

The Hebrew University of Jerusalem

Syllabus

Another Look at Corporate Governance - 62849

Last update 11-09-2023

HU Credits: 2

Degree/Cycle: 2nd degree (Master)

Responsible Department: Law

Academic year: 0

Semester: 2nd Semester

Teaching Languages: Hebrew

Campus: Mt. Scopus

Course/Module Coordinator: Amir Wasserman

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Coordinator Office Hours: Wednesdays, 18:00 - 18:30

Teaching Staff:

Course/Module description:

The legal justification for corporate governance rules for public companies usually rests on the theory of agency problems. According to this theory, the firm's decision-makers may act in a way that does not reflect the interests of the principals they were entrusted to look after. Israel's corporate and securities laws try to deal with three major agency problems: The company's management vs. the shareholders; the controlling shareholder vs. the minority shareholders; the shareholders vs. the debt holders. Many provisions of the corporate and securities laws can be explained through this prism.

In this course we will try to go beyond the standard theories of corporate law, and explain how other factors, political and institutional, affect the design of corporate governance rules. We will do so through a historical and comparative examination of corporate governance rules, and through an analysis of selected current topics where the considerations and the way leading to the formation of corporate governance rules raise questions and insights regarding this field.

Course/Module aims:

Establishing profound knowledge in the field of corporate governance, and discussing current topics; Understanding the ways regulation is made and its implications for the market; Developing critical thinking skills regarding corporate governance rules.

Learning outcomes - On successful completion of this module, students should be able to:

1. Gain a profound knowledge in the field of corporate governance.
2. Explain the development of the corporate governance "movement" in the world and in Israel.
3. Critically discuss corporate governance rules and their implications both on the individual corporate level and on the system as a whole.
4. Analyze current topics in the field of corporate governance and discuss various ways to regulate the field and their implications.
5. Map the main players and interests in the formation of corporate governance rules.

Attendance requirements(%):

According to faculty rules

Teaching arrangement and method of instruction: Lectures and class discussion

Course/Module Content:

We will open the course with a discussion of the corporate governance "movement" as a rather new phenomenon, and describe the stages it went through, from the British Cadbury Report (1992) to the 2008 financial crisis and later. The course will then consist of discussions of current corporate governance issues, including the following:

(a) *Executive Pay:* Rarely do corporate governance rules become the topic of a wide public debate. But that has been the case with the heated subject of executive pay. How were corporate governance rules on executive pay designed? Why has executive pay kept rising despite the attempts to curb it? We shall discuss how the issue evolved in the U.S. and Israel, focusing on the unique legislation enacted in Israel in recent years.

(b) *Who are the investors?* The rise of institutional investors and proxy advisory firms: Corporate law wishes to deal with the dispersed ownership of shares of the public company – a large number of shareholders, each owning a fraction of the company. Securities laws, on their part, strive to achieve full disclosure for the "reasonable investor". Over the last decades there was a rise in the respective share of institutional investors' ownership of public companies. How does this change affect the objectives mentioned above? What is the role of institutional investors in dictating corporate governance of firms? How powerful are proxy advisory firms that assist institutional investors, and should their work be regulated?

(c) *Shareholders Activism:* This is the most discussed corporate governance topic in the U.S. in recent years. What constitutes activism? Is it a positive or a negative phenomenon? Should it change our perception regarding the agency problem of the company's management vs. its shareholders?

(d) *Dual-Class Shares:* The issuance of various types of shares shakes the ground beneath traditional corporate governance rules. Why did giant companies (Google, Facebook, and others) choose to make public offerings with a dual-class structure? We shall explore the pros and cons of this structure, the one share-one vote rule promulgated by section 46b of the Israeli Securities Law, the growing phenomenon of IPOs with a dual-class structure in the world, the role played by stock exchanges in the field of corporate governance, and the reaction of corporate governance advocates and investors to the spreading of dual-class structures.

(e) *The Rise of the Stakeholders Theory:* What is the purpose of the company? And who should determine it? What is, for example, the place of the company's employees in determining the company's purpose and managing it? What is the place of social considerations in determining the actions of the company and its investors? We shall discuss the growing phenomenon of corporate responsibility and social investment, the challenges it raises to traditional corporate and securities laws, and ask whether the expectations it embodies for changing the course of the corporate world are justified?

(f) *Who Makes the Rules?* Formally, corporate governance rules in Israel are formed mainly by the Knesset. Is the legislator the best institution for making corporate governance rules, and how are they made in practice? We shall analyze how

corporate governance rules are designed and the role played by numerous players, such as the government, parliament members, the Securities Authority and other regulators, the companies, the investors, the courts, the media, etc.

Required Reading:

Reading assignments will be provided in the beginning of the course.

Additional Reading Material:

Additional reading materials will be provided throughout the course.

Grading Scheme:

Essay / Project / Final Assignment / Home Exam / Referat 100 %

Additional information:

*Attendance required;
Active participation grade*

Teaching will be based upon group discussions and active participation and contribution of students. The discussion of corporate governance topics shall be based upon the analysis of cases and reading materials that the students will be required to read and prepare thoroughly for class.