CORPORATE GOVERNANCE IN OECD MEMBER COUNTRIES

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Abstract: *Corporate governance reflects how a company is managed and controlled. In defining this concept it goes on the idea that the global performance of the company is based on the theory of interest holders. The value of the firm is maximized to the extent that managers manage to identify and harmonize conflicts of interest that arise between the company's social partners, especially between shareholders and managers. Harmonization of these interests is ensured through the corporate governance system. In this paper we aim to analyze the corporate governance in the OECD member countries with a focus on the rights of shareholders and key ownership functions.*

***Keywords**:* Corporate governance, Shareholders, Performance, Conflicts, Interest.

JEL Classification Codes: G34, G38.

1. INTRODUCTION

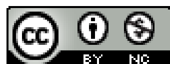
Corporate governance increasingly occupies a space of debate in today's business world. The reason seems to be determined by the fact that, due to business globalization, their owners are becoming increasingly distant from their leadership. Thus, two distinct groups of interests are created: the owners, respectively the management (agencies). The interests of these groups are sometimes identical, sometimes not.

Often, there is a conflict between the interests of the owners and those of the management, in the sense that each one seeks to maximize his earnings. Principally, without entering into technical details, was outlined the *ideal* model of organizing the management structure, which involves the separation of the supervisory/monitoring function from the executive function. In this vision, the board of directors would have been made up of executive directors and non-executive directors, the latter assuming the role of supervising the executive function and ensuring the interface with the business owners.

2. THE REGULATORY FRAMEWORK FOR CORPORATE GOVERNANCE

Around 84% of the member countries have national codes or principles and follows the *comply or explain* framework, while the rest, address the corporate governance issues through laws, regulations and listing requirements.

No matter how they adressed the corporate governance issues, if through legal and regulatory instruments (e.g. India, USA) or through codes or principles, the standards of corporate governance are part of the company law and securities law in all member countries. In the countries without a *comply or explain* framework the laws and regulations provide all the needed aspects concerning addressing corporate governance issues (Figure no. 1: right side).



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Taking into consideration the fact that business are into a continuous change and the investor's behavior also, the balance of importance between *comply or explain* framework and formal regulation may change in time. This process already started to happen. For example, in 2011, Capital Markets Board of Turkey published its own Corporate Governance Principles and large listed companies were required to comply with some of the provisions recommended by this code. Another example is Portugal, which in 2013 introduced a second code, beside the one prepared by the regulator, a code issued by a private institute. Some other countries like Japan (in 2015), Brazil (in 2016) or China (2017) also developed corporate governance codes under the *comply or explain* framework.

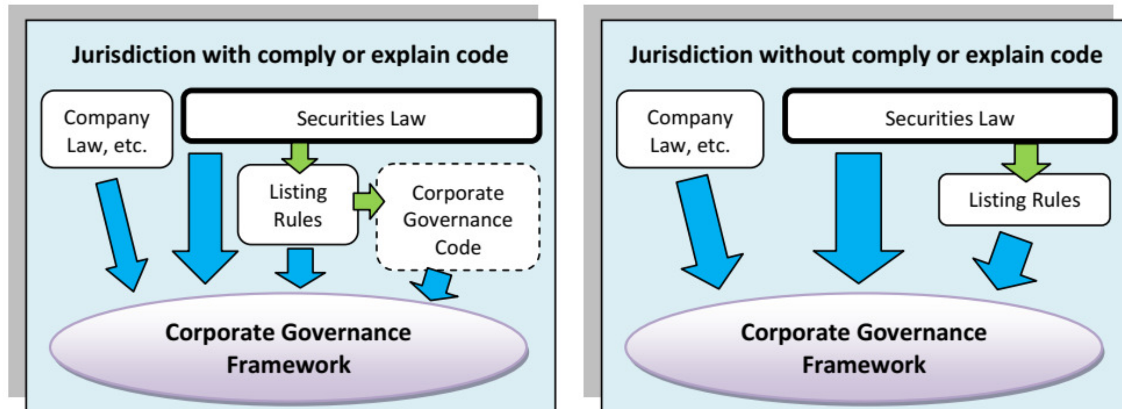

Figure 1 Examples of national corporate governance frameworks

Governance codes became increasingly common at national level and they are often updated (19 codes were revised in 2017-2018 period).

In 26 from the 45 jurisdictions national authorities are setting up corporate governance codes and in 19 of this jurisdictions also private associations are involved in developing this codes. This codes are flexible for updating and in Austria and Germany were realized procedures to ensure the reviewing of the codes by the custodian on a yearly basis.

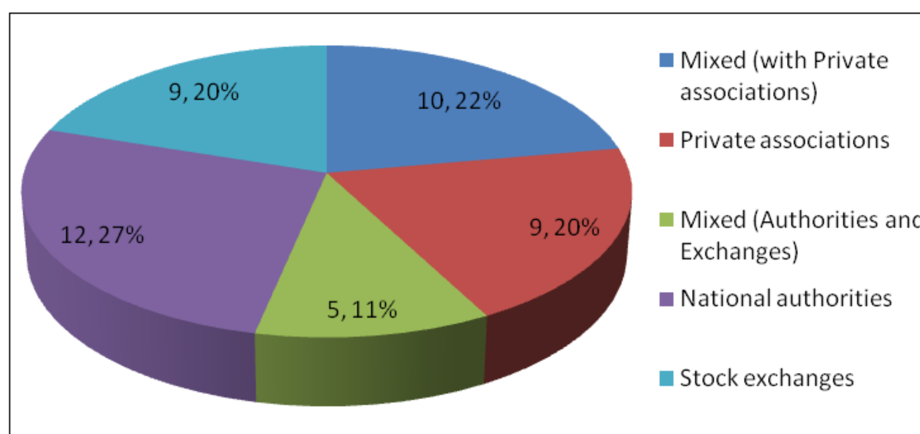

Figure 2 Custodians of corporate governance codes

The implementations of the corporate governance code is different between the member countries. In all the European Union countries and in other 14 jurisdictions was adopted the *comply or explain* system, that means around 84% from the countries analyzed. In 26 jurisdictions (from 45) the system was adopted through laws and regulations and in 11

jurisdictions through listing rules underpinned by laws and regulations. In most of the jurisdictions the code became component of the annual reporting requirements for listed companies.

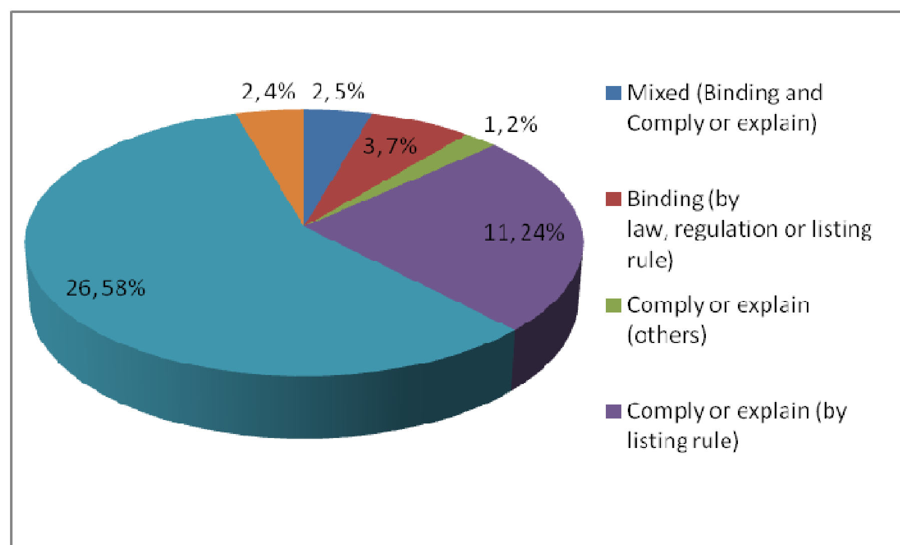

Figure 3 Implementation mechanisms of corporate governance codes

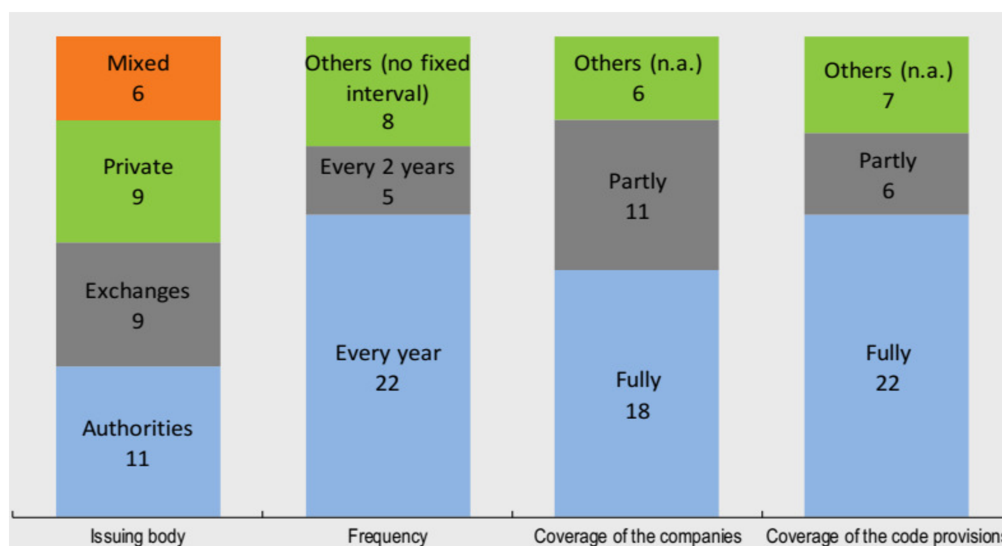

Figure 4 National reports on adherence to the code (35 institutions in 28 out of 46 jurisdictions)

Note: These Figures show the number of issuing bodies and national reports that fall into each category

Most of the countries publish annually, through governmental authorities, stock exchanges, private sector or stakeholder groups, a national report reviewing adherence to the code by listed companies in order to support the implementation of the *comply or explain* system. 35 institutions publish a such report reviewing adherence to the system of the corporate governance of the companies listed in the internal market (Figure 4).

9 of 11 jurisdictions that publish such national reports, does it regularly, annually or at least once every two years. Those are made by national regulators. The stock exchange also publishes the annual review in 9 jurisdictions.

3. THE RIGHTS OF SHAREHOLDERS AND KEY OWNERSHIP FUNCTIONS IN THE MEMBER COUNTRIES

In 1999, were elaborated the OECD Principles of Corporate Governance, which today are the only set of universally accepted principles, being recognized as one of the 12 pillars of international financial stability. The OECD principles have served as a reference point for building a collection of national codes on corporate governance. They primarily focus on publicly traded companies, but also address issues related to large, but not listed, companies. They may also be useful in some aspects of the administration of smaller private firms and state-owned enterprises. These principles refer to:

- ✓ the rights of shareholders and their protection (right to dividends, the right to be informed about decisions regarding important changes in the life of the company, the right to participate and to vote in general assemblies, the observance of the pre-emption right);
- ✓ fair treatment of all shareholders, including minority and foreign shareholders;
- ✓ the role and rights of stakeholders - the role of employees, creditors, suppliers and customers in corporate governance, which must be respected as defined in national law;
- ✓ transparency of information and its prompt dissemination (reporting to shareholders of all current, financial, administrative, extraordinary activities, on a regular, timely and fair basis, independent audit etc);
- ✓ responsibilities of the Board of Directors and executive management (number of members of the Board of Directors, number of independent members, appointment, revocation, remuneration, etc.).

The principles have been stated very general, leaving it to the discretion of countries to apply them and to give less or greater importance to some of them. It is even stated that there is no desire to impose a universal model of corporate governance, but the long-term trend is to advance towards global standards.

Since each of these principles contains a particularly complex aspect, we will continue to focus only on one, namely the rights of shareholders and key ownership functions, following we will examine each of them in later research.

A. Notification of general meetings and information provided to Shareholders

Proxy materials have to be sent to shareholders in the same time with the publication on the internet. In some countries, shareholders with a certain percent of equity (e.g. 1/10 in Mexico, 1/3 in Italy), if they consider they have been insufficiently informed have the possibility to request for the voting to be postponed for 3-5 days. (Figure no. 5)

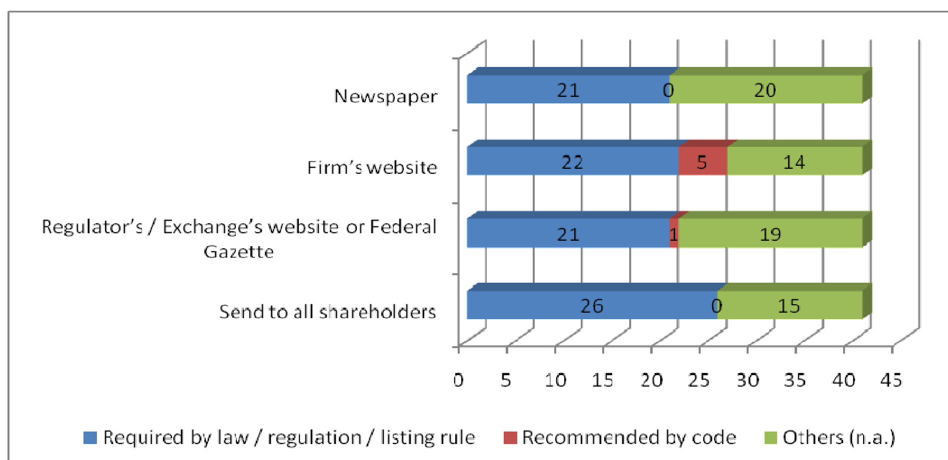

Figure 5 Required media for publishing the shareholder meeting notification

About half of jurisdictions require for the meetings of the general shareholder to be announced previously with 15 - 21 days, but many of them require even a longer notice period. Almost all of them require for this information to be published on the internet at least on the company's web site, while half of this jurisdictions established a common electronic platform for this purpose. (Figure 6).

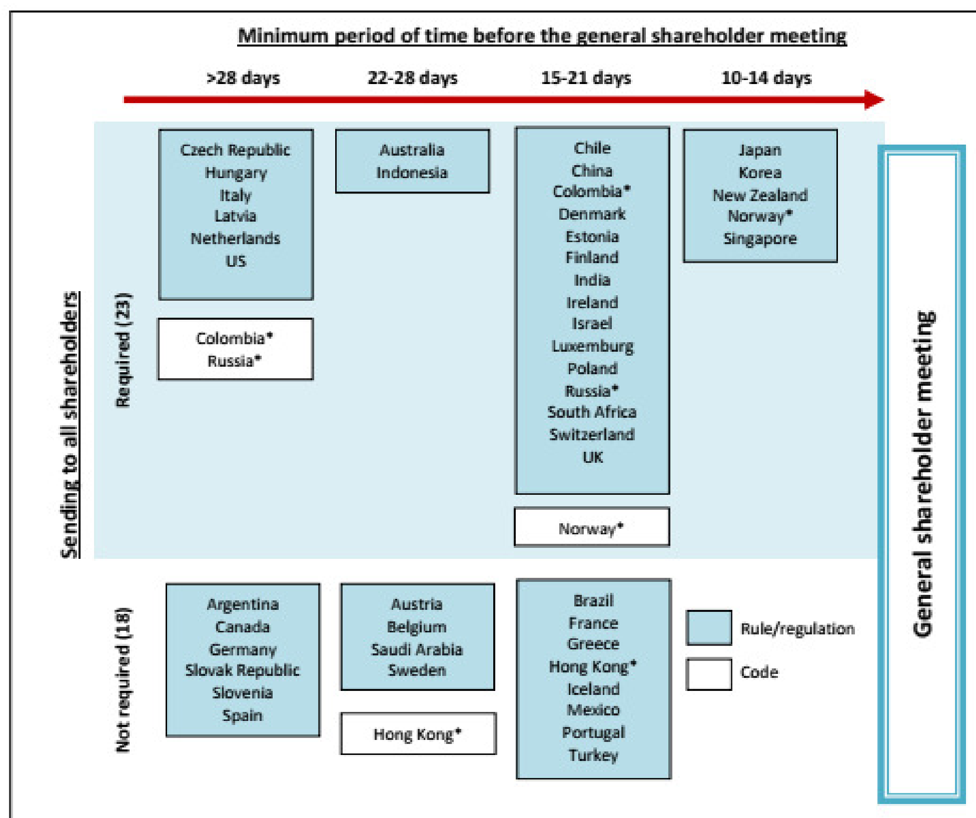

Figure 6 Notification of general shareholder meetings

Note: "*" denotes a jurisdiction with more than one requirement or recommendation.

B. Shareholder voting

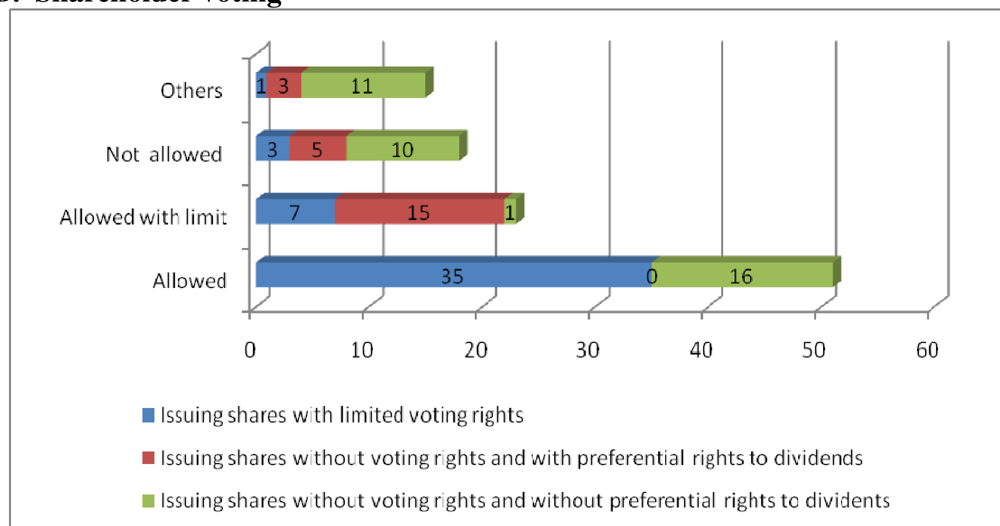

Figure 8 Issuance of shares with limited or no voting rights

Enhancing shareholder participation in the most important decisions regarding corporate governance is an issue that many jurisdictions consider important. In most cases law prescribes a majority or supermajority requirement for resolutions in general meetings.

Almost all jurisdictions (except Singapore, Israel and Indonesia) allow listed companies to issue shares with limited voting rights. 15 of these jurisdictions allow issuing this kind of shares to come with a preference in respect to the receipt of the firm's profits, and in 7 of these jurisdictions can't represent more than 25% or 50% of capital. In 16 jurisdictions is allowed the issuing of non-voting shares without preferential dividend rights. (Figure 8).

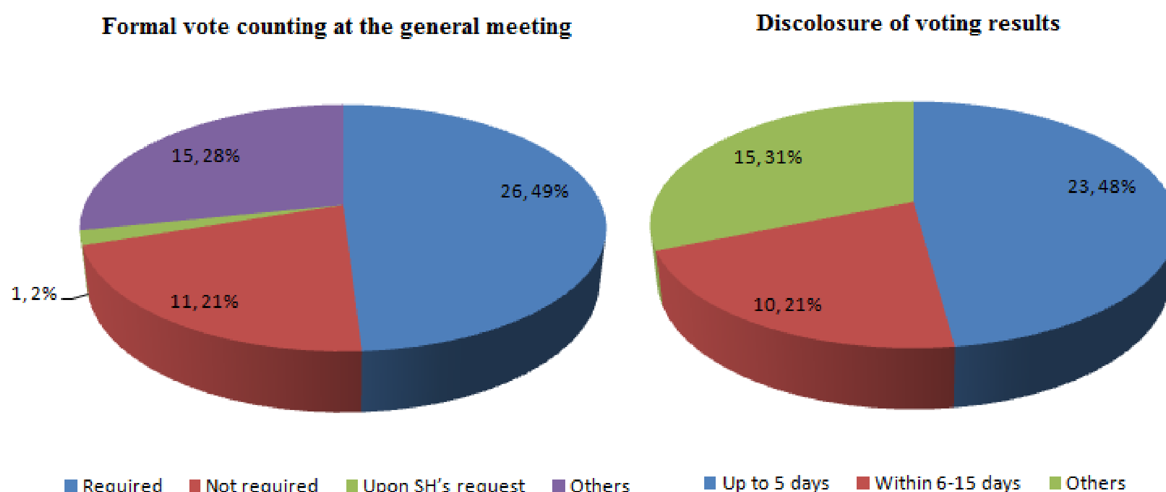

Figure 9 Formal vote counting and disclosure of the voting results

Half of the jurisdictions surveyed require the voting result to be published within five days after the general meeting, ¾ require listed companies to publish voting results within 15 days while the others do not prescribe a formal procedure of vote counting. (Figure 9).

Many jurisdictions prescribe a formal procedure of vote counting (USA, Singapore, China), while voting by show of hands is still common in some jurisdictions.

Except Indonesia, Israel and Singapore all jurisdictions allowed the issuing of a class of shares with limited voting rights. Countries like Australia, the Netherlands, Singapore, the Slovak Republic and Sweden prohibited issuing shares without voting rights is prohibited in five jurisdictions.

The disclosure of voting results on each agenda item is mandatory in almost all jurisdictions from the European Union, USA and Japan.

C. Related party transactions

The law and the other forms of regulation for the corporate governance address related party transactions using a series of measures such as mandatory disclosure, board approval and shareholder approval.

Countries such as, Turkey, India, Brazil, France, Chile, Korea, Hungary, Estonia, Portugal and USA have stated the prohibition of certain related party transactions, emphasizing most the loans between a certain company and its directors.

In what regards the disclosure of related party transactions, we can say that most of jurisdictions (74% from all 46 jurisdictions) have adopted either IAS24 (International Accounting Standards) or some local standards but which are similar to the international ones. (Figure 10)

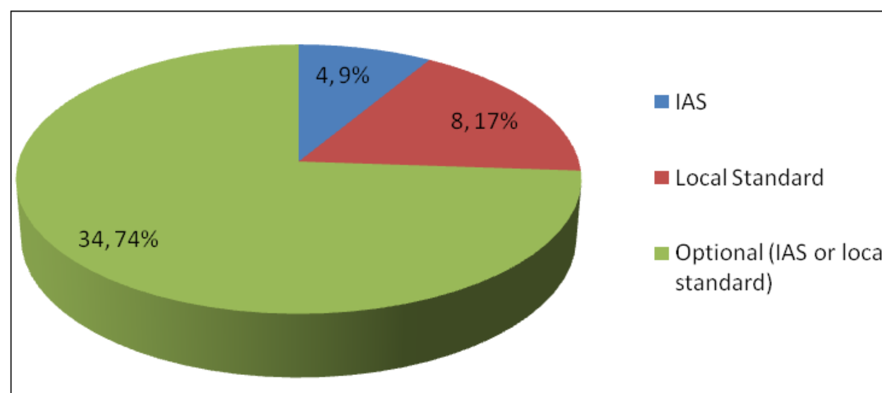

Figure 10 Disclosure of related party transactions in financial statements

Regarding the fact that the board approval is required for certain party transactions we can say that this is mandatory in 59% of the jurisdictions. (Figure 11, left side). In what concerns the type of related party transactions, we observe that the abstention of relation members from the resolution is mandatory in 23 jurisdictions, independent board members play a key role in 19 jurisdictions and an independent formal valuation is recommended in 18 jurisdictions. (Figure 11, right side)

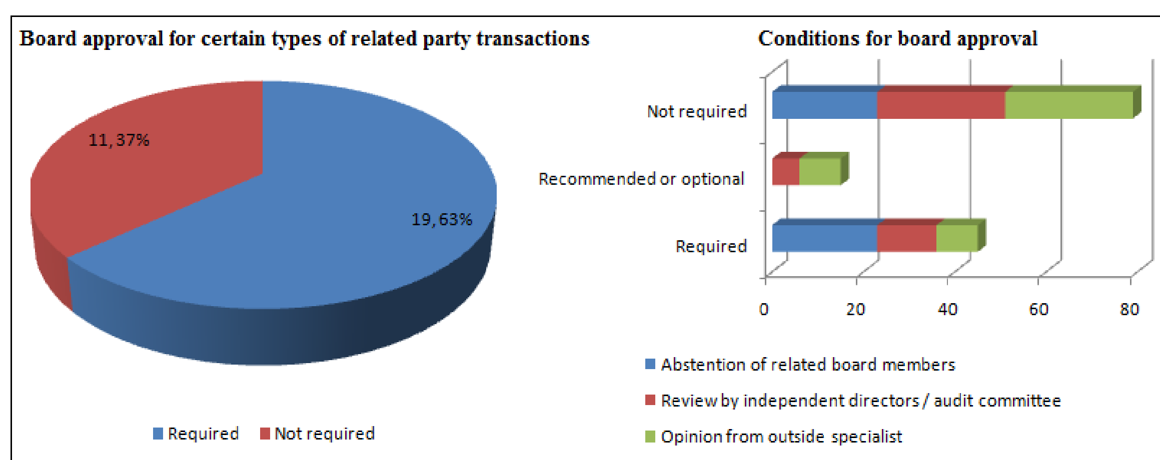

Figure 11 Board approval for certain types of related party transactions

Shareholder approval of related party transactions is viewed as an alternative to board approval procedure, but in many cases this is limited by certain conditions that applies to large transactions and those not on market terms. (Figure no. 12: left side). In some countries, such as Turkey, Italy, Chile, Colombia the shareholder approval is required based on the opinions of the audit committee or if certain directors disapprove.

59% of the jurisdictions require shareholder approval as an additional control over the potential abuse of related party transactions, 15 jurisdictions adopted provisions for approval by non-interested shareholders and 16 jurisdictions have as mandatory obtaining an opinion or evaluation from external auditors or other outside specialists. (Figure 12: right side).

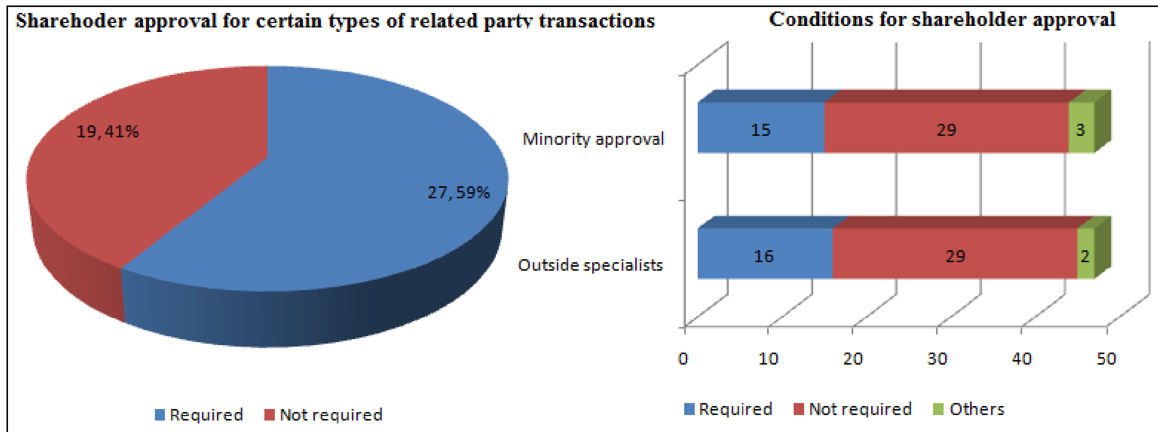

Figure 12 Shareholder approval for certain types of related party transactions

D. Shareholder's right to request a meeting and to place items on the agenda

Shareholders have the fundamental right to request a meeting or to place an item or more on the agenda of general meetings. In more than 2/3 of jurisdictions this meetings have to take place in a certain period after the request, the others don't have specific deadlines. (Figure 13).

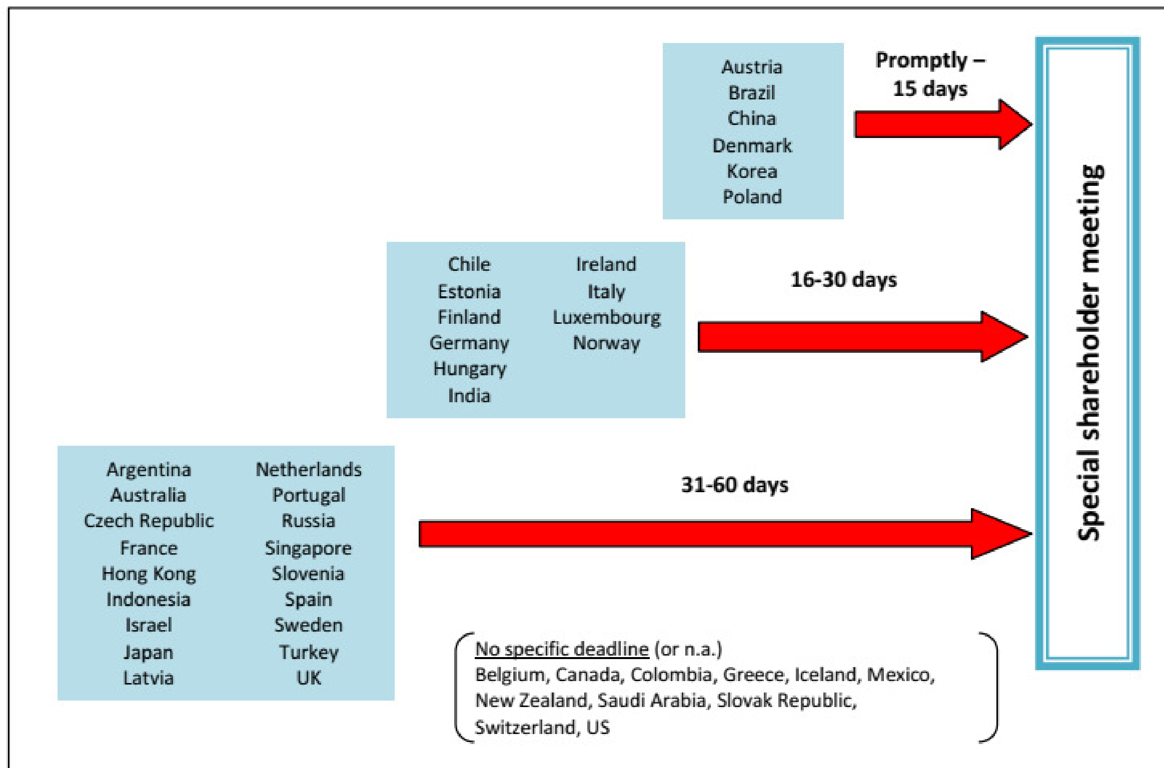

Figure 13 Deadline for holding the meeting after shareholder requests

Regarding the right of shareholders to request a shareholder, we can say that the meeting is subject to minimum thresholds of shareholdings which vary from 1% to 25%.

E. Takeover bid rules

Almost all jurisdictions issued regulations on takeover bids, with the observation that a series of them require this in voluntary codes (e.g. Hong Kong, China) and not through hard law, and others have regulations for voluntary takeover bids but this is not mandatory (e.g. New Zealand). 41 jurisdictions introduced a mandatory takeover bid rule (Figure 14), 80% of these jurisdictions take an ex-post approach, in which the bidder has to initiate a takeover bid after acquiring shares exceeding the threshold, the others taking an ex-ante approach, where a bidder is required to initiate a takeover bid for acquiring shares which would exceed the threshold.

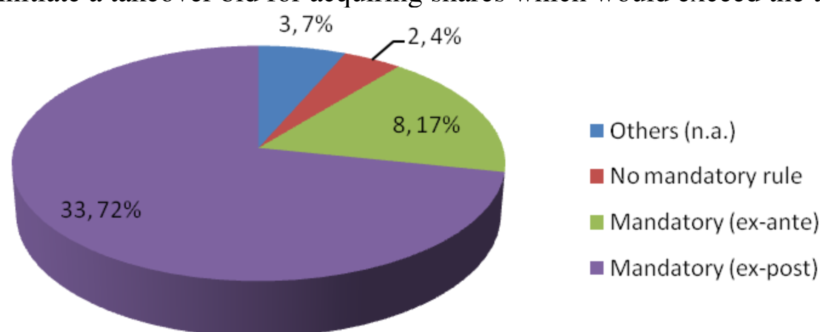

Figure 14 Takeover bids rules

F. The roles and responsibilities of institutional investors

In the past 10 years has increased a lot the share of equity investments which are hold by institutional investors such as mutual funds, pension funds, insurance companies and hedge funds and the jurisdictions generally impose different requirements for each of these institutional investors.

Some jurisdictions oblige or encourage institutional investors to exercise their voting rights. In Chile for example, in case they hold a certain percent of the corporation equity, pension, investment and mutual funds are obliged to attend shareholder meetings and exercise their voting rights. Also in Israel, institutional investors must participate and vote on certain resolutions. In Switzerland pension funds are required to vote in the interest of their insured persons on some specific matters.

67% of the 46 jurisdictions require that institutional investor disclose their voting policies, this being about equally split between legal requirements and code recommendations, whereas only 41% require or recommend disclosure of actual voting records, with code recommendations less common. (Figure 15)

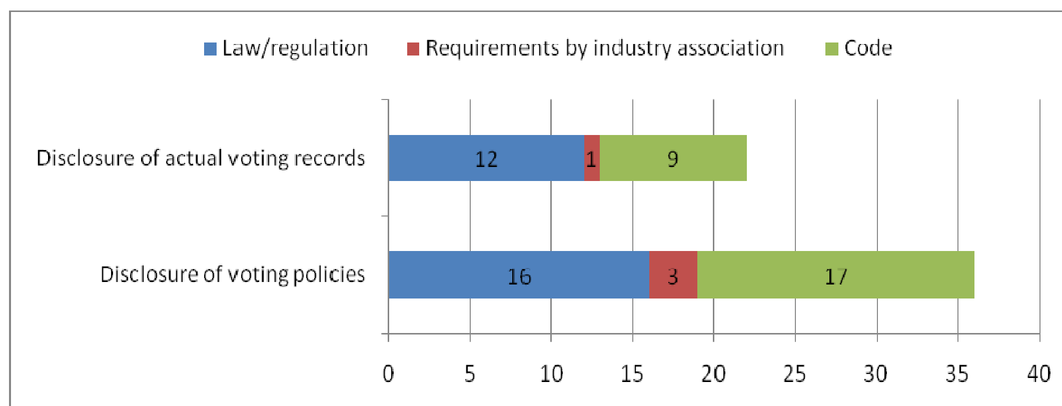

Figure 15 Disclosure of voting policies and actual voting records

4. CONCLUSIONS

Efficient corporate governance is not an end in itself but is a way to develop an environment of market confidence and business integrity. The quality of corporate governance framework in all states is very important for increasing the competitiveness. The analysis of the implementation of the corporate governance framework reveals a substantial evolution of regulatory frameworks. As we observed, in the past 2 years, 19 jurisdictions have revised or issued corporate governance codes. The requirements for the issued that OECD identified as weaknesses had increased revealing a growing importance being granted to corporate governance system.

In the same time with the evolution of the capital markets and corporations appear new challenges so it is necessary for the policy makers to remain connected to the reality and to adapt policies and practices to the new context.

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