PARTICULAR ASPECTS OF CORPORATE GOVERNANCE IN LIMITED COMPANIES

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Abstract

The article examines the 'political' principles in the running of a limited company focusing, in particular, on the political aspects of the decision-making process. As the board of directors acts as a controlling interface between the shareholders and the directors, we will study the main aspects of corporate governance in relation to the board of directors of a limited company. Finally, we will present the different systems of corporate governance and we will end with the distinctive characteristics of each of these systems.

Keywords: Corporate Governance, Decision-making Process, Board of Directors

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INTRODUCTION

The introduction of legal forms of companies that enable directors to obtain considerable external sources of financing was one of the most important innovations during the industrial revolution. A large part of the wealth created by the capitalist system was established on the basis of the economic success of these entities. The star of these legal forms, the limited company, dominates the industrial, banking, insurance and business sectors all over the world. The limited company is the most widespread legal title for medium and, above all, large companies. At the base of this structure is to be found the groups, either national or international. It's a type of company with capital in its pure state, solely composed of associates whose responsibility is limited to their own contributions. As remuneration, they receive freely negotiable shares, which when transferred, have very little impact on the limited company which behaves as an autonomous being whose existence is based on social property, whoever the associates may be. This structure has played a fundamental role as much in the growth process in companies as in the very conception of the theory of a firm.

From a strict legal point of view, the company is created as a contract based on three fundamental conditions. The first is the sharing of contributions made up from the property that is made available to the company by the associates so that it can achieve its social objective. The contributions are not only limited to liquid assets but generally, can also be made up of any transferable property. Materially, they consist of negotiable securities: shares which play the role of a catalyser when savings are transferred to companies. The second fundamental condition in a company contract is a participation in the profits and a contribution relative to the losses. The logical progression to the common pooling of contributions is the sharing of the good and bad fortunes of the company. According to this principle, a company cannot therefore deprive one or several associates of their part of the profits anymore than it can disengage them from any losses. Finally, the third condition concerns the common willingness of associates to set up a company. The intention must be present to achieve a common aim as defined by the social objective. This willingness is the 'entrepreneurial spirit' by which the company, which has a moral personality, is organised in order to obtain the necessary means for achieving the collective aim defined by the social objective.

The implementation of a company project means that partners are associated that do not necessarily have interests which coincide on all points Hayafil (1997), emphasises that a system of governance is set up to orientate the decisions of the directors when they are likely to be detrimental to one of the partners in question. In fact, the survival of any company depends on the balance between two distinct powers: the strength of those who own the company (the shareholders) and those who manage it. The company depends on the shareholders to provide its capital but leave its daily management to the directors. This situation often creates opportunities for directors to deviate from the pursuit of the shareholders' interests. Companies cannot be governed by a consensus. The company director must have a certain amount of authority in order to be able to make rapid decisions and take reasonable risks. In fact, if every decision taken by the company manager had to be communicated and approved by the owners of the company, it would be paralysed and not very successful. However, if the associates accept to delegate substantial power to the company manager, they need to be assured that this latter does not use this authority to his own ends. The main challenge in corporate governance is to fix the type of discretionary authority granted to the directors. This remark leads us to ask the following questions: What is the definition of control? What is the difference between the right to vote, control and monitoring? What are the consequences of separating ownership and control? In this article, we will examine these different questions more particularly on the basis of efforts and reflections which have been made in the United States and Europe. Then, we will present the different characteristics inherent in each system of corporate governance. Finally, we will show the connection between property structure, control and company value.

SEPARATION BETWEEN OWNERSHIP AND CONTROL IN THE MODERN CORPORATION

A. The conceptual framework for control

The concept of control has been particularly studied in organisational literature. It was defined the first time by Fayol (1970), p. 133, "*consists of verifying that everything takes place according to the programme adopted, to the orders given and the admitted principles"* According to the author, it's necessary to recognise the errors so that they do not reoccur. According to Fama and Jensen (1983b), an efficient takes place in four stages. The initialisation corresponds to the propositions made ex-ante with regard to the use of resources. The ratification is related to the choice of decision initiatives. The implementation corresponds to the execution of the ratified decisions. Finally, control also includes a measure of the agents' performance as well as the implementation of rewards. Contrary to that of Fayol, the second definition appears more precise for it has the advantage of drawing attention to the different dimensions of the concept of control. In fact, for Fayol, control is an act of *surveillance* with the aim of ensuring that the obligations of the personnel have really been fulfilled, that is to say, to verify and inspect in an attentive manner the consistency of the decisions taken by these agents .It therefore concerns an internal control within the company. In the opinion of Fama and Jensen (1983b), it concerns the control exercised by the owners over the director(s) of the company. In other words, it is an authority which is exercised in relation to decision-making within the company, generally obtained by acquiring a large proportion of the shares of this company either alone or with the support of allies.

Several levels of influence are to be found in the system of company management. It directs the relationships between ownership, control and power as well as several filters operating between these three levels. The same degree of ownership can be associated with variable degrees of control and the same degree of control can correspond to degrees of power that are also unequal. Agreeing with the concept of control elaborated by Fama and Jensen (1983b), we can confirm that control represents a political right connected with the voting rights. It can be evaluated either according to the importance of the shareholder's financial commitment with regard to capital and distribution of voting rights (and not shares) or according to possible shareholders' alliances within a group and to the configuration of the shareholding. It is a financial control in the sense where it is defined as an expression of the financial power of the shareholder, even if he is not actually concerned with the voting rights. The degree of control is thus the relative political importance of the shares held in relation to the distribution of the shareholding within the company. It is not the same situation for power which can be defined as the ability to influence management decisions. Two types of mediation can be found between control and the power. Direct mediation is that of the directors elected by the shareholders; the power of minority shareholders is particularly based on their number and how great the authority of the directors who represent them. Indirect mediation concerns all the procedures for strategic decision-making within a vast field of theories concerning decisions and organisational sociology. It cannot be defined in a simple way.

The securities of a company do not only concern the right to receive a part of its results. They also confer the right to watch over the company and the decision-making. The shareholders can, for example, elect the board of directors responsible for controlling, motivate and discipline the directors as well as supervise the implemented strategy. They can also vote to replace a director who, in their opinion, does not carry out his tasks in a satisfactory manner. Moreover, in many countries, a company cannot sell off the major part of its actions or disappear after a merger, for example, without the shareholders having voted their agreement. In reality, the shareholders cannot directly control the directors that they have taken on. In large companies, the shareholdings are generally dispersed amongst the public. In this case, the shareholders have the right to elect directors who have seats on the board of directors and who watch over the management of the company in their name; it is crucial part of the structure of a company. It represents the link between the fund providers (the shareholders) and the people (the directors) who use these funds to create value; this therefore signifies that it is the intersection between the small group which handles the company management and a the powerless part, widely distributed amongst the public which wishes to ensure the good management of the company. This description is based on the hypothesis of a separation between ownership and control. In practice, the presence of strong majority shareholders can weaken the strength of the team of directors. A particular interest needs to be taken in the directors because of the ambivalence of their stature. They can at the same time be shareholders and directors, which means that their loyalties towards the shareholders can either be reinforced or divided. The board of directors, or more precisely the directors, play a fundamental role in the corporate governance *proces*s (Fama and Jensen (1983b)). They assume the responsibility of monitoring the company director and evaluating his performance, they fix the salaries of the company executives, give advice to the directors without however becoming involved in the daily management of the company and fix the company's long-term objectives. But their main responsibilities lie in resolving agency conflicts which arise between the shareholders and the directors.

B. Consequence of the separation between ownership and control in a limited company

It is difficult to speak about control without studying ownership and the phenomena of property concentration and dispersion which is one of the fundamental characteristics of current market structures. After having defined property concentration, we will analyse the role of property structure with relation to the designation of board members. Finally, we will study the relationship between the concentration (versus dispersion) of ownership and management. The classical theory is one of a firm with a personalised and unitary layout. The entrepreneur is assimilated with the owner who is both a risk-taker and a beneficiary of the profits. In fact, ownership is a patrimonial right; it is the right to dispose of a part of the wealth of a company and at the same time, a commitment. The right with regard to the wealth of the company is that of using future revenues (value added or dividends) whilst at the same time assuming the risk. The commitment which is the negative aspect of the right is that of withstanding the possible losses which are a pro rata of the shareholder's participation. The right to ownership is not therefore only a right to profits, it is also a right to losses and in this sense the notion of right is an integral part of responsibility. The wealth of the shareholder can therefore be evaluated according to the revenue/risk of the security. A financial investor is not concerned with other considerations except in the case where the value of the security is affected by these factors. From this point of view, it is evident that the control of the company is closely linked to its ownership. Can we say that this is still the case when the firm is a limited company?

From a theoretical point of view, the controlling seat of power is decided on by all the shareholders. The directors are chosen at the annual general meeting, their management is controlled and revoked if need be. Such a conception is hardly satisfactory. It simply considers the annual general meeting as a homogenous element that represents the common will of the shareholders. Some people question the fact that the controlling seat of power in large limited companies is under the responsibility of the legal organisms which are the general assembly or the board of directors. The study of property concentration is relatively recent. It has hardly ever been the subject of classical analyses and Karl Marx was one of the first to have integrated this phenomenon into the general theory of capitalism. In his view, a double tendency towards concentration is to be found within the capitalist model. On the one hand, there is a constant accumulation of capital within companies thanks to the reinvestment of the added value, on the other hand, and parallel to this process, the number of firms diminishes 'Capital attracts capital'. According to Marx (1965), the concentration is thus an economic phenomenon characterised by both an autonomous company growth and a correlating reduction in their number. He considered it as a process which leads to an inevitable catastrophe, that is to say, a concentration in the form of a gigantic national monopole in the hands of one capitalist company. It is therefore not surprising from then on and for several years, the very fact of analysing concentration was considered as an acceptance of Marxist principles. As a reaction to this, several economists were tempted, if not denying the existence of the phenomenon, at least to minimise the consequences. However, the economic crisis of the 30's modified this state of mind and gave a new impetus to studies on property concentration.

Other authors, such as Berle and Means (1932) studied the problem. Rejecting the pessimistic views of Marxism, they considered the concentration as a structural mutation which made them reconsider the explanatory value of the conclusions in the classical theory and search for working rules in large scale capitalism. The term 'ownership concentration' is as much used to describe the process as its results.

The phenomenon in companies is due to the classic association of control and property. Berle and Means were the first to put forward this problematic. The fundamental originality in their researches was to test the hypothesis of a separation between control and ownership within limited companies. In this work, three positions are presented with regard to the role of the *modern company*. In fact, in their view, a company develops by concentrating economic power. However, its growth is only possible by property dispersal; consequently, a separation appears between ownership and control as well as a weakening in the position of the owners in comparison to that of the directors.

- The economic power is concentrated: these days, large corporations dominate the main industries, if not all industries, in most countries. A large number of industries have developed in this type of organisation. Apparently, there is no limit to this form of development.
- Property is dispersed and this dispersal tends to increase as time goes by: whilst economic power has become more concentrated, shareholding has become diffuse and dispersed. Property dispersion in these companies seems to be inherent in the current corporative system. This process appears inevitable for company development.
- The separation of ownership and control has arisen from the fact that, in the corporative system, industrial wealth can be controlled with a minimum of property and even, in certain cases, without there being a property concentration. Property without wealth and control without appreciable property appear to be the logical result of the development of this system.

The combination of these three propositions leads us to state that concentrated, economic power is not necessarily exercised by the owner but rather by third parties such as the company directors. In fact, the controlling power increases when the company shareholdings become more and more divided up amongst the public. In other words, no shareholder is in a position to influence the directors or to use his participations to accumulate the majority share necessary to take over the control. For Berle and Means (1932), the control of the company by the directors is a residual result that stems from a lack in voting rights. On the other hand, it is possible for individuals or external groups who have a limited participation in the capital to control the firm; it is the case in a de facto control for example. Consequently, the control is not necessarily in the hands of the company directors. Moreover, the right to vote is the principle instrument for acquiring control of a company. For it is often the task at the annual general meeting to name the members of the board of directors. Consequently, an analysis of the voting tights is the first step that is necessary for acquiring control of a company. There have been cases where the control is only exercised through a concentration of the voting rights or when these rights are not upheld. However, this is not generally the case and the modern economic theory perceives control as a probabilistic concept (games theory) and not as a discrete variable. Berle and Means's study was the starting point for other empirical researches concerning the dissociation of economic power and property. Their study was quantitatively brought up to date by Larner (1966) and Herman (1981). Property separation and control was reviewed in detail by Fama and Jensen (1983b). Williamson (1983) insists on the necessity for the implementation of a governance structure which regulates the consequences of the conflicts between economic agents. After Ross (1973), Jensen and Meckling (1976) were the first to describe the separation between ownership and control in terms of agency costs. These authors conclude that separation can be effective. In their view, an agency relationship occurs when the principle (owner or even a representative) passes on his decision-making rights to the agent (the company director). In an agency relationship, problems arise when the agent satisfies his own interests rather than those of his principle. A reduction in the risks caused by these conflicts due to the discretionary behaviour of the company director leads to costs called agency costs: monitoring costs and residual costs.

The classic example of an agency relationship is that of the shareholder company director, who transfers a part of his company capital to external investors. Because of his position, the director shareholder will wish to take advantage of his useful purpose by an increase in his wealth measured according to the value of the firm and the benefits in kind. If the shareholder director transfers a part of the company, he will use up more of the benefits in kind for he is no longer the only cost bearer of these benefits in kind. Consequently, the value of the firm will diminish. The new shareholders will expect a change in behaviour on the part of the original shareholder and will pay their acquisition at a lower price than before. A monitoring effort with the costs involved arises each time that their marginal cost becomes equal to the marginal profit obtained by the reduced use of benefits in kind. All the agency costs will be paid by the original shareholders (or the decision-makers), therefore causing the value of the company to diminish. According to the agency theory, a separation between ownership and control within a company will no longer be effective. On the contrary, it will result in a reduction in the value of the firm. Apart from an explanation of the agency costs of securities, Jensen and Meckling (1976) broadened their theory on property structure so that it also covered companies' capital structures. The agency costs associated with the capital structure emanate from the use of the debt. In fact, the agency costs for the debt originate from a premium payable by the original shareholders who try to obtain their finance through borrowed funds. These agency costs are factors which incite the original shareholders to behave in a risky manner as the responsibility for the failure is born by the financier. In fact, this latter, will commit himself to monitoring costs in order to forestall any risky behaviour and avoid the costs involved in the case where the original shareholder goes bankrupt. The authors conclude that for a given participation on the part of the original shareholder, the best level of shares held by the new shareholders is that which reduces agency costs to a minimum.

Taking agency costs into account, when can we observe the best division between ownership and control? Finding the best structure within an organisation for a given amount of agency costs was explored by Fama and Jensen (1983a); b). The authors conclude that in small-sized companies it is more effective to group management and control together and make a single agent bear the residual risk, for these companies do not have a complex structure and neither require a particularly specialised knowledge with regard to management nor a diversification to limit the risk. Non-complex small companies are characterised by a closed property structure often limited to one or a few named shareholders. In these companies, the decider is also the one who bears the residual risk. When the gains achieved through risk diversification and specialised management skills are justified, companies become more motivated by a separation between the person responsible for management and the one responsible for the control and bearing the residual risk. Fama and Jensen (1983a) suggest that agency costs are minimised in these complex companies, when the different agents are competent in the decision-making process and when those who possess the residual rights delegate the control to those who are in a position to monitor and sanction decisions initiated and enforced by the management. According to Fama and Jensen (1983b), companies that issue new shares on capital markets are not the only category of organisation which separates sanctions and the monitoring of decisions from the initiating and the enforcement of decisions. Other organisations such as professional associations, financial mutual benefit societies and non profit-making organisms have an effective form of separation between ownership and control. The authors agree with the hypothesis, according to which organisations which have a corporate governance structure that separates ownership and control are efficient and survive through the benefits of the separation as well as through the reduction in agency costs. In the view of Demsetz and Lehn (1983) quoted companies with dispersed shareholders are more efficient. Supposing that the work factor involved is different in the companies controlled by shareholder directors, the authors estimate that the agency theory has its limits. They confirm that monitoring costs and too many benefits in kind lead to an even greater variation in the use of company resources. Consequently, the directors choose companies which bring them the most satisfaction. The property structure whether it be separated or not from control, "is an endogenous result of the competitive choice in which diverse cost advantages and inconveniences are adjusted to attain an organisational equilibrium within the company".

C. Duality of the shareholders and their roles

The existence of a power of control that is disassociated from property has led financiers to distinguish between the shareholders, those that are joint owners, minority shareholders or controlling shareholders. As Champaud (1962), judiciously points out « nobody seriously contests that there are two categories of shareholder depending on the actual part they take in the company administration.". Jensen and Meckling (1976) when developing the agency theory, also divide shareholders into two groups the inside shareholders who are on the board and intervene above all in the company management and the outside shareholders who neither intervene in the management nor in the strategic decision-making such as the holding of the annual general meeting and who will only be remunerated by the distribution of dividends.

The group which exercises the control in a company through the board of directors is named 'directors' or even 'controlling shareholders'. This latter expression has the benefit of drawing attention to the financial aspect of this power and is frequently used by jurists and financiers. According to the legal mechanism, the controlling shareholders exercise their power by choosing, perhaps within their own group, the company directors. These latter identify with the controlling group from which they emanate. However, from a purely legal point of view they remain the representatives chosen at the annual general meeting. Their nominations and their possible revoking are nevertheless unknown facts for most of the shareholders. The internal mechanism within a limited company therefore succeeds in preserving the actual power since the only real control possible is that maintained by the controlling group. The second category called minority shareholders, sponsors, independent shareholders, or even external shareholders is identified by a low individual participation in a company's capital even though their group, considered as a whole, has often a majority holding. Their isolation, their lack of organisation makes this minority ineffective. Their passivity has often been mentioned but they have no means of joining together except when they are present at the annual general meeting. Their anonymity maintained by the technique of bearer shares increases this isolation. Several authors, among other Champaud (1962), explain the weakness of this group of shareholders by essentially psychological and sociological elements. "*Is it not better to blame a large part of this situation on the very mechanism of limited companies which favours this state of affairs by depriving the minority shareholder of an effective structure enabling him to participate more closely in the managing control of the company*"? Limited companies are based on a system of votes which deprive the small shareholder of the possibility of controlling effectively even if he has the desire and the competence. In fact, it is not the individual who is the main cause of the refusal to allow him to become fully operational, this originates from the company itself. In fact the internal mechanism in a limited company does not in practice permit the minority shareholder to participate in the company management policies. In the case of disagreement with the management, he has one ultimate choice: to sell his shares on the stock market.

Describing the two categories of shareholder as 'electors' of the directors and remarking the passive role played by certain shareholders in their nomination is obvious considering the objective of our research to understand and discover the determining elements in property structure. Thus, when the capital of a company is in the hands of an important shareholder, he has the possibility of influencing the election process for the members of the board. Consequently, this shareholder can control the agenda at the annual general meeting and limit the discretionary power of the directors in the company's management operations. However, in large firms, it is rare that the capita is solely in the hands of a single group or a few groups of shareholders. This dispersion enables the company director to extend his discretionary power and to influence the members of the board of directors, above all when this latter is made up of a large number of directors. For this, several studies, for example Yermack (1996), recommend avoiding that the board is made up of a large number of directors for this makes the process of exchanging information and decision-making more difficult. Moreover, Jensen (1993) confirms that that it is easier for the managing shareholder to control a large board. Certain empirical studies confirm this presumption. Thus, in his study on the link between the reliability of the American financial states and the size of the board of directors, Beasley (1996) found that the risk of fraudulent financial states increase with the size of the board. As current proof does not enable us to make a conclusion about the best size for a board, we can say that the size varies according to specific factors in the sector of activity as well as in the size of the company. The number of members on the board of directors is an important factor in its effectiveness.

D. The principle "politics" in the functioning of a limited company

After having evoked the fundamental principles in the functioning of a limited company, we will show that company shareholding is not a 'democratic city'. Finally, we will evoke the mechanism for designating the management system.

1. The "parliamentary" regime in the annual general meeting

The functioning of a limited company is similar to that of the parliamentary regime at the time of its creation as it is based on a system similar to voting rights. The legislator confers for each share, a vote at the annual general meeting of shareholders and which constitutes the basis of the system of a limited company. It designates and revokes the directors and the company representatives, the first being responsible for the management, the second for the management control. They are both responsible at the annual general meeting of shareholders which alone is authorised to modify the status of the company. An ordinary general meeting must be held once a year. Its aim is to control the management of the board of directors during the given period. Apart from this other general meeting can take place. In some countries, they either have a limited objective such as the nomination of new directors, or they concern a more basic modification likely to have repercussions on the daily life of the company, such as, for example, a modification of the status, an increase in the capital or a change in the social objectives of the company.

In the beginning, the annual general meeting was considered as the most important company organism. It contained all the power and represented a supreme and superior authority. In general, the stature of limited companies has in fact reduced these prerogatives to a strict legal minimum by conferring all the powers not specifically concerned with the law to the board of directors. The legislator, in most cases, finally relinquished this position by attributing all the residual powers to the board of directors whereas the annual general assembly only retains the powers bestowed on it by the law or by the status. All shareholders have the right to vote in the annual general meeting. Each shareholder has as many votes as the number of shares in his possession and the decisions are, except in certain cases, taken by a simple majority of votes. The fact of possessing a 50 % participation plus one share thus gives their holder a legal majority. However, in certain countries, the legislation provides for a certain lightening of this principle through limitations in the right to vote and through the necessity for a 'quorum' (majority) of more than half the votes for certain decisions.

2. The shareholding of a company is not a "democratic city"

As it concerns parts of the capital, the right is not connected with the individual bearer but with the security. The rule is not 'one man = one vote' and the individual is worth what his part in the capital is worth. If the political metaphor had a sense, the eligible vote would characterise shareholders' rights better than the universal vote but it would still be simplistic. For the rule is neither one share = one vote'. One share can be connected with a variable number of votes between zero and *n* (>2). The power of a share can be evaluated according, on the one hand, to the type of share concerned and on the other hand to the configuration of the shareholding. Therefore several different types of situation can occur:

- *zero vote* : it is the case of a priority dividend share with no voting right ;
- *from zero to one vote :* if the right to vote has an upper limit, one share in a block of shares will only be worth a fraction of the right to vote. For example, a shareholder holding 36% of the shares in a company where the right to vote was fixed at 12% would only have a third of the right to vote for each share;
- *one vote:* This is the value of an ordinary share;
- *two votes:* This is the case for shares with double voting rights;
- *n(>2) votes:* The dispersion of the shareholding on the one hand and the pacts between referential shareholders on the other hand can confer an increased political influence to some of them so that each of the shareholders has the power of several. In terms of power, one shareholder is not worth more than another not only because one or the other holds a different number of shares but because one share is not equal to one vote. It is not enough for trading companies to obey the rules with regard to rights and that the law of the majority is applied to the college of shareholders for them to become a 'democratic city. Neither the directors nor the company directors are part of a democratic regime therefore the metaphor corporate governance concerns a mixture of types that are open to criticism.

3. The designation of management team

The directors, named at the annual general meeting, form a college within the company, called the management committee which has the task of running the company. They are the representatives of the third parties and legitimately represent the company. Their mandates being of a limited duration, and essentially revocable, the legislator places therefore them under the authority and strict control of the shareholders' at the annual general meeting. From a formal point of view, the board of directors must be made up of at least three members who, in principle, have periodical meetings and deliberate according the methods determined by the statutes or if this is not possible, according to the rules laid down in the deliberating general meetings. They have no personal obligations in connection with their company decision-making and are only responsible for the errors that they commit. This college is however not sufficiently flexible to handle the day to day running of the company. For this, the legislator makes it possible to delegate this task. The delegate chooses either an administrator or a third party. In the first case, he is called a delegated administrator, in the second case, the manager. This latter is an employee of the company who has the title of managing director or delegated director. This delegation in no way diminishes the superior position of the board of directors which remains responsible for the company management although, for the third parties, the delegate represents the company. For example in France in 1940, the legislator substituted the delegated administrator for a CEO who was given more authority and more responsibility. Since 1960, however, limited companies can choose another type of administrator and management by replacing the board of directors by a monitoring board and the CEO by a board of directors.

Apart from these different forms of management, the legislator also makes provision for the presence of a monitoring organism: one or more commission members. They are named at the annual general assembly and also act as representatives, and in this capacity, must also give an account of their missions by submitting an annual report at the annual general meeting. Their mandate is however limited to the task of monitoring. They have in particular a right to monitor all the company operations, accounts registers, correspondence and minutes etc.

CHARACTERISTICS OF THE DIFFERENT SYSTEMS OF CORPORATE GOVERNANCE

The system of *corporate governance* can be distinguished according to the degree of property concentration and the identity of the controlling shareholder. Franks and Mayer (1997) confirm that two models of control are naturally opposed to one another. In the external control model, (*the outsider system)*, the shareholders intervene by the purchase and the sale of securities also as the nomination of the directors. In this way, this system functions less by control than by sanctions. It prevails in that the dispersion of the shareholding does not make it possible to identify the large shareholders likely to be interested in the management and become management representatives as in the United States and in the United Kingdom. This 'external' control therefore operates after the event. On the other hand, the concentration of shareholding goes hand in hand with the system of internal control '*insider system'* in which the shareholders play a more active role in their relation with the directors. Internal control is an accompanying control. It originates from the referential shareholders who are partners in the management. It develops even more in cross-held stakes where each director is the referential shareholder of another. Therefore this internal control can be censured as in the case of a control monopolised by several 'families' or 'moneyed cliques', at least for certain large institutions or their representatives.

In market-orientated corporate governance system, typically found in the United States or the United Kingdom, the property is mainly associated with institutional investors. However, individual property is more widespread in the United States than in the United Kingdom. This observation is not true for banker orientated systems, where the property is in the hands of other companies or even controlling investors. Moreover, Mayer (1996) confirms that cross-held stakes are quite frequent, strong relationships exist with the banks and family shareholding are often an important part of institutional investments. In developed countries, there are significant differences in regulations as well as in property structure. La Porta, Lopez, Shleifer and Vishny (1997), Shleifer and Vishny (1997) confirm that corporate governance is affected by the legal and statutory context in which the company operates. At the same time, the legal and statutory context is a part of the different corporate governance systems. In fact, on the one hand, the distinctive characteristics in the different systems of corporate governance and their interactions in the legal context and on the other hand, the degree of competitiveness in the property markets, both have important implications affecting the company's economic and financial performance. According to Aoki (1994), these interactions lead to a systematized approach with regard to governance. It is inconvenient that it often difficult to precisely describe the interactions between the different parties. The objective in this section is to examine the distinctive characteristics in the different corporate governance systems on the basis of two systems: the first being the property structure and the second the right to vote. Then, we will study the strong points and the weaknesses in each of the systems. For the moment, we will only be interested in the typology of the two systems.

A. The Dilemma between concentration and dispersion

Financial and economic literature proposes diverse cartographies for companies in the capitalist world. Gomez (1996), proposes a typology of the different forms of company based on two dimensions, the first being property structure and the second the separation of ownership and control. Charreaux (1997), proposes a typology of two main forms of company by indicating the impact of the structure on the type of control, the first form being market-orientated and the second bank-orientated. The following table presents a typology halfway between the two previous studies.

Table. Property Structure and power of vote; structure and consequences

	Dispersed Voting Rights	Concentrated Voting Rights
Dispersed Property	**Situation A: Dispersed Property & Dispersed Voting Rights** **Where: USA, UK** • ***Advantages* :** ▪ Diversification of the portfolio and liquidity ▪ Possibility of takeover ▪ Low costs of capital • ***Inconveniences***: ▪ Absence of management control ▪ Problem of 'free riders' ▪ Presence of a hostile takeover • ***Agency Conflicts*:** *Directors versus Shareholders*	**Situation B: Dispersed Property & Concentrated Voting rights** **Where: Countries where voting by proxy is authorized and /or coalitions** • ***Advantages*** : ▪ Possibilities for diversification of the portfolio and of the liquidity ▪ Direct Management Control ▪ Lower Capital Costs than in D • ***Inconveniences*** : ▪ Violation of the rule: "one share– one right to vote" ▪ Takeover unlikely • ***Agency Conflicts*:** *Controlling versus Minority Shareholders*
Concentrated Property	**Situation C: Concentrated Property & Dispersed Voting Rights** **Where : Companies with voting right restrictions** • ***Advantages* :** ▪ Protection of the rights of small shareholders • ***Inconveniences*** : ▪ Violation of the rule : "one share – one right to vote" ▪ No management control ▪ Low liquidity ▪ No possibilities diversification ▪ High cost of capital ▪ No takeover • ***Agency Conflicts***: *Directors versus Shareholders*	**Situation D: Concentrated Property & Concentrated Voting Rights** **Where : Continental Europe, Japan and in all companies after a takeover bid** • ***Advantages*** : ▪ Direct Management Control • ***Inconveniences*** : ▪ Slight possibilities of diversification of the portfolio ▪ Low Liquidity ▪ No possibilities for takeover • ***Agency Conflicts***: *Directors versus Shareholders*

In the absence of a one share-one right to vote rule, the data on property concentration can be either undervalue or over value the real control that the shareholders exercise in the company. The combination of dispersed property and dispersed voting rights is associated with a shareholding structure characterised by the presence of small shareholders and the absence of block holders or majority shareholders. The small shareholders have no wish to exercise control over the directors. These latter can profit from this situation and privilege their own interests to the detriment of the shareholder's interests. (See situation A). However, it is also possible , motivated by the ambition to control, to have dispersed property with a concentration of voting rights by using ordinary shares with double voting rights, privileged shares, proxy votes and all types of issuing of shares, (See situation B). Consequently, this situation is characterised by shareholders in a strong position of control on the one hand, and minority shareholders in a weak position on the other hand. A takeover is impossible in this situation. When the property is concentrated and the right to vote is connected with property rights (see situation D) the small shareholders also find themselves in a weak position. However the directors also find themselves in the same weak position and the majority shareholders maintain the residual control in the company. Takeovers are impossible in this situation for the right to monitor the cash flow is connected with the right to vote. In a general way, one of these three situations is to be found in the corporate governance system in developed countries.

One last situation (situation C) is possible: it is the case where the property is concentrated but where the power of vote is dispersed by restrictions in voting rights. This situation is used to prevent block holders from monitoring the company director or from exercising control in the company. Although this system offers a certain protection to minority shareholders against voting restrictions, it is also mainly inconvenient from the point of view of corporate governance. This system presents the same problems connected with monitoring as the market-orientated system. However, it does have the same advantages; it is characterised by a lack of liquidity, no possibility for diversification and a relatively high capital cost, although companies with a single referential person choose this property structure. In fact, this type of *governance* is the exception rather than the rule. It is for these reasons that we do not observe in practice this system of corporate governance.

B. Market orientated systems

This system is characterised by a greatly dispersed property structure and a high turnover of shareholders. It requires reliable and adequate information so that the investors are capable of making their own decisions concerning it. As an example, the regulations are traditionally structured in such a way that all investors, in all equality, can have access to the information. It is with this objective that the conditions with regard to the system's transparency are the most rigorous. In fact, the system protects shareholders and their rights particularly the minority shareholders. Creating rules concerning the circulation of information prevents the controlling shareholders from keeping this information to themselves. On the contrary, these rules make it possible for the information to be available to all shareholders. Moreover, a legal framework protects the right of shareholders to control their company and, in most cases; the board of directors and the management in power are explicitly responsible with regard to the shareholders. Since a good protection of minority shareholders is often associated with an active financial market, the corporate governance situation in the United States and the UK favours market activities. Thus, long-term company financing by issuing ordinary shares and bonds is an important mechanism in the market-orientated system. Consequently, financing through bank loans seems to be used more in the case of short-term financing and the banks, in this case, seek rather to prolong relationships with the company because of the weak financial lever. In this system, the monitoring and the discipline of the company director is mainly based on the market. For example, the share rates are likely to fall each time that the directors apply decisions which are different from the objective of maximising the value for shareholders and that by putting the company at risk of hostile takeovers. In reality, the market liquidity, the strict negotiating rules and the transparency with regard to information (all the characteristics associated with the *outsider system* are indispensable in order that the *Market for corporate control* can act as an effective disciplinary mechanism. Amongst the advantages of property dispersion is to be found an increase in the liquidity of the securities and consequently, a better diversification of the risk for investors.

A second important aspect for the financial market to be active is encouraging innovative activities, a company spirit and the development of a dynamism in the small and medium sized companies in the 'new economy'. The companies with risk capital and the 'business angels' are the vital initiatives to maintain innovative activities and the creation of new products. However, the company director's control becomes weaker in the case of property dispersion because of the problem of free riders. When there is property dispersion, the company director has a large discretionary margin and is able to make a profit from it. This discretionary margin can also lead the company director to undertake a series of measures which do not necessarily maximise the value. For example to increase the size of the company rather than the profits, to increase the cash flow rather than pay dividends, to pay exorbitant salaries or even to settle into his position and protect himself from control mechanisms. Because of these inconveniences, this market orientated system is often reproached for its intolerance instead of the irresponsibility of its directors.

Corporate governance and the regulatory context of the market-orientated system were developed to respond to particular problems resulting from not only the separation between ownership and control, but also the very nature of the dispersion of share property. Several recommendations have been made with regard to the weaknesses in the system of control, suggesting a increased responsibility on the part of the directors and a correlation between the interests of the directors and those of the shareholders. Apart from the requirements concerning transparency and the protection of shareholders' rights, we can also cite the examples of monitoring by the institutional and pension fund investors, the market for company control and the directors profit-sharing schemes. All these mechanisms aim to encourage the directors to maximise the value for the shareholder.

1. The role of financial institutions

Financial institutions have for a long time been limited par legal and regulatory constraints which have led to a segmentation in the financial sector. For example, because of restrictions on share property, the participation of banks in company capital is relatively low. American legislation also prevents banks from giving advice to their clients. In fact, if the client of a bank becomes insolvent, the legal doctrine of 'equitable subordination' limits the bank's claim on the company assets, when the company can prove that the bank influenced its activities. Although these constraints have led to property dispersion in the markets in the United States, they have, at the same time, discouraged a long-term relationship between financial institutions and companies. Thus, in comparison with other countries, the banks only play a passive role in the monitoring of quoted companies.

However, the shareholding structure of quoted companies in the United Kingdom and above all in the United States is particularly dominated by institutional investors. The large number of institutional investors and pension funds in the capital of most quoted companies is an important factor in the way in which corporate governance is exercised in the United Kingdom and the United States. These investors have continually shown their willingness of the last few years to monitor the companies in which they have participations. This tendency can be explained as an improvement in the method of exercising corporate governance in the United Kingdom and in the United States. The only question which seems to persist is: *who will monitor the fund director?* In fact, the high level of participations on the part of institutional investors only aggravates the problem. According to the OECD (1998), the 25 largest institutional investors hold 40% of the Stock Market capitalisation of the portfolio held by all the institutional investors. Moreover, the majority shareholders of quoted companies are often institutional investors.

2. The role of the board of directors

Apart from the control exercised by the institutional investors, the board of directors proposes a second low cost controlling mechanism. The board of directors plays a primordial role in the context of corporate governance. It has the role of monitoring the competence of the company director and to verify that this latter ensures that the shareholders receive sufficient returns whilst at the same time preventing conflicts. When it is necessary, the board has the power to dismiss the company director and to replace him by someone more competent. The board is also responsible for approving the remuneration plans of the company director and the members of the board. However, in order that they can correctly carry out their monitoring role, the members of the board must have a certain degree of independence. Whereas, Shleifer and Vishny (1989) argue that the market orientated system insists on the independence of its members, in practice the situation is much more complex for these latter may also be settled into their positions. It is particularly the case when the members are remunerated and are themselves responsible for controlling their own remunerations and those of the directors. In fact, the remuneration attracts high quality individuals. However these latter are not often available. It is for this reason that we observe that, in practice; an administrator is a member of several boards. This can have a negative impact on the effectiveness of the board of directors for the fact of being a member of several boards reduces the monitoring capacity of this organism for controlling directors. Even if the law should limit the number of mandates for the board, in the case of property dispersion, the agency problems which arise from the separation of ownership and control still persist. Theoretically, the members of the board must defend the interests of the company and those of the shareholders; however in practice it is seen that these members often prefer to protect the directors. Because of these problems, the board of directors is considered as a relatively weak monitoring mechanism.

3. The role of market mechanisms

The threat of a takeover can act as an effective disciplinary mechanism and thus limit the company director's opportunism. The United States, in particular has a market for the control of very active companies, as is shown by the numerous mergers and acquisitions and also by the large number of hostile takeovers. In fact, Becher (2000) reports that, during the 1980's, the total value of mergers amounted to around a trillion American dollars, that is to say, the equivalent of 40% of the average annual capitalisation. During the study period (1980-1987), the author noted 558 acquisition operations. Although, up until now, the market for control has not been a mechanism in corporate governance with regard to market-orientated systems, this is gradually beginning to change as the number of mergers and acquisitions increases and hostile takeover bids become more frequent. At the same time, the intensity of the merger-acquisition market is not the only evidence of a powerful disciplinary mechanism; takeovers can be founded on a desire to use resources, as in the construction of an enormous building and to minimise taxation more than the desire to improve the level of efficiency. Consequently, it is not always correct to suppose that the market for sustained control of companies reflects the true situation of company control. With on the one hand, the costs paid to financial experts when choosing a financial structure and on the other hand the cost of financing, this mechanism becomes a particularly costly one for balancing the interests of the directors and the shareholder. Nevertheless, given the weaknesses in the other disciplinary mechanisms in the market-orientated system, the market for company control plays a crucial role in the governance process.

The competitive property market can also, to a certain extent, reduce opportunism and problems concerned with the directors' management since the income could be 'misappropriated' by these latter if the markets are competitive. Competition provides a point of reference by which the performance of a company can be judged in comparison with that of other companies operating in a similar sector. However, there is a slow reaction in competitive markets, thus forcing unsuccessful companies to file for bankruptcy after a long period of failure. At that moment, the value of the shares has already greatly deteriorated. By influencing the rights and the control of different investors following the announce of the insolvency, the legislation relative to bankruptcy also plays a primordial role in corporate governance.

4. A short-term investor

In an economy characterised by frequent takeover operations, and although the market for company control can act as a disciplinary mechanism affecting the behaviour of the directors, it is becoming more and more difficult to maintain long-term commitments between the different company stakeholders. This can not only reduce the number of investment projects by weakening the desire of the *stakeholders* to provide specific investments but can also create a bias in the choice of project investments. In fact, when they have great confidence in the financial markets, directors are encouraged to choose projects which provide long-term profits, even if the choice may not prove to be a good one for the company's long-term performance. On the other hand, more competitiveness in the market for company control can facilitate the monitoring of the directors and lead them to be much more rigorous in their choice of projects and to have a better control of the costs which will thus lead to an improvement in the research carried out. The special financial mechanisms have also been developed in the market-orientated system and can ensure the financing of risky projects which incur substantial research and development costs. For example, the NASDAQ is a specialised financial market that is frequently approached by companies with great technological potential. These companies prefer to raise capital in the financial market rather than resort to classical banking intermediaries that are frequently used in the bank-orientated corporate governance system. However, the projects that are not profitable in the long-term, such as 'the new economy' projects, can be under-valued because of the short-sightedness of the share markets. Innovation is the result of technological development and of long-term economic growth. In order to finance the increase in research and development costs, the most profitable company projects must stimulate increased growth in productivity in the short and medium-term. Thus, any expansion that is created must be of a transitory nature. Those that decide on the corporate governance systems, who have a tendency to prefer the short-term, should pay particular attention to the potential risks in reducing governmental finance in favour of fundamental research.

Rejecting projects whose profitability is judged to be insufficient for the requirements of the investors, does not however signify that the directors are incompetent or wrong to have a short-term vision. However, profit-sharing schemes are mechanisms that aim to bring the directors' interests into alignment with those of the shareholders and could thus attenuate their short-term behaviour. For example, in the case where the director's remuneration is essentially based on shares and/or stock option schemes, the director is encouraged to maximise the short-term value of the company for his only objective is to increase his own remuneration. The directors can reap all the benefits by involving the company in projects that enable it to best maximise the value for short-term shareholders. Then, they will have the possibility to become directors of a second company when they sell off the securities that they hold in the first company. At the same time, they can benefit from the occasion and improve their reputation by declaring that it is they who have created the value for the shareholders in the first company. Directors' remuneration largely consisting of shares and/or stock options should make it possible to bring the interests of the directors and shareholders into alignment. However, the directors always have the ability to deviate this incentive mechanism. This would seem to uphold the point of view that the number of salaried directors in the United Kingdom and the United States has become excessive. This has led shareholders to use systems for limiting the directors' remunerations or at least ensuring that they are more closely linked with company performance.

C. Bank oriented Systems

The bank-orientated systems which are typically found in most of continental Europe (with the exception of the United Kingdom), and in Japan are characterised by property concentration voting rights as well as by the diversification of participations within pyramidal structures. The institutional investors such as the pension funds, common placement funds and insurance companies play a corporate governance role that is less important than in the market-orientated system. The bank-orientated systems are in fact dominated by family control, privileged relationships with banks, cross-held stakes (horizontal or vertical) and the pyramidal structure of holding companies. Their advantage is that they enable shareholders to extend their control at a relatively low cost. The majority shareholder or even those holding controlling blocks are interested in management control and have at the same time the power necessary for influencing the decision-making process. The principle conflict which can occur in these systems is between the controlling shareholders and the external minority shareholders. Essentially, two types of conflict can occur in the corporate governance systems. The first occurs between the block shares holders with voting rights in a powerful position and minority shareholders in a weak position. The second concerns the majority shareholders and directors and the minority shareholders. In this conflict, the directors and minority shareholders find themselves in a weak position, whereas the majority shareholders find themselves in a powerful position.

Managerial entrenchment is always possible if the property structure is dispersed but the voting rights are concentrated, above all in the blocks share holders with voting rights are themselves the directors. This possibility is often one of the arguments used to defend the principle of *one share + one vote*. The weak incentives in control often associated with the market-orientated system often leads to management entrenchment, but with *one share = one right to vote,* this is also possible. In fact, with dispersed property and a concentrated voting right, a takeover becomes impossible. Moreover, in the case of a distinction between having access to the cash flow and having voting rights, the desire to take advantage of this becomes a strong factor and the risk of connivance between the company director and the principle shareholder becomes more and more probable. In continental Europe, the directors are often forced to maximise the value for the block holders, but this does not necessarily maximise the value for the minority shareholders. For example, in pyramidal structures, the minority shareholders can be expropriated by the block holders who control the group through the internal transfers of its blocks of shares. The block holders can also uphold the company director's vote in return for 'side payments'. These incentives stem from the fact that the block holders only bear a part of the costs of these payments because of the subsequent payment of dividends with relation to their rights to the cash flow, but also have the advantages that are obtained from all the side payments. One of the consequences when the controlling shareholders receive an income is an increase in the capital cost because of the fact that the minority shareholders demand an issuing allowance on the shares. This problem can become particularly serious if the small shareholders do not have sufficient legal rights to make a profit on their investments. This causes a reduction in the market liquidity since the investors withhold funds. This limited market liquidity therefore leads to a lack of investment opportunities. The markets in bank-orientated systems are therefore much less developed than those that are found in the market-orientated systems. Moreover, property concentration encourages relationships as well as a long-term commitment between the shareholders. Consequently, this favours investments in specific company assets with the possibility of producing a long-term positive profit.

1. The role of banks in corporate governance

The differences between the corporate governance systems are essentially based on the cost of capital and the means of financing available to the company. The growth and development of the economy essentially depends on the development of financial markets. However, the presence of alternative financing sources in the financial sector can also be seen to play the same role as the financial market. For this reason, in the bank-orientated systems, external financing is essentially derived from bank financing. Consequently, in these systems, companies seem to be characterised by a higher financial control than that of the companies in the market-orientated systems.

Unlike the companies in the market-orientated systems, the banks maintain complex long-lasting relationships with companies. In continental Europe, and in Japan, the commercial banks play a primordial role in company governance. For example, in Germany, banks have the ability to designate an administrator who will defend their interests and can be used to exercise control over the company. The benefits of a system based on bank financing are that the banks carefully monitor the companies, which therefore makes it possible to reduce the problems of unequal information. In the bank-orientated systems, because of the close relationships with the banks, the banks have the opportunity to gain access to privileged information. This factor means that the banks require a relatively low risk premium. Thus, the companies can lower their capital cost. However, such information when obtained in the bank-orientated systems is based on confidentiality, which is contrary to the demand for a large amount of transparency in the market-orientated systems. The problems of unequal information become particularly important for the refinancing of companies in difficulty. During this difficult financial period, bad companies can easily be distinguished from the good ones. This can lead to some premature liquidation. In the bank-orientated systems, the close relationships, between the banks and the companies can attenuate some of these information problems and consequently lead to a perfect repartition of resources. Mayer (1996) confirms that, in these systems, banks also pay a primordial role during the restructuring operations of companies in difficulty, contrary to what we observe in the United States and the United Kingdom where financial institutions rarely intervene. In fact, competition in the financial markets of the market-orientated systems can hinder the development of long-term relations between companies and financial institutions. For example, in the case of market competition, banks are not encouraged to propose funds for saving companies that are in financial difficulties. Once they recover from their financial distress, they are then free to change their backer and change to one who proposes cheaper funds.

Franks and Mayer (1997), report that that the bank-orientated systems are characterised by small-sized companies, financial markets with little liquidity, no risk capital markets, and a preference for bank financing. For the authors, these characteristics can be an obstacle to the growth and development of small and medium-sized companies. New companies can encounter difficulties in raising funds because of their lack of experience and the absence of long-term relations with the financial sector. The banks have a tendency in this case to be very prudent when granting loans for they find themselves faced with a risk of asymmetry during the evaluation of the start-up. In fact, in a catastrophic scenario, the bank can lose the totality of the loan granted to the new company. However, if the project works well and the business succeeds, the bank can hope to recuperate their funds with, in addition, the interest due. Therefore the bank runs a great risk. On the other hand, as far as established companies are concerned, the banks are generally much more flexible than the shareholders with relation to matters of risk. Moreover, because of the close relations which banks maintain with companies, they have the advantage of a reduction in the asymmetry of information and in the risk connected with uncertainty. Von Thadden (1995) adds that long-term relations with banks can also reduce the tendency to prefer investments which make it possible to improve short-term performance. For example, low capital costs encourage a long-term investment relationship to be maintained. Consequently, the corporate governance systems which are based on long-term relations with financial institutions are more likely to finance the projects with high costs. However, the overall effect of these differences does not easily make it possible to tell which of this corporate governance system is the most capable of promoting innovative activities.

2. Long- term relations: cross-held stakes and commitments

The market-orientated systems are characterised by property dispersion, where the shareholders have no contact between each other and prefer not to beat the costs. In this way, the system discourages companies to make specific investments. In the bank-orientated system, forging long-term relationships with the different associates in a company is particularly important. It seems that the nature of the long-term relations between these groups, including banks, employees and clients leads to considerable investments in specific company assets. However, Mayer (1996) and Maher (1997) note that the effect that long-term relations and commitments have on company performance changes according to the industrial sector or the nature of activities. Mayer (1996), p. 24, points out that "*relations are particularly important where the production activity depends on participation and investment by a large number of shareholders. The process of complex manufacturing, which require several suppliers and clients can particularly depend on property models that encourage confidence. The property models are also adapted to activities which can require specific investments on the part of the company for training and the hiring of qualified employees. Such investments on the part of employer require that he is motivated to commit himself to a policy of long-term employment and in-house promotion*". The relations and long-term commitments are thus particularly important in industries or high technology activities characterised by *specific assets.* In these industries, all the specific investments made by different shareholders have a greater effect on company performance than external monetary flow.

The identity of the owners can also have an important impact on the economy. From one company to another, property reduces transaction costs and the free rider problems are connected with the desire to behave in an opportunist way. In this case, the shareholders are encouraged to invest in specific assets. The complex property models can also prevent the restructuring of companies or industries and diminish the ability of companies to adapt to changes in circumstance and to globalization. The most important problem often associated with the complex structure of property and cross-held stakes, where the insiders do not necessarily need an absolute majority to maintain control. The pyramidal structures offer an easy access to the capital and its advantage with regard to property dispersion is that a minimum of agency costs are due for management monitoring. However, this type of property structure is particularly inclined to exploit the interests of minority shareholders and reduce transparency. Moreover, cross-held stakes facilitate strategic alliances and can be used to create a hard core. In Japan, for example, cross-held stakes are concentrated among the *keiretsu*, which is made up of large companies operating in different industrial sectors with the banks placed in the centre of the structure. The strategic and operational decisions within companies are made by holding companies, using these connections.

Complex property models also serve to protect the group and its different levels from hostile takeovers. In fact, durable relations between companies, cemented by cross-held stakes, can prevent all transfers of shares. Consequently, the market for company control in the bank-orientated systems is less developed than in the market-orientated systems. The absence of an effective market for company control can prevent the development of an international base for production and can also prevent companies from making acquisitions. In Germany, the limited responsibility of quoted companies, the important role of company partnerships and the important role of employee representation on the board of directors, makes German companies very difficult to acquire by external companies. However this tendency is gradually beginning to change and the number of takeovers, in continental Europe and Japan is greatly increasing. Whereas durable relations between companies and their suppliers help to improve profits, an increase in industrial concentration can also lead to connivance which can reduce the overall amount of competition in competitive property markets. This suggests that bank-orientated corporate governance systems must pay more attention to consolidating their competitive policy and the conditions of access to new economies including those of start-up companies

D. Convergences between the two systems

The agency problems which occur through the separation of ownership and control have created the need for a corporate governance system which reinforces the directors' responsibilities and encourages them to maximise the value of the company rather than favour their personal interests. Moreover, an effective corporate governance should protect minority shareholders against their interests being exploited by the directors and the controlling shareholders. The means for achieving this objective vary considerably from country to country and from one sector to another within the same country, which is explained by the divergences in corporate governance structure in developed countries. However, the increase in the globalization of financial markets these last few years on the one hand and the liberalisation of international commerce on the other hand seems to have created an environment where divergences between the corporate governance systems have become less noticeable. Because of the property concentration in the bank-orientated systems, it is particularly advisable to monitor management. Institutional investors and pension funds are more and more often becoming active participants in the corporate governance of companies in which they hold shares.

Has equally been developed to adapt to the exterior financing of strictly controlled companies. The strong converging factors in the functioning of the two systems are essentially the result of a globalization of the financial markets. Companies, and in particular large multinational companies, have more and more often adopted the best practices in the in order to improve company performance and attract the permanent external capital necessary for their growth. For example capital needs, above all for companies which wish to extend their activities outside their territory, have led some of them to endeavour to have their securities quoted foreign stock exchanges. Raising capital through foreign value stock exchanges, where the shareholders are more preoccupied by company risks, is a very different method from the system which is based on bank financing, where the banks are more interested in the risk of non-payment. This change in the means of financing has had an important impact on corporate governance. For example, in most bank-orientated systems, the importance of foreign investors as the main backers' forces companies quoted companies to better protect their minority shareholders and to provide more transparency when circulating information. It is difficult to foresee the implication of recent developments; however, it seems that there is a global tendency towards a degree of convergence in governance models and in financing, with the market-orientated systems adopting certain mechanisms in the bank-orientated systems and vice versa. However the amount of divergence between the systems, which are historically representative and deep-rooted in the different historic and legal cultures, suggests that a total convergence is unlikely.

CONCLUSION

In this article, we have studied the conceptual context of the control of limited companies. We have elucidated the consequences of the separation between ownership and control. Then, with the aide of a review of the literature and basing ourselves on the degree of ownership and control, we have shown the strong and weak points as well as the economic implications associated with the different systems of corporate governance. In fact, over a period of time, each country has developed a variety of mechanisms to overcome the agency problems which arise from the separation of ownership and control. We have discussed the different mechanisms used in the different systems. For example, the markets for company control, profit-sharing schemes, property concentration and cross-held stakes between companies.

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