SHAREHOLDER`S RIGHTS AND REMEDIES RELATED TO CORPORATE GOVERNANCE PRINCIPLES

Meltem Karatepe Kaya*

* Brunel University of London, the UK

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Abstract

The concept of corporate governance is not new but, due to the international financial crisis, it has become prominent in contemporary business, accounting and legal debates. Corporate governance is being readdressed to regain investors` confidence and decrease the risk of the re-occurrence of corporate failures (Kirkpatrick, 2009). There is a wealth of anecdotal evidence which shows that protection of minority shareholders is an important issue in the corporate governance literature (Cheffins, 2000). Minority shareholders typically hold low amounts of stocks, so the benefits gained from their participation in shareholder meetings are very asymmetric to the cost (Kong, 2013). Therefore, the presence of a good corporate governance structure is the proper protection of and respect for the rights and interests of shareholders, particularly those of minority shareholders (Yurtoglu, 2003).

The protection of minority shareholders is not only a corporate governance objective in its own right but also has added importance particularly in developing countries. In the United Kingdom (UK) and the United States of America (USA), there are diffused ownership structures so that any shareholders do not influence the management of the company (Miles & He, 2005).

Indeed, in the world, hundreds of companies go into operation every year and the shareholders aim to make a profit. The relationship

between the shareholders themselves or the relations between the shareholders and the management is of crucial importance because they may affect the performance of the company. The relationship between the shareholders has importance, in particular, in the countries where the most of the companies have concentrated ownership structure, such as Turkey.

Moreover, in general, a shareholder is an investor who pays some money to a company in hopes of earning money return, so the amount of money that this shareholder pays is converted into a financial interest in the company itself, which belongs to the company because of a separate legal entity. Therefore, contribution of shareholders to the company`s capital will need to be swapped for the rights, interests and power that can be used with regards to the company's capital and businesses. However, the question is what are the rights and interests of the shareholders, including the minority shareholder, and the ways in which shareholders can apply if there is a violation of these rights. This in turn has led to the need to create safeguard mechanisms for shareholders (Cheffins, 2000).

Good protection mechanism for shareholders should firstly convince shareholders that the company is managed by reliable, talented and faithful managers and at the same time ensure that all shareholders are treated equally in the company. When minority shareholders encounter any problem regarding with company management, they would apply to the court and seek to obtain a remedy. At the same time, company management should be able to be provided by shareholders without any problems and the company must continue to make profits.

The principle of shareholder democracy is a known term in corporate law. One of the instruments of democracy is majority rule, which was established in the case of *Foss v Harbottle* in the United Kingdom (Foss v Harbottle, 1843). Majority rule signifies the proposition that the decisions and choices of the majority will always prevail over those of minorities. It is understandable for shareholders who provide the majority of the capital to the company and spend more time and effort for the company to have higher authority and power that make them favour their interests and rights in the company's decisions (Kim, Nofsinger & Kitsabunnarat-Chatjuthamard, 2007). However, the technical implementation of the majority rule and granting the majority shareholders a broad authority and significant power, without taking into account minority shareholders` rights and interests may affect negatively not only the company's progress but also the other shareholders and even the economy of the country. Therefore, it may cause abuse of the interests of minority shareholders and prevents the multiplicity of suits against the controllers of the companies. Then they can remain in a weak position in the company where they cannot protect their interests. The concept of the protection of minority shareholders has therefore been originated in corporate law that seek to protect

minority shareholders from the abusive conduct of the controllers (majority shareholders and directors) (Sarkar, 2017).

In general, the aim of minority shareholders' protection is to avert the abuse of power by majority shareholders (*abus de la majorité*). Nevertheless, it should be emphasised that if the pendulum were to swing too far to the side of the minority shareholders, it would result in dead-lock (Murdock, 1999) and make the company seem unattractive and functionless to investors. In introducing instruments of minority protection, the law struggles to strike a balance between the interests of minority and of majority shareholders (Sobolewski, 2008). Put simply, the concept of minority protection provides that those shareholders who are not in control of the management of a company should have a direct way to go to court if it is proved that the management is directing the company in a manner which is prejudicial either to their (the minority shareholders') interest in the company or to the interest of the company itself. The weakness of the legal rules in the company law leads controlling shareholders to abuse the rights of minority shareholders and oppression over them. According to the decision in the case of *Atwool v Merryweather*, unless the legal system provides rights and remedies to minority shareholders, managers and controlling shareholders will always have the opportunity to control company for their own interest and profit.

Differences in countries' history, social and political cultures and local traditions play an important role in shaping the minority shareholder protection system. Therefore, it should be acknowledged that a country's minority shareholder protection model is always somewhat dependent on its previous model. Furthermore, the ownership structures of the companies in a country influence the provided legal rules to protect minority shareholders. Nevertheless, it seems that in the area of company law, countries have concentrated on some dominant legal policies to protect minority shareholders, accordingly, in modern company law a global model of the strong corporate governance system has developed that countries are expected to follow. In this respect, the common aim of protection of minority shareholders in most of these different systems is to design a system that guarantees equal treatment for shareholders, regardless of the amount of their shares (Okutan Nilsson, 2007). Therefore, a strong corporate governance regime requires that all shareholders are treated fairly and equitably irrespective of their shareholding. Protection of shareholders matters for the facility of companies to raise the capital required to grow, innovate, diversify and compete.

The systems ought to be in place to strengthen the rights of minority shareholders against those of the majority; otherwise minority shareholders will continue to be helpless victims of the actions of the majority (Goo & Weber, 2003). Hence, a functional system of minority shareholder protection must provide rights and interests of minority

shareholders and ensure that minority shareholders are treated fairly. Additionally, shareholders should be sure that in the case of wrongdoing or oppression they can apply to the court and obtain an appropriate remedy such as the purchase of their shares at a fair value (Raja, 2012).

Based on these considerations this study will assess regulations about the legal protections of minority shareholders and try to find answer this question: "Why it is inevitable for company law to treat in a successful way the problems arising from minority shareholders` conflict with other stakeholders of a company?".

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