CBR EXTENDED SHAREHOLDER PROTECTION INDEX

Centre for Business Research, University of Cambridge

by

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Part 1:
Introduction (Priya Lele and Mathias Siems)

This dataset has been developed as part of the 'Law, Finance and Development' project at the Centre for Business Research, University of Cambridge, UK.[1] A separate shareholder protection index comprising of 60 variables on a pilot basis for five countries coded the development of the law for a period of 35 years.[2] The present index consists of ten core variables which act as proxies for shareholder protection law in order to code the development of the law for a wider range of countries for a shorter period of 11 years, i.e. 1995-2005. The following guidelines were used in the process of coding. The choice of the ten variables is explained in more detail in two papers accompanying this dataset.[3]

1. Guidelines

The dataset draws on provisions of laws, relevant regulations or codes, and relevant court decisions applicable to or answering the description of each of the core variables set out below. Values were assigned to each individual variable between '0' and '1' for each of the last 11 years and expressedt in a tabular form.[4] The scores are expressed as a value between 0 and 1. Here, '0' would stand for no protection or worst protection offered and '1' would stand for the best or maximum protection offered with respect to the particular core variable.

a) Which areas of law to code

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

b) Mandatory as well as default rules

Except while coding the variables 4 and 9 (see 2 below), we took account not only mandatory law but also default rules. As far as default rules are concerned, we also considered the *corpo-*

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

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

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

[4] See the template contained at 3 below.

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

rate governance codes or takeover codes, if any, so long as, in the jurisdiction in question, these were considered to be at least as important as default rules set out in legislation.[6]

c) Non-uniform law and listing rules

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

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

d) Statutory and case law

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

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

e) Binary as well as non-binary coding

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

f) Explanations or references

We have included short explanations or at least references to the provisions of law or citations of court decisions on the basis of which we assigned values to each of the core variables and for each of the changes in these values over the last eleven years in the 'Explanation/Reference' coloumn provided in the template below.

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

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

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

g) Comments

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

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

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

[9] But see variable 10, below.

2. Core Variables

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[24] We have also given intermediate scores, e.g., 0.25 for a 33% hurdle and 0.66 for a 20% hurdle.

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

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

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

3. Template

Variable	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	Explanations/ References
1.Powers of the general meeting for de facto changes												
2. Agenda setting power												
3. Anticipation of share-holder decision facili-tated												
4. Prohibition of multiple voting rights (super vot-ing rights)												
5. Independent board members												
6. Feasibility of direc-tor's dismissal												
7.Private enforcement of directors duties (deriva-tive suit)												
8. Shareholder action against resolutions of the general meeting												
9. Mandatory bid												
10. Disclosure of major share ownership												
	1995	**1996**	**1997**	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**	**2004**	**2005**	

Comments (see 1 g, above)

Part 2:
Countries Coded

1. Argentina (Pablo Iglesias-Rodriguez)

The Argentine Companies Act 19.550/1972, enacted on 3 April 1972 is the primary source of law in this area. Decree 677/2001 on Transparency of capital markets, enacted on 25 May 2001, sought to increase transparency in capital markets and incorporated certain globally recognised corporate governance practices. Decree 677 has been further regulated by the National Securities Commission 400/02 and 401/02 regulations. In addition to these sources, the 1968/17811 Act on Public Bids and resolution 368/2001 concerning the rules of the National Securities Commission complete the framework of shareholders´ protection rules.

Variable	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	Explanations/ References
1.Powers of the general meeting for de facto changes	½	½	½	½	½	½	½	½	½	½	½	Article 72 of Decree 677/2001[27] establishes that, in listed companies, the ordinary meeting, aside from the matters mentioned in section 234 of Act 19550/1972[28] and amending regulations, shall decide on the disposition or encumbrance of all or a substantial part (no specific percentage is given) of the assets of the company when it is not carried out in the ordinary course of the company's business (for the coding it is considered that substantial means at least 50% of the company's assets). However, this possibility could also be considered as a competence of the general extraordinary meeting before 2001 according to article 235 of the 19550/1972 Act, which states that those items which are not competence of the general ordinary meeting are within the competence of the general extraordinary meeting. The majority requirements for adopting decisions are the same in both types of meetings according to articles 243 and 244 of Act 19550/1972 (however, there were no specific provisions on this matter before 2001).

[27] On Transparency and best practices in the capital markets.

[28] Companies Act.

2. Agenda setting power	½	½	½	½	½	½	¾	¾	¾	¾	¾	Article 71 of Act 17811/1968[29], incorporated by article 42 of the annex of Decree 677/2001, establishes that up to five days before the general meeting, shareholders with at least 2% of the share capital with voting rights in companies which make a public offering of their shares can send commentaries or proposals to be introduced in the meeting. Before this date there were no dispositions concerning this right. In addition to this, according to article 236 of Act 19550/1972, shareholders with at least 5% of the share capital, or a lower percentage, if established by the articles of association, could call a general meeting, specifying the items to be discussed on it.
3. Anticipation of shareholder decision facilitated	0	0	0	0	0	0	0	0	0	0	0	According to article 239 of Act 19550/1972, shareholders can be represented in general meetings. The representatives cannot be directors, members of the supervision committee, managers or any employees of the firm. The power of representation can have the form of a private document with a certified signature, unless the articles of association establish a different form. No mention of proxy solicitation or two way proxy form is made. However, article 65 of Decree 677/2001 establishes that the articles of association can provide for the possibility of general meetings at a distance; in these cases the National Securities Commission must regulate the means and conditions in order to guarantee the security and transparency of such meetings. It is understood that for these types of meetings, distance voting would be allowed, as the meeting itself would require it. However, neither General resolution 400/2002 nor General Resolution 401/2002[30] contain any mention of this kind of general meetings.

[29] On Public Bids

[30] Both regulating the Decree 677/2001.

4. Prohibition of multiple voting rights (super voting rights)	0	0	0	0	0	0	0	0	0	0	0	According to the article 216 of Act 19550/1972, the articles of association can create shares with up to 5 votes per ordinary share. This privilege is not compatible with other economic privileges. It is not possible to create shares with multiple voting rights after the company has been authorized to make a public offering of its shares.
5. Independent board members	0	0	0	0	0	0	0	0.1	0.1	0.1	0.1	The only requirement concerning independence is related to the members of the audit committee. This type of committee must be adopted in any company which makes a public offer of its shares, and must have at least three members who must also be directors of the company. However, the majority of the members of this committee must be independent according to the definition of independence established by the National Securities Commission. This definition is given in article 4 of the resolution 400/2002 and establishes that a member of the board of directors is not independent when one or more of the following circumstances are present: 1. She is dependent of any shareholder with a substantial ownership in the company or member of the board in any other company in which directly or indirectly, these shareholders have a substantial ownership or influence. 2. She is linked to the company because of a relation of dependence or has had this type of relation during the last three years. 3. She has a professional relation or belongs to a company or professional association with professional relations or remunerated (for an activity different from that related to the membership to the board) by the company or the shareholders who directly or indirectly have in this company a substantial ownership or influence. 4. She directly or indirectly has a substantial ownership in the firm or in another firm which has a substantial ownership or influence on it. 5. She directly or indirectly sells or provides goods or services to the company or the shareholders with a substantial influence or ownership on it, for a sum substantially higher that that related to the exercise of the functions as a member of the board.

												6. She is married or relative up to the fourth degree of consanguinity or the second of affinity of persons that, in case of being members of the board, would not be independent. In all these cases, the concept, ´substantial ownership´ means at least 35% of the share capital or a smaller percentage when, as a result of the types of shares they owe, the shareholders in question can nominate one or more directors, or when they have, with other shareholders, made agreements on the management or governance of the company or its controller. The concept 'substantial influence' is be defined according to relevant accountanting rules. Due to the fact that the independence requirement only applies to the audit committee, a value of 0.1 has been chosen here.
6. Feasibility of director's dismissal	½	½	½	½	½	½	½	½	½	½	½	According to Article 256 of Act 19550/1972, the nomination of a director is revocable by the general meeting (the general ordinary meeting, according to article 235 of the same Act). The articles of association cannot limit the revocability of the nomination of directors. Thus, it can be inferred that neither serious cause nor supermajority requirements are required for the dismissal of a director. In these cases the shareholders have to wait until the general meeting takes place (unless the general meeting is called by shareholders with at least 5% of the share capital (article 236 of the same Act) at which point they can proceed tothe dismissal of the directors.
7.Private enforcement of directors duties (derivative suit)	½	½	½	½	½	½	½	½	½	½	½	Article 276 of Act 19550/1972 establishes that the bringing of a claim against the directors of the company lies within the competence of the company where this has been previously agreed by the general meeting. However shareholders with at least 5% of the share capital can start a derivative suit against the directors for the breach of their duties. According to article 75 of the 677/2001 Decree, a derivative claim may also be made by individual shareholders (under the provisions of article 216 of Act 19550/1972 this means those owning at least 5% of the share capital) against the directors, on the company's behalf.

<table>
<tr><td>8. Shareholder action against resolutions of the general meeting</td><td>1</td><td>1</td><td>1</td><td>1</td><td>1</td><td>1</td><td>1</td><td>1</td><td>1</td><td>1</td><td>1</td><td>Article 251 of Act 19550/1972 states that any resolution of the general meeting which is contrary to law or regulations, or to the articles of association, can be the object of a judicial claim (calling for its nullity) by the shareholders who did not vote for it at the general meeting (except in the case of a resolution contrary to law in which case the vote can be annulled) and by those shareholders who were not present at the general meeting.</td></tr>
<tr><td>9. Mandatory bid</td><td>0</td><td>0</td><td>0</td><td>0</td><td>0</td><td>0</td><td>0</td><td>½</td><td>½</td><td>½</td><td>½</td><td>The thresholds for a mandatory bid are set out in regulation 401/2002 (following the general mandate established in article 23 of Decree 677/2001) and are the following:
<table>
<tr><td>Target ownership %</td><td>Mandatory bid</td></tr>
<tr><td>≥35% of the shares with voting rights and/or the votes of the company (1)</td><td>≥50% of the share capital with voting rights</td></tr>
<tr><td>≥51 of the shares with voting rights and/or the votes of the company</td><td>100% of the share capital with voting rights</td></tr>
</table>
1 When the shareholder already has an ownership stake equal or higher than 35% of the share capital with voting rights and/or voting rights, but below 51%, and aims to increase the % by at least 6% during a period of 12 months, a bid must be made for at least the 10% of the share capital with voting rights.</td></tr>
<tr><td>10. Disclosure of major share ownership</td><td>0</td><td>0</td><td>¾</td><td>¾</td><td>¾</td><td>¾</td><td>¾</td><td>¾</td><td>¾</td><td>¾</td><td>¾</td><td>Article 12 of Book 6 of resolution 368/2001[31] establishes a complex rule concerning the disclosure of information which can be summarised thus: acquiring (directly or indirectly) ownership of 5% or any of its multipliers must be communicated to the National Securities Commission. Aticle 10, book 7 of the former resolution 290/1997[32] reflects the same percentage (without specifying the multipliers). No requirements on this matter were established before this date</td></tr>
</table>

[31] On the rules of the National Securities Commission

[32] On the rules of the National Securities Commission.

2. Brazil (Viviana Mollica)

Variable	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	Explanations/ References
1.Powers of the general meeting for de facto changes	0	0	0	0	0	0	0	0	0	0	0	Concerning the selling of relevant assets of corporations, duties of loyalty and rules on misuse of powers are set out in articles 153 to 159 of Law 6404/76 and article 1 of CVM's Instruction 31/84. As a general rule, managers must act with due diligence and in the interest of the company and relevant disclosure – brief description of the operation and its effects on the company – must be made. More recently, CVM's Instruction 323/2000 considered abuse of controlling power over the selling of assets, depositing them as guarantee and transferring corporate activities, if such operations result in advantages to the controlling shareholder. The general meeting is empowered to decide all matters relating to corporate purposes and to pass such resolutions as it deems necessary for the protection and development of the corporation, esp. those concerning fundamental changes. 'Fundamental corporate changes' may include: amendments to statutes or governing documents of the company; the authorization of additional shares; and extraordinary transactions that in effect result in the sale of the company (part III.1 CVM Recommendation of Corporate governance 2002).
2. Agenda setting power	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.75	0.75	0.75	0.75	Article 123 of the Corporation Law determines that it is up to the administrative council or to the directors to summon a general meeting and to propose issues for discussion. However, under special circumstances, listed below, there are exceptions: - following the law on by-law provisions, a general meeting may be called by any shareholder whenever the officers delay the call for more than sixty days;

												- shareholders representing at least five per cent of the corporation's capital may request to the corporation officers that a general meeting, indicating the matters to be discussed, take place; should the officers not comply with the request within eight days, the above mentioned shareholders may call the general meeting (directly modified in 1997 by law nº 9.457); - shareholders representing at least five per cent of the voting capital, or five per cent of nonvoting shareholders, may call a general meeting whenever the corporation officers do not, within eight days, comply with the request that a meeting be called in order to appoint a statutory audit committee. (new wording in the 1997 law). CMV Recommendation on corporate governance 2002 at art. 1 states that: 'Regardless of the percentage required by law for calling shareholder meetings, the board should include in the agenda relevant and timely issues suggested by minority shareholders.' This is still a 'moral suasion' type of code, but in the recitals to the code there is a reference to an intention to make it a 'comply or explain' code.
3. Anticipation of shareholder decision facilitated	0	0	0	0	0	0	0	0	0	0	0	Personal attendance by the shareholder or a proxy is required by law. Shareholders must vote in person, duly producing proof of shareholder status, or be represented by a proxy, who may be a shareholder, a corporation officer, or a lawyer; in a publicly held corporation, the proxy may also be a financial institution. The power of attorney must date back no more than one year. Legal representatives of shareholders are also entitled to vote at general meetings, while telephone and electronic voting are not permitted. Art. 126
4. Prohibition of multiple voting rights (super voting rights)	1	1	1	1	1	1	1	1	1	1	1	Article 110 § 2 'Lei de SAs' prohibits the attribution of plural voting right to any class shares.
5. Independent board members	0	0	0	0	0.5	0.5	0.5	0.5	0.5	0.5	0.5	The code of ethics for Board Members issued by IBGC (the Brazilian Institute of Corporate Governance) in 1999 and revised in 2001 states specifically that board members must be independent. The requirements of independence are the following:

												- not to have been an employee of the company or one of its controlled companies; - not to have any relationship with the company; - not be providing any kind of product or services to the company or being an employee of a company which provides such products or services; - not to be a relative to any director, manager or controller of the company; - not to receive any other payment of the company other than the compensation for his services as a board member. In 2001 a further paragraph was added: (Article 147) § 3. Directors shall have unblemished reputations and are ineligible for election, unless an applicable waiver is granted by the general meeting, in the following cases: I – having a position in a competing company, especially on a management board or advisory or finance committees; and II – conflicting interests with the company.[33]
6. Feasibility of director's dismissal	½	½	½	½	½	½	½	½	½	½	½	Art. 122. (as modified by 2001 law) inciso II confers on the general meeting the power to dismiss at any time the directors of the company.
7.Private enforcement of directors duties (derivative suit)	½	½	½	½	½	½	½	½	½	½	½	According to Article 159 of Law 6404, by a resolution passed in a general meeting, the corporation may bring an action for civil liability against any officer for losses caused to the corporation's property. This resolution may be passed at an annual general meeting and, if included in the agenda or arising directly out of any matter included therein, at an extraordinary general meeting. In this case, the officer or officers against whom the legal action is to be filed shall be disqualified and replaced at the same general meeting. Should the general meeting decide not to institute proceedings, they may be instituted by shareholders representing at least five per cent of the capital. Should such proceedings not be instituted within three months from the date of the resolution of the general meeting, any shareholder may bring the action.

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

												In this case, any damages recovered by proceedings instituted by a shareholder shall be transferred to the corporation, but the corporation shall reimburse him for all expenses incurred, including monetary adjustment and interest on his expenditure, up to the limit of such damages. The action described above shall not preclude any action available to any shareholder or third party directly harmed by the acts of the officer. Should such action constitute a material event according to CVM's Instruction 31/84, it must be disclosed to shareholders through the newspaper.
8. Shareholder action against resolutions of the general meeting	½	½	½	½	½	½	½	½	½	½	½	Shareholders who believe that their rights have been violated may file a formal complaint with the CVM, who will take action such as issue orders to a supervised entity or initiate an administrative inquiry. However, CVM currently may not initiate a legal action in the name of the shareholder, who in their turn may initiate such action directly at any time. Art. 117 states that the majority shareholders are held responsible for damages caused through 'abuse of powers' behaviours (listed in § 1). According to Art. 115, the shareholder needs to exercise his voting right in the interest of the company. It will be considered an abusive exercise of a voting power for a vote to be cast with the intention to cause damage to the company or other shareholder, or to obtain, either for himself or others, some unjust advantages that may result in a damage caused to the company or another shareholder. This was introduced in Lei nº 10.303, de 31.10.2001. Paragraph § 4 stated that the resolution taken with the vote of a shareholder who exercises it as an abuse of power is voidable and the shareholder will be held responsible for it and will have to transfer the advantages received to the company.

9. Mandatory bid	1	1	0	0	½	½	1	1	1	1	1	Prior to the latest partial reform of the Corporation Law, introduced by Law No. 9457/97, the acquirer of a controlling stake in public companies was required by article 254 to make a tender offer for the purchasing of voting shares owned by minority shareholders, at the same price and on the same conditions as those offered to the selling controlling shareholder. The whole operation was subject to CVM approval. Under the new system, designed to facilitate the privatization process and in force since May 1997, tender offers were no longer necessary. Then under CVM Instruction 299/1999 mandatory offer rules were reinstated: in particular, mandatory open market tenders are introduced for any increase of 10% or higher in the same class. New art. 354 A introduced by Law 10303/01 reestablishes in corporate law the mandatory bid rule. It does not refer to any particular percentage, only to the 'acquisition of control' of the company. (New Article 4 § 6 provides that if the majority shareholder, or the controlling corporation, acquires shares of a publicly-held corporation under its control, and these shares directly or indirectly increase their interest in a certain class of shares in a way that hinders the market liquidity of the remaining shares, they shall be required to publicly offer to purchase all shares remaining in the market.) The Tag Along right grants to minority shareholders of publicly-held companies the right to be bought out at 80% of the purchase price offered to the controlling shareholder.
10. Disclosure of major share ownership	¾	¾	¾	¾	¾	¾	¾	¾	¾	¾	¾	CVM Instruction 202/93 rules that publicly held companies must provide and update the CVM with several data through different forms. The 'IAN' (annual information) form, which must be filed by all publicly held companies with the CVM annually, provides many types of information, including those on beneficial ownership of every shareholder holding more than 5% of the voting capital of a company. Law 9457/1997 abolishes existing requirements to disclose the price of sales of 5% blocks of voting stock or more, including control sales. CVM Instruction 299, first published and enacted on February 9, 1999 reinstates pre-1997 rules on price disclosure, and extends them to apply to sales of 5% (or higher) blocks of any class of shares.

Comments:
2001 law changes: Shareholders' representing 15% minimum of the voting shares are entitled to elect one Board member. Shareholders with non-voting shares, representing 10% minimum of the issued stock are also entitled to appoint one Board member. Regardless of the number of members in the Board, the controlling shareholder will be entitled to elect the majority of Board members.
Mandatory disclosure is determined by: CVM Instruction 202/93, which covers initial registration requirements and periodic reporting; Instruction 31/84, which covers disclosure of material information; and Instructions 69/87 and 299/99 (updated by instructions 35/02 and 36/02 respectively), which cover disclosures regarding the acquisition of blocks of shares. The CVM regularly publishes a list of major violations of the organization's disclosure requirements.
The new Law makes specific reference to the possibility of solution of conflicts among shareholders or between the company and any shareholder by means of arbitration.
Brazilian corporate law already provides a mechanism for cumulative voting (multiple voting) for minority voting shareholders who have 10% of the voting capital of the company. In fact, Art. 141 § 1 states that whether or not provided for in the bylaws, when electing the members of the board, shareholders representing at least one-tenth of the voting capital may request that a multiple voting procedure be adopted to entitle each share to as many votes as there are board members, and to give each shareholder the right to vote cumulatively for only one candidate or to distribute his votes among several candidates

3. Canada (Priya Lele)[34]

Variable	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	Explanations/ References
1.Powers of the general meeting for de facto changes	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	Canada Business Corporations Act (CBCA), s. 189(3): A sale, lease or exchange of all or substantially all the property of a corporation other than in the ordinary course of business of the corporation requires the approval of the shareholders in a general meeting by a special resolution. There is some jurisprudence on the issue of what constitutes 'all or substantially all' the property of the corporation. The issue does not appear susceptible to precise mathematical calculation: Wood v. MNR (1987) 87D.T.C. 312 (T.C.C.). Both the quality as well as quantity of the property in question must be examined: Warden Drilling Co. v. MNR (1974) 74 D.T.C. 6164 (F.C.T.D.): affd 78 D.T.C. 6202 (F.C.A.). It seems that sale of as little as one third of the company's assets might trigger the operation of s.189(3): 85956 Holdings, supra; Campbell v. Vose (1975) 515 F. 2nd 256. Such extreme cases occur when the balance of the assets are monetary including cash, promissory notes or an investment portfolio. On the other hand where a corporation carries on one or more businesses, the sale of one such business would not cause the provision to become operative, provided the corporation retains business assets: Olympia and York Enterprises Ltd. v. Hiram Walker Resources Ltd. (1986) 59 O.R. (2d) 254; Martin v. F.B. Bourgault Industries Air Seeder Division Ltd. (1987) 45 D.L.R. (4th) 296 (Sask.).[See Company Law of Canada, Fraser & Stewart, Sixth Edition, 1993: by – Harry Sutherland, Q.C. Carswell Thomson Professional Publishing – pg.574]

[34] Thanks to Brian Cheffins for helpful comments

2.Agenda setting power	1	1	1	1	1	1	1	1	1	1	1	CBCA, S. 137: any shareholder entitled to vote at an annual meeting may submit to the corporation notice of any matter he proposes to raise at the meeting
3.Anticipation of shareholder decision facilitated	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	CBCA, ss. 149-150: in case of corporations with 50 or more members, management is required to send a two-way proxy form that could be accompanied by a solicitation by or on behalf of the management From 2001: Amended ss.149-150 and s.141: Although the heading for section 149 is 'mandatory solicitation', it only requires management to send a two-way proxy form that could be accompanied by a solicitation by or on behalf of the management. However, in addition to two-way proxy form with or without solicitation by or on behalf management, management may facilitate voting entirely by means of a telephonic, electronic or other communication facility if they make available such a communication facility (see s.141) See also: Ontario Securities Act (OSA), s.85; and Alberta Securities Act (ASA), s.127; British Columbia Securities Act (BCSA), s.117 (1) and Québec Securities Act (QSA), s.81
4. Prohibition of multiple voting rights (super voting rights)	0	0	0	0	0	0	0	0	0	0	0	CBCA, s. 24: it is possible to have multiple voting rights
5. Independent board members	1	1	1	1	1	1	1	1	1	1	1	CBCA, s.102 (2) – corporations that have distributed shares to the public must have a minimum of three directors at least two of whom are 'outside' (i.e. not officers or employees) directors. As the largest Canadian public companies are listed on the Toronto Stock Exchange (TSX), we have taken into account corporate governance disclosure requirements of the TSE for this variable.

												In 1994 the Toronto Stock Exchange (TSE) published: 'Where Were The Directors? Guidelines for Improved Corporate Governance' [(Dec. 1994) the 'Dey Report']. The TSE introduced governance disclosure requirements to implement the Dey Report adopting the Committee's 14 recommendations as best practice guidelines for listed companies in 1995. One of these, provide that board of directors of every corporation should be constituted with a majority of individuals who qualify as unrelated directors [Guidelines Sec. 474 (2)].
6. Feasibility of director's dismissal	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	CBCA, S. 109: Except in cases where cumulative voting is concerned, the shareholders of a corporation may, by ordinary resolution at a special meeting, remove any director/s from office unless that director is elected on behalf of any class or series of shares in which case only the shareholders of that class of shares may so vote to remove that director. In case of directors appointed by cumulative voting: a director may be removed from office only if the number of votes cast in favour of the director's removal is greater than the product of the number of directors required by the articles and the number of votes cast against the motion [see s.107 (g)]. Whilst the CBCA does not specifically contain a provision which states that it does not deprive any director dismissed under the Act from claiming any compensation or damages payable to him in respect of the termination of his appointment as director or of any appointment terminating with that as director. Dismissal as a director does not affect the rights of the same individual under a separate managerial services contract. As the dismissed director will inevitably also be dismissed as an executive; when dismissed without cause, he/she can rely on this contract to claim compensation/damages.

7.Private enforcement of directors duties (derivative suit)	1	1	1	1	1	1	1	1	1	1	1	CBCA, ss. 239-242: derivative suits u/s.239 and 'oppression remedy' u/s. 241 The CBCA s.239 facilitates to a certain extent the bringing of a derivative action, it requires 'complainants' who wish to bring such action to apply to court for leave to bring the action. The moving party must establish three elements, namely, notice, good faith and that it is in the interest of the corporation. Whislt s.239 does facilitates to a certain extent the bringing of a derivative action, the cost rules undermine its significance and use. s.239 requires 'complainants' who wish to bring such action to apply to court for leave to bring the action. The moving party must establish three elements, namely, notice, good faith and that it is in the interest of the corporation.. In addition to derivative action u/s.239, the 'oppression remedy' available under s. 241 offers a further opportunity to enforce directors' duties – hence the score. Under s.241, remedy is available where, any act or omission of the corporation or the business or affairs of the corporation are or have been carried on or conducted in a manner, or the powers of the directors of the corporation are or have been exercised in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer. Directors and officers can be held personally liable for corporate oppression. Their liability in this regard does not depend on the breach of a specific statutory duty or on a common law tort but is substantially broader.: Budd v. Gentra Inc. (1998), 43 B.L.R. (2d) 27 (Ont. C.A.) the Ontario court of appeal's review of the case law in this case reveals following situations in which directors may be held personally liable:

												1. where directors obtain a personal financial benefit from their conduct: Budd v. Gentra Inc., Downdown Eatery (1993)Ltd. V. Ontario (2001) 54 O.R. (3d) 161, leave to appeal refused (2002), 289 N.R. 195 (note) (S.C.C.) 2. where directors have increased their control of the corporation by the oppressive conduct: e.g. Gottlieb v. Adam (1994), 21 O.R. (3d) 248 (Ont. Gen. Div.) 3. where directors have breached a personal duty they have as directors: e.g. Canada (Director appointed under s.253 of CBCA) v. Royal Trustco Ltd. (1984), 6 D.L.R. (4th) 682 (Ont. CA), affirmed [1986] 2 S.C.R. 537 (S.C.C.) 4. where directors have misused a corporate power: Gottlieb v. Adam (1994), 21 O.R. (3d) 248 (Ont. Gen. Div.) 5. where a remedy against the corporation would prejudice other security holders: Gottlieb v. Adam (1994), 21 O.R. (3d) 248 (Ont. Gen. Div.), Budd v. Gentra Inc.
8. Shareholder action against resolutions of the general meeting	1	1	1	1	1	1	1	1	1	1	1	CBCA, s. 241: for oppression remedy and s.190 for dissent and appraisal rights The oppression remedy available under s. 241 is broad and flexible and is available to 'a complainant' [238 (a) security holder] where, any act or omission of the corporation or the business or affairs of the corporation are or have been carried on or conducted in a manner, or the powers of the directors of the corporation are or have been exercised in a manner that is oppressive or unfairly prejudicial to or that unfairly disregards the interests of any security holder, creditor, director or officer.

												Scope of corporate conduct subject to review under the oppression remedy is wide, and is not restricted to the wrongdoing of management. Sparliong v. Javelin International Ltd. (No. 1), [1986] R.J.Q. 1073 (Que. S.C.) at p.1077. it has been held that the enumerated heads of corporate conduct "are to be regarded as mutually exclusive, each applying as well to isolated acts as to a continuing course of conduct". Miller v. F. Mendel Holdings Ltd. (1984), 26 B.L.R. 85 (Sask. Q.B.) at p.99; Wark v. Kozicki (1997), 153 Sask. R. 127 (Q.B.) at pp.132-133. Sahota v. Basra (1991) 45 B.L.R. (2d) 143 (Ont. Gen. Div.) specified some of the leading propositions in relation to the 'oppression remedy' as follows: 1. One of the goals is to protect the reasonable expectation of shareholders; 2. When dealing with a closely held corporation, the court may consider the relationship between their shareholders and not simple their legal rights as such; 3. It is not necessary for the applicant to establish there is an element of bad faith present in the alleged misconduct in order to succeed; 4. It is sufficient to establish that the interests of the complainant have been unfairly disregarded or prejudiced; 5. The burden of proof concerning unfairly disregarded or prejudiced is less rigorous than the burden of proof where oppression is claimed. [see Butterworths Shareholder Remedies in Canada, Dennis H. Peterson: §18.72, §18.73] s.190 gives shareholders right to dissent from certain transactions and to demand a fair value for their shares. 190 (1) provides that the dissent and appraisal are subject to the right to bring an op-

												pression application u s.241. 193 (1) provides that a dissenting shareholder has the right to be paid fair value 'in addition to any other right the shareholder may have'.
9.Mandatory public bid	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	Until 2000: The federal act, CBCA as well as the securities legislations of the provinces both contained provisions regulating take-over bids. CBCA, ss. 194-196: Trigger: 10%:, but a take-over bid could be for all (s.195) or less than all of the shares of any class (s.196) and accordingly either sections 195 or 196 would apply for the procedure and details. Under the provincial securities legislation: Trigger: 20%, but the bid could be made for less than all of the class of securities subject to the bid, see e.g. OSA, s.89(1) read with s.95. From 2001, changes brought about by Bill S-11: Amendments to the CBCA that came into force in November 2001 eliminated regulation of take-over bids of federal corporations under that statute. Therefore now regulation of take-over bids in Canada is only under the provincial securities legislations.
10.Disclosure of major share ownership	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	10%: Early warning disclosure: any person acquiring control over 10% of securities of a class of voting or equity securities must issue and file a press release identifying the person and the extent of their control over the voting securities, see O.S.A. s. 101 [See also A.S.A. s.141; B.C.S.A. s.111; M.S.A. s. 93; Nfld.S.A. s. 102; N.S.S.A. s. 107; Q.S.A. s. 147.11; S.S.A. s.110] Until 2000 (i.e. before the amendments to CBCA in November 2001), the CBCA s.194 also contained similar provision.

Comments:

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

4. Chile (Pablo Iglesias-Rodriguez)

The main source for evaluating minority shareholder protection in Chile is the 18046/1981 Act on Limited Liability Companies which regulates most of the analyzed points. The 18045/1981 Act on Stock Markets will also be considered. Presently, there are no Corporate Governance Codes in Chile; however, the 2001 Draft Code will be mentioned.

Variable	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	Explanations/ References
1.Powers of the general meeting for de facto changes	0	0	0	0	0	0	1	1	1	1	1	According to article 57.4 of Act 18046/1981,[35] ininserted in 2001 by article 5.2 of Act 19769/2001[36] (with effect from 2002), the extraordinary general meeting has the power to take decisions concerning the selling of the company's debts in the terms stated in article 67.9 of the same Act, or the selling of at least the 50% of its credits. Article 67.9 of the same Act requires a vote of 2/3 of all the issued shares with voting rights in the case of decisions of the extraordinary general meeting concerning the sale, or a business plan involving the sale, of 50% or more of the company assets, including or not sums owed to it. A single 'selling operation' is one involving one or more different acts relating to the company assets during a period of 12 months. Before the 2001 amendment, the law required this majority for the selling of all the assets of the company.
2. Agenda setting power	¼	¼	¼	¼	¼	¼	¼	¼	¼	¼	¼	The current Law does not contemplate this possibility for minority shareholders. At presnet, the Draft Project of Reform of the Capital Markets reflects the possibility of including an article 51 bis in Act 18046/1981 (amended the same year by DO 31.10.1981) according to which shareholders of public companies representing at least 1% of the issued shares with voting rights can introduce commentaries, make proposals related to the business of the firm, or make motions in relation to subjects of discussion in the general meeting. Article 58.3 of Act 18046/1981 establishes that the board of directors must call a general meeting when this is required by shareholders with at least 10% of the shares with voting rights (they must also indicate the items to be discussed in the general meeting).

[35] Limited Liability Companies Act

[36] Act on the Flexibilization of Mutual Funds and Insurance Firms, creation of the General Administration of Funds, facilitation of the bank internationalization and perfectioning of the Companies Act and Investment Funds

3. Anticipation of shareholder decision facilitated	0	0	0	0	0	0	0	0	0	0	0	Article 64 of Act 18046/1981 (amended in the same year by DO 31.10.1981) states that shareholders can be represented in the general meeting by another person, even if she is not a shareholder. This power of representation must be conferred by written means and for all the shares the represented shareholder owns. It was laid down that a regulation developing the content of Act 18046/1981 would specify the characteristics of the document conferring the representation. In effect, article 63 of Regulation 587/1982 Regulation[37] of the 18046/1981 Act establishes these characteristics, but no mention of a two-way voting form or to the fact that this must be provided by the company is made. At present, the Draft Project on the Reform of the Capital Markets, under discussion, proposes the introduction of an article 59 ter, accordingly to which companies, additionally and complementarily to their ordinary voting system, can also have remote voting systems, if they are simultaneous to ordinary voting and properly guarantee the fidelity, inalterability and confidentiality of the exercise of voting rights; they must also be properly computed.
4. Prohibition of multiple voting rights (super voting rights)	1	1	1	1	1	1	1	1	1	1	1	Article 21 of Act 18046/1981, by amendment, prohibits the creation of shares with multiple voting rights. According to article 1 of the Transitory dispositions of Act 18046/1981, companies in existence at the time of the publication of this Act must make their articles of association compliant with the new regulation in the first amendment they make concerning on them, or not later than within 180 days following the publication of the Act in the Official Bulletin. So, it may be understood that after those 180 days, firms with multiple voting rights must have adapted their internal rules to the new regulation, and thus, no shares with multiple voting rights may exist from 1982 onwards.

[37] Regulation of the 18046/1981 Limited Liability Companies Act

5. Independent board members	0	0	0	0	0	0	0	0	0	0	0	The only reference in the Law concerning the independence of the directors is made in article 50.bis of Act 18046/1981 introduced by article 2.14 of the 19705/2000 Act,[38] and refers not to the board but to the committee of directors, which must be established in each public limited company with a share capital above a given percentage. The majority of the members of this committee[39]must be independent of the controllomg shareholder. At present, according to the same article, it is considered that a director is independent when, if not taking into consideration the votes of the major controlling shareholder or the persons related to her, the director would have equally well have been nominated. In the case there are not enough independent directors to constitute this committee, the non independent directors may be in the majority. Aside from this provision, the draft Code of Best Corporate Practice[40], recommendation number 13, recommends that according to the number of members of the board and the legal rules, some committees should be created in order to help the board of directors to develop various tasks. The nominating directors should try to ensure that the majority of the members of these committees are independent.
6. Feasibility of director's dismissal	½	½	½	½	½	½	½	½	½	½	½	Article 38 of Act 18046/1981 establishes that all the members of the board of directors can be dismissed by decision of the general ordinary or extraordinary meeting; it is not possible to dismiss one or some of the directors only. The nomination or dismissal of directors is a matter of the general meeting as stated in article 56.3 of Act 18046/1981; thus, agreements related to this issue must be adopted by absolute majority of the shares participating in the meeting or represented in it with voting rights, according to the majority requirements of article 61.1 of Act 18046/1981. Even if there are no special requirements for dismissal, the fact that this must affect all the directors explains the attributed value 0.5.

[38] Act on Public Bids and corporate governance regimes.

[39] Which is in charge of different tasks, such as advice concerning the retribution of the directors.

[40] Draft Code, under discussion since 2001.

7.Private enforcement of directors duties (derivative suit)	0	0	0	0	0	½	½	½	½	½	½	Article 133 bis of Act 18046/1981, introduced by article 2.21 of Act 19705/2000, established that any depletion of the company's assets as a consequence of the infringement of that Act, related regulations, the articles of association or the rules established by the National Securities Commission, confers upon to any shareholder or group of shareholders, representing at least a 5% of the issued shares, the right to start a derivative suit in the name and benefit of the company. Before 2000, article 133 of Act 18046/1981 just referred to the liabilitiy of persons not fulfilling the requirements of Act 18046/1981 Act, related regulations, the company's articles of association or the rules established by the National Securities Commission, without specifying how a claim could be brought.
8. Shareholder action against resolutions of the general meeting	0	0	0	0	0	0	0	0	0	0	0	No rules concerning this right exist. The law just mentions certain rights of shareholders when, for example, they do not agree with resolutions of the general meeting (see article 69 of Act 18046/1981). Apart from this, article 133 of Act 18046/1981 just referred to the liabilitiy of persons who do not fulfill with the 18046/1981 Act, its related regulations, the articles of association of the company, or the rules established by the National Securities Commission. This could also include the general meeting itself when it adopts a resolution against one of these rules. However, no particular causes of action for a shareholder aiming to file a claim against a resolution of the general meeting are set out.
9. Mandatory bid	0	0	0	0	0	½	½	½	½	½	½	If as a consequence of an acquisition by which any person reaches or exceeds 2/3 of the of the issued shares with voting rights of a company which makes a public offering of their shares, she has 30 days after the bid (taking this day into account) to make an offer for the rest of the shares. This precept (article 69 ter) has been inserted into Act 18046/1981 Act in 2000, by Act 19705/2000 Act.

10. Disclosure of major share ownership	½	½	½	½	½	½	½	½	½	½	½	Article 12 of Act 18045/1981[41] establishes that persons who directly, or indirectly, by means of other physical or legal person, own at least the 10% of the share capital of a firm whose shares are registered on the Stock Register, or who as a result of any acquisition reach that percentage, along with the directors, liquidators, main managers and CEO of these companies, independently of the number of shares they own, must inform the National Securities Commission and to various Chile Stock Exchanges in which the shares are traded, of any direct or indirect buying or selling they do in relation to the company's shares. Additionally the major shareholders must indicate if the purpose of these acquisitions is the control of the firm or just a financial investment (this last paragraph was introduced by Act 19705/2000 Act, article 1.4.c.). Article 54 of Act 18045/1981, by an amendment introduced by article 7.a of Act 19075/2000, adds that any person who directly or indirectly aims to obtain control of the company must make a public disclosure of this.
	1995	**1996**	**1997**	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**	**2004**	**2005**	

[41] Stock Markets Act

5. China (Mathias Siems)[42]

Variable	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	Explanations/ References
1.Powers of the general meeting for de facto changes	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	Company Law 1993, art. 102(no.10): power of the general meeting to decide about mergers, divisions, dissolution, liquidation, and "other matters". The latter may cover "de facto changes". It has, however, not been clarified what exactly is required. Since 2004 there are also the Minority Shareholder Protection rules which require that "all relevant issues that have an important bearing on the interests of minority shareholders require tradable shareholder approval" (see Chao Xi, Institutional Shareholder Activism in China: Law and Practice, 17 *I.C.C.L.R*. 251 at 258 (2006)).
2. Agenda setting power	0.25	0.25	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	Only in the Company Law 2006, art. 103(2) (not coded here) was there introduced a general right to put an item on the agenda. Previously this was only the case for listed companies: Mandatory Provisions in the Articles of Associations for Companies Listed Overseas of 27 August 1994, art. 54 (not coded); Guidelines to Articles of Associations of Companies Limited by Shares (Guidelines on Memoranda of Associations in Listed Corporations) of 06 December 1997, art. 57: 5 % Company Law 1993, art. 104(no.3): 10 % right to call an extraordinary general meeting
3. Anticipation of shareholder decision facilitated	0	0	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	Proxy voting but not postal voting is possible (Company Law, art. 108; Mandatory Articles 1994, art.59; Mandatory Articles 1997, art. 48; Corporate Governance Code 2001, art. 9, 10). Companies do not have to provide proxy solicitation. If they do so, Mandatory Articles 1994, art. 62 and Mandatory Guidelines 1997, art. 51 requrires, however, two-way proxies.

[42] Thanks to Rui Wang for helpful comments

4. Prohibition of multiple voting rights (super voting rights)	1	1	1	1	1	1	1	1	1	1	1	Company Law 1993, art. 106: strict one share one vote principle
5. Independent board members	0	0	0	0	0	0	0	0.4	0.6	0.6	0.6	Until 2002 some independent directors were only required for companies listed abroad and in some local provisions. Furthermore, there was a 2000 recommendation by Shenzen Stock Exchange (see generally Donald C. Clarke, The Independent Director in Chinese Corporate Governance, 36 Delaware Journal of Corporate Law 125-228 (2006)). In 2001, the CSRC issued an opinion on independent directors, mandating that companies have 2 independent board members by June 2002 and 3 independent board members by June 2003 (see Clarke, ibid.). For calculation of percentages: see Clarke, ibid, at 200: average number of directors in Chinese companies: 10
6. Feasibility of director's dismissal	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	The general meeting elects and replaces both the members of the management board and the supervisory board (Company Law 1993, art. 103 (nos. 2 and 3); However, directors of the management board shall not without reason be removed (art. 115). Furthermore, if agreed, compensation appears to be possible
7. Private enforcement of directors duties (derivative suit)	0.25	0.25	0.25	0.25	0.25	0.25	0.5	0.5	0.5	0.5	0.5	Company Law 1993, art. 111 states, inter alia, that shareholders have the right to initiate proceedings if resolutions of the board of directors violate the law. The scope of this provisions was, however, not clear, and derivative suits did not take place until recently. The 2001 Corporate Governance Rules, art. 4 only state that "shareholders shall have the right to request the company to sue for such compensation in accordance with law." In 2003 the High Courts of Shanghai and Jiangsu promulgated rules according to which derivative actions were possible.

8. Shareholder action against resolutions of the general meeting	1	1	1	1	1	1	1	1	1	1	1	Company Law 1993, art. 111
9. Mandatory bid	1	1	1	1	1	1	1	1	1	1	1	Provisional Regulations on the Administration of Issuing and Trading of Shares, promulgated by the State Council in April 1993, art. 48 and Securities Act 1998 (in force since 1999), art. 81: 30 %
10. Disclosure of major share ownership	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	Provisional Regulations on the Administration of Issuing and Trading of Shares, promulgated by the State Council in April 1993, arts. 46, 47 Securities Act 1998 (in force since 1999), art. 79: 5 %

Comments:

- The new Company Law, which came into force in January 2006, has not been taken into account
- Private enforcement may be problematic, but government ownership and public-law measures may provide alternative or additional protection.

6. Czech Republic (Stephan Haidenhein)

Variable	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	Explanations/ References
1.Powers of the general meeting for de facto changes	0	0	0	0	0	0	0.5	0.5	0.5	0.5	0.5	Until 30.6.1996: Commercial Code, s. 187(1)(h): the general meeting decides if the statutes of the company transfer this right to the executive board. Since 1.7.1996: Commercial Code, s. 187(1)(j): general meeting decides whether to conclude a contract if its object is the transfer of an enterprise or a part of such, or lease of an enterprise or a part of such, unless the statutes of the company transfer this right to the executive board. Since 1.1.2001: Commercial Code, s. 187(1)(k): the general meeting decides whether to conclude a contract if its object is the transfer of an enterprise or a part of such, or lease of an enterprise or a part of such, or whether to conclude such contract with a controlled person→ changes in 2006; the general meeting still decides, however, the rules which apply to mergers do not apply any more to those contracts (Commercial Code, s. 187(1)(k) and s. 67a).
2. Agenda setting power	0.25	0.25	0.25	0.25	0.25	0.25	0.5	0.5	0.5	0.5	0.5	Until 31.12.2000: Commercial Code, ss. 182(1)(a), 181(1): shareholders of a company who hold at least 10 % of the registered capital. Since 1.1.2001: Commercial Code, ss. 182(1)(a), 181(1): shareholders of a company whose registered capital is higher than CZK 100 million: 3 %; otherwise 5% of the registered capital
3. Anticipation of shareholder decision facilitated	0	0	0	0	0	0	0	0	0	0	0	Commercial Code, s. 184 (1) does only address proxy voting in general (and excludes directors)
4. Prohibition of multiple voting rights (super voting rights)	0	0	0	0	0	0	0	0	0	0	0	No explicit prohibition applies.

5. Independent board members	0	0	0	0	0	0	0	0	0	0	0	No; according to the Commercial Code, s. 200(1): 2/3 to be elected by the general meeting, 1/3 by the employees where the company has more than 50 employees; according to Commercial Code, s. 200(4), board members must not be proxies of the company.
6. Feasibility of director's dismissal	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	Until 30.6.1996 Commercial Code, s. 187(1)(c),(d): as of 1.7.2006 Commercial Code, s. 187(1)(d),(e): yes - by a decision of the general meeting; no compensation is obligatory according to the Commercial Code, and it may be paid only if special agreements or contracts between the director and the company provide for it (however, those stipulations in those contracts are normal).
7.Private enforcement of directors duties (derivative suit)	0.25	0.25	0.25	0.25	0.25	0.25	0.5	0.5	0.5	0.5	0.5	Until 31.12.2000: Commercial Code, ss. 182(1)(a), 181(1): possible for shareholders of a company who hold at least 10 % of the registered capital. Since 1.1.2001: Commercial Code, ss. 182(2), 181(1): possible for shareholders of a company whose shareholders of a company whose registered capital is higher than CZK 100 million: 3 %; otherwise 5% of the registered capital
8. Shareholder action against resolutions of the general meeting	1	1	1	1	1	1	1	1	1	1	1	Commercial Code, ss. 131, 183
9. Mandatory bid	0	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	Until 29.5.1996: no mandatory bid. As of 30.5.1996, up to 30.12.2001: Commercial Code, ss. 183b(1), 66a(1), (2): mandatory bid must be made where the shareholder has at least 50 % or 2/3 or ¾ of voting rights of freely negotiable shares. Since 1.1.2001: Commercial Code, ss. 183b(1), 66a(5): mandatory bid must be made where the shareholder has 40 % of voting rights

10. Disclosure of major share ownership	0	0.5	0.5	0.5	0.5	0.5	0.75	0.75	0.75	0.75	0.75	Until 29.5.1996: no disclosure.; As of 30.5.1996, up to 31.12.2000: Commercial Code, s. 183(d): 10 %. As of 1.1.2001: Commercial Code, s. 183(d): 5 %, up to30.4.2004. As of 1.5.2004 up to now: more or less identical stipulations in the law on the capital market (s. 122).

7. France (Mathias Siems)

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

Variable	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	Explanations/ References
1.Powers of the general meeting for de facto changes	0	0	0	0	0	0	0	0	0	0	0	There is no explicit provision on sale of major parts of company assets. It is debated, first, whether a *de facto* measure constitutes a change in the object of business (as indicated in the articles), for which the general meeting is competent. Second, it is argued that the major assets can be equated with the whole assets (Loi 1966, art. 396 (no.4); Code de Commerce 2000, art. L. 237-8(no.4)) (see generally, Siems, Die Konvergenz der Rechtssysteme im Recht der Aktionäre, 2005, at 217). Since these cases are exceptions, and since there is no case law, deviation from the "0" score would, however, not be justified.
2. Agenda setting power	1	1	1	1	1	1	1	1	1	1	1	The number of shareholders that can make a topic the object of decision by the general meeting is usually 5% of the registered capital (Loi 1966, art. 160; Code de Commerce 2000, art. L. 225-105). There is also a graduated threshold, which for big companies may be 1 or 0.5 % (Décret 1967, art. 128). These companies (portion of capital more than 7.5. million euro) are the main focus of this study. Since Loi no 94-679 du 8 août 1994 the proposal right is also extended to shareholder associations (Loi 1996, art. 172-1; Code de Commerce 2000, art. L. 225-120).
3. Anticipation of shareholder decision facilitated	1	1	1	1	1	1	1	1	1	1	1	Décret no 86-584 du 14 mars 1986 (in force since January 1988) inserted Décret 1967, art. 131-1: shareholders have the right to request a remote ballot form. Then, postal voting is possible (Loi 1966, art. 161-1 inserted by Loi no 83-3 du 3 janvier 1983; today: Code de Commerce 2000, art. L. 225-107).

4. Prohibition of multiple voting rights (super voting rights)	½	½	½	½	½	½	½	½	½	½	½	Loi 1966, art. 175; Code de Commerce 2000, art. L 225-123: holders of registered shares can be given a double voting right in the articles of association, if the shares have been held for two years by the same owner.
5. Independent board members	0	0	0	0	0	0	0	0	¼	¼	¼	2003: According to the French corporate governance principles a significant number of board members (no. 8.2), shall be independent. This can be regarded as the default rule because the corporate governance principles are in general applied by almost all companies (see note Monks & Minow, Corporate Governance, 2nd edn 2001, at p. 292). The fact that many companies opt out of the independence requirement (see Storck, (2004) 1 ECFR 36 at 47) is therefore not coded in this variable.
6. Feasibility of director's dismissal	¾	¾	¾	¾	¾	¾	¾	¾	¾	¾	¾	Loi 1966, art. 160(3): dismissal was (and is) always possible (now: Code de Commerce 2002, art. L. 225-18(2); 225-105(3)). This effect was not reduced due to contracts which supplement the appointment, because separate employment contract were inadmissible, unless this contract antedated the appointment by at least two years and related to actual employment. Loi no 94-126 du 11 février modified Loi 196, art. 160(3): an employment contract is already admissible if it relates to actual employment. It is therefore (only) necessary that this occupation is distinct from the occupation as director. [1] Code de Commerce 2000, art. L. 225-22(1) as amended by Loi no 2001-1168 du 11 décembre affirms the change from 1994.
7.Private enforcement of directors duties (derivative suit)	1	1	1	1	1	1	1	1	1	1	1	Loi 1966, art. 245; today: Code de Commerce 2000, art. L. 225-252: Shareholder suit by single shareholder possible. There are also simplified representation provisions for an action by several shareholders (as a rule 5 %, Décret 1967, art. 200) and since 1994 (Loi no 94-679 du 8 août 1994) shareholder associations.
8. Shareholder action against resolutions of the general meeting	1	1	1	1	1	1	1	1	1	1	1	Loi 1966, art. 360 *et seq.*; Code de Commerce 2000, arts. L. 235-1 *et seq.* on nullity of a decision; This does not concern the case of abuse of majority power. However, here too a decision may be null, or damages can be awarded (see Cools, The Real Difference in Corporate Law between the United States and Continental Europe: Distribution of Powers, 2004, p. 30, available at http://ssrn.com/abstract=623286 and now published in 36 Del. J. Corp. L. 697 (2005)).

9. Mandatory bid	1	1	1	1	1	1	1	1	1	1	1	Loi 89-531 du 2 août 1989: mandatory bid in case of 1/3 of the target's shares since 1989; however, the bidder was only required to buy 2/3 of the shares (see Gardner (1992) ICCLR 93 at 96). Arrête du 15 mai 1992: Bidder is required to buy all shares; the mandatory bid was later regulated in Règlement Général des Conseils des Marchés Financiers (CMF), art. 5-5-2 and today in Règlement général de l'Autorité des marchés financiers 2004, art. 234-2.
10. Disclosure of major share ownership	¾	¾	¾	¾	¾	¾	¾	¾	¾	¾	¾	Loi no 87-416 du 17 juin 1987 changed Loi 1966, arts. 356, 356-1 (amended by Loi no. 89-531 du 2 août, Loi no. 96-597 du 2 juilliet 1996, Loi no. 98-545 du 2 juilliet 1998); now Code de Commerce 2000, arts. L. 233-6, 233-7 (amended by Ordonnance no 2004-604 du 24 juin 2004).
	1995	**1996**	**1997**	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**	**2004**	**2005**	

8. Germany (Mathias Siems)

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

Variable	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	Explanations/ References
1.Powers of the general meeting for de facto changes	½	½	½	½	½	½	½	½	½	½	½	Case law of the German Supreme Court based on the referral possibility in § 119(2) AktG: The management board is obliged to refer questions of conduct of business to the general meeting if serious interference with shareholders' rights and interests is likely. This is presumed if a sale accounts for ca. 80% of company assets ((BGH, BGHZ 83, 122 (*Holzmüller*)); BGH, NJW 2004, 1860 (*Gelatine*)).
2. Agenda setting power	½	½	½	½	½	½	½	½	½	½	½	§ 122(2) AktG: 5% of the registered capital is needed.
3. Anticipation of shareholder decision facilitated	0	0	0	0	0	0	0	¼	¼	¼	¼	Usually, German shareholders appointed credit institutions as proxies. However, there was and is no general requirement for credit institutions to act as a proxy (cf. § 135(10) AktG). According to no. 2.3.4 of the GCGC (2002) exercising shareholders' voting rights shall be "facilitated" and the company shall "assist the shareholder in the use of proxies". Details are, however, not specified.
4. Prohibition of multiple voting rights (super voting rights)	⅓	⅓	⅓	⅔	⅔	⅔	⅔	⅔	⅔	1	1	§ 12(2) AktG 1965: multiple voting rights that existed before 1965 remained valid; new multiple voting rights required state approval. § 12(2) AktG as amended by KonTraG (1998): existing multiple voting rights remained valid until 2003; new multiple voting rights cannot be granted.

5. Independent board members	0	0	0	0	0	0	0	¼	¼	¼	¼	No. 5.4.2 of the GCGC (2002) states that not more than two members of the supervisory board shall be former members of the management board. Since 2005 the GCGC states that there shall be "an adequate number of independent members."
6. Feasibility of director's dismissal	¼	¼	¼	¼	¼	¼	¼	¼	¼	¼	¼	The management board can be dismissed by the supervisory board only in the event of an important reason, which is presumed if the general meeting withdraws its confidence (§ 84(3) AktG). Dismissal of supervisory board members is, unless otherwise provided in the articles of association, possible only by three quarters of the votes cast, unless an important reason is present (§ 103(1),(3) AktG).
7.Private enforcement of directors duties (derivative suit)	¼	¼	¼	½	½	½	½	½	½	½	¾	According to § 147(1) AktG shareholders with 10% of the registered capital can enforce claims. Only a few special provisions in law on groups of companies have to date allowed a shareholder to sue directly (§§ 309(4), 310(4); 317(4), 318(4) AktG). KonTraG (1998) reduced the hurdle from 10 % to 5 % if facts suggest the suspicion of gross breach of duty (§ 147(3) AktG). The UMAG (2005) enables a shareholder minority with a 1% share of the registered capital or a stock-exchange value of €100,000 to bring action in its own name (§ 147a AktG).
8. Shareholder action against resolutions of the general meeting	1	1	1	1	1	1	1	1	1	1	1	§§ 241 *et seq.* AktG. It could be argued that since 2001 this score should be downgraded because of the decisions of the German Supreme Court in BGHZ 146, 179 (*MEZ*); BGH, NJW 2001, 1428 (*Aqua-Butzke*) (in general, action can be brought against resolutions of the general meeting with which the wrongly refused information was connected. A problem with this is that these actions can block entry in the commercial register, bringing the danger of abuse of law. This has been restricted by the German Supreme Court; similar now UMAG (2005): § 243(4)(s.2) AktG).

9. Mandatory bid	0	0	0	0	0	0	1	1	1	1	1	Mandatory bid (§§ 35(1), 29(2) WpÜG) inserted by Unternehmensübernahme-Regelungsgesetz (2001).
10. Disclosure of major share ownership	¾	¾	¾	¾	¾	¾	¾	¾	¾	¾	¾	§ 21 WpHG (5 %) inserted by Zweites Finanzmarktförderungsgesetz (1994).
	1995	**1996**	**1997**	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**	**2004**	**2005**	

9. India (Priya Lele)

Variable	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	Explanations/ References
1.Powers of the general meeting for de facto changes	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	CA 1956, S. 293 (1) (a). requires shareholders' approval in case of sale or disposal of "whole, or substantially the whole of the undertaking of the company, or where the company owns more than one undertaking, of the whole, or substantially the whole, of any such undertaking". Sale of a mere asset or property will not be sale of an undertaking. For a theoretical discussion of the meaning of the expression 'undertaking' see, Re, Yellamma Cotton Woollen and Silk Mills Co. Ltd., (1970) 40 Com Cases 466. The expression 'undertaking' used in this section is liable to be interpreted to mean 'the unit', the business as a going concern, the activity of a company duly integrated with all its components in the form of assets and not merely some asset of the undertaking: Dhanuka J. in P.S. Offshore Inter Land Services Pvt Ltd v Bombay Offshore Suppliers and Services Ltd (1992) 75 Com Cases 583, (Bom). If the question arises as to whether the major capital assets of the company constitute the undertaking of the company, the courts do not specify a qualifying percentage, but emphasise that the test to be applied would be to see 'whether the business of the company would be carried on effectively even after the disposal of the assets in question or whether a mere husk of the undertaking would remain after the disposal of the asset?'
2.Agenda setting power	0	0	0	0	0	0	0	0	0	0	0	CA 1956, S. 188 (2) [prescribes a hurdle of 20% or not less than 100 members contributing to paid-up capital of not less than Rs. 1 lakh]
3.Anticipation of shareholder decision facilitated	0.5	0.5	0.5	0.5	0.5	0.75	0.875	0.875	0.875	0.875	0.875	From 1995-1999: CA 1956, s. 176 (Proxies) read with s.179 (Demand for poll) and Art 61 of Table A of Schedule I. Proxies have no right to speak at the general meeting and can participate in deciding only in the case of a written vote, unless the articles of association of the company provide otherwise [see CA 1956, s. 176(1) proviso (c)]. A poll can be demanded by members present in person or through proxy, holding 1/10th voting power or shares of Rs. 50,000/- [Amended S.179 (1) (a)].

												Clause 34 (f) of the Listing Agreement as on 1985 (which is identical to the clause 34 (f) of the Listing Agreement of 2005) requires listed companies to send out proxy forms to shareholders and debenture holders in all cases, such proxy forms being so worded that a shareholder or debenture holder may vote either for or against each resolution. For 2000: Listing Agreement, Clause 49 Annexure 3 (d) as added by Circular No. SMDRP/Policy/Cir-10/2000 dated 21-2-2000: mentions certain non-mandatory requirements which included postal ballot in case of certain resolutions (e.g. matters relating to alteration in the memorandum of association of the company, sale of whole or substantially the whole of the undertaking; sale of investments in the companies, where the shareholding or the voting rights of the company exceeds 25%; corporate restructuring, matters relating to change in management etc.). From 2001: CA 1956, S.192 A, introduced by the Amendment Act of 2000 w.e.f. 15/6/01 to be read with Companies (Passing of the Resolution by Postal Ballot) Rules, 2001 (introduced w.e.f. 10-05-2001) as amended on 11th October, 2001 provide that certain important resolutions specified in Rule 4 'shall' be passed by postal ballot (these include most of the important resolutions e.g. alteration in the Object Clause of Memorandum, certain alteration in the Articles of Associations, buy-back of own shares, sale of whole or substantially the whole of undertaking of a company, giving loans or extending guarantee or providing security in excess of the limit prescribed under sub-section (1) of section 372A; election of a director under sub-section (1) of section 252 etc.
4. Prohibition of multiple voting rights (super voting rights)	1	1	1	1	1	1	1	1	1	1	1	CA 1956, S.169 (6)

5.Independent board members	0	0	0	0.25	0.25	0.25	0.75	0.75	0.75	0.75	0.75	From 1998: Voluntary Code: The Confederation of Indian Industries took an initiative in the area of corporate governance in the early 1990s and established a task force in 1995 to prepare a voluntary code of Corporate Governance in India. The draft of what is known as the 'Desirable Code of Corporate Governance' or 'Desirable Corporate Governance: A Code' was published in April 1997 and the final code was released in April 1998. (By 2000 over 25 leading and forward looking companies had already reviewed and/or complied with the voluntary Code.) According to this Code, the following was the recommendation with respect to independent board members: Recommendation 2: Any listed companies with a turnover of Rs.100 crores and above should have professionally competent, independent, non-executive directors, who should constitute - at least 30 percent of the board if the Chairman of the company is a non-executive director, or at least 50 percent of the board if the Chairman and Managing Director is the same person. From 2001: Clause 49.I (A) of the Listing Agreement (introduced from 2000) prescribes that where the Chairman of the Board is a non-executive director, at least one-third of the Board should comprise of independent directors and in case he is an executive director, at least half of the Board should comprise of independent directors
6. Feasibility of director's dismissal	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	See CA 1956 S.284 for dismissal of directors. S. 284 (7) provides that the section does not deprive any person removed thereunder of any compensation or damages payable to him in respect of the termination of his appointment as director or of any appointment terminating with that as director. Further see also S.318 for a possibility of claim by managing director or a director in the whole-time employment of the company for compensation in case of dismissal.

7.Private enforcement of directors duties (derivative suit)	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	Derivative suits: Ordinarily the directors of the company are the only persons who can conduct litigation in the name of the company (rule in Foss v. Harbottle) but there are certain well known exceptions to this rule in which cases the shareholders may take action. For instance, matters which are ultra vires (e.g. see Jahangir Rustomki Modi v. Shamji Ladha, (1867) 4 Bom OC 185; Dr. Satya Charan Law v. Rameshshwar Prosad Bajoria (1950) 20 Com Cases 39, AIR 1950 FC 133), acts constitute fraud on minority, where action of majority is illegal or where articles require super majority. See also Shanti Prasad Jain v. Union of India, (1973) 75 Bom LR 778 for when the right to start an action on the company's behalf in exceptional cases reverts to the general meeting. Shareholders actions under S.397/398: CA S.399: The threshold for bringing shareholders' action under Ss. 397/398 is the possession of 1/10th of voting right or of the total number of its members or a minimum of 100 members whichever is less [S.399 (1) (a)]. However, the Central Government may, if in its opinion circumstances exist which make it just and equitable so to do, authorise any member or members of the company to apply to the Company Law Board under section 397 or 398, even if they don't constitute the requisite shareholding to take action under S.399 (1) (a) [See S.399 (4)]. Further, apart from an action u/Ss.397 or 398, in cases where the jurisdiction of civil courts over matters is not expressly or impliedly excluded by CA, 1956, shareholders may take action in ordinary civil courts which does not require the compliance of S.399 e.g. civil suit to challenge the validity of a notice calling a meeting: Niranjan Singh v. Edward Ganj Public Welfare Association Ltd., (1977) 47 Com Cases 285 (P&H); to save the company from two warring factions among the Board of directors: Jayanthi R. Padukone (Mrs.) v. I.C.D.S. Ltd. AIR 1994 Kant 354

												'Member not qualified may file a civil suit': The Delhi High Court in Spectrum Technologies USA Inc. v. Spectrum Power Generation Co. Ltd., 2002 CLC 539 (Delhi) held that: where the aggrieved member is not qualified for filing a petition because of his low shareholding and the Central Government's order for relaxing the requirement in this case is also not available to him, his remedy would be to file a civil suit.
8. Shareholder action against resolutions of the general meeting	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	The threshold for bringing shareholders' action under Ss. 397/398 is the possession of 1/10th of voting right or 100 members [S.399 (1) (a)]. However, the Central Government may, if in its opinion circumstances exist which make it just and equitable so to do, authorise any member or members of the company to apply to the Company Law Board under section 397 or 398, even if they don't constitute the requirement of minimum shareholding to sue under S.399 (1) (a) [Power of Central Government to relax requirements of 399: S.399 (4)]. Further, it is possible for shareholders to bring action against resolutions of the general meeting in the ordinary courts under certain circumstances. See note 75 supra, for instances of matters over which ordinary civil suits were allowed to be filed. 'Member not qualified may file a civil suit': The Delhi High Court in Spectrum Technologies USA Inc. v. Spectrum Power Generation Co. Ltd., 2002 CLC 539 (Delhi) held that: where the aggrieved member is not qualified for filing a petition because of his low shareholding and the Central Government's order for relaxing the requirement in this case is also not available to him, his remedy would be to file a civil suit.
9.Mandatory public bid	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	Clauses 40A and 40B (of the Listing Agreement) incorporated in May 1990 and from November 1994 as per Regulation 9 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1994. Regulation 21 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997.

10.Disclosure of major share ownership	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	A new Clause 40A (of the Listing Agreement) was incorporated in the Listing Agreement Form in May 1990. According to this clause, any person acquiring 5% or more of the shares in a company was to notify the stock exchange of such holding. For position from 1994: see SEBI (Substantial Acquisition of Shares and Take-overs) Regulation, 1994 (Reg 6) and from 1997 see SEBI (Substantial Acquisition of Shares and Take-overs) Regulation, 1997 (Regulations 6 and 7)

10. Italy (Viviana Mollica)

Variable	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	Explanations/ References
1.Powers of the general meeting for de facto changes	0	0	0	0	0	0	0	0	0	0	0	Art. 2365 Codice Civile deals with the power of the extraordinary shareholders' meeting. The new wording of the article provides for an eventual delegation of power to the board of directors (or the audit committee or the supervisory board), on mergers, transfer of the seat of the company, reduction of the capital in case of a shareholder, etc... Art. 2410 now confers the power of issue obligations to the board, and no longer to the extraordinary shareholders meeting.
2. Agenda setting power	0	0	0	0	0	0	0	0	0	0	0	Art. 2367 c.c. (before the reform) regulates the power of the minority to ask for a meeting to be held if they possess 1/5 of the company capital. Art. 125 d. lgs. n. 58/1998 (TUF), modified this rule for listed companies, and provides for the power of the minority to ask a shareholder meeting, when they possess at least 10% of the shares. According to Art 125 the minority shareholders should indicate also the topics to be discussed in the meeting. The directors can nevertheless introduce other topics, even different from the minority formulation, with the only limit that the topics eventually chosen by the directors cover in substance what was asked by the minority that requested the meeting. The directors have to comply with the request in the time and modes established by law. Yet, the interpretation of art. 2367 c.c. is still very controversial and there are two main streams options above it: on one hand, doctrine recognises an obligation imposed on the directors to call for the meeting, on the other hand, some part of the doctrine thinks directors have only an obligation to consider the request, and would be free to reject it even for their own mere convenience. Recent case law recognises the right-obligation of the directors not to accept illegitimate, unjustified, repetitive, illicit requests, or requests that concerns areas that are outside the competence of the shareholders meeting. Trib. Milano, 7 maggio 1987, in Giur. Comm., 1987,II, p. 812; Trib. Milano, 22 marzo 1990, in Società, 1990,I, p. 775; Trib. Aosta, 12 aprile,

												1994, in Società, 1995, I, p.70; Trib. Milano, 21 novembre 1994, in Giur. Comm., 1995, II, p.586; Trib. Napoli, 24 gennaio 1996, in Società, 1996, II, p.817. New art. 2367, 2° co., c.c. states that the Court president is not automatically authorised to call for the meeting, but shall do so only after having heard all the relevant parties in order to establish why the meeting was not called. More over the new art. 2367, states that the meeting won't be called if the request concerns subjects that have to be prompt by the directors.
3. Anticipation of shareholder decision facilitated	0	0	0	0	0	0	0	0	0	0	0	Art. 127 Testo Unico della Finanza 1998 (TUF): "The Company Statute can allow postal voting to be cast." Transposed into the new Art. 2370 co. 4 Codice Civile. The old legislation was silent on the matter. Art. 2372 Codice Civile: Proxy voting is normally permitted, unless expressly prohibited by the Company Statute. The delegation of the voting power must be conferred in writing and it is valid only for one shareholders meeting. The new wording of the article adds that the latter is the norm, unless the delegation of power is made through a general delegation clause or if the delegating person is a company and the delegate one of his employees. The same person cannot represent more than 50 shareholders if the company capital amount to less than Euro 5,000,000, or 100 if the company capital amount to more than Euro 5,000,000 but less than 25,000,000 or 200 if the company capital is more than Euro 25,000,000.
4. Prohibition of multiple voting rights (super voting rights)	1	1	1	1	1	1	1	1	1	1	1	Art. 2351, co. 4 Codice Civile
5. Independent board members	0	0	0	0	0.1	0.1	0.1	0.25	0.25	0.4	0.4	The (self-disciplinary) Preda Code (1999 revisited in 2002) Art. 3: which states that the board should comprise an 'adequate' number of independent not executive directors", though these are soft rules, which represent a moral suasion rather than a legal obligation. – freedom with accountability principle- Other (soft law) regulations that referred to the independent directors are 1. 'Le line guida di Confindustria', Le line guida dell' 'Associazione Bancaria Italiana'.

												Particularly relevant are 'le Linee Guida della Borsa Italiana, written on the basis of D.lgs. n. 231/2001, and concerning the annual report that listed companies have to compile. In the Stock Exchange Regulation, paragraph 2.2., makes provisions about the roles that independent directors (again the reference is to an adequate number) should have in listed companies. The Regulation has a Comply or Explain requirement. For the traditional model, the law reform introduced for the first time a formal mention of the independence requirement in the Civil Code. New Art. 2387 Codice Civile states that the Company Statute may subordinate directors' appointment to some pre-requisites of independence. In the traditional model, the requirement of independency is traditionally attached to the auditors. As for the one-tier structure introduced by the company law reform, Art. 2409–septiesdecies, co. 2 introduces the compulsory figure of the independent director: at least one third of the board must be independent. Besides, art. 2409-octiesdecies, which recalls art. 2409-septiesdecies c.c. states that the audit committee, the eventual remuneration and nomination committees must be composed mainly by independent directors. For the new two-tier system, Art. 2409 duodecies c.c states that the member of monitoring board can be asked for the necessary requisites of independence. As for the managing board, Art. 2409-undecies recalls Art. 2387.
6. Feasibility of director's dismissal	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	Art. 2383, co. 3 Codice Civile Directors can be dismissed at any time by the board, but compensation for breach of contract must be paid in case there is not a good justification for the dismissal.
7.Private enforcement of directors duties (derivative suit)	0	0	0	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	Old Artt. 2409 e 2408 Codice Civile, set relatively high percentages for shareholders remedies: 10% for starting an enforcement action in front of a court (in case of serious irregularities and a founded suspect of a serious breach), and 5% to ask for the auditors checking intervention powers.

												Since 1998 onwards, Art. 129 TUF provides for 5% shares to start an action in front of a Court; 2% shares to ask for the auditors checking powers. Lower percentage can be established in the company statute. New art. 2408 and 2409 makes reference to a specific fraction of the social capital: 1/50 for asking the auditors intervention, and 1/20 for the court intervention. Old text of art. 2393 del Codice Civile gives the exclusive competence to the shareholders meeting: the latter can act against the directors in case the fiduciary relation between the two is coming to an end; this power can be also eventually waived, but only if 1/5 of the capital doesn't veto the waiving. Art.. 129 TUF legitimates shareholders who possess at least 5% of the company shares. And new art. 2393 bis attributes the power to the shareholders that now represent 1/20 of the company capital.
8. Shareholder action against resolutions of the general meeting	1	1	1	1	1	1	1	1	1	1	1	Artt. 2377 and 2379 Codice Civile (new and old version) Resolutions of the shareholders meeting can be the object of a claim for two categories of reasons: - reasons concerning the substantial part (content) of the resolutions: -reasons concerning procedural vices in their formation. Besides, the vice can be classified in 'nulli' (null) that can be objected by whomever has an interest regulated by art. 2379 c.c. and 'annullabili' (voidable) that are regulated by art. 2377 c.c. The new version of art. 2379 clarified the hypothesis in which a resolution can be defined as 'nulla' stating that it is so not only in case of illicit or impossible object (as the previous text), but also when the meeting has not been called, and when the meeting written report is missing. New art. 2377 establishes that only shareholders who represent 1/1000 of the company capital can use this remedy: all the rest can ask for damage compensation. Art. 2377 has always been considered the instrument granted to the minority against the excessive power of the majority, but it is ONLY actionable when there is a frauding intent aimed to produce a patrimonial advantage

												for a majority at the expense of other shareholders (cfr, Cass. 5 maggio 1995 n.4923 in Giust. Civ. Mass., 1995, 949; Cass.11 marzo 1993 n.2958 in Riv. Dir. comm., 1994, II, 311; Tribunale Milano, 18 maggio 1992, in Vita not., 1993, 876; Tribunale Milano, 15 aprile 1991, in Giur. It., 1991, I, 2, 649; Tribunale Trieste, 3 luglio 1987, in Giur. Comm., 1988, II, 124, (nota); Corte Appello Milano, 27 settembre 1983, in Rass. Dir. civ., 1985, 812 (nota); Cass. 7 febbraio 1979 n.818, in Giust. Civ. Mass., 1979, fasc.2), and never in the case of mere opportunity, cause the court cannot interfere in the running of the company. See Tribunale Milano, 15 aprile 1991 in Giur. It., 1991, I, 2, 649.
9. Mandatory bid	0	0	0	1	1	1	1	1	1	1	1	Legge n. 149 del 18-2-92, Art. 10 co. 1, 3, 7, 8, 9 transposed. The initial provisions introduced only the 'opa residuale' into the Italian landscape. The bid was mandatory if 90% (or a minor percentage if so indicated by CONSOB) of the shares were concentrated on the hand of a shareholder. Now, Art. 106 TUF and regulated by Reg. CONSOB 11520/1998. A mandatory bid will take place in case of the purchase of 30% of the shares
10. Disclosure of major share ownership	1	1	1	1	1	1	1	1	1	1	1	Legge n. 216 del 1974 (e suc. mod.), required the disclosure of more than 2% of shares. Art. 120 TUF: There is an obligation placed on every shareholder (companies, physical person) of disclosure (made to the Company and the Italian Stock Exchange) if it directly or indirectly owns more than 2% shares. Further disclosures are mandatory when one owns 5%, 7.5%, 10% and eventual 5-multiples. Reversely, there is a mandatory disclosure obligation when the shares possessed goes below those percentages, or reach less than 2%. The shares that are the object of this norm are only those with voting rights.
	1995	**1996**	**1997**	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**	**2004**	**2005**	

11. Japan (Mathias Siems)[43]

Variable	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	Explanations/ References
1.Powers of the general meeting for de facto changes	1	1	1	1	1	1	1	1	1	1	1	Commercial Code, § 245(1)(no.1): transfer of a substantial part of the company's business is sufficient, which courts already assume as from 10% of the whole firm (see Kenichi Osugi, Americanization of Stock Corporation Laws Around the World and Shareholders' Derivative Suits as a Forgotton Element Therein, (2002) 13 ZJapanR 29 at 36).[44]
2. Agenda setting power	1	1	1	1	1	1	1	1	1	1	1	Commercial Code, § 232-2: 1 %
3. Anticipation of share-holder decision facili-tated	1	1	1	1	1	1	1	1	1	1	1	Commercial Code, § 239: only basics; postal voting possible if the board decides; but Law for special exceptions to the Commercial Code concerning audit, etc. of joint stock companies, § 24-3(1)-(4): postal voting re-quired for big companies Disclosure of proxy voting regulated in secu-rities law (cf. Securities and Exchange Act, § 194)
4. Prohibition of multi-ple voting rights (super voting rights)	1	1	1	1	1	1	1	1	1	1	1	Commercial Code, § 241(1)
5. Independent board members	0	0	0	0	0	0	0	0	0	0	0	Law for special exceptions to the Commercial Code concerning audit, etc. of joint stock companies, § 18(1) requires that half of the members of the "board of auditors" are inde-pendent (since 2001; from 1993-2000: at least one member). However, this board does not have comparable powers to, for instance, the German supervisory board. Thus, it is not taken into account in this coding. With respect to directors, the general law mentions outside directors but does not *re-quire* independence (cf. Commercial Code, § 188).

[43] Thanks to Kenji Hirooka for helpful comments.

[44] According to art. 467(1)(no.2) of the new Company Act the transfer of "not more than a fifth of the entire assets" will be excluded from this requirement.

												The Tokyo Stock Exchange, Principles of Japanese Corporate Governance do not recommend independent directors.
6. Feasibility of director's dismissal	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	Commercial Code, § 257(1): compensation possible (s.2).
7.Private enforcement of directors duties (derivative suit)	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.5	0.5	0.5	0.5	Since 1950 derivative suit possible; but, e.g., demand requirement (Commercial Code, § 267). In 1993 court fees were reduced and a regulation on reimbursement of lawyers' fees (Commercial Code, § 268-2) was introduced. Amendment of 5 December 2001 (in force since 1 May 2002): extension of demand period from 30 to 60 days (Commercial Code, §§ 267-1- 267-3), amicable settlement with its defendant directors without consent from the entire shareholders possible (Commercial Code, §§ 268-5- 268-7) (before 2001 this was controversial)
8. Shareholder action against resolutions of the general meeting	1	1	1	1	1	1	1	1	1	1	1	Japanese law differentiates between actions to quash a resolution (i.e., actions for avoidance) and actions for declaration of non-existence or nullity of resolution (Commercial Code, §§ 247, 252). The time limit for avoidance here is three months (Commercial Code, § 248(1)). Moreover, by contrast with the German model, the Court may require provision of security (Commercial Code, § 249(1)).
9. Mandatory bid	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	Since 1991: Securities and Exchange Act, § 27-2(1) requires an off-exchange offer, the acceptance of which would result in the acquisition of more than 33.3% of the target's shares, be made through a tender offer open to all shareholders. The offer does not have to be for all outstanding shares.
10. Disclosure of major share ownership	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	Securities and Exchange Act, § 27-23: 5 %

12. Latvia (Theis Klauberg)

Variable	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	Explanations/ References
1. Powers of the general meeting for de facto changes.	0	0	0	0	0	0	0	0	0	0	0	Since 2002: Commercial Law, s. 238, 268 A stockholder may freely alienate their stock. The articles of association may provide that the sale of registered stock shall require the consent of general meeting. There is no case law that provided another interpretation. Until 2002: Law on Joint Stock Companies, s. 54
2. Agenda setting power.	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.5	0.5	0.5	0.5	Since 2002: Commercial Law, s. 274: 5 % Until 2002: Law on Joint Stock Companies, s. 55: 10 %
3. Anticipation of shareholder decision facilitated.	0	0	0	0	0	0	0	0	0	0	0	Since 2002: Commercial Law, s. 277 Until 2002: Law on Joint Stock Companies, s. 58: proxy voting only possible
4. Prohibition of multiple voting rights (super voting rights)	1	1	1	1	1	1	1	1	1	1	1	Since 2002: Commercial Law, s. 279, 280: imperative norm one share – one vote. Until 2002: Law on Joint Stock Companies, s. 57: imperative norm one share – one vote.
5. Independent board members	0	0	0	0	0	0	0	0	0	0	0	Not in Commercial Law The Corporate Governance Principles are only applied since 2006
6.Feasibility of director`s dismissal	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	Since 2002: Commercial Law, s. 306: for director's dismissal important or good reason is necessarily, s. 296: no special requirements for supervisory board. Until 2002: Law on Joint Stock Companies, s. 66 and 78: no special requirement for dismissal of supervisory members or director, but there are compensation for damages for breach of contract without important reason.

7. Private enforcement of directors duties (derivative suit)	0	0	0	0	0	0	0	0.5	0.5	0.5	0.5	Since 2002: Commercial Law, s. 172: by 5 % of the equity capital or equity capital of not less than 50 000 LVL. Until 2002: Law on Joint Stock Companies, s. 100: by 10 % of equity capital.
8. Shareholder action against resolutions of the general meeting	1	1	1	1	1	1	1	1	1	1	1	Since 2002: Commercial Law, s. 287 Until 2002: Law on Joint Stock Companies, s. 63
9. Mandatory bid	0	0	0	0	0	0	0	0	0	0.5	0.5	Since 2004: Law of the Financial Instrument market, s. 66: 50 % of the total number of votes. Not in Commercial Law, not in Law on Joint Stock Companies
10. Disclosure of major share ownership	0	0	0	0	0	0.5	0.5	0.5	0.5	0.5	0.5	Since 2000: Group of Companies Law, s. 6: 10 % Since 2004: Law of the Financial Instrument market, s. 61: 10 % (since 2006: 5 %) Not in Law on Joint Stock Companies

13. Malaysia (Priya Lele)

Variable	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	Explanations/ References
1.Powers of the general meeting for de facto changes	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	Companies Act 1965, s 132C: any proposal or transaction involving the disposal of a substantial portion of the company's undertaking or property which would adversely and materially affect the performace or financial position of the company requires the approval of the general meeting. 'Substantial value' is not defined under the section. However, a transaction is of substantial value if it relates to an acquisition or disposal of property which will materially and adversely affect the financial position of the company. In Chang Ching Chuan & Ors. V Aik Ming (M) Sdn Bhd & Ors. (Pekan Nenas Industries Sdn Bhd Intervenors) [1992] 2 MLJ 583, the land which was disposed of by the directors was the only asset of the company. The court held that its disposal would affect the financial situation of the company. Since the directors failed to obtain shareholders' approval at general meeting, the disposal of the property was invalid [p.291: Commercial Applications of Company Law in Malaysia: Aiman Nariman Mohd Sulaiman and Aishah Bidin. 2002]
2.Agenda setting power	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	Companies Act 1965, s 151: members holding at least 5% of the total voting rights of members having the right to vote on the matter to which the requisition relates or numbering at least 100 with an average of not less than RM500 having been paid by each member for the shares, may propose resolutions to be considered at a meeting of the company
3.Anticipation of shareholder decision facilitated	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	Companies Act 1965, s 149 read with Article 59 of Table A

4. Prohibition of multiple voting rights (super voting rights)	0	0	0	0	0	0	0	0	0	0	0	Table A, article 2 grants directors a wide power to issue shares with preferred, deferred or other special rights or restrictions with regard to dividend, voting, return of capital or otherwise
5.Independent board members	0	0	0	0	0.25	0.25	0.5	0.5	0.5	0.5	0.5	0 until 1999 because there was no special requirement in relation to composition of the board and independent board members 0.25 since 1999-2000: Because of the Malaysian Code on Corporate Governance - a mechanism adopted by the government to encourage best practices and high standards for companies in Malaysia. Part II of the Corporate Governance Code which set out the best practices stated the recommended number of independent directors on a board to be at least two or one-third of the board of directors, whichever is the higher. A lower score has been assigned because it's a voluntary code. 0.5 since 2001: Because many of these recommendations have now been codified in the listing requirements (LRs) of the Kuala Lumpur Stock Exchange (KLSE) (now the Bursa Malaysia since 2004), which were launched on 22 January 2001. As per these LRs: Board of directors of a listed company to contain at least two independent directors or be one-third comprised of independent directors, whichever is higher. [LR 3.14]
6. Feasibility of director's dismissal	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	Companies Act 1965, S. 128 read with S. 137 Compensation for loss of office: S.137 attempts to limit the power of the board of directors to pay compensation to a director for loss of office. It is unlawful for a company to make payment or give any benefit to a director by way of compensation for loss of office unless particulars of the proposed payment have been disclosed to the members of the company and approved by the general meeting: S.137 (1)

												But S.137 (5) provides that certain payments are 'exempt benefits' which are not subject to the prohibition of S.137 (1): which includes: a payment made or given under an agreement entered into between the company and a director before he or she took up office, as a part of consideration for agreeing to hold office and a bona fide payment by way of damages for breach of contract.
7.Private enforcement of directors duties (derivative suit)	1	1	1	1	1	1	1	1	1	1	1	At common law: A member's entitlement to commence legal proceedings to remedy wrongs done to the company …is circumscribed by the rule in Foss v. Harbottle. If a member is unable to bring his case within one of the established exceptions, he is precluded from proceeding with his complaint. Once it is established that the case comes under one of the exceptions to the rule in Foss v. Harbottle, the action to be commenced may take one of three forms, namely, personal action, a representative action or a derivative action. Under the Rules of the High Court 1980 (RHC), there is no procedure prescribed for a derivative action and it takes the form of a representative action as in O.15 r.12 of the RHC. The company is added to the action as a mere nominal defendant so that it may be bound by any order that the court makes. Companies Act 1965, s 181: s 181 (1) (a) allows the court to provide remedy to a member where the court finds that: affairs of the company are being conducted or the powers of the directors are being exercised either in an oppressive manner to one of the members including petitioner or in disregard of the member or other members' interests. [p. 341: Commercial Applications of Company Law in Malaysia: Aiman Nariman Mohd Sulaiman and Aishah Bidin. 2002]

8. Shareholder action against resolutions of the general meeting	1	1	1	1	1	1	1	1	1	1	1	Companies Act 1965, s181 (1) (b): under this section any member can apply for a remedy if the affairs of the company are being conducted in a manner which is oppressive, unfairly prejudicial or unfairly discriminatory. S.181 covers a wide range of conduct inclyding fraud on minority: however, it appears that despite the wide terminology of section 181, courts are generally reluctant to intervene in the affairs of companies unless bad faith is established: see Zephyr Holdings Pty Ltd v Jack Chia (Aust) Ltd (1989) 7 ACLC 239: Re TriCircle Investment Pte Ltd [1993] 2 SLR 523; and Re Tong Eng Sdn Bhd [1994] 1MLJ 451 p.376: Company Law in Malaysia, Cases and Commentary: Krishnan Arjunan, Malay Law Journal, 1998
9.Mandatory public bid	1	1	1	1	1	1	1	1	1	1	1	Trigger: 33% or 50% for creeping takeover: Rule 34, Malaysian Code on Takeovers and Mergers 1987 And partial takeover is possible with the consent of the Securities Commission: Rule 27, Malaysian Code on Takeovers and Mergers 1987: 27.4 allows the offerror to bid for only a percentage of the target company's shares with the consent of the Securities Commission (established in March 1993 under the Securities Commission Act, 1993). Pg.383
10.Disclosure of major share ownership	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	Div 3A of Pt IV of the Companies Act 1965 and the Listing Requirements: 5%

14. Mexico (Pablo Iglesias-Rodriguez)[45]

The primary legal sources in the Mexican case are the 1934 Mexican Companies Act as well as the 1975 Stock Markets Act. A new Stock Markets Act has been created in 2005 and is currently (since June 2006) in force as the relevant regulation for the Stock Markets. Even if it is not considered in the coding (as it was not in force for the period examined here), as it is the new regulation in foce since 2006, several references to this new regime are made below. The 1999 Code of Best Corporate Governance Practices will be referred to when analyzing directors' independence requirements.

Variable	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	Explanations/ References
1.Powers of the general meeting for de facto changes	0	0	0	0	0	0	0	0	0	0	0	The sale of an amount equal or higher than 5% of the assets of the company is within the competence of the board of directors according to article 28.3.c of the 2005 Mexico Stock Markets Act (SMA)[46]. This article requires the authorization of the board of directors for operations that are executed simultaneously or successively, which by their characteristics can be considered like a single operation and which are sought to be carried out by the company or the people controlling it, done in the course of a social exercise, where they are unusual or nonrecurring, or, they consist of the buying or selling of company's assets with a value equal or higher to a 5% of the consolidated assets of the company.[47] No other provisions make direct reference to this right. Only if this type of operations imply a change in the object of the company or a modification of the articles of association would they be the object of the general extraordinary meeting, as stated in article 182 of the 1934 Mexico Companies Act (MCA).
2. Agenda setting power	¼	¼	¼	¼	¼	¼	¼	¼	¼	¼	¼	The commissaries (persons in charge of the monitoring of companies, who can be both shareholders or persons with no relation with the society and who are nominated by the shareholders) can introduce items on to the agenda, according to article 166.5 of the 1934 MCA.

[45] Thanks to Oscar Alvarez Macotela for helpful comments.

[46] Operating since June 2006

[47] Based on the balance of the immediate last trimester before the operation takes place.

												Apart from this, article 167 of the 1934 MCA allows shareholders to inform the commissaries about any irregularity they consider to have arisen in the management of the company. In these cases, the commissaries must inform the general meeting about these complaints, as well as make any suggestions or proposals they consider to be sufficient. Apart from the powers of the commissaries (who can also be shareholders) in these circumstances, the minority shareholders are not able to introduce items on to the agenda of general meetings. Article 184 of the MCA establishes that shareholders with at least 33% of the share capital can ask a member of the board, the board of directors or any commissaries to call a general meeting, indicating items to be discussed. As the commissaries are, in some sense, representatives of the interest of the shareholders, the value 0.25 has been attributed during the relevant period.
3. Anticipation of shareholder decision facilitated	0	0	0	0	0	0	½	½	½	½	½	Article 192 of the 1934 MCA offers the possibility of shareholder proxy solicitations. The representatives can be other shareholders, but not members of the board or commissaries. The power of representation will be conferred in the way established by the articles of association, or, in absence of such provision, by written means. Article 14.bis 3.VI.c.2 of the 1975 SMA, introduced in 2001, by Decree of 1 June, and article 49 of the 2005 SMA develops this general principle and establishes the right to be represented in the general meetings by another person with a two-way voting proxy form provided by the company.
4. Prohibition of multiple voting rights (super voting rights)	1	1	1	1	1	1	1	1	1	1	1	Article 113 of the 1934 MCA clearly states that each share will just have one vote. Article 114 allows the company to issue special shares for people working for the company. These shares must indicate their particular conditions. Today it is understood that these particular conditions cannot go against the rule established the article 113 of the 1934 MCA. The transitory dispositions of the 1934 MCA establish that the dispositions of the Law will be applied to the effects of all the previous legal acts of the company unless this application is retroactive. It is thus considered that all the companies with the form of a PLC cannot have shares with double voting rights.

5. Independent board members	0	0	0	0	¼	¼	½	½	½	½	½	Article 14.bis.3.IV of the former 1975 SMA, introduced in 2001, as well as article 24 of the current 2005 SMA, establish a requirement for at least 25% independent members on the board of directors (where the board is of a size between 5 and 20 members). According to article 14.bis of the 1975 SMA, in no case may independent board members be: employees or officers of the company (including employees or officers who have worked as such during the previous year in the company); shareholders who may have authority over the company's managers; partners or employees of corporations or associations that provide advice or consulting services to the company or to other companies belonging to the same business group as the company and whose earnings represent 10 per cent or more of the company's total earnings; customers, suppliers, debtors, creditors, partners, directors or employees of a company that is a customer, supplier, debtor or significant creditor; employees or a foundation, association or civil company that receives significant donations from the company; general directors or high level officers of companies on whose board of directors the general director or top managers of the company have a seat; or spouses or those living together as well as relatives by blood or marriage. Pursuant to the 2005 SMA (article 24), stock exchange companies' boards of directors must have a maximum of 21 directors of which at least 25 per cent must be independent directors. Each director may have an alternate director. Independent directors will be designated by virtue of their experience, capacity and professional training. The Code of Best Corporate Practice, introduced in July 1999, page 7, recommends that at least 20% of the members of the board shall be independent. The fact that the percentage of independence has been raised and recognized by the Law justifies the increase in 0.25 points in the coding since 2001.
6. Feasibility of director's dismissal	½	½	½	½	½	½	½	½	½	½	½	Article 50 of the 2005 SMA allows shareholders owing 10 per cent (individually or in group) of the shares with voting rights, even those with limited or restricted voting rights, to nominate or revoke the designation of a mem-

												ber of the board of directors. Apart from this provision, article 162 of the 1934 MCA only permits the dismissal of the directors in the cases in which the general meeting decides it as a result of their responsibility. However, the articles of association may provide that such an appointment or removal of the sole director or board of directors must be made through an extraordinary shareholders' meeting (attending to the rule established in article 182.12 of the 1934 MCA). This is the reason why the value 0.25 has been attributed.
7.Private enforcement of directors duties (derivative suit)	0	0	0	0	0	0	¼	¼	¼	¼	¼	Article 163 of the 1934 MCA allows shareholders owning at least 33% of the share capital of a firm to start a derivative suit against the breach of duties by the directors. Today article 38 of the 2005 SMA allows shareholders of listed firms with at least 5% of the share capital to start this kind of actions. Before 2005, the 1975 SMA (art 14.bis.3.6.d, by amendment introduced in June 2001, allowed shareholders with at least 15% of the share capital to start the derivative suit.
8. Shareholder action against resolutions of the general meeting	¼	¼	¼	¼	¼	¼	3/8	3/8	3/8	3/8	3/8	Article 201 of the 1934 MCA establishes that shareholders with at least 33% of the share capital can file a claim against a resolution of the general meeting unless they were not in the general meeting where the decision was adopted or they voted against the claimed resolution, in whose case the claim is not possible. This claim cannot cover the resolutions concerning the responsibility of the directors or the commissaries. According to article 51 of the 2005 SMA, shareholders with voting rights, even if these are limited or subject to restrictions, owning individually or together at least 20% of the share capital, can file a judicial claim against a resolution of those general meetings in which they have voting rights. In these cases there is no application of the percentage (33%) established by the article 201 of the MCA. The former 1975 SMA, in its article 14.bis.3VI.f (introduced in June 2001) reflects the same percentage. The improvement in the percentage requirement has been considered adding 0.1 to the 0.5 percentages of the precedent years.

9. Mandatory bid	0	0	0	0	0	0	0	0	0	0	0	As stated in article 98 of the 2005 SMA, a person or a group of persons aiming to acquire or reach by any mean directly or indirectly at least 30% of the share capital of a PLC with registered shares, listed or not, by one or more different operations, at the same time or in different stages, must make an offer for the 100% of the share capital when they want to get the control of the company. There are also rules governing cases in which the purpose of the bidder is not to get control of the firm. According to article 2.III of the 2005 SMA one of the definitions of 'control', is the power of a person or a group of persons to keep the ownership of rights which allow to directly or indirectly exercising more than the 50% of the voting rights of the firm. Thus, it can be assumed that for bids of more than 50% of the share capital with voting rights there is sn obligation to bid for 100% of the share capital. Neither the 1934 MCA nor the1975 SMA contain rules regarding this type of bid.
10. Disclosure of major share ownership	0	0	0	0	0	0	0	0	0	0	0	Provisions regarding the disclosure of major share ownership are contained in the articles 109-111 of the 2005 SMA. Article 109. - The person or group of persons who acquire, directly or indirectly, inside or outside any stock market, by means of one or several operations of any nature, simultaneous or successive, ordinary shares of a PLC registered in the Registry, leading to an ownership percentage equal or higher than the 10% and less than the 30%e qual of these shares, are required to inform the public of this. At the same time, the person or group of people just mentioned must disclose whether they intend or not to acquire significant influence in the company. Article 110. - Persons related to a PLC with registered shares, who directly or indirectly increase or decrease by a 5% their participation in its share capital, by means of one or several operations, simultaneous or successive, must publicly dislose this. In addition, they must disclose whether they intend to acquire or increase a substantial influence in that company.

												Article 111. - A person or group of persons who directly or indirectly own at least the 10% of the share capital of a registered PLC as well as the members of the board and the main managers must inform the National Securities Commission and, in the cases involving dispositions of general character, must make public disclosure, concerning the acquisition or sale of those shares, within the terms established by the National Securities Commission. Before these provisions, neither the 1934 MCA nor the 1975 SMA contained any rule concerning disclosure of this type of information.
	1995	**1996**	**1997**	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**	**2004**	**2005**	

15. Netherlands (Gerhard Schnyder)[48]

Variable	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	Explanations/ References
1.Powers of the general meeting for de facto changes	0	0	0	0	0	0	0	0	0	0	0.5	New art. 2:107a Civil Code (Burgerlijk Wetboek BW) states that board decisions implying the transfer of the "enterprise or nearly the whole enterprise to a third party" (a) and "acquiring of or divestment from" (c) stakes in the capital of another company if it amounts to at least 1/3 of the company's assets. This concerns only shares of other companies but not other types of assets.[49] Before 2004 some approval for transfers of important parts of assets required (see Timmerman & Doorman 2002: 26)[50]
2. Agenda setting power	0	0	0	0	0	0	0	0	0	0	1	Reform of *structuurregieme* entered into force on October 1, 2004: Shareholders representing at least 1% of the issued capital or – in the case of listed companies – € 50m at the current share price, can ask that a certain item be put on the agenda for the AGM. (BW 2:114a, §2)(This provision corresponds literally with recommendation no. 30 of the Peters Code.)[51]

[48] Thanks to Oscar Couwenberg for helpful comments.

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

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

[51] "In their articles of association, some companies grant an explicit right to shareholders and to holders of certificates of shares to propose items for inclusion on the agenda. If the articles do not contain such a provision, this still does not mean that the Board of Directors can simply disregard a proposal to include a certain item." This suggests that there was no such right, but that some customary rule or 'moral obligation' exists. The passage continues "BoD should realize that mutual trust [...] implies" that requests for placing an item on the agenda should be carefully considered "[...] unless such inclusion on the agenda is – in the opinion of the Supervisory Board and the Board of Directors – opposed by substantive company interests" (Peters Code, 1997, English Version, p.25) The code also suggests that if the BoD refuse the follow a claim for inclusion, it should clearly explain why at the beginning of the AGM.

3. Anticipation of shareholder decision facilitated	0	0	0	0	0	0	0	0	0	0	0	Dutch law admits the existence of a right to delegate the voting of one's shares without however specifying any procedure (2:117 §1 BW). The company itself can solicit proxies and is not constrained to provide any particular form of ballot (Spamann 2006a). General proxies are prohibited, i.e. proxies count for one AGM only (Meinema 2002: 169).
4. Prohibition of multiple voting rights (super voting rights)	0	0	0	0	0	0	0	0	0	0	0	The law stipulates that each shareholder has at least one vote (art. 2:118 BW for NVs and art. 2:228 BW for BVs). Deviations from the 'one share – one vote' principle include (see for a list Meinema 2002: 167): Voting caps, which limit the number of votes per shareholder to six (if more than 100 shares are issued, otherwise to three) (2: 118 lid 5 BW [before 2004]); Priority shares may give its holder certain special rights, e.g. the right to do a binding nomination for the appointment of managing directors (the general meeting may, at all times by a resolution passed with a two-third majority of the votes cast representing one-half o the issued capital, resolve that such a nomination shall not be binding). Most importantly, Indirect 'super-voting shares' can be created through not fully paid-up preference shares, which can be issued by excluding the pre-emptive right of existing shareholders (Carriere 1997, p. 377; Timmerman & Doorman 2002: 4).
5. Independent board members	0	0	0	0	0	0	0	0	0	1	1	Tabaksblat code (2004): all but one member of the supervisory board must be independent. (§ III.2.1) ("Compliance with the Code is mandatory (by law) for listed companies from the 2004 financial year." compliance report 2005).

6. Feasibility of director's dismissal	0	0	0	0	0	0	0	0	0	0	0.75	Carrière 1997, p. 380: no time limit for director appointment; Carrière 2000, p.81: directors' contracts have a special position in Dutch labour law, thus: contrary to other employees, no consent is needed from the Regional Employment Bureau for their dismissal and they cannot be reinstated by a court ruling! **Structure company before 2004 reform:** only supervisory board can dismiss managing directors; supervisory board members are appointed for max. 4 years, **but can be dismissed only by the *Onderneming-skamer* of the Amsterdam Court of Appeal (if requested by supervisory board, AGM, or Works council). ==> therefore 0** In companies with voluntary supervisory boards and with 'mixed regime', the AGM appoints and dismisses supervisory directors. (Carrière 1997, 383) Structure company after 2004: co-optation of supervisory board abolished, AGM can dismiss the supervisory board *en bloc* by an absolute majority (and at least 1/3 of share capital). (Kleyn et al. 2007)
7.Private enforcement of directors duties (derivative suit)	0	0	0	0	0	0	0	0	0	0	0	
8. Shareholder action against resolutions of the general meeting	1	1	1	1	1	1	1	1	1	1	1	Besides an investigation procedure under art. 2:344-359 BW, other legal venues are open to shareholders based on art. 2:8 BW. Thus, each shareholder may apply for annulment of decisions by any organ of the company when it is contrary to: 1. law and statutes, 2. principle of reasonableness and fairness, 3. other company rules laid down in by-laws. Carrière 2000, p.83[52]

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

9. Mandatory bid	0	0	0	0	0	0	0	0	0	0	0	Such a rule was adopted by the lower house on October 24, 2006 following the adoption of the 13th EC CL Directive. The rule is part of chapter 5 of Financial Supervision Act (FSA), which entered into force on January 1, 2007, without chapter 5 however.[53]
10. Disclosure of major share ownership	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	Disclosure of Major Holdings in Listed Companies Act of 1992 implemented the EC directive of 12 December 1988, 88/627/EEC and introduced thresholds for the compulsory announcement of the acquisition or sale of significant share stakes. First threshold for disclosure = 5%.[54]
	1995	**1996**	**1997**	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**	**2004**	**2005**	

Comments:
A structure company is defined as a company (either BV or NV) that satisfies during three consecutive years the following criteria: i) issued share capital of at least € 13m (€ 16m since October 2004); ii) has more than 100 employees, and iii) it – or one of its subsidiaries – falls under the obligation under the Works Council Act to establish a works council (Meinema 2002: 158). Companies which fall under this 'structure regime' are obliged to establish besides the management board (*raad van bestuur*) an independent supervisory board (*raad van commissarissen*) with at least three members. Until recently, most listed firms were *structuurvennootschap* (see e.g. SER 2001 (pp.8-9): out of 184 listed companies 111 were structure companies and 30 applied the mixed regime voluntarily (January 1, 1999). The Dutch law provides for a less strict version of the structure regime for certain companies, the so called "mixed regime". Companies which employ the majority of their workforce outside the Netherlands can apply this less strict regime in which case the AGM, not the supervisory board, adopts the annual accounts [Since October 2004 the AGM is always the authorized corporate body to adopt the annual accounts] and appoints and removes the members of the executive board (de Jong 2001). Interestingly, however, a considerable part of companies which could opt-out of the *structuurregeling* chose to apply the Dutch law system anyway: Poutsma and Braam (2005: 15) report 15% of the firms renounced from opting out; de Jong (2001: 159) reports even that 26% of all firms that applied the structure regime do so voluntarily. (this may

[53] The government submitted a bill on Financial Supervision Act (FSA / Wft) including a chapter 5 on mandatory public bids to the Parliament in December 2005. This regulation entered into force October 28, 2007. Content of mandatory bid rule Section 5:70(1) of the FSA as adotped by the lower house in October 2006): "[...] Anybody who, individually or acting in concert with other parties, obtains dominant control in a Dutch public limited company (naamloze vennootschap, or NV), of which NV shares or certain depositary recepits issued for shares (certificaten van aandelen) have been admitted to trading at a regulated market within the European Union, will in the future be required to make a public offer to all holders of the relevant shaers for 100% of their holdings. The term dominant control means the capacity to exercise at least 30% of the voting rights in the general shareholders' meeting of such an NV." (Buruma 2006, ¶3). NB: "The current bill does not include a prohibition on increasing pre-existing controlling interests (above 30%), without making an offer for 100% of the relevant company's issued capital (this is a notable difference from takeover rules in , for instance, the United Kingdom)." (Buruma 2006, ¶13) Adopted by lower house in October 2006, and by April 2007 was treated in the Senate but not adopted by October 2007 (Kleyn et al. 2007, ¶2).

[54] In 1996 the Disclosure of Major Holdings in Listed Companies Act (Wet melding zeggenschap in ter beurze genoteerde vennootschappen Wmz 1996, entry into force on June 1, 1997) has been adopted, which defines 'bands' (0-5%, 5-10% etc.) for disclosure. However even before (since 1992? disclosure requirements following EC transparency directive of 1988). Disclosure rules at least since June 1995 (Haanappel et al. 1999). The thresholds were 5%, 10%, 25%, 50% and 66.66%. (replaced in 2006 by *Wet melding zeggenschap en kapitaalbelang in effectenuitgevende instellingen*, entered into force October 1, 2006). Wet melding zeggenschap en kapitaalbelang in effectenuitgevende instellingen is replaced in 2007 by Wet op het financieel toezicht, entered into force January 1, 2007. The tresholds are 5%, 10%, 15%, 20%, 25%, 30%, 40%, 50%, 60%, 75% and 95% (art. 5:38 Financial Supervision Act).

be explained by the fact that the structure regime constitutes an efficient anti-takeover device). Note that in the case of the voluntary structure regime, the power of the supervisory board are reduced and the AGM elects and dismisses the directors (Carrière 1997: 383)

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16. Pakistan (Priya Lele)

Variable	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	Explanations/ References
1.Powers of the general meeting for de facto changes	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	Companies Ordinance 1984, S. 196 (3) : sale, lease or other disposal of the undertakings or a sizable part thereof requires the consent of general meeting.
2.Agenda setting power	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	Companies Ordinance 1984, S.164 (2): 10% Companies Ordinance 1984, 159 (2): Calling of extraordinary general meeting.-- members representing not less than one-tenth of the voting power can requisition or themselves call for an extraordinary general meeting.
3.Anticipation of shareholder decision facilitated	0	0	0	0	0	0	0	0.5	0.5	0.5	0.5	0 until 2001: Companies Ordinance 1984, S.161 read with Regulation 39 of Table A in the First Schedule. 0.5 since 2002: Because the Code of Corporate Governance mandates the provision of proxy solicitation but only in one case, i.e. to facilitate the minority shareholders as a class to contest election of directors.
4. Prohibition of multiple voting rights (super voting rights)	0	0	0	0	1/3	1/3	1/3	1/3	1/3	1/3	1/3	0 until 1998: Companies Ordinance 1984, S.90 1/3 from 1999: Companies Ordinance 1984, S.90 as as substituted by Finance Act, 1999 dated 30th June 1999 read with the Companies, Share Capital (Variation in Rights and Privileges) Rules, 2000 – in particular rules 3 and 5.
5.Independent board members	0	0	0	0	0	0	0	0	0	0	0	Because there is nothing in the Companies Ordinance 1984 on the composition of the board of directors and the requirement of independence of directors. Further, the Code of Corporate Governance includes clause (i) on Board Composition, but apart from clause (i) (b) which requires at least one independent director from amongst the institutional investors, it merely recommends the encouragement of effective representation of independent nonexecutive directors, including those representing minority interests on the Board of Directors of listed companies and is in any case dependent on voluntary compliance.
6. Feasibility of director's dismissal	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	Companies Ordinance 1984, S.181

7.Private enforcement of directors duties (derivative suit)	0	0	0	0	0	0	0	0	0	0	0	Companies Ordinance, 1984, S.290: 20%
8. Shareholder action against resolutions of the general meeting	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.5	0.5	0.5	0.5	Companies Ordinance, 1984, S.290: Action could be taken against decision of general meeting when it amounts to oppression and mismanagement within the meaning of that section: hurdle of 20% Introduced since 2002:by Ordinance No. C 2002 dated 26 Oct. 2002 is S.160A, under which proceedings of a general meeting may be declared invalid by reason of any material defect or omission in the notice or irregularity in the proceedings of the meeting which prevented members from using effectively their rights - hurdle of 10%
9.Mandatory public bid	0	0	0	0	0	0	0.5	0.5	0.5	0.5	0.5	Regulations 5 and 12 of the Listed Companies (Substantial Acquisition of Shares and Takeovers) Regulations, 2000.
10.Disclosure of major share ownership	0	0	0	0	0	0.5	0.5	0.5	0.5	0.5	0.5	Listed Companies (Substantial Acquisition of Shares and Takeovers) Regulations, 2000: Regulation 4: 10%.

17. Russia (John Hamilton)

Variable	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	Explanations/ References[55]
1. Powers of the general meeting for de facto changes	0	1	1	1	1	1	1	1	1	1	1	Sale of more than 50 % of the company's assets requires approval of the general shareholders meeting. (Article 79 of the JSC Law[56]).
2. Agenda setting power	0	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	Holders of not less than 2 % of shares may propose items to the agenda of the general shareholders meeting. (Article 53 of the JSC Law).
3. Anticipation of shareholder decision facilitated	0	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	Upon decision of the board of directors, the general shareholders meeting may be conducted without attendance of the shareholders. In such a case a decision of the general shareholders meeting shall be adopted by postal voting and a two-way proxy form must be provided to each shareholder of the company. Postal voting is not permitted in the case the agenda of the general shareholders meeting includes certain items, e.g. election of the board of directors, approval of annual reports, distribution of profits etc. (Article 50 of the JSC Law).

[55] The explanations are given as to the status of the relevant provisions by 2005 and may not reflect the current situation.

[56] Federal Law No. 208-FZ of 26 December 1995 "On Joint Stock Companies" effective since 1 January 1996 ("**JSC Law**"). Entry into force of the JSC Law justifies the 1996 valuation changes of the variables 1 - 3, 7 and 8.

4. Prohibition of multiple voting rights (super voting rights)	1	1	1	1	1	1	1	1	1	1	1	The general principle is one voting share grants one vote. (Article 59 and Article 66 of the JSC Law). [[Exception from the above principle is "cumulative voting" in the course of election of the board of directors. At the cumulative voting the number of votes is multiplied by the number of candidates to the board of directors (Art. 59 and Art. 66 of the JCS Law. "Golden share" may be considered as an equivalent to super voting rights. The "Golden share" may belong only to the state and may be obtained in the course of privatisation or exclusion of the company from the list of strategic companies. The "Golden share" entitles the state, in particular, to participate in general shareholders meeting and to exercise a veto right with respect to certain issues included in the meeting agenda. (Article 38 of the Law on Privatisation[57]). These exceptions were not coded in this variable]].

[57] Federal law No. 178-FZ of 21 December 2001 "On Privatisation of State and Municipal Property" ("**Law on Privatisation**").

5. Independent board members	0	0	0	0	0	0	0	0	0.6	0.6	0.6	In 2003 it was recommended to the stock exchanges to include into quotation lists only the companies, which had not less than 3 independent directors. (Decree of the Federal Commission for Securities Market No. 03-1169/r of 18 June 2003). As far as the general number of members of the board of directors is concerned, a company is required to have a minimum of 5-9 members of the board of directors (the minimum is dependant on the quantity of shareholders).
6. Feasibility of director's dismissal	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	(Articles 66 and 69 of the JSC Law). In the case of early dismissal of the sole executive body (general director) in the absence of misconduct on his part, he is entitled to the compensation provided for by the employment contract (Article 279 of the Labour Code[58]). In other situations a claim for compensation may also be possible. The general problem is that the relationship between labour law and company is ambiguous with respect to directors (for a brief summary see Black et al, 'Report to Russian Center for Capital Market Development: Comparative Analysis on Legal Regulation of the Liability of Members of the Board of Directors and Executive Organs of Companies', available at http://ssrn.com/abstract=1001990 at 124-127)

[58] Labour Code of the Russian Federation No. 197-FZ of 30 December 2001.

7. Private enforcement of directors duties (derivative suit, shareholder action)	0	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	The company or a shareholder(s) holding in aggregate not less than 1% of placed common shares of the company are entitled to bring a lawsuit against a member of the board of directors, general director or member of the management board concerning compensation of losses caused to the company by their deliberate actions. (Article 71 of the JSC Law).
8. Shareholder action against resolutions of the general meeting	0	1	1	1	1	1	1	1	1	1	1	A shareholder is entitled to challenge in court a decision adopted by the general shareholders meeting in violation of the statutory requirements or the charter of the company, if such a shareholder did not take part in the general shareholders meeting or voted against the adopted decision, provided that the shareholder's rights were violated by the said decision. In certain circumstances the court may leave the decision in force. (Article 49 of the JSC Law).
9. Mandatory bid	0	1	1	1	1	1	1	1	1	1	1	Acquisition of over 30% of placed ordinary shares in a company triggered mandatory bid to other shareholders. After 2001 this rule applied only to companies with more than 1000 shareholders. The charter of the company or the general shareholders meeting could release the acquirer of over 30% of shares of the said obligation. (Article 80 of the JSC Law). The rules on mandatory bid were significantly amended in 2006.

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	
10. Disclosure of major share ownership	0	0.25	0.25	0.75	0.75	0.75	0.75	0.75	0.25	0.25	0.25	The Securities Law[59] introduced in 1996 an obligation of the company to disclose (in the form of notices on material facts) information on its shareholders holding over 25% of shares. The threshold for disclosure was set at 5% in 1998 and was changed to 25 % in 2003. In 2006 the threshold of shareholding to be disclosed in a notice on material facts was changed to 5%. In addition to the above disclosure requirement, a shareholder was obliged to notify the Federal Commission for Securities Market of its acquisition of 20% or more of the shares in a company and of any increase or decrease in its shareholding for each incremental 5% over 20% of the company's shares. (Article 30 of the Securities Law).

Comment on the legislation in 1995:

In 1995 the first part of the Russian Civil Code came into force. It set forth basic regulation with respect to joint stock companies (definition, general rules on establishment, reorganization and liquidation, on charter capital and corporate governance). These general rules are retained in the JSC Law. In addition to the Civil Code in 1995 there were other normative acts, which were adopted in early 90-s, regulating joint stock companies (e.g. Decree of the Council of Ministers of RSFSR No. 601 dated 25 December 1990 "On approval of the Regulations on Joint Stock Companies"), such normative acts were applicable as far as they did not contradict the Civil Code. However, the JSC law, which came into force in 1996, was a cornerstone in regulation of joint stock companies in Russia, providing detailed regulation of issues, which either were not specifically addressed in the previous legislation or were addressed in an insufficient manner. Therefore, many variables for the year 1995 have indices that differ from the following years.

[59] Federal law "On Securities Market" No. 39-FZ of 22 April 1996 ("**Securities Law**").

18. Slovenia (Nina Cankar)

Variable	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	Explanations/ References
1.Powers of the general meeting for de facto changes	0	0	0	0	0	0	0	0	0	0	0	No approval of the shareholder meeting is required. Powers of the shareholoder meeting are defined in Article 282 of the Companies Act (ZGD). Note that the 2006 amendments to the Companies Act (ZGD-1, Article 330) require the adoption of the shareholder meeting resolution for the sale of more than 25 % of the company's assets.
2. Agenda setting power	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	Shareholders who hold 5% or more of the share capital can call a shareholder meeting and require the subject of the meeting to be published. However, the articles can regulate the right to call the shareholder meeting in a different way (Article 284 of ZGD). Note that the new Companies Act (ZGD-1) limits the maximum requirement that can be introduced in the articles to 10 % of the share capital. Note also that a counter-proposal for each proposed resolution on the agenda can be filed by a single shareholder.
3. Anticipation of shareholder decision facilitated	0	0	0	0	0	0	0	0	0	0	0	Postal voting is not possible. Corporate Governance Code for Joint-Stock Companies (the "Code") adopted in 2004 recommends that should a company organise the collection of proxies for voting at the general meeting, or should the members of its management or supervisory bodies or persons employed by the company collect proxies, this information should be made public on the company's website (Article 1.3.12. of the Code, comply-or-explain requirement).
4. Prohibition of multiple voting rights (super voting rights)	1	1	1	1	1	1	1	1	1	1	1	It is prohibited to issue shares of a certain nominal value that give a different number of votes (Article 179 of ZGD).

5. Independent board members	0	0	0	0	0	0	0	0	0	1	1	Article 3.3.1. of the Code recommends that at least ½ of board members should be independent (comply-or-explain requirement). Note that the new Companies Act of 2006 maintains that a company may set up supervisory board committees. If an audit committee is set up, one of its members has to be an independent expert from the field of finance or accountancy (Article 279 and 280 of ZGD-1).
6. Feasibility of directors' dismissal	0.5	0.5	0.5	0.5	0.5	0.5	0.75	0.75	0.75	0.75	0.75	Until 2001 members of the management board could be dismissed for the following (good) reasons: - severe breach of directors duties; - incapability of running the business; or - passing a vote of no confidence to the board member. However, if a member of the management board was dismissed without good reason, he was entitled to certain remuneration, whereby the maximum amount was provided by the law (Article 250 of ZGD). ZGD amendments of 2001 introduced two major changes; (i) another good reason for dismissal is introduced – that is, other business and economic reasons (e.g. major changes in the ownership structure, reorganisation of the company, major changes in the business of the company, etc.); and (ii) compensation is not mandated by the law anymore. From 2001, I allocate the value 0.75 to this variable, for the criteria of "other business and economic reasons" are fairly lax and enables a great deal of manoeuvring space for dismissal. No good reasons are required nor any financial burdens imposed for dismissal of a director from the supervisory board. The codings given relate to the management board. (Article 266 of ZGD).

7.Private enforcement of directors duties (derivative suit, share-holder action)	0	0	0	0	0	0	0	0	0	0	0	If the resolution to file a lawsuit is not adopted at the shareholder meeting (51% majority vote re-quired), shareholders who hold at least 10 % of the share capital or 400,000 EUR can file the suit (Article 73 of the Takeover Act of 1997). Note that with the new Companies Act of 2006, this issue has been transferred from takeovers law to company law.
8. Shareholder action against resolutions of the general meeting	1	1	1	1	1	1	1	1	1	1	1	Articles 359 and 366 of ZGD.
9. Mandatory bid	0	0	1	1	1	1	1	1	1	1	1	From 1997, the mandatory bid obligation is trig-gered at 25 % of the voting rights (Article 4 of the Takeovers Act of 1997 - ZPre). Until 2006, exceptions from this rule were three fold: (i) privatisation investment funds (PIFs) were not required to issue the mandatory bid for shares they had acquired in the privatisation process; (ii) so called "empowered companies", estab-lished by shareholders of those companies that have not chosen public sale of shares as a priva-tisation method, were excluded from the manda-tory bid requirement when acquiring shares; and (iii) for the two para-state funds (KAD and SOD) and other shares acquired by PIFs the mandatory bid was triggered at 40 %. The new Takeovers Act of 2006 (ZPre-1) elimi-nated these exceptions.

10. Disclosure of major share ownership	0.5	0.5	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	Until the adoption of the Takeovers Act in 1997, shareholders who acquired 10%, 25%, 50% or 75% of shares with voting rights listed at the official market, were subject to disclosure requirement (the Securities Markets Act of 1994, Article 146). The Takeovers Act of 1997 mandated a shareholder who, directly or indirectly, acquired 5 % and each subsequent 5 % of shares with voting rights, to notify the issuer of securities and the Securities Market Agency thereof within three working days (Article 64 of ZPre). The new Takeovers Act of 2006 requires disclosure at 5, 10, 15, 20, 25, 33.33, 50 and 75% (Article 10).
	1995	**1996**	**1997**	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**	**2004**	**2005**	

Comments

Please note that in 2006 a new Companies Act (ZGD-1) was adopted, introducing major amendments to the Slovenian company law. In the template I refer to the old Companies Act (ZGD) and its amendments as applicable in each year of the coding. Where appropriate, however, I also indicate the amendments introduced by the ZGD-1.

The same holds for the Takeovers Act, which was adopted in 1997. It has not been amended until 2006 when the new Takeovers Act (ZPre-1) came into force. Where appropriate, I indicate the amendments introduced by the ZPre-1.

19. South Africa (Priya Lele)[60]

Variable	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	Explanations/ References
1.Powers of the general meeting for de facto changes	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	Companies Act 1973, S. 228: the disposal of the 'whole or substantially the whole of the undertaking of the company or the whole or the greater part of its assets' requires the consent of the general meeting.[61]
2.Agenda setting power	0	0	0	0	0	0	0	0	0	0	0	Companies Act 1973, S. 185 (2): members representing 20% of voting rights or at least 100 members Companies Act 1973, S. 181: members representing 20% of voting rights or at least 100 members can requisition or themselves call for a general meeting other than the annual general meeting
3.Anticipation of shareholder decision facilitated	½	½	½	½	½	½	½	½	½	½	½	Companies Act 1973, S.189 read with Article 50 of Table A
4. Prohibition of multiple voting rights (super voting rights)	2/3	2/3	2/3	2/3	2/3	2/3	2/3	2/3	2/3	2/3	2/3	Companies Act 1973, S.193 (1) read with S.196 (1)
5. Independent board members	0	0	0	0	0	0	0	0	0.25	0.25	0.25	The King reports (King I -1994 and King II - 2001) are both voluntary codes of Corporate Practices and Conduct – result of self-regulatory initiatives. We understand that there was nothing substantial in the King Report I on the requirement of 'independent directors'. The King II Report states that a company should have a balance of executive and non-executive directors, "preferably comprising a majority of non-executive directors of whom sufficient should be independent of management for minority interests to be protected" (sec 2.2). King II does not provide specific numbers on the number of independent directors. Since 2003 Rule 3.84 of the JSE Listing Requirements states that certain recommendations on corporate governance issues are now mandatory for listed companies, including this recommendation on the composition of the board.

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

[61] Please note that s 228 has been amended in terms of the Corporate Laws Amendment Act 24 of 2006. A special resolution is now needed.

6. Feasibility of director's dismissal	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	Companies Act 1973, S. 220 read with S.227
7.Private enforcement of directors duties (derivative suit)	1	1	1	1	1	1	1	1	1	1	1	Companies Act 1973, S.266.
8.Shareholder action against resolutions of the general meeting	1	1	1	1	1	1	1	1	1	1	1	Companies Act 1973, S.252 (which covers cases where the majority is oppressive or unfairly prejudicial, unjust or inequitable). For technical issues shareholders will have to rely on the Act and request that the specific decision be declared void based on the fact that it went against the Companies Act. S 65(2) also states that the articles and memorandum of association constitute a contract between the company and the shareholders and between the shareholders themselves, normal contractual principles can therefore also be used.
9.Mandatory public bid	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	Securities Regulation Code on Takeovers and Mergers, Regulation 8.
10.Disclosure of major share ownership	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	Rule 8.63(d) and (f) (former Section 11.26) of the JSE Limited Listings Requirements

20. Spain (Pablo Iglesias-Rodriguez)

Legal rules: 1988 Stock Markets Act (listing requirements), 1989 Spanish Companies Act (limited liability companies), 1991 Act on Public Bids, 1991 Royal Decree on communication of substantial ownership on listed firms, 2003 Act on transparency of listed firms, 2005 Act on the European Limited Liability Company
Codes of Conduct: 1998 Olivencia Report, 2003 Aldama Report , 2006 Unified Code

Variable	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	Explanations/ References
1.Powers of the general meeting for de facto changes	0	0	0	0	0	0	0	0	0	0	0	No legal provisions exist concerning these powers.
2. Agenda setting power	½	½	½	½	½	½	½	½	½	½	½	Companies Act 1989 (article 97), modified by the 2005 Act on the European Limited Liability Company, establishes that shareholders representing at least 5% of the share capital can introduce items on to the agenda. Before that year there were no provisions giving this right. But the right to call extraordinary meeting requires 5% of share capital.
3. Anticipation of shareholder decision facilitated	0	0	0	0	0	0	0	0	0.5	0.5	0.5	Article 106 of the 1989 Companies Act establishes that all the shareholders with attendance rights can be represented in the meeting by another person. However this right can be limited by the articles. Article 107 of the same Act establishes that the company (via directors or register and deposit firms) may provide proxy solicitation with a two way proxy form. Article 105.4 of the Companies Act introduced by article 2.1 of the 2003 Transparency Act states that according to the articles of association, voting on any item of the general meeting can be delegated or exercised by postal or electronic means or any other communication means which properly guarantees the identity of the person exercising the voting right. The law does not impose this obligation, just creates the possibility, and there is no explanation of what 'secure means' are.
4. Prohibition of multiple voting rights (super voting rights)	1	1	1	1	1	1	1	1	1	1	1	The 1989 Companies Act (article 50) prohibits the creation of shares which directly or indirectly modify the proportion between the value of the share and the voting rights or the preemptive rights attached to it. According to the second transitory disposition of the same law, all provisions in the articles of association going against the Companies Act will have no effect from the coming into force of the Companies Act. Thus, it can be assumed that there are no shares with multiple voting rights after 1990.

5. Independent board members	0	0	0	¼	¼	¼	¼	¼	¼	¼	¼	No legal provisions concerning this requirement exist, just governance codes. These codes are not compulsory for companies, which can freely decide whether to comply with them or not. However, once they affirm they follow any of these codes, they must comply with their respective requirements. The 1998 Olivencia Code considers independent directors (point 2.2) to be those who are appointed to the Board of Directors on the basis of their high professional qualifications, regardless of whether or not they are shareholders. These directors have the mission of representing the floating capital (ordinary shareholders). The report establishes that a wide majority of the directors should be non executive and that among non executive directors, the ratio between the independent and domanial directors (those who hold or represent the holders of blocks of shares which can control the company) should be based on the ratio in the company's shareholders between the floating capital (in the hands of ordinary investors) and the stable capital (held by significant investors). This is a recommendation which tries to ensure that independent directors carry sufficient weight in the Board's decisions. As the code states: 'the reasonable and flexible nature of the rule allows it to be adapted to each company's individual circumstances'. The 2003 Aldama report reflects a similar definition of independent directors (point 2.1.c), although establishing more specific restrictions. When it comes to the balance between independent and not independent directors, the code follows the criteria established in the Olivencia report. The Unified Code, valid from may 2006 establishes a unified set of criteria based on the earlier codes.
6. Feasibility of director's dismissal	½	½	½	½	½	½	½	½	½	½	½	The 1989 Spanish Companies Act (article 131) allows the general meeting to agree on the dismissal of the directors at any moment with no special requirements for proceeding in this way. However, compensation is probably possible.

7.Private enforcement of directors duties (derivative suit)	½	½	½	½	½	½	½	½	½	½	½	The 1989 Spanish Companies act (article 134.4) allows shareholders owing at least 5% of the share capital to call a general meeting to decide on the exercise of the derivative suit or to directly exercise it when the directors fail to call a meeting to discuss the exercise of the action, or when an agreement to exercise it is not carried out by the company.
8. Shareholder action against resolutions of the general meeting	1	1	1	1	1	1	1	1	1	1	1	According to the 1989 Companies Act (article 117), any shareholder can file a claim in respect of a resolution of the general meeting which is null and void. In the case of voidable resolutions, claims may be brought by those shareholders who attended the general meeting and indicated their opposition to that resolution in that meeting, those who were not in the meeting, and those who were illegally deprived of their voting rights. Resolutions of the general meeting which can be subject to this action are resolutions which are against the law (void) or the articles of association, or those which damage, to the benefit of one or some shareholders, the interest of the company (voidable) –article 115).
9. Mandatory bid	½	½	½	½	½	½	½	½	½	½	½	Ownership: The 1991 Act on the regime of public bids establishes percentages concerning the mandatory bid in case of purchase of shares (article 1): PURCHASE — BID ≥25% — ≥10%1 ≥50% — 100%2 1: A bid must also be for 10% in these cases: when the purchaser already had a percentage equal or higher than 25% but lower than 50% and aims to increase that percentage by at least a 6% in a period of 12 months; when the offer refers to a percentage lower than 25% but the following circumstances pertain: firstly, that the purchaser aims to achieve a percentage equal or higher than 5% or where, the target is below 5%, is at a level which

												would allow him to nominate members of the board representing (along with those previously nominated) more than a third but less than 51% of the members of the board of the firm; secondly, where the intention of the purchaser is to nominate the said amount of the members of the board. 2. A bid must also refer be for 100% of the share capital in a case in which the offer refers to a percentage below the 50% but the following circumstances pertain at the same time: firstly, that the purchaser aims to achieve a percentage equal or higher than 5% or where, the target is below 5%, is at a level which would allow him to nominate members of the board representing (along with those previously nominated) more than a third but less than 51% of the members of the board of the firm; secondly, where the intention of the purchaser is to nominate the said amount of the members of the board.
10. Disclosure of major share ownership	¾	¾	¾	¾	¾	¾	¾	¾	¾	¾	¾	The 1991 Royal Decree on the communication of substantial stakes on listed companies (article 1), following the requirement of the 1988 Stock Markets Act (article 53) establishes, as a general rule, an obligation upon shareholders purchasing shares leading to an ownership percentage equal or higher than 5% of the share capital and their successive multipliers to communicate this to the listed company, the stock exchange where the firm is listed, and the National Securities Commission.
	1995	**1996**	**1997**	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**	**2004**	**2005**	

21. Sweden (Gerhard Schnyder)

Variable	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	Explanations/ References
1.Powers of the general meeting for de facto changes	0	0	0	0	0	0	0	0	0	0	0	No rules on sales of assets[62]
2. Agenda setting power	1	1	1	1	1	1	1	1	1	1	1	'aktieägares initiativrätt' (7:16 ABL 2005, ABL 1975 9:7): even one single shareholder has the right to put a point on the agenda
3. Anticipation of shareholder decision facilitated	0	0	0	0	0	0	0	0	0	0	0	ABL 2005: 7 kap 4§ *fullmaktsinamlingar*: articles of incorporation can provide that board is allowed to collect proxies, which amounts in fact to a sort of postal voting system.[63]
4. Prohibition of multiple voting rights (super voting rights)	0	0	0	0	0	0	0	0	0	0	0	-
5. Independent board members	0	0	0	0	0	0	0	0	0	0.5	0.5	Swedish Code of 2004 (3.2.4) "The majority of the directors elected by the shareholders' meeting are to be independent of the company and its management." According to the OMX listing rules companies have to "comply or explain" whether they fulfil the requirements of the code.
6. Feasibility of director's dismissal	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	Directors who are elected by the AGM can be dismissed without good reasons and without compensation (ABL 2005: 8:14; ABL 1975: 8:2). Yet, those who have been appointed in other ways (e.g. by political authority) can only be dismissed by those who have appointed them.
7.Private enforcement of directors duties (derivative suit)	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	Damage suit ('*minoritetstalan*' 29:9 ABL 2005, ABL 1975 15:5): at least 10% of share capital

[62] But see Leo Lagen (lag 1987:464 om vissa riktade emissioner i aktiemarknadsbolag): listed company cannot sell shares of subsidiary companies to related persons or parties (e.g. managers of the subsidiary) without the consent of 9/10th of AGM (represented votes & capital).(§6 lag 1987:464) (has been integrated in ABL 2005: chap. 16 4§).
ABL 2005: 24 kap, 1-30§§ fission: AGM has to agree on the splitting of the company (no precision of % of assets that have to be sold…). 2/3rd majority of votes cast and of shares represented in order to approve the fission plan. NB: if the company which sells its assets is a public company and one (or several) of the overtaking companies are private, the decision has to be taken in the selling company's AGM unanimously and 9/10 of the shares have to be present! + 0.25

[63] Svensson & Danelius 2005: p.62 "De är tillåtet att i bolagsordningen ta in föreskrifter om ett särskilt slags fullmaktsförfarande, *som i praktiken kan liknas vid en form av poströstning*".

8. Shareholder action against resolutions of the general meeting	1	1	1	1	1	1	1	1	1	1	1	Each shareholder can file a law suit against a AGM decision if it was not taken in due form or if it infringes on the law or the articles[64]
9. Mandatory bid	0	0	0	0	0.5	0.5	0.5	0.5	1	1	1	NBK takeover rules since 1971; revision 1988 and 1999. Mandatory bid rule since 1999. Has obtained quasi-legal status through inclusion in SSE listing requirements 1999[65]. 30% mandatory bid rule since 2003[66]. SOU 2005:58 proposes to introduce a mandatory bid rule at 30% in the law, make the NBK rule in this respect stricter and introduce stricter sanctions[67]

[64] 'inte har kommit till i behörig ordning eller på annat sätt strider mot denna lag, tillämplig lag om årsredovisning eller bolagsordningen' (7 kap, 50§ ABL 2005; ABL 1975 9 kap, 17§)

[65] SOU 2005::58, p.10 "Sverige är ett av de länder i Europa i vilka takeover-regler tidigast växte fram. Redan år 1971 utfärdade Näringslivets börskommitté (NBK), med förebild i de brittiska reglerna, regler om offentliga erbjudanden om aktieförvärv. Reglerna har under årens lopp successivt utvecklats och anpassats till näringslivets behov och den internationella utvecklingen. Reglerna är intagna i Stockholmsbörsens, NGM:s och AktieTorgets noteringsavtal och därmed juridiskt bindande för de noterade bolagen."

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

[67] SOU 2005:58 p.17 "3 kap. Budplikt Förutsättningar för att budplikt skall uppkomma i ett aktiemarknadsbolag 1 § Den som inte innehar några aktier eller innehar aktier representerande mindre än tre tiondelar av röstetalet för samtliga aktier ett aktiemarknadsbolag och genom förvärv av aktier i bolaget, ensam eller tillsammans med någon som är närstående enligt 2 § uppnår ett aktieinnehav som representerar minst tre tiondelar av röstetalet för samtliga aktier i bolaget (kontroll), skall lämna ett offentligt uppköpserbjudande avseende resterande aktier i bolaget (budplikt)."

10. Disclosure of major share ownership	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	NBK “flaggningsreglerna” (*flagging rules*) of 1983, 1984, 1991 and 1994 are part of the SSE listing requirements and inspired by UK rules. They apply to Swedish companies’ listed shares (since 1991 also to convertibles). Between 1983 and 1994 10% initial threshold for disclosure and then iff +/- 2% of total of stake (capital or votes); since 1994: 5% threshold and then 10%, 15%, 20%, 25% etc. (abolished on July 1, 2007 as legal rules takeover)[68]
	1995	**1996**	**1997**	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**	**2004**	**2005**	

[68] Between 1993 and 2007 the NBK rules applied in parallel to a set of legal rules (Lag 1991:980 om handel med finasiella instrument (chapter 4, 5§) entry into force on Jan 1, 1993)that were based on 88/627/EEC on the information to be published when a major holding in a listed company is acquired or disposed of (thresholds: thresholds of 10 %, 20 %,1 / 3, 50 % and 2 / 3). The NBK maintains its rules as their abolishing in favour of the EC-based legal rules would consititute a weakening of disclosure requirements (see NBK flagging rules of 1994, p.2). Following Bet. 2006/07:FiU17 2007 (2007:535) lag 1991:980 is amended. New thresholds: 5, 10, 15, 20, 25, 30, 50, 66 2/3 and 90. NBK rules are abolished in 2007.

22. Switzerland (Viviana Mollica)[69]

Variable	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	Explanations/ References
1.Powers of the general meeting for de facto changes	0	0	0	0	0	0	0	0	0	0	0	No. (but in some cases because of "Teillquidation","faktische Liquidation")
2. Agenda setting power	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	Ex Art. 699 (3): to exercise a requisition right, the requesting shareholders who represent shares of an (aggregate) nominal value of 1 million Swiss Francs of the issued capital. Art. 700 (2) and market practice fix a time limit of 2 or 3 weeks before the notice, so approximately 45 days before the meeting. (provision unchanged); 10 % can call extraordinary general meeting
3. Anticipation of shareholder decision facilitated	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	The general meeting exercises the rights of the shareholders respecting the affairs of the company. Each shareholder is entitled to participation in the general meeting. The shareholder may be represented by proxy. (Art. 689). In the case of registered shares, such proxy must be in writing. Since 1992 proxy voting is facilitated. The management is not obliged to act as a proxy, however, it has to guarantee that in case of proxy voting shareholders have to have the chance to effectively voice their opinion (Arts. 689b, c).
4. Prohibition of multiple voting rights (super voting rights)	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	0.25	Multiple voting rights have been issued by two companies (Serono and Swatch Group: data in 2005); but Art. 693(2) limits the extend of multiple voting rights to a maximal distortion of 1:10, i.e. super-voting shares cannot carry more then 10 times as many votes as 'normal' shares..
5. Independent board members	0	0	0	0	0	0	0	0.5	0.5	0.5	0.5	Art. 707 states that all directors must be shareholders of the company. Recently, a "Code of Best Practice" recently was issued in 2002 by *Economie Suisse*, the leading Swiss business association contains non-binding recommendations for the corporate governance of listed and non-listed companies. The Code recommends at section IIb §12 : "That the majority of the Board should, as a rule, be composed of […] non-executive members […]."

[69] Thanks to Gerhard Schnyder for helpful comments.

6. Feasibility of director's dismissal	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	According to article 705 para. 1 CO the general assembly can remove members of the board of directors. Co. 2 states that compensations can still be paid for the dismissal, whenever due. The condition in which the company may indemnify its D&Os is not addressed by statute. There is limited legal commentary and no leading case or other precedent on the subject. The commentators suggest that indemnification is impermissible in respect to claims brought by shareholders, although providing a defense may be allowed as long as the claim is unsuccessful. The scope of indemnification may also be affected by the terms of the articles of incorporation or by (e.g. employment) contract. (provision unchanged)
7.Private enforcement of directors duties (derivative suit)	1	1	1	1	1	1	1	1	1	1	1	Art. 754 makes the directors liable to the company, shareholders and creditors, in cause they caused damage to the company while violating their duty to act honestly, diligently and with due care. Art. 756 any shareholders can apply for court proceeding against a director.
8. Shareholder action against resolutions of the general meeting	1	1	1	1	1	1	1	1	1	1	1	Art. 706 states that the board and any shareholder have the right to start an action in front of the Court to oppose a resolution of the general meeting if they are in breach of the law or the company statute. The second comma adds that the resolution that can be the object of such an action are those that: 1. suppress or limit shareholders' right in violation with the company articles; 2. suppress or limit shareholders' right in an incongruous way; 3. they create an unequal treatment for different shareholders or a prejudice that is not justified by the company's scope; 4. suppress the lucrative goals of the company without the unanimous consent of all the shareholders. Art. 706b states that can be considered void the resolutions that: 1. suppress or limit the right to take part in the general meeting, the minimum voting right or the right to enforce rights mandatorily guaranteed by the law; 2. limit the power of shareholders to check on the company matters, insofar this checking power is provided to them by law; or

												3. do not respect the fundamental structure of the company or are in breach of the capital provisions. (provision unchanged)
9. Mandatory bid	0	0	0	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	If a shareholder exceeds a participation of 33% of the voting rights, then he has an obligation under the Federal Act on Stock Exchanges and Securities Trading (SESTA entered into force in 1998, art. 32(1)(s.1)) to submit a takeover offer to purchase all of the existing securities of the target company. Public takeover regulations are controlled by the Takeover Board, which is subordinate to the Federal Banking Commission. In their articles of incorporation, companies may raise the threshold for a public takeover offer to 49% (opting-up) (art. 32(1)(s.2)). Furhtermore, companies might even exclude that obligation (opting-out) before they are listed (art. 22(2)). In practice 22% of all companies listed at the SWX Swiss Exchange have opted out and 6% have opted up.
10. Disclosure of major share ownership	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	0.75	Under the SESTA, whoever directly, indirectly or acting in concert with third parties, acquires or sells, for his own account, securities in a Swiss company listed in Switzerland, and who thereby reaches, exceeds or falls below the thresholds of 5, 10, 20, 33 1/3, 50 or 66 2/3 per cent of the voting rights must report these participations to the company and to the exchange on which the shares are listed. The disclosure obligations also include put and call options and conversion rights. Article 663c CO (Swiss Code of Obligations) requires listed companies to disclose, in their annual business report, the identity of shareholders or organized groups of shareholders with a title or beneficial interest of more than 5 per cent (subject to a lower percentage pursuant to the articles of incorporation) in the companies' shares to the extent such interest is known to the companies.
	1995	**1996**	**1997**	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**	**2004**	**2005**	

Comments

- Before 2003, listed companies in Switzerland have not been required to publicly disclose information on aspects of corporate governance, apart from ownership stakes above five percent and the names of directors.

- Consultative voting is a procedure through which shareholders may form and express their opinion on any issue concerning the affairs of the corporation. Although without foundation in the corporate law of Switzerland, consultative voting is today a well established even if under-utilised tool in Swiss corporate practice. They have no binding effect, but they are used by the board members to know what the shareholders expect from them and to express their dissatisfaction with the management's general performance.
- Art. 709 states that if there are several groups of shareholders with different legal status, the articles must guarantee that each group will have at least one elected representative on the board of directors.
- Ex Art. 699 (3): to exercise a requisition right, the requesting shareholders who represent shares of an (aggregate) nominal value of 1 million Swiss Francs of the issued capital.

23. Turkey (Pinar Akman)

Variable	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	Explanations/ References
1.Powers of the general meeting for de facto changes	0	0	0	0	0	0	0	0	0	0	0	However, if the assets have been lost by as much as 50% of the grand capital, the management board has to inform the general meeting (Turkish Commercial Code Article 324).
2. Agenda setting power	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	Capital Market Law Article 11(8) – 5%
3. Anticipation of shareholder decision facilitated	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	0.5	Capital Markets Board Communiqué on Principles Regarding Proxy Voting at Shareholders' Meetings of Publicly Held Joint Stock Corporations, Proxy Solicitation and Tender Offer (Serial: IV, No: 8) Article 6 et seq (Proxy solicitation is also possible – but not mandatory - if there is no provision to the contrary in the articles.)
4. Prohibition of multiple voting rights (super voting rights)	0	0	0	0	0	0	0	0	0	0	0	Turkish Commercial Code Article 373 – Each share gives at least one vote. The number of votes per share can be stipulated in the articles so long as this rule is complied with. Exception – when the matter is changing the articles, each share gives only one vote (Turkish Commercial Code Article 387). Exception to the first rule – there can be shares without any voting rights in public companies (Capital Market Law Article 14/A).
5. Independent board members	0	0	0	0	0	0	0	0	0.7	0.7	0.7	Two-tier system – supervisory board separate from management board. Supervisory board members must not be employees of the company (Turkish Commercial Code Article 347). Similarly, they must not be members of the management board or close relatives of the management board members (Turkish Commercial Code Article 349). They can be shareholders or non-shareholders (Turkish Commercial Code Article 347). There is also compulsory external "independent" supervision (Capital Market Law Article 16). The Corporate Governance Code of 2003 (see http://www.ecgi.org/codes/code.php?code_id=117) , which follows the "comply or explain principle", states: "3.3. The board should be composed to comprise independent members who have the ability to execute their duties without being influenced under any circumstances" and in "3.3.1. Independ-

												ent board members should comprise at least one third of the board and in any case two members of the board should be independent. While calculating the number of independent members, fractions should be considered as the next whole number".
6. Feasibility of director's dismissal	1	1	1	1	1	1	1	1	1	1	1	Turkish Commercial Code Article 316
7.Private enforcement of directors duties (derivative suit, shareholder action)	.25	.25	.25	.25	.25	.25	.25	.25	.25	.25	.25	Turkish Commercial Code, Article 341: "Claim/Suit on Behalf of the Company". This is about suing management "on behalf" of the company. The right for this belongs to the general meeting - if general meeting does not accept the claim, then shareholders holding 10% can request it from the general meeting and then the company has to sue the management. Normally, it is the supervisory board that sues the management. But if the 10% has used the abovementioned right, then they can have someone else represent them.
8. Shareholder action against resolutions of the general meeting	1	1	1	1	1	1	1	1	1	1	1	Turkish Commercial Code Article 381. However, there are limitations on the basis of whether or not the shareholder was present at the meeting.
9. Mandatory bid	0.5	1	1	1	1	1	1	1	1	1	1	Mandatory bid at 25% - Capital Markets Board Communiqué on Principles Regarding Proxy Voting at Shareholders' Meetings of Publicly Held Joint Stock Corporations, Proxy Solicitation and Tender Offer (Serial: IV, No: 8) Article 17. This article stipulated the mandatory bid at 35% until 1996.
10. Disclosure of major share ownership	.75	.75	.75	.75	.75	.75	.75	.75	.75	.75	.75	5% - Capital Markets Board Communiqué on Principles Regarding Public Disclosure of Material Events (Serial: VIII, No: 39) Article 5.
	1995	**1996**	**1997**	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**	**2004**	**2005**	

Comments

The general regulation is by the Turkish Commercial Code (1957, Act No 6762). The Capital Market Law (1981, Act No 2499) is *lex specialis* for public companies and has been complemented by the Communiqués of the Capital Market Board. However, where there is no special regulation, the applicable law is still the Turkish Commercial Code.

24. United Kingdom (Mathias Siems)

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

Variable	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	Explanations/ References
1.Powers of the general meeting for de facto changes	1	1	1	1	1	1	1	1	1	1	1	As from 25 % of total assets involvement of the general meeting is required (Listing Rules 1984 (in force since 1985), s. 6.3.4; not yet in Listing Rules 1979-83, ch. 4.5): major class 1 transactions; Listing Rules, 1993 para. 10.37: super class 1 transactions).
2. Agenda setting power	½	½	½	½	½	½	½	½	½	½	½	CA 1948, s. 140; CA 1985, ss. 376, 377: 5 % or support from holders of not less than 100 shares on which there has been paid up an average sum of not less than £100.
3. Anticipation of share-holder decision facilitated	½	½	½	½	½	½	½	½	½	½	½	Listing Rules 1979, ch. 2.12; Listing Rules 1984, s. 5.36; Listing Rules, para 13.28(a),(b): two-way proxy forms required; but management does not have to provide solicitation.
4. Prohibition of multiple voting rights (super voting rights)	0	0	0	0	0	0	0	0	0	0	0	Multiple voting rights are admissible *Cf.,* e.g., *Bushell v. Faith* [1970] A.C. 1099; Davies, Modern Company Law, 7th edn., 2003, at. 620-1.
5. Independent board members	¼	¼	¼	¼	¼	¼	¼	¼	¼	1	1	Code of Best Practice 1992, s. 2.2 (majority of non-executive directors must be independent). Combined Code 2003, A.3.2 (at least haft the board members must be independent).
6. Feasibility of director's dismissal	¾	⅞	⅞	⅞	⅞	⅞	⅞	⅞	⅞	⅞	⅞	Dismissal without particular thresholds is possible (CA 1948, s. 184; CA 1985, s. 303). But there is often a financial burden on the firm where on appointment the member concluded a contract giving rise to a compensation claim upon dismissal. In particular, an agreement whereby the (ex-) director receives compensation is possible (CA 1948, s. 184(6); CA 1985, s. 303(5)). Moreover, members of the board may often agree on a separate service contract (Table A 1948, arts. 107, 108; Table A 1985, art. 84) with long notice periods, so that a compensation claim arises in the event of early dismissal. But CA 1980, s. 47; CA 1985, s. 319: a contract with a pe-

												riod of more than five years can only be concluded with the assent of the general meeting. Code of Best Practice 1992, s. 3.1: a contract with a period of more than three years can only be concluded with the assent of the general meeting. Code of Best Practice 1995, s. D2 and Combined Code 1998, s. B.1.6: notice or contract periods should be one year or less.
7.Private enforcement of directors duties (derivative suit)	½	½	½	½	½	½	½	½	½	½	½	*Foss v. Harbottle* (1943) 2 Hare 461: it is in principle not possible for a shareholder to bring an action on behalf of the company (although there are some exceptions; see Boyle, Minority Shareholders' Remedies, 2002). According to CA 1980, s. 75 (now: CA 1985, ss. 459, 461) shareholders could, with court authorisation, sue on behalf of the company for compensation for damages. Yet, it could be said that this provision was only about discriminatory treatment so that an unfair conduct which affected all shareholders equally would not have been covered (Davies, t 513). CA 1989, sch. 19 amended CA 1985, s. 459: now it is clarified that CA 1985, s. 459 is about both cases of unfair conduct; However, there are still limits (and therefore the coding ½) because the courts can relieve officers (*cf.* CA 1985, s. 744) from their liability if the breach of duty can in the circumstances be excused (CA 1985, s. 727; formerly CA 1948, s. 448).
8. Shareholder action against resolutions of the general meeting	1	1	1	1	1	1	1	1	1	1	1	See, e.g., *Edwards v. Halliwell* [1950] 2 All E.R. 1064 at 1067.
9. Mandatory bid	1	1	1	1	1	1	1	1	1	1	1	City Code, rule 9.1.
10. Disclosure of major share ownership	1	1	1	1	1	1	1	1	1	1	1	CA 1967, s.33; CA 1976, s. 26(2); CA 1985, s. 199(2)(a) (usually 5 %); CA 1985, s. 199(2)(a) was changed by Companies Act 1989 (usually 3 %; in some special cases 10 %).
	1995	**1996**	**1997**	**1998**	**1999**	**2000**	**2001**	**2002**	**2003**	**2004**	**2005**	

25. United States (Mathias Siems)[70]

Main laws on shareholder protection: Delaware General Corporation Law (DGCL, major revision in 1967; frequent changes thereafter; unless otherwise stated the notes refer to the 2005 version); Securities Act of 1933 (SA 1934), ch. 38, 48 Stat. 7, codified at 15 USC secs. 77a-77m; Securities Exchange Act of 1934 (SEA 1934), ch. 404, 48 Stat. 881, codified at 15 USC secs. 78a-78kk; Rules of the SEC based on Securities Exchange Act of 1934 (SEC Rule), 17 CFR Parts 200-30; Sarbanes-Oxley Act (Public Company Accounting Reform and Investor Protection Act) of 30.07.2002, Pub. L. No. 107-204, 116 Stat. 745; Listed Company Manual of the New York Stock Exchange (NYSE Manual); Model Business Corporations Act (MBCA, for information purposes only).

Variable	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005	Explanations/ References
1.Powers of the general meeting for de facto changes	¾	¾	¾	¾	¾	¾	¾	¾	¾	¾	¾	DGCL, § 271(a) approval in case of "substantially all of its property and assets". The courts do not specify a specific qualifying percentage, but emphasise the qualitative and quantitative characteristics of the transaction at issue (*Gimbal v. Signal Companies*, 316 A.2d 599 (Del. Ch.) affirmed in part, 316 A.2d 619 (Del. 1974). In *Katz v. Bregman*, 431 A.2d 1274 (Del.Ch.1981) ca. 50 % was regarded as sufficient.
2. Agenda setting power	1	1	1	1	1	1	1	1	1	1	1	Two communication possibilities are to be distinguished: First, by the shareholder communication rule (SEC Rule 14a-7) any shareholder may collect proxies for matters relating to the general meeting and thus affect its course. To enable contact with fellow shareholders, management may at its discretion either send the shareholder the list of other shareholders or pass on his communication to them. The problem is, however, that in either case the shareholder must bear the costs (not coded in this index). Secondly, shareholders who have held 1% of shares (or least $ 2,000 in market value) for at least one year may require proxy documents to be included at company expense with the general documents for voting proxies (SEC Rule 14a-8(b)(1)). Particular areas are however excluded. In these cases only the cumbersome path via SEC Rule 14a-7 is possible.
3. Anticipation of shareholder decision facilitated	1	1	1	1	1	1	1	1	1	1	1	NYSE Manual, § 402.04 (proxy solicitation required in order to afford shareholders a convenient method of voting) (the NYSE first mandated proxy voting in 1959); SEC Rule, 14a-4(b)(1) (two way proxies).

[70] Thanks to Cynthia Williams for helpful comments.

4. Prohibition of multiple voting rights (super voting rights)	½	½	½	½	½	½	½	½	½	½	½	DGCL, §§ 151(a), 212(a): multiple voting rights possible; But listing at the NYSE excluded (see Douglas C. Michael, Untenable Status of Corporate Governance Listing Standards Under the Securities Exchange Act, 47 Bus. Law. 1461, 1463 n.12, 1464 n.15 (1992)). When the NYSE first proposed to repeal its voting rights listing standards in 1985, the SEC issued a ban on multiple voting rights (Voting Rights Listing Standards; Disenfranchisement Rule, 53 Fed.Reg. 26,376, 26,394 (1988), codified at 17 CFR § 240.19c-4 (1990)), which was, however, invalidated by the DC Circuit Court (The Business Roundtable v. SEC, 905 F.2d 406 (1990)). Yet, the verbatim counterpart adopted by the NYSE remained valid until 1994 (see Michael, ibid, at note 70). Note: the rules of NASDAQ are different. NYSE Manual, §§ 313.00, 308.00 as amended on 05.05.1994 prohibits multiple voting rights. Yet, the new policy is more flexible than the SEC-Rule, and companies with existing dual class capital structures are generally permitted to issue additional shares of the existing super voting stock.
5. Independent board members	¼	¼	¼	¼	¼	¼	¼	1	1	1	1	NYSE Manual B-23 (1966): at least two independent directors. 2002: NYSE Manual, § 303A.01: half of the board members independent (approved by the SEC, Self-Regulatory Organizations; New York Stock Exchange, Inc. and National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Changes (SR-NYSE-2002-33 and SR-NASD-2002-141), 68 Fed. Reg. 64154 (Nov. 12, 2003)).
6. Feasibility of director's dismissal	½	½	½	½	½	½	½	½	½	½	½	DGCL, 141(k); see also MBCA, § 8.08; (general) compensation agreements as well as "golden parachutes" in the event of a change in corporate control are possible (but see also on the argument that "golden parachutes" help to reduce the conflict of interest between shareholders and managers in case of takeovers; Bruce A. Wolk, The Golden Parachute Provisions: Time for repeal?, 21 Va. Tax Rev. 125 (2001)).

7.Private enforcement of directors duties (derivative suit)	½	½	½	½	½	½	½	½	¾	¾	¾	Derivate suits are possible (Rule 23.1 of the Court of Chancery of the State of Delaware; see also Rule 23.1 Federal Rules of Civil Procedure). Their use of is fostered because lawyers can agree on contingency fees and thus expect considerable gains if successful. This incentive is further enhanced by the possibility of a class action (cf. Rule 23 of the Court of Chancery of the State of Delaware). Yet, there are also various requirements which have to be fulfilled (e.g., demand; review of special litigation committees; contemporaneous ownership rule; see also DGCL, § 327). *In re Walt Disney Co.*, 825 A.2d 275 (Del. Ch. 2003) (Disney II) (regarding demand requirement); *In re Oracle Corp.*, 824 A.2d 917 (Del. Ch. 2003) (regarding independence of litigation committees); *In re Abbott Laboratories*, 325 F.3d 795 (7th Cir. 2003) (regarding demand requirement) "evidence a heightening of judicial scrutiny on directors in the wake of the corporate governance scandals" (Hern, (2005) 41 Willamette L. Rev. 207; for a different assessment see Reese & Herring (2005) 7 Del. L. Rev. 177); see also the decision in *Disney IV*, 2005 WL 2056651 (Del. Ch. 2005) in favour of the (former) director (Note, 119 Harv. L. Rev. 923 (2006)).
8. Shareholder action against resolutions of the general meeting	1	1	1	1	1	1	1	1	1	1	1	See already *Goldman v. Postal Tel.*, Inc., 52 F. Supp. 763 (D. Del. 1943) (exercise of power to amend certificate of incorporation); *Barrett v. Denver Tramway Corp., 53 F. Supp*. 198 (D. Del. 1943), aff'd, 146 F.2d 701 (3d Cir. 1944) (exercise of power granted to majority).
9. Mandatory bid	0	0	0	0	0	0	0	0	0	0	0	There is no mandatory bid. Fiduciary duties in case of sale of corporate control are only recognised to a limited extent for smaller companies (see Cox & Hazen, Corporations, 2nd edn., 2003, at §§ 12.01, 12.02). In Delaware courts have repeatedly emphasised that controlling shareholders may obtain a premium for their shares which they need not to share with other shareholders (see *In re Sea-Land Corp. S'holders Litig.*, No. 8453, 1987 WL 11283 (Del. Ch. 1987); *Harris v. Carter*, 582 A.2d 222, 234 (Del. Ch. 1990*); Thorpe v. CERBCO, Inc.*, 676 A.2d 436, 442 (Del. 1996)).
10. Disclosure of major share ownership	¾	¾	¾	¾	¾	¾	¾	¾	¾	¾	¾	SEA, § 13(d), Schedule 13D: 5 % → 0.75