

Could the Different Countries' Corporate Governance Regimes be Harmonized?

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Abstract: Corporate governance system is of great importance in the performance of corporations through connection the interests of investors and managers. The efficiency of the corporate governance determines whether the value of firms can be improved. According to this, every country is finding the suitable model which can improve the performance of corporations efficiently. During this process, two models formed: the 'outsider' system and the 'insider' system. It is commonly believed that different country has different backgrounds of historical, economic, political, cultural, legal system, and basically the different structures of corporations based on which corresponding corporate governance systems are shaped.² According to the differences among these crucial elements, the standards of the efficient corporate governance system in different countries are distinctive too. So, there cannot be 'one best standard system' which is suitable for every country, and the argument for harmonization of corporate governance at the world level is weak.

Key words: Harmonization; Concentration; Company law

1. INTRODUCTION

Corporate governance system plays a big role in the performance of companies. It is no denying that, almost all modern companies are constituted by investors and managers, and the problem of how to bring the interests of these two parties into line and make sure that companies are run for the benefit of investors is decided by corporate governance.³

Nowadays, because of the globalization and development of international market, every country is forced to inquire a 'most efficient corporate governance system'. And through the effort of some countries and organizations, fruitions in terms of harmonization have been achieved. For example, the 'Organization for Economic Co-operation and Development' (OECD) which is the first action of harmonization as well as several company law directives published by EU. However, two most common systems in the world are the 'insider' system which is oriented in Germany and the 'outsider' system which is applied in the United States and the U.K.⁴ Different country has different backgrounds of

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² Yuwa Wei, *Comparative Corporate Governance—A Chinese Perspective*. 2003, Kluwer Law International, P206.

³ C.Mayer, *Corp. Governance, Competition, and Performance* (1997) 24 J.of Law and Soc, P154.

⁴ Mark Roe, *Political Determinants of Corporate Governance* (Oxford U.Press,2003), pp16-17.

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historical, economic, political, cultural, legal system, and basically the different structures of corporations based on which corresponding corporate governance systems are shaped.⁵ According to these differences, the standards of the efficient corporate governance system in different countries are distinctive too. So, there cannot be 'one best standard system' suitable for every country, and the argument for harmonization of corporate governance at the world level is weak.

This paper argues that although several countries and organizations are trying to harmonize the world corporate governance systems, the result will be clearly frustrated. And what should be done is leaving countries within competition to modify their governance system according to their characters, so that to enhance the efficiency of existing systems. Part II introduces some achievements of the harmonization, and analyses their self-contradiction. Part III examines that is one system really better than the other? Part IV explores how specific system formed and persisted. Part V explains the reason of persistence essentially in the view of beneficiaries. Part VI tests the possibility of a perfect system holding the advantages of both current systems.

2. ACHIEVEMENTS OF HARMONIZATION AND ITS INTERNAL CONTRADICTION

According to these stresses from the globalization and the development of international capital market, some countries have adjusted their systems to some extent. For example, firms in the U.S. start to adopt long-term relational investing strategies which are taken from 'insider' system, and institutional investors are more common than before.⁶ Meanwhile, the representative of 'insider' system—Japan has some movements too. The information related to finance and investor is becoming more disclosed in Japan, which has been the character of 'outsider' system. And the financial way is becoming variable including equity market instead of the exclusive banking financial system. Shareholders in Japan have got more power. On the other hand, managers' performance is more accountable compared with that in the past.⁷ However, it doesn't mean these two systems will become convergent in the future, because the roots of them are not changed.

Regard the action of international organizations. The OECD acts as the first harmonization,⁸ produced the 'Principles of Corporate Governance (2004)' aim to promote good corporate governance in general.⁹ These principles are efficient in theory, ensuring the basis for an efficient corporate governance framework, standardizing the rights of shareholders and key ownership functions, acquiring the equitable treatment of shareholders, emphasizing the role of stakeholders in corporate governance, meanwhile, demanding disclosure and transparency and making sure the responsibilities of the board.¹⁰ To monitor how countries' governance systems adhere to these principles, the World Bank becomes the monitoring institution through the 'Reports on the Observance of Standards and Codes' (ROSC).¹¹ However, member states of OECD are not complied to follow these principles, so they might opt out of these principles in terms of their particular efficiency of existing systems.

Compared with OECD, EU has issued some specific schemes. It has produced several company law directives to rule relevant issues of corporate governance.¹² However, not every directive is successful. The 5th directive is an example,¹³ for which the U.K. refused the extended German-style codetermination,

⁵ Yuwa Wei, *Comparative Corporate Governance—A Chinese Perspective*. 2003, Kluwer Law International, P206.

⁶ M.J.Rubach and T.C.Sebara, 'Comparative Corporate Governance: Competitive Implication of an Emerging Convergence' (1998) 33 *J.of World Business*, pp178-179.

⁷ *Ibid*, pp179-180.

⁸ See. http://www.oecd.org/topic/0,2686,en_2649_37439_1_1_1_1_37439,00.html

⁹ Lecture handout of 'Harmonization, Competition and Convergence'.

¹⁰ See. http://www.oecd.org/document/49/0,2340,en_2649_34813_31530865_1_1_1_1,00.html.

¹¹ See. http://www.worldbank.org/ifa/rosc_cg.html

¹² *Supra* note 7.

¹³ J.Du Plessis and J.Dine. (1997). *The Fate of the Fifth Directive on company law: Accommodation Instead of*

namely, the two-tier board.¹⁴ Because the U.K. takes the one-tier board, so the firms are run for the shareholders' benefit at all. If employees come into the board, the purpose of maximizing shareholders' interests might be limited by the intention to balance the interests, so that distort the objective of corporate governance in the U.K. The similar conflict arises in 2001 European Company Statute which allows the creation of European Company.¹⁵ In the process of ruling the structure of this company, Germany requires same level of employee participation in EU companies which point the U.K. would never agree. Because that the market plays the most important role in monitoring managers' performance not the employees under the U.K. system, so that the managers in the U.K. companies enjoy utmost power of management, and they would not permit employees coming into the board to limit their discretion.¹⁶

Obviously, through the effort of both countries and international organizations, there are some achievements in harmonization. However, because of the corporate governance is based on the combination of several systems such as economical, political, legal system, so that every country has particular system framework within which the efficient modification could be made. Therefore, the harmonization just can be done on the face of each system, provided not interpret the root of particular system, otherwise, the convergence would be self-contradiction.

3. IS ANY SYSTEM SUPERIOR? –COULD THE MERITS OF THE TWO SYSTEMS BE COMPARED?

Through the development of international capital and product market, the advantages and disadvantages of existing corporate governance systems become distinct. As a result, the action toward harmonization is taken in some areas, for example, the 'Directive on Shareholder Rights (2007)' and the 'draft fifth directive--on Employee participation' of the EU. Obviously, these two directives are mostly based on the U.K. law and the German law respectively. However, the framework and the background of these two systems are distinctive, so, one question should be asked, 'Is one system really better than the other?'

Presently, the radical difference of the ownership of firms leads to the diverse corporate governance systems. General Electric, AT&T, Exxon which are the three most valuable companies in the U.S (the 'outsider' system) are all widely held by public shareholders.¹⁷ On the other hand, most of German firms have blockholders. For example, Allianz Insurance which is the most valuable company in Germany has plenty of large shareholders, and the largest one own 25 percent stake being the ultimate owner of the company.¹⁸ The another example is Daimler Benz, the fourth largest company of Germany which is held by the Deutsche Bank (24.4 percent stake). Evidently, banks play a big role in the ownership of firms in Germany. Consequently, particular ownership leads to a relevant focus of the corporate governance, so the measure of the economic efficiency refer to different focuses is different.¹⁹ Considering diffused ownership of firms, the U.S. corporate governance pays a lot of attention to the free market to monitor the management.²⁰ Nevertheless, the German system as well as Japanese system focuses on the relationship through which the long-term exchanges between owners and managers are built.²¹ Each system is pursuing different economic efficiency under its own focus.

The differences of the focuses between current systems were set down at the beginning of the

Harmonisation. *J.B.L.* 23J.

¹⁴ H.Hansmann and R.Kraakman. (2004). 'The End of History for Corporate Law' in Gordon and Roe. *Convergence and Persistence in Corporate Governance*. Cambridge: Camb.U.Press, P38.

¹⁵ Supra note 7.

¹⁶ Supra note 10.

¹⁷ R.La Porta, F.Lopez-de-Salanos, A,Shliefer and R.Vishny. (1999). *Corporate Ownership Around the World*. Finance, 15, P480.

¹⁸ Ibid, p483.

¹⁹ Supra note5, p169.

²⁰ Ibid, p169.

²¹ Ibid, pp172-173.

industrial revolution. The U.K. is the earliest country to industrialize, so that it had enough time to develop firms gradually and allowed the free trade with strong economy and industry. However, Germany as well as Japan came into the process of industrialization later. Therefore they were dropped behind by the U.K. at the scratch line. Because of the weak economic basis, the firms had no choice but to face the fierce competition assisted by the government's financial support and guidance. Then the distinctive systems formed in different countries, and they have different priorities when come across problems.²² In other words, different systems hold different objectives. The U.S. system aims to maximize shareholders' interests (eg. good minority shareholder protection), the German system acts in the purpose of improving national interest (eg. the bank-central economic system) and the Japanese system is willing to balance the social interests in all (eg. lifetime employment).²³ Relevant systems are developed to fulfill these objectives. From this point, the merits of current two systems cannot be compared.

The proponents of the harmonization might argue that even if the objectives of two systems are different, according to competition countries would like to run its companies under an economic more efficient system. It means that the winner is the one which is more efficient in terms of economy.

Incontestably, each system has its superiorities and defects. First of all, the 'insider' system emphasizes the stability. Compared with 'outsider' system, it may be slow in reaction to the change in the market, consequently lose some opportunities to get benefit. Take the General Motors for example, 'during the reign of Robert stempel lost over \$13 billion before its board and institutional owners reacted by deposing him as CEO. And the similar problems are faced by Apple computer, Eastman Kodak.'²⁴ The 'insider' system might earn less than 'outsider' system, however, because of its large shareholders' activity to monitor the performance of managers, the problem of free-rider of corporate control may be avoided, so that the company saves a mount of money.²⁵ Meanwhile, when the company comes across the economic distress, the financial institutions such as banks will play a big role in restructuring this company so that the financial distress is less costly.²⁶ Secondly, the 'insider' system may lack of professional managers compared with 'outsider' system. However, it reduces the agency costs of both debt financing and equity financing because of the creditor-shareholders' (banks and other economic institutions) active participation in corporate governance.²⁷ Thirdly, there is a potential problem in the 'insider' system that the concentrated owners may act just for their own interest without caring about the interests of other investors.²⁸ In fact, the system itself has the ability to restrict this risk through the commitment. Suppose that the large shareholder acts just for his own interest and lead to the suffering of stakeholders, he may lose the reputation in the system, so that it will be really hard for him to establish a long-term relationship with others.²⁹

The 'outsider' system represents the advantages of flexibility.³⁰ It changes quickly refer to the market. So, this system encourages corporate governance to react rapidly to the new opportunities.³¹ Under this system, on the one hand, the ownership and control are separated, so that more professional managers who can make the right decision in the market are required to run the company on the behalf of owners. However, though these competent managers may get more benefit for the company, the agency costs become higher at the same time. On the other hand, although the market assisted by several professional institutions such as audit and account institutions monitor the performance of the managers. However, the market and these institutions provide no rapid way to solve the financial distress when managers made mistake, so the costs for restructuring the poorly performing company is much higher than 'insider' system.

²² Supra note3, pp176-177.

²³ Supra note2, pp71-105.

²⁴ Supra note5, p177.

²⁵ Supra note1, p160.

²⁶ Ibid, p163.

²⁷ Guanghua Yu. (2007). *Comparative Corporate Governance in China*. Routledge. p92.

²⁸ Supra note1, p160.

²⁹ Ibid, p168.

³⁰ Ibid, p170.

³¹ Ibid, p171.

From the analysis above, both 'insider' and 'outsider' systems have defects, so the economic efficiency is almost the same after the offset of inputs and costs. The best examples are the U.K and Germany which are representatives of two systems respectively, and the economic performance of whom are similar.³² Meanwhile, each system has its particular way to proceed with the corporate governance, the 'outsider' system put the market at the central position in monitoring the performance of management, however, Germany emphasizes the role of large shareholders, and the final results are similar.

In sum, neither system provides perfect mechanisms to solve all the problems connected with corporate governance. However, each one acts efficiently under its framework, so that the efficient results are achieved by both of them through the working of the whole system. Their merits cannot be compared.

4. CORPORATE GOVERNANCE IS A CONSECUTIVE AND INTERACTIONAL SYSTEM----THE PIECE-MEAL CHANGE IS IMPOSSIBLE

To some extent, corporate governance just likes a person who cannot live alone. His personality and habit are constructed in the period of his life and the relationship with others supports him solving problems or making progress. Equally, the corporate governance system is confined by its historical slot and evaluates in connection with the other systems such as legal, political systems and other aspects of the economy under particular framework.³³ It is one of the elements under the framework, and the only way to get efficient reform is to modify the whole system and the relevant framework all together. So, the crucial question is that even if there is a best model, could the system be reformed toward it constitutionally? The answer is absolutely 'no' according to the path dependence and the complementarities.

4.1 Path dependence----the scope of changes is restricted by original choices

The persistence of particular corporate governance system is due to the distinctive ownership of companies, the different politics, culture, legal systems which formed in the process of original development of corporate governance systems.³⁴ They are and will continue to impede the convergence of existing corporate governance systems.

4.2 Original ownership structure of corporations decides the ownership in future

As what have been discussed in section III: each corporate governance system is efficient to the particular country. Meanwhile, the massive post-war state ownership around the world leads to the appearance of the state controller in several countries, such as China, Austria and Singapore.³⁵ In a word, it is the difference between the diffused ownership and the concentrated ownership. This basic difference of corporate structure makes the path of each system distinctive.

There are several reasons that the original ownership structure affects the structure continuously. On the one hand, to make the structure work efficiently, relevant rules and regulations would be produced to assist it. For example, in a country with concentrated ownership, the regulations to avoid the self-interest activity of large shareholders might be made, and corresponding framework which allows the establishment of long-term relationship between financial institutions and firms is constructed. However,

³² Supra note1, p172.

³³ Supra note4, p115.

³⁴ Ibid,p73.

³⁵ Supra note14, p496.

in the country with diffuse ownership, to incent the managers do due diligence, a compensation scheme which connect the performance of firm with executive remuneration should be developed. And relevant rules formed to reduce agency costs.³⁶ Obviously, if the country wants to change its corporate governance structure, all of the relevant adaptations should be reformed, because the current rules are developed on the basis of original structure.³⁷ So, costs of reforming might be huge even exceed the benefit it will make, then current system persist according to the costs. On the other hand, at the beginning of the development of corporate governance, most companies adopted the original structure which was efficient to them at that particular time. So a new company is set up in the circumstance where most of other accompaniers are run in that structure. It is said that the new company has no choice other than taking the same structure to get into the market.³⁸ In addition, when a corporate ownership structure was decided, other elements in the economic system would develop in connection with the improvement of the corporate governance's efficiency under this structure. Therefore, the original structure is the only efficient choice according to these assistances.³⁹ In other words, it is the problem of complementarities. In the end, considering the efficient performance of existing systems, and the transaction from one system to the other must involve costs, the country would prefer to maintain the current structure.⁴⁰

4.3 Original legal system determines consequent legal rules

Mr E Berglof stated, 'The higher concentration of ownership, the smaller and less liquid capital markets, the difference functioning of markets for corporate control and the different nature of conflicts between investors would all be explained by the original decision to adopt, or impose, a specific legal system.'⁴¹ On the other hand, Mr Coffee held that 'share ownership patterns determine whether a country is likely to offer significant protection to outside investors.'⁴² It is clear that the structure of corporate and the legal system supplement each other. Because of the persistence of ownership structure, the legal system will follow the path too.

Anglo-American corporate law is constructed under the principles of common law and equity law, so, it pays a lot of attention to the protection of justice and equity. Consequently, to maintain the equity among shareholders and the ownership structure, this legal system provides better preservation to minority shareholders.⁴³ Nevertheless, the civil law aims to provide stable control for the large shareholders on the corporate, so its corporate law follows a path of tight control with poor protection for minority shareholders.⁴⁴ Therefore, common law system is more attractive to minority shareholders to invest. However, large shareholders' controlling position is maintained well under civil law system. Therefore, different ownership structure is connected with different legal systems. As a survey of the corporate governance literature by Andrei Shleifer and Robert Vishny argues 'in the absence of well functioning corporate law, concentration of ownership is the only way to commit not to steal from the company.'⁴⁵

When the country chose one of the legal systems, the path of the rules was determined. First of all, under the common law system, the interests of minority shareholders are preserved well, so that managers are enjoy the controlling power and more political power.⁴⁶ They would influence the making of relevant corporate rules to retain their positions. The same situation exists in civil law countries, in which the large shareholders would utilize their political power to enhance relevant rules.⁴⁷ Then the

³⁶ Supra note31, p79.

³⁷ Ibid, p79.

³⁸ Ibid, pp80-81.

³⁹ Ibid, p80.

⁴⁰ Ibid, p81.

⁴¹ Supra note4, p114.

⁴² B.Cheffins. (2003). *Law as Bedrock*. 23 *Oxford Journal of Legal Studies* 1, p18.

⁴³ Supra note3, p182.

⁴⁴ Ibid, p183.

⁴⁵ Supra note4, p98.

⁴⁶ Supra note31, p71.

⁴⁷ Ibid, p71.

original legal systems continue to exist. Secondly, new investments are unavoidable if a country wants to change its corporate rules. It is clear that the corporate rules work with the assistant practices and institutions which fit these rules well. So, the change of existing rules will go hand in hand with the developing of new practices and institutions. Considering these costs, the efficient rules for a country might rest with the current one.⁴⁸ Anyhow, the original legal system formed a path which the subsequent corporate rules have to follow.

4.4 Original financing measure influences the development of corporate governance

Although, the financing measure is determined by the corporate structure, however, it is counteractive to the corporate governance system.

In the 'insider' system, banks are in the central position of financing, so that the controllers do not need to sell their equity to raise funds. Therefore, the protection of minority shareholders is less important in this system. However, the 'outsider' system relies on the equity market to finance companies, so that the founders have to put equities into the market to raise funds. To attract public funds, the protection of minority shareholders becomes essential.⁴⁹ Visibly, particular financing way just accelerates relevant rules which would enhance its ability of raising funds. There is no opportunity for irrelevant rules to develop. Accordingly, this original financing measure is stable. If the financing way is unaltered, how could relevant governance system change?

In addition to the above three points, different countries have their historical reasons which lead to the particular paths. The first example is Japan, where the 'lifetime employment' marks a particular corporate governance system.⁵⁰ This structure formed according to the dismissal of a large number of employees to get the control back to firms before the Second World War. To some extent, it was the only way to retain the loyalty of the remaining employees and avoid them jumped from firm to firm.⁵¹ So, this distinctive path which was 'a key part of the Japanese peace predicate',⁵² formed and maintained in Japan till now. In Germany, because of the conventional emphasis placed on the stakeholders, there was a requirement to balance the power of blockholders with stakeholders in the enterprises.⁵³ Meanwhile, labor organization was always powerful, so the system of codetermination formed with a supervisory board in which half of the members are labors.⁵⁴ Afterward, the corporate governance system developed following this path.

On the other hand, some companies play special role in particular countries, such as the state-owned and state-controlled companies in China.⁵⁵ These kinds of companies always take a lot of burdens even for non-commercial objectives for the government such as social services, providing jobs and so on because of the weakness in the area of social welfare.⁵⁶ To control these firms, the country will limit the significance of stock market and emphasize the importance of banks in monitoring them, so that the path of 'insider' system is maintained.⁵⁷

So, one corporate system only could be modified on the basis of the original model instead of being reformed to another one.

⁴⁸ Ibid, pp95-96.

⁴⁹ Supra note14, p508.

⁵⁰ Supra note2, p87.

⁵¹ Ibid, p88.

⁵² Ibid, p87.

⁵³ Supra note4, p108.

⁵⁴ Ibid, pp71-73.

⁵⁵ Supra note3, p201.

⁵⁶ Ibid, p188.

⁵⁷ Ibid, p185.

4.5 Complementarities---corporate governance works under an economic framework, not just by itself

It is no denying that the corporate governance is one of elements in economic system, so, there are relevant complementarities which fit together to exert its efficiency.⁵⁸

When a corporate governance regime is chose, relevant complementarities such as institutions, practices and professional communities are developed to assist it.⁵⁹ When the system of complementarities formed, which corporate governance system is efficient in this country is affected by the complementarities as well. So, the existing corporate governance system is likely to persist even if it is no longer efficient in the new circumstances considering the huge reforming costs of restructuring the complementarities.⁶⁰

Provided the close relationship between the core elements of the corporate governance system with other economic and legal elements, the intention to change the corporate governance system essentially has to involve reconstructing other systems.⁶¹ For example, aim to reform the corporate governance, relevant laws not only corporate law but also labor law, financial regulatory law and tax law should be rewritten which is really difficult to implement.⁶²

Suppose that one 'best model' is accepted by a country without considering the social, ideological, economic, historical, cultural conditions of current system, it will be useless because of the unsuitability of every aspects of the framework.⁶³ So, the result of that may make the country's firms perform worse. As Schmidt and Spindler's opinion 'introducing elements of the outsider system into the insider system may reduce the later's value, vice versa'.⁶⁴

4.6 Political issues----the essential reason that the convergence be prevented

In Milhaupt's opinion, 'different national polities differ in the degree to which they retain authority over the firm.'⁶⁵ Because of the leader of the country is government, meanwhile, it is who offer relevant foundations for firms. So, the government plays a big role in the corporate governance system.

If the governmental influence is strong, the private property rights might be less secure, so that more concentrated ownership would appear in the system.⁶⁶ However, if the political players just have limited authority over firms, the market and other institutions will provide external governance, so that the ownership is more dispersed.⁶⁷

The most special example is China where the government has considerable ownership of firms and great power to guide corporate development. Because of the regime is constructed under social democracy according to which the aim of the economy is to bring benefit to the dumb millions. Therefore, the government would not eliminate the domination of those state-owned or state-controlled firms in economy. So, the corporate ownership keeps concentrated. Meanwhile, the host of China is citizens, so the board would develop toward the co-determination structure which solves the conflict between capitals and labors well.⁶⁸

To sum up, the internal elements of this system affected each other to maximize the efficiency, so that

⁵⁸ Reinhard H. Schmidt &Gerald Spindler, 'Path Dependence and Complementarity in Corporate Governance' in Gordon and Roe, *Convergence and Persistence in Corporate Governance* (Cambridge: Camb.U.Press,2004), p119.

⁵⁹ Supra note31, p80.

⁶⁰ Gordon and Roe. (2004). *Convergence and Persistence in Corporate Governance*. Cambridge: Camb.U.Press, p28.

⁶¹ Supra note56, p124.

⁶² Supra note58, p3.

⁶³ Supra note3, p192.

⁶⁴ Supra note58, p16.

⁶⁵ Ibid, p22.

⁶⁶ Ibid, p22.

⁶⁷ Ibid, p22.

⁶⁸ Supra note3, p186.

specific path formed. Meanwhile, relevant laws, practices and institutions were produced to assist the core elements of this system. Therefore, it is impossible to change corporate governance system itself. However, reformation of the whole framework might be too expensive to do. Even if the costs are less, considering the equally efficiency of existing systems, the country prefer to persist current system.⁶⁹ Then, the convergence becomes undesirable.

5. THE CONTROLLERS WOULD RESTRICT THE HARMONIZATION IN PURSUIT OF PRIVATE INTERESTS

In different systems, the groups which control firms are different too. In 'outsider' system, the control and ownership are separated, so that the managers are in charge of the companies while public shareholders own them.⁷⁰ In contrast, although there are managers in the 'insider' system, indeed, the controllers are the large shareholders who have enough power over managers through exercise voting rights in the shareholders' general meetings.⁷¹

As what talked above, existing systems have equally efficiency after offset of costs and benefits. So that, current controllers prefer to persist incumbent systems through which they can keep enjoying the controlling power.⁷² In fact, it is the intention of controllers to maintain their private value. Imaging that who will give up the superior position when he cannot be put in a better position? For example, in 'insider' system, large shareholders utilize the controlling position to divert a disproportionate benefit against minority shareholders.⁷³ Would they provide better protection or change the ownership to which in favor of minority shareholders? The answer is absolutely 'no'. They will avoid any change toward 'outsider' system, just through keeping shares in hand.⁷⁴ Meanwhile, those controllers would retain or expand relevant rules which favor themselves.⁷⁵ Take 'outsider' system for example, the powerful managers would support rules which can avoid formation of large shareholders, such as antitakeover rules and rules which discourage the ownership of blocks by financial institutions.⁷⁶ Through these rules, professional managers can maintain their positions.

From the analysis above, existing controllers would refuse convergence of corporate governance system in the purpose of maintaining their private benefits.

6. COULD A 'BEST MODEL' BE BUILT WITH BOTH SYSTEMS' ADVANTAGES?

The proponents of harmonization of corporate governance system may argue that if there is no better one between existing systems, diligence can be done to produce one system which is superior to both.

In the process of harmonization, some good elements of one system should be attached by the other. Considering problems of path dependence and complementarities, the problem of inefficiency may arise because that the good elements of one system do not fit well with other elements of the system which accept them.⁷⁷ In other words, the advantages of each system are relative to the framework they work in. As Schmidt and Spindler stated, '...a middle-of-the-road model is not recommended from an economic

⁶⁹ Supra note58, pp11-14.

⁷⁰ Supra note14, p471.

⁷¹ Ibid, p472.

⁷² Supra note58, p12.

⁷³ Supra note11, p56.

⁷⁴ Ibid, p56.

⁷⁵ Supra note31, p100.

⁷⁶ Ibid, p100.

⁷⁷ Supra note56, p121.

perspective. It would not necessarily improve the British corporate governance system if important elements were introduced into it which observers, regulators or legislators find useful in the German system, and vice versa.⁷⁸ Meanwhile, every system has advantages and disadvantages, and they go hand in hand. To draw the advantages of both systems is impossible.

Moreover, it is visible that objectives of each country are different essentially. The corporate governance in the U.S. is to maximize shareholders' interests, however, Germany corporate governance aims to improve national interests and Japan wants to make good the social benefits in all⁷⁹. In practice, these objectives are separately emphasized in different systems.⁸⁰ And some modes under different systems are antipathic. So, how could one system satisfy all the objectives and balance the interests between groups all together?

In the end, the attention should be paid on the basis of above argument which is constructed without concern on the discrepancy of economic development status in different countries. However, in practice, because of the different size of economy and different levels of economic development, the system which is suitable for countries are different. The best example is differences between developed and developing countries. Compared with developed countries, developing countries have smaller firms and less capital to afford fierce competition in the market, so that the liquid market cannot be in the central position of corporate governance.⁸¹

Provided some unchangeable differences of corporate governance systems in different countries, it is clear that no single system can solve all the problems perfectly. Schmidt and Spindler give a reasonable conclusion to the controversy between harmonization and competition, '...as long as complements are deep and strong, and as long as one could not change one institution without changing another, change can be harder than a simple smooth evolution to a standardized efficiency.'⁸² So, it is better to leave countries improving their corporate governance in competition instead of harmonizing different systems into one.

7. CONCLUSION

Corporate governance system is of great importance in the performance of corporations through connection the interests of investors and managers. The efficiency of the corporate governance determines whether the value of firms can be improved. According to this, every country is finding the suitable model which can improve the performance of corporations efficiently. During this process, two models formed: the 'outsider' system and the 'insider' system. Both systems have advantages and disadvantages. Nowadays, forces from globalization and development of international market make countries and institutions intend to harmonize the world corporate governance system, and several actions toward this have been done. However, the essential convergence of the world systems is impossible. This paper has analyzed several achievements following the intention of convergence from an objective perspective, meanwhile, pointed out several critical concerns for harmonization and argued why harmonization cannot be achieved base on analysis of each point.

In sum, considering the failure of efforts of EU to end differences of corporate governance systems, it is clear that a system is shaped not only by the rationality itself, but also by the particular economic framework which is composed of historical, cultural, political and legal systems. So, the efficiency of each system is relative. The world corporate governance systems would not be harmonized substantially unless all the elements in the framework are unified which is incogitable by far. Therefore, countries should be left in competition to improve relevant elements or inquire the systems which are efficient to them rather than run under the uniform form.

⁷⁸ Ibid, p122.

⁷⁹ Supra note3, p180.

⁸⁰ Ibid, p204.

⁸¹ Supra note31, p110.

⁸² Supra note58, p18.

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- See. http://www.oecd.org/topic/0,2686,en_2649_37439_1_1_1_1_37439,00.html
- See.http://www.oecd.org/document/49/0,2340,en_2649_34813_31530865_1_1_1_1,00.html
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