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Comment

RIETI Special BBT Webinar

Wataru Tanaka
Professor of Law
Institute of Social Science, the University of Tokyo

The purpose of a company (for-profit corporation): Traditional understanding

- To maximize long-term interests of shareholders

= “Shareholder primacy”

To achieve this goal, corporate law provides two basic structures

1) Shareholders have a control power over a company
 Especially the power to appoint/remove directors

2) Directors have a fiduciary duty to maximize long-term shareholders’ interests
 To this end, directors can consider interests of other people
 But cannot pursue those people’s interests on their own

Corporate law in Japan: shareholder primacy in general

- Corporate law in Japan is interpreted as generally supporting shareholder primacy
- Courts agree that
- (1) “Directors are fiduciaries of shareholders who are owners of the company” (Nippon Broadcasting Case, Decision of Tokyo High Court, June 16, 2005)
- (2) In a contest of control, shareholders should make a final decision who will control the company (Nippon Broadcasting Case; Bull-Dog Sauce Case, Decision of Supreme Court, Aug. 7, 2007)
- **Caveat**: legal doctrines and business practices may have been very different
- Since WWII, at least through 20th century, shareholders’ (investors’) control powers had been substantially limited by cross-shareholdings

Should shareholder primacy be changed?

Possible problems brought by shareholder primacy

(1) Shareholders’ myopia

Shareholders may demand short-term profits to the detriments of the long-term firm value

(2) Negative external effects

Companies under shareholders’ control may pursue profits at the sacrifice of interests of third parties (including future generations)

My questions

(1) How serious are those problem?

(Counter-arguments: Bebchuk (Harv. Bus. Rev., Jan-Feb 2021); Roe (U. Penn. L. Rev., vol. 167, 2018))

(2) Won't changing corporate purpose (denying shareholder primacy) lead to another problem, especially weakening discipline of the management?

- Japanese firms traditionally have been under less pressure from shareholders than US or UK counterparts, but have they succeeded more in increasing the long-term firm value?

My questions (cont.)

- US corporate governance systems were also severely criticized around late 1980s / early 1990s
- In those days quite a few prominent scholars (e.g., Michael Porter) argued US firms must learn from Japanese firms
- Nowadays, few people make such an argument
- Low profitability and growth rate in Japanese firms and economy have degraded traditional Japanese corporate governance systems
- If we deny shareholder primacy, what assure discipline of the management?