1

Shareholder Voting and Engagement

An Introduction

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1.1 INTRODUCTION

Few topics have received greater attention in the current corporate law and governance discourse than shareholder voting and shareholder engagement, especially concerning institutional investors. Institutional investors have become an important shareholder class in many jurisdictions, and the shares of many companies are aggregated in the portfolios of large asset managers. Therefore, emphasis is increasingly being placed on institutional shareholder stewardship and accountability.[1] In particular, the spectacular increase in assets under the management of large US institutional investors has forced these investors to expand their portfolios into foreign markets, creating large ownership stakes in many markets around the globe.[2] Economic globalization and capital market internationalization have thus served as a key driving force for the adoption of common principles, rules and practice in respect of shareholder engagement in many jurisdictions around the globe.[3] In addition, retail shareholders have also been called upon to depart from their traditional passive role and to exercise proactively their rights to vote.[4] It is no exaggeration to say that shareholder engagement and voting are generally considered to be a pivotal feature of good and effective corporate governance.[5] Despite the broad convergence towards an increasing role for shareholders in governance, however, considerable national differences remain, as this Handbook demonstrates, depending on nation-specific and path-dependent settings such as the division of powers between the corporate boards, shareholders and other corporate constituencies (e.g. worker unions), and also on differences in shareholder and ownership structures and types.

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[1] See e.g. Jennifer G. Hill, 'Good Activist/Bad Activist: The Rise of International Stewardship Codes' (2018) 41 Seattle University Law Review 497; Lucian Bebchuk and Scott Hirst, 'Index Funds and the Future of Corporate Governance: Theory, Evidence, and Policy' (2019) 119 Columbia Law Review 2029.

[2] Edward B. Rock and Marcel Kahan, 'Index Funds and Corporate Governance: Let Shareholders Be Shareholders' (2020) 100 Boston University Law Review 1771.

[3] Reena Aggarwal et al., 'Does Governance Travel Around the World? Evidence from Institutional Investors' (2011) 100 Journal of Financial Economics 154; Peter Iliev et al., 'Shareholder Voting and Corporate Governance Around the World' (2015) 28 The Review of Financial Studies 2167.

[4] Jill E. Fisch, 'Standing Voting Instructions: Empowering the Excluded Retail Investor' (2018) 102 Minnesota Law Review 11.

[5] OECD, *G20/OECD Principles of Corporate Governance* (OECD Publishing 2015) 29. See also 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 [2007] OJ L184/17 (SRD I), preamble (3); Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as regards the Encouragement of Long-Term Shareholder Engagement [2017] OJ L132/1 (SRD II).

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The Handbook seeks to re-examine corporate law and corporate governance from the viewpoint of the position and role of shareholders, taking a comparative and global perspective. More specifically, it examines how different types of shareholders make use of their voting rights and other engagement instruments within their own jurisdictions' legal, regulatory and broader institutional contexts. The Handbook aims to contribute to current academic and policy debates by providing a broad, comparative, evidence-based understanding of current issues in major jurisdictions around the world.

In general, non-controlling shareholders in publicly traded companies, when dissatisfied with the ways in which their invested companies are run, can consider three courses of action.[6] They can either (1) take the 'Wall Street Walk' and sell; (2) remain (rationally) passive; or (3) exercise their voice and seek greater engagement. Traditionally, small public shareholders have tended to choose either the first or second option.[7] However, the rise of institutional investors and a greater consciousness among shareholders of their rights have recently made engagement and voting an increasingly attractive option, or even a duty.[8]

The term 'shareholder engagement' covers the third situation where shareholders become actively involved with their investee companies, using their shareholder rights and powers, both formal and informal, to influence corporate affairs. Perhaps the most important form of shareholder engagement is shareholder voting, which takes place at the general meetings of shareholders. As Easterbrook and Fischel put it, 'if limited liability is the most distinctive feature of corporate law, voting is second'.[9] In virtually every jurisdiction, shareholders have voting rights.[10] Besides voting, shareholders can also potentially make use of a wide range of non-litigious engagement instruments. These methods range from submitting shareholder proposals to initiating or supporting a proxy contest; from private on-site visits to a threat to exit; from direct, behind-the-scene meetings and communications with the board and the management to openly questioning and criticizing the management (e.g. at general meetings or by mounting media campaigns).[11] The choice between a collaborative and confrontational tactic varies from case to case, and is usually determined at firm level by the relationship between the shareholders and their engagement targets.

1.2 METHODOLOGICAL CONSIDERATIONS

The Handbook conscientiously embraces a sophisticated functionalist approach. First and foremost, the comparative methodology of the Handbook consists mostly of a functionalist

[6] Borrowing the frame of Albert O. Hirschman, *Exit, Voice, and Loyalty: Responses to Decline in Firms, Organizations, and States* (Harvard University Press 1970). Exit refers to an economic market-based response where the unsatisfied shareholder leaves the company. In comparison, voice represents a political response using communication in an attempt to rectify performance lapses.

[7] Adolf Augustus Berle and Gardiner Coit Means, *The Modern Corporation and Private Property* (rev. ed., Harcourt, Brace & World 1968).

[8] See e.g. Hanne S. Birkmose and Konstantinos Sergakis, *Enforcing Shareholders' Duties* (Edgward Elgar 2019); Directive (EU) 2017/828 (n. 5).

[9] Frank H. Easterbrook and Daniel R. Fischel, *The Economic Structure of Corporate Law* (Harvard University Press 1996) 63.

[10] A major exception is the non-voting share arrangement. See Dorothy S. Lund, 'Nonvoting Shares and Efficient Corporate Governance' (2019) 71 Stanford Law Review 687.

[11] Willard T. Carleton, James M. Nelson and Michael S. Weisbach, 'The Influence of Institutions on Corporate Governance through Private Negotiations: Evidence from TIAA-CREF' (1998) 53 Journal of Finance 1335; Marco Becht et al., 'Returns to Shareholder Activism: Evidence from a Clinical Study of the Hermes UK Focus Fund' (2010) 23 The Review of Financial Studies 3093; Joseph A. McCahery, Zacharias Sautner and Laura T. Starks, 'Behind the Scenes: The Corporate Governance Preferences of Institutional Investors' (2016) 71 Journal of Finance 2905.

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approach.[12] The central functional question of this Handbook concerns the shareholders' (shifting) position and role in corporate law and corporate governance. More specifically, it is about how shareholders make use of their voting rights and other engagement instruments to influence the conduct of affairs in their investee companies. It is this functional inquiry that guides the formulation of the Handbook's analytical framework (Section 1.3 of the present Chapter), which in turn intellectually drives the assessment of shareholder voting and engagement in the Handbook's jurisdiction-based studies, as well as its comparative analysis (Chapters 2–23). To be sure, opinions differ markedly on whether shareholders in public companies should be empowered to effect major corporate changes.[13] However, there seems to be a trend in many jurisdictions around the world favouring the enhancement of shareholder rights, both generally in respect of their invested public companies, and particularly in terms of greater institutional investor stewardship of their portfolio companies. More fundamentally, modern corporate law jurisprudence assumes that shareholders are generally entitled to have some say on how (at least certain fundamental) affairs of their investee companies are managed. Virtually all modern corporate law regimes are faced with the problem of resolving how engaged shareholders *can* vote and otherwise engage with the companies in which they invest. The chapter contributions to the Handbook have therefore all sought to address this functional problem, enabling a 'deep' comparative analysis of convergences and divergences in Chapters 21–23 in the Handbook. By focusing strongly on the central functional problem, the Handbook ensures that it does not become bogged down prematurely in ideological debates.

The Handbook aims to provide generally useful perspectives, while also being sensitive to significant local differences, in light of the starkly divergent legal systems and traditions, capital market structures and share ownership patterns around the globe. As such, while the nineteen jurisdiction-based reports all set out to address the common framework of research questions (Section 1.3 of the present Chapter), they also examine at length the legal traditions, ownership structures, dominant shareholder types and other jurisdiction-specific conditions in their respective jurisdictions. This results in rich descriptions of a wide variety of legal (and extralegal) doctrines, principles, approaches, techniques and tactics developed in different jurisdictions, as summarized in the comparative Chapters 21–22. Importantly, these jurisdiction-specific approaches are placed in the economic, ideological, historical, cultural and political contexts which shaped them. These broader institutional idiosyncrasies also inform the Handbook's discussions of how legal (and extralegal) rules, techniques and tactics are actually used by shareholders to engage their investee companies. Overall, the Handbook takes a holistic methodological approach, looking not only at what the rules governing shareholder voting and engagement are in the nineteen jurisdictions it studies, but also how these rules have been shaped and are used in practice.

The Handbook's use of doctrinal and empirical methods is also mixed. While nuanced doctrinal analysis of the jurisdictions' legal rules and techniques is central to its contents, the nineteen expert reports and the comparative analysis either draw on the findings of prior empirical research or conduct original empirical research of their own. The Handbook takes the position that some research questions can best be answered with reference to empirical

[12] '[I]ncomparables cannot be usefully compared and in the law the only things which are comparable are those which fulfil the same function'. Following Mathias Siems, *Comparative Law* (Cambridge University Press 2018) 33. See, more generally, Konrad Zweigert and Hein Kötz, *Introduction to Comparative Law* (Tony Weir tr., 3rd rev. ed., Clarendon Press 1998).

[13] Lucian Arye Bebchuk, 'The Case for Increasing Shareholder Power' (2005) 118 Harvard Law Review 833. Cf. Stephen M. Bainbridge, 'Director Primacy and Shareholder Disempowerment' (2006) 119 Harvard Law Review 1735.

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evidence. For instance, an evaluation of the effectiveness of the legal rules on shareholders' initiation rights (e.g. the right to make shareholder proposals) would ideally consider evidence for the turnout of minority shareholders at the general meetings, insofar as these data are readily available. Clearly, the shareholder right to initiate a proposal can be meaningless in practice if a jurisdiction sets the threshold for proposing a shareholder resolution at 10 per cent of the company's shares, while the average minority voter turnout is typically far lower than that figure.

The Handbook's nineteen jurisdiction reports therefore follow a common analytical framework with specific topical categories. As will be discussed at greater length in the comparative Chapters 21–23, this collaborative endeavour by the jurisdiction experts yields fresh insights on substantial convergences and divergences among nineteen major jurisdictions in four continents. Together they offer a truly global perspective on some of the most debated current issues in comparative corporate law and governance.

1.3 FRAMEWORK OF RESEARCH QUESTIONS

The Handbook's focus on the position and role of shareholders in corporate law and corporate governance is reflected in the way we have divided our research questions, and related research topics for our contributors, into three parts. Part I addresses the particular characteristics of these jurisdictions, including their capital market structures, ownership and corporate governance model. Part II relates to the legal framework of shareholder voting and engagement, with a special focus on general meetings. Part III concerns the law in action, and considers the use of shareholder voting rights, voting modes and other engagement mechanisms. The specific research questions addressed in the three Parts are described below.

1.3.1 *General Jurisdictional Features (Part I)*

This Part sets the contextual stage for the discussions of specific laws, regulations and practices in respect of shareholder voting and engagement. It also discusses broader topics, including the pattern of ownership concentration in different jurisdictions, shareholder types, attributes of the company's board and the demarcation of power between the board and the shareholders.

1.3.1.1 Ownership Concentration

Most previous studies of corporate governance have tended to assume that the dispersed ownership of American public companies, as described by Berle and Means in their seminal work in 1932, is the model behind most modern corporations.[14] Comparative corporate governance studies in the past three decades have, however, repeatedly called that assumption into question. For instance, drawing upon their case studies of corporate ownership in the UK, France and Germany, Franks and Mayer in 1995 made an important distinction between two types of ownership structures: the 'outsider system' seen in the USA and the UK, where share ownership is dispersed, and the 'insider system' in many other jurisdictions, where ownership concentration is remarkably higher.[15] Franks and Mayer's insights have been extended in the seminal works of La Porta, Lopez-de-Silanes, Shleiffer and Vishny, which find that, in global terms, state- and family-controlled firms are far more common than Berle-and-Means

[14] See n. 7.

[15] Julian Franks and Colin Mayer, 'Ownership and Control' in Horst Siebert (ed.), *Trends In Business Organization: Do Participation and Cooperation Increase Competitiveness?* (University of Michigan Press 1995).

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corporations, and that a jurisdiction's legal origin (civil law versus common law) is strongly correlated with its prevailing ownership structure.[16] Further studies have since shown that ownership patterns in continental Europe[17] and Asian countries[18] are generally more concentrated than in Anglo-Saxon countries.[19] Recent empirical research has also highlighted the pervasive role of government and family control, notably in civil law jurisdictions.[20] It is also interesting to note the recent institutionalization of securities markets and the reconcentration of ownership in institutional investors, particularly in the US markets, which has given rise to the phenomenon known as 'the agency costs of agency capitalism'.[21]

The existence of national differences in respect of ownership structures has important implications for corporate governance. Agency problems of conflicting goals and opportunistic behaviour exist not only between managers and shareholders, but also in the relationships between small shareholders and controlling blockholders.[22] The types of legal strategies for controlling the principal-agent conflicts can therefore differ fundamentally across jurisdictions, depending heavily on their prevailing structures of shareholder ownership.[23] For instance, blockholders may be tempted to use their majority stake to maximize their own private benefits rather than acting in the interests of the welfare of the shareholders as a whole,[24] or, to put it another way, to extract the private benefits of control.[25] Thus, in a jurisdiction where blockholder ownership (either by a government or a family) is prevalent, the legal system may concern itself less with the opportunistic behaviour of management (vis-à-vis the shareholders) than with that of the blockholder (vis-à-vis the minority or outsider shareholders).

Given these important differences between jurisdictions in terms of ownership structures, we asked the contributors to this Handbook to provide information, and, if possible, data about the typical ownership structure (widely dispersed or concentrated) of listed companies in their jurisdiction.

[16] Rafael La Porta et al., 'Legal Determinants of External Finance' (1997) 52 Journal of Finance 1131; Rafael La Porta et al., 'Law and Finance' (1998) 106 Journal of Political Economy 1113; Rafael La Porta, Florencio Lopez-de-Silanes and Andrei Shleifer, 'Corporate Ownership Around the World' (1999) 54 Journal of Finance 471. For critiques of the legal origin theory, see Holger Spamann, 'The "Antidirector Rights Index" Revisited' (2010) 23 The Review of Financial Studies 467.

[17] Christoph Van der Elst, 'Shareholder Mobility in Five European Countries' (2008) ECGI – Law Working Paper No. 104/2008 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1123108 accessed 5 May 2021.

[18] Stijn Claessens, Simeon Djankov and Larry H. P. Lang, 'The Separation of Ownership and Control in East Asian Corporations' (2000) 58 Journal of Financial Economics 81; Richard W. Carney and Travers Barclay Child, 'Changes to the Ownership and Control of East Asian Corporations Between 1996 and 2008: The Primacy of Politics' (2013) 107 Journal of Financial Economics 494.

[19] Cf. Clifford G. Holderness, 'The Myth of Diffuse Ownership in the United States' (2009) 22 The Review of Financial Studies 1377. See also Brian R. Cheffins, *Corporate Ownership and Control: British Business Transformed* (Oxford University Press 2008).

[20] Adriana De La Cruz, Alejandra Medina, and Yun Tang, 'Owners of the World's Listed Companies' (2019) OECD Capital Market Series www.oecd.org/corporate/Owners-of-the-Worlds-Listed-Companies.htm accessed 3 May 2021. See also Gur Aminadav and Elias Papaioannou, 'Corporate Control around the World' (2020) 75 Journal of Finance 1191.

[21] Ronald J. Gilson and Jeffrey N. Gordon, 'The Agency Costs of Agency Capitalism: Activist Investors and the Revaluation of Governance Rights' (2013) 113 Columbia Law Review 863; Scott Hirst and Lucian Bebchuk, 'The Specter of the Giant Three' (2019) 99 Boston University Law Review 721.

[22] There is a third type of agency problems between the firm's shareholders and its stakeholders.

[23] John Armour, Henry Hansmann and Reinier Kraakman, 'Agency Problems and Legal Strategies' in Reinier Kraakman et al., *The Anatomy of Corporate Law* (3rd ed., Oxford University Press 2017).

[24] The trade-off here is that the presence of a controlling shareholder may reduce the managerial agency problem. See Ronald J. Gilson and Jeffrey N. Gordon, 'Controlling Controlling Shareholders' (2003) 152 University of Pennsylvania Law Review 785.

[25] Alexander Dyck and Luigi Zingales, 'Private Benefits of Control: An International Comparison' (2004) 59 Journal of Finance 537.

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1.3.1.2 Shareholder Types

Ownership concentration is not the only important factor here. Different shareholder types can also have varying levels and kinds of impact on shareholder voting and engagement. Take institutional investors for instance. Public pension funds can be sensitive to incentives and pressures (such as local economy and employment) to which other types of institutional investors may be indifferent.[26] Hedge funds are known to have played a more activist role than index funds, for example.[27] A particular contextual consideration is the stewardship requirement that holds certain types of institutional investors accountable for their ultimate investors, to which they own a fiduciary duty. In the USA, the SEC has required US-registered investment advisers to adopt policies and procedures to ensure that proxies vote in the best interests of ultimate beneficiaries, and to also provide beneficiaries with information about how these proxies have voted.[28] In the European Union too, the Revised Shareholder Rights Directive (SRD II) requires institutional investors and asset managers to disclose their engagement policies and the implementation of these policies on a comply-or-explain basis.[29] Similarly, the UK Stewardship Code establishes a framework to determine the monitoring role for institutional investors, namely asset owners and asset managers.[30] Principle 6 of the Stewardship Code states that 'institutional investors should seek to vote all shares held'.[31] The role of proxy advisors, which exert much greater influence over votes cast by institutional investors in some jurisdictions (in particular, the US) than in other jurisdictions, is also directly relevant.[32]

Similarly, the motivations for controlling families may not be the same as those for state owners, and they may behave differently in the face of shareholder activism. The government as controlling shareholder may be prone to placing its own (short-term) non-commercial, political agenda (such as political stability, employment and the government's own financial interests) ahead of long-term shareholder welfare.[33] In family-controlled firms, by contrast, family controllers may be motivated to extract value from their controlled firm (by using complex pyramids or cross-shareholding structures),[34] and to reduce managerial agency costs.[35]

To conclude, taking into account the ownership model including different shareholder types is important for a comparative study on shareholder voting and engagement. Therefore, the

[26] Roberta Romano, 'Public Pension Fund Activism in Corporate Governance Reconsidered' (1993) 93 Columbia Law Review 795; Marcel Kahan and Edward B. Rock, 'Hedge Funds in Corporate Governance and Corporate Control' (2007) 155 University of Pennsylvania Law Review 1021. See also David Webber, *The Rise of the Working-Class Shareholder: Labor's Last Best Weapon* (Harvard University Press 2018).

[27] Alon Brav et al., 'Hedge Fund Activism, Corporate Governance, and Firm Performance' (2008) 63 The Journal of Finance 1729. See also Lucian A. Bebchuk et al., 'Dancing with Activists' (2020) 137 Journal of Financial Economics 1.

[28] Securities and Exchange Committees, Final Rule: Proxy Voting by Investment Advisers (2003), 17 CFR Part 275 www.sec.gov/rules/final/ia-2106.htm accessed 6 May 2021. See also Alan R. Palmiter, 'Mutual Fund Voting of Portfolio Shares: Why Not Disclose?' (2002) 23 Cardozo Law Review 1419.

[29] Directive (EU) 2017/828 of the European Parliament and of the Council of 17 May 2017 amending Directive 2007/36/EC as Regards the Encouragement of Long-Term Shareholder Engagement [2017] OJ L 132/1.

[30] The UK Stewardship Code 2012, 2.

[31] See n. 9.

[32] Andrew F. Tuch, 'Proxy Advisor Influence in a Comparative Light' (2019) 99 Boston University Law Review 1459. Cf. Stephen Choi, Jill Fisch and Marcel Kahan, 'The Power of Proxy Advisors: Myth or Reality?' (2010) 59 Emory Law Journal 869.

[33] Victor Nee, Sonja Opper and Sonia Wong, 'Developmental State and Corporate Governance in China' (2007) 3 Management and Organization Review 19. See also Marcel Kahan and Edward Rock, 'When the Government is the Controlling Shareholder' (2011) 89 Texas Law Review 1293.

[34] Claessens, Djankov and Lang (n. 18).

[35] Belen Villalonga and Raphael Amit, 'How Do Family Ownership, Control and Management Affect Firm Value?' (2006) 80 Journal of Financial Economics 385.

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contributors provide valuable information in their chapters about the shareholder types typically present in companies in their jurisdictions, including institutional investors, families, pyramid structures and the government.

1.3.1.3 Board Characteristics

The board serves as a focal point for shareholder engagement. It plays an important monitoring role of hiring, firing and assessing the performance of the management. It is also typically tasked with various advisory and managerial functions, such as the setting of the company's strategies and the selection of projects.[36] Hence, if shareholders are dissatisfied with their investee companies' state of affairs or with the direction the companies are taking, the board will act as the interface between shareholders and the management or controlling shareholder. Indeed, board members themselves stand for election at the shareholders' meeting and, in that sense, are held accountable to the shareholders who elect them.

The board-shareholder engagement process is sensitive to various board characteristics, which may differ across jurisdictions. Board structure can potentially affect that process. The one-tier board, two-tier board and some hybrid board structure forms found in different jurisdictions[37] – in tandem with the representation of stakeholders (in particular, employees)[38] – can impact on the way in which shareholder engagement feeds into corporate decision-making. Board composition is also an important consideration. The presence of independent, outside directors on the board and its committees, particularly if they hold leading positions, can help to bridge the gap between shareholders and management,[39] and their monitoring role may also be beneficial to shareholder value.[40] The method of board appointment is a significant variable that determines the strength of shareholder rights. Staggered board[41] and plurality voting,[42] for instance, can help to insulate board members from market and shareholder pressures. By contrast, cumulative voting can help to empower minority shareholders by electing their representatives onto the board and increasing their say in the conduct of the company's affairs.[43]

[36] Renée B. Adams, Benjamin E. Hermalin and Michael S. Weisbach, 'The Role of Boards of Directors in Corporate Governance: A Conceptual Framework and Survey' (2010) 48 Journal of Economic Literature 58. See also Miriam Schwartz-Ziv and Michael S. Weisbach, 'What Do Boards Really Do? Evidence from Minutes of Board Meetings' (2013) 108 Journal of Financial Economics 349.

[37] Paul L. Davies and Klaus J. Hopt, 'Corporate Boards in Europe – Accountability and Convergence' (2013) 61 American Journal of Comparative Law 301.

[38] Larry Fauver and Michael E. Fuerst, 'Does Good Corporate Governance Include Employee Representation? Evidence from German Corporate Boards' (2006) 82 Journal of Financial Economics 673.

[39] Amy Freedman, Wes Hall, and Ian Robertson, 'The Director-Shareholder Engagement Guidebook', The Harvard Law School Forum on Corporate Governance (2 March 2019) https://corpgov.law.harvard.edu/2019/03/02/the-director-shareholder-engagement-guidebook/ accessed 7 May 2021.

[40] Bang Dang Nguyen and Kasper Meisner Nielsen, 'The Value of Independent Directors: Evidence from Sudden Deaths' (2010) 98 Journal of Financial Economics 550; Reena Aggarwal et al., 'Differences in Governance Practices between U.S. and Foreign Firms: Measurement, Causes, and Consequences' (2009) 22 The Review of Financial Studies 3131; Larry Fauver et al., 'Board Reforms and Firm Value: Worldwide Evidence' (2017) 125 Journal of Financial Economics 120.

[41] Lucian Bebchuk, John Coates IV and Guhan Subramanian, 'The Powerful Anti-Takeover Force of Staggered Boards: Theory, Evidence and Policy' (2002) 54 Stanford Law Review 887. Cf. K. J. Martijn Cremers, 'The Shareholder Value of Empowered Boards' (2006) 68 Stanford Law Review 67.

[42] Stephen J. Choi et al., 'Does Majority Voting Improve Board Accountability?' (2016) 83 University of Chicago Law Review (2016) 1119.

[43] Sanjai Bhagat and James A. Brickley, 'Cumulative Voting: The Value of Minority Shareholder Voting Rights' (1984) 27 The Journal of Law and Economics 339. Cf. Jeffrey N. Gordon, 'Institutions As Relational Investors: A New Look at Cumulative Voting' (1994) 94 Columbia Law Review 124.

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Given the differences in the board's role, structure and composition in many jurisdictions, which has amongst others an impact on shareholder voting and engagement, the contributors also address (albeit briefly) the board structure of companies in their jurisdiction, including the board's characteristics and duties.

1.3.1.4 Demarcation of Powers

A closely related issue is the balance of power between the shareholders and the board in respect of corporate decision-making. Shareholders are the residual claimants of the corporation, and naturally wish to maximize the value of their residual claim,[44] albeit research also shows that shareholder preferences can be very heterogenous.[45] In corporate law theory, shareholders are generally assumed to have appropriate incentives to engage in corporate decision-making. Yet, concentrating all corporate powers in the hands of shareholders would be unworkable in (public) companies with numerous and constantly changing shareholders. Moreover, in many jurisdictions, the interest of the company is not defined as the aggregate interests of the shareholders, but considered as a separate interest, often mediating between the differing partial interests of the different stakeholders.[46] This, and the function of representation, create a need to delegate most of the decision-making powers to a centralized board of directors and also to full-time, professional managers. It then becomes necessary to decide which fundamental decisions should be reserved for the shareholders and which should be delegated to the board or its professional managers.[47] Corporate laws in different jurisdictions offer varying solutions to this conundrum. Presumably, shareholders will find it more difficult to have a say on matters reserved for the board under corporate law and, even if they are successful, their voice may not be binding. Say-on-pay serves as a prominent example of this constraint on shareholder engagement in many jurisdictions.[48] Moreover, shareholders often have the ratification or approval rights of a management board proposal (such as the election of board candidates and the aforementioned say-on-pay rights), instead of initiation rights.

The appropriate demarcation of powers between shareholders and the board has been the subject of constant debate between policymakers, academics and other stakeholders, and it is interesting to note that the balance seems to have shifted recently.[49] The USA serves as an important example. There, there is an increasing use of 'private ordering' to expand shareholders' right to participate. So, shareholders, particularly institutional investors, take into their own hands governance rights that are traditionally assigned to the board, thereby shifting the allocation of power between the board and shareholders.[50] Once again, jurisdictions vary in their approaches in this respect.

[44] Frank H. Easterbrook and Daniel R. Fischel, 'Voting in Corporate Law' (1983) 26 Journal of Law and Economics 395.

[45] See e.g. Patrick Bolton et al., 'Investor Ideology' (2020) 137 Journal of Financial Economics 320.

[46] For instance, in Germany, this is called *Unternehmensinteresse* (Andreas Cahn and David C. Donald, *Comparative Company Law* (2nd ed., Cambridge University Press 2018) 396). In the Netherlands, this is referred to as the '*vennootschappelijk belang*'.

[47] Klaus J. Hopt, 'Modern Company and Capital Market Problems: Improving European Corporate Governance after Enron' (2003) 3 Journal of Corporate Law Studies 221.

[48] Randall S. Thomas and Christoph Van der Elst, 'Say on Pay around the World' (2015) 92 Washington University Law Review 653.

[49] Edward B. Rock, 'Adapting to the New Shareholder-Centric Reality' (2013) 161 University of Pennsylvania Law Review 1907.

[50] Jennifer G. Hill, 'The Trajectory of American Corporate Governance: Shareholder Empowerment and Private Ordering Combat' (2019) University of Illinois Law Review 507.

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To conclude, the balance between shareholder decision-making rights and boards' powers sets the stage for discussions of jurisdiction-specific voting and engagement rules. The contributors therefore individually identify which matters fall within the purview of the shareholders, and which matters are the responsibility of the board. They also outline whether there is a clear demarcation of powers between boards and shareholders in their jurisdiction.

1.3.1.5 Other Jurisdiction-Specific Aspects

There might also be other important aspects which vary between jurisdictions. The contributors therefore address whether the corporate law and corporate governance framework in their particular jurisdiction has any such distinctive features.

1.3.2 *Legal Means of Shareholder Voting and Engagement (Part II)*

This Part describes the legal means by which shareholders, in particular minority shareholders, in public companies exercise their rights to vote and engage.

1.3.2.1 Procedures for General Meetings

Shareholders' meetings are the venue at which shareholders exercise their rights to vote. These meetings are also a primary channel for shareholders to engage the management, acquire information and make their voices heard. Procedural rules pertaining to general meetings therefore have an important impact on shareholder voting and engagement. They can, for instance, affect the ability of shareholders to engage, and thus limit or stimulate shareholder participation in governance.

General meetings typically include annual general meetings (AGMs), usually held shortly after the end of each financial year, and extraordinary general meetings (EGMs). As their name implies, EGMs are usually convened only in exceptional circumstances, to consider proposed fundamental changes to the company. Shareholder voting rights are arguably collective in nature, as the (special or qualified) majority of the shareholders – sometimes subject to a quorum – determines whether a proposal is adopted. The majority and quorum rules can therefore all prominently influence shareholders' ability to vote and engage.

The ease with which shareholders can call a shareholders meeting is also an important procedural aspect of shareholder engagement. La Porta and his associates considered the percentage of share capital needed to call an EGM to be an important part of their shareholders' right matrix.[51] It follows that the lower the percentage, the greater the opportunity for minority shareholders to bring matters that concern them to the attention of a broader audience (i.e. the shareholders' meeting, and potentially the media and the general public), and the better their chance of pressurizing the management to address their concerns. Also of relevance are the cost rules of convening an EGM, that is, whether the shareholders calling the EGM are liable for all the costs.[52] Overall, the procedural rules governing the requisitioning of EGMs by shareholders impact on their ability to use this engagement tool.

Other less-studied procedural aspects may also be relevant. The minimum notice period rules serve an important informational function, affecting shareholders' ability to acquire the

[51] La Porta et al., 'Law and Finance' (n. 16).

[52] Priya P. Lele and Mathias M. Siems, 'Shareholder Protection: A Leximetric Approach' (2007) 7 Journal of Corporate Law Studies 17.

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information they need to cast an informed vote.[53] The record date[54] and share blocking rules[55] can also affect activist shareholders' ability to amass shares in a proxy contest. There is also evidence that even routine procedural matters, such as the choice of venue for general meetings, can influence shareholders' ability to scrutinize their investee companies.[56]

All these aspects have an important impact on the exercise of shareholder voting rights and engagements. The contributors therefore consider the regular procedure for holding an AGM or EGM in their jurisdiction, quorum and majority rules, and the conditions under which shareholders can call a general meeting (assuming they can), and the regular terms involved.

1.3.2.2 Voting Rules

The traditional principle of one-share-one-vote (OSOV) promises to align the shareholder's cash flow rights with voting rights. Separation between cash flow and voting rights is, however, commonplace among public corporations around the world.[57] This misalignment is particularly acute in economies with concentrated share ownership and weak governance institutions, where pyramidal and cross-holding structures can be used by an opportunistic controller to extract value from the controlled firms at the expense of the public investors.[58] It has also been an issue of intense debate as to whether dual-share structures[59] and loyalty shares[60] serve to institutionalize and formalize the wedge between cash flow and voting rights, and expose minority shareholders to the risks of majority overreach and expropriation.

Deviations from the OSOV principle, however, do not always place minority shareholders at a disadvantage. Indeed, they can often be empowering, as the majority-of-the-minority (MoM) voting practice demonstrates. The MoM mechanism excludes those shareholders with a conflict of interest (typically, the controller) from voting, thereby effectively vesting in the disinterested shareholders (often minority shareholders) a power of veto. Therefore, as a 'property rule', MoM voting prevents the controlling shareholder from pushing through a controversial transaction against the wishes of the minority, as this transaction simply cannot be performed without the consent of the minority.[61] Other useful empowering tools that also deviate from OSOV include

[53] Christoph Van der Elst and Anne Lafarre, 'Bringing the AGM to the 21st century: Blockchain and Smart Contracting Tech for Shareholder Involvement' (2017) European Corporate Governance Institute (ECGI)-Law Working Paper 358/2017 https://ssrn.com/abstract=2992804 assessed 1 May 2021.

[54] John Pound, 'Proxy Contests and the Efficiency of Shareholder Oversight' (1988) 20 Journal of Financial Economics 237.

[55] Luc Renneboog and Peter Szilagyi, 'Shareholder Engagement at European General Meetings' in Massimo Belcredi and Guido Ferrarini (eds.), *Boards and Shareholders in European Listed Companies: Facts, Context and Post-Crisis Reforms* (Cambridge University Press 2013).

[56] Yuanzhi Li and David Yermack, 'Evasive Shareholder Meetings' (2016) 38 Journal of Corporate Finance 318.

[57] La Porta et al., 'Corporate Ownership Around the World' (n. 16).

[58] Joseph P. H. Fan and T. J. Wong, 'Corporate Ownership Structure and the Informativeness of Accounting Earnings in East Asia' (2002) 33 Journal of Accounting and Economics 401.

[59] Jennifer Francis et al., 'The Market Pricing of Accruals Quality' (2005) 39 Journal of Accounting and Economics, 295. Cf. Zohar Goshen and Assaf Hamdani, 'Corporate Control and Idiosyncratic Vision' (2016) 125 Yale Law Journal 588.

[60] Paul H. Edelman, Wei Jiang and Randall S. Thomas, 'Will Tenure Voting Give Corporate Managers Lifetime Tenure?' (2019) 97 Texas Law Review 991; Marco Becht, Yuliya Kamisarenka and Anete Pajuste, 'Loyalty Shares with Tenure Voting: Does the Default Rule Matter? Evidence from the *Loi Florange* Experiment' (2020) 63 Journal of Law and Economics 473.

[61] Zohar Goshen, 'The Efficiency of Controlling Corporate Self-Dealing: Theory Meets Reality' (2003) 91 California Law Review 393. See also Luca Enriques, 'Related Party Transactions: Policy Options and Real-World Challenges with a Critique of the European Commission Proposal' (2015) 16 European Business Organization Law Review 1.

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cumulative voting and slate voting, which has been deployed in jurisdictions such as Mainland China,[62] Taiwan[63] and Italy.[64]

Given the importance of different voting rights and actual voting arrangements in companies, the contributors address how far the OSOV principle holds in their jurisdiction, whether any deviations are allowed, and if so, whether they are frequently used. Special attention is given to voting mechanisms that promise to empower minority shareholders, such as the MoM, cumulative voting or slate voting.

1.3.2.3 Shareholder Proposals

The shareholder's right to propose is also a potentially effective tool to constrain agency problems of different types. This particular right has been fiercely debated in recent years by academics and policymakers. Its vocal advocates believe that vesting in shareholders greater power to propose and intervene can improve corporate governance and enhance shareholder value.[65] However, their opponents have argued that giving shareholders such power is inefficient,[66] and can indeed reduce shareholder wealth.[67] Empirical evidence on the effects of shareholder proposals is also mixed. Some work suggests that shareholder proposals on governance topics that pass with a small margin can be value-enhancing,[68] and ESG proposals may (sometimes) lead to higher corporate sustainability and performance.[69] Uninformed shareholders submitting shareholder proposals may destroy shareholder value, but particularly informed proposals can be value-enhancing.[70] Hence, it is perhaps fair to say that shareholder proposals, on balance, are a useful device of external constraint on shareholder–manager agency problems[71] and, under the right conditions, can

[62] Chao Xi and Yugang Chen, 'Does Cumulative Voting Matter? The Case of China: An Empirical Assessment' (2014) 15 European Business Organization Law Review 585. See also Yinghui Chen and Julan Du, 'Does Regulatory Reform of Cumulative Voting Promote a More Balanced Power Distribution in the Boardroom?' (2020) 64 Journal of Corporate Finance 101655.

[63] Yu-Hsin Lin and Yun-chien Chang, 'An Empirical Study of Corporate Default Rules and Menus in China, Hong Kong, and Taiwan' (2018) 15 Journal of Empirical Legal Studies 875.

[64] Massimo Belcredi and Luca Enriques, 'Institutional Investor Activism in a Context of Concentrated Ownership and High Private Benefits of Control: The Case of Italy' in Jennifer G. Hill and Randall S. Thomas (eds.) *Research Handbook on Shareholder Power* (Edward Elgar Publishing 2015).

[65] Lucian A. Bebchuk, 'Letting Shareholders Set the Rules' (2005) 119 Harvard Law Review 1784. See also Milton Harris and Artur Raviv, 'Control of Corporate Decisions: Shareholders vs. Management' (2010) 23 The Review of Financial Studies 4115.

[66] Stephen M. Bainbridge, 'The Case for Limited Shareholder Voting Rights' (2006) 53 UCLA Law Review 601.

[67] John G. Matsusaka and Oguzhan Ozbas, 'A Theory of Shareholder Approval and Proposal Rights' (2017) 33 Journal of Law, Economics, and Organization 377.

[68] Vicente Cuñat, Mireia Gine, Maria Guadalupe, 'The Vote is Cast: The Effect of Corporate Governance on Shareholder Value' (2012) 67 Journal of Finance 1943.

[69] Cynthia E. Clark, Andrew P. Bryant and Jennifer J. Griffin, 'Firm Engagement and Social Issue Salience, Consensus, and Contestation' (2017) 56 Business & Society 1136; Jody Grewal, George Serafeim and Aaron Yoon, 'Shareholder Activism on Sustainability Issues' (2016) Harvard Business School Working Paper No. 17-003 https://dash.harvard.edu/bitstream/handle/1/27864360/17-003.pdf?sequence=1 accessed 15 July 2020; Min-Dong Paul Lee and Michael Lounsbury, 'Domesticating Radical Rant and Rage: An Exploration of the Consequences of Environmental Shareholder Resolutions on Corporate Environmental Performance' (2011) 50 Business & Society 155.

[70] When shareholders are more informed, they are able 'to weed out ill-informed proposals'. See Nickolay Gantchev and Mariassunta Giannetti, 'The Costs and Benefits of Shareholder Democracy: Gadflies and Low-Cost Activism' (2021) 34 The Review of Financial Studies 5629.

[71] Randall S. Thomas and James F. Cotter, 'Shareholder Proposals in the New Millennium: Shareholder Support, Board Reponse and Market Reaction' (2007) 13 Journal of Corporate Finance 368; Yonca Ertimur, Fabrizio Ferri and Stephen R. Stubben, 'Board of Directors' Responsiveness to Shareholders: Evidence from Shareholder Proposals'

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create value for shareholders.[72] As we will see in Section 1.3.3.3 of this chapter, existing evidence shows a very mixed picture on the actual use of shareholder proposals in practice across jurisdictions. This may be caused by the various ownership requirements and other procedural and material requirements, which are addressed by the contributors in this Handbook.

1.3.2.4 Shareholder Information Rights

Information rights are generally regarded as the fundamental rights of the shareholder.[73] Ready and easy access to information about the companies they invest in is crucial to shareholders' role as monitors.[74] Much corporate governance debate on access to information has focused on disclosure rules under securities laws. Legal rules requiring issuers to make disclosures in prescribed manners and at prescribed frequencies help to provide shareholders with reliable, low-cost information which enable them to monitor their invested firms. It has been shown that more extensive mandatory disclosure requirements (in tandem with effective private enforcement) are positively associated with more robust national stock markets.[75] Of course, it has not always been possible to find the right balance between a sufficiency of information and information overload.[76]

However, the shareholder's right to request information beyond what is required in the mandatory disclosure regime has not so far been adequately studied. One particularly important venue for shareholders' information acquisition is the general meeting, where shareholders generally have the opportunities to ask the management questions. Asking questions can also be a powerful form of shareholder engagement, influencing the way in which the management thinks and acts.[77] Therefore, the contributors to this Handbook outline whether and to what extent shareholders have the right to ask questions or request information in and outside the general meeting.

1.3.2.5 Other Jurisdiction-Specific Aspects

While we seek to clarify the legal means of shareholder voting and engagement, we recognize that other, less formal, channels may also be important. The contributors will therefore address channels specific to their jurisdiction which complement the legal means for shareholder engagement. Here it is worth noting that while the Handbook mainly focuses on shareholder voting as a primary form of shareholder engagement, it also addresses other forms of (informal) shareholder engagement, such as engagements behind the scenes, other stewardship activities by institutional investors and, to a lesser degree, private actions.

The impact of the Covid-19 pandemic on shareholder voting and engagement has naturally attracted attention recently. Corporate and securities law responses to the pandemic have varied

(2010) 16 Journal of Corporate Finance 53. See also Luc Renneboog and Peter G. Szilagyi, 'The Role of Shareholder Proposals in Corporate Governance' (2011) 17 Journal of Corporate Finance 167.

[72] Vicente Cuñat et al., 'The Vote is Cast: The Effect of Corporate Governance on Shareholder Value' (2012) 67 The Journal of Finance 1943.

[73] Julian Velasco, 'The Fundamental Rights of the Shareholder' (2006) 40 U.C. Davis Law Review 407.

[74] Randall S. Thomas, 'Improving Shareholder Monitoring of Corporate Management by Expanding Statutory Access to Information' (1996) 38 Arizona Law Review 331.

[75] Rafael La Porta et al., 'What Works in Securities Laws?' (2006) 61 The Journal of Finance 1.

[76] Troy A. Paredes, 'Blinded by the Light: Information Overload and its Consequences for Securities Regulation' (2003) 81 Washington University Law Quarterly 417.

[77] Lisa A. Fontenot, 'Public Company Virtual-Only Annual Meetings' (2018) 73 The Business Lawyer 35.

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from country to country around the globe, and have ranged from doing nothing to the wholesale adoption of virtual-only general meetings (though perhaps only temporarily). While it may be premature to draw any definitive conclusions in respect of the Covid-19 pandemic, we have taken this opportunity to reflect on the conventional approaches to shareholder voting and engagement in each jurisdiction, when facing challenges posed by this and similar once-in -a-century crises.

1.3.3 *Shareholder Voting and Engagement in Practice (Part III)*

In Part III, shareholder engagement is considered in practice. The third set of questions covered in this Part address shareholder voting and engagement in practice, using empirical methodology where appropriate and to the extent that data is readily accessible. The availability of the data determines whether these questions can be answered in a quantitative, qualitative or illustrative way.

1.3.3.1 Voting Modes and Turnout

Shareholders' turnout decisions are assumed to depend on a rational, costs and benefits calculation of voting.[78] Acquiring and analyzing firm-specific information in order to cast an informed vote is likely to account for the bulk of the costs involved, but other costs may also be important. Voting in person at the shareholders' meeting will probably cost more (in terms of travel and accommodation expenses) than voting electronically. Voting modes can therefore influence shareholders' decisions as to whether to vote. Contributors are, therefore, asked to consider how votes are cast; the type of voting mode (vote in person, by proxy, remote voting) available to shareholders; and whether technology-enabled virtual-only or hybrid meetings are permissible.

The conventional theory of shareholder rational passivity dictates that shareholders owning a tiny fraction of the company's shares are likely to be passive or to vote with their feet.[79] In other words, it is not economically justifiable for small investors to participate in the voting process. Recent empirical scholarship has suggested, however, that low (retail) shareholder turnout can have profound governance consequences. It can distort vote outcomes, limit shareholders' ability to initiate governance changes[80] and impair a firm's ability to amend corporate charters for the improvement of governance.[81] Calls have repeatedly been made to incentivize retail shareholders to cast votes,[82] and recommendations have been made to combat shareholder 'absenteeism'.[83] Contributors will therefore also consider who votes, how regularly retail (small)

[78] Konstantinos E. Zachariadis, Dragana Cvijanovic and Moqi Groen-Xu, 'Free-Riders and Underdogs: Participation in Corporate Voting' (2020) European Corporate Governance Institute – Finance Working Paper No. 649/2020 https://ssrn.com/abstract=2939744 accessed 1 May 2021.

[79] Alon Brav, Matthew D. Cain and Jonathon Zytnick, 'Retail Shareholder Participation in the Proxy Process: Monitoring, Engagement, and Voting' (2019) European Corporate Governance Institute – Finance Working Paper 637/2019 https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3387659 accessed 1 May 2021.

[80] Kobi Kastiel and Yaron Nili, 'In Search of the Absent Shareholders: A New Solution to Retail Investors' Apathy' (2016) 41 Delaware Journal of Corporate Law 55.

[81] Scott Hirst, 'Frozen Charters' (2017) 34 Yale Journal on Regulation 91.

[82] Jill E. Fisch, 'Standing Voting Instructions: Empowering the Excluded Retail Investor' (2018) 102 Minnesota Law Review 11.

[83] European Parliament, 'Rights and Obligations of Shareholders: National Regimes and Proposed Instruments at EU Level for Improving Legal Efficiency' (May 2012) www.europarl.europa.eu/thinktank/en/document.html?reference=IPOL-JURI_ET(2012)462463 accessed 1 May 2021.

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shareholders exercise their voting rights and how large the shareholder turnouts are at general meetings.

1.3.3.2 Voting Items and Outcomes

A jurisdiction's demarcation between shareholders and management powers can be empirically understood by examining the range of matters laid before shareholders' meetings for a vote. These matters can be mandated by a jurisdiction's corporate and securities rules and are therefore 'routine'. Board elections are a primary example. There can also be ad hoc matters that, insofar as law allows, shareholders decide to take into their own hands and have a say on. These matters can be wide-ranging and vary greatly across jurisdictions and at different times in the same jurisdiction. Contributors will therefore consider the type of mandatory and routine resolutions that shareholders vote on, the type of resolutions that are non-mandatory yet commonplace and the type of less regular or less common resolutions.

Previous research has shown that shareholder approval/dissent can be sensitive to resolution types[84] (and the proponent of the resolution, which is an issue to be addressed in Section 1.3.3.3). Some resolutions such as the listed company transacting with its controlling shareholder (or its close-knit associates) are more susceptible to conflicts of interest and therefore attract greater shareholder scrutiny. Shareholder dissent is likely to be high if the terms of the related-party transaction are perceived to be unfairly set. On the other hand, shareholder approval is likely to be higher for resolutions that are more routine and uncontroversial. Contributors are asked to consider, where jurisdiction-specific data is available, the types of resolution which are likely targets of activist shareholders, and the types which usually face little shareholder resistance.

1.3.3.3 Shareholder Proposals

As we have seen in Section 1.3.2.3, putting a shareholder proposal on the agenda is considered an important shareholder initiation right. Empirical evidence on the role of shareholder-initiated proposals in corporate governance is mixed, and moreover, highly jurisdiction-specific. Shareholder proposals have played a crucial role in the growth of shareholder activism in the USA, though their prevalence has showed a modest decline in recent years.[85] The practice of shareholders initiating proposals intervening the conduct of affairs in their investee companies has also gained some momentum around the globe, including in economies where concentrated ownership is the norm, such as in continental European countries,[86] Japan[87] and Hong Kong.[88] Contributors will address the issue of the prominence of shareholder-initiated proposals to the corporate governance landscape in general. Where jurisdiction-specific information is available, they will consider the typical topics of shareholder proposals (such as ESG); whether shareholder proposals often make it to the general meeting agenda; whether they usually receive the

[84] Renneboog and Peter Szilagyi (n. 55); Chao Xi, 'Shareholder Voting and Corporate Sustainability in China' in Beate Sjåfjell and Christopher Bruner (eds.) *Cambridge Handbook of Corporate Law, Corporate Governance and Sustainability* (Cambridge University Press 2019).

[85] Gibson, Dunn & Crutcher LLP, 'Shareholder Proposal Developments During the 2020 Proxy Season' www.gibsondunn.com/shareholder-proposal-developments-during-the-2020-proxy-season/ assessed 1 May 2021.

[86] Peter Cziraki, Luc Renneboog and Peter G. Szilagyi, 'Shareholder Activism through Proxy Proposals: The European Perspective' (2010) 16 European Financial Management 738. See also Renneboog and Szilagyi (n. 55).

[87] Tsung-ming Yeh, 'Large Shareholders, Shareholder Proposals, and Firm Performance: Evidence from Japan' (2014) 22 Corporate Governance: An International Review 312.

[88] Yu-Hsin Lin, 'When Activists Meet Controlling Shareholders in the Shadow of the Law: A Case Study of Hong Kong' (2019) 14 Asian Journal of Comparative Law 1.

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necessary shareholder support to pass; and how often shareholder proposals are associated with proxy fights.

1.3.3.4 Other Forms of Shareholder Voice

Shareholder voice can manifest in various forms that are enabled by a jurisdiction's economic structure, market conditions, historical and cultural conditions and, of course, the characteristics of its corporate sector. Private actions brought by shareholders to enforce their rights are of great importance in certain jurisdictions (such as the USA), but are much less relevant to many other jurisdictions.[89] Jurisdictions in which the securities markets are 'institutionalized' are more likely to witness institutional investors wielding their influence over invested companies via private, behind-the-scene engagement than jurisdictions with a relatively weak institutional presence in their stock markets. Similarly, proxy advisors might be powerful corporate governance players in some jurisdictions, but practically irrelevant in others. In some jurisdictional settings, pension funds have been able to effect striking corporate governance changes such as board diversity and managerial remuneration.[90] Publicly funded institutions or shareholders backed by or closely linked to the state have been able to force governance improvements in the listed sector in some jurisdictions, whereas in other jurisdictions such a role would be unthinkable.

Contributors will therefore consider the additional channels through which shareholders have made their voice heard. In particular, they will explore the importance of private, behind-the-scene engagement; how often such engagement is used; and whether there are any practical examples or anecdotal evidence related to the engagement types special to a particular jurisdiction.

1.3.3.5 Other Jurisdiction-Specific Aspects

Other aspects not already covered in the preceding sections may also be important. The contributors will therefore also address other jurisdiction-specific aspects of shareholder voting and engagement in practice.

1.4 BRIEF OUTLINE OF THE HANDBOOK

The rest of the Handbook consists of four Parts. Part I covers eight Asian jurisdictions, including China (Mainland) (Chapter 2), Hong Kong (Chapter 3), India (Chapter 4), Indonesia (Chapter 5), Japan (Chapter 6), Singapore (Chapter 7), South Korea (Chapter 8) and Taiwan (Chapter 9). Part II addresses three other important jurisdictions: Australia (Chapter 10), Canada (Chapter 11) and the United States (Chapter 12). Part III contains jurisdiction-specific studies on eight European economies: Denmark (Chapter 13), France (Chapter 14), Germany (Chapter 15), Greece (Chapter 16), Italy (Chapter 17), Norway (Chapter 18), the Netherlands (Chapter 19) and the United Kingdom (Chapter 20). Each of the chapters in Parts I, II and III focuses on one jurisdiction, guided by the general analytical framework and specific research questions as described above.

[89] John Armour et al., 'Private Enforcement of Corporate Law: An Empirical Comparison of the United Kingdom and the United States' (2009) 6 Journal of Empirical Legal Studies 687.

[90] David Webber, *The Rise of the Working Class Shareholder: Labor's Last Best Weapon* (Harvard University Press 2018).

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Part IV of the Handbook takes stock of the jurisdiction-based studies comprising the preceding Parts, and develops an evidence-based, reflective account of what the Handbook has to offer to advance the extant scholarship on shareholder voting and engagement from a comparative perspective. Chapters 21 and 22 approach our central research question, as laid out at the outset of this Introduction, by looking at how the law functions both in theory and in practice. Chapter 23 concludes the Handbook with discussions on the implications, both theoretical and policy-wise, of the Handbook to the enterprise of shareholder voting and engagement around the world.

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