The False Hope of Stewardship in the Context of Controlling Shareholders: Making Sense Out of the Global Transplant of a Legal Misfit

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Abstract

In 2010, the United Kingdom issued the world's first stewardship code. Since then, stewardship codes have been issued in many of the world's leading economies and now exist in 20 jurisdictions on six continents, with more jurisdictions considering adopting them. In the UK, stewardship codes were promised to transform rationally passive institutional investors into actively engaged shareholders to prevent another Global Financial Crisis. More recently, the new 2020 UK Code has been promoted as a mechanism to save the planet by incentivizing institutional investors to pressure listed companies to focus on ESG.

There is a vigorous debate and developed literature on whether the UK Code will achieve these goals. However, what has been lost in this debate is that outside of the UK/US it may not matter nearly as much if stewardship succeeds in changing the behavior of institutional investors. This is because, with the notable exception of the UK/US, institutional investors are collectively minority shareholders in most listed companies in almost every jurisdiction in the world. Moreover, in almost every jurisdiction, with the notable exception of the UK/US, most listed companies already have a rationally active – non-institutional – controlling shareholder as their "steward". Why then have jurisdictions around the world adopted UK-style stewardship codes which are designed based on the assumption that institutional investors collectively control most listed companies?

This Article answers this question by undertaking the first in-depth global comparative analysis of the curious transplant of UK-style stewardship codes into jurisdictions dominated by controlling shareholders and examines the role that stewardship plays in these jurisdictions. It does this by drawing on a unique collection of recent in-depth case studies on stewardship in 22 jurisdictions by leading corporate law experts, hand-collected data analyzing the content of every stewardship code that has ever been issued, and fresh hand-compiled data on shareholder ownership structures in listed companies around the world. It reveals that stewardship has been coopted by governments and institutional investors to serve their own diverse purposes – a troubling trend which will likely be exacerbated post-Covid-19, when an authentic focus on an inclusive society and the environment will be more critical than ever.

Keywords: Shareholder Stewardship, Controlling Shareholders, Comparative Corporate Law and Governance, Institutional Investors, Legal Transplants, ESG

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ABSTRACT

In 2010, the United Kingdom issued the world's first stewardship code. Since then, stewardship codes have been issued in many of the world's leading economies and now exist in 20 jurisdictions on six continents, with more jurisdictions considering adopting them. In the UK, stewardship codes were promised to transform rationally passive institutional investors into actively engaged shareholders to prevent another Global Financial Crisis. More recently, the new 2020 UK Code has been promoted as a mechanism to save the planet by incentivizing institutional investors to pressure listed companies to focus on ESG.

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stewardship plays in these jurisdictions. It does this by drawing on a unique collection of recent in-depth case studies on stewardship in 22 jurisdictions by leading corporate law experts, hand-collected data analyzing the content of every stewardship code that has ever been issued, and fresh hand-compiled data on shareholder ownership structures in listed companies around the world. It reveals that stewardship has been coopted by governments and institutional investors to serve their own diverse purposes – a troubling trend which will likely be exacerbated post-Covid-19, when an authentic focus on an inclusive society and the environment will be more critical than ever.

TABLE OF CONTENTS

I. Introduction

The 2008 Global Financial Crisis (GFC) rocked the foundation of the United Kingdom's financial system. As the dust settled, the UK tried to figure out what went wrong. An autopsy of UK corporate governance revealed that it had developed an acute problem.[1] Institutional investors had come to collectively own a substantial majority of the shares of listed companies, but often lacked the incentive to use their collective ownership rights to monitor them.[2] The failure of these "rationally passive"[3] institutional investors to act as engaged shareholders – or, as is now the popular vernacular, to be "good stewards" – allowed corporate management to engage in excessive risk taking and short-termism, which were primary contributors to the GFC.[4]

In 2010, the UK enacted the world's first stewardship code (UK Code) to solve this problem.[5] The goal of the UK Code was to incentivize passive institutional investors to become actively engaged shareholder stewards.[6] After a decade, there are still divergent views on whether the UK Code will ever be able to achieve this goal.[7]

Amidst these divergent views, it is often forgotten that the systemic problem that the UK Code attempts to solve, and the solution it aims to provide, are rooted in an idiosyncratic feature of UK corporate governance. In no other major economy in the world, with the notable exception of the United States, do institutional investors collectively own a majority of shares in listed companies.[8] In turn, only in the UK/US will the passivity of institutional investors result in most listed

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[1] David Walker, *A Review of Corporate Governance in UK Banks and Other Financial Industry Entities. Final Recommendations* 24 (Nov. 26, 2009), https://ecgi.global/sites/default/files/codes/documents/walker_review_261109.pdf [hereinafter Walker Review]. For a description of the Walker Review, *see* Brian R. Cheffins, *The Stewardship Code's Achilles' Heel*, 73 MOD. L. REV. 1004, 1009 (2010); Paul Davies, *The UK Stewardship Code 2010-2020: From Saving the Company to Saving the Planet?*, in GLOBAL SHAREHOLDER STEWARDSHIP: COMPLEXITIES, CHALLENGES AND POSSIBILITIES 4-22 (Dionysia Katelouzou & Dan W. Puchniak eds., Cambridge Univ. Press, forthcoming).

[2] *See infra* Part II.

[3] Ronald J. Gilson & Jeffery N. Gordon, *The Agency Costs of Agency Capitalism: Activist Investors and the Revaluation of Governance Rights*, 113 COLUM. L. REV. 863, 895 (2013); Gerald F. Davis, *A New Finance Capitalism? Mutual Funds and Ownership Re-concentration in the United States*, 5 EUR. MGMT. REV. 11, 19–20 (2008).

[4] Gen Goto et al., *Diversity of Shareholder Stewardship in Asia: Faux Convergence*, 53 VAND. J. TRANSNAT'L L. 829, 831–32; Cheffins, *supra* note 1, at 1005–06; Paul Davies, *Shareholders in the United Kingdom*, in RESEARCH HANDBOOK ON SHAREHOLDER POWER 355, 373 (Jennifer G. Hill & Randall S. Thomas eds., 2015).

[5] UK STEWARDSHIP CODE, FIN. REPORTING COUNCIL (2010), https://www.frc.org.uk/getattachment/e223e152-5515-4cdc-a951-da33e093eb28/UK-Stewardship-Code-July-2010.pdf [hereinafter 2010 UK Code].

[6] Cheffins, *supra* note 1, at 1011; Paul L. Davies & Klaus J. Hopt, *Corporate Boards in Europe—Accountability and Convergence*, 61 AM. J. COMP. L. 301, 367-72 (2013).

[7] Davies, *supra* note 1, at 31 (suggests that the prospect of changing the behavior of institutional investors from rationally passive to actively engaged shareholders is unlikely, but argues that the 2020 version the UK Code has broader goals, which may possibly be achieved); John Kingman, *Independent Review of the Financial Reporting Council* 10 (Dec. 2018), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/767387/frc-independent-review-final-report.pdf [hereinafter Kingman Review] (argues that if the UK Code does not differentiate excellence in stewardship, the Code would simply be a driver of boilerplate reporting); Edward Rock, *Institutional Investors in Corporate Governance* in THE OXFORD HANDBOOK OF CORPORATE LAW AND GOVERNANCE 16-28 (Jeffrey N. Gordon and Wolf-Georg Ringe ed., 2018). (puts forth the view that the UK Stewardship code is unlikely to transform institutional investors into effective stewards).

[8] *See infra* Part II.

companies not having a shareholder steward who actively controls the company's voting rights. The other side of the same coin is that only in the UK/US will properly incentivizing institutional investors produce actively engaged shareholder stewards with voting control in most listed companies.[9] These unique features of the UK/US shareholder landscapes have transformed institutional investors into the linchpins of their systems of corporate governance. They also demonstrate why the UK Code's goal to properly incentivize institutional investors fits perfectly into the UK's corporate governance context[10] and why understanding the incentives that drive institutional investors is now a seminal issue in US corporate governance.[11]

Outside of the UK/US, however, the potential for institutional investors to play the role of a shareholder steward is significantly diminished. In most other countries, institutional investors rarely own enough shares in a listed company to collectively control it.[12] As such, in most other countries, there is little risk of institutional shareholder passivity – which is the problem the UK Code is designed to solve – to cause a *systemic* corporate governance or market failure. Conversely, in most other countries, properly incentivizing institutional investors to act as engaged shareholders will not result in institutional investors being active stewards of most listed companies.[13]

The rationale for transplanting a UK-style stewardship code to other countries appears even more curious considering the game-changing fact that in most countries, with the notable exception of the UK/US, a single or small group of block-shareholders, who are *not* institutional investors, control the voting rights in most listed companies.[14] These controlling shareholders – who are often wealthy families or individuals, the state, or other corporations – have the voting rights and economic incentive to control the corporate governance in their respective listed companies.[15] As "stewardship" has become a global buzz word to signify good corporate governance, some of these rationally active, non-institutional, controlling block-shareholders have begun to label themselves as "good stewards" of the companies they control.[16] However, nothing in the history, policy rationale, or content of the UK Code, suggests that it was ever intended to apply to such controlling shareholders.[17] Nevertheless, jurisdictions around the world, in which listed companies are

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[9] *See infra* Part II.
[10] *See infra* Part II.
[11] Lucian A. Bebchuk, Alma Cohen & Scott Hirst, *The Agency Problems of Institutional Investors*, 31 J. ECON. PERSP. 89, 92–93 (2017); John C. Coates, IV, *The Future of Corporate Governance Part I: The Problem of Twelve* 2–5 (Harv. Public Law Working Paper No. 19–07, 2019); Jill Fisch, *The Uncertain Stewardship Potential of Index Funds*, in GLOBAL SHAREHOLDER STEWARDSHIP: COMPLEXITIES, CHALLENGES AND POSSIBILITIES (Dionysia Katelouzou & Dan W. Puchniak eds., forthcoming); Gilson & Gordon, *supra* note 3, at 865, 874–876.
[12] *See infra* Part II.
[13] *See infra* Part II.
[14] *See infra* Part II.
[15] *Id.*
[16] Temasek as an example, see Dan W. Puchniak & Samantha S. Tang, *Singapore's Puzzling Embrace of Shareholder Stewardship: Similar Name, Divergent Forms, and Unrecognizable Functions*, 53 VAND. J. TRANSNAT'L L., 9, 14-16 (2020); TEMASEK REVIEW 2019, https://www.temasekreview.com.sg/steward/a-trusted-steward.html (on its website, Temasek calls itself a "trusted steward" and an investor with an institutional conscience, and a duty towards present and future generations).
[17] Dionysia Katelouzou & Mathias Siems, *The Global Diffusion of Stewardship Codes*, in GLOBAL SHAREHOLDER STEWARDSHIP: COMPLEXITIES, CHALLENGES AND POSSIBILITIES 2-3 (Dionysia Katelouzou & Dan W. Puchniak eds.,

dominated by non-institutional controlling shareholders, have adopted UK-style stewardship codes.[18] These UK-style codes appear to be legal misfits as they target institutional shareholders, rather than non-institutional controlling shareholders, as the stewards of listed companies – which fits the corporate governance realities in the UK/US, but not in almost any other country.

Against this backdrop, this Article undertakes what to the author's knowledge is the first in-depth global comparative analysis of the curious transplant of UK-style stewardship codes into jurisdictions dominated by controlling shareholders and examines the role that stewardship plays in these jurisdictions. It draws on a unique collection of 22 recent in-depth case studies on stewardship by leading corporate law experts – which is part of a larger ongoing project on global shareholder stewardship co-organized by the author.[19] By drawing on these case studies, hand-collected data on every stewardship code that has ever been issued, and fresh hand-compiled data on shareholder ownership structures in listed companies around the world, this Article fills a significant gap in the literature as shareholder stewardship is one of the most important global corporate governance phenomenon in recent times and, as explained in this Article, will likely be increasingly important post-Covid-19.[20] Shareholder stewardship has also recently morphed into an important vector for promoting ESG and other interests beyond shareholder value – which cut to the core of the issue on "corporate purpose" – one of the "hottest public policy issues" of our time.[21]

Unfortunately, however, most of the academic understanding of shareholder stewardship is based on the narrow and idiosyncratic UK/US shareholder landscape, which this Article aims to change.[22] Understanding how shareholder stewardship works in controlling shareholder jurisdictions, where institutional investors collectively are minority shareholders, is critically important as almost all jurisdictions that have adopted UK-style stewardship codes fit this description.[23] Moreover, future transplants of the UK Code will almost certainly be to such jurisdictions.[24] These watershed facts which define the present – and will define the future – of shareholder stewardship have been almost entirely overlooked in the literature.

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forthcoming) (explains that UK-style stewardship codes aim to address the agency problem caused by the rise of institutional investors).

[18] *See infra* Part II.

[19] GLOBAL SHAREHOLDER STEWARDSHIP, https://www.kcl.ac.uk/research/global-shareholder-stewardship.

[20] *See infra* Part VI.

[21] Edward Rock, *For Whom is the Corporation Managed in 2020?: The Debate over Corporate Purpose*, 1 (2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3589951.

[22] It should be noted that it makes sense that this has been the focus of academics as most of the academics analyzing stewardship are based in the UK/US and have focused their analysis on the UK/US. Davies, *supra* note 1; Cheffins, *supra* note 1; Rock, *supra* note 7; Arad Reisberg, *The UK Stewardship Code: On the Road to Nowhere?*, 15 J. CORP. LEGAL STUD. 217, 223–25 (2015); Sean J Griffith & Dorothy S. Lund, *A Mission Statement for Mutual Funds in Shareholder Litigation*, 87 U. CHI. L. REV. 1149, 1153 (2020); Suren Gomtsian, *Voting Engagement by Large Institutional* Investors, 45 J. CORP. L. 659, 661-62, 680 (2020). Even research which adopts a comparative perspective tends to stress the global shift towards a UK/US-style shareholder landscape, where institutional investors are the dominant force in corporate governance and controlling shareholders are fading in importance. See for example, Jennifer G. Hill, *Good Activist/Bad Activist: The Rise of International Stewardship Codes*, 41 SEATTLE U. L. REV. 497, 500, 506 (2018). As explained in Part II below, the UK/US-style shareholder landscape in which institutional investors are the dominant force, is unique to the UK/US – it is not the global norm.

[23] *See infra* Part III.

[24] *Id.*

Ultimately, the empirical and case-study evidence in this Article demonstrate that UK-style stewardship codes have been transplanted into jurisdictions in which institutional investors are collectively minority shareholders and controlling shareholders predominate, making them "legal misfits". This fact, however, has not rendered the impact of the global proliferation of UK-style stewardship codes nugatory. To the contrary, as this Article explains in detail, these misfitted UK-style stewardship codes have served diverse, often jurisdictionally-contingent, functions – many of which would have been beyond the wildest imaginations of the original drafters of the UK Code. Understanding these functions, which have heretofore been almost entirely overlooked, is necessary to have an accurate picture of the global proliferation of shareholder stewardship, which is one of the hallmark corporate governance developments of our time.

The remainder of this Article will proceed as follows. Part II identifies three assumptions that are embedded in the UK Code, which are easy to overlook from a domestic UK perspective. Then, taking a global comparative perspective, this Part explains how the UK Code is a legal misfit in the context of the corporate governance systems of most other jurisdictions. Part III uses hand-collected empirical evidence based on a substantive review of every stewardship code ever drafted to trace the history of the transplant of UK-style stewardship codes to controlling shareholder jurisdictions, illuminating the global transplant of a legal misfit. It also explains the extent to which the UK Code is a legal misfit in different regions and jurisdictions by drawing on fresh hand-compiled data on shareholder ownership structures in listed companies around the world. Part IV identifies the reasons that make the adoption of these legal misfits rational and highlights the diverse functions that stewardship codes have come to play globally – many of which could never have been anticipated based on the intended or actual function of the original UK Code, but nevertheless still serve important local, and often jurisdiction-specific, purposes. Part V briefly concludes by suggesting how this research serves as a caution for comparative corporate governance scholars who view the world through an Anglo-American lens and suggest what the future may hold for stewardship in controlling shareholder jurisdictions considering the "corporate purpose" debate and Covid-19.

II. The UK Code as a Global Legal Misfit Revealed

(a) *Illuminating a Legal Misfit by Taking a Global Comparative Perspective*

A careful historical analysis of the creation, evolution, and global transplant of the UK Code reveals a paradox. When viewed from a domestic UK perspective, the UK Code appears bespoke for the UK's corporate governance context. When viewed from a global comparative perspective, the UK Code appears to be a legal misfit in almost all the jurisdictions into which it has been transplanted.

The domestic UK perspective on the goal and effectiveness of the UK Code is well documented in a series of UK government sponsored reviews and policy papers.[25] These UK government

[25] Paul Myners, *Institutional Investment in the United Kingdom: A Review*, HM Treasury 1-2 (Mar. 6, 2001), https://uksif.org/wp-content/uploads/2012/12/MYNERS-P.-2001.-Institutional-Investment-in-the-United-Kingdom-A-Review.pdf [hereinafter Myners Review]; Walker Review, *supra* note 1; John Kay, *The Kay Review of UK Equity Markets and Long Term Decision Making, Department for Business, Innovation and Skills* 45- 47 (Jul. 2012),

sponsored reports led to the creation of the UK Code in 2010 (2010 UK Code),[26] drove its subsequent amendment in 2012 (2012 UK Code),[27] culminating in the latest version of the UK Code in 2020 (2020 UK Code).[28] A body of high-quality academic literature has developed, which carefully analyzes the goals and effectiveness of the UK Code, primarily from a domestic UK perspective.[29]

There are three assumptions embedded in this body of UK government reports and academic literature. From a domestic UK perspective, these three assumptions deserve, and have received, little attention as they are well-known and widely accepted facts about the UK's corporate governance context and its approach to stewardship. However, from a global comparative perspective, these three assumptions are critically important as they distinguish the UK from almost every other jurisdiction in the world and are essential in assessing the functionality of a UK-style code in other jurisdictions. Highlighting these three assumptions also illuminates why and how the UK Code is bespoke for the UK's corporate governance context, but is a legal misfit in a global comparative context.

(b) Assumption 1: Institutional Investors Collectively Have the Legal Rights to Control Most Listed Companies

The first assumption is that institutional investors collectively have the legal rights to control the corporate governance in most UK listed companies. This now well-known and widely accepted fact was highlighted almost two decades ago by the UK Government commissioned Myners Review which, based on its analysis of the decision-making of institutional investors in the UK, was the first to propose that the UK adopt a government sponsored stewardship code.[30] Myners noted in his March 2001 cover letter to the review that institutional investors now "'own' and control most of British industry".[31] Statistics in the review highlight the history of the dramatic increase in institutional shareholder ownership of UK listed companies from 30.3% in 1963 to 57.9% in 1981.[32] Bolstered by a significant increase in foreign institutional investors starting in the late 1980s,[33] collectively UK and foreign institutional investors have consistently owned a

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https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/253454/bis-12-917-kay-review-of-equity-markets-final-report.pdf [hereinafter Kay Review]; Kingman Review, *supra* note 7, at 7-8, 81; *Building a Regulatory Framework for Effective Stewardship*, FINANCIAL CONDUCT AUTHORITY, FINANCIAL REPORTING COUNCIL 22-27 (Jan. 2019), https://www.fca.org.uk/publication/discussion/dp1901.pdf [hereinafter Effective Stewardship Framework].

26 2010 UK Code 2010, *supra* note 5.

27 UK STEWARDSHIP CODE, FIN. REPORTING COUNCIL (2012), https://www.frc.org.uk/getattachment/d67933f9-ca38-4233-b603-3d24b2f62c5f/UK-Stewardship-Code-(September-2012).pdf [hereinafter 2012 UK Code].

28 UK STEWARDSHIP CODE, FIN. REPORTING COUNCIL (2020), https://www.frc.org.uk/getattachment/5aae591d-d9d3-4cf4-814a-d14e156a1d87/Stewardship-Code_Final2.pdf [hereinafter 2020 UK Code].

29 See for example, Davies, *supra* note 1; Cheffins, *supra* note 1; Rock, *supra* note 7; Reisberg, *supra* note 22; Dionysia Katelouzou & Eva Micheler, *The Market for Stewardship and the Role of the Government*, in GLOBAL SHAREHOLDER STEWARDSHIP: COMPLEXITIES, CHALLENGES AND POSSIBILITIES (Dionysia Katelouzou & Dan W. Puchniak eds., forthcoming).

30 Davies, *supra* note 1, at 4.

31 Myners Review, *supra* note 25, at 1.

32 *Id.* at 27.

33 *Id.*; Cheffins, *supra* note 1, at 1017-19 (describes the dramatic shift in favor of overseas institutional ownership).

sizable majority of shares of UK listed companies over the past four decades – with recent statistics pegging their collective ownership at 68%.[34]

In short, for decades, it has been well-known and widely accepted that *if* institutional investors act collectively they have the legal rights to control the corporate governance in most UK listed companies.[35] As a result, this assumption has been the starting point for UK policymakers and experts when implementing, reforming, and analyzing the UK Code.[36] In turn, leading UK academics and government commissioned reviews focus their attention on how UK institutional investors can overcome their collective action problems – not on whether they collectively have ownership and control rights to begin with.[37]

This assumption was embedded in the design of the 2010 UK Code which assumes that if institutional investors act collectively they normally have the legal rights to intervene in a company's corporate governance by taking measures such as replacing the board of directors.[38] The 2020 UK Code also assumes that if institutional investors act collectively they have the ability to control a wide enough swath of UK listed companies to "respond to market-wide and systemic risks to promote a well-functioning financial system".[39] Indeed, the entire idea of making institutional investors – rather than another corporate stakeholder – the focus of the UK Code is predicated on the fact that if institutional investors act collectively they have the legal right to steward most UK listed companies. As highlighted above, from a domestic UK perspective, this assumption makes perfect sense as institutional shareholders for four decades have had the indisputable legal right to control most UK listed companies.

From a global comparative perspective, however, the fact that collectively institutional investors have the legal right to control most listed companies makes the UK exceptional and cannot be assumed to be the case in almost any other jurisdiction. With the notable exception of the United States, institutional investors do not own a majority of the shares in listed companies in any other major economy.[40] To the contrary, based on the hand-calculated data in Table 1 below, at the end of 2017, the mean share ownership of institutional investors in jurisdictions globally, excluding the UK/US, was 18% – a stark contrast to 68% in the UK and 80% in the US.[41] In Asian jurisdictions, where UK-style stewardship codes have proliferated,[42] at the end of 2017 the mean

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[34] *See* Appendix 1, Table A4; *Owners of the World's Listed Companies*, OECD CAPITAL MARKET SERIES (2019), https://www.oecd.org/corporate/Owners-of-the-Worlds-Listed-Companies.htm [Hereinafter, Owners of the World's Listed Companies]

[35] Myners Review, *supra* note 25, at 27.

[36] Myners Review, *supra* note 25, at 1; Kay Review, *supra* note 25, at 50; Walker Review, *supra* note 1, at 87; Effective Stewardship Framework, *supra* note 25, at 14.

[37] Davies, *supra* note 1, at 19; Cheffins, *supra* note 1, at 1023-24; Reisberg, *supra* note 22, at 227-243; Myners Review, *supra* note 25, at 2; Kay Review, *supra* note 25, at 50; Walker Review, *supra* note 1, at 87; Effective Stewardship Framework, *supra* note 25, at 14.

[38] 2010 UK Code, *supra* note 5, at 8 (Principle 5); Davies, *supra* note 1, at 19-21.

[39] 2020 UK Code, *supra* note 28, at 11 (Principle 4).

[40] *See* figure 8, Owners of the World's Listed Companies, *supra* note 34, at 18.

[41] *See* Appendix 1 for the complete data of the level of institutional ownership in the 54 countries.

[42] *See Infra* Part II.

shareholder ownership of institutional investors was just 11% and the median was a paltry 9%.[43] Thus, the assumed starting point from a global comparative perspective is the opposite of that in the UK: in most jurisdictions institutional investors collectively hold a minority of shares in most listed companies and do not have the legal rights to control them. In short, the assumption embedded in the UK Code's design – that institutional investors collectively have the legal rights to act as stewards in most listed companies – does not fit the global corporate governance reality.

TABLE 1.[1] INSTITUTIONAL OWNERSHIP[2] AS OF END-2017

	Mean	Median
All economies[3]	20%	17%
All economies (excluding the US and UK)	18%	16%
Asia	11%	9%
Europe (excluding the UK)	21%	20%
United States	80%	80%
United Kingdom	68%	68%

Notes:

(1) Table 1 statistics calculated based on data from Table A.4 in Owners of the World's Listed Companies, *supra* note 33, at 38. See also Appendix 1 for more details.

(2) Institutional ownership refers to mainly profit-maximizing intermediaries that invest on behalf of their ultimate beneficiaries, most importantly, mutual funds, pension funds, and insurance companies.

(3) The total number of economies examined is 54 globally, with 18 in Asia and 26 in Europe (excluding the UK).

As would be expected, the jurisdiction-specific data in Appendix 1 below shows some variation in the level of institutional shareholder ownership across jurisdictions. As explained in detail in Part III below, this variation alters the legal rights and corporate governance role of institutional investors in different jurisdictions. In jurisdictions where institutional investors collectively own a sizable minority of shares they will often be able to make use of company law rights to block corporate actions pursued by controlling shareholders.[44] In jurisdictions where the collective shareholder ownership of institutional investors is in the small single digits, the company law remedies available to block actions pursued by the controlling shareholders and the benefits of acting collectively will be more limited.[45]

While the variation in the size of the minority share ownership stake of institutional investors is meaningful, it should not obscure the reality that institutional investors acting primarily as minority shareholders does not fit the assumption embedded in the UK Code nor its ambitious goals. It does not provide institutional investors with the legal rights to steward companies if they act collectively – let alone to be "guardians of market integrity"[46] who "respond to market-wide and systemic risks",[47] as contemplated in the 2020 UK Code. Nor does institutional shareholders collectively acting as minority shareholders fit with the ambitious goal to solve the systemic problems of excessive risk taking and short-termism in UK listed companies, which was the impetus for the

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[43] *See Infra* Table 1.

[44] Luca Enriques et al., *The Basic Governance Structure: Minority Shareholders and Non-Shareholder Constituencies*, in THE ANATOMY OF CORPORATE LAW: A COMPARATIVE AND FUNCTIONAL APPROACH 84 (Reinier H. Kraakman et al. eds., 2017).

[45] *Id.*

[46] UK Code 2020, *supra* note 28, at 4.

[47] *Id.*

2010 UK Code.[48] However, in the UK's corporate governance reality, where institutional investors collectively own a sizable majority of shares, the UK Code's aim to transform institutional investors into the solution for the UK's core corporate governance – or even societal – problems makes sense.

(c) Assumption 2: A Single or Small Group of Block Shareholders Does Not Have the Voting Rights to Control Most Listed Companies

The second assumption is that a single or small group of shareholders does not have the voting rights to control the corporate governance in most UK listed companies. In 2009, Lord Myners, who was the Financial Services Secretary to the Treasury, famously described institutional investors as "absentee landlords"[49] whose passiveness had resulted in the UK being plagued by "ownerless corporations"[50] – which is often cited as the malady that shareholder stewardship in the UK aims to cure.[51] A foundational assumption in Myners' critique is that if institutional investors fail to collectively act as shareholder owners then most UK listed companies would be "ownerless", as they would have no other shareholder able to act as an owner – a logical assumption in the context of the UK's dispersed shareholder environment.

In 2010, based on the government commissioned Walker Review's recommendation, the Financial Reporting Council (FRC) – a quasi-governmental agency – drafted and implemented the 2010 UK Code.[52] The Walker Review validates the assumption in Myner's critique as it suggests that the problem of ownerless corporations would not arise in a concentrated shareholder environment.[53] It also observes that active engagement between shareholders and the company's management is unproblematic in companies with controlling shareholders.[54] In addition, the Walker Review's assessment of the stewardship role that institutional investors could play when engaging with management in UK listed companies is predicated on the assumption that the UK has a "dispersed ownership model".[55]

In short, the UK's dispersed ownership model is foundational in creating a core problem that stewardship in the UK was designed to solve: "ownerless corporations". From a domestic UK perspective, it makes sense to assume, in the context of the UK's dispersed shareholder environment, that if institutional investors are passive then most listed companies will be ownerless. However, this assumption is erroneous in a global comparative context.

The UK/US stand out globally as having uniquely dispersed shareholder ownership.[56] In contrast, "the vast majority [of jurisdictions in the world] have corporations with controlling shareholders

[48] Davies, *supra* note 1, at 5-6; UK Code 2010, *supra* note 5, at 7.
[49] Cheffins, *supra* note 1, at 1005, 1010-11.
[50] *Id.*
[51] Davies, *supra* note 1, at 14-15; Cheffins, *supra* note 1, at 1006 , Reisberg, *supra* note 22, at 220.
[52] Davies, *supra* note 1, at 4.
[53] Walker Review, *supra* note 1, at 26, 69, 71.
[54] *Id.* at 69.
[55] *Id.* at 28, 79.
[56] OECD Corporate Governance Factbook, OECD 17 (2019), http://www.oecd.org/corporate/Corporate-Governance-Factbook.pdf [hereinafter Factbook 2019]; Owners of the World's Listed Companies, *supra* note 34, at 17-18; Rafael

as the dominant characteristic".[57] Based on the hand-calculated data in Table 2 below, at the end of 2017, in a large sample of the world's most important economies, excluding the UK/US, on average a single or the three largest shareholders held a majority of the shares in 61% of listed companies[58] – with half of the jurisdictions having more than 70% of their listed companies with such dominant block shareholders who control a majority of the company's voting rights. This contrasts sharply with the UK and US, where the comparable figures are 12% and 4%, respectively.[59]

TABLE 2.[1]
PERCENTAGE OF LISTED COMPANIES
IN WHICH THE 3 LARGEST SHAREHOLDERS OWN MORE THAN 50% OF THE SHARES
(AS OF THE END-2017)

Jurisdictions	Mean	Median
All Jurisdictions (excluding the UK and US)[2]	61%	70%
United States	4%	4%
United Kingdom	12%	12%

Notes:
(1) Table 2 calculations are based on the data from Appendix 2.
(2) The total number of countries excluding the United Kingdom and the United States is 33, see Appendix 2 for details.

In most jurisdictions, with the notable exception of the UK/US, private companies, wealthy families and individuals, and the state are the largest shareholders in listed companies.[60] In addition, in many of these jurisdictions corporate shareholders and family shareholders have developed pyramid and other cross-shareholding structures, allowing them to control the corporate governance of a listed company while holding a minority of its shares.[61] This suggests that there are many jurisdictions in which families or corporations who own a minority of a listed companies shares have the financial incentive and legal rights to actively control its corporate governance – further increasing the percentage of listed companies with rationally engaged *non-institutional* shareholder stewards outside of the UK/US.[62]

This comparative picture of shareholding structures of listed corporations around the world suggests that the assumption that is made in the domestic UK context is correct: if institutional investors remain passive most listed companies in the UK will effectively be ownerless. However, this is not true in most jurisdictions around the world because a single or small group of non-

La Porta, Florencio Lopez-De-Silanes & Andrei Shleifer, *Corporate Ownership Around the World*, 2 J. FINAN. ECON. 471, 472 (1999).

57 Factbook 2019, *supra* note 56, at 17-18.

58 *See* Table 2 and Appendix 2.

59 *Id.*

60 *See* Appendix 3.

61 Owners of the World's Listed Companies, *supra* note 34, at 19; Stijn Claessens, Simeon Djankov & Larry H.P. Lang, *The Separation of Ownership and Control in East Asian Corporations*, 58 J. FINAN. ECON. 81, 99-107 (1999); Joseph P.H. Fan, Stijn Claessens, Simeon Djankov & Larry H.P. Lang, *Expropriation of Minority Shareholders: Evidence from East Asia* 3, 11, 28 (World Bank Policy Research Working Paper No. 2088, 1999).

62 *See* Appendix 3.

institutional block shareholders has the economic incentive and voting rights to steward most listed companies – further illustrating how the UK Code is a global legal misfit.

Before moving on, it is noteworthy that there is a significant body of leading literature that documents the "re-concentration" of dispersed shareholding in the UK/US over the past several decades.[63] This re-concentration of share ownership has been almost entirely a result of the rise of institutional investor ownership in the UK/US.[64] The UK/US are the only countries in the world in which the largest 20 institutional investors on average control a majority of the shares in listed companies.[65] If one removes institutional shareholders from the picture, most listed companies in the UK/US lose the vast majority of their largest block shareholders – reverting to stereotypical Berle and Means firms.[66] In stark contrast, in most other countries removing institutional investors from the picture would not remove the vast majority of the largest controlling-block shareholders from most listed companies – as their largest shareholders are most often wealthy individuals and families, corporations, and the state.[67] In addition, contrary to the predictions of prominent scholars, block-shareholding in listed companies – particularly in family-controlled and state-controlled companies – is increasing in prevalence and importance globally.[68] This portends that the UK Code will become even more of a global legal misfit in the future.

(d) Assumption 3: The UK Code Aims to Change the Behavior of Institutional Investors – Not to Change the UK's Corporate Governance System

The third assumption is that the UK Code aims to change the behavior of institutional investors in the UK – not to change the UK's corporate governance system, which has institutional investors and dispersed shareholding at its core. As articulated by one of the UK's leading corporate law scholars, Paul Davies, in his forthcoming analysis of the history of stewardship in the UK: "the UK Code was concerned with changing behavior directly, not via structural changes in the governance system".[69] Congruent with Davies observation, in 2001, the Myners' Review cited the UK's high level of institutional investor ownership and nature of its equity markets as "national assets".[70] In a similar vein, the FRC's 2019 Discussion Paper on the UK Code explicitly rejected exploring the idea of attempting to transform the UK's shareholder landscape to promote alternative shareholder structures.[71]

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63 Gilson & Gordon, *supra* note 3 at 863, 865; Bebchuk et al., *supra* note 11, at 93.
64 *Id.*
65 *See* Appendix 4 for a full breakdown of the average combined holdings of the 3, 10 and 20 largest institutional investors at the company level in each market.
66 *See* Appendix 3 for full breakdown of individual categories of investors in each market.
67 *Id.*
68 Cheng Han Tan et al., *State-Owned Enterprises in Singapore: Historical Insights into a Potential Model for Reform,* 28 COLUM. J. ASIAN L. 61, 61 (2015) (for SOEs); Siobhan Cleary & Stefano Alderighi, *Family Firms and Listing: Opportunities for Public Capital Markets*, WORLD FEDERATION OF EXCHANGES 3 (Feb. 26, 2018), https://www.worldexchanges.org/storage/app/media/research/Studies_Reports/wfe-family-owned-businesses-amp-listing-report.pdf. (for family firms).
69 Davies, *supra* note 1, at 10.
70 Myners Review, *supra* note 25, at 1.
71 Effective Stewardship Framework, *supra* note 25, at 5.

Maintaining the UK corporate governance model is an implicit assumption in every version of the UK Code as they all explicitly focus on institutional investors as the only potential stewards of listed companies. No version of the UK Code has ever intended to deal with any other potential corporate stewards such as controlling shareholders.[72] As explained above, from a domestic UK perspective, this makes sense as institutional investors control the voting rights in most listed companies and non-institutional block shareholders only have control in a small minority of UK listed companies.

However, from a global comparative perspective, properly incentivizing institutional investors to be good stewards does not have the potential to solve the core corporate governance problems in most jurisdictions as institutional investors own a small minority of shares in most listed companies. Conversely, as listed companies in most jurisdictions are dominated by controlling shareholders, one would expect stewardship codes in most jurisdictions to focus on incentivizing controlling shareholders to be good stewards.

However, as explained in Part III below, out of the 32 stewardship codes that have been issued in 19 Non-UK jurisdictions,[73] only one code – the Singapore Stewardship Principles for Family Businesses (Singapore Family Code) – is designed to focus on non-institutional controlling shareholders as the primary steward for a type of listed company.[74] Ironically, in a global empirical study that undertakes a textual analysis of 41 jurisdiction-specific and inter-jurisdictional stewardship codes around the world, the only code that is excluded from the analysis is the Singapore Family Code on the basis that it does not focus on institutional investors.[75] From a domestic UK perspective, excluding the Singapore Family Code makes sense. However, from a global comparative perspective, the Singapore Family Code is the only code that attempts to fit a corporate governance system where non-institutional controlling shareholders – rather than institutional investors – control the voting rights in most listed companies which, as demonstrated above, is the global norm.

(e) The Value of a Global Comparative Perspective Beyond Revealing a Legal Misfit

As we have seen, viewing the UK Code from a global comparative perspective is valuable as it illuminates how the UK Code is a global legal misfit. Additionally, viewing the UK Code from a global comparative perspective reveals two other interesting paradoxes that provide a more accurate understanding of the global transplant of the UK Code. First, when viewed from a domestic UK perspective, the goal of the UK Code appears to have evolved considerably over the past decade. However, when viewed from a global comparative perspective, the goal of the UK Code appears to have remained static.

From a domestic UK perspective, the evolution of the goal of the UK Code over the last decade is captured well by the subtitle of Paul Davies' forthcoming analysis of the history of stewardship in

[72] 2010 UK Code 2010, *supra* note 5; 2012 UK Code, *supra* note 27; UK Code 2020, *supra* note 28.

[73] The term 'jurisdiction' is used here instead of 'country' to avoid confusion in the case of jurisdictions such as Hong Kong, which is in China but has a different corporate law, governance, and stewardship regime.

[74] *See* Appendix 6.

[75] Katelouzou & Siems, *supra* note 17, at 7.

the UK: "From Saving the Company to Saving the Planet?".[76] Davies' analysis makes it clear that the FRC set a more ambitious goal for stewardship through its 2020 amendments. The expectation for the 2020 UK Code is that by properly incentivizing institutional investors it will now be able to solve *both* the corporate governance problems of listed companies that contributed to the GFC *and* the wider societal problems that are the focus of the ESG movement.[77] As Davies puts it, through its 2020 amendments, "the FRC doubled down on its bets: it is now committed to producing a code which operates not only effectively but also over a much broader set of stewardship goals than previously".[78]

However, from a comparative global perspective, this expansion in what the UK Code aims to achieve, does not change its foundational goal of properly incentivizing institutional investors to act as stewards of listed companies to solve the UK's most pressing systemic corporate governance problems. In every version of the UK Code, this foundational goal has remained consistent. Recognizing this common thread in all versions of the UK Code is important because achieving this foundational goal requires institutional investors to collectively have control rights in most listed companies and assumes that institutional investors (and not controlling shareholders) will be the stewards of most listed companies. As explained above, these assumptions are at the core of the UK Code being a global legal misfit – which has also remained consistent in all versions of the UK Code.

Second, from a domestic UK perspective, the 2010 UK Code has largely been deemed a failure. From its inception, leading UK academics were pessimistic about its ability to use soft law, through its "comply or explain" approach, to transform rationally passive institutional investors into actively engaged shareholders.[79] In December 2018, the UK Government commissioned Kingman Review pointedly concluded that the UK Code was "not effective in practice."[80] Based on this condemnation, it suggested that if the UK Code could not be transformed into more than "simply a driver of boilerplate reporting, serious consideration should be given to its abolition."[81] This was the impetus for the FRC's major revisions to the UK Code in 2020, which as explained above, expanded the scope of its aims. Also, in terms of effectiveness, as part of the 2020 revisions, the FRC created detailed "Reporting Expectations", which focus the FRC's regulatory energy on evaluating changes in the actual behavior of institutional investors rather than on assessing the quality of their written stewardship policies.[82] It is too early to evaluate whether the amended 2020 UK Code will succeed where the 2010/2012 UK Codes failed: changing the behavior of institutional investors from being rationally passive shareholders to actively engaged stewards. However, regardless of any future success, from a domestic UK perspective, the first decade of the UK Code was clearly a failure.[83]

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[76] Davies, *supra* note 1.
[77] Dionysia Katelouzou, INSTITUTIONAL SHAREHOLDERS AND CORPORATE GOVERNANCE: THE PATH TO ENLIGHTENED STEWARDSHIP (Forthcoming).
[78] *Id.* at 5.
[79] Cheffins, *supra* note 1, at 1006, 1013, 1016, 1024-25; Reisberg, *supra* note 22, at 243-44.
[80] Kingman Review, *supra* note 7, at 8.
[81] *Id.* at 46.
[82] Davies, *supra* note 1, at 9. Generally on the enforcement of shareholder stewardship, see Dionysia Katelouzou & Konstantinos Sergakis, *Shareholder Stewardship Enforcement*, in GLOBAL SHAREHOLDER STEWARDSHIP: COMPLEXITIES, CHALLENGES AND POSSIBILITIES (Dionysia Katelouzou & Dan W. Puchniak eds., forthcoming).
[83] Davies, *supra* note 1, at 9-11.

Ironically, despite the 2010/2012 UK Code being deemed a domestic failure, it has been heralded by the UK as a global success. In 2012, in the UK Government's Response to the Kay Review it noted that "Professor Kay rightly acknowledges that the UK has led the world in the development of an effective, flexible framework for corporate governance and investor stewardship…".[84] In its 2019 Discussion Paper, the FRC stressed that the aim of the 2020 Code was "to consolidate and to maintain the UK's strong reputation on stewardship internationally".[85] Considering the UK Code's deemed domestic failure and the evidence above that it is a global legal misfit, this rosy assessment of the UK Code's international success is curious. It suggests that a deeper examination of where and how the UK Code has been transplanted and what functions these transplants have served is required to gain an accurate, positive, and normative understanding of the UK Code from a global comparative perspective. This is the focus of Parts III and IV below.

PART III. MAPPING AND UNDERSTANDING THE GLOBAL TRANSPLANT OF A LEGAL MISFIT

(a) The Genesis and Form of Transplanted UK-Style Stewardship Codes

In 1991, the Institutional Shareholders' Committee (ISC), a private body comprised of four major UK institutional shareholders, published "The Responsibilities of Institutional Shareholders in the UK", which set out principles for institutional shareholders "in relation to their responsibilities in respect of investee companies" (ISC Principles).[86] The ISC Principles were subsequently amended on several occasions and were used as a "manoeuvre on the part of the institutional shareholders [in the UK] to head off an earlier proposal for an official stewardship code made by the Myners Review".[87] In the wake of the GFC and the Walker Review's recommendation for the FRC to implement a stewardship code, the FRC relied "very substantially" on the ISC Principles in drafting the 2010 UK Code.[88]

Although the ISC Principles were foundational in the development of the UK Code, their international impact on the emergence of stewardship codes appears to have been limited. There is some possibility that they may have influenced Canadian institutional investors to publish Canada's first stewardship code in 2005.[89] However, there is little evidence that they directly inspired the emergence of stewardship codes by institutional investors in other jurisdictions nor other governments to implement stewardship codes. In this respect, the primary contribution of

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[84] Vince Cable, *Ensuring Equity Markets Support Long-Term Growth, The Government Response to the Kay Review*, DEPARTMENT FOR BUSINESS INNOVATION & SKILLS 3 (Nov, 2012), https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/253457/bis-12-1188-equity-markets-support-growth-response-to-kay-review.pdf.

[85] Effective Stewardship Framework, *supra* note 25, at 3.

[86] THE RESPONSIBILITIES OF INSTITUTIONAL SHAREHOLDERS AND AGENTS- STATEMENT OF PRINCIPLES, INSTITUTIONAL SHAREHOLDERS' COMMITTEE (Oct. 21, 2002), https://ecgi.global/content/codes?title_field_value=The%20responsibilities%20of%20institutional%20shareholders%20and%20agents&field_country_value=All&sort_by=field_date_posted_value&sort_order=DESC

[87] Davies, *supra* note 1, at 2.

[88] *Id.*

[89] Cynthia A. Williams, *Stewardship Principles in Canada,* in GLOBAL SHAREHOLDER STEWARDSHIP: COMPLEXITIES, CHALLENGES AND POSSIBILITIES 1 (Dionysia Katelouzou & Dan W. Puchniak eds., forthcoming).

the ISC Principles to the history of the global shareholder stewardship movement is that they were the genesis of the 2010 UK Code.

The 2010 UK Code, which is widely considered to be the world's first stewardship code, appears to have had a significant impact globally. Following its publication in 2010, stewardship codes have been issued in 19 Non-UK jurisdictions on six continents (8 in Asia, 5 in Europe, 2 in Africa, 2 in North America, 1 in Australia, and 1 in South America),[90] with the issuance of stewardship codes now being considered in more jurisdictions.[91] More than one type of stewardship code has been issued in Australia, India, and Singapore to deal with either different types of institutional investors (Australia/India) or different types of shareholders (Singapore).[92] In all other jurisdictions, a single type of stewardship code, focusing on all institutional investors in each respective jurisdiction, has been issued.[93] In addition, in several Non-UK jurisdictions in which stewardship codes have been issued (Canada, India, Italy, Japan, Netherlands, and Norway) a subsequent amended version(s) of the inaugural stewardship code has been issued – resulting in a total of 32 codes having been issued in 19 Non-UK jurisdictions.[94]

There is a widespread belief that stewardship codes around the world have been modelled on the 2010 UK Code or the 2012 UK Code[95] (as the 2010 UK Code and 2012 UK Code are fundamentally the same, they will be referred to together as the "2010/12 UK Code").[96] At first blush, this is understandable considering that in most jurisdictions with a code, leading academics, government officials, and/or the text of the code itself explicitly recognize the influence of the 2010/12 UK Code.[97] However, from a global comparative perspective, as explained in Part II

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[90] *See* Appendix 6 for the full list of Stewardship Codes across the different jurisdictions and regions.

[91] *See* for Kazakhstan, *Responsible Shareholder Engagement- A Kazakh Stewardship Code,* THECITYUK, ASTANA INTERNATIONAL FINANCIAL CENTRE 5 (Mar. 2017), https://www.thecityuk.com/assets/2017/Reports-PDF/047c09633b/Responsible-Shareholder-Engagment-A-Kazakh-stewardship-code.pdf; *see also* for Philippines, Fiona Reynolds, *Stewardship codes guide best practice*, INVESTMENT MAGAZINE (Sept. 6, 2017), https://www.investmentmagazine.com.au/2017/09/stewardship-codes-guide-best-practice/.

[92] *See* Appendix 6 for details.

[93] *Id.*

[94] *See* Appendix 6 for details.

[95] Katelouzou & Siems, *supra* note 17 at 7.

[96] *See* Davies, *supra* note 1, at 2.

[97] AUSTRALIAN ASSET OWNER STEWARDSHIP CODE, ACSI 1 (May 2018), https://acsi.org.au/wp-content/uploads/2020/01/AAOSC_-The_Code.pdf kk [hereinafter Australian ACSI Code 2018];PRINCIPLES OF INTERNAL GOVERNANCE AND ASSET STEWARDSHIP, FINANCIAL SERVICES COUNCIL 7 (Jul. 20 17), https://ecgi.global/node/6196 [hereinafter Australian FSC Code 2017]; AMEC STEWARDSHIP CODE, AMEC 6 (2016), https://ecgi.global/code/amec-stewardship-code-2016 [hereinafter AMEC Code 2016]; Williams, *supra* note 89, at 1 (Canada); STEWARDSHIP CODE, THE COMMITTEE ON CORPORATE GOVERNANCE 3 (Nov. 2016), https://ecgi.global/code/danish-stewardship-code-2016 [hereinafter Danish Code 2016]; David C. Donald, *Stewardship in the Hong Kong International Financial Centre: Adding 'Responsible Owners' to an Entrepreneurial Market* in GLOBAL SHAREHOLDER STEWARDSHIP: COMPLEXITIES, CHALLENGES AND POSSIBILITIES 9 (Dionysia Katelouzou & Dan W. Puchniak eds., forthcoming) (Hong Kong); Umakanth Varottil, *Shareholder Stewardship in India: The Desiderata* in GLOBAL SHAREHOLDER STEWARDSHIP: COMPLEXITIES, CHALLENGES AND POSSIBILITIES 10 (Dionysia Katelouzou & Dan W. Puchniak eds., forthcoming) (India); Giovanni Strampelli, *Institutional Investor Stewardship in Italian Corporate Governance*, in GLOBAL SHAREHOLDER STEWARDSHIP: COMPLEXITIES, CHALLENGES AND POSSIBILITIES 10 (Dionysia Katelouzou & Dan W. Puchniak eds., forthcoming) (Italy); Gen Goto, *Japanese Stewardship Code: Its Resemblance and non-resemblance to the UK Code* in GLOBAL SHAREHOLDER STEWARDSHIP: COMPLEXITIES, CHALLENGES AND POSSIBILITIES 2 (Dionysia Katelouzou & Dan W. Puchniak eds.,

above, the idea that the 2010/12 UK Code has been the model for stewardship codes around the world is curious as it is a global legal misfit. This being said, before jumping to the conclusion that most Non-UK Codes are legal misfits, it is necessary to carefully examine the content of codes around the world to determine whether they have, in substance, been modelled on the 2010/12 UK Code.

To make this determination, each stewardship code that has been issued following the inaugural 2010 UK Code was examined along three dimensions, its: (1) core concept; (2) primary content; and, (3) text. The first dimension examines whether the core concept of the 2010/12 UK Code – to use a soft law instrument to change the behavior of institutional investors from rationally passive shareholders to actively engaged shareholders to solve a systemic corporate governance problem – is also a core concept in each jurisdiction's stewardship code. As explained in Part II above, this core concept of the 2010/12 UK Code is arguably the most important dimension for determining whether a Non-UK Code is a legal misfit, as it is the very reason why the 2010/12 UK Code, as well as the 2020 UK Code, are themselves global legal misfits.

Based on a review of every stewardship code issued in a Non-UK jurisdiction following the issuance of the 2010 UK Code (i.e., 32 stewardship codes in 19 jurisdictions)[98] all the Non-UK Codes adopt the core concept of the 2010/12 UK Code, except the Singapore Family Code.[99] As explained in detail elsewhere, the Singapore Family Code reorients the core concept of shareholder stewardship to focus on controlling shareholders in family businesses.[100] Thus, aside from the Singapore exception, it appears that the core concept of the 2010/12 UK Code is also the core concept of stewardship codes in all Non-UK/US jurisdictions, making them legal misfits.

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forthcoming) (Japan); Austin Ouko, *Stewardship Code In Kenya: Is The Nigh Here* in GLOBAL SHAREHOLDER STEWARDSHIP: COMPLEXITIES, CHALLENGES AND POSSIBILITIES 2 (Dionysia Katelouzou & Dan W. Puchniak eds., forthcoming) (Kenya); Sang Yop Kang & Kyung-Hoon Chun, *Korea's Stewardship Code and the Rise of Shareholder Activism Agency Problems and Government Stewardship Revealed* in GLOBAL SHAREHOLDER STEWARDSHIP: COMPLEXITIES, CHALLENGES AND POSSIBILITIES 2 (Dionysia Katelouzou & Dan W. Puchniak eds., forthcoming) (Korea); MALAYSIAN CODE FOR INSTITUTIONAL INVESTORS, MINORITY SHAREHOLDER WATCHDOG GROUP, SECURITIES COMMISSION MALAYSIA 18 (2014), https://www.sc.com.my/api/documentms/download.ashx?id=9f4e32d3-cb97-4ff5-852a-6cb168a9f936#:~:text=The%20Malaysian%20Code%20for%20Institutional%20Investors,-1.&text=The%20Code%20is%20a%20voluntary,2. [hereinafter Malaysian Code 2014]; DUTCH STEWARDSHIP CODE, EUMEDION 2 (Jun. 20, 2018), https://ecgi.global/code/principles-stewardship-responsibilities-institutional-investors-2016 [hereinafter Dutch Code 2018]; Dan W. Puchniak & Samantha S. Tang, *Singapore's Embrace of Shareholder Stewardship: A Puzzling Success,* in GLOBAL SHAREHOLDER STEWARDSHIP: COMPLEXITIES, CHALLENGES AND POSSIBILITIES 2 (Dionysia Katelouzou & Dan W. Puchniak eds., forthcoming) (Singapore); CODE FOR RESPONSIBLE INVESTING IN SOUTH AFRICA, INSTITUTE OF DIRECTORS IN SOUTHERN AFRICA 12 (2011), https://ecgi.global/code/code-responsible-investing-south-africa-crisa-0 [hereinafter South African Code 2011]; GUIDELINES FOR INSTITUTIONAL INVESTORS GOVERNING THE EXERCISING OF PARTICIPATION RIGHTS IN PUBLIC LIMITED COMPANIES, ASIP 3 (2013), https://ecgi.global/code/guidelines-institutional-investors-governing-exercising-participation-rights-public-limited [hereinafter Swiss Code 2013]; Andrew Jen-Guang Lin, *The Assessment of Taiwan's Shareholder Stewardship Codes: From International Stewardship Principle to Alternative Good Stewardship* in GLOBAL SHAREHOLDER STEWARDSHIP: COMPLEXITIES, CHALLENGES AND POSSIBILITIES 2 (Dionysia Katelouzou & Dan W. Puchniak eds., forthcoming) (Taiwan); THAI INVESTMENT GOVERNANCE CODE FOR INSTITUTIONAL INVESTORS, NATIONAL CORPORATE GOVERNANCE COMMITTEE 32 (2017), https://ecgi.global/node/6198 [hereinafter Thai Code 2017]; Jill Fisch, *supra* note 11, at 6 (USA).

[98] *See* Appendix 6 for the full list of Stewardship Codes in every jurisdiction.

[99] *See* Appendix 6 for more details.

[100] *See* Dan W. Puchniak & Samantha S. Tang, *supra* note 97.

The second dimension for considering whether Non-UK Codes have been modeled on the 2010/12 UK Code is to examine whether the seven principles that compose the primary content of the 2010/12 UK Code have been transplanted into Non-UK Codes. These seven principles provide the specific actions that the 2010/12 UK Code encourages institutional investors to take to be "good stewards". [101] None of the seven principles in the 2010/12 UK Code have direct equivalents in the Singapore Family Code[102] – which makes sense as the Singapore Family Code has nothing to do with institutional investors. In contrast, as illustrated in Table 3 below, based on hand collected data, 81.82% of the latest versions of Non-UK Codes that focus on institutional investors (18 out of 22 codes, in 19 jurisdictions) contain all 7 principles, with Non-UK Codes on average adopting 6.68 out of the 7 principles.[103] This high level of uniformity confirms that Non-UK Codes have overwhelmingly adopted the primary content of the 2010/12 UK Code, another indication of their status as legal misfits.

TABLE 3.[1] 2010/12 UK CODE 'S 7 PRINCIPLES IN LATEST VERSIONS OF NON-UK CODES

Number of 2010/12 UK's 7 Principles	Percentage of Non-UK Codes
Codes that adopted 7 principles	81.82%
Codes that adopted 6 principles	9.09%
Codes that adopted 5 principles	4.55%
Codes that adopted 4 principles	4.55%

Notes:
(1) The preamble, principles and guidance of the latest versions of codes in every jurisdiction that has adopted a stewardship code for institutional investors were examined to determine whether each of the 7 core principles contained in the 2010/12 UK Code had an equivalent provision in each jurisdictions code. *See*, Appendices 5 and 6 for more details.

The hand collected data on the transplant of the seven principles to Non-UK Codes reveals three additional findings. First, over the past decade, most of the inaugural Non-UK Codes which originally did not contain all seven principles have been amended to add missing principles.[104] Conversely, no Non-UK Code has ever been amended to remove any of the seven principles.[105] As such, despite the 2010/12 UK Code being a global legal misfit, its primary content has been overwhelmingly embraced by Non-UK Codes – with most of the small minority of Non-UK Codes that did not originally adopt all seven principles making reforms to adopt them.[106]

Second, two out of the seven principles account for almost all of the "missing principles" in the small minority of Non-UK Codes that did not originally adopt all seven principles: (1) that institutional investors should have a policy on, and willingness to, act collectively with other institutional investors (collective action principle); and, (2) that institutional investors should provide guidelines on when and how they will escalate their shareholder activities in investee

[101] See Appendix 5 for the content of the 7 core principles of the UK Code 2010.
[102] *See* Dan W. Puchniak & Samantha S. Tang, *supra* note 97, at 20-23.
[103] *See* Appendix 6.
[104] Canada's inaugural 2010 Stewardship Code was amended in 2017 to include all 3 missing principles; Italy's inaugural 2013 Stewardship Code was amended in 2016 to include 1 missing principle; Japan's inaugural 2014 Stewardship Code was amended in 2020 to include 1 missing principle (principle 4 – Escalation – remains missing). *Id.*
[105] *Id.*
[106] *Supra* note 104.

companies (escalation principle).[107] As discussed in Part IV below, the collective action and escalation principles are less meaningful when institutional investors collectively are minority shareholders – which is normally the case in almost all Non-UK/US jurisdictions.

Third, the watershed reform undertaken in the 2020 UK Code has resulted in the UK abandoning the use of the seven principles which were the primary content of the 2010/12 UK Code.[108] As the 2020 UK Code has only recently been issued, it is too early to tell whether Non-UK Codes will follow its new content and form. However, as explained in Part II above, a core concept of the 2020 UK Code – to change the behavior of institutional investors from passive to active shareholders to solve systemic corporate governance problems – is something that has been consistent throughout the history of all the UK Codes. This makes the 2020 UK Code a global legal misfit. In fact, as the 2020 UK Code now requires even more from institutional investors (i.e., to solve both corporate governance and societal problems)[109] it appears it may be even more of a global legal misfit as it expects more from institutional investors in jurisdictions where they are often weak minority shareholders.[110]

The third dimension is to examine the specific wording used in the Non-UK Codes to determine whether there is further evidence that they have been modelled on the 2010/12 UK Code. In their forthcoming book chapter, Dionysia Katelouzou and Mathias Siems use automated textual analysis to empirically measure the similarities of the text of the 2012 UK Code and Non-UK Codes.[111] As noted above, they excluded the Singapore Family Code from their analysis as they limited it to codes focused on institutional investors.[112]

Three of their findings help shed light on the extent to which the text of Non-UK Codes has been copied from the 2012 UK Code. First, they note the "coreness" of the 2012 UK Code in terms of its influence over the text used in Non-UK Codes – particularly codes in Asian common law jurisdictions.[113] This is interesting because, as explained below, Asian common law jurisdictions that have adopted codes have a particular paucity of institutional investor ownership and an abundance of controlling shareholders – making them extreme examples of jurisdictions in which the 2010/12 UK Code is an obvious legal misfit. Despite this extreme misfit, Asian common law jurisdictions curiously appear to be the most diligent in having copied the precise text used in the 2012 UK Code.

Second, Katelouzou and Siems find that the word "vote" is the most common word with legal significance used in Non-UK Codes.[114] They interpret this finding as suggesting that "[v]oting is considered as an essential aspect of stewardship activities and the exercise of voting rights is a key expression of shareholders' rights and recognition of shareholders' responsibilities."[115] This

[107] *See* Appendix 6.
[108] Davies, *supra* note 1, at 4-7.
[109] Davies, *supra* note 1, at 3-7.
[110] *See Infra* Part II.
[111] Katelouzou & Siems, *supra* note 17, at 15.
[112] *Id.* at 6, n.17.
[113] *Id.* at 24-25.
[114] *Id.* at 26.
[115] *Id.*

emphasis on voting rights makes sense from a UK domestic perspective where institutional investors can control the corporate governance of most listed companies by exercising their voting rights collectively. However, from a global comparative perspective, it suggests that even at a textual level the influence of the 2012 UK Code on Non-UK Codes has made them legal misfits – as voting rights are often meaningless for small minority shareholders in controlling shareholder dominated companies. In a similar vein, in companies where minority shareholders hold larger minority blocks, they may be able to veto some important majority decisions, but will not have the legal right to "steward" the company, as company law normally allocates control rights to the majority shareholder.

Third, Katelouzou and Siems provide empirical evidence that supports the finding above that the 2010/12 UK Code's collective action and escalation principles are the most likely principles to be missing in Non-UK Codes.[116] However, it appears that a textual analysis may overestimate the amount that these principles are missing as it is entirely based on the word stems "collect" and "escal" appearing in codes.[117] It does not account for instances in which the collective action and escalation principles are in substance included in codes, but the word stems "collect" and "escal" are not used to articulate these principles. Katelouzou and Siems found that the failure to use the word "escalate" is particularly common in translated codes from jurisdictions where English is not the first language – which suggests that different words were likely used to express the same principles in these jurisdictions.[118] However, the use of different words may also suggest that the principle has been softened, which as discussed below, would make sense in jurisdictions where institutional investors are a weak minority, making escalation less relevant.

In sum, all Non-UK Codes, except for the Singapore Family Code, have adopted the core concept of all the UK Codes, which focus on institutional investors as the key vehicle for solving systemic corporate governance and societal problems. The vast majority of Non-UK Codes have embraced the primary content of the 2010/12 UK Code as they have adopted all seven of its principles – with the rare jurisdictions that did not originally adopt all seven principles amending their codes towards complete conformity. Even the precise text of Non-UK Codes has been significantly influenced by the 2012 UK Code – with Asian common law jurisdictions appearing to copy a significant amount of their texts from the 2012 UK Code. Thus, there is overwhelming evidence that Non-UK Codes have largely adopted the 2010/12 UK Code model, despite it being a global legal misfit.

(b) Varieties of Shareholder Landscapes: Determining the Extent of Legal Misfits

In Part II, it was demonstrated that the UK Code was – and still is – designed based on the assumptions that institutional investors collectively control the voting rights in most listed companies and that most listed companies do not have a controlling shareholder who is a rationally active steward. It was also showed that, with the notable exception of the UK/US, these assumptions do not hold true almost anywhere else. As such, the UK Code appears to be a global legal misfit.

[116] *Id.* at 28-29.
[117] *Id.* at 28-29.
[118] *Id.*

However, as illustrated in Table 4 below, it is important to recognize that shareholder landscapes differ, sometimes significantly, among Non-UK/US jurisdictions with a code. Although in all these jurisdictions, on average, institutional investors collectively hold a minority of shares in listed companies, in Canada institutional investors on average hold 43% of the shares in listed companies – which is the highest level outside of the UK/US and suggests that institutional investors have strong controlling stakes in at least some listed companies in Canada.[119] In the Netherlands (39%), Denmark (33%), South Africa (33%), Japan (31%), Australia (29%), and Norway (26%), on average institutional investors collectively hold a sizable minority of shares in listed companies. This may allow institutional investors to collectively exercise veto rights over important corporate decisions.

Also, as illustrated in Table 4 below, a sizable portion of listed companies in these jurisdictions do not have a dominant controlling shareholder. As such, in these jurisdictions institutional investors will have significant scope for shaping corporate governance and playing some role in addressing systemic problems – but as dominant controlling shareholders exist in a significant minority of listed companies in these jurisdictions they will also play an important role. In turn, in these jurisdictions, it may make sense to focus codes on institutional investors exercising their voice collectively as sizable minority shareholders, rather than on being the primary solution for corporate governance or societal problems by acting as shareholder stewards in most listed companies – which is the core logic in all the UK Codes.

Conversely, in Singapore (6%), Thailand (8%), Malaysia (11%), Hong Kong (12%), Korea (13%), Italy (16%), Taiwan (18%), and India (19%) institutional investors on average collectively hold a small minority of shares in listed companies.[120] In all these jurisdictions a majority of listed companies have a dominant controlling shareholder.[121] In such a shareholder landscape, the focus should be on ensuring that controlling shareholders act as good stewards, as the ability of institutional investors to play a meaningful role influencing – let alone stewarding – listed companies will be more limited. As examined in Part IV below, in such jurisdictions reorienting stewardship to focus on controlling shareholders should be considered – but only as one tool in the

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[119] It is noteworthy that Canada stands out as the only Non-US/UK jurisdiction where an institutional investors is the largest shareholder in a majority of listed companies, with 60% of listed companies having an institutional investor as its largest shareholder – compared to 70% in the UK, 85% in the US and 2% in Singapore and 1% in Hong Kong. *See*, Appendix 3 for details and other jurisdictions.

[120] *See,* Appendix 1.

[121] *See, Appendix 2.* It should be noted that according to the data in Appendix 2, in 45% of listed companies in Korea the largest three shareholders control a majority of the shares. However, Korea is infamous a significant portion of its listed companies being family controlled, with the founding family using a pyramid shareholding structure to control the governance of the company with a minority of shares. As explained by Kang and Chun in their forthcoming chapter on shareholder stewardship in Korea: "The controlling family members' shareholding ratio in the listed core company of each chaebol is mostly far less than 50 per cent and, in many cases, less than 10 per cent. However, circular shareholdings or pyramidal structures that tie together the member companies enable the controlling shareholders to exercise control over the entire group substantially greater than their economic cash flow rights — a typical problem of 'controlling minority shareholders' which often results in conflicts of interest between controlling shareholders and non-controlling shareholders." Kang & Chun, *supra* note 97, at 5. It should also be noted that Taiwan was not included in the underlying research from which the data in Appendix 2 was drawn. However, in his forthcoming chapter on stewardship in Taiwan, Andrew Lin observes: "The majority of listed companies (excluding foreign companies) in Taiwan have a more concentrated shareholding structure and are originally family-owned in most sectors". Lin, *supra* note 97, at 3.

toolbox for regulating controlling shareholders. Obviously, in such an environment, it would be misguided to view institutional investor focused stewardship – the central tenet of the UK stewardship model – as a solution for systemic corporate governance or societal problems.

Thus, the extent to which the UK Code is a misfit varies from jurisdiction to jurisdiction. In a jurisdiction such as Singapore there are literally no listed companies in which institutional investors collectively have the legal rights to act as stewards and almost all listed companies have a rationally active controlling shareholder to steward the company.[122] However, in a jurisdiction such as Canada, at least in a portion of listed companies, institutional investors likely have the legal rights to play the role contemplated by the UK Code *if* they act collectively. But, as a leading Canadian corporate law scholar has recognized, there will still be a significant portion of Canadian companies where the UK Code's concept of institutional investor stewardship does not fit.[123] This suggests that a jurisdiction-specific approach to stewardship is required and that for all Non-UK jurisdictions blindly following the UK's approach to stewardship is misguided.

TABLE 4.[1] SHAREHOLDING STATISTICS IN JURISDICTIONS THAT HAVE ADOPTED UK-STYLE CODES

Region	Jurisdictions	Percent of Shares Owned by Institutional Investors	Percent of Listed Companies with 3 Largest Owners Controlling Majority of Shares	Institutional Ownership		3 Largest Owners as Controllers	
				Mean for Region	Median For Region	Mean for Region	Median For Region
	Hong Kong	12%	75%				
	India	19%	66%				
	Japan	31%	15%				
Asia	Korea	13%	45%	15%	13%	56%	66%
	Malaysia	11%	72%				
	Singapore	6%	70%				
	Taiwan	18%	N.A.				
	Thailand	8%	51%				
	Denmark	33%	N.A.				
Europe	Italy	16%	71%	27%	26%	69%	35%
	Netherlands	39%	31%				
	Switzerland	23%	N.A.				
	Norway	26%	35%				
North America	US	80%	4%	62%	62%	10%	10%
	Canada	43%	15%				
Africa	South Africa	33%	38%	33%	33%	38%	38%
	Kenya	N.A.	N.A.				
South America	Brazil	22%	72%	22%	22%	72%	72%
Australia	Australia	29%	N.A.	29%	29%	N.A.	N.A.

Notes:
(1) See Appendix 1 and Appendix 2 for more details.

(c) Government Versus Private Codes: An Important Distinction

[122] Research has found that over 90% of Singapore's public listed companies have block-shareholders who exercise controlling power. Luh Luh Lan & Umakanth Varottil, *Shareholder Empowerment in Controlled Companies: The Case of Singapore*, in RESEARCH HANDBOOK ON SHAREHOLDER POWER 572, 579 (Jennifer Hill & Randall Thomas eds., 2015).
[123] Williams, *supra* note 89, at 2.

A defining factor which differentiates stewardship codes across jurisdictions is whether the code is issued by a government connected agency or a private organization supported by institutional investors. In the case of a government agency issued code, one would expect the code to be tailored to the jurisdiction's corporate governance context. As such, the failure of a government agency to consider the fit between the code and the jurisdiction's shareholder landscape would, at first blush, seem like a curious oversight. However, as explained in Part IV below, factors such as market signaling, political motives, or ESG may provide reasons for a government agency to issue a UK-style code, despite its failure to fit the jurisdiction's shareholder landscape.

In the case of a private institutional investor issued code, the code will axiomatically focus on institutional investors. Even in a jurisdiction where institutional investors are collectively weak minority shareholders, private organizations are bound to serve their members' interests. At first blush, one may expect these private organizations in jurisdictions where institutional investors are weak minority shareholders to tailor their codes to the role they may play as minority shareholders – making the UK Code a poor fit. However, as explained in Part IV below, private institutional investor organizations may have an incentive to issue a UK-style code despite its poor fit. The UK Code is widely regarded as the "gold standard" of stewardship codes and, thus, issuing a UK-style code may be effective in preempting the government from issuing a code – an outcome that would seem to be desirable for most institutional investors who would normally prefer self-regulation over government-regulation.

As explained above, the UK Code started out as principles issued by a private institutional investor organization (the ISC) and then was issued as the 2010 UK Code by the FRC, a quasi-government regulatory body. From a UK domestic perspective this evolution makes sense as institutional investors control the voting rights in most listed companies, placing institutional investors at the core of the UK's corporate governance system. However, such an evolution may be a poor fit in a jurisdiction where institutional investors are a weak minority. In such a context, the government's imprimatur of institutional investor centered shareholder stewardship may overemphasize its importance and shift regulatory attention away from more central issues such as controlling-shareholder abuse.

There is a geographic divide that has been almost entirely overlooked in terms of government issued versus private issued codes. In Asia, all the codes (i.e., 11 codes in 8 jurisdictions) are issued by either government or quasi-government agencies.[124] Conversely, all the Non-Asian codes (i.e., 12 codes in 11 jurisdictions) are private institutional investor issued codes, with the exceptions of Denmark and Kenya.[125] Thus, outside of Asia, there is no Non-UK jurisdiction with an economy or stock market ranked in the top 30 in the world that has a government issued code.[126]

There are two reasons that may explain this development. First, in Non-Asian jurisdictions institutional investors tend to have a larger ownership stake in listed companies[127] and, in turn, may have more influence over policymaking and the regulation of corporate governance. As such, they may have a greater incentive to issue a code to facilitate coordination among institutional

124 *See,* Appendix 6.

125 *Id.*

126 *See,* Appendix 6 and Table 5.

127 *See,* Table 4.

investors who collectively may have a sufficient percentage of shares to exercise veto rights over important corporate decisions. Alternatively, as observed by Paul Davies based on the behavior of institutional investors in the UK in the decades preceding the issuance of the 2010 UK Code, powerful institutional investors may use their influence to issue a stewardship code to preempt the development of a government issued code.[128] Second, governments and public regulation tend to play a larger role in Asian economies and corporate governance – which fits with the development of government issued codes throughout Asia. Whatever the reasons, this development suggests that UK-style stewardship codes are particularly poor fits in Asia. As explained above, one would expect government issued codes to be tailored to fit the jurisdiction's shareholder landscape. However, aside from the Singapore Family Code, Asian governments have done the opposite by embracing UK-style stewardship codes in a corporate governance context largely defined by weak institutional investors and dominant controlling shareholders.[129] Possible reasons for this curious development will be examined in Part IV below.

(d) Non-Adopters: Revealing the Limits of the Globalization of UK-Style Stewardship

UK-style shareholder stewardship is often assumed to be a global trend.[130] However, this common assumption requires closer scrutiny. As described above, since the UK adopted the first stewardship code in 2010, 19 Non-UK jurisdictions on 6 continents have adopted UK-style codes.[131] In addition, several regional and international organizations have promoted the proliferation of such codes.[132] It is clear from Table 5 below, that in addition to the UK/US, stewardship codes have been adopted by several other jurisdiction's that have world leading economies and stock markets. From this perspective, UK-style institutional investor centered stewardship appears to have become a global trend.

However, despite comparisons between the global spread of UK-style corporate governance codes and UK-style stewardship codes,[133] the proliferation of the former has been far greater – as corporate governance codes now exist in almost 90 jurisdictions and have made independent directors globally ubiquitous.[134] It is also clear from Table 5 below that jurisdictions that contain several of the world's largest economies and stock markets have yet to adopt stewardship codes. Conspicuously, China and Germany, which are the most populous jurisdictions with the largest

[128] Davies, *supra* note 1, at 2.
[129] *See*, Appendix 6. It should be note that Japan is somewhat of an outlier as institutional investors own a sizable minority of the shares in listed companies and empirically the shareholding structure in listed companies is dispersed. However, stable shareholding in Japan, make it more like a controlling shareholder jurisdiction than a widely dispersed UK/US style jurisdiction. *See generally*, Dan W. Puchniak, *Multiple Faces of Shareholder Power in Asia – Complexity Revealed*, in RESEARCH HANDBOOK ON SHAREHOLDER POWER 511, 512–15, 521–22 (Jennifer Hill & Randall Thomas eds., 2015).
[130] Katelouzou & Siems, *supra* note 17, at 2.
[131] *See*, Appendix 6.
[132] *Id. See*, Katelouzou & Siems, *supra* note 17, at 3.
[133] *Id.* at 2, 10, 27.
[134] Nolan Haskovec, *Codes of Corporate Governance: A Review* (2012), https://millstein.law.columbia.edu/sites/default/files/content/docs/Codes%20of%20Corporate%20Governance_Yale_053112.pdf; Dan W. Puchniak & Luh Luh Lan, *Independent Directors in Singapore: Puzzling Compliance Requiring Explanation*, 65 AM. J. COMP. L. 265, 277 (2017).

economies in Asia and Europe respectively, have chosen to not adopt UK-style stewardship codes. This suggests that UK-style stewardship may have some limits in terms of its global applicability.

There are at least three possible reasons China and Germany have chosen to not adopt UK-style stewardship codes. First, building on the above analysis, in China and Germany the relatively low level of institutional investor ownership and high level of controlling shareholders suggest that a UK-style stewardship code would be a poor fit.[135] Second, compared to smaller jurisdictions, China and Germany have shown that they have the economic size and political will to sometimes chart their own corporate governance paths.[136] Third, China and Germany have developed regimes for regulating institutional investors and have highly developed systems of corporate governance, which may obviate the need for a UK-style stewardship code.[137]

While China and Germany have a history of maintaining unique aspects of their corporate governance systems, recent history with codes of corporate governance and independent directors suggests that they are not immune to the pressure of adopting Anglo-American-cum-global norms of "good" corporate governance.[138] In this vein, it is noteworthy that Germany has recently inserted a brief reference to the importance of shareholder engagement by institutional investors into its corporate governance code and China has significantly expanded a similar provision in its recently revised corporate governance code.[139] However, given Germany's and China's unique shareholder landscapes and corporate governance systems, it is likely that if they adopt a code it would be to deal with a different set of problems (e.g., mitigating controlling shareholder abuse) – rather than focusing on incentivizing passive institutional investors to solve the problem of "ownerless corporations" which is the foundation of the UK Code. This suggest that any code that China or Germany adopt may not be UK-style in practice and will not likely result in any

[135] See, Appendices 1 & 2. However, it is important to note the meteoric rise that has occurred in the size and ownership stakes of institutional investors in China over the last decade, which has been largely overlooked in the legal literature. Although institutional investors in China are still normally collectively minority shareholders, their influence on corporate governance is on the rise and can no longer be overlooked. See, Lin Lin & Dan W. Puchniak, *Institutional Investors in China: Corporate Governance and Policy Channeling in the Market Within the State*, ECGI LAW WORKING PAPER, 590/2021, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3858348

[136] As demonstrated by Lin and Puchniak, this is the case with institutional investors in China. Lin & Puchniak, *supra* note 135. See also, Li-Wen Lin & Curtis J. Milhaupt, *We Are the (National) Champions: Understanding the Mechanisms of State Capitalism in China*, 65 STAN. L. REV. 697 (2013) (explaining how China has developed its own unique corporate governance system for SOEs); Jean J. Du Plessis & Otto Sandrock, The Rise and Fall of Supervisory Codetermination in Germany, 16 I.C.C.L.R. 67 (2005) (explaining Germany's unique co-determination and board structure).

[137] Wolf-Georg Ringe, *Stewardship and Shareholder Engagement in Germany* in GLOBAL SHAREHOLDER STEWARDSHIP: COMPLEXITIES, CHALLENGES AND POSSIBILITIES 13-14, 16-18 (Dionysia Katelouzou & Dan W. Puchniak eds., forthcoming) (explaining Germany's institutional investor regulatory regime and corporate governance system, but suggesting that objections by academics on the basis that a stewardship code would be incompatible with the German corporate law and governance system are flawed). Lin & Puchniak, *supra* note 135 (explaining how the Chinese Communist Party has consistently, for decades, taken steps to develop an autochthonous regulatory regime to foster the growth of institutional investors in China, while maintaining its ultimate control).

[138] An example of this can be seen in China and Germany both adopting independent directors. *See generally* INDEPENDENT DIRECTORS IN ASIA: A HISTORICAL, CONTEXTUAL AND COMPARATIVE APPROACH (DAN W. PUCHNIAK ET AL. EDS., 2017)

[139] Ringe, *supra* note 137, at 26-27; Lin & Puchniak, *supra* note 135.

significant changes in how their systems of corporate governance function[140] – a common trend which will be examined in Part IV below.

TABLE 5. ECONOMIC GLOBAL RANKINGS OF ADOPTERS VERSUS NON-ADOPTERS OF UK-STYLE CODES
AS OF DECEMBER 31, 2018

	Jurisdictions	Stock Market[1]	Size of Economy[2]	
			GDP Norm	GDP PPP
Jurisdictions That Have Adopted the UK-style Code 2010/12	United Kingdom	6th	6th	9th
	United States	1st	1st	2nd
	Japan	3rd	3rd	4th
	India	4th	5th	3rd
	Brazil	13th	9th	8th
	Canada	7th	10th	16th
Jurisdictions That Have Not Adopted a Stewardship Code	Germany	8th	4th	5th
	China	2nd	2nd	1st
	France	N.A.[3]	7th	10th
	Russia	17th	11th	6th

Notes:
(1) 'Stock Market' displays the ranks of the 10 jurisdictions listed in Table 7 based on their stock market capitalizations. *See* WORLD FEDERATION OF EXCHANGES, https://www.world-exchanges.org/ . France's stock exchange is part of the Euronext, which also comprises of the stock exchanges of the Netherlands, Belgium, Ireland, Spain, the United Kingdom and France. As such, France is excluded from the rankings as derived from the WORLD FEDERATION OF EXCHANGES website. The fifth largest Stock Exchange which is missing from Table 5 is Hong Kong, whose stock market size is separated from Mainland China because the table is displaying Jurisdictions instead of Countries as they have different corporate law regimes.
(2) 'Size of economy' based on nominal GDP and GDP on a purchasing power parity basis. See STATISTICS TIMES (Feb. 20, 2020), http://statisticstimes.com/economy/projected-world-gdp-ranking.php (information is accurate as of December 31, 2019)

PART IV: UNEXPECTED DIVERSE FUNCTIONS OF STEWARDSHIP IN CONTROLLING SHAREHOLDER JURISDICTIONS

(a) The Myth of the Global Rise of UK-Style Stewardship in Practice: Illuminating Diversity

The failure to recognize the misfit between UK-style stewardship codes and the divergent corporate governance contexts into which they have been transplanted has led to a misunderstanding among academics, policymakers, and market-players. A common assumption is that the forces that have driven the widespread adoption of UK-style stewardship codes and the function that they serve mirrors that of the UK.[141] Indeed, two leading UK law professors have previously suggested that the global transplant of UK-style stewardship codes "is likely driven by the [same] common concerns shared by many jurisdictions" in terms of the active role that

[140] Lin Lin & Dan W. Puchniak, *Institutional Investors in China: An Autochthonous Mechanism Unrelated To UK-Cum-Global Stewardship* in GLOBAL SHAREHOLDER STEWARDSHIP: COMPLEXITIES, CHALLENGES AND POSSIBILITIES (Dionysia Katelouzou & Dan W. Puchniak eds., forthcoming). *See also*, Lin & Puchniak, *supra* note 135; Ronald J. Gilson & Curtis J. Milhaupt*, Shifting Influences on Corporate Governance: Capital Market Completeness and Policy Channeling,* 11, 65-66 (Aug. 20, 2020).
[141] Goto et al., *supra* note 4, at 842-48.

institutional investors can play as shareholder stewards.[142] As such, the conventional wisdom is that stewardship globally mirrors that of the original goal in the UK: to use soft law to transform rationally passive institutional investors into actively engaged shareholder stewards to prevent short-termism and excessive risk-taking in listed companies.

Based on the evidence provided in Part III above, these assumptions seem reasonable. Almost all jurisdictions that have adopted stewardship codes claim to have been inspired by the UK Code.[143] More importantly, our hand-collected data in Part III above confirms that almost every jurisdiction that has a stewardship code has *formally* adopted one that mirrors the 2010/12 UK Code. As such, the assumption that the global rise of stewardship has followed the UK model is understandable.

However, as explained in this Part, if one drills-down deeper to examine the reasons that Non-UK codes have been issued and the actual impact that they have had (i.e., their intended and actual functions in non-UK jurisdictions) a picture of global diversity – rather than universal uniformity based on the UK model – emerges. In fact, in some jurisdictions, shareholder stewardship functions in a way that appears to run counter to the UK model. As I explain with co-authors elsewhere, "the Japanese government adopted a stewardship code with the aim of reforming its traditional lifetime-employee, risk-averse, and stakeholder-oriented governance system towards a more shareholder-oriented, profit-maximizing, and less risk-averse governance system".[144] Another divergent example is in Singapore where "its stewardship codes appear to be designed to entrench its successful state-controlled and family-controlled system of corporate governance".[145] These functions would be beyond the wildest imaginations of the drafters of the UK Code and demonstrate the diversity in the role played by stewardship codes globally.

Ultimately, the analysis below of the diverse forces that have driven the adoption of stewardship codes and the functions they have come to play suggests that the global proliferation of codes flows from the fact that "they provide a convenient vehicle for local governments and/or market players to achieve their own particular interests through an inexpensive, nonbinding, and malleable vehicle",[146] while at the same time sending a signal of "good" corporate governance to the market.[147] This phenomenon – which I explain with coauthors and coin elsewhere as "faux convergence" – has made it appear on the surface that shareholder stewardship (and corporate governance, more generally) around the world is converging, while it, in fact, remains diverse.[148] To demonstrate this phenomenon, what follows is a description of each of the main drivers of the diverse functions of shareholder stewardship illuminated by evidence from in-depth jurisdiction-specific case studies. Ultimately, this evidence overwhelmingly demonstrates that the jurisdiction-specific functions of stewardship are incredibly diverse globally – and unexpected given the original intended and actual functions of shareholder stewardship in the UK.

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[142] Iris H.Y. Chiu & Dionysia Katelouzou, *From Shareholder Stewardship to Shareholder Duties: Is the Time Ripe?*, in SHAREHOLDER DUTIES 131, 131 (Hanne S. Birkmose ed., 2017).
[143] *Supra* note 97.
[144] Goto et al., *supra* note 4, at 834.
[145] *Id.* See also ERNEST LIM, SUSTAINABILITY AND CORPORATE MECHANISMS IN ASIA (2020) 188-195.
[146] *Id.* at 836.
[147] *Id.*
[148] *Id*. at 874-80.

(b) Government Issuers Versus Private Issuers – A Driver of Diversity

Fortunately, we no longer live in colonial times or in an era where it is common for a country's occupying army to impose its laws on a foreign jurisdiction. All the stewardship codes that have been adopted have either been the result of a government connected agency or a private organization supported by institutional investors in a jurisdiction deciding to issue a code. As demonstrated in Part III above, aside from the Singapore Family Code, codes that have been issued have followed the UK model, which is built on the assumption that institutional investors collectively control the voting rights in most listed companies and that the passivity of institutional investors will result in most listed companies being "ownerless". As we have seen, while these assumptions hold true in the UK/US, they are erroneous in almost all other jurisdictions in which normally institutional investors are minority shareholders and listed companies have a rationally active controlling shareholder. As such, the question that arises is: Why have so many jurisdictions adopted UK-style stewardship codes when, on their face, they are global legal misfits?

To start, as highlighted in Part III above, there is an important distinction between the forces that drive government connected agencies and private institutional investor organizations to issue codes. In terms of private institutional investor organizations, there appears to be two possible rationales for issuing a stewardship code – both of which serve their self-interests. First, institutional investors may have a desire to regulate themselves rather than to be regulated by the government.[149] Self-regulation allows institutional investors to signal that they are responsible market players that understand the importance of stewardship, while not requiring them to incur any significant costs of having to change their business models as they remain in absolute control of what the code requires.[150] Second, institutional investors may have an incentive to issue a code to facilitate coordination among them to increase their shareholder power. This may be particularly true in the jurisdictions identified in Part III above in which institutional investors collectively own a sufficient percentage to exercise veto rights in most listed companies.

For institutional investors in non-UK jurisdictions who want to preempt the government from issuing a code, adopting a code modeled after the UK Code makes sense because the UK Code has generally been viewed as the "gold standard" for stewardship code's globally. On this basis, there is a clear explanation for why the 9 Non-UK jurisdictions with privately issued codes adopt the UK model – despite all of them, with the exception of the US, being in jurisdictions where institutional investors are collectively minority shareholders and controlling shareholders are prominent.[151] Although institutional investors may have an incentive to issue codes as a coordinating device, if this were the case one may have expected such codes to be tailored to the non-UK shareholder environment in which institutional investors are minority shareholders –

[149] Davies, *supra* note 1, at 2 (describing how this drove the development of a stewardship code by institutional investors in the UK, which was replaced by the 2010 UK Code after the GFC)

[150] For empirical evidence that it is normally not in the financial self-interest of most institutional investors to engage in stewardship and, thus, that non-binding stewardship codes are likely to be ineffective see, Bebchuk et al., *supra* note 11, at 90, 108. In another context, for a related discussion of how the Business Roundtable released a non-binding statement on corporate purpose as a form of "self-regulation" by corporate CEOs, which served merely as a public-relations move and did not produce any corporate governance changes in their companies see, Lucian Bebchuk & Roberto Tallarita, *The Illusory Promise of Stakeholder Governance*, Corn. L. Rev (forthcoming), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3544978

[151] *See*, Appendices 1 & 2.

which, as explained in Part III above, appears to have not occurred. In addition, obviously, private institutional investor organizations will naturally issue codes that focus on institutional investors. Therefore, it would be unrealistic to expect such codes to focus on anything other than institutional investors – even in jurisdictions dominated by controlling shareholders.

As the number of government-issued-codes has increased globally, the incentive for institutional investors to preempt their government from following this trend has increased. In addition, as more governments in a region issue stewardship codes, those jurisdictions in the region who fail to issue a code begin to stand out. Although this herding behavior may explain part of the rationale for the rise of government issued codes – particularly in Asia – there appears to be several other factors that have driven governments to issue codes.

Distinct from private institutional investor organizations, at first blush, it would seem that government connected agencies would have a strong incentive to tailor the stewardship code to fit their jurisdiction's corporate governance context. However, given the curious misfit between UK-style codes and the corporate governance reality in jurisdictions with government issued codes, one must look beyond the narrow lens of corporate law and governance to understand the forces that drive them. As explained below, when viewed through the narrow lens of corporate law and governance the decisions of governments around the world to adopt UK-style codes appear irrational. However, when viewed through a wider lens that includes market signaling, politics, and ESG factors these same government decisions make sense.[152]

To be clear, this is not to suggest that a government's decision to adopt a misfit UK-style stewardship code is definitive evidence that it is devoid of any corporate law and governance drivers. As explained below, there may be some possible corporate governance benefits of adopting a UK-style code even in a jurisdiction in which it is a misfit. However, these possible benefits appear to be subsidiary to the non-corporate law and governance drivers. Finally, it is important to recognize that in almost all cases, governments are driven by multiple factors and, admittedly, identifying the relative strength and prominence of any one driver is more of an art than a science.

(c) Halo Signaling: A Key Driver for Adopting UK-Style Misfits in Some Jurisdictions

In depth case studies reveal that in some jurisdictions the government's motive to signal that their jurisdiction embraces cutting-edge global norms of "good" corporate governance has driven the adoption of misfit UK-style stewardship codes. The rationale behind such government action is to attract foreign investment by bolstering the jurisdiction's image as an attractive cutting-edge investment hub, without significantly changing how the jurisdiction's corporate governance actually works in practice – a corporate governance reform strategy which I have, with co-authors, explained and coined elsewhere as "halo signaling".[153]

As halo signaling does not involve the corporate governance mechanism effecting actual change, importance is placed on the jurisdiction's formal adoption of a mechanism that is considered to be

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[152] Lim, *supra* 145.

[153] Puchniak & Lan, *supra* 134, at 272 (generally describing the concept of halo signaling); Puchniak & Tang, *supra* note 16, at 1004-05.

the global gold standard of "good" corporate governance – which in the case of stewardship is the UK Code. The fact that the UK Code is a poor fit is irrelevant as the impetus for adopting a code is to signal formal compliance with the "gold standard "– not to effect actual change. The position of the UK Code as the global "gold standard" has been reinforced by a European institutional investor association and global corporate governance organization issuing EU and global model stewardship codes respectively – both of which adopted the 2010/12 UK Code model.[154] As has been observed with other Anglo-American-cum-global norms of "good" corporate governance, the past several decades have seen a trend, particularly in Asia, of halo signaling driving governments to formally adopt different Anglo-American-cum-global mechanisms of "good" corporate governance, while functionally maintaining their own idiosyncratic corporate governance systems in practice.[155]

The two jurisdictions where halo signaling appears to have played the most significant role as a key driver in the issuance of UK-style stewardship codes are Hong Kong and Singapore, which share at least three features that illuminate their governments' embrace of halo signaling. First, the small minority ownership status of institutional investors in Hong Kong (12%) and Singapore (6%), coupled with listed companies that are dominated by controlling shareholders (i.e., in Hong Kong and Singapore controlling shareholders own a majority of shares in at least 75% and 70% of listed companies, respectively),[156] make UK-style codes extreme misfits in both jurisdictions. Yet, both jurisdictions adopted codes that mirrored the 2010/12 UK Code by focusing solely on institutional investors, containing all seven of the 2010/12 UK Code's core principles, and closely tracking the precise language used in the 2012 UK Code.[157]

Second, in both jurisdictions the government-linked body[158] that issued the code explicitly suggested rationales for adoption which mirrored the original rationale used in the UK for adopting its stewardship code. However, tellingly, the rationales provided are entirely incongruent with the actual, and well-known, corporate governance context in each jurisdiction. The dissonance between the government's advertised rationale for adopting a UK-style code and the jurisdiction's actual corporate governance reality is compelling evidence that such statements were made to justify adopting a UK-style code which is the global gold standard – rather than addressing the actual corporate governance reality in each jurisdiction.

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[154] The European Fund and Asset Management Association (EFAMA) issued a model code for Europe in 2011 and the International Corporate Governance Network (ICGN) issued a model global code in 2013 – with both organizations issuing updated versions in 2018 and 2016 respectively. All these codes adopted all seven principles from the 201/12 UK Code *see*, Appendix 6. The fact that intra-jurisdictional and international organizations have been a catalyst in disseminating the UK Model is another example of what Marianan Pargendler has recently coined and identified as the rise of "international corporate law", *see* Marianan Pargendler, *The Rise of International Corporate Law European Corporate Governance Institute*, ECGI LAW WORKING PAPER, 555/2020, https://ecgi.global/working-paper/rise-international-corporate-law

[155] Goto et al., *supra* note 4, at 874-880; Id. 31. *See also generally*, Jeffrey N. Gordon, *Convergence and Persistence in Corporate Law and Governance*, in OXFORD HANDBOOK OF CORPORATE LAW AND GOVERNANCE 28, 29-30 (Jeffrey N. Gordon & Wolf-Georg Ringe eds., 2018).

[156] *See*, Appendix 1. Research has found that over 90% of Singapore's public listed companies have block-shareholders who exercise controlling power. Lan & Varottil, *supra* note 122 at 579.

[157] *Supra* Part III.

[158] For a detailed discussion of how Stewardship Asia in Singapore is a government-linked body see, Puchniak & Tang, *supra* note 16, at 996, 1010-11.

In Singapore, the Preamble of its Institutional Investor Code exemplifies the dissonance required to justify the issuance of a UK-style code when it is an extreme misfit:[159]

> Many countries are seeing a trend towards fragmented ownership, especially in listed companies, with many shareholders each holding a small proportion of shares. Coupled with increasingly shorter shareholding tenure, the ownership mentality is arguably being eroded and replaced by a prevalent short-term view of investment and portfolio management. Hence, the emphasis on stewardship is relevant and timely.

In a similar vein, the Hong Kong Securities and Futures Commission has been called-out for its dissonant statements justifying the issuance of its UK-style code, with the conclusion that the following statement is purely to facilitate halo signaling:[160]

> In the last couple of decades there has been a notable increase in institutional ownership of publicly listed companies, with these institutions increasingly demanding a voice in corporate governance. In many instances, institutional investors exert rights traditionally held by individuals, families or bloc alliances.[161]

Ironically, as Hong Kong and Singapore have emerged as two of the world's wealthiest jurisdictions, concentrated shareholding has *increased*[162] – while institutional investors have played a less significant role in corporate governance in both jurisdictions.[163] In such an environment, short-termism is rarely a problem – rather the problems arise due to controlling shareholder abuse. However, bringing these realities to light would obviously not justify adopting a UK-style code.

Third, Hong Kong and Singapore at their core are International Financial Centers (IFCs), which as explained by David Donald in his insightful analysis of the Hong Kong Code, creates an additional incentive for halo signaling as IFCs "sell their services – regulatory framework among them – to internationally active financial institutions based in the US or UK" who set the global norms for "good" corporate governance.[164] In addition, as IFCs, Hong Kong and Singapore are heavily reliant on attracting foreign capital, creating a level of pressure to engage in halo signaling that is not experienced to the same extent by jurisdictions with larger domestic markets.[165]

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[159] SINGAPORE STEWARDSHIP PRINCIPLES FOR RESPONSIBLE INVESTORS, STEWARDSHIP ASIA CTR. (Nov. 2016), http://www.stewardshipasia.com.sg/sites/default/files/Section%202%20-%20SSP%20(Full%20Document).pdf [https://perma.cc/L3BZ-BF69] 3 (archived Jan. 27, 2020) [hereinafter SINGAPORE INSTITUTIONAL INVESTORS CODE]
[160] Donald, *supra* note 97, at 11.
[161] SECURITIES AND FUTURES COMMISSION, CONSULTATION PAPER ON THE PRINCIPLES OF RESPONSIBLE OWNERSHIP (2015) 4, https://www.sfc.hk/edistributionWeb/gateway/EN/consultation/openFile?refNo=15CP2 (accessed 29 June 2020).
[162] Tan et al., supra note 68, at 66; Donald, *supra* note 97, at 11.
[163] Puchniak & Tang, *supra* note 16, at 1003; Donald, *supra* note 97, at 4. However, hedge funds have played an increasingly important (but not necessarily positive) role in Hong Kong: ERNEST LIM, A CASE FOR SHAREHOLDERS' FIDUCIARY DUTIES IN COMMON LAW ASIA 70-77 (Cambridge University Press 2019).
[164] Donald, *supra* note 97, at 4.
[165] See also Katelouzou & Siems, supra note 17, at 23-4 (finding a textual similarity between the Hong Kong and Singapore codes on the one hand and the UK code on the other).

However, there is one important difference between Hong Kong and Singapore. A few years after issuing the Singapore Institutional Investor Code, Singapore issued its novel Singapore Family Code with the "ambition of making Singapore the standard bearer for a new Asian model of corporate governance".[166] According to David Donald:

> Hong Kong evidences no such aspiration [to create a stewardship code that fits the corporate governance context of Asia], as its financial activity mainly serves fund flows between China and the world, and to serve this function, it applies in rigorous fashion the most respected and accepted law and regulation, which is currently a mix of UK and US corporate and securities law.[167]

As far as the author is aware, this was Singapore's first attempt in the area of corporate governance to become a standard bearer, at least for Asia, rather than engaging in the type of halo signaling that drove it to comply with the Anglo-American global norm by adopting the UK-style Singapore Institutional Investor Code.[168]

Beyond Hong Kong and Singapore, there is some evidence in other jurisdictions that adopting a stewardship code was at least in part driven by halo signaling.[169] Indeed, as others have observed, conforming to Anglo-American-Cum Global norms of "good" corporate governance has been a main driver of corporate governance reform, especially in Asia, over the past several decades[170] – with UK-style stewardship codes being the latest iteration of this trend. In a similar vein, as mentioned above, model EU and international stewardship codes have promoted the UK Model of stewardship globally, which have provided a further incentive for jurisdictions to adopt UK-style codes – part of a larger movement which Mariana Pargendler has recently coined "international corporate governance".[171] However, beyond halo signaling and the rise of UK-style stewardship as a feature of international corporate governance, it appears there are other significant drivers for the adoption of misfit UK-style stewardship codes, which will now be explored.

(d) Politics: UK-Style Codes as an Effective and Malleable Vehicle for Political Agendas

It is difficult to find almost any criticism of a government adopting a UK-style stewardship code. Rather such an adoption is almost certain to have the jurisdiction listed alongside many of the most important economies in the world for joining a club that is seen as an indicia of being on the cutting-edge of the latest global trend in "good" corporate governance.[172] Stewardship codes have

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[166] *Id.* at 16.
[167] *Id.*
[168] Puchniak & Tang, *supra* note 16, at 1004-06.
[169] Ouko, *supra* note 97, at 2 (describing Kenya's desire to align with global best practices); Lin, *supra* note 97, at 2 (describing Taiwan's desire to keep-up with global norms); Patanaporn Kowpatanakit & Piyabutr Bunaramrueang, *Thai Institutional Investors Stewardship Code and Its Implementation*, in GLOBAL SHAREHOLDER STEWARDSHIP: COMPLEXITIES, CHALLENGES AND POSSIBILITIES 33-34 (Dionysia Katelouzou & Dan W. Puchniak eds., forthcoming) (describing how the Thai Code has signaled good governance but has not yet effected stewardship much in practice).
[170] *Supra* note 147.
[171] Pargendler, *supra* note 154.
[172] Ringe, *supra* note 137, at 39 (describing how Germany is "swimming upstream by refusing to follow the international trend towards [issuing a stewardship code]").

largely utilized soft law obligations, which makes it easy for governments to issue them and limits their actual bite. As the UK Code, has provided a model for other jurisdictions to follow, UK-style codes can be developed inexpensively and quickly. Perhaps most importantly, the concept of "stewardship" is ambiguous, which makes it a malleable vehicle for a myriad of political agendas – as explained in Part II above, this has even occurred in the UK with the 2020 UK Code shifting its focus to ESG. This blend of characteristics has allowed stewardship to be used as a convenient vehicle for governments to satisfy their own political agendas.

As Gen Goto insightfully explains in his analysis of the Japan Code, the Abe Administration issued it as a key part of its Abenomics strategy to reinvigorate the Japanese economy.[173] To this end, the aim of the Japan Code was to reform Japan's "traditional lifetime-employee, risk-averse, and stakeholder-oriented governance system towards a more shareholder-oriented, profit-maximizing, and less risk-averse governance system"[174] – which "all but turns the original [UK] concept of stewardship on its head".[175] Goto also highlights how the very nature of stewardship made it the ideal vehicle for the government to use to achieve its political agenda:

> One might reasonably question why the Abe administration elected to use the medium of a "stewardship code" to implement its desired corporate governance changes. The answer may lie with the mutable nature of stewardship, which enabled Japan to introduce the idea that institutional investors should be loyal to the interests of beneficiaries, without triggering technical discussions on the precise elements of fiduciary duties and the legal consequences of their breach. Further, the idea of a soft law "code" may also have been appealing to Japanese policymakers, as soft law codes need not be put through the full legislative process in order to be implemented.[176]

In a similar vein, Sang Yop Kang and Kyung-Hoon Chun in their forthcoming analysis of the Korea Code insightfully illuminate how stewardship may be used by the Korean government to exert its political agenda and power over private industry.[177] As they explain, there is reason to believe that the government has used its influence over the Korean National Pension Service (NPS) – which is the largest institutional investor in Korea and the third-largest public pension fund in the world – to execute a strategy which has been labelled by its critics as "pension-fund socialism" under the guise of stewardship.[178] As Kang and Chun explain:

> In the context of Korea, pension-fund socialism is understood as an ideology supporting the political-economic regime where large public pension funds led by the government deeply intervene in the management and operation of private companies. The government expects other institutional investors to join the Korean Code actively. Also, there is a political and social atmosphere that makes it difficult for institutional investors (large ones in particular) to turn down participation in shareholder stewardship….Accordingly, it is possible that the government can abuse the NPS as a means to carry out its policies, even though such policies may damage the interest of the NPS's beneficiaries.[179]

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[173] Goto et al., *supra* note 4, at 858, 861 n.158.
[174] *Id.* at 834.
[175] *Id.* at 850.
[176] *Id.* at 863.
[177] Kang & Chun, *supra* note 97, at 3, 25-27.
[178] *Id.* at 27.
[179] *Id.*

Malaysia provides yet another interesting example of a government using shareholder stewardship as a vehicle to achieve its political agenda. As skillfully illuminated by Petrina Tan in her analysis of the Malaysian Code, the Malaysian government's position as the controlling shareholder in many of the country's most powerful institutional investors and listed companies has inextricably linked stewardship and the state.[180] As explained by Tan, the risk is that the government is using stewardship to achieve its political agenda, raising the concern about "whether the interests of the state are aligned with those of the asset owners, the asset managers and more importantly, those of the ultimate beneficiaries or clients which are at the end of the investment chain".[181] This is an acute concern considering the government's position as the predominant controlling shareholder of Malaysia's institutional investors and listed companies, combined with its history of corruption – most recently highlighted by the 1MDB scandal.[182]

These examples illustrate how the proliferation of UK-style stewardship codes may have more to do with a government's desire to execute its political agenda than corporate governance – making the fit of the UK-style code with the jurisdiction's corporate governance context a subsidiary concern. Also, with the issuance of stewardship codes being inexpensive and quick, governments may simply enact them to demonstrate they are doing something "good" – which seems to have been the case in Kenya where the government issued a voluntary stewardship code over two years ago and not a single institutional investor has yet signed-up.[183] A similar force could be at play in Thailand where General Prayut Chan-o-cha's military junta, which took power in a coup d'état a few years earlier, issued a UK-style code in 2017 – a message to the world from the junta that it was ensuring Thailand was at the cutting-edge of global trends in "good" corporate governance.[184] As discussed in Part V below, this trend may accelerate post-Covid-19 as governments look for inexpensive and quick ways to demonstrate their commitment to an inclusive society, the environment, and ESG.

(e) ESG: Increasingly a Rationale, But with Weak Prospects for Real Change

One of the more recent rationales cited as a driver for jurisdictions adopting stewardship codes has been to promote the interests of beneficiaries by having their agents, the institutional investors, take into account ESG considerations in their investment objectives, strategies, and decision-making processes.[185] Indeed, the rise of ESG as a factor mentioned in the latest versions of stewardship codes globally is striking. The 2010 UK Code did not mention ESG at all and the 2011

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[180] Petrina Tan Tjin Yi, *Institutional Investor Stewardship in Malaysia: Code, Context & Challenges* in GLOBAL SHAREHOLDER STEWARDSHIP: COMPLEXITIES, CHALLENGES AND POSSIBILITIES 19 (Dionysia Katelouzou & Dan W. Puchniak eds., forthcoming)
[181] *Id.* at 20.
[182] *Id.* at 23-24; Vivien Chen, *Enforcement of Directors' Duties in Malaysia and Australia: The Implications of Context*, 19 OXF. U. COMMONW. L. J. 91 (2019); Vivien Chen, *Corporate Law and Political Economy in a Kleptocracy*, AM. J. CORP. L (forthcoming).
[183] Ouko, *supra* note 97, at 17.
[184] Kowpatanakit & Bunaramrueang, *supra* note 169, at 33-34 (describing how the Thai Code has signaled good governance but has not yet effected stewardship much in practice).
[185] Lim, *supra* note 145, at ch. 5.

South African Code was an outlier among first generation Non-UK codes in that it mentioned ESG.[186] In stark contrast, a recent empirical review of the text of the latest versions of stewardship codes reveals that 84% of the codes now refer "at least once to ESG factors" and that only four current codes (i.e., Denmark 2016, Korea 2016, Switzerland 2013, and US 2017) do not mention ESG factors at all.[187] This same study, however, notes that several of these codes "mention ESG only briefly in a list of many topics that investors may wish to monitor in their investee companies".[188] However, it also notes that there are a few countries with codes (i.e., South Africa, Thailand, and Kenya) in which ESG is treated with greater depth and substance – but the study suggests that this may have more to do with politics and attracting foreign investment than a genuine commitment to ESG.[189]

It is noteworthy that ESG appears to be equally prevalent in stewardship codes issued by government connected agencies as those issued by private institutional investor organizations.[190] With respect to codes issued by government connected agencies, it is possible that government entities have an incentive to include ESG in stewardship codes as this may send a signal to voters that they are promoting ESG – an issue which has increasingly resonated with voters in jurisdictions around the world.[191] With respect to institutional investors, issuing a stewardship code that promotes ESG provides them with a mechanism to signal their commitment to an important issue, which has increasingly been embraced by major institutional investors.[192] As such, the rise of the ESG movement provides another possible rationale for the global proliferation of stewardship codes in jurisdictions dominated by controlling shareholders.

The details of how ESG is addressed in individual stewardship codes suggest that although most codes tend to mention ESG there is diversity in how this is done. An interesting example of ESG requirements is a provision in the Malaysian Code which states that it is: "…intended to give institutional investors guidance on effective exercise of stewardship responsibilities to ensure delivery of sustainable long-term value to their ultimate beneficiaries or clients."[193] The Malaysian Code also states that: "[i]nstitutional investors should incorporate corporate governance and sustainability considerations into the investment decision-making process."[194] It then lists out detailed guidelines on this principle, with sustainability considerations including ESG factors.

Another example is in India where the emphasis appears to be more on protecting pensioners and the ultimate beneficiaries of investment products, rather than merely focusing on improving the

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[186] Katelouzou & Siems, *supra* note 17, at 20.
[187] Dionysia Katelouzou & Alice Klettner, *Sustainable Finance and Stewardship: Unlocking Stewardship's Sustainability Potential*, in GLOBAL SHAREHOLDER STEWARDSHIP: COMPLEXITIES, CHALLENGES AND POSSIBILITIES 18 (Dionysia Katelouzou & Dan W. Puchniak eds., forthcoming)
[188] *Id.* at 18-19.
[189] *Id.* at 21.
[190] Only four current codes (i.e., Denmark 2016, Korea 2016, Switzerland 2013, and US 2017) do not mention ESG factors at all. Of these four codes, two are codes issued by government connected agencies (Denmark 2016 and Korea 2016) and two are codes issued by private institutional investor organizations (Switzerland 2013 and US 2017). *See* Appendix 6.
[191] Katelouzou & Klettner, *supra* note 187, at 2.
[192] *Id.* at 2.
[193] Malaysian Code 2014, *supra* note 97.
[194] *Id.* at 13.

corporate governance of investee companies or on sustainability. In the code issued by the Insurance Regulatory and Development Authority of India, the purpose of stewardship is to "improve the return on investments of insurers which will ultimately benefit the policyholders".[195] Similarly, the stewardship code issued by the Pension Fund Regulatory and Development Authority is "intended to protect the subscribers' pension wealth."[196] The Securities and Exchange Board of India makes it clear that the object of stewardship is for institutional investors "to protect their clients' wealth".[197] The purpose of the Singapore Institutional Investors Code is broader than protecting the financial interests of beneficiaries as it includes the interests of stakeholders broadly defined.[198] Under the Singapore Institutional Investors Code, investors are permitted to engage with their investee companies on a variety of matters including, but not limited to, ESG matters.[199]

Perhaps the most striking demonstration of ESG being a significant driver in the development of a stewardship code can be seen in the recently released 2020 UK Code. As described by Paul Davies:

> driving [the significant reforms made in the 2020 UK Code was] the heavy emphasis placed on ESG, especially climate change…. The UK Code 2012 contained a fleeting reference to ESG factors, but most people would probably have missed it. By contrast, the [2020 UK Code] insists that 'Signatories systematically integrate stewardship and investment, including material environmental, social and governance issues, and climate change, to fulfil their responsibilities', and that 'Signatories should explain how information gathered through stewardship has informed acquisition, monitoring and exit decisions . . .'. The aim is clearly to mainstream ESG factors into stewardship, not simply to present them as an add-on.[200]

The question then becomes whether it is effective to use stewardship codes as a mechanism to protect the financial interests of beneficiaries by urging institutional shareholders to incorporate ESG factors in their decision-making process and to engage with the investee companies on sustainability matters. In other words, the fact that a stewardship code is a legal misfit for addressing the traditional institutional investor agency problem in concentrated ownership jurisdictions may or may not make it a legal misfit for promoting the beneficiaries' interests and a broader environmental or social agenda.

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[195] GUIDELINES ON STEWARDSHIP CODE FOR INSURERS IN INDIA, INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY OF INDIA (Mar. 22, 2017), https://www.irdai.gov.in/ADMINCMS/cms/frmGuidelines_Layout.aspx?page=PageNo3096&flag=1; these guidelines were revised by the Insurance Regulatory and Development Authority of India in 2020, *see* REVISED GUIDELINES ON STEWARDSHIP CODE FOR INSURERS IN INDIA, INSURANCE REGULATORY AND DEVELOPMENT AUTHORITY OF INDIA (Feb. 7, 2020), https://www.lifeinscouncil.org/component/Revised%20Guidelines%20on%20Stewardship%20Code%20for%20Insurers%20in%20India.pdf [hereinafter IRDAI Code 2020].

[196] COMMON STEWARDSHIP CODE, PENSION FUND REGULATORY AND DEVELOPMENT AUTHORITY 1 (May 4, 2018), https://www.pfrda.org.in/writereaddata/links/circular-%20common%20stewardship%20code%2004-05-186ec9a3b4-566b-4881-b879-c5bf0b9e448a.pdf (introductory letter) [hereinafter PFRDA Code 2018].

[197] STEWARDSHIP CODE FOR ALL MUTUAL FUNDS AND ALL CATEGORIES OF AIFS, IN RELATION TO THEIR INVESTMENT IN LISTED EQUITIES, SECURITIES AND EXCHANGE BOARD OF INDIA 1 (Dec. 24, 2019), https://ecgi.global/node/7923 (introductory letter para 1) [hereinafter SEBI Code 2019].

[198] Singapore Institutional Investors Code, supra note 159, at 5.

[199] *Id.*, at 6 (para. 2.3).

[200] Davies, *supra* note 1, at 6-7.

The answer to this question depends to a significant extent on whether the promotion of beneficiaries' interests by institutional investors under the stewardship code is consistent with how institutional shareholders interpret the fiduciary or other similar duties that they owe to their beneficiaries.[201] There are three different interpretations. The first is that fiduciary or other similar duties preclude the consideration of ESG factors.[202] If institutional shareholders subscribe to this interpretation, then it would clash with the stewardship code. Given that the stewardship code in concentrated ownership jurisdictions is soft law, institutional shareholders would disregard it in favour of the hard law of fiduciary or other similar duties. The second interpretation is that fiduciary or other similar duties require the consideration of ESG factors.[203] This is consistent with the stewardship code but it is highly questionable what added value the stewardship code brings if fiduciaries are already required under hard law to incorporate ESG factors. The third interpretation is that fiduciary or other similar duties permit institutional shareholders to take into account ESG factors under certain circumstances.[204] In this regard, a stewardship code would have a role to play, albeit a limited one, in reinforcing the importance of considering ESG factors.

The first and second interpretations are incorrect. The first interpretation erroneously assumes that maximising the beneficiaries' financial interests necessarily precludes consideration of ESG factors. As long as the terms and purposes of the investment agreement and instrument do not prohibit such consideration, and insofar as the fiduciaries honestly believe that taking into account ESG factors will improve the beneficiaries' risk-adjusted returns, they should not be barred from doing so. The fallacy in the second interpretation is that it assumes that fiduciaries are obliged to give effect to ESG considerations even if doing so will conflict with the beneficiaries' financial interests, and even if the terms and purposes of the investment agreement and instrument preclude or do not require the consideration of ESG factors. The third interpretation is the correct one, but the difficulty lies in the circumstances under which ESG factors can be considered. It has been said that as long as incorporating ESG factors gives effect to the preferences of the beneficiaries, and does not significantly reduce the risk-adjusted returns, the fiduciary is permitted to do so.[205] However, it will be difficult to ascertain the preferences of beneficiaries, especially if they are numerous and dispersed. Further, it is unclear if unanimous or majoritarian preferences are required.

In common law jurisdictions, generally speaking, given that a fiduciary owes fiduciary duties to each of its beneficiaries, it would be difficult to circumvent the legal requirement (unless expressly

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[201] Lim, *supra* 140, at 196-203.

[202] *See*, Anna Tilba and Arad Reisberg, *Fiduciary Duty under the Microscope: Stewardship and the Spectrum of Pension Fund Engagement,* 82 MOD. L. REV. 456, 470-80 (2019).

[203] *A Legal Framework for the Integration of Environmental, Social and Governance Issues into Institutional Investment,* UNEP FINANCE INITIATIVE, FRESHFIELDS BRUCKHAUS DERINGER 13 (Oct. 2005); *Fiduciary Duty in the 21st Century*, UNITED NATIONS GLOBAL COMPACT, UNEP FINANCE INITIATIVE, PRINCIPLES FOR RESPONSIBLE INVESTMENT, INQUIRY INTO THE DESIGN OF A SUSTAINABLE FINANCIAL SYSTEM 9 (2015); Susan N Gary, *Best Interests in the Long Term: Fiduciary Duties and ESG Integration* 90 U. COLO. L. REV. 731 (2019); Susan N Gary, *Values and Value: University Endowments, Fiduciary Duties, and ESG Investing* 42 J.C. & U. L. 247. (2016).

[204] *Fiduciary Duties of Investment Intermediaries*, UK LAW COMMISSION 113 (Jun. 30, 2014), http://www.lawcom.gov.uk/app/uploads/2015/03/lc350_fiduciary_duties.pdf (6.34); Max M Schanzenbach & Robert H Sitkoff, *Reconciling Fiduciary Duty and Social Conscience: The Law and Economics of ESG Investing by a Trustee* 72 STAN. L. REV. 381 (Feb. 2020).

[205] *Fiduciary Duties of Investment Intermediaries*, UK LAW COMMISSION 113 , *Id.*.

contracted out of) that consent has to be obtained from each of them.[206] Moreover, the fiduciary has to avoid favouring the interests of one group of beneficiaries over another as fiduciary law requires the fiduciary to act fairly between classes of beneficiaries and to protect and promote the interests of beneficiaries as a whole.[207] In non-common law jurisdictions, such as the Netherlands and Norway, although pension fund trustees are generally required to maximise the financial returns of their beneficiaries, they are permitted to take into account ESG considerations without necessarily seeking the consent of their beneficiaries.[208]

In sum, if fiduciary and other similar duties already require institutional investors to incorporate ESG considerations, stewardship codes are redundant in terms of advancing ESG considerations. If fiduciary and other similar duties currently bar the consideration of ESG factors, stewardship codes are ineffectual. However, if fiduciary and other similar duties permit ESG factors to be considered, stewardship codes would provide further support in doing so – although the code's effectiveness may be limited in view of its generally voluntary and non-binding nature.

Importantly, it should also be recognized that even if stewardship codes provide some nudge for institutional investors to take ESG factors into consideration, the ability of institutional investors to effect real change in listed companies in controlling shareholder dominated jurisdictions will be limited – especially in comparison to in the UK/US where institutional investors collectively control the voting rights in most listed companies. Nevertheless, as significant minority shareholders and market participants, institutional investors may use their voice to bring ESG issues to the fore or to name and shame companies who flout them. Such an approach would be more reliant on norm creation through publicity than on voting rights and may suggest a rationale for the inclusion of ESG in codes.

However, it should not be forgotten that the ability for institutional investors to collectively influence ESG through hard legal means will be limited to mechanisms for preventing minority abuse – but not for determining the direction of the company – in jurisdictions where collectively they are minority shareholders. This suggests that the term "stewardship" may be misplaced in this context – institutional investors acting collectively as minority shareholders will be unable to "steward" investee companies towards ESG. Rather they may apply pressure on controlling shareholders, who have the legal right to "steward" the company. It also suggests that if a government in a controlling shareholder dominated jurisdiction is serious about advancing ESG through corporate law, it should ultimately focus on changing the behaviour of controlling shareholders – in which pressure from minority institutional investors may be helpful, but likely insufficient, to achieve this goal.

(f) Mitigating Private Benefits of Control: Theoretically Possible but Negligible in Practice

Another possible rationale for the adoption of stewardship codes by concentrated ownership jurisdictions is to improve corporate governance by preventing controlling shareholders from

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[206] Lynton Tucker, Nicholas Le Poidevin and James Brightwell, LEWIN ON TRUSTS (18th edn, 2012) para. 45-03.
[207] See eg, *Nestle v National Westminster Bank* (1996) 10 TRUST LAW INTERNATIONAL 112, at 115.
[208] See eg, Keith L. Johnson, *Introduction to Institutional Investor Fiduciary Duties* (International Institute for Sustainable Development, 2014) at 14-15.

extracting wealth reducing private benefits of control.[209] Under the codes issued by concentrated ownership jurisdictions, institutional shareholders are urged to monitor and engage with their investee companies. Engagement includes the exercise of formal powers (such as speaking, voting and requisitioning general meetings, selling shares, as well as litigation) and informal powers (including, but not limited to, public campaigns and private meetings).[210] Institutional shareholders are urged to monitor and engage with the company in matters including the company's strategy, performance, governance, remuneration, risk management, and ESG considerations.[211] They are also often encouraged to act collectively with other investors where appropriate.[212] In dispersed ownership jurisdictions, institutional shareholders, particularly activist hedge funds, play an important role in monitoring and even disciplining directors and managers.[213] The role that hedge fund activists play is even more important given that other types of institutional shareholders, such as index, pension, and mutual funds are rationally reticent.[214]

The question here is whether a stewardship code is an effective mechanism to bring about increased shareholder activism by minority institutional shareholders through increased monitoring and engagement with controlling shareholders in concentrated ownership jurisdictions. There appears to be no evidence that stewardship codes have an impact on the decisions of minority institutional shareholders as to whether and the extent to which they will engage and monitor with their investee companies. While there is evidence of minority institutional shareholder activism in concentrated ownership jurisdictions, it is relatively uncommon.[215] Save for hedge funds, minority institutional shareholders are generally passive due to their short-term investment strategies; highly diversified portfolio structures; and short-term performance metric and compensation mechanisms.[216] Further, collective action and free rider problems among the institutional investors

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[209] For an overview of how private benefits of control work in different jurisdictions and types of companies see, Puchniak, supra note 129.

[210] AMEC STEWARDSHIP CODE, AMEC 12 (2016), https://ecgi.global/code/amec-stewardship-code-2016 (Principle 4) [hereinafter AMEC Code 2016]; PRINCIPLES OF RESPONSIBLE OWNERSHIP, SECURITIES AND FUTURES COMMISSION 4 (2016), https://ecgi.global/code/principles-responsible-ownership (principle 2, para 19) [hereinafter Hong Kong Code 2016]; PFRDA Code 2018, *supra* note 196, at 3 (Principle 4); SEBI Code 2019, *supra* note 197, at 5 (principle 4); IRDAI Code 2020, *supra* note 195, at 3 (principle 4); Malaysia Code 2014, *supra* note 97, at 11 (principle 3, para 3.4); Singapore Code 2016, *supra* note 198, at 7 (principle 3 para 3.4); Thai Code 2017, *supra* note 97 at, 45-47.

[211] AMEC Code 2016, *supra* note 210, at 12 (Principle 4); Hong Kong Code 2016, *supra* note 210, at 3 (principle 2, para 15); PFRDA Code 2018, *supra* note 210, at 2 (Principle 3); SEBI Code 2019, *supra* note , at 4 (principle 3); IRDAI Code 2020, *supra* note 195, at 2 (principle 3); Malaysia Code 2014, *supra* note 97, at 9 (principle 2, para 2.1); Singapore Institutional Investors Code, *supra* note 159, at 7 (Principle 3); Thai Code 2017, *supra* note 97, at 42 (principle 3).

[212] AMEC Code 2016, *supra* note 210, at 13 (Principle 6); Hong Kong Code 2016, *supra* note 210, at 5 (principle 5, para 29); PFRDA Code 2018, *supra* note 196, at 3 (principle 4); SEBI Code 2019, *supra* note 197, at 5 (principle 4); IRDAI Code 2020, *supra* note 195, at 4 (principle 5); Malaysia Code 2014, *supra* note 97, at 3 (para 5); Singapore Institutional Investors Code, *supra* note 159, at 9 (Principles 7.1-7.3); Thai Code 2017, *supra* note 97, at 50 (principle 6).

[213] Alon Brav, Wei Jiang, Frank Partnoy and Randall Thomas, *Hedge Fund Activism, Corporate Governance, and Firm Performance*, in INSTITUTIONAL SHAREHOLDER ACTIVISM: HEDGE FUNDS AND PRIVATE EQUITY, ECONOMICS AND REGULATION (William W. Bratton and Joseph A. McCahery. et al. eds., Oxford University Press, 2015).

[214] Gilson & Gordon, *supra* note 3; Bebchuk et al., *supra* note 11.

[215] ERNEST LIM, A CASE FOR SHAREHOLDERS' FIDUCIARY DUTIES IN COMMON LAW ASIA 67-95 (Cambridge University Press 2019); Lauren Yu-Hsin Lin, *When Activists Meet Controlling Shareholders in the Shadow of the Law: A Case Study of Hong Kong* 14 ASIAN. J. COMP. LAW. 1 (2019).

[216] Lim, *supra* note 215 , at 283-87.

will render engagement less likely. As such, although this theoretically may provide a rationale for controlling shareholder jurisdictions to adopt a stewardship code focused on institutional investor engagement, it seems like a weak, if non-existent, driver in practice. In addition, if a stewardship code was meant to fulfil this purpose, using the UK Code as a model would be misguided as it was not designed for this purpose and no jurisdiction has drafted a stewardship code, focused on institutional investors, which has this as its primary purpose.[217]

PART V: FUTURE OF STEWARDSHIP WITH CONTROLLING SHAREHOLDERS: BRIGHT LIGHTS, LITTLE BITE

The future of stewardship will be in jurisdictions in which institutional shareholders are collectively minority shareholders and listed companies are dominated by controlling shareholders. This is clear because it describes the shareholder landscapes in almost every jurisdiction in the world, with the notable exceptions of the UK/US. Given this reality, if the past is any predictor of the future, stewardship will not play the role intended by the UK Code in any Non-UK/US jurisdiction – which debunks current conventional wisdom.[218]

Shareholder stewardship will not, therefore, transform passive institutional investors into actively engaged shareholder stewards to solve systemic corporate governance or societal problems almost anywhere – because as a global legal misfit it is incapable of doing this outside of the UK/US. Even if the global proliferation of UK-style stewardship codes succeeds in incentivizing institutional investors to become actively engaged shareholders (which based on the UK's history is itself unlikely), they nevertheless will in most cases only be able to act collectively as minority shareholders – not as stewards of listed companies. This does not mean that the global shareholder stewardship movement will have no impact outside the UK/US. However, it does mean that the impact of stewardship outside of the UK/US will continue to significantly differ from what the original drafters of the UK Code intended.

Ultimately, the in-depth case studies and empirical evidence presented in this Article demonstrate that the global shareholder stewardship movement has been coopted by governments and institutional investors to serve their own purposes. This has resulted in stewardship serving diverse functions globally – such as a mechanism that governments can use to engage in halo signaling, a tool for governments to advance their own political agendas, or as a mechanism for institutional investors to stave off being regulated by the government. This development, which is likely to continue, is something that the original drafters of the UK Code would never have anticipated, and which has been almost entirely overlooked in the literature.

This Article also serves as a caution to leading Anglo-American scholars to avoid applying the UK/US corporate governance lens – in which institutional investors have become the linchpin in their corporate governance systems – to non-UK/US jurisdictions. In their watershed 2013 article, Gilson and Gordon insightfully observe that as institutional investors had come to own "over 70% of the outstanding stock of the thousand largest U.S. public corporations" the agency problems of

[217] It is noteworthy the Singapore Family Code focuses of the controllers of family firms – but not institutional investors – which can be see as an attempt to mitigate agency problems with controlling shareholders For an in-depth analysis of the Singapore Family Code *see,* Puchniak & Tang, *supra* note 16.
[218] *Supra*, Part IV.A.

institutional investor ownership had become central to understanding US corporate governance.[219] As noted above, the 2001 Myners Review observed a similar trend in the UK which occurred a few decades earlier – by 1981 UK institutional investors had come to own 57.9% of listed UK companies. [220] There is the temptation to extend these insightful observations about the implications of the rise of institutional investors in UK/US corporate governance to corporate governance globally. Bebchuk, Cohen, and Hirst's insightful article identifying the importance of the agency problems of institutional investors in corporate governance suggests that these problems may be applicable beyond US boarders – particularly with respect to the effectiveness of stewardship codes.[221] Although they are no doubt correct that agency problems exist with institutional investors globally, they fail to note that the UK/US are outliers globally with respect to the percentage of their stock markets owned by institutional investors and, in turn, that these agency problems are likely to be far less significant in non-UK/US jurisdictions.[222] As the hand-compiled data in Part II illuminates, it must be remembered that on average institutional investors currently own 21% of the shares in listed companies in continental Europe and 11% in Asia.[223] To find such low levels of institutional ownership in UK/US corporate governance history one must look back well over half a century – at which time leading Anglo-American scholars (correctly) did not view institutional investors as either the cause or solution for any major corporate governance problems.[224]

This limitation on institutional investors to effectively influence stewardship, and corporate governance more generally, outside of the UK/US – due to their small minority share ownership in the face of dominant controlling shareholders – is well recognized by leading institutional investors. BlackRock in its 2020 Investment Stewardship Annual Report notes several times that the ability of institutional investors to effect change on insider dominated boards in Asia is undermined by controlling state or private shareholders – and describes one striking case study to emphasize this point.[225] This highlights the flaw of applying the Anglo-American stewardship lens to Non-UK/US jurisdictions where controlling shareholders – not institutional investors – have the legal right and economic incentives to steward most listed companies. To be clear, obviously, outside of the UK/US, institutional investors can collectively have some impact on corporate governance as minority shareholders. However, obviously, as minority shareholders, their impact

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[219] Gilson & Gordon, *supra* note 3 , at 865.

[220] Myners Review, *supra* note 25, at 27.

[221] Bebchuk et al., *supra* note 11, at 108.

[222] Bebchuk, Cohen and Hirst clearly suggest that their conclusions have implications to stewardship codes and corporate governance beyond US boarders. Id. at 90, 108. They also make it clear that the rise of institutional investors has resulted in them posing "system wide adverse consequences on governance". Id. at 90. However, they do not note how the UK/US are outliers and how such systemic risks and significant implications of the rise of institutional investors may not be applicable outside of the UK/US because institutional investors are most often collectively small minority shareholders in most other countries.

[223] *Supra* Table 1.

[224] Gilson & Gordon note that: "Equities were still held predominately by households; institutional investors, including pension funds, held only approximately 6.1% of U.S. equities. By 1980, however, the distribution of shareholdings had begun to shift away from households toward institutions. At that time, institutional investors held 28.4% of U.S. equities". Gilson & Gordon, *supra* note 3 , at 865. The statistics contained in the Myners Review show that by 1963 UK institutional investors had already come to own 30.3% of the shares in UK listed companies. Myners Review, *supra* note 25, at 27.

[225] BLACKROCK, INVESTMENT STEWARDSHIP ANNUAL REPORT (September 2020), 10, 27, 29, 30, https://www.blackrock.com/corporate/literature/publication/blk-annual-stewardship-report-2020.pdf.

will be far less than in the UK/US, where institutional investors collectively own a majority of the shares in most listed companies and, therefore, have the legal right to steward them.

Finally, with the increasing focus on corporate purpose and the related rise of ESG – both of which will likely increase post-Covid 19 – the need for governments and institutional investors to be *seen* to be acting in the interests of society as a whole, and especially the environment, is likely to intensify. As the 2020 UK Code has been reframed as a signal for societal and ESG interests, it will likely serve as an appealing mechanism for governments and institutional investors to coopt as a signaling device. As such, more UK-style stewardship codes will likely be adopted post-Covid 19 and jurisdictions that already have them will amend them towards the 2020 UK Code, citing their commitment to society, ESG, and corporate purpose. In Asia, some jurisdictions may even decide to follow the Singapore Family Code model and claim that they are tailoring their approach to a new form of Asian corporate governance – with family owners as the natural stewards of a significant portion of listed companies.[226]

However, most likely, these developments will merely be about *signaling* a shift in focus towards a more inclusive society, the environment, and corporate purpose using the bright lights of stewardship. This may shift attention away from the hard law regulation and reforms that are required to bring about real change in jurisdictions where institutional investors are weak minorities and controlling shareholders dominate. For reforms in these jurisdictions to have real bite, the entrenched interests of controlling shareholders will have to be challenged – something which powerful corporations, families, and governments, who themselves are the dominant controlling shareholders around the world, will likely be able to avoid.

[226] For an analysis of the Singapore Family Code and how it aims to create a model for Asia *see*, Puchniak & Tang, *supra* note 16. Kowpatanakit & Bunaramrueang, *supra* note 169, at 33-34 (suggesting that it may make sense for Thailand to follow the Singapore model of stewardship given Thailand's similar shareholder structure).

APPENDICES

APPENDIX 1

Average Ownership by Category of Investor, end-2017[1]					
Jurisdiction	Private Corporations[2]	Public Sector[3]	Strategic Individuals[4]	Institutional Investors[5]	Other free-float[6]
Argentina	40%	10%	18%	7%	25%
Australia	10%	3%	13%	29%	45%
Austria	28%	9%	20%	20%	23%
Bangladesh	21%	8%	22%	2%	47%
Belgium	21%	5%	21%	18%	35%
Brazil	25%	11%	21%	22%	21%
Canada	8%	4%	6%	43%	39%
Chile	57%	1%	17%	10%	15%
China	13%	21%	25%	8%	33%
Czech Republic	33%	15%	1%	28%	23%
Denmark	12%	5%	12%	33%	38%
Estonia	36%	5%	17%	10%	32%
Finland	10%	5%	24%	31%	30%
France	27%	4%	21%	20%	28%
Germany	23%	3%	21%	21%	31%
Greece	22%	8%	29%	10%	31%
Hong Kong (China)	18%	24%	19%	12%	27%
Hungary	42%	10%	7%	15%	26%
Iceland	14%	3%	8%	54%	21%
India	34%	15%	13%	19%	19%
Indonesia	43%	16%	10%	7%	24%
Ireland	8%	10%	11%	40%	31%
Israel	30%	0%	26%	16%	28%
Italy	26%	4%	26%	16%	28%
Japan	24%	5%	6%	31%	34%
Korea	27%	10%	17%	13%	33%
Latvia	37%	6%	34%	9%	14%
Lithuania	24%	25%	26%	8%	17%
Luxembourg	52%	2%	9%	15%	22%
Malaysia	32%	24%	14%	11%	19%
Mexico	16%	1%	32%	19%	32%
Netherlands	12%	2%	17%	39%	30%
New Zealand	16%	11%	16%	18%	39%
Norway	14%	5%	21%	26%	34%

Pakistan	43%	6%	17%	9%	25%
Philippines	54%	2%	18%	5%	22%
Poland	21%	7%	23%	34%	15%
Portugal	40%	5%	20%	17%	18%
Russia	34%	23%	19%	8%	16%
Saudi Arabia	20%	16%	15%	2%	47%
Singapore	33%	4%	29%	6%	28%
Slovak Republic	79%	0%	6%	5%	10%
Slovenia	25%	31%	2%	8%	34%
South Africa	26%	12%	8%	33%	21%
Spain	25%	3%	22%	21%	30%
Sri Lanka	58%	9%	13%	9%	11%
Sweden	14%	4%	22%	27%	33%
Switzerland	13%	9%	19%	23%	36%
Chinese Taipei	22%	4%	9%	18%	47%
Thailand	28%	8%	26%	8%	30%
Turkey	49%	8%	12%	11%	20%
United Kingdom	6%	4%	6%	68%	16%
United States	2%	3%	4%	80%	11%
Vietnam	27%	17%	13%	8%	35%

Notes:
(1) This appendix shows the level of ownership of each category of investor as of the end of 2017. It reproduces the data from Table A.4., Owners of the World's Listed Companies, *supra* note 34, at 38, which shows the level of ownership of each category of investor as of the end of 2017.
(2) Private corporations and holding companies include listed and unlisted private companies, their subsidiaries, joint ventures and operating divisions.
(3) Public sector includes direct ownership by central governments, local governments, public pension funds, state-owned enterprises (SOEs) and sovereign wealth funds (SWFs).
(4) Strategic individuals and families refers to physical persons that are either controlling owners or members of controlling family or block-holders and family offices.
(5) Institutional investors refer to pension funds, insurance companies, mutual funds and hedge funds. Institutional investors' holdings are recorded according to their domicile country, which can be different than the domicile country of the beneficial owner.
(6) Other free-float including retail investors refers to the shares in the hands of investors that are not required to disclose their holdings. It includes the direct holdings of retail investors who are not required to disclose their ownership and institutional investors that do not exceed the required thresholds for public disclosure of their holdings.

APPENDIX 2

Ownership Concentration by Market[1]			
Jurisdiction	**Largest shareholder**	**3 Largest shareholders**	**Total**
Russia	73%	20%	93%
Turkey	57%	36%	93%
Indonesia	69%	23%	92%
Philippines	50%	35%	85%

Argentina	73%	9%	82%
Chile	61%	21%	82%
Israel	45%	35%	80%
Sri Lanka	56%	22%	78%
Hong Kong (China)	53%	22%	75%
Austria	46%	28%	74%
Greece	38%	35%	73%
Poland	49%	23%	72%
Brazil	46%	26%	72%
Malaysia	37%	35%	72%
Pakistan	39%	32%	71%
Italy	51%	20%	71%
Singapore	47%	23%	70%
India	43%	23%	66%
Mexico	45%	16%	61%
France	40%	20%	60%
Vietnam	34%	25%	59%
China	28%	29%	57%
Germany	37%	17%	54%
Thailand	23%	28%	51%
Saudi Arabia	21%	30%	51%
Korea	18%	27%	45%
South Africa	20%	18%	38%
Norway	17%	18%	35%
Netherlands	18%	13%	31%
Sweden	8%	20%	28%
Finland	7%	11%	18%
Canada	11%	4%	15%
Japan	7%	8%	15%
United Kingdom	5%	7%	12%
United States	2%	2%	4%

Notes:
(1) This appendix shows the number of companies where the largest and 3 largest shareholder(s) hold more than 50% of the equity as share of the total number of listed companies in each market as of the end of 2017. This appendix is based on Figure 8 of Owners of the World's Listed Companies, *supra* note 34, at 18. However, the detailed statistics in this Appendix were not included in the report, but were generously provided to the authors of this article by one of the co-authors of the Owners of the World's Listed Companies, Alejandra Medina.

APPENDIX 3

Category of the Largest Investors at the Company Level[1]				
Jurisdiction	Private Corporations[2]	Public Sector[3]	Strategic Individuals[4]	Institutional Investors[5]
Philippines	78%	2%	20%	1%
Sri Lanka	75%	9%	13%	3%
Chile	72%	1%	25%	2%
Turkey	69%	9%	16%	6%
Pakistan	66%	8%	20%	6%
Indonesia	62%	23%	15%	0%
Argentina	61%	13%	27%	0%
India	57%	19%	20%	4%
Malaysia	56%	24%	19%	1%
Korea	54%	9%	35%	1%
Israel	52%	0%	40%	8%
Thailand	49%	11%	37%	3%
Singapore	47%	8%	44%	2%
South Africa	45%	30%	8%	17%
Italy	45%	7%	39%	9%
Vietnam	43%	25%	22%	10%
Japan	43%	15%	14%	27%
France	43%	8%	35%	14%
Russia	39%	31%	27%	2%
Saudi Arabia	39%	30%	26%	5%
Brazil	38%	12%	34%	17%
Germany	37%	6%	39%	18%
Austria	37%	9%	35%	19%
Greece	33%	14%	45%	8%
Poland	31%	13%	38%	18%
Sweden	30%	5%	42%	23%
Norway	28%	5%	36%	31%
Hong Kong (China)	27%	40%	31%	1%
Mexico	25%	0%	55%	20%
Netherlands	24%	1%	29%	46%
Finland	19%	10%	41%	30%
Canada	19%	9%	11%	60%
China	16%	37%	45%	2%
United Kingdom	13%	5%	12%	70%
United States	5%	0%	9%	85%

Notes:

(1) This appendix shows the category of the largest investor in each market as of the end of 2017. For example, in the United States 85% of listed companies have an institutional investor as the largest owner, whereas in Singapore only 2% of listed companies have an institutional investor as the largest owner. This appendix is based on Figure 10 of Owners of the World's Listed Companies, *supra* note 34, at 19. However, the detailed statistics in this appendix were not included in the report, but were generously provided to the authors of this article by one of the co-authors of the Owners of the World's Listed Companies, Alejandra Medina.
(2) Private corporations and holding companies include listed and unlisted private companies, their subsidiaries, joint ventures and operating divisions.
(3) Public sector includes direct ownership by central governments, local governments, public pension funds, state-owned enterprises (SOEs) and sovereign wealth funds (SWFs).
(4) Strategic individuals and families refers to physical persons that are either controlling owners or members of controlling family or block-holders and family offices.
(5) Institutional investors refer to pension funds, insurance companies, mutual funds and hedge funds. Institutional investors' holdings are recorded according to their domicile country, which can be different than the domicile country of the beneficial owner.

APPENDIX 4

Holdings of the Largest Institutional Investors at the Company Level[1]				
Jurisdiction	**Largest 3**	**Largest 10**	**Largest 20**	**Total**
United States	24%	19%	11%	54%
United Kingdom	22%	19%	11%	52%
Canada	17%	12%	7%	36%
Netherlands	21%	10%	4%	35%
Poland	21%	10%	2%	33%
South Africa	15%	9%	4%	28%
Finland	16%	9%	3%	28%
Japan	13%	11%	4%	28%
Sweden	16%	7%	2%	25%
Norway	16%	7%	2%	25%
Brazil	15%	5%	1%	21%
Germany	12%	5%	2%	19%
Austria	13%	4%	2%	19%
France	12%	4%	2%	18%
Mexico	13%	4%	1%	18%
India	9%	6%	2%	17%
Israel	12%	3%	1%	16%
Italy	10%	4%	1%	15%
Korea	8%	4%	1%	13%
Malaysia	6%	3%	1%	10%
Hong Kong (China)	6%	3%	1%	10%
Turkey	7%	2%	1%	10%
Greece	7%	2%	1%	10%
Chile	7%	2%	0%	9%
Pakistan	7%	1%	0%	8%
Sri Lanka	7%	1%	0%	8%
Vietnam	7%	1%	0%	8%

China	5%	2%	1%	8%
Russia	6%	1%	1%	8%
Thailand	5%	2%	1%	8%
Indonesia	4%	2%	1%	7%
Argentina	3%	2%	1%	6%
Singapore	4%	1%	0%	5%
Philippines	3%	1%	0%	4%
Saudi Arabia	2%	0%	0%	2%

Notes:
(1) The figure shows the average combined holdings of the 3, 10 and 20 largest institutional investors at the company level in each market. The percentage holdings of the largest institutional investors at the company level are aggregated and then averaged for each market. For example, in the United Kingdom, the average combined holdings of a company's 3 (20) largest institutional investors account for 22% (54%) of the shares of the listed companies. The data is as of the end of 2017 This appendix is based on Figure 13 of Owners of the World's Listed Companies, *supra* note 34, at 24. However, the detailed statistics in this appendix were not included in the report, but were generously provided to the authors of this article by one of the co-authors of the Owners of the World's Listed Companies, Alejandra Medina.

APPENDIX 5

The Seven Core Principles in the UK Code 2010[1]	
Principle 1	Publicly disclose their policies on how they will discharge stewardship responsibility
Principle 2	Have a robust policy on managing conflicts of interest
Principle 3	Monitor investee companies
Principle 4	Establish clear guidelines on when and how to escalate stewardship activities
Principle 5	Willing to work collectively with other investors
Principle 6	Have a clear policy on voting and disclosure of voting activity
Principle 7	Report periodically on stewardship and voting activities to their client/beneficiaries

Notes:
(1) The table displays the 7 core Principles in the 2010 UK Code 2010, *supra* note 5.

APPENDIX 6

Stewardship Codes Around the World after the UK Code 2010[1]												
Jurisdiction	**Year**	**Name**	**Focus of the Code**	**Issued by (Institutional investor/ Governmental)**	**P1**	**P2**	**P3**	**P4**	**P5**	**P6**	**P7**	**Currently In force? (i.e., latest version)**
Australia	2018	Australian Asset Owner Stewardship Code	Institutional investor	Institutional investor	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

	2017	Principles of Internal Governance and Asset Stewardship	Institutional investor	Institutional investor	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Brazil	2016	AMEC Stewardship Code	Institutional investor	Institutional investor	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
Canada	2010	CCGC Stewardship Principles	Institutional investor	Institutional investor	Yes	No	Yes	No	Yes	Yes	No	No
	2017	CCGC Stewardship Principles	Institutional investor	Institutional investor	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
	2020	CCGC Stewardship Principles	Institutional investor	Institutional investor	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Denmark	2016	Stewardship Code	Institutional investor	Governmental	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Hong Kong	2016	Principles of Responsible Ownership	Institutional investor	Governmental	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
India	2017	IRDA Guidelines on Stewardship Code for Insurers	Institutional investor	Governmental	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
	2018	PFRDA Common Stewardship Code	Institutional investor	Governmental	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	2019	SEBI Stewardship Code	Institutional investor	Governmental	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	2020	IRDAI Guidelines on Stewardship Code for Insurers	Institutional investor	Governmental	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Italy	2013	Italian Stewardship Principles for the exercise of administrative and voting rights in listed companies	Institutional investor	Institutional investor	Yes	No	Yes	Yes	Yes	Yes	Yes	No
	2015	Italian Stewardship Principles for the exercise of administrative and voting rights in listed companies	Institutional investor	Institutional investor	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No

	2016	Italian Stewardship Principles for the exercise of administrative and voting rights in listed companies	Institutional investor	Institutional investor	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Japan	2014	Principles for Responsible Institutional Investors <<Japan’s Stewardship Code>>	Institutional investor	Governmental	Yes	Yes	Yes	No	No	Yes	Yes	No
	2017	Principles for Responsible Institutional Investors <<Japan’s Stewardship Code>>	Institutional investor	Governmental	Yes	Yes	Yes	No	Yes	Yes	Yes	No
	2020	Principles for Responsible Institutional Investors <<Japan’s Stewardship Code>>	Institutional investor	Governmental	Yes	Yes	Yes	No	Yes	Yes	Yes	Yes
Kenya	2017	Stewardship Code for Institutional Investors	Institutional investor	Governmental	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Korea	2016	Principles on the Stewardship Responsibilities of Institutional Investors	Institutional investor	Governmental	Yes	Yes	Yes	No	No	Yes	Yes	Yes
Malaysia	2014	Malaysian Code for Institutional Investors	Institutional investor	Governmental	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Netherlands	2011	Best Practices for Engaged Share-Ownership	Institutional investor	Institutional	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
	2018	Dutch Stewardship Code	Institutional investor	Institutional	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

Norway	2012	Industry Recommendation for the Members of the Norwegian Fund and Asset Management Association: Exercise of Ownership Rights	Institutional investor	Institutional investor	Yes	Yes	No	No	Yes	Yes	No	No
	2019	Industry Recommendation for the Members of the Norwegian Fund and Asset Management Association: Exercise of Ownership Rights	Institutional investor	Institutional investor	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Singapore	2016	Stewardship Principles for Responsible Investors	Institutional investor	Governmental	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
	2018	Stewardship Principles for Family Businesses	Family Controlling Shareholder	Governmental	N.A.							Yes
South Africa	2011	Code for Responsible Investing in South Africa	Institutional investor	Institutional investor	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Switzerland	2013	Guidelines for institutional investors governi ng the exercising of participation rights in public limited companies	Institutional investor	Institutional investor	No	Yes	Yes	No	No	Yes	Yes	Yes
Taiwan	2016	Stewardship Principles for Institutional Investors	Institutional investor	Governmental	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Thailand	2017	Thai Securities and Exchange Commission Investment Governance Code	Institutional investor	Governmental	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
United States	2017	Stewardship Framework for Institutional Investors	Institutional investor	Institutional investor	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Inter-jurisdictional												

EU	2011	EFAMA Code for external governance: Principles for the exercise of ownership rights in investee companies	Institutional investor	Institutional investor	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
	2018	EFAMA Code for external governance: Principles for the exercise of ownership rights in investee companies	Institutional investor	Institutional investor	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
International	2013	ICGN Statement of Principles on Institutional Shareholder Responsibilities	Institutional investor	Institutional investor	Yes	Yes	Yes	Yes	Yes	Yes	Yes	No
	2016	ICGN Global Stewardship Principles	Institutional investor	Institutional investor	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

Notes:

(1) The 2010/2012/2020 UK Codes are not included in Appendix 6. P1 to P7 refers to the 7 core principles of the UK 2010 Code as shown in Appendix 5 above. The statistics in the table above are derived from inaugural versions of codes adopted after the UK Code 2010 and in some jurisdictions, there have been subsequent amended versions implemented which are also included in the table.

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