CORPORATE GOVERNANCE IN POST-SOCIALIST POLAND

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Abstract

In this paper, I focus specifically on how changes in the legal framework shape the ownership and control structure of new and recently privatized companies in the emerging market economy of post-socialist Poland. I discuss the market for capital, which also depends on the legal system, as investors' decision to invest is bound up with the sort of protection they are likely to receive against those who appropriate their money for the operations of the firm. I argue that governmental actions aimed at stimulating investment and economic development in post-socialist Poland and the emergent model of corporate governance is conditioned both by internal dynamics - such as previous corporate arrangements and the origins of the commercial law - and by external factors - such as EU accession, directives and policies regarding investment obligations and shareholder rights.

Keywords: ownership, corporate control, Poland, legal system

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Introduction

In the contemporary global business climate, domestic firms have to increasingly adapt their practices not only to national, but international regulatory and legal environments. One of the key problems that firms face in their attempt to produce and sell their products and services is how to get access to finance and ensure investor goodwill. Its solution requires legal and economic institutions that help regulate the balance between the various stakeholders of a firm and help maintain economic performance. The system which organizes these activities is known as corporate governance. To understand how firms balance the interests and motivations of the various stakeholders, it is necessary not only to analyze the structure of the capital market in the economy, but also to analyze the legal and regulatory framework of corporate governance.

In this paper, I focus specifically on how changes in the legal framework shape the ownership and control structure of new and recently privatized companies in the emerging market economy of post-socialist Poland. I discuss the market for capital, which also depends on the legal system, as investors' decision to invest is bound up with the sort of protection they are likely to receive against those who appropriate their money for the operations of the firm. I argue that governmental actions aimed at stimulating investment and economic development in post-socialist Poland and the emergent model of corporate governance is conditioned both by internal dynamics - such as previous corporate arrangements and the origins of the commercial law - and by external factors - such as EU accession, directives and policies regarding investment obligations and shareholder rights.

The paper is organized in the following way. First, I define the concept of corporate governance and review salient empirical studies, which demonstrate that a variety of institutions of corporate governance exist across the capitalist system. I turn next to the Polish case. First, I describe the process of privatization of state-owned enterprises, paying special attention to the transformation of the corporate structure therein. Next, I look at the capital market, the Warsaw Stock Exchange, and the structure of ownership and control in publicly listed companies. Finally, I briefly discuss the external dynamics, which serve as additional factors that affect the system of corporate governance in Poland.

Literature review

Corporate governance can be understood as a “system by which companies are directed and controlled."[1] Alternatively, "corporate governance deals with the ways in which suppliers of finance to corporations assure themselves of getting a return on their investment."[2] Finally, "corporate governance is

[1] Cadbury A. 1992. “The Report of the Committee on the Financial Aspects of Corporate Governance.” Cited in: www.pfcg.org.pl.

[2] Shleifer A., and R.W. Vishny. 1996. “A Survey of Corporate Governance. *NBER Working Paper 5554*. Cited in: www.pfcg.org.pl.

concerned with minimizing the transaction costs of running firms."[3] These definitions create a general terminology around the concept of corporate governance.

When conceptualized more explicitly, corporate governance refers to “institutions that take care of the conflict between the interest of investors to get the ‘warranted’ return on their invested funds and the interest of ‘managers’ to exert control over the use of those funds with as little interference from investors as possible."[4] The basic assumption underlying this formulation is that the interests of investors and managers are often in conflict and a firm is liable not to function effectively unless this conflict of interests becomes institutionalized and shareholder rights are protected by law and custom.[5]

Anrei Shleifer and Robert W. Vishny (1997) provide an excellent review of research on corporate governance from this perspective. Specifically, they ask: why do investors invest when managers have the know-how and power to divert finances?[6] In other words, why would investors risk handing over capital? They conclude that both legal protection of investors and some concentration of ownership are essential qualities of a good corporate governance system because these allow investors to exert control over managerial action.[7]

Most recent studies focus on how investors’ rights are defined by the legal system in which they operate. According to La Porta, Shleifer and Vishny (2000), corporate governance is a set of mechanisms by which “the outsiders” (external investors) protect themselves from “the insiders” (managers or controlling shareholders). They argue that differences in the legal system and its enforcement, rather than the structure of markets (e.g. presence or absence of stock market) are the key to understanding country variation in firms’ ability to raise outside capital.[8]

The empirical work of La Porta, Lopez-de-Silanes, Shleifer, and Vishny (1998) raises a number of interesting questions about corporate governance: What are the legal differences across countries? What are the mechanisms of enforcement? Do market mechanisms or powerful interest groups influence the functioning of the corporate governance system? [9]

In answering these questions, La Porta et al. (1998) argue that legal tradition has a significant impact on how investors’ rights are defined by the legal system. Every legal system has historical roots in either common (Anglo-Saxon) or civil (Roman) law, the latter represented in French, Scandinavian and German variations. The common and civil law systems provide varying degrees of shareholder protection and creditor rights. In countries with civil law traditions, companies have higher concentration of ownership and that these systems ensure less effective shareholder protection. While the world average ownership of the three largest shareholders is 46 percent, in countries governed by French-inspired civil law tradition that average is 54 percent. The lowest concentration, 34 percent, is in the German-civil law countries.[10]

Similarly, Coffee (1999) finds that common law is better at protecting investor rights, while civil law correlates with greater state intervention and lesser protection of private property than common law. The findings of La Porta et al. (1998) also suggest that countries with Anglo-Saxon common law tradition not only protect shareholders more effectively, but also have more valuable stock markets, larger numbers of listed securities per capita, and a higher rate of IPO (initial public offering) activity than do the less protective countries. In other words, there appears to be a positive correlation between investor protection, active financial markets and economic growth.

The quality of enforcement of securities, commercial and bankruptcy laws is another factor considered in this study. Here, the authors find that Scandinavian countries have best enforcement measures, followed by German, common law and French civil law countries. In addition, richer countries have higher measures of enforcement.[11]

Whereas La Porta et al. isolate the civil and common law traditions as primary factors in explaining differences in corporate governance systems, Weimar and Pape (1999) use an eight-point basis to present a taxonomy of four distinct corporate governance models: the Anglo-Saxon, Germanic, Latin and Japanese models.[12]

On the basis of these characteristics, the authors demonstrate differences in the structure of ownership and control. For example, German banks are significant stakeholders in German corporations. In Italy and France, concentrated family-ownership and cross-holdings prevail. Similarly to La Porta et al. (1998), the authors find that ownership is less

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[3] Mayer, C. 2000. “Oxford University Paper Written for Inaugural Lecture at Universite Libre de Bruxelle.” Cited in www.pfcg.org.pl.

[4] Barca, F. 1997. “Some Views on U.S. Corporate Governance.” Cited in www.pfcg.org.pl.

[5] Of course, discussion of corporate governance need not be confined to the problem of owner-controlled firms and large stakeholders. It can be generalized to model interactions among a number of different stakeholders. Berglof E., and E. von Thaden. 1999. “The Changing Corporate Governance Paradigm: Implications for Transition and Developing Countries,” mimeo. Cited in www.pfcg.org.pl.

[6] Shleifer A., and R.W. Vishny. 1997. “A Survey of Corporate Governance.” *Journal of Finance* 52:748-750.

[7] Ibid, p. 738.

[8] La Porta, R., F. Lopez-de-Silanes, A. Shleifer, and R.W. Vishny. 2000. “Investor Protection and Corporate Governance.” *Journal of Financial Economics* 58:3-27.

[9] La Porta, R., F. Lopez-de-Silanes, A. Shleifer, and R.W. Vishny. 1998. “Law and Finance.” *Journal of Political Economy* 106(61):1113-1155.

[10] Ibid, p. 1129.

[11] Ibid, p. 1141. See especially Table 5, p. 1142.

[12] Weimer J., and JC. Pape. 1999. “A Taxonomy of Systems of Corporate Governance.” *Corporate Governance: An International Review* 7(2)152-163.

concentrated in the United States and England. The largest five shareholders hold on average 20-25%, compared with 41% in Germany, 48% in France, and 87% in Italy.[13] This shows that countries differ both in terms of the type of owner (institutional vs. individual) and the degree to which ownership of equity is concentrated in the hands of few investors (e.g. Italy) or dispersed among many investors (e.g. United States).

Based on the above studies, two institutional arrangements appear especially prevalent when studying the various models of capitalism – the Anglo-Saxon "outsider" model and the Germanic "insider" model.

The Anglo-Saxon model occurs in a system of dispersed ownership, where individual shareholders' are not able to directly influence management, except through the market, i.e. through the sale of shares as a means of exercising corporate control. Furthermore, a "one share one vote" one-tier system of board of directors typically dominates in this system. Where the Anglo-Saxon model prevails, the capital market tends to be substantial. For example, about 7,300 public companies valued at $13.8 trillion (or 136% of GDP) are listed on the American stock market. In Great Britain, there are 1,900 publicly listed companies, valued at $2.1 trillion in 2001.[14]

The German model is characterized by ownership concentrated primarily in the hands of a single stakeholder. Consequently, owners often have substantial control over the company. The Germanic model is characterized by a two-tiered system of corporate governance – the supervisory board, which elects and oversees the management board. In contrast to the Anglo-Saxon model, where owners contribute the capital (as owners of shares), banks and other financial institutions tend to be the sources of finance. Employees and stakeholders (such as banks) are often involved in the supervisory position. Finally, instead of the stock market, negotiation between management and supervisory boards serves as the medium through which corporate control is exercised.

In the transitioning post-socialist economies, the classic problems of corporate governance arose in tandem with the privatization of state enterprises. The pace and method of privatization have played a very important role in the transformation of the corporate governance system.[15] Internal factors, such as employee participation in privatization proceedings, and the absence of a domestic capital market have crucially influenced the path of corporate development. External factors, such as EU accession and the globalization of financial markets have also mitigated the process.

[13] Ibid, p. 156, 158, 159.

[14] Tamowicz, P., and T. Dzierzanowski. 2002. "The White Paper on Corporate Governance." Gdansk: The Gdansk Institute For Market Economies. p. 13.

[15] Brada, J.C., A. Hess, and I. Singh. 1996. "Corporate Governance in Eastern Europe. Findings from Case Studies." *Post-Soviet Geography and Economics* 37(10):590.

Poland

The corporations sector in Poland is made up of joint-stock and limited liability companies. According to a recently published white paper, about 8,000 joint-stock companies and 150,000 limited liability companies existed in 2000, compared with 2,600 joint stock and 66,000 limited liability companies in 1992. Joint-stock companies are the basic structure of large corporations. Of the top 500 companies, 66% are joint-stock companies. They account for 78% of the revenues of the top 500.[16]

The organs of corporate governance are defined by the Polish Commercial Code, which originates in German civil law. [17] The provisions of the Commercial Code are strictly linked to Acts dealing with the privatization of state-owned enterprises (Act of July 13th 1990) and foreign investment (Act of June 14th 1991).[18] As in the German model, the key instrument of corporate control is the supervisory board. Polish employees (mostly the managerial cadre) and industrial strategic investors are likewise significant stakeholders in Polish corporations (though more so in the former state-owned enterprises than in new start-ups). In contrast to the German system, the participation of banks in Polish corporations is limited.[19]

Privatization

The Act of July 13th 1990 on the Privatisation of State-Owned Enterprises established the principles and standards for transforming the 8,000+ state enterprises into private firms.[20] Privatization, and in particular the laws that implemented it, granted workers the opportunity to purchase shares at discount prices and in a substantial number of procedures made the provision for them to become employee-owners. The Act of July 13th 1990 provided a number of measures that appeared to reflect both the conviction that privatization should proceed swiftly and include minimal state involvement, but also the possibility for

[16] Tamowicz, P., and T. Dzierzanowski. 2002. "The White Paper on Corporate Governance." Gdansk: The Gdansk Institute For Market Economies. p. 17.

[17] Coffee, J. 1999. "Privatization and Corporate Governance: The Lessons from Securities Market Failure." *SSRN Working Paper*. P.34.

[18] The Commercial Code also includes: the 1926 law on restricting unfair competition; the bankruptcy law of the 1936 Decree of the President of the Republic of Poland; the law on settlement procedures from the Decree of the President of the Republic of Poland of 1934.

[19] Koladkiewicz, I. 2001. "Building of a Corporate Governance System in Poland: Initial Experiences." *Corporate Governance: An International Review* 9(3):228-237.

[20] In 1990, there were 8,453 state enterprises on the state register. By the end of 1999, 4,957 underwent the process of ownership transformation. Among them: 1,454 were commercialized, 1,727 were privatized through direct privatization and 1,641 were designated for bankruptcy. Polish Ministry of Treasury. 2000. "Report on Ownership Transformation in 1990-1999." [CD-ROM.] Warsaw: Poland.

workers to shape the process.[21] It reflected the political compromise between those in government that advocated the explicit economic objectives of privatization (i.e. the need to improve the economic effectiveness of the enterprises) and those who had the realization of social goals in mind, i.e. that privatization should consider workers as the main participants in this process.[22] It also reflected the underdeveloped state of the capital market and relative absence of strategic investors willing and able to purchase state assets.

State owned enterprises have been privatized primarily through two methods. Most large state enterprises participated in indirect privatization, wherein they undergo a process of commercialization, i.e. they are transformed into sole shareholder companies of the Ministry of Treasury. Subsequently, they are sold to a strategic investor or through an IPO. In direct privatization, state enterprise assets are liquidated and transferred to a firm set up by the liquidated enterprise's employees. The resulting ownership and control structure is largely made up of workers and managers of the former state enterprise.[23] Thus, the mix of owners in Poland has been quite diverse, including former enterprise managers, non-managerial employees and foreigners.

The Act of July 13th 1990 replaced the 1981 Law on State Enterprises and with it the mandatory provision for the existence of Workers' Councils. The new structure replaced the socialist model, composed of the managing director, the Workers' Council, and the general assembly of employees as mandated in the 1981 Law on State Enterprises. Workers' Councils effectively ceased to exist, in many cases to make room for a new corporate governance structure, generally composed of an executive management board, supervisory board and general assembly of shareholders.[24]

Prior to their dissolution, the councils in consultation with the managing director and with approval of the workforce had the power to initiate and veto privatization proposals of their firm. In addition, workers had the right to receive up to 20% of the shares in the privatized firm at discounted prices. As shareholders in the private firms, workers gained the right to receive part of the profits of the enterprise distributed annually. They exercise their authority in management through the shareholders' assembly, which under the new commercial code elects the supervisory board, whose members in turn chose the board of directors, including the president.[25] Therefore, in being granted preferential access to shares, workers gained the right to express their views through the shareholders meeting and when they sat as members of the supervisory board.

Workers' ownership turned out to be a transitory phenomenon. Workers sold their shares to outsiders and to members of the boards during the first decade of privatization. As the table below shows, between 1990 and 1999, workers as a group ceased to be the dominant shareholder (see Table 1).[26] Whereas, at the beginning of 1990s, rank-and-file employees had a clear ten-point advantage in terms of shareholding, in the absence of institutions that would have helped workers create a collective shareholding bloc, insider elites (middle and upper management and members of supervisory boards) gained the 10-point advantage in share equity by 1999.

This observed change in the ownership structure during the period of 1990-1999 became especially pronounced after the implementation of the Act of August 30th 1996 on Commercialization and Privatisation of State Owned Enterprises, which replaced the Act of July 13th 1990. While the new law increased the participation of employees in the supervisory process by allowing them to choose 2/5 of the supervisory board, it also made it easier for outside investors to buy shares in the privatized enterprises.

Thus, changes in the legal framework reflected the tradition of Workers' Councils, the strong historical role of the Solidarity trade union and the social support for employee ownership and involvement in corporate decision-making. However, they also reflected concessions made to increase foreign investment and the need to stimulate the market for capital by diversifying the corporate ownership structure.

Privatization laws granted ownership rights to former state enterprise employees and to foreign

[21] For example, the law created the Ministry of Ownership Transformation as a centralized organization in charge of all privatizations. At the same time, Worker's Councils were given the right to initiate privatization or the right to veto privatization proposals presented by the Ministry or outside investors. See Frydman R., A. Rapaczynski, and J.S. Earle. 1993. *Privatization Process in Central Europe.* Budapest: CEU Press, p. 177.

[22] Blaszczyk, B., and R. Woodward, eds. 1999. "Privatization and Company Restructuring in Poland." Warsaw: Center for Social and Economic Research.

[23] For more detailed description of the various paths of privatization, see Polish Ministry of Treasury. 2000. "Report on Ownership Transformation in 1990-1999." [CD-ROM.] Warsaw: Poland.

[24] Federowicz, M. and A. Levitas, "Poland: Councils Under Communism and Neoliberalism" in Streek W. and J. Rogers, eds. (1995) *Works Councils. Consultation, Representation and Cooperation in Industrial Relations*. Chicago and London: University of Chicago Press.

[25] Blaszczyk, B., and R. Woodward, eds. 1999. *Privatization and Company Restructuring in Poland*. Warsaw: Center for Social and Economic Research, p. 30. The results of their empirical research suggest, as might be expected, that actual practice differed from the rules set forth in the code. For instance, they found that often the president of the company who was chosen by the supervisory board, in turn chose the remaining members of the board of directors.

[26] Calculations based on Gardawski, J., "Ksztaltowanie sie grup wlascicielskich w sprywatyzowanych przedsiebiorstwach" in Maria Jarosz .2000. *Dziesiec Lat Prywatyzacji*, Warsaw: ISP-PAN. Blaszczyk and Woodward (1999) find similar results in firms that were not privatized directly by employees, but which instead granted the workforce 20% of the shares in the private firm at half the purchase price. In their research they find that the average shareholding among rank-and-file workers is between 1 and 7.5%, down from the 20% initially distributed. Blaszczyk, B., and R. Woodward, eds. 1999. *Privatization and Company Restructuring in Poland*. Warsaw: Center for Social and Economic Research, p. 30.

investors. Three additional measures extended ownership to institutional investors.

Beginning in 1993, ownership of enterprises was expanded to include government controlled national investment funds. Most recently, the Act of August 28th 1997 on Investment Funds and the Act on Organisation and Functioning of Retirement Pension Funds allowed pension funds to acquire equity in private enterprises. According to the law, all employees born before 1969 are obligated to contribute a fixed percentage of their salary, a portion of which goes to private pension funds. By 2002, this measure has produced funds totaling around $6 billion. Of the total, 40% can be invested directly in private equities. [27] In 2001, the biggest participants were: Commercial Union, Ing Nationale and PZU Zlota Jesien.

The program of National Investment Funds (NIF) was launched in 1995 as part of the Mass Privatization Program. Fifteen funds were set up as join-stock companies. The funds were responsible for managing and restructuring 514 state companies.[28] The ownership of companies participating in the program was shared by the funds, the State Treasury and employees of the companies.[29] The NIFs continue to be controlling shareholders in a number of publicly listed companies.

The Act of February 3rd 1993 on Financial Restructuring of Banks and Enterprises marked another attempt to stimulate the sale of state assets and private investment. The Act of February 3rd 1993 allowed banks to be company owners. Initially, domestic banks were given a lending ceiling by the Ministry of Finance, but most enterprises could not repay the loans.[30] As the share of poor credits rose to 30-40% of most bank loans, the government permitted firms to swap debt for equity. This effectively led to banks becoming even more stringent with their credit terms. The general state of undercapitalization due to tight credit led the Polish government to seek alternative sources of finance for restructuring and capital accumulation.

A decade later, it appears that the pension funds and government sponsored National Investment Funds are significant drivers of change in strengthening and enforcing shareholder protection in Poland.[31] As indicated above, employee ownership did not become an important component of the corporate governance system, despite significant employee privileges. Individual investors have limited impact on the corporate governance mechanisms. They attempt to influence particular decisions (including supervisory board composition) by combining under the Association of Individual Investors, which strives to involve individual investors in the companies' general meetings.[32] Other means of exercising control of managers include performance-related remuneration, hostile takeovers and managerial stock option plans. Institutional investors exercise corporate control through forging alliances to change supervisory board members or to assign a special auditor.[33] The State Treasury is also a significant player in the ownership and control of Polish companies. In 2002, the state (in the capacity of the State Treasury) held shares in 585 companies, 803 entirely state-owned. The State Treasury plays an active role on state-owned companies' supervisory boards.[34]

Public corporations

The privatization methods have occurred in tandem with the development of the capital market. The capital market was re-established with the Act of March 22nd 1991 on Public Securities Trading and Trust Fund Law (later replaced by Act of August 21st 1997 on Public Securities Trading Law). Since its re-opening on April 16th 1991, the Warsaw Stock Exchange (WSE) has become one of the largest European exchanges (The Warsaw Stock Exchange is a joint-stock company owned by the State Treasury and 48 banks and brokerage houses).

According to Table 2, there were 230 companies listed on the WSE with a current market value of 2.9 billion PLN. Fourteen NIFs are listed on the stock exchange. Trading on the WSE is highly concentrated, with 14% of all companies accounting for 85% of the total capitalization (Ibid, p. 19.)

In most public corporations ownership and control are held by a single controlling shareholder. In the absence of shareholder protections, the concentrated ownership may be a way to monitor managers. There appears to be a connection between the Polish legal system and the emerging model of corporate governance.[35]

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[27] "Corporate Governance in Poland: Minority protection," *The Economist*, May 4, 2002, p.80.

[28] Until 2001, the NIFs sold their stakes in 325 of the 514 firms. Tamowicz, P., and T. Dzierzanowski. 2002. "The White Paper on Corporate Governance." Gdansk: The Gdansk Institute For Market Economies, p. 18.

[29] Employee ownership (employees were entitled to acquire 15% of their companies free of charge) has decreased steadily over the period.

[30] Koladkiewicz, I. 2001. "Building of a Corporate Governance System in Poland: Initial Experiences." *Corporate Governance: An International Review* 9(3):232.

[31] As mentioned above, the major difference between the German and the Polish model of corporate governance is the notable absence of banks in the corporate structure of Polish firms. However, other financial institutions, such as pension funds in Poland appear to perform a similar function to the banks in Germany.

[32] Tamowicz, P., and T. Dzierzanowski. 2002. "The White Paper on Corporate Governance." Gdansk: The Gdansk Institute For Market Economies, p. 26.

[33] Ibid, p. 25.

[34] Ibid, p. 31.

[35] This observation is in line with the argument presented by La Porta et al. (1998) and summarized above. I am grateful to Professor Jacoby for bringing this to my attention.

Table 1. Changes in ownership structure of firms privatized by leasing state assets to company formed by employees, 1990-1992, 1997 and 1999

Shareholders	At point of privatization (1990-1992)	In 1997	In 1999
External strategic investor	3.1	6.0	9.1
Non strategic investors (domestic)	4.6	8.0	17.4
Non strategic investors (foreign)	-	0.1	-
Supervisory board members	11.4	11.4	5.6
Executive board members	15.1	18.2	17.3
Other managers	12.1	10.7	9.0
Rank-and-file employees	47.4	37.5	24.9

Source: Gardawski, J. "Emergence of ownership structure" in Jarosz, Maria, ed. 2000. D*ziesiec Lat Prywatyzacji Bezposredniej* (Ten Years of Direct Privatization) Warsaw: ISP-PAN, p. 156.

Table 2. Number of companies listed on the Warsaw Stock Exchange and market value, 1995-2004 (year-end)

	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004
Number of listed companies	65	83	143	198	221	225	230	216	203	230
Capitalization (mill PLN)	PLN 11,3	PLN 24,000	PLN 43,800	PLN 72,400	PLN 123,000	PLN 130,000	PLN 103,000	PLN 111,000	PLN 168,000	PLN 292,000

Source: *Warsaw Stock Exchange* (www.wse.com.pl)

In 2004, the equity market in Poland consisted of 35% of trading carried out by individual investors, 33% by foreign investors and 32% by domestic institutional investors. Although institutional investors account for the smallest share of the equity market, their participation has increased steadily from 24% in 1997. In contrast the share of individual and foreign investors decreased from 38% in 1997. According to Table 3, the equity market in 2004 was based on 32% institutional domestic investors, 35% individual domestic investors and 33% foreign investors.

Table 3. Warsaw Stock Exchange trading by investor type (%)

Investors	1997	1998	1999	2000	2001	2002	2003	2004
Foreign	38%	39%	34%	28%	34%	35%	32%	33%
Individual domestic	38	39	44	50	37	29	29	35
Institutional domestic	24	22	22	22	29	36	39	32
TOTAL	100	100	100	100	100	100	100	100

Source: *Warsaw Stock Exchange*, 18 July 2005. Data based on the survey conducted among WSE members

Recent data for Poland suggests a trend toward further concentration, with the median value of the controlling shareholders voting block over 50%.[36] This value appears slightly higher, but within the general patterns occurring in Western Europe. It is, however, substantially higher than the median value of biggest block of shares observed in the United States and Great Britain. However, it should be noted that ownership in Polish firms is less concentrated than in other Central Eastern European countries – only about 35% of the firms have the largest owner holding more than 50% of votes vs. Czech Republic, Latvia and Romania where 49-70 percent of largest owners hold more than 50%.[37] While ownership and control of Polish public companies is mainly in the hands of individuals and other companies (in terms of size of voting block), foreign investors provide the biggest share of capital, followed by the State Treasury and individual investors.[38]

Notwithstanding the above-mentioned advances in the system of corporate governance, empirical evidence suggests that numerous abuses of corporate control do take place. Such abuses include the stripping out of assets by government-inspired national investment funds or strategic investors paying premium for a controlling stake in a company without making a general offer to shareholders. For example, a German bank, which paid more than twice as much per share for the Polish Bank Przemyslowo-Handlowy (BPG) that it paid minority shareholders. In another case, Michelin was accused of unfairly transferring profits from its listed Polish subsidiary, Stomil

[36] Quoted in Tamowicz, P., and T. Dzierzanowski. 2002. "The White Paper on Corporate Governance." Gdansk: The Gdansk Institute For Market Economies, p. 22.

[37] Berglof, E., and A. Pajuste. 2003. "Emerging Owners. Eclipsing Markets. Corporate Governance in Central and Eastern Europe." Working paper version of the chapter that appeared in P.K. Cornelius, and B.Kogut, eds. *Corporate Governance and Capital Flows in a Global Economy*, 2003, Oxford University Press. p. 12.

[38] Tamowicz, P., and T. Dzierzanowski. 2002. "The White Paper on Corporate Governance." Gdansk: The Gdansk Institute For Market Economies, p. 24.

Olsztyn.[39] Thus, it appears that the problem of agency – effective monitoring of managers - is a significant problem in transitioning economies.[40]

Two major factors are mitigating the social, political and historical traditions that have shaped the system of corporate governance emerging in post-socialist Poland. First, Poland's membership in the EU means that as with Western European countries, new EU members have to comply with EU directives. This view is confirmed by remarks make by the president of the Polish Securities Commission, Jaroslaw Kozlowski:

"The presence of foreign entities on the Polish market requires closer co-operation with regulators from other countries which is provided by agreements on co-operation and exchange of information… Furthermore, Poland's joining the EU considerably influenced the legislative process concerning the capital market – regulatory tasks of the Office of the Commission focus more and more on the participation in the legislative process at the EU level."[41]

Second, integration with the European currency system and Poland's dependence on foreign investment means domestic reforms and policies are strongly more dependent on the influence and interests of foreign capitalists. The formidable domestic presence of foreign multi-national corporations means that their interests dominate the domestic economic agenda to the detriment of domestic interests. Although the need for government intervention is generally accepted, the goal of creating long-term capital growth is severely constrained by the external economic interests.

Conclusion

Notwithstanding certain pressures at convergence, being a shareholder in a country like Poland is different than being a shareholder elsewhere. These differences depend on the formal legal rules and norms that govern shareholder status. These rules in turn determine the willingness of individuals and other entities to invest. Following Shleifer and Vishny (1997), different legal rules and different levels of enforcement determine different systems of corporate governance. The empirical question then becomes, what are the characteristics of a particular system and does it resemble any other existing models? In the contemporary global economy, any national system of corporate governance is likely to be increasingly affected by changes occurring at the global level, such as changing regulations and standards of firm conduct, and increasing penetration of foreign capital. These factors create a need to synchronize regulations so as to allow firms to compete effectively on the global market. However, as I have argued in this paper, this process of convergence is limited by the internal dynamics of the country. In this paper I analyzed the development of corporate governance in post-socialist Poland. I paid special attention to the legal environment and the developing financial sector. As I described above, in the case of Poland, one factor has been particularly significant. The evolution of corporate governance is occurring in an institutional context of strong employee participation at the firm-level. The strong presence of "insiders" in the ownership of Polish enterprises means that the owner is likely to be a manager. The problem of corporate governance then becomes in setting up the proper mechanisms for protecting minority shareholders. As ownership becomes diffused, the separation of owners and managers creates problems of agency and the need for institutions that attempt to synchronize the needs of managers and investors.

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