Course Objective, Rationale and Description

Course Objective and Rationale:

Welcome to the Comparative corporate governance class!

Every day in the media, the press relentlessly reminds us of how the global financial crisis has undermined the economy and our confidence in financial markets overall. The global financial crisis clearly demonstrated that poor corporate governance practices can have disastrous consequences, not only for companies and shareholders but also for capital and financial markets and for the economy as a whole. Good corporate governance, in turn, is supposed to help clearly distinguish the line between ownership and control of the company, balance the powers of shareholders, board members, and other stakeholders, while ensuring their accountability. As such, it should lead to better productivity and attract investments. Many countries around the world have already launched or are in the process of launching reforms leading to better corporate governance.

In parallel, in the aftermath of the financial and economic crisis, numerous criticisms have been levelled against passive boards and passive shareholders. To perform better, it is argued on the one hand that boards need to be supported in key areas and be more competent, while the respective roles of Chairman and CEO need to be revisited. On the other hand, the financial crisis has raised questions on the role of institutional investors and there have been calls, specifically at the international and European levels, for more shareholder engagement and less conflicts of interest. In addition, the debate about the role of shareholders in ensuring accountability needs to further take into account the different types of shareholders.

From a legal perspective, there have been calls for greater use of regulation over what are considered to be self-regulation codes and standards. These calls tackle the “comply or explain” rule and its efficiency. They can even go further, such as for instance the US response with the Dodd-Frank Act. This approach can be questioned because, in the area of corporate governance, the case is more complex than the one of prudential standards. There have also been instances of regulatory failure. In line with principles of corporate governance, it is questioned whether rather call for jurisdictions to review regularly the capacity of their supervisory, regulatory and enforcement authorities, or to promote forward looking capacities.

The course aims at giving thorough insight into corporate governance practices while providing legal tools to help improve corporate governance practices in listed companies. It seeks to understand the origins and theoretical foundations of corporate governance norms (class 1) and to question their integration in a globalized context (class 2). It encourages the need for comparative law as a means of thinking about law in a globalized economy, either from a shareholder perspective (class 3), or from the perspective of directors (classes 4 & 5). All in all, the course tackles the complex issue of a need for more convergence in corporate governance systems worldwide.
Description:

This course presents a comparative overview of Corporate Governance issues, mainly focusing on the U.S. legal system and those of the European Union member states. In addition, there will be a short overview of Asian-specific perspectives in relation to corporate governance issues. The course will begin with a comprehensive introduction of the theoretical foundations and principles of corporate governance (classes 1 & 2), underlining the different features of civil law systems in comparison with the common law tradition. It will then compare the laws and practices of such European Union member states as the U.K., Germany and France. Examples from other countries will also be used in order to illustrate some principles or practices. Topics covered include rights and equitable treatment of shareholders/investors (class 3), board selection and composition (class 4), Executive compensation and responsibility (class 5), transparency and disclosure. The class mainly focuses on listed American and European corporations.

Course Policies:

Attendance and Class Participation: Regular and punctual attendance at class sessions is required of each student.

Substantial time should be devoted to the assigned readings before each class. Only a thorough preparation will enable you to participate and take full advantage of class discussions. The reading materials comprise most of the seminal studies that have been done in the field of corporate governance, mainly in the U.S. and in Europe but also in Asia. Beyond the importance of each document, the assigned readings will challenge you to understand the complex socio-economic issues raised by corporate governance discussions.

I will expect students to contribute to class discussions spontaneously and I will call on students as well.

The main materials as well as some additional materials are available online and web links are provided.

No required book on Corporate Governance


Class schedule:

Class 1: Origins and foundations of Corporate Governance

Class 2: Corporate Governance Principles & Codes of Corporate Governance

Class 3: Shareholders’ Rights and Investors’ Engagement

Class 4: Composition of the Board of Directors

Class 5: Executives’ Compensation / Directors’ Liabilities