups, Quarterly Journal of Economics, 117:121.

Bhagat S. and Bolton B., (2008) Corporate Governance and Firm Performance, Journal of Corporate Finance. 14:257.

Bhagat S. Bolton B. J. and Romano R., The Promise and Peril of Corporate Governance Indices (October 7, 2007). ECGI - Law Working Paper No. 89/2007; Yale Law & Economics Research Paper No. 367; Columbia Law Review 108:1803. Available at SSRN: http://ssrn.com/abstract=1019921.

Bhattacharya U. and Ravikumar B., (2001), Capital markets and the evolution of family business, Journal of Business, 74:187.

Bianchi, M., and M. Bianco, (2006), Italian Corporate Governance in the Last 15 years: From Pyramids to Coalitions?, ECGI - Finance Working Paper.

BIS, Consultation Paper Department for Business Innovation and Skills, October 2010, available at http://www.bis.gov.uk/assets/biscore/business-law/docs/l/10-1225-long-term-focus-corporate-britain(last accessed 27.09.2011).

BIS, Summary of Responses, A long-term focus for corporate Britain, March 2011 available at http://www.bis.gov.uk/assets/biscore/business-law/docs/s/11-797-summary-responses-long-term-focus-corporate-britain.pdf (last accessed 27.09.2011).

Black B.S. et al., (2006), Does Corporate Governance Predict Firms' Market Values? Evidence from Korea, Journal of Law, Economics and Organization. 22:366.

Bloch F. and Hege U., Multiple Shareholders and Control Contests, (2003), available at https://studies2.hec.fr/jahia/webdav/site/hec/shared/sites/hege/acces_anonyme/papers/BlochHege_Control.

Boardman A. E. and Vining A. R., (1989), Ownership and Performance in Competitive Environments: A Comparison of the Performance of Private, Mixed, and State-Owned Enterprises, Journal of Law and Economics, 32(1).

Bolton P. and Von Thaden E., (1998), Blocks, liquidity and corporate control, Journal of Finance, 53:1

Boot A., Radhakrishnan G. and Thakor A.V., (2006), The Entrepreneur's Choice between Private and Public Ownership, Journal of Finance, Vol.71(2), p.803.

Botosan C.A., (1997), Disclosure Level and the Cost of Capital. The Accounting Review, Vol. 72 (3), July 1997. Available at SSRN: http://ssrn.com/abstract=292.

Boycko M., Shleifer A. and Vishny R., (1996), A Theory of Privatization, Economic Journal, 106:435.

Bortolotti B. and Faccio M., Government Control of Privatized Firms (May 2007). ECGI - Working Paper No. 40/2004; FEEM Working Paper No. 130.04; EFA 2005 Moscow Meetings Paper; AFA 2006 Boston Meetings Paper. Available at SSRN: http://ssrn.com/abstract=536683.

Boubaker S., (2007), Ownership-Control Discrepancy and Firm Value: Evidence from France, Multinational Finance Journal 11, 211-252.

Braendle U.C., Shareholder Protection in the USA and Germany - On the Fallacy of LLSV (May 2005). Available at SSRN: http://ssrn.com/abstract=728403.

Broadman H. G., (2001a), Lessons from Corporatization and Corporate Governance Reform in Russia and China. Available at SSRN: http://ssrn.com/abstract=292599.

Broadman H.G., (2001b), The Business(es) of the Chinese State, World Economy, Forthcoming. Available at SSRN: http://ssrn.com/abstract=283959.

Burkart M. and Lee S., (2008), One Share - One Vote: the Theory, Review of Finance, Oxford University Press for European Finance Association, Vol. 12(1), p.1.

Burkart M. C. and Panunzi, Fausto, Takeovers (January 2006). ECGI - Finance Working Paper No. 118/2006. Available at SSRN: http://ssrn.com/abstract=884080.

Burkart M. C., Gromb D. and Panunzi F., Minority Blocks and Takeover Premia (September 2005). ECGI - Finance Working Paper No. 96/2005. Available at SSRN: http://ssrn.com/abstract=796765.

Burkart M. and Panunzi, F., Mandatory Bids, (2004), Squeeze-out, Sell-out and the Dynamics of the Tender Offer Process, in G. Ferrarini, K. Hopt, J. Winter, and E. Wymeersch (eds.), Modern Company Law and Takeover Law in Europe, Oxford University Press (2004).

Burkart M., Pannunzi F. and Shleifer A., (2003), Family firms, Journal of Finance, 58:2167.

Burkart M., D. Gromb and F. Panunzi, (1997), Large shareholders, monitoring and the value of the firm, Quarterly Journal of Economics 112.

Capaul M., Fremond O., (2003), Capital Structures and Control Rights Patterns, Policy Issues, The World Bank, available at http://info.worldbank.org/etools/docs/library/154716/domestic2003/pdf/fremondcapaulberg_version1.doc (last accessed 29.09.2011).

Carpenter, M. A., Pollock, T. G. and Leary, M. M., (2003), Testing a model of reasoned risk-taking: Governance, the experience of principals and agents, and global strategy in high-technology IPO firms, Strategic Management Journal, 24:802.

City Takeover Code available at http://www.thetakeoverpanel.org.uk/wp-content/uploads/2008/11/code.pdf (last accessed 29.09.2011).

Chemla G., Ljungqvist A. and Habib M. A., An Analysis of Shareholder Agreements (July 2004). NYU, Ctr for Law and Business Research Paper No. 02-01; RICAFE Working Paper No. 006. Available at SSRN: http://ssrn.com/abstract=299420.

Chemmanur T. and Jiao Y., (2005), Dual-Class IPOs, Share Recapitalisations and Unifications: A Theoretical Analysis, ECGI Finance Working Paper No.29/2006.

Christiansen H. and Koldertsova A., (2009), The Role of Stock Exchanges is Corporate Governance, OECD, Financial Market Trends, Vol.1, 2009, available at http://www.oecd.org/dataoecd/3/36/43169104.pdf (last accessed 27/09/2011).

Claessens S., (2006), Corporate Governance and Development, World Bank Research Observer, 21:91

Claessens S., Djankov, S., Fan, J., and L. Lang, (2002), Disentangling the Incentive and Entrenchment Effects of Large Shareholdings, Journal of Finance 57, 2741-2771.

Claessens S., Djankov S. and Lang L. H. P., (2000), The Separation of Ownership and Control in East Asian Corporations, Journal of Financial Economics, 58:81.

Claessens S., Fan J. P. H., Djankov S. and Lang L.H.P., (1999), On Expropriation of Minority Shareholders: Evidence from East Asia (December 9, 1999). Available at SSRN: http://ssrn.com/abstract=202390.

Clarke D. C., Corporate Governance in China: An Overview (July 15, 2003). Available at SSRN: http://ssrn.com/abstract=424885.

Coates IV J. C., Ownership, Takeovers and EU Law: How Contestable Should EU Corporations Be? (July 9, 2003). ECGI - Law Working Paper No. 11/2003; Harvard Law and Economics Discussion Paper No. 450 . Available at SSRN: http://ssrn.com/abstract=424720.

Coffee J., The Rise of Dispersed Ownership: The Role of Law in the Separation of Ownership and Control, (December 2000), Columbia Law and Economics Working Paper No. 182. Available at SSRN: http://ssrn.com/abstract=254097.

Coffee J., (1999), The Future as History: The Prospects for Global Convergence in Corporate Governance and its implications, Northwestern Law Review, 93:641.

Cole R. A., Berkman H. and Fu J. L., (2002), From State to State: Improving Corporate Governance Where the Government is the Controlling BlockHolder (November 12, 2002). Available at SSRN: http://ssrn.com/abstract=370140.

Conac P.-H., Enriques L. and Gelter M., (2007), Constraining Dominant Shareholders' Self-Dealing: The Legal Framework in France, Germany, and Italy (October 2007). European Company and Financial Law Review, Vol. 4, No. 4; ECGI - Law Working Paper No. 88/2007; Harvard Olin Fellows' Discussion Paper No. 18/2008. Available at SSRN: http://ssrn.com/abstract=1532221.

Cools S., (2005), The Real Difference in Corporate Law between the United States and Continental Europe: Distribution of Powers. Delaware Journal of Corporate Law, Vol. 30(3), 697; Harvard Law and Economics Discussion Paper No. 490. Available at SSRN: http://ssrn.com/abstract=893941.

Corporate Governance Code (UK), June 2010, Financial Reporting Council, available at http://www.frc.org.uk/documents/pagemanager/Corporate_Governance/UK%20Corp%20Gov%20Code%20June%202010.pdf (last accessed 22.09.2011).

Gorton G. and Schmid F., (2000), Universal Banking and the Performance of German Firms. Journal of Financial Economics 58:29.

Cronqvist H. and Nilsson M., (2003), Agency Cost of Minority Shareholders, Journal of Financial and Quantitative Analysis, Vol. 38(4).

D' Souza J., Nash R. C. and Megginson W. L., Determinants of Performance Improvements in Privatized Firms: The Role of Restructuring and Corporate Governance (March 2000). AFA 2001 New Orleans. Available at SSRN: http://ssrn.com/abstract=243186.

Daigre, J.-J., Bompoint, D., and F. Basdevant, 2002, Les pactes d'actionnaires dans les sociétés cotées, Actes Pratiques et Ingénierie Sociétaire 64, 05-33. available at

http://www.affi.asso.fr/uploads/Externe/48/CTR_FICHIER_343_1226349180.pdf (last accessed 26.09.20011).

Daines R. et al., Rating the Ratings: How Good Are Commercial Governance Ratings? 8-14 (John M. Olin Program in Law & Econ., Stanford Law School, Working Paper No. 360, 2008), available at http://ssrn.com/abstract=1152093 (last accessed 27.09.2011).

Davies P. L., Schuster E.-P. and Van de Walle de Ghelcke E., (2010), The Takeover Directive as a Protectionist Tool? (February 17, 2010), ECGI - Law Working Paper No. 141/2010. Available at SSRN: http://ssrn.com/abstract=1554616.

Davies P., Introduction to Company Law, 2002, OUP.

Deakin S.F. and Ahlering B.A., (2005), Labour Regulation, Corporate Governance and Legal Origin: A Case of Institutional Complementarity? (September 2005). U. of Cambridge Centre for Business Research Working Paper No. 312; ECGI - Law Working Paper No. 72/2006. Available at SSRN: http://ssrn.com/abstract=898184.

Deminor Rating, (2005), Application of the One-Share-One-Vote Principle in Europe, A Survey Commissioned by Association of British Insurers.

Demsetz, H. and Lehn K., (1985), The Structure of Corporate Ownership: Causes and Consequences, Journal of Political Economy, 93:1155.

Demsetz H., (1983), The Structure of Ownership and the Theory of the Firm, Journal of Law and Economics, 26:375.

Denis D.J. and Denis D.K., (1994)**,** Majority owner-managers and organizational efficiency, Journal of Corporate Finance 1:91.

Djankov S., Lopez de Silanes F., La Porta R. and Shleifer A., (2008), The Law and Economics of Self-Dealing, Journal of Financial Economics, 88:430.

Durand R. and Vargas V., (2003), Ownership, organization, and private firms' efficient use of resources. Strategic Management Journal, 24:667.

Dyck A. and Zingales L., (2004), Private Benefits of Control: An International Comparison, The Center for Research in Security Prices Working Paper №535; Journal of Finance 59:537.

Easterbrook F. and Fischel D., (1983), Voting in Corporate Law, Journal of law and Economics, 26:395.

Ecchia G., Gelter M. and Pasotti P., (2009), Corporate Governance, Corporate and Employment Law, and the Costs of Expropriation (July 6, 2009). Harvard Olin Fellows' Discussion Paper No. 29, 5/2009; ECGI - Law Working Paper No. 128/2009; Fordham Law Legal Studies Research Paper No. 1430623. Available at SSRN: http://ssrn.com/abstract=1430623.

Edmans A. and Manso G., (2009) Governance Through Trading and Intervention: A Theory of Multiple Blockholders (June 29, 2011). Review of Financial Studies, Vol. 24, No. 7, pp. 2395-2428, July 2011; AFA 2009 San Francisco Meetings Paper; ECGI - Finance Working Paper No. 225/2008; EFA 2008 Athens Meetings Paper; U of Penn, Inst for Law & Econ Research Paper No. 08-09. Available at SSRN: http://ssrn.com/abstract=1102730.

Edwards J.S.S. and K. Fischer, (1994), Banks, Finance and Investment in Germany, Cambridge University Press: Cambridge.

Enriques L., (2009), European Takeover Law: The Case for a Neutral Approach (December 14, 2009). UCD Working Papers in Law, Criminology & Socio-Legal Studies Research Paper No. 24/2010. Available at SSRN: http://ssrn.com/abstract=1523307.

Enriques L. and Gatti M., (2007), EC Reforms of Corporate Governance and Capital Markets Law: Do They Tackle Insiders' Opportunism?, Northwestern Journal of International Law & Business, Vol.28(1), p.1.

Enriques L. and Volpin P., (2007), Corporate Governance Reforms in Continental Europe, Journal of Economic Perspectives, 21:117.

Enriques L., (2003). The Mandatory Bid Rule in the Proposed EC Takeover Directive: Harmonization As Rent-Seeking? Reforming Company and Takeover Law in Europe. G. Ferrarini, K. Hopt, J. Winter and E.Wymeersch, OUP.

Enriques L., (2000), The Law on Company Directors' Self-Dealing: A Comparative Analysis (April 01, 2000). International and Comparative Corporate Law Journal, Vol. 2, No. 3, pp. 297-333, 2000. Available at SSRN: http://ssrn.com/abstract=135674.

Estrin S., Hanousek J., Kocenda E. and Svejnar J., (2009), Effects of Privatization and Ownership in Transition Economies (January 1, 2009). World Bank Policy Research Working Paper 4811, 2009. Available at http://www-wds.worldbank.org/external/default/WDSContentServer/IW3P/IB/2009/01/07/000158349_20090107093820/Rendered/PDF/WPS4811.pdf (last accessed 29.09.2011).

EU Commission's Working Document on the Revision of the Transparency Directive available at http://ec.europa.eu/internal_market/securities/docs/transparency/directive/sec-2010_611_en.pdf (last accessed 29.09.2011).

EU Commission, Press Release by the Commission 05.05.2010, available at http://europa.eu/rapid/pressReleasesAction.do?reference=IP/10/503&format=HTML&aged=0&language=EN&guiLanguage=en. (last accessed 27.09.2011).

EU Public consultation on the Modernisation of the Directive 2004/109/EC, 27.05.2010, available at http://ec.europa.eu/internal_market/securities/docs/transparency/transparency-info_en.pdf (last accessed 27.09.2011).

EU Consultation document on the modernisation of the Directive 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market, Brussels, 27.05.2011, available at http://ec.europa.eu/internal_market/securities/docs/transparency/directive/consultation_questions_en.pdf (last accessed 19.09.2011).

EU Commission report on the operation of the Transparency Directive, 27.05.2010, available at http://ec.europa.eu/internal_market/securities/docs/transparency/directive/com-2010-243_en.pdf (last accessed 29.09.2011).

EU Commission staff working document - The Review of the operation of Directive 2004/109/EC: emerging issues, 27.05.2010, available at http://ec.europa.eu/internal_market/securities/docs/transparency/directive/sec-2010_611_en.pdf (last accessed 29.09.2011).

EU Commission, Green Paper, Corporate governance in financial institutions and remuneration policies, Brussels, 2.6.2010 available athttp://ec.europa.eu/internal_market/company/modern/corporate_governance_in_financial_institutions_en.htm (last accessed 12.09.2011).

EU Commission's call to apply the ACJ judgment, 27.11.2008, see http://europa.eu/rapid/pressReleasesAction.do?reference=IP/08/1797&format=HTML&aged=0&language=EN&guiLanguage=en.

EU Feedback Statement: Summary of responses to the consultation by DG Internal Markets and Services on the modernisation of the Transparency Directive (2004/109/EC), Brussels, 17.12.2010, available at http://ec.europa.eu/internal_market/securities/docs/transparency/transparency-consultation-summary_en.pdf (last accessed 19.09.2011).

EU External Study on the Application of the Transparency Directive (December 2009): executive summary, final report and annexes http://ec.europa.eu/internal_market/securities/docs/transparency/report-application_en.pdf and http://ec.europa.eu/internal_market/securities/docs/transparency/report-application-annexes_en.pdf (all accessed last on 29.09.2010).

European Securities Markets Expert Group (ESME) states that these goals although complementary, are different. See Preliminary views on the definition of 'acting in concert' between the Transparency Directive and the Takeover Bids Directive, 17.11.2008, available at http://ec.europa.eu/internal_market/securities/docs/esme/acting_in_concert_20081117_en.pdf (last accessed 18.09.2011).

EU Report of the Reflection group on the future of EU Company Law, Brussels, 05.04.2011, available at http://ec.europa.eu/internal_market/company/docs/modern/reflectiongroup_report_en.pdf (last accessed 18.09.2011).

EU European Commission, Green Paper on the EU corporate governance framework , Brussels, 05.04.2011 available at http://ec.europa.eu/internal_market/company/docs/modern/com2011-164_en.pdf (last accessed 18.09.2011).

Faccio M., Lang L. and Young, L. (2001), Dividends and expropriation, American Economic Review, 91:54.

Faccio,, M. and Lang L. H.P., (2002), The ultimate ownership of Western European corporations, Journal of Financial Economics, 65:365.

Faccio,, M., Lang L.H.P. and Young L. S.F., (2000), Dividends and Expropriation (July 31, 2000). AFA 2001 New Orleans; EFMA Athens 2000. Available at SSRN: http://ssrn.com/abstract=222428.

Fahlenbrach R., (2009), Founder-CEOs, Investment Decisions, and Stock Market Performance, Journal of Financial and Quantitative Analysis 44:439.

Fahlenbrach R., (2003), Founder-CEOs and stock market performance, Journal of Financial and Quantitative Analysis, 44:439.

Fama E. F. and Jensen M. C., (1983), Separation of Ownership and Control. Michael C. Jensen, Foundations of Organisational Strategy, Harvard University Press, 1998, and Journal of Law and Economics, Vol. 26, June 1983. Available at SSRN: http://ssrn.com/abstract=94034.

Fauver L. and Fuerst M.E., (2004), Does Good Corporate Governance Include Employee Representation? Evidence from German Corporate Boards (May 2004). EFA 2004 Maastricht Meetings Paper No. 1171. Available at SSRN: http://ssrn.com/abstract=534422.

Ferran E., (1994) The Decision of the House of Lords in Russell v Northern Bank Development Corporation Limited, Cambridge Law Journal, 53:343.

Ferrarini G., (2006), One-share-one-vote: A European Rule, ECGI Law Working Paper No.58/2006. Available at SSRN: http://ssrn.com/abstract=875620.

Francis J.R., Khurana I.K. and Pereira R., (2005), Disclosure Incentives and Effects on Cost of Capitol Around the World. Accounting Review,Vol.80(4),p.1125.

Franks J.R. and Mayer C., Hostile Takeovers In the UK and the Correction of Managerial Failure. London Business School Institute of Finance and Accounting Working Paper 156-1995. Available at SSRN: http://ssrn.com/abstract=6487.

Franks J. R. and Mayer, C., Ownership and Control of German Corporations (October 2001). Review of Financial Studies, Vol. 14(4), p.943. Available at SSRN: http://ssrn.com/abstract=900656.

Franks J. and Mayer C., (1997), Corporate governance and control in the UK, Germany and France, Journal of Applied Corporate Finance, Vol. 9, Issue 4, 30-45.

Freeman Richard B. and Edward Lazear, (1995), 'An Economic Analysis of Works Councils' in Joel Rogers and Wolfgang Streeck, eds., Works Councils: Consultation, Representation, and Cooperation in Industrial Relations. Chicago: University of Chicago Press, p.27–52.

Galve Górriz, Carmen and Salas Fumás, Vincente, Family Ownership and Performance: The Net Effect of Productive Efficiency and Growth Constraints(February 2005). ECGI - Finance Working Paper No. 66/2005. Available at SSRN: http://ssrn.com/abstract=664538.

Gatti M., (2005), Optionality Arrangements and Reciprocity in the European Takeover Directive, European Business Organization Law Review (EBOR), Vol. 6, p.553.

Gelter M., (2008), The Dark Side of Shareholder Influence: Toward a Hold-up Theory of Stakeholders in Comparative Corporate Governance (March 17, 2008). ECGI - Law Working Paper No. 096/2008; CLEA 2008 Meetings Paper; Harvard Olin Fellows' Discussion Paper No. 17/2008. Available at SSRN: http://ssrn.com/abstract=1106008.

Gillan St. L., (2006), Recent Developments in Corporate Governance: An Overview, Journal of Corporate Finance. 12:381.

Gianfrate G., (2007), What Do Shareholders Coalitions Really Want? Evidence from Italian Voting Trusts. Corporate Governance: An International Review, Vol. 15, No. 2, pp. 122-132, March 2007. Available at SSRN: http://ssrn.com/abstract=972511.

Gilson R. J., (2007), Controlling Family Shareholders in Developing Countries: Anchoring Relational Exchange (January 1, 2007). Columbia Law and Economics Working Paper No. 311; Stanford Law and Economics Olin Working Paper No. 333; ECGI - Law Working Paper No. 79/2007; Rock Center for Corporate Governance at Stanford University Working Paper No. 10. Available at SSRN: http://ssrn.com/abstract=957895.

Gilson R. J., (2005), Controlling Shareholders and Corporate Governance: Complicating the Comparative Taxonomy (August 2005).; Stanford Law and Economics Olin Working Paper No. 309; Columbia Law and Economics Working Paper No. 281. Available at SSRN: http://ssrn.com/abstract=784744.

Gilson R. J. and Gordon, J. N., (2003), Controlling Controlling Shareholders (June 2003). Columbia Law and Economics Working Paper No. 228; Stanford Law and Economics Olin Working Paper No. 262. Available at SSRN: http://ssrn.com/abstract=417181.

Gilson R., (1987), Evaluating Dual Class Stock: The Relevance of Substitutes, Virginia Law Review, 73(5), p.807, suggesting that, if a new class of non-voting shares is issued to allow new capital to be raised without diluting the dominant group, the transaction should not be interfered with.

Gilson S. and B. Villalonga, (2007), Adelphia Communications Corp.'s Bankruptcy, Harvard Business School Case 208-071, Boston, MA, Harvard Business School Publishing.

Goergen M., Martynova M. and Renneboog L., (2005), Corporate Governance Convergence: Evidence From Takeovers: Evidence from Takeover Regulation Reforms in Europe, Oxford Review of Economic Policy, 21(2):243.

Goergen M. and Renneboog L., Why are the Levels of Control (so) Different in German and UK Companies? Evidence from Initial Public Offerings (January 2003). ECGI - Finance Working Paper No. 07/2003. Available at SSRN: http://ssrn.com/abstract=372420.

Goergen M. and Renneboog L., (1999), Strong managers and passive investors in the UK, in Barca and Becht, Ownership and control: A European perspective, OUP.

Goergen M., Does Ownership Matter? A Study Of German And UK IPOS (February 1997). Available at SSRN: http://ssrn.com/abstract=42860.

Gomes A. R. and Novaes W., Sharing of Control as a Corporate Governance Mechanism (February 2005). PIER Working Paper No. 01-029; U. of Penn., Inst. for Law & Econ. Research Paper 01-12. Available at SSRN: http://ssrn.com/abstract=277111.

Gomez-Mejia L., Larraza-Kintana M. and Makri M., (2003), The determinants of executive compensation in family-controlled public corporations’, Academy of Management Journal, 46:226.

Gomez-Mejia L., Nunez-Nickel M. and Gutierrez, I. (2001). ‘The role of family ties in agency contracts’. Academy of Management Journal, 44:81.

Gompers P. A., Ishii J. L. and Metrick A., (2008), Extreme Governance: An Analysis of Dual-Class Companies in the United States (May 1, 2008). AFA 2005 Philadelphia Meetings; Rodney L. White Center for Financial Research Working Paper No. 12-04; Rock Center for Corporate Governance Working Paper No. 39. Available at SSRN: http://ssrn.com/abstract=56251.

Gompers P.A., Ishii A.J. and Metrick A., (2006), Extreme Governance: An Analysis of Dual Class Firms in the United States, Working Paper, Harvard, Stanford and Wharton.

Gompers P.A., Ishii J.L. and Metrick A., (2004), Incentives vs. Control: An Analysis of U.S. Dual-Class Companies, NBER Working Paper No.10240.

Gompers P.A., Ishii J. L. and Metrick A., (2003), Corporate Governance and Equity Prices. Quarterly Journal of Economics, Vol. 118, No. 1, pp. 107-155, February 2003. Available at SSRN: http://ssrn.com/abstract=278920.

Gompers P. and Lerner J., (1996), The Use of Covenants: An Empirical Analysis of Venture Partnership Agreements, Journal of Law and Economics, 39:463.

Gorton G. and Schmid, F., (2004), Capital, Labor, and the Firm: A Study of German Codetermination. Journal of the European Economic Association, 2:863-905.

Gorton G. and Schmid G., (2000), Class struggle inside the firm: A study of German codetermination, NBER Working Paper No. 7945, October 2000.

Gower & Davies, (2008), Principles of Modern Company Law, 8th Edition, Sweet & Maxwell

Graff M., (2008), Legal Origin and Financial Development: New Evidence for Old Claims? The Creditor Rights Index Revisited (April 1, 2008). Available at SSRN: http://ssrn.com/abstract=1135595.

Graff M., (2006), Myths and Truths: The 'Law and Finance Theory' Revisited (January 2006). Swiss Institute for Business Cycle Research (KOF) Working Paper No. 122. Available at SSRN: http://ssrn.com/abstract=881546.

Grossman S.J. and Hart O., (1988), One-Share-One-Vote and the Market for Corporate Control, Journal of Financial Economics, 20:175.

Grossman, S., and Hart O., (1980), Takeover Bids, the Free-Rider Problem, and the Theory of the Corporation, The Bell Journal of Economics, 11:42.

Grundmann S. and Möslein F., Golden Shares - State Control in Privatised Companies: Comparative Law, European Law and Policy Aspects (April 2003). Available at SSRN: http://ssrn.com/abstract=410580.

Gutiérrez Urtiaga, María, Josep A. Tribo, (2004), Ownership Structure and Minority Expropriation in Non-Listed Firms: The Case for Multiple Large Shareholders. ECGI - Finance Working Paper No. 053/2004. Available at SSRN: http://ssrn.com/abstract=1106979.

Habbershon T. and Williams M., (1999), A resource-based framework for assessing the strategic advantage of family firms. Family Business Review, 12:1.

Hail L. and Leuz C., (2005), International Differences in the Cost of Equity Capital: Do Legal Institutions and Securities Regulation Matter? (December 2005). ECGI - Law Working

Paper No. 15/2003; Rodney L. White Center for Financial Research Working Paper No. 17-04; AFA 2005 Philadelphia Meetings. Available at SSRN: http://ssrn.com/abstract=641981.

Haldane Andrew and Richard Davies, The short long, May 2011, Bank of England, available at http://www.bankofengland.co.uk/publications/news/2011/043.htm (last accessed 27.09.2011).

Haldane Andrew, Speed 11,05.2011 available at http://www.bankofengland.co.uk/publications/speeches/2011/speech495.pdf (last accessed 27.09.2011).

Hall P. and Soskice D., Varieties of Capitalism: The Institutional Foundations of Comparative Advantage, Oxford, Oxford University Press, 2001.

Hart O. (1983), The Market Mechanism as an Incentive Scheme, Bell Journal of Economics 14:366.

Havrylyshyn O. and McGettigan D., (1999), Privatization in Transition Countries: A Sampling of the Literature (January 1999). IMF Working Paper, Vol., pp. 1-44, 1999. Available at SSRN: http://ssrn.com/abstract=880533.

Hermalin B., (1992), The effects of competition on executive behavior, Rand Journal of Economics 23:350.

Hertig G. and McCahery J. A., Company and Takeover Law Reforms in Europe: Misguided Harmonization Efforts or Regulatory Competition? (August 2003). ECGI - Law Working Paper No. 12/2003. Available at SSRN: http://ssrn.com/abstract=438421.

High Level Group of Company Law Experts Final Report on a Modern Regulatory Framework for Company Law in Europe (2002) available at http://www.ecgi.org/publications/documents/report_en.pdf (last accessed 29.09.2011).

Holderness C. G.,(2009), The Myth of Diffuse Ownership in the United States (April 2009). The Review of Financial Studies, Vol. 22 (4), p.1377.

Holderness C. G., (2003), A survey of blockholders and corporate control, Economic Policy Review, 9:51.

Holger F. and Schmolke K. U., (2011), The reform of the Transparency Directive: Minimum or full harmonisation of ownership disclosure?', European Business Organization Law Review, 12:121.

Hopt K. J., (2011), Comparative Corporate Governance: The State of the Art and International Regulation (February 25, 2011), American Journal of Comparative Law, Vol.59, p.1, January 2011; ECGI - Law Working Paper No. 170/2011. Available at SSRN: http://ssrn.com/abstract=1713750.

Hovey M. T., Corporate Governance in China: Ownership Structures and the Performance of Listed Firms (June 2006). Available at SSRN: http://ssrn.com/abstract=904261.

Hughes J.S., Liu, Jing and Liu, Jun, (2004), Information, Diversification, and Cost of Capital (December 16, 2004). AFA 2006 Boston Meetings Paper. Available at SSRN: http://ssrn.com/abstract=651944.

Implementation of the UK Stewardship Code, July 2010, Financial Reporting Council, available at http://www.frc.org.uk/images/uploaded/documents/Implementation%20of%20Stewardship%20Code%20July%2020103.pdf (last accessed 22.09.2011).

ISS (part of the MSCI Group), Governance Risk Indicators, http://www.issgovernance.com/grid-info (last accessed 09.11.2011).

Jackson G., (2005), Employee Representation in the Board Compared: A Fuzzy Sets Analysis of Corporate Governance, Unionism, and Political Institutions. Industrielle Beziehungen, Vol. 12, No. 3, pp. 1-28, 2005. Available at SSRN: http://ssrn.com/abstract=800525.

Jensen M. C., (1976), A Theory of the Firm: Governance, Residual Claims and Organisational Forms, Harvard University Press, December 2000; Journal of Financial Economics (JFE), Vol.3, No.4, 1976. Available at SSRN: http://ssrn.com/abstract=94043.

Jensen M. C., (1986), The Takeover Controversy: Analysis and Evidence. Midland Corporate Finance Journal, Vol. 4(2). Available at SSRN: http://ssrn.com/abstract=173452.

Jensen M. C., (1988), Takeovers: Their Causes and Consequences. Journal of Economic Perspectives, Vol.2(1), p.21. Available at SSRN: http://ssrn.com/abstract=173455.

Jensen M. C. and Meckling W.H., (1979), Rights and productions functions: an application to labor-managed firms and codetermination. Journal of Business 52(10):469.

Jensen M. C. and Meckling, W., (1976), Theory of the firm: Managerial behavior, agency costs, and ownership structure, Journal of Financial Economics, 3:305.

Johnson S., La Porta R., Lopez-de-Silanes F., and Shleifer A., (2000), Tunneling, American Economics Review Papers and Proceedings, 90:22.

Kaplan S. and Stromberg P., (2003), Financial Contracting Theory Meets the Real World: Evidence from Venture Capital Contracts, Review of Economic Studies, 70:281.

Kaplan S. and Strömberg P., (2002), Characteristics, Contracts and Actions: Evidence from Venture Capitalist Analyses (January 2002). CRSP Working Paper No. 536. Available at SSRN: http://ssrn.com/abstract=296956.

Kershaw D. , (2009), Company Law in Context: Text and Materials, OUP.

Khachaturyan A., (2006), The One-Share-One-Vote Controversy in the EU, ECMI Working Paper No.1, Centre for European Policy Studies (CEPS).

Khanna T. and Yafeh Y., (2006), Business groups in Emerging Markets: Paragons or Parasites, Working Paper, HBS and Hebrew University.

Kikeri S. and Kolo A. F., Privatization: Trends and Recent Developments (November 2005). World Bank Policy Research Working Paper No. 3765. Available at SSRN: http://ssrn.com/abstract=849344.

Kikeri S. and Nellis J., (2002), Privatization in Competitive Sectors: The Record to Date (June 2002). World Bank Policy Research Working Paper No. 2860. Available at SSRN: http://ssrn.com/abstract=636224.

Kirchmaier T., Grant J. and Kirschner J., Financial Tunnelling and the Mandatory Bid Rule (January 2009). FMG Discussion Paper No. 536. Available at SSRN: http://ssrn.com/abstract=613945.

Kirchmaier T. and Grant J., (2004), Who Governs? Corporate Ownership and Control Structures in Europe (June 7, 2004). Available at SSRN: http://ssrn.com/abstract=555877.

Kraakman R., Armour J., Davies P., Enriques L., Hansmann H. B., Hertig G., Hopt K.J., Kanda H., and Rock E. B., 'The Anatomy of Corporate Law', (2009), OUP.

La Porta R., F. Lopez-de-Silanes, A. Shleifer, and R. W. Vishny, (1997), Legal Determinants of External Finance, Journal of Finance, 52:1131.

La Porta R., F. Lopez-de-Silanes, A. Shleifer, and R. W. Vishny, (1998), Law and Finance, Journal of Political Economy 107:1113.

La Porta Rafael, Lopez de Silanes, Florencio, Shleifer, Andrei and Vishny, Robert W.,(1999a), Investor Protection and Corporate Governance (June 1999). Available at SSRN: http://ssrn.com/abstract=183908.

La Porta R., F. Lopez-de-Silanes, and A. Shleifer, (1999b), Corporate Ownership Around the World, Journal of Finance, 54:471.

La Porta R., F. Lopez-de-Silanes, A. Shleifer, and R. W. Vishny, (2000a), Agency Problems and Dividend Policies Around the World, Journal of Finance, 55:1.

La Porta R., F. Lopez-de-Silanes, A. Shleifer, and R. W. Vishny, (2000b), Investor Protection and Corporate Governance, Journal of Financial Economics, 58:3.

La Porta R., F. Lopez-de-Silanes, A. Shleifer, and R. W. Vishny, (2002), Investor Protection and Corporate Valuation, Journal of Finance, 57:1147.

La Porta, R., F. Lopez-de-Silanes, and A. Shleifer, (2006), What Works in Securities Law?, Journal of Finance, 61:1.

La Porta R., F. Lopez-de-Silanes, and A. Shleifer (2008), The Economic Consequences of Legal Origin, Journal of Economic Literatur, 46:285.

Laeven L. and Levine R., (2007), Complex Ownership Structures and Corporate Valuations; IMF Working Paper 07/140, June 1, 2007, available at http://www.imf.org/external/pubs/ft/wp/2007/wp07140.pdf.

Lambert R. A., Leuz C. and Verrecchia R. E., (2006), Accounting Information, Disclosure, and the Cost of Capital (March 2006). Available at SSRN: http://ssrn.com/abstract=823504.

Law Society of England and Wales and the City of London Law Society, Response to the EU Commission Consultation Document on the Transparency Directive, 25.08.2010 available at http://international.lawsociety.org.uk/files/LSEW&CLLSResponse-TransparencyDirective-August2010.pdf (last accessed 18.09.2011).

Lease R. J., McConnell J., and Mikkelson W., (1983). The market value of control in publicly traded corporations, Journal of Financial Economics, 11:439.

Lee K. S., Lim, G. H. and Lim, W. S. (2003), Family business succession: Appropriation risk and choice of succession, Academy of Management Review, 28:657.

Lehmann E. E. and Weigand J., (2001), Does the Governed Corporation Perform Better? Governance Structures and Corporate Performance in Germany. European Finance Review, Vol. 4, Iss. 2, 2001. Available at SSRN: http://ssrn.com/abstract=268734.

Lele P.P. and Siems, M. M., (2006), Shareholder Protection: A Leximetric Approach, University of Cambridge, CBR Working Paper No 324. Available at SSRN: http://ssrn.com/abstract=897479.

Levine R., (2003), Bank-Based or Market-Based Financial Systems: Which is Better?, Journal of Financial Intermediation, 11:398.

Li W., (1997), The Impact of Economic Reform on the Performance of Chinese State Enterprises, 1980-1989, Journal of Political Economy, 1997, 105(5).

Licht A.N. et al, (2005), Culture, Law, and Corporate Governance, International Review of Law and Economics 25:229.

Lin Cai and Li Lin, Justin Yifu, Fang Cai, Zhou Li. (1998), Competition, policy burdens, and state-owned enterprise reform, American Economic Review, Papers and Proceedings, 88:22.

Lins K.V., (2003), Equity ownership and firm value in emerging markets, Journal of Financial and Quantitative Analysis 38:159.

Lins K.V. and Lemmon M.L., Ownership Structure, Corporate Governance, and Firm Value: Evidence from the East Asian Financial Crisis (April 2001). William Davidson Institute Working Paper No. 393; 3rd Annual Fin. Mkt. Dev. Conference, Hong Kong 2001; U of Utah Working Paper. Available at SSRN: http://ssrn.com/abstract=265108.

Listokin Y., (2008), Interpreting Empirical Estimates of the Effect of Corporate Governance, American Law and Economics Review, 10:90.

Mancinelli L., & Ozkan A. (2006). Ownership structure and dividend policy: Evidence from Italian firms. European Journal of Finance, 12(3), 265-282.

Manne H. G., (1965), Merger and the Market for Corporate Control, Journal of Political Economy, 73:110.

Martynova M. and Renneboog, L., A Corporate Governance Index: Convergence and Diversity of National Corporate Governance Regulations (February 23, 2010). Center Discussion Paper Series No. 2010-17; TILEC Discussion Paper No. 2010-012. Available at SSRN: http://ssrn.com/abstract=1557627.

Martynova M. and Renneboog L., (2008a), A Century of Corporate Takeovers: What Have We Learned and Where Do We Stand? (previous title: The History of M&A Activity Around the World: A Survey of Literature). Journal of Banking and Finance, 2008; ECGI - Finance Working Paper No. 97/2005. Available at SSRN: http://ssrn.com/abstract=820984.

Martynova M. and Renneboog L., (2006), The Performance of the European Market for Corporate Control: Evidence from the 5th Takeover Wave (July 10, 2008). European Financial Management Journal, Forthcoming; ECGI - Finance Working Paper No. 135/2006. Available at SSRN: http://ssrn.com/abstract=941731.

Masulis R.W., Wang C. and Xie F., (2007), Agency Problems at Dual-Class Companies, Journal of Finance, 64:1697.

Mattei U., (1997), Comparative Law and Economics, University of Michigan.

Maury B. and Pajuste A., (2005), Multiple Large Shareholders and Firm Value, Journal of Banking and Finance, Vol. 29, pp. 1813-1834, 2005. Available at SSRN: http://ssrn.com/abstract=617844.

McCahery J. A. and Vermeulen E.P.M., Does the Takeover Bids Directive Need Revision? (February 4, 2010). TILEC Discussion Paper No. 2010-006; Tilburg Law School Research Paper No. 005/2010. Available at SSRN: http://ssrn.com/abstract=1547861.

McCahery J. A. and Renneboog L., The Economics of the Proposed Takeover Directive, Brussels: CEPS (2003).

McConnaughy D., Walker M., Henderson G. and Chandra M., (1998), Founding family controlled firms: Efficiency and value, Review of financial economics 7:1.

McConnell J. J. and Servaes H., (1990), Additional evidence on equity ownership and corporate value, Journal of Financial Economics, 27:595.

Megginson W. L., Privatization Trends and Major Deals in 2010 (June 24, 2011). Available at SSRN: http://ssrn.com/abstract=1886009.

Megginson W. L., Ginglinger E. and Waxin T., (2009), Employee Ownership, Board Representation, and Corporate Financial Policies (January 10, 2009). 21st Australasian Finance and Banking Conference 2008 Paper. Available at SSRN: http://ssrn.com/abstract=1259609.

Megginson W. L., Nash R. C. and Matthias van Randenborgh, (1994), Financial and Operating Performance of Newly Privatized Firms: An International Emprirical Analysis, Journal of Finance, 49(2).

Mehta P. and Mullainathan S., (2002), Ferreting Out Tunnelling: An Application to Indian Business Groups, Quarterly Journal of Economics 117:121.

Modigliani F. and Perotti E., (2000), Security Markets versus Bank Finance: Legal Enforcement and Investors' Protection, International Review of Finance, International Review of Finance Ltd., Vol. 1(2), p.81.

Modigliani F. and Perotti E.C. & van Oijen P., (1998), Security versus Bank Finance, Tinbergen Institute Discussion Papers 98-051/2, Tinbergen Institute.

Morck R., Wolfenzon D., and Yeung B., (2005), Corporate Governance, Economic Entrenchment and Growth, Journal of Economic Literature, 43:657.

Morck R., Strangeland D., and Yeung B., (1998), Inherited Wealth, Corporate Control and Economic Growth: a Canadian Disease?, NBER Working paper, no. 6814.

Morck R., Shleifer, A., and Vishny R., (1988), Management Ownership and Market Valuation: An Empirical Analysis, Journal of Financial Economics, 20:293.

Mülbert P.O., (2010), Corporate Governance of Banks after the Financial Crisis - Theory, Evidence, Reforms (April 2010). ECGI - Law Working Paper No. 130/2009. Available at SSRN: http://ssrn.com/abstract=1448118.

Mülbert P. O., (2003), Make It or Break It: The Break-Through Rule as a Break-Through for the European Takeover Directive? (August 2003), ECGI - Law Working Paper No. 13/2003. Available at SSRN: http://ssrn.com/abstract=441120.

Muthusamy Senthil Kumar, Bobinski, Pawel A. and Jawahar, David, (2009), Toward a Strategic Role for Employees in Corporate Governance (January 19, 2009). Available at SSRN: http://ssrn.com/abstract=1330140.

Nellis J., Privatization: A Summary Assessment (March 2006). Center for Global Development Working Paper No. 87. Available at SSRN: http://ssrn.com/abstract=983188.

Nenova T., (2003), The Value of Corporate Votes and Control Benefits: A Cross–country Analysis, Journal of Financial Economics, 68:325.

Netter J. M. and Megginson W. L., (2001), From State to Market: A Survey of Empirical Studies on Privatization. Journal of Economic Literature, Vol. 39, No. 2, June 2001. Available at SSRN: http://ssrn.com/abstract=262311.

North D., (1990), Institutions, Institutional Change, and Economic Performance (Cambridge: CUP).

Nowak E., Ehrhardt O. and Weber F. M., (2006), 'Running in the Family': The Evolution of Ownership, Control, and Performance in German Family-Owned Firms, 1903-2003 (September 15, 2006). Swiss Finance Institute Research Paper No. 06-13. Available at SSRN: http://ssrn.com/abstract=891255.

OECD: State-Owned Enterprise Governance Reform: An Inventory of Recent Change, 2010, available at http://www.oecd.org/dataoecd/43/4/48455108.pdf (last accessed 27.09.2011) (pages 69-77) (last accessed 27.09.2011).

OECD: Corporate Governance of State-Owned Enterprises: A Survey of OECD Countries, 2005

OECD Guidelines on Corporate Governance of State-Owned Enterprises, 2005, available at http://www.oecd.org/dataoecd/46/51/34803211.pdf (last accessed 27.09.2011).

OECD Principles of Corporate Governance, 2004.

OECD Privatising State-Owned Enterprise, An Overview of Policies and Practices in OECD Countries, 2003.

O'Hara M. and Easley D., (2001), Information and the Cost of Capital. EFA 2002 Berlin Meetings Presented Paper; Cornell University Johnson Graduate School of Management Working Paper. Available at SSRN: http://ssrn.com/abstract=300715.

Pagano M. and Volpin P., (2005), The Political Economy of Corporate Governance, American Economic Review 95:1005.

Pagano M. and Roell A., (1998), The Choice of Ownership Structure: Agency Costs, Monitoring and the Decision to Go Public, Quarterly Journal of Economics, 113(1), 187-225.

Palia D. and A. Ravid, (2002), The Role of Founders in Large Companies: Entrenchment or Valuable Human Capital, Working Paper, Rutgers University.

Paligorova T. and Zhaoxia Xu, Complex Ownership and Capital Structure (2009), Bank of Canada Working Paper 2009/12.

Papadopoulos Thomas, (2008), Legal Aspects of the Breakthrough Rule of the European Takeover Bid Directive. Takeover regulation: A legal approach, Icfai Books, Icfai University Press (IUP), Icfai University, 2008. Available at SSRN: http://ssrn.com/abstract=1114671.

Peng M. W. and Jiang Y., (2010), Institutions behind family ownership and control in large firms, Journal of Management Studies, 47:2.

Peng M. W. and Jiang Y., (2006), Family Ownership and Control in Large Firms: The Good, the Bad, the Irrelevant - and Why (October 2006). William Davidson Institute Working Paper No. 840. Available at SSRN: http://ssrn.com/abstract=938173.

Peng, M. W., (2003), Institutional transitions and strategic choices. Academy of Management Review, 28:275.

Pérez-González, F., (2010), The impact of product market competition on private benefits of control. Working paper, available at http://www0.gsb.columbia.edu/faculty/mguadalupe/papers/Paper%20Mar2010%20v2.pdf (last accessed 27.09.2011).

Pérez-González, F., (2006), Inherited Control and Firm Performance, American Economic Review, 96(1):559.

Rajan R.G. and Zingales L., (2006), The Persistence of Underdevelopment: Institutions, Human Capital, or Constituencies? NBER Working Paper 12093.

Reece Thomas K. and Ryan C.L., (1999) The Law and Practice of Shareholders Agreements, Butterworths, LexisNexis p.4; Kershaw (2009) supra note11, p.85.

Report on UK Corporate Governance Code Consultation, May 2010, available at http://www.frc.org.uk/documents/pagemanager/Corporate_Governance/May%202010%20report%20on%20Code%20consultation.pdf (last accessed 22.09.2011).

Report on the Proportionality Principle in the EU, ISS, ECGI, Sherman & Sterling LLP, May 2007 available at http://www.ecgi.org/osov/documents/final_report_en.pdf (last accessed 27.09.2011).

Report of the High Level Group of Company Law Experts on Issues Related to Takeover Bids, EC, Brussels, January 10, 2002, available at http://ec.europa.eu/internal_market/company/docs/takeoverbids/2002-01-hlg-report_en.pdf (last accessed 29.09.2011).

Rickford J., (2004), The Emerging European Takeover Law From A British Perspective, European Business Law Review, 2004, p.1379.

Roosenboom P., and W. Schramade, (2006), The price of power: Valuing the controlling position of owner-managers in French IPO firms, Journal of Corporate Finance 12, 270-295.

Ros A. J., (1999), Does Ownership or Competition Matter?, Journal of Regulatory Economics,105(1).

Rose P., (2007), The Corporate Governance Industry, Journal of Corporate Law Vol.32(4), 887

Ruback R. S. and Jensen M. C., (1983), The Market for Corporate Control: The Scientific Evidence. Journal of Financial Economics, Vol.11, p.5. Available at SSRN: http://ssrn.com/abstract=244158.

Rubin A. and Barnea A., Corporate Social Responsibility as a Conflict Between Shareholders (March 10, 2006). EFA 2006 Zurich Meetings. Available at SSRN: http://ssrn.com/abstract=686606.

Rydqvist K., (1992), Dual-Class Shares: A Review, Oxford Review of Economic Policy, 8(3), p.45;

Sahlman W., (1990), The Structure and Governance of Venture-Capital Organizations, Journal of Financial Economics, 27(2), p.473.

Sappington D. E.M. and Sidak J. G., (2003a), Competition Law for State-Owned Enterprises. Antitrust Law Journal Vol. 71(2),p.479-523. Available at SSRN: http://ssrn.com/abstract=357720.

Sappington D. E.M. and Sidak J. G., (2003b), Incentives for Anticompetitive Behavior by Public Enterprises (2003). Review of Industrial Organization, Vol. 22, p.183. Available at SSRN: http://ssrn.com/abstract=269489.

Schmidbauer R., (2006), On the Fallacy of LLSV Revisited - Further Evidence About Shareholder Protection in Austria and the United Kingdom (February 2006). Available at SSRN: http://ssrn.com/abstract=913968.

Schmidt K., (1997), Managerial incentives and product market competition, Review of Economic Studies, 64:191.

Schmitthoff K., (1970) House of Lords Sanctions Evasion of Companies Act, Journal of Business Law, p.1.

Schramade W. and Roosenboom P. ,(2006), The Price of Power: Valuing the Controlling Position of Owner-Managers in French IPO Firms. Journal of Corporate Finance, Vol.12(2), p.270. Available at SSRN: http://ssrn.com/abstract=708985.

Schulze W. S., Lubatkin M. H. and Dino R., (2003), Toward a theory of agency and altruism in family firms, Journal of Business Venturing, 18:473.

Schulze W. S., Lubatkin M. H., Dino R. and Buchholtz, A. K., (2001), Agency relationships in family firms: Theory and evidence, Organization Science, 12:99.

Sepe S.M., (2008), Private Sales of Corporate Control: Why the European Mandatory Bid is Inefficient, Yale Law School Working Paper.

Shirley M. M. and Walsh, P. M., (2001), Public vs. Private Ownership: The Current State of the Debate (January 2001). World Bank Policy Research Working Paper No. 2420. Available at SSRN: http://ssrn.com/abstract=261854.

Shirley M. M., Kikeri S. and John Nellis, (1992), Privatization: the Lessons from Experience. World Bank Publication # 11104, 1992.

Shleifer A. and Wolfenzon D., Investor Protection and Equity Markets (October 2000). Harvard Institute of Economic Research Paper No. 1906. Available at SSRN: http://ssrn.com/abstract=245448.

Shleifer A., (1998), State versus Private Ownership, Journal of Economic Perspectives, 12:4

Shleifer A., and Vishny R., (1997), A Survey of Corporate Governance, Journal of Finance, 52:737.

Shleifer A. and Vishny R., (1994), Politicians and Firms, Quarterly Journal of Economics, 109:4.

Shleifer A., and Vishny R., (1986), Large Shareholders and Corporate Control, Journal of Political Economy, 94:461.

Siems M.M., (2010), Convergence in Corporate Governance: A Leximetric Approach (June 07, 2010). Available at SSRN: http://ssrn.com/abstract=1444860.

Siems M.M., (2008a), What Does Not Work in Comparing Securities Laws: A Critique on La Porta et al.'s Methodology (September 20, 2008). International Company and Commercial Law Review, pp. 300-305, 2005; CPC-RPS No. 0009. Available at SSRN: http://ssrn.com/abstract=608644.

Siems M.M. , (2008b), Shareholder Protection Around the World ('Leximetric II') (March 1, 2008). University of Cambridge, CBR Working Paper No. 359. Available at SSRN: http://ssrn.com/abstract=991092.

Siems M.M. (2005), Numerical Comparative Law - Do We Need Statistical Evidence in Law in Order to Reduce Complexity?. Cardozo Journal of International and Comparative Law, 13:521. Available at SSRN: http://ssrn.com/abstract=514142.

Sirmon D. G. and Hitt M. A., (2003), Managing resources: Linking unique resources, management, and wealth creation in family firms, Entrepreneurship: Theory & Practice, 27:339.

Sonnenfeld J., (2004), Good Governance and the Misleading Myths of Bad Metrics, 18 Acad. Mgmt. Exec. 18:108.

Spamann H., (2010), The Antidirector Rights Index Revisited, Review of Financial Studies, 23:467.

Spamann H., (2008), 'Law and Finance' Revisited (February 1, 2008), Harvard Law School John M. Olin Center Discussion Paper No. 12. Available at SSRN: http://ssrn.com/abstract=1095526 .

Spamann H., (2006), On the Insignificance and/or Endogeneity of La Porta et al.'s 'Anti-Director Rights Index' under Consistent Coding (March 2006). Harvard Law School John M. Olin Center Discussion Paper No. 7; ECGI - Law Working Paper No. 67/2006. Available at SSRN: http://ssrn.com/abstract=894301.

Sprenger C., (2001), Ownership and Corporate Governance in Russian Industry: A Survey. EBRD Working Paper #70. Available at SSRN: http://ssrn.com/abstract=333705.

Sraer D. and Thesmar D., (2007), Performance and Behavior of Family Firms: Evidence from the French Stock Market, Journal of the European Economic Association 5:709.

Stapledon G.P., (1996), Institutional shareholders and corporate governance, Clarendon Press;

Stark O. and Falk I., (1998), Transfers, empathy formation, and reverse transfers, American Economic Review 88(2):271.

Stein J., (1989), Efficient Capital Markets, Inefficient Firms: A Model of Myopic Corporate Behavior, Quarterly Journal of Economics 103:655.

Stewardship Code (UK), July 2010, Financial Reporting Council, available at http://www.frc.org.uk/images/uploaded/documents/UK%20Stewardship%20Code%20July%2020103.pdf (last accessed 22.09.2011).

Streeck W., (2005), Requirements for a useful concept of complementarity, Socio-Economic Review, 3: 363.

Stulz R., (1988), Managerial Control of Voting Rights: Financing Policies and the Market for Corporate Control, Journal of Financial Economics, 20:25.

Tamburrini G., (2009), Harmonization of Takeover Discipline: A Comparative Law and Economic Overview (June, 22 2009). Available at SSRN: http://ssrn.com/abstract=1423762.

Tiscini R. and Di Donato F., The Impact of Family Control and Corporate Governance Practices on Earnings Quality of Listed Companies: A Study of the Italian Case (November 1, 2008). Available at SSRN: http://ssrn.com/abstract=1346457.

Vagliasindi M., Governance Arrangements for State Owned Enterprises (March 1, 2008). World Bank Policy Research Working Paper Series. Available at SSRN: http://ssrn.com/abstract=1102837.

Vagts D.F., Comparative Company Law - The New Wave in Festschrift fur Jean Nicolas Druey zum 65. Geburtstag 595 (R. Schweizer et al. eds., 2002).

Vickers J. and Yarrow G., (1991), Economic Perspectives on Privatization, Journal of Economic Perspectives, 5:2.

Ventoruzzo M., (2008), Takeover Regulation as a Wolf in Sheep's Clothing: Taking Armour & Skeel's Thesis to Continental Europe, Bocconi University Working Paper (2008).

Villalonga B., and Amit R., (2009a), How are U.S. Family Firms Controlled?, Review of Financial Studies 2009 22(8):3047.

Villalonga B. and Amit R. H., (2009b) Family Control of Firms and Industries (December 2009). Financial Management, Forthcoming. Available at SSRN: http://ssrn.com/abstract=1107466.

Villalonga B. and Hartman C., (2007), The New York Times Co., Harvard Business School Case 207-113, Boston, MA, Harvard Business School Publishing.

Villalonga B. and Amit R., (2006), How Do Family Ownership, Control, and Management Affect Firm Value?, Journal of Financial Economics 80:385.

Villalonga B. and Amit R., Raphael H., How Do Family Ownership, Control, and Management Affect Firm Value? (December 10, 2004). AFA 2005 Philadelphia Meetings; EFA 2004 Maastricht Meetings Paper No. 3620; Fifteenth Annual Utah Winter Finance Conference. Available at SSRN: http://ssrn.com/abstract=556032.

Volpin P. (2002) Governance with poor investor protection: Evidence from top executive turnover in Italy, Journal of Financial Economics, 64:61.

Walker Review, Sir David Walker, A review of corporate governance in UK banks and other financial industry entities, Final Recommendations, 26 November 2009, available at http://www.hm-treasury.gov.uk/walker_review_information.htm.

Westphal J. D., (1999), Collaboration in the boardroom: Behavioral and value consequences of CEO-board social ties. Academy of Management Journal, 42:7.

Windbichler Christine, (2005) Cheers and Boos for Employee Involvement: Co-Determination as Corporate Governance Conundrum. European Business Organization Law Review (EBOR), Vol. 6, 2005 . Available at SSRN: http://ssrn.com/abstract=963287.

Winton A., (1993) Limitation of Liability and the Ownership Structure of the Firm, Journal of Finance 48 (2), 487-512.

Wong S. C. Y., Government Ownership: Why This Time It should Work (June 2009). The McKinsey Quarterly, June 2009.

Wurgler J., (2000), Financial markets and the allocation of capital, Journal of Financial Economics, Elsevier, Vol. 58(1-2), p.187.

Wymeersch, Eddy O, The Takeover Bid Directive, Light and Darkness (January 2008). Financial Law Institute Working Paper No. 2008-01. Available at SSRN: http://ssrn.com/abstract=1086987.

Xu Xiaonian and Wang, Yan, Ownership Structure, Corporate Governance, and Corporate Performance: The Case of Chinese Stock Companies (May 1997). World Bank Policy Research Working Paper No. 1794. Available at SSRN: http://ssrn.com/abstract=45303.

Yermack D., (2005), Flights of Fancy: Corporate Jets, CEO Perquisites, and Inferior Shareholder Returns (March 2005). AFA 2005 Philadelphia Meetings. Available at SSRN: http://ssrn.com/abstract=529822.

Zingales L., (1995), What Determines the Value of Corporate Votes?, Quarterly Journal of Economics, 110:1047.

Zingales L., (1994), The Value of the Voting Right: A Study of the Milan Stock Exchange Experience, Review of Financial Studies, 7:125 supports that the price of voting rights is indicative of the magnitude of the private benefits.

Zweigert K. and Kotz H., (1998), An Introduction to Comparative Law, Oxford University Press.

Zwiebel J., (1995), Block Investment and Partial Benefits of Corporate Control. Review of Economic Studies, 62, 161-185.

GREEK BIBLIOGRAPHY

Corporate Governance Code of the Hellenic Federation of Enterprises – SEV, available at www.sev.org.gr/Uploads/pdf/KED_TELIKO_JAN2011.pdf (last accessed 01.05.2011).

Deloukas N., Legal opinion published in Nomiko Vima 29:468-472.

Georgakopoulos L., The Law of Societes Anonymes, 1974.

Georgiadis A. and Stathopoulos M., Commentary on Civil Code, Article 281, No.12.

Kintis S., in The Law of the Societe Anonyme, Collection of law commentary overseen by E.Perakis, (2000), Vol,4, Article 35 a', p.257-261.

Kintis S., Void and voidable resolutions of the shareholders meeting in the Societe Anonyme (Ακυρώτης και ακυρωσία των αποφάσεων γενικής συνέλευσης της ανώνυμης εταιρείας).

Kotsiris L., Legal Opinion in the context of Case 7119/2004, published in Commercial Law Review, 2005,p.166.

Kotsiris L., Legal opinion on, published in Commercial Law Review, 1997, p.849.

Kotsovilis V. in The Law of the Societe Anonyme, Collection of law commentary overseen by E.Perakis, (1992), Article 35 a', No33-35.

Levantis E., Societes Anonymes, 7th Ed.

Marinos M., (2008), Contractual shareholders agreements and the articles of association- Some normative observations on the distinction between the statutory and the contractual agreement following Case 1121/2006 of the Supreme Court of Greece (Άρειος Πάγος), (Ενοχική συμφωνία μετόχων και καταστατικό-Μερικές δογματικές παρατηρήσεις στη διάκριση μεταξύ καταστατικής και ενοχικής σύμβασης με αφορμή την απόφαση ΑΠ 1121/2006), Elliniki Dikaiosini, 2008, p.677.

Marinos M., (2006), Comments on Multi-member First Instance Court of Athens Case 5723/2006, published in Law of Enterprises and Companies, 2006, p.1151.

Marinos M, (2004), Shareholders agreements as a means of coordination and planning, (Οι συμφωνίες μεταξύ μετόχων ως μέσο οργάνωσης και προγραμματισμού), Chronicles of Private Law, 2004, p.97.

Mastrokostas Hr., (2003), The distinct personal right of the shareholder to appoint the members of the board of directors (Article 18 par.3 of Law 2190/1920), (Το ατομικό ιδιαίτερο δικαίωμα του μετόχου να διορίζει μέλη του διοικητικού συμβουλίου (Άρθρο 18 παρ.3 Ν.2190/1920)) Chronicles of Private Law, 2003, p.487.

Mihalopoulos G., (1992), Issues on shareholders agreements, (Ζητήματα εξωεταιρικών συμφωνιών), Commercial Law Review, 1992, p.348.

Mouzoulas S. in Company law commentary collection overseen by E.Perakis, (1992), Vol.A.

Nisiraios E., in The Law of the Societe Anonyme, in Collection of law commentary overseen by E.Perakis, (1992), Articles 13-13a', No. 251-252.

Pampoukis K., Comments on the Supreme Court of Greece ('Αρειος Πάγος), Case 26/1998, Commercial Law Review 1998, p.553.

4th Panhellenic Conference on Commercial Law The majority principle in the Societe Anonyme, Myth and Reality (Η αρχή της πλειοψηφίας στην ανώνυμη εταιρία, Μύθος και πραγματικότητα). 4th Panhellenic Conference on Commercial Law, Nayplion, November 1994. Volume 1, Publications of the Macedonian Society of Commercial Law, Antonis Sakkoulas Publishers.

Papadimitriou G., The liability of the members of the Board of the Societe Anonyme to the company and third parties (Η ευθύνη των μελών του διοικητικού συμβουλίου ΑΕ έναντι αυτής και τρίτων). Nomiko Vima, 1980, p.962.

Passias I., The Law of the Societe Anonyme, 1969, Vol II, p.355-360.

Perakis E., (2002), The Law of the Societe Anonyme-Auditors and Minority Rights (Το δίκαιο της Ανώνυμης Εταιρίας – Ελεγκτές και δικαιώματα μειοψηφίας), 2nd Edition, Nomiki Vivliothiki.

Perakis E., (1976), Contractual restrictions of shareholders' voting rights (Ενοχικαί δεσμεύσεις του δικαιώματος ψήφου του μετόχου), 1976.

Rokas N. (2003), Opinion in the context of Single-member Court of First Instance of Athens, Case 5565/2003, published in Commercial Law Review 2003, p.831.

Rokas N., Commercial Companies (Εμπορικές Εταιρίες), (1996), Athens, Antonis Sakkoulas Publishers, p.224.

Rokas N., (1971), 'The limits of the powers of the majority shareholders in the Law of Societes Anonymes' (Τα όρια της εξουσίας της πλειοψηφίας εις το δίκαιον των Α.Ε.), Nomiko Vima, 1971.

Shareholders agreement between the Greek State and Deutsche Telecom regarding the Hellenic Telecommunications Organisation available at http://www.minfin.gr/content-api/f/binaryChannel/minfin/datastore/b2/53/f8/b253f838f3ad28d122ef06faeccca9687439593b/application/pdf/3676_139-A-08_11_07_2008.pdf (last accessed 26.09.2011). This agreement has been approved by the Greek Parliament (Law

3676/2008) and has been published in the Official Government Gazette (139/11.07.2008).

Sinanioti-Mauroudi Ar.,(2010), Emporikes Etairies (Εμπορικές Εταιρείες), Athens, Antonis Sakkoulas Publishers, p.407-420.

Spuridonos Al., The rights of minority shareholders in Societes Anonymes (Τα δικαιώματα της μειοψηφίας στο δικαιο της ΑΕ), (2001), Nomiki Vivliothiki Publishers.page563

Telli N., (1991), Pre-requisites for the variation of old shareholders' pre-emption rights (Προϋποθέσεις για τη κατάργηση του δικαιώματος προτίμησης των παλαιών μετόχων), Commercial Law Review, 1991.

Triantafyllakis G., (1998), The interest of the company as a behavioural standard of the organs of the Societe Anonyme, 1998. Sakkoulas Publications.

Varela V., Comments on Case 7119/2004, published in Law of Companies and Enterprises, 2007, p.583.

Vervesos V., (2007), Shareholders agreement among all the shareholders of the company (Omnilaterale Gesellshaftervereinbarung) and invalidity of the resolution of the general meeting of the shareholders, Simultaneously, observations on Case 1121/2006 of the Supreme Court of Greece (Άρειος Πάγος), (Εξωεταιρική συμφωνία ανάμεσα σε όλους τους μετόχους της εταιρίας (Omnilaterale Gesellshaftervereinbarung) και ακυρότητα της απόφασης της γενικής συνέλευσης των μετόχων. Συγχρόνως παρατηρήσεις στην απόφαση 1121/2006 ΑΠ), Commercial Law Review, 2007, p.932.

ARTICLES FROM THE PRESS

Charles Batchelor, Famous families, FT, 08.072007, available at http://www.ft.com/cms/s/2/ad831aba-2d49-11dc-939b-0000779fd2ac.html#axzz1Q6apFVW8 (last accessed 29.09.2011).

Paul Betts, Family members in tune for some harmony, FT, 09.12.2010, available at http://www.ft.com/cms/s/0/47f7147a-03bb-11e0-8c3f-00144feabdc0.html#axzz1Q6apFVW8 (last accessed 29.09.2011).

Paul Betts, Greece must sell family silver to bolster asset ragbag, FT, 16.06.2010, available at http://www.ft.com/cms/s/0/96e5d846-78dd-11df-a312-00144feabdc0.html#axzz1NqD7nnnM.

Bruno Cova, The Parmalat case has generated too little reform, FT, 07.11.2007, available at http://www.ft.com/cms/s/0/333642e6-4f33-11da-9947-0000779e2340.html#axzz1WiZ1voKY (last accessed 27.09.2011).

Scheherazade Daneshkhu, Hermès clan fights for control, FT, 10.12.2010, available at http://www.ft.com/cms/s/0/6319a918-048b-11e0-a99c-00144feabdc0.html#axzz1Q6apFVW8 (last accessed 29.09.2011).

Scheherazade Daneshkhu, Hermès to create holding company, FT, 05.12.2010, available at http://www.ft.com/cms/s/0/f3306ec2-00b9-11e0-aa29-00144feab49a,s01=1.html#axzz1Q6apFVW8 (last accessed 29.09.2011).

The Deal Magazine. 'The conspiracy defence', 03.07.2008, available at http://www.thedeal.com/magazine/ID/017541/features/the-conspiracy-defense.php (last accessed 29.09.2011).

Mark Solomons, Shock after watchdog sounds alarm over Eiffage, FT, 28.06.2007, available at http://www.ft.com/cms/s/0/7a46b776-2513-11dc-bf47-000b5df10621.html.

Deutsche Welle, Germany Faces Legal Action over VW Law, Deutsche Welle, 19.03.2003, available at http://www.dw-world.de/dw/article/0,,812366,00.html (last accessed 02.06.2010).
Neil Dennis, Eiffage stands out in Europe on Sacyr ruling, FT, 26.06 2007 available at http://www.ft.com/cms/s/0/2829a6ce-23ce-11dc-8ee2-000b5df10621.html#axzz1Yo0KkPMk (last accessed 27.09.2011).
Geoff Dyer and Richard McGregor, China's champions: Why state ownership is no longer proving a dead head, FT, 16.03.2008, available at http://www.ft.com/cms/s/0/979f69c8-f35b-11dc-b6bc-0000779fd2ac.html#axzz1ZbCWGn84 (last accessed 27.09.2011).
The Financial Times, Alarm after watchdog bares teeth over Eiffage, FT 27.06.2007 available at http://www.ft.com/cms/s/0/581323a6-24d7-11dc-bf47-000b5df10621.html#axzz1Yo0KkPMk (all accessed last 29.09.2011).
Seamus Gillen, Boardroom culture holds secret to success, FT, 06.06.2010, available at http://www.ft.com/cms/s/0/ae899a02-7002-11df-8698-00144feabdc0.html#ixzz1WopOQihT, (last accessed 27.09.2011).
Isabel Gorst, ENRC and Kazakh corporate governance, FT, 10.06.2011, available at http://blogs.ft.com/beyond-brics/2011/06/10/enrc-and-kazakh-corporate-governance/#axzz1XqBXO0eI (last accessed 27.09.2011).
Francesco Guerrera, Out of the picture, FT, July 23, 2007 available at http://www.ft.com/cms/s/0/6f1c011c-38b4-11dc-bca9-0000779fd2ac.html#axzz1Q6apFVW8 (last accessed 29.09.2011).
Peggy Hollinger and Mark Mulligan, Eiffage opts to take the fight to predator Sacyr, FT, 23.04.2007 available at http://www.ft.com/cms/s/0/b2c6e634-f200-11db-b5b6-000b5df10621.html#axzz1Yo0KkPMk (last accessed 27.09.2011).
Peggy Hollinger Eiffage strips Spanish of voting rights, FT, 18.04.2007 available at http://www.ft.com/cms/s/0/c086486c-ed9d-11db-8584-000b5df10621.html#axzz1Yo0KkPMk (last accessed 27.09.2011).
Kerin Hope, China in deal to build Piraeus terminal, Financial Times, November 26 2008, available at http://www.ft.com/cms/s/0/66d4b7fc-bb5c-11dd-bc6c-0000779fd18c.html#ixzz1NqN38nn9 (last accessed 16.09.2011).
Miles Johnson, UK: Stewardship Code aims to encourage collaboration, FT, 06.10.2010, available at http://www.ft.com/cms/s/0/0b3bcdce-d016-11df-bb9e-00144feab49a,dwp_uuid=46d2c262-d015-11df-bb9e-00144feab49a.html#axzz1YR9twlDb (last accessed 27.09.2011).
Richard Lambert, Lessons in capitalism for the FTSE 100, FT, 27.06.2011, available at http://www.ft.com/cms/s/0/fde2f874-a0f2-11e0-adae-00144feabdc0.html#axzz1Xdsfv72I (last accessed 27.09.2011).
Lex Column, Hermès, FT, December 6, 2010, available at http://www.ft.com/cms/s/3/0d94e256-011f-11e0-8894-00144feab49a.html#axzz1Q6apFVW8 (last accessed 29.09.2011).
John Lippert and Bill Koenig, ‘Ford family members weigh sale of shares, people say’, Bloomberg, May 14, 2007, available at http://www.bloomberg.com/apps/news?pid=newsarchive&sid=a5CO3otNRW0Y&refer=home (last accessed 29.09.2011).
William MacNamara, Vallares deal straight from Hannam's handbook, FT, 07.09.2011 available at http://www.ft.com/cms/s/0/def1b766-d92d-11e0-884e-00144feabdc0.html#axzz1Xdsfv72I (last accessed 27.09.2011).

William MacNamara, ENRC: lessons for London, FT, 13.06.2011 available at http://blogs.ft.com/beyond-brics/2011/06/13/enrc-what-lessons-for-london/#axzz1XqBXO0eI (last accessed 27.09.2011).

William MacNamara and Patrick Jenkins, Third independent director to quit ENRC, FT, 09.06.2011, available at http://www.ft.com/cms/s/0/d25e6eec-92d1-11e0-bd88-00144feab49a.html#axzz1Xdsfv72I, (last accessed 27.09.2011).

Alison Maitland, Chairmen slate parts of the Governance Code as 'crazy', FT, 27.06.2010, available at http://www.ft.com/cms/s/0/2cf56cdc-81eb-11df-938f-00144feabdc0.html#ixzz1WooGIsIZ, (last accessed 27.09.2011).

Colin Melvin, Frank Curtiss and Dr Daniel Summerfield, Annual Re-election will not increase accountability, FT, 16.07.2010, available at http://www.ft.com/cms/s/0/93ccbd8e-906e-11df-ad26-00144feab49a.html#ixzz1WonfwZF4, (last accessed 27.09.2011).

Adrian Michaels, Control shifts from Patriarchs to pacts, FT, 18.01.2006, available at http://www.ft.com/cms/s/0/662883c2-87c7-11da-8762-0000779e2340.html#axzz1WiZ1voKY (last accessed 11.09.2011).

Mark Mulligan, Peggy Hollinger, Sacyr drops interest in Eiffage, FT, 09.04 2008, available at http://www.ft.com/cms/s/0/7e179a12-0606-11dd-802c-0000779fd2ac.html#axzz1Yo0KkPMk (last accessed 27.09.2011).

Sylvia Pfeifer, Vallares sounds out FSA on $2.1BN Genel deal, FT, 07.09.2011, available at http://www.ft.com/cms/s/0/e022e024-d96e-11e0-b52f-00144feabdc0.html#axzz1Xdsfv72I (last accessed 27.09.2011).

John Plender, Investing: Rules of engagement, FT, 07.11.2010, available at http://www.ft.com/cms/s/0/9275b768-8d14-11df-bad7-00144feab49a.html#ixzz1WonAJrWO, (last accessed 27.09.2011).

Rachel Sanderson, Kate Burgess and Brooke Masters, Reaction to Governance Code divided, FT, 27.05.2010, http://www.ft.com/cms/s/0/11dbccd0-69c1-11df-8432-00144feab49a.html#axzz1WiZ1voKY (last accessed 27.09.2011).

Bernard Simon and Telis Demos, GM listing marks successful turnround, FT, 18.11.2010 available at http://www.ft.com/cms/s/0/0efddc18-f325-11df-9514-00144feab49a,dwp_uuid=0e73f8e0-a2b8-11de-ae7e-00144feabdc0.html#axzz1Xdsfv72I (last accessed 16.09.2011).

Alison Smith and Kate Burgess, Governance concerns rise after spate of London IPOs, FT, 17.06.2011, available at http://www.ft.com/cms/s/0/7411f846-9843-11e0-ae45-00144feab49a.html#axzz1Yo0KkPMk (last accessed 29.09.2011).

Alison Smith and William MacNamara, ENRC dismissals shake UK corporate world, FT, 09.06.2011, available at http://www.ft.com/cms/s/0/0f8499c2-924b-11e0-9e00-00144feab49a.html#axzz1OdbG0F3i (last accessed 27.09.2011).

The Wall Street Journal, GM collapses into government's arms, 02.06.2009, available at http://online.wsj.com/article/SB124385428627671889.html (last accessed 16.09.2011)

Weltonline, Entscheidung bei Beiersdorf bis Jahresende, Bafin macht Tempo - Streit um Übernahmeangebot an freie Aktionäre - US-Investor droht mit Klage, Birger Nicolai, WeltOnline, 09.12.03, available at http://www.welt.de/print-welt/article278740/Entscheidung_bei_Beiersdorf_bis_Jahresende.html (last accessed 29.09.2011).

ANNUAL REPORTS AND PROSPECTUSES

Agricultural Bank of Greece S.A. Annual Report 2010, available at http://www.atebank.gr/NR/rdonlyres/46BB070D-19CD-4D9A-813B-F8B1742D01D1/0/ETISIAEKTHESI31122010.pdf, (last accessed 01.05.2011).

Athens&Piraeus Water and Sewage Corporation 2010 Annual Report available at http://www.eydap.gr/media/FinancialData/isologismoi_en/ANNUAL_ECONOMIC_REPORT_2010.pdf (last accessed 17.09.2011).

General Motors 2010 Annual Report which provides a comprehensive view of the company in the past years, available at https://materials.proxyvote.com/Approved/37045V/20110408/AR_87685/images/General_Motors-AR2010.pdf (last accessed 16.09.2011);

Glencore IPO Prospectus (2011).

Exxor Annual Report 2010 available at http://www.exor.com/uploads/922389-CG_Report_English.pdf (last accessed 11.09.2011).

FIAT SPA Annual Report 2010 http://www.fiatspa.com/en-US/investor_relations/financial_reports/FiatDocuments/Bilanci/2010/Relazione_Finanziaria_UK.pdf (last accessed 11.09.2011).

Hellenic Postbank S.A. Annual Report 2010, available at http://www.irwebpage.com/ttbank/english/pdf/12M2010EN.pdf (Accessed May 1, 2011),

Hellenic Sugar Industry Annual Report 2010, available at http://ebz.smartin.gr/272864399/2009%2010.pdf (last accessed 17.09.2011).

Piraeus Port Authority S.A. 2010 Annual Report, available at http://www.olp.gr/en/investor-information/annual-reports/viewdownload/71-annual-reports/508-annual-report-2010 (last accessed 27.09.2011).

PPC SA Annual Report 2010, available at http://www.dei.gr/Documents2/ENG%20REPORT%202010%20FINAL.pdf (last accessed 27.09.2011).

Thessaloniki Water and Sewage Corporation, SA Annual Report 2010 available at http://www.eyath.gr/misc/ETISIA_EKTHESI_2010.pdf (last accessed 01.05.2011).