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## An Analysis of Company law in various Countries for Global Competitiveness

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*The concept of corporate had deep historical roots and was brought into existence for bringing smooth administration and division of responsibilities. In the leisurely past, merchants used festive gatherings as an opportunity to address business-related issues. Over time, the business matter has become more complicated and the idea behind corporate law was modified under the demands of the changing business environment. This led to the rise of an organizational structure and with the increasing demand for business dynamics, the concept of corporate governance evolved. The increasing importance of good corporate governance is particularly impacting corporate law reforms around the world. Most countries such as the UK, Hong Kong, and Singapore including India are working towards a modern, efficient and effective framework of company law to achieve global competitiveness.*

**Keywords:** *corporate law, global competition, administration, business matters, corporate governance.*

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### INTRODUCTION

The world is getting smaller and smaller. International trade, more efficient transportation, and the global spread of the internet, all contribute to the global economy. Global businesses are growing tremendously. To protect, all the don'ts in the corporate sector, it is essential to have an effective framework of company law. A fair framework of company law is one of the

most crucial prerequisites for the functioning of any economy and society as a whole. Countries, today are recognizing the importance of good corporate governance. In the competitive and technology-driven environment, it is important for corporate sectors to have greater autonomy of operations and should constantly upgrade their corporate compliances to operate in a national and global context.

Transparency in corporate reforms through enhanced disclosures and a good system of company law is a need in national as well as the international scenario of complex business operations. The law must balance the interests of investors and other stakeholders. To achieve global competitiveness, a modernization of company legislation is required which would facilitate enterprises in providing a flexible regime in the operation of companies and make the country more appealing and preferred destination for domestic as well as foreign direct investments to do business. Various countries across the world are modernizing and harmonizing their company law with global standards, to achieve global competitiveness.

### **THE IMPORTANT LEGAL SYSTEM IN VARIOUS COUNTRIES**

Company law deals with the incorporation, shareholding, management, operations, and dissolution of corporations. Incorporating a company to get it wound up is a long process that is enacted in various countries' acts, rules, regulations, and bylaws. Corporations follow different approaches and theories to operate the legal system in a particular company. Different jurisdictions are drawn from different legal traditions and systems which allow them to be compared with each other. Directors who are in the charge of the management of the company should have a sound understanding of the legal system and its approach. Therefore, it is important to know the traditional theories and approaches of the legal system followed in different countries.

**Some of the important legal systems include:<sup>1</sup>**

- Common law: It is a system which is originated in England and consists of laws made by the legislature and rules derived from the cases by the courts. It is the Most English-based legal system followed by the United Kingdom, Canada, India, Singapore, Malaysia, and the majority of the former British Empire nations.
- Civil law: It is a legal system of comprehensive written codes that are used in the majority of continental Europe and much of Asia)
- Sharia law: Traditional sharia law can range from serving as a foundation for all laws in a nation (such as Saudi Arabia) to serving as the secondary legal framework (e.g.: Turkey)
- Communist: The communist, or formerly communist, legal system offers a background framework over which one of the other systems may typically operate. (E.g., civil law in Vietnam and common law in Hong Kong). A key characteristic of most is state ownership of property, state-owned businesses, and substantial discretionary authority granted to central and local government officials and committees, all of which have a significant impact on how business is conducted.
- Roman-Dutch law: It is still in use today in countries like South Arabia and Indonesia and is based on ancient Roman law.

**ANALYZING FEATURES OF COMPANY LAW IN VARIOUS COUNTRIES**

Every nation has companies with distinguishing qualities that enable them to be categorized and compared. Let's take a look at the short snaps of the salient features of company law in different countries and explore their unique traits which make them comparable. The countries we are going to look into are - The United Kingdom, the United States, Hong Kong, Singapore, and Australia,

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<sup>1</sup> 'Corporate Governance in overseas Jurisdiction' (*American Anstitute of Company Directors*, 1 January 2020) <<https://www.aicd.com.au/corporate-governance-sectors/global/challenges/corporate-governance-in-overseas-jurisdictions.htm>> accessed 17 July 2022

### *The United Kingdom*

The UK Companies Act, 2006 largely superseded the Companies Act, 1985, and received Royal Assent on 8<sup>th</sup> November 2006. UK Companies Act, 2006 came up intending to modify and simplify corporate law. It contains 47 parts (with 1300 sections) and 16 schedules.<sup>2</sup>The UK companies Act, 2006 mainly covers ‘*corporate finance*’ and ‘*corporate governance*. Corporate finance deals with the ways a limited company can raise money and corporate governance addresses the rights and duties of different stakeholders i.e. shareholders, directors, creditors, and employees.<sup>3</sup>

Company Act, 2006 is also regulated by:

- The Insolvency Act, 1986
- The UK governance corporate code
- European Union Directives.

### **SALIENT FEATURES OF UK COMPANIES ACT, 2006**

- Any one or more persons associated with a lawful purpose can incorporate a company. A company can be formed with or without liability.
- There are four types of companies under the companies act, of 2006:
  - Limited and unlimited companies
  - Private and public companies
  - Companies limited by guarantee and having a share capital
  - Community interest companies
- 1. People who are intended to carry out the activities for the benefit of society can form community interest companies (CLC). The CLC legal structure helps to carry out non-

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<sup>2</sup> Companies Act 2006

<sup>3</sup> *Ibid*

profit activities from very small projects to multi-million-pound health services. An existing company can also get itself converted into a CLC Company.<sup>4</sup>

2. The amount of share capital of the public company is proposed to be registered. For forming a public company, the minimum authorized share capital shall be 50000 Euro or such other sum as the secretary of state may order.
3. A company other than a private company limited by shares or by guarantee must have at least two members. If a company carries on business without having at least two members and does so for more than 6 months then the member and company shall be liable for payment of the company's debts contracted during the period.
4. Every public company must have at least 2 numbers of directors and a private company is required to have one director at least. A person is qualified to become a director of the company if he has attained the age of 16 years.
5. Under the Companies Act, 2006 all UK businesses are mandated to conduct audits. But if you meet certain requirements, you may be eligible for exclusions for this rule. The size of the company and the group as a whole are two factors that determine whether or not someone is eligible to take an exemption from the audit.<sup>5</sup>

## UK CORPORATE GOVERNANCE CODE

In the United Kingdom, UK corporate governance code is overseen by Financial Reporting Council. It is a part of UK Company Law which draws the set of principles for good corporate governance. Transparency and honesty in business are promoted by the Financial Reporting Council (FRC). It also establishes the UK's Corporate Governance and regulates auditors, accountants, and actuaries. In the terms of thoughts on effective corporate governance, Financial Reporting Council has released the new 2018 UK Corporate Governance Code which focuses on the application of the principles. It is a key to the long-term sustainable growth of

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<sup>4</sup> Caitlyn Buchanan, 'The Benefits of Setting up a UK Community Interest Company' (*Euro Company Formation*, 16 November 2020) <<https://www.eurocompanyformations.com/blog/the-benefits-of-setting-up-a-uk-community-interest-company/>> accessed 23 July 2022

<sup>5</sup> Richard Collis, 'Does your UK subsidiary require audit?' (*Saffery Champness*, 12 October 2021) <<https://www.saffery.com/insights/publications/does-your-uk-subsiary-require-an-audit/>> accessed 23 July 2022

the UK economy. The 2018 UK Corporate Governance Code emphasizes the relationships between companies, shareholders, and stakeholders. It is designed to promote transparency and integrity in companies. The revised code promotes open communication between businesses and their shareholders as well as openness in how businesses handle shareholder complaints. The objective is to enhance businesses' current business practices.<sup>6</sup>

### *The United States of America (USA)*

The United States is a federation of states with a federal Constitution and several state constitutions.

- Company law - State subject
- Minimum standards for trade in securities and governance rights – Federal subject

Each state has its corporate law regime which attracts competition and experimentation in the corporate form. There exist nearly 50 different corporate laws which produce a wide diversity of legislation, operating in the same country. Several mitigating factors encourage collaboration, standardization, and in some cases harmonization across the United States. To administer the legislation of the Securities and Exchange Commission (SEC), agencies are created, which come under the subject matter of federal laws. It is working as the most powerful administrative agency in the world. MBCA (Modern Business Corporation Act) is the body of statutory that governs corporations in each state. Modern Business Corporation (compiled by the American Bar Association) has been implemented in whole or a part by and has influenced statutes of various states.

The MBCA was first introduced by the American Bar Association in 1950 as a replacement for the unpopular Uniform Business Corporation Act, which was only adopted by three states. Over the following three decades, the ABA kept amending the MBCA to make it more palatable to state legislators. The MBCA had a significant redesign in 1984, and there have

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<sup>6</sup> Elena Sarbhu, 'The 2018 UK Corporate Governance Code – A refreshed view on corporate governance' (*Sustain Analytics*, 31 July 2018) <<https://www.sustainalytics.com/esg-research/resource/investors-esg-blog/the-2018-uk-corporate-governance-code-a-refreshed-view-on-corporate-governance>> accessed 23 July 2022

been a few more minor changes since then. 24 states and the District of Columbia had fully and partially passed the MBCA by the year 2008, respectively.<sup>7</sup>

### **Salient features of MBCA of US Corporation:**

- Any one or more persons may incorporate a company by filing articles of incorporation to the secretary of state. Corporate existence begins, with the effectiveness of filing the articles.
- The officers of the corporation are appointed by the board of directors of the company by the by-laws.
- Each officer has the authority and the duties prescribed by the directors of the company. The officer must perform all the duties.<sup>8</sup>
  1. in good faith,
  2. the position would be reasonably exercised, and
  3. in the best interest of the incorporation.
- 4. The qualifications of the directors are may be prescribed by the articles of association or bylaws. A board of directors is required to have one or more individuals, with the specified number prescribed in the articles of incorporation or bylaws.
- 5. Corporate records shall be maintained by the corporations following the articles of corporation or bylaws.

### **USA corporate Governance:**

US Corporate Governance is influenced by the investors, proxy advisory firm pressures, and company-specific factors. The key sources of legal and regulatory requirements are:<sup>9</sup>

- State corporate law
- The Federal 1933 Securities Act and Securities Exchange Act,1934

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<sup>7</sup> David Carnes J.D., 'Model Business Corporations Act' (*Legal Beagle*) <<https://legalbeagle.com/12717857-model-business-corporations-act.html>> accessed 23 July 2022

<sup>8</sup>Modern Business Corporation Act 1950, s 8(42)

<sup>9</sup> Adam O Emmerich *et. al.*, 'The Corporate Governance Review: USA' (*The Law Reviews*, 17 March 2022) <<https://thelawreviews.co.uk/title/the-corporate-governance-review/usa>> accessed 23 July 2022

- The regulations of the US Securities and Exchange Commission (SEC)
- Stock exchange listing rules (predominantly the NYSE and NASDAQ) and federal statutes in the areas of corporate areas.

Corporate governance in the United States has dramatically changed over time and will unquestionably continue to develop in the coming years. In particular, the SEC (Securities and Exchange Commission) is highly focused on the accuracy and transparency of corporations. The high level of fraud shook the investors and to settle down such old regulatory standards the Sarbanes-Oxley (SOX) Act, came into existence. The key takeaways are:

- In reaction to highly publicized corporate financial scandals earlier in that decade, Congress passed the Sarbanes-Oxley (SOX) Act in 2002.
- The act imposed stricter recordkeeping standards and established strict new norms for accountants, auditors, and company leaders.
- The act further increased the severity of the punishments for breaking securities laws.<sup>10</sup>

Sarbanes-Oxley Act, 2002, which came into force to protect investors from financial scandals, has amended the existing laws dealing with securities laws and introduced a new set of reforms. The four principles areas are:<sup>11</sup>

- Corporate responsibility
- Increased criminal responsibility
- Accounting Regulation
- New Protections

In many ways, the persistent push to implement corporate governance rules appears to have hit a standstill in the US, with nearly all the recommended best practices in place.

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<sup>10</sup> Will Kenton, 'Sarbanes-Oxley (SOX) Act, 2002' (*Investopedia*, 08 May 2022)  
<<https://www.investopedia.com/terms/s/sarbanesoxleyact.asp>> accessed 23 July 2022

<sup>11</sup> *Ibid*



## *Hong Kong*

Hong Kong has become the biggest trading center in Asia, for both multinational and local companies. An established reputation, business-friendly policies, fewer trade barriers, tax benefits, and low compliance costs make this country, the most preferred location for conducting trading activities in Asia. The companies established in Hong Kong are guided by the Hong Kong Companies Ordinances. Hong Kong is an international business hub because of its various fundamental strengths and always remains the go-to option for carrying out business throughout Asia. Hong Kong may play a special role in directing the coordinated growth of the financial services sector and afterward benefit from the rising momentum in the area. The recently introduced Wealth Management Connect plan has launched after lots of anticipation.<sup>12</sup> It would draw foreign capital to onshore wealth management products in the mainland while exposing retail funds registered and regulated in Hong Kong to international markets. Additionally, it will enable Hong Kong investors to increase their exposure to the mainland.

### **Salient features of Hong Kong Companies Ordinances:**

1. A company may be formed by one or more persons, by signing the articles of the company and submitting them to the registrar of the company. A company can be incorporated only for a lawful purpose.
2. Under Hong Kong Companies Ordinances, five kinds of companies can be incorporated:
  - A public company limited by shares
  - A private company limited by shares
  - A public unlimited company with share capital
  - A private unlimited company with a share capital
  - A company limited by guarantee without a share capital

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<sup>12</sup> 'Wealth Management concept finally kicks off: what is its significance' (*China Briefing*, 15 October 2021) <<https://www.china-briefing.com/news/wealth-management-connect-finally-kicks-off-what-is-its-significance>> accessed 23 July 2022

3. The company ordinances (cap.622) also contain the provision related to the share capital of the company. A share is the personal property of a member of a company. A share is transferrable following the company's article. Directors of the company have the power to allot shares or grant rights. A company must register an allotment of shares within 2 months after the date of allotment.

4. In the case of directors, public companies and companies limited by guarantee are required to have at least 2 directors and private companies must have at least 1 director. Directors may be increased in general meetings, for such purpose only. A person must not be appointed as a director of a company unless at the time of appointment the person has attained the age of 18 years.

5. An auditor must be appointed for each financial year of a company and gets terminated only if:

- The term of office expires
- The person resigns from the office
- The person is removed from the office, or
- A winding up order is made in respect of the company

### **Hong Kong Corporate Governance:**

Hong Kong has moved from being a regional market to an international financial Centre. The pivotal year may have been 1992, when Zhu Rongji, the former Chinese premier, turned to the south in search of fresh inspiration for his reform agenda for state-owned enterprises. Since then, Chinese businesses have rushed to Hong Kong's securities market, helping the city become one of the world's foremost financial hubs. The common law, some important statutes, and a heavy dependence on non-statutory norms, standards, and best practices all serve as the foundation for the governance framework for Hong Kong-listed businesses. In general, laws and regulations function to penalize businesses and their directors for non-compliance and to provide redress for the harmed, whereas non-statutory rules and best practices serve to drive

business behavior.<sup>13</sup>Hong Kong Corporate Governance defines a three-tier hierarchy made up of "principles of good corporate governance," "code provisions," and "recommended best practices" to guide corporate behavior.

### *Singapore*

Singapore has earned the reputation of a global financial center and has one of the fastest-growing economies in the world. The country is also renowned for its laws and regulations. Because of increasing technological advancement, the government of Singapore brought a major revamp of the Companies Act, of 1967 and formed a committee CLRFC (committee Legislation and Regulatory Framework Committee) in December 1999. In October 2002 committee came up with its final report with various recommendations. Also, amendments have been made to the Singapore Companies since then to implement the CLRFC's recommendations. The 2014 and 2017 amendments to the act brought several significant changes and modified the Singapore companies act. Presently, Singapore Companies Act, ch50 – company law is the primary legislation that regulates the companies in Singapore.

### **Salient features of the Singapore Companies Act:**

1. Any person may whether solely or together with another person, comply with the registration process requirements, and incorporate a company under section 17 of the Companies Act.
2. Under the Singapore Companies Act, three types of companies can be incorporated<sup>14</sup>
  - A company limited by shares;
  - A company limited by guarantee;
  - An unlimited company;

No company, association, or partnership consisting of more than 20 persons can be formed.

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<sup>13</sup> Robert Ashworth & James Perkin, 'The Corporate Governance Review: Hong Kong' (*The Legal Reviews*, 17 March 2022) <<https://thelawreviews.co.uk/title/the-corporate-governance-review/hong-kong>> accessed 23 July 2022

<sup>14</sup> Companies Act 1967, s 17

3. Concerning its shares and share capital, a corporation is subject to various provisions and obligations. Singapore company legislation does not limit the types of shares that can be established, even though businesses, particularly private businesses, frequently only issue one sort of share, namely ordinary shares. Therefore, it is acceptable for various classes to have different rights.

4. Every company must have at least one director who regularly resides in Singapore; in cases where there is only one member of the firm, that one director may also be the sole member of the company. A person who attained the age of 18 years shall be a Director of the company. A Director must discharge his duties and powers honestly and use reasonable diligence in exercising such responsibilities.

5. According to the Companies Act ("CA"), all firms incorporated in Singapore are required to hire a company auditor. An auditor must be appointed within 3 months of the incorporation of a company. An audit committee<sup>15</sup> shall be appointed by the directors of the company. The committee shall be composed of 3 or more members. The chairman of the audit committee, elected by the members, shall convene a meeting to consider the matters that need the attention of the directors and shareholders of the company.

6. A company in Singapore, if authorized by its constitution, may have a duplicate common seal.<sup>16</sup>

### **Singapore Code of Corporate Governance:**

On 21<sup>st</sup> March 2001, the code of Corporate Governance was first issued by the Corporate Governance Committee (CGC). According to the Singapore Exchange Listing Rules, listed businesses must publish their corporate governance policies and provide justifications for any deviations from the Code in their annual reports. The code gets revised various times to bring the best from it.

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<sup>15</sup> Companies Act 1967, s 210B

<sup>16</sup> Companies Act 1967, s 124

Finally, on 12 Feb 2019 the Corporate Governance Advisory Committee (CGAC), a permanent, industry-led organization, was established by MAS, to promote excellent corporate governance practices among Singapore's listed firms. The CGAC will track global trends and identify present and future threats to Singapore's corporate governance standards. The CGAC will occasionally update the Practice Guidance to add clarification to the Code and suggest changes.

### *Australia*

Australia is the perfect blend of stability and innovation. Doing business in Australia is considered easy as it offers a safe, secure, cost-effective, and innovative business environment. In Australia, corporations are incorporated and operated by Corporations Act, 2001 and the Australian Securities and Investment Commission (ASIC) is in the charge of supervising the regulation and registration of companies. The Australian legal system is founded on the English common law system, and a vast range of state-based and federal legislation and regulations govern economic activities. Australia has three basic tiers of government: federal, state, and local councils. The High Court of Australia, the highest court in the land, handles appeals relating to federal, state, and territory cases even though each state and territory has its legal system and courts. The Federal Court deals with federal affairs.

#### **Salient features of corporation act, 2001:**

- For setting up a company in Australia, the operator must apply to the ASIC to complete the registration with various details. Under the Corporation Act 2001, two types of companies get incorporated, proprietary and public companies.
- A public officer must be appointed by the company who acts as the company's representative to the ATO (Australian Taxation officer). The company must notify the ATO of the appointment within three months of starting operations in Australia or receiving income there.

- Although there is no set minimum or maximum for *share capital*, a business must have at least one stakeholder. Public share issues are not permitted for private enterprises to raise capital.
- Australian corporations' directors must be natural persons who are at least 18 years old. A proprietary company, (which is the most common type), must have at least one director, who must be a resident of Australia. And for public companies at least 3 directors are a must, among which at least 2 directors ordinarily reside in Australia. Directors of the company are held responsible to manage the operations of the business.
- The company can appoint a company secretary who must reside in Australia. It is not mandatory for proprietary companies to have a company secretary. Under the Corporation Act, 2001 the company secretaries have specific responsibilities and obligations.
- An individual, a firm, or a company may be appointed as auditor of the company.

In a proprietary company, if an auditor has not been appointed in a general meeting, the directors of the company are responsible to do so.

### **Australian Corporate governance:**

Corporate governance has been more important in the Australian business climate over the past years. Government, businesses, and shareholders have all actively pushed for the adoption of new governance systems and stronger governance standards in the wake of high-profile corporate failures and against the backdrop of the global financial crisis. In the framework of Australia, three key elements are included i.e. hard law, soft law, and non-binding guidelines. Australia has made recent changes in corporate governance. The ASX corporate governance Council has issued the final version of the fourth edition: Corporate Governance Principles and Recommendations. The main changes reflected in the 4<sup>th</sup> edition,

are a shift towards recognizing the importance of monitoring and taking responsibility for culture, conduct, and behaviour within the group.<sup>17</sup>

The 4<sup>th</sup> edition principles and recommendations include 9 new recommendations i.e. culture, values, whistle-blower policy, anti-bribery policy, corporate reports, company announcements, voting by poll, International directors, and meetings of security holders of foreign entities. Listed companies must reflect on their current government policies and practices and determine whether any adjustments are necessary to comply with the 4th Edition. A good practice of corporate governance in companies, will boost and provide more strength to the Australian economy.

## CONCLUSION

In the current scenario, business operations are getting complex in national as well as global contexts. Countries are working towards their company law and best corporate compliances to make their country the most preferable location for both local and international markets. The growing concept of corporate governance has taken the attention of various countries. Countries are modifying it by bringing effective amendments continuously. This concept of good corporate governance influences company reforms all over the world. Incorporating a simple, consolidated, and accessible company law is the ultimate objective of countries. In the competitive and technology-driven environment, countries across the world are trying to harmonize and bring modernization to their existing company law. Global standards for operating business in any country are getting higher and much better in the past years. Hence, the need to adopt a proper framework of company law for the regulation of companies for global competitiveness is increasingly being recognized by various countries.

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<sup>17</sup> Lauren Selby & Alex Lorenz, '4<sup>th</sup> edition ASX corporate governance principles and recommendations' (*Herbert Smith Free Hills*, 29 March 2019) <<https://www.herbertsmithfreehills.com/latest-thinking/4th-edition-asx-corporate-governance-principles-and-recommendations>> accessed 23 July 2022

*Suggestions:*

- The world is a market now, hence it is important to make corporate laws more simplified and have a flexible regime for operating businesses in various countries.
- The framework of corporate governance must facilitate the companies to function in the national as well as international market. To work in the global context the countries need to recognize the importance of good corporate governance which will enable them to protect the interests of investors, employees, creditors, and other stakeholders.
- Entities working in a global context should only tune with emerging economic scenarios, but also adopt a good governance practices in the operation of the companies.